



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

### FINANCE COMMITTEE

Wednesday 19 June 2013



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**FINANCE COMMITTEE**  
**19<sup>th</sup> Meeting 2013, Session 4**

**CONVENER**

\*Kenneth Gibson (Cunninghame North) (SNP)

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*Gavin Brown (Lothian) (Con)

\*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

\*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

\*Michael McMahon (Uddingston and Bellshill) (Lab)

\*Jean Urquhart (Highlands and Islands) (Ind)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Eleanor Emberson (Scottish Government)

John Kenny (Scottish Environment Protection Agency)

Ronnie Robinson (Scottish Environment Protection Agency)

John Swinney (Cabinet Secretary for Finance, Employment and Sustainable Growth)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

Committee Room 2



## Scottish Parliament

### Finance Committee

*Wednesday 19 June 2013*

[The Convener *opened the meeting at 10:00*]

### Decision on Taking Business in Private

**The Convener (Kenneth Gibson):** Good morning and welcome to the Finance Committee's 19th meeting in 2013. As this is the committee's last meeting before the summer recess and its last meeting before the contract of our current budget adviser, Professor David Bell, comes to an end and he departs from the committee, I put on record my sincere thanks as well as the thanks of the whole committee for all his expert advice and support.

David Bell is in fact the longest-serving member of the committee, since none of the rest of us was here before 2011, and he has been here since 2007. He has greatly assisted the committee in its scrutiny of the Government's spending plans over the years and has done so fairly and equitably. On the committee's behalf, I wish him every success in the future. I understand that Jim Johnston will be presenting him with a carriage clock later this morning.

I put on record the committee's decision to appoint Angela Scott as our new budget adviser, subject to the Scottish Parliamentary Corporate Body's approval. She is head of regions with the Chartered Institute of Public Finance and Accountancy, with responsibility for Scotland, Wales and Northern Ireland. She will take up her post on 1 July and the committee greatly looks forward to working with her.

Agenda item 1 is a decision on taking business in private. Are members content to take items 3 to 5 in private?

**Members indicated agreement.**

## Landfill Tax (Scotland) Bill: Stage 1

10:02

**The Convener:** The second item of business is to take evidence as part of our stage 1 scrutiny of the Landfill Tax (Scotland) Bill. I welcome Eleanor Emberson and Nicky Harrison from revenue Scotland and John Kenny and Ronnie Robinson from the Scottish Environment Protection Agency. There are no opening statements, so we will go straight to questions.

As usual, it falls on me to open the questions. First, I have questions for our colleagues from SEPA. In your submission, you point out:

"Alternatives to Landfill are currently expensive. The Bill, by continuing the existing Landfill Tax rates, makes the alternatives to Landfilling more proportionate, thereby encouraging alternative technology development and the utilisation of existing alternative facilities".

Would an increase or decrease in the landfill tax encourage or discourage that development and utilisation further?

**John Kenny (Scottish Environment Protection Agency):** As you know, the setting of the rates sits with the minister in the current proposal. The rate that has been set has been a success—the landfill tax has changed behaviours in the waste management industry and encouraged a move away from landfill to more environmentally sustainable solutions.

If the rate was increased significantly, it could make alternatives more attractive. However, it would have a significant impact on business, and business would need a significant lead-in time to adjust to that. It would also be a differential rate from the rest of the United Kingdom, which is not the policy direction of the bill as it stands.

**The Convener:** On encouraging the proper disposal of asbestos, your submission says:

"it would benefit from being taxed at the lower rate to ensure that more material is disposed of safely in a controlled legal manner rather than being stockpiled at the place of production or disposed of illegally."

How common is the illegal disposal of asbestos or the hoarding of asbestos?

**Ronnie Robinson (Scottish Environment Protection Agency):** I am probably best placed to answer that. There have been considerable changes over the years. Asbestos was a prevalent building material from the late 1800s through to 1985, when it was banned in building products. Since 1999, it has ceased even to be reused. The only option for asbestos, as it is a hazardous material, is disposal to a landfill site. To dispose properly of this dangerous substance, it is best

placed on land covered up, so that the fibres are not exposed to air. Reducing the tax liability for asbestos would encourage the proper and safe disposal of the material.

**The Convener:** Indeed, but how extensive is the problem?

**Ronnie Robinson:** The issue is diminishing, because asbestos is not present in modern buildings. However, a considerable number of buildings and building products still contain asbestos and asbestos fibres. There is a considerable tonnage still to be disposed of but, in comparison with the waste stream in Scotland as a whole, it is small.

**The Convener:** Are we talking about hundreds or thousands of tonnes a year being dumped illegally?

**Ronnie Robinson:** We are probably talking about hundreds to small thousands of tonnes of illegal disposal.

**The Convener:** What is the proportion of that relative to legal disposal?

**Ronnie Robinson:** I do not have those figures, so I cannot make a comparison. However, I would say that it is a relatively small proportion, compared with overall disposal.

**The Convener:** Your submission talks about concerns about waste tourism, but you also talk about waste such as incinerator bottom ash being brought into the standard rate of tax, rather than the lower rate. If that happens in Scotland but not in England, will that encourage waste tourism?

**Ronnie Robinson:** It definitely has the potential to do that. We would like the rates of landfill tax to remain the same as they are in the rest of Britain, to encourage certainty in disposal. However, we believe that certain waste streams would benefit from a slight change and that it is worth discussing that further and consulting on the issue.

Any of the proposals to change the rates could bring about quite complex changes to the movements of material backwards and forwards. It is therefore only fair to consult industry openly if any changes are to be made.

There are benefits to the change that we are discussing, of course. The landfill tax is an environmental tax, and we want to encourage the safe and proper disposal of material and encourage the reuse of material and the development of alternative technologies for that material. Bottom ash is one of the materials whose reuse we would like to encourage.

**The Convener:** On waste tourism, we have been told in previous sessions that waste can be very price sensitive and that, if the price rose from £2.50 a tonne to £80 a tonne, the waste would be

likely just to be shifted over the border. I do not think that people in England would be very happy about that.

**John Kenny:** We are saying that the change should be considered, not that it should happen. We are saying that we need certainty now. As we engage with industry, opportunities that are worth considering might arise, but all the points that you have raised would have to be considered in any thoughts about such changes.

**The Convener:** There has been a discussion about how Her Majesty's Revenue and Customs cannot collect tax from operators whose sites are not permitted, which encourages large-scale dumping. I am trying to understand the scale that we are talking about—I appreciate that the fact that such activity is illegal means that it is hard to get a firm grasp on it.

Last week, Craig Hatton told us that 268 tonnes were dumped in North Ayrshire last year. That is pretty small compared with the amount that is dumped in other local authority areas, as we know. What level of illegal dumping are we talking about, as a share of landfill disposals?

**John Kenny:** As you say, it is difficult to give an exact number but, over the past few years, SEPA has become aware of large-scale illegal waste disposal and the involvement of serious organised criminality in that. Significant fines of up to £90,000 and £200,000 have been issued. We are investigating operations of a significant scale. If illegal disposal were brought into the tax regime, the tax liability from such sites could get into seven figures.

It is difficult to quantify the exact number of sites, but I can say that in the past year SEPA has submitted 25 reports to the procurator fiscal on waste-related issues, five of which related to the depositing of waste. Our main concern is significant large-scale dumping, and the ability to address that will be the main benefit of bringing illegal waste sites into the tax regime.

**The Convener:** What is revenue Scotland's view?

**Eleanor Emberson (Scottish Government):** As you would expect, expertise on waste disposal lies entirely with SEPA. That said, I think that two issues arise, the first of which is the practical issue that we have been discussing of the amount of tax that might be recovered and the amount of illegal dumping that is going on. There is also an important issue of principle, which is really a policy matter. I share my policy colleagues' view that we want to send the signal that tax will still be collected from everyone who ought to have paid it. Regardless of whether we collect a large amount of money, we will follow the important principle of not allowing people simply to duck the tax.

**The Convener:** Obviously, the issue is important. An element on which we seek clarification is enforcement. Who should be responsible for enforcement of tax collection?

**Eleanor Emberson:** That varies from tax to tax. The committee has recently had a lot of discussion about the land and buildings transaction tax—

**The Convener:** I am talking about the landfill tax.

**Eleanor Emberson:** Indeed. Compliance and enforcement activity ranges from chasing up payments that are late or which have not been made and checking that the disposals on a landfill site match the returns on the tax due through to pursuing people who might have been dumping illegally and the corresponding tax liability. One end of that requires a lot of environmental expertise; SEPA has that special expertise and we will look to agree with it the activity that it will undertake and the activity that revenue Scotland will undertake.

**The Convener:** What is SEPA's view?

**John Kenny:** We hold a similar view. There are a lot of synergies to be found, benefits to be had and efficiencies to be made in our work on identifying and dealing with illegal waste sites. We have put a massive amount of resource into that work, and we are working with partners through the environmental crime task force. I concur with my revenue Scotland colleague that we have expertise in enforcement and that it would make sense for us to have that role, but the exact role is still to be determined in discussions.

**The Convener:** The committee is trying to determine exactly what that role would be.

I understand that £300,000 will be made available to SEPA to carry out the additional responsibilities. Does the agency feel that that sum is adequate?

**John Kenny:** For what?

**The Convener:** For the additional work. I appreciate that you do not know exactly what you will be doing, but how do you feel about the sum that has been set aside?

**John Kenny:** It is adequate to cover our estimate, which is based on our operational experience of inspecting and dealing with landfill sites. We know where we are in that respect; after all, we have a finance department with 20 staff who deal with £30 million-plus of income and an information systems department that has 45 staff and deals with million-pound IS developments. The £300,000 covers what we have quoted for but if, after discussions with revenue Scotland, SEPA's role expands to include enforcement, we

will have to discuss with the organisation the financial arrangements for taking on that role.

**The Convener:** As colleagues will have questions about the landfill communities fund, I will not ask SEPA about it. However, I wonder whether revenue Scotland has a view on the issue.

**Eleanor Emberson:** Not really. It is a policy matter.

**The Convener:** I did not think that you would—I was simply seeking clarification.

Finally, on one other issue that again might be predominantly a policy matter, what is your view on when the tax rate should be set?

**Eleanor Emberson:** I am afraid that I do not have a view. I think that you explored that question with policy colleagues.

**The Convener:** Yes, and we will ask the Cabinet Secretary for Finance, Employment and Sustainable Growth the question afterwards. I just wondered whether, in practical terms, you have any concerns about timescales.

**Eleanor Emberson:** I would have a concern if a timescale that was inappropriate for making administrative arrangements was set, but we will deal with that.

10:15

**The Convener:** What would you consider to be an appropriate timescale?

**Eleanor Emberson:** I am sorry, but I cannot answer that right now.

**The Convener:** Okay.

**Eleanor Emberson:** We expect to develop systems that will allow rates and arrangements to be changed not simply for landfill tax but for land and buildings transaction tax, potentially at very short notice, if necessary. I do not expect that we would need a long lead-in time administratively, but that would be my only concern.

**The Convener:** A number of colleagues want to ask questions, so I will let them in straight away.

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** I posed the following question at our previous meeting. I suppose that it is primarily directed to SEPA but, if revenue Scotland has a perspective on it, it is welcome to provide that. The primary purpose of the landfill tax, unlike taxes that are primarily designed to accrue revenue for the public purse, is to reduce the amount of waste that goes to landfill. If we take the bill in the round, what is your assessment of whether it works towards that primary aim?

**John Kenny:** The bill is a positive mechanism for doing that. The tax has already been shown to

be successful and has driven a 30 per cent reduction since 1997 in the amount that goes to landfill. It is understood by business and regarded as a success. There is also the landfill communities fund element, so it is a very powerful tool.

**Jamie Hepburn:** I have a question about the block grant adjustment. SEPA was clear that it did not necessarily have a set perspective at this time. However, in our previous evidence session on the bill, North Ayrshire Council expressed concern about a gap that might emerge between any reduction in the block grant and revenue accrued through the landfill tax. Do revenue Scotland and SEPA have a perspective on that?

**Eleanor Emberson:** I am sorry, but that is another policy matter, which the committee explored quite thoroughly with colleagues. It is something to be negotiated between the Scottish Government and the UK Government Treasury. The committee is aware of the issues, so I am not sure whether we could usefully add anything.

**Jamie Hepburn:** Okay. I do not know whether SEPA has anything to say.

**John Kenny:** We have the same view. The facts are there; the issue is just about how that is negotiated out.

**Jamie Hepburn:** Perhaps this does not apply to revenue Scotland, but does SEPA suggest a particular line to take in the negotiation?

**John Kenny:** Our role is to collect the tax on behalf of revenue Scotland, so I do not think that doing what you suggest would be appropriate.

**Jamie Hepburn:** Okay.

**John Mason (Glasgow Shettleston) (SNP):** The convener touched on the waste tourism idea. Is it SEPA's view that a small difference in tax rates between, say, Scotland and England or Scotland and the Netherlands would mean that a lot of waste moved backwards and forwards?

**John Kenny:** I would go with the prices that the committee was given by the industry in the previous evidence session. For example, I think that Jim Baird talked about £10 a tonne. That is the kind of ballpark figure that makes a difference.

**John Mason:** So SEPA is comfortable with the idea that we will start off in line with the UK and perhaps experiment in the longer term.

**John Kenny:** Absolutely. Business needs certainty.

**John Mason:** The point has been raised that there are not a lot of recycling opportunities in some communities, such as some of the islands in the Western Isles. Should they be treated differently for those purposes?

**John Kenny:** Do you mean a different tax rate?

**John Mason:** I think that it was suggested that there might be a different tax rate for certain materials, because things would have to be shifted off the islands to the mainland for recycling, which would mean that transport costs became prohibitive.

**John Kenny:** My colleague Ronnie Robinson might add to this, but there are regulatory mechanisms in place that allow exemptions and certain less strict standards for islands. That is a better way to address the problem than having differential rates, which could lead to the perverse tourism of stuff coming back from the mainland to the islands.

**John Mason:** So you feel that the present system is fair towards the islands.

**John Kenny:** It is better than the alternative of having differential rates.

**Ronnie Robinson:** I emphasise that point. There are exemptions from waste management licensing when inert and less-dangerous material can be utilised for beneficial purposes. There are avenues for that. As the bill stands, if such material is used for beneficial purposes, it will not incur landfill tax. That is a benefit.

There would be concern if there was a difference between the islands and mainland Scotland, because that would create the possibility of material going to the islands if things were cheaper there. The issue would depend on scale and the differences between taxable materials, so we would need to be very careful on any changes between areas in Scotland.

**John Mason:** Until now, SEPA's role has been to minimise landfill and tax, but now SEPA will have the new role of maximising tax. Will there be a conflict of interest between trying to keep the tax down and keep the tax up?

**John Kenny:** It is not SEPA's role to maximise the tax. SEPA's role is to collect the tax on behalf of revenue Scotland. There is a communication issue, because we need to make industry aware of that. I know that industry has had the perception that was described and raised that point.

SEPA's policy direction supports the Government's policy direction on the zero waste plan and reducing the amount of material that goes to landfill. There are many more areas of potential commonality than of conflict. Our role is not to maximise revenue.

**John Mason:** I take it that revenue Scotland's aim will be to maximise revenue. How do you see the relationship with SEPA in that regard?



**Eleanor Emberson:** Revenue Scotland's aim will be to collect the tax that is due under the bill; it will not be to maximise revenue.

**John Mason:** I am interested in that. HMRC has a slightly ambiguous position at times as to whether it is maximising tax or just sticking to the rules. HMRC's history has been of going beyond the law and trying to increase the tax beyond what the law says. You would not see revenue Scotland doing that kind of thing.

**Eleanor Emberson:** We will come to that in more detail in the tax management bill, which will come before the committee later this year. I do not understand how we would operate beyond the law. We have to operate in line with legislation passed by Parliament.

**John Mason:** Inevitably there would be grey areas.

**Eleanor Emberson:** There would indeed, but our aim would be to collect the tax due.

**John Mason:** It has been suggested that sometimes quite large quantities of illegal waste are dumped over time, and nobody seems to notice them until they have got very big. Does that suggest that SEPA does not have enough resources, or is it just impossible to notice them because there is so much space in Scotland? Will that happen inevitably?

**John Kenny:** It is not inevitable. As I said, SEPA has put a significant amount of resource into the activity. We have 18 geographical teams that are spread about the country, we have an enforcement support team of specialist staff to undertake complex investigations with surveillance capacity and we partner the police to undertake surveillance. We have invested a significant amount of resource in an intelligence system that gathers intelligence from our staff, members of the public, partner organisations and industry. We engage with industry, which, as you might imagine, is good at telling us when somebody is undercutting it. We have a lot of information at our disposal to identify such sites and we have resources to tackle them.

It is a significant and difficult job. I am not saying that we are aware of every illegal waste site in Scotland, but we have invested a lot to have systems and tools in place to help us to identify and tackle them.

**John Mason:** We accept that that is not easy, although it is surprising that sometimes dumping is not picked up on even in urban areas. Can you use satellite technology?

**John Kenny:** Yes. We have used technology called LIDAR—light detection and ranging—in recent cases, which allows us to compare how a flyover was a year or two ago with what is there

now. There are thermal techniques to identify how much material has been deposited on-site. We use all those techniques.

**John Mason:** Finally, I will touch on the communities fund. Paragraph 19 of your submission talks about the role of ENTRUST. Previous witnesses have suggested to us that we could do away with ENTRUST's role and carry on quite happily. That would save us a bit of administration. Does SEPA disagree?

**Ronnie Robinson:** The communities fund is generally seen as an effective way of compensating communities for the detriment of having a landfill site alongside them; it is seen as returning something beneficial to communities. The way in which it is organised and regulated seems to work fine. However, we have received views that the regulation is slightly top heavy and that it could be streamlined, so that moneys can be put back into the fund to be better spent on communities.

We appreciate that there are a lot of views out there and many vested interests, among environmental bodies and the distributing bodies that are in place. SEPA would like to be involved in the discussions to look at the synergies and benefits of SEPA perhaps being involved in regulating the process, although that is only one of several options that are being discussed in relation to how the communities fund will be developed.

**John Mason:** In paragraph 20, you talk about the 10-mile eligibility radius. I completely agree with your analysis of the problem. You refer to the edge of Glasgow, 10 miles from which could take us right across the city, where there is little impact on people, whereas, in a rural area, 10 miles is a relatively short distance and there could be a much wider impact. Do you have a solution to that, or have you just raised the problem?

**Ronnie Robinson:** We have raised the problem. The point is that, since 1996, the waste management industry has changed considerably. There used to be considerably more landfill sites; waste was generally put in people's bins and taken to landfill. In 2013, the situation is very different. New waste technologies are available and there is a zero waste policy to encourage the minimisation of waste and stop material going to landfill. As a result, there are fewer landfill sites and material is being transported larger distances to facilities to be treated, rather than going to a nearby landfill site.

In that respect, changes are required in the consideration of the detriment that is caused by the waste management industry as a whole, because that concerns not just landfill sites. We now have closed landfill sites that were open in 1996, which might still be causing environmental

problems. Detriment is also involved in transporting waste past people's front doors; it would be fair to look at opportunities to compensate communities for that material being moved.

**John Mason:** Could we make the radius a variable distance? I wonder whether we can look at council wards, which tend to be bigger in a rural area and smaller in an urban area.

**Ronnie Robinson:** I think that my colleague John Kenny would like to comment on that.

**John Kenny:** Rather than having a fixed area, the principle should be that those who are directly affected should get the first call on the benefit of the fund.

**Michael McMahon (Uddingston and Bellshill) (Lab):** My question is directed primarily to SEPA.

You said in evidence this morning and in your submission that you currently license waste sites. However, there are also considerations in the bill that SEPA should manage the landfill communities fund and take a role in the administration of the landfill tax. You have used the words "synergies" and "commonality". Other people may call it centralisation and a power grab. Are you not concerned that taking on all those responsibilities brings the issue into the centre and may not be the best way of looking at the wider picture?

**John Kenny:** I want to clarify that SEPA is being given management not of the communities fund but of the collection of the tax.

Efficiency-wise and commonality-wise, the benefits are there. We regulate those sites; we know where they are. We have relationships with the operators, who already make data returns that outline the types and quantities of waste that they receive. It is not about centralisation; it is about making the best use of the resources that are there, in the most efficient manner, in order to collect the tax.

**Michael McMahon:** Your submission refers to "A single distributing environmental body".

That would be ENTRUST.

10:30

**John Kenny:** Our comment was that SEPA could be in a position to administer the fund, but that is an issue for discussion further down the line. That is one view. Our view was not that SEPA should be doing it; it was that SEPA could be doing it, if that was the best thing for the tax and the fund.

**Michael McMahon:** There has been some discussion of allowing for funding of wider national environmental objectives that are not specific to

any one location. It goes back to John Mason's point. At present, if someone's life is blighted by their close proximity to the landfill site, at least there can be some benefit, in that they get compensation via the communities fund. As the landfill tax receipts reduce, as they are intended to do, disbursement of the fund more widely would diminish the amount of money that is available to local communities. As things move forward, the communities that have been disadvantaged by having landfill sites could be further disadvantaged by the dissipation of the landfill returns. Is that not the case?

**John Kenny:** That is a very good point. My earlier comment was that the first port of call should be those who are affected. Again, this is SEPA's view—I am not saying that this is what should happen. The fund is currently disbursed to a range of activities at various locations. The first call should be those who are affected. If there is a surplus or an opportunity, we are saying that it might be worth looking at strategic issues to support the aims of the tax. There are also potential issues around legacy sites that the public purse might have to pick up.

**Michael McMahon:** The phrase "vested interests" was used earlier. Would it be a vested interest to say that the only call on the tax should be from local communities that have been blighted by landfill and that it should not be disbursed to areas that are providers of the material that goes into the landfill?

**John Kenny:** There are many different views. Ronnie, do you want add anything?

**Ronnie Robinson:** I emphasise my earlier point about the change in the waste management industry. There are now considerably fewer landfill sites, which means that there are closed landfill sites. Those closed landfill sites can still cause greenhouse gas emissions, smells and so on. Communities are still being affected by those sites, even though they are closed.

**Michael McMahon:** I make no apologies for my final point, although it is about parochialism. The very reason for there being so many landfill sites around my community is the road network, which lends itself to bringing materials to a central point. As we move away from landfill to other means of waste disposal, my community—for that same logistical reason—is now the focus of some very live proposals for incineration. Again, we will be the focus for the changes in waste management. We continue to be affected by waste management even though the means by which we dispose of waste is changing. Where is the advantage to our local communities as those changes take place? You want to consider disbursing the money elsewhere.

**John Kenny:** As you say, that is based on location, and on economies in the free market. Waste will go where the infrastructure is. I am not aware of any opportunities in incineration for a similar tax. As I said in my first point, those who are affected by landfill should be the first port of call for the communities fund.

**Michael McMahon:** So you can see my point, which is that if we are going to be the dumping ground, we should be the people who benefit from any taxation that results from our being the dumping ground.

**John Kenny:** As I said, those who are affected should have the first call on the moneys in the fund.

**Michael McMahon:** Or the only call on them.

**John Kenny:** That is a matter of opinion.

**Gavin Brown (Lothian) (Con):** In paragraph 10 of SEPA's written submission, in the section on "taxes evaded through the illegal dumping of waste", you say:

"SEPA would urge the Government to take this opportunity to address this issue by including illegal deposits of waste within the definition of a taxable deposit as outlined in the Bill."

Are you saying that there should be something additional in the bill that is not yet covered, or are you just applauding what is in the bill?

**John Kenny:** The latter. We are applauding what is in the bill.

**Gavin Brown:** In paragraph 29 of the same submission, you say that, in order to carry out landfill tax administration, you

"would need to be given authority to audit landfill tax records. This could be done through amendment of section 108 of the Environment Act or by the provision of additional powers of entry and examination in other enabling legislation."

Have you had a conversation with the Government about that? Is that issue now resolved or does the committee need to pursue it?

**John Kenny:** My colleague from revenue Scotland can add to this. There have been discussions about the best way in which to address the issue. Is it to give revenue Scotland powers under the bill and for it to delegate the authority to SEPA? My colleague can talk about whether that is the most appropriate route for SEPA to get those powers.

**Gavin Brown:** In your view, the matter is in hand.

**John Kenny:** Yes.

**Gavin Brown:** Thank you. My third question is a slightly curt one. Last week, we heard evidence

from several organisations. In written evidence, both North Ayrshire Council and the Scottish Environmental Services Association made statements to the effect that SEPA has a skills gap regarding tax administration. How would you respond to that?

**John Kenny:** First, I would point out where we have the skills that would help, although I acknowledge that there is a potential gap. In our costings, we have allowed for the development of guidance and staff training to plug that gap.

**Gavin Brown:** You accept that there is a gap but suggest that it could be filled.

**John Kenny:** Yes. It is a different kind of audit. We have a lot of auditing skills and landfill skills—we know about landfill sites—but there is a bit more to do before we can audit tax returns. The base is there and there is funding in place to upskill staff as required.

**Gavin Brown:** In your view, by April 2015, when the tax goes live, there will not be a skills gap.

**John Kenny:** That is right.

**Gavin Brown:** My final question is for revenue Scotland, but SEPA may have a view on it. There will clearly be synergies. Your two organisations already work together and will continue to do so. As the bill stands, are the responsibilities of the two organisations clearly defined or is something else needed to ensure that the distinction is crystal clear?

**Eleanor Emberson:** A lot of the powers and issues that we have been discussing, in relation to which we need to make a clear distinction between SEPA and ourselves, will arise when we discuss the proposed tax management bill rather than the Landfill Tax (Scotland) Bill. However, even when we have the tax management bill a further document will need to accompany the legislation. There will need to be a formal agreement between revenue Scotland and SEPA. The two organisations are already clear that we will need to develop that once the tax management bill is sufficiently far through its consideration. That should be a public document that the committee will have an opportunity to scrutinise.

**Gavin Brown:** The shared view at this stage is that nothing additional is needed in the Landfill Tax (Scotland) Bill to define those responsibilities.

**Eleanor Emberson:** Yes.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I am interested in what I perceive as a tension in SEPA's evidence between the idea of incentivising other methods of disposal, on one hand, and the idea of incentivising dumping, on the other hand. Asbestos provides a good

example of the danger of the latter. If the tax is set too high, more people will dump asbestos. Equally, however, you have said that alternatives to landfill are expensive so the tax must be set quite high to incentivise the use of those alternatives. What is your response to that? Is your conclusion that the tax is set at about the right level and we must be careful not to set it too high or too low?

**John Kenny:** As you say, we believe that the tax is set at the correct level. Applying it to illegal waste sites will also have a massive impact by improving the situation that you are talking about. As well as improving the environment, it should increase business for legitimate operators.

**Malcolm Chisholm:** What is the scenario with regard to alternatives becoming cheaper? You have said that they are expensive at the moment, but do you see them getting cheaper over the next few years?

**John Kenny:** The alternatives will become cheaper as money is invested in them and people learn more about them. Indeed, the increase in recycling rates has been driven by the fact that the technology has become more affordable. However, the industry needs the certainty of the landfill tax and of knowing what the price is to justify the investment in the first instance.

**Malcolm Chisholm:** The zero waste plan sets out a target of a maximum 5 per cent going to landfill by 2025. Do you expect that target to be achieved or does it depend on, say, rising tax rates, lower expense on alternatives or some other factor? What is the status of that 5 per cent?

**John Kenny:** We need to work towards that target. The landfill tax is part of the overall strategy, but our efforts are also being driven by regulatory measures such as bans on certain things such as recyclable and collectable material and food waste going to landfill.

**Malcolm Chisholm:** My next question is for revenue Scotland. I believe that there are estimates for the tax take in 2025, but are those projections based on the 5 per cent target?

**Eleanor Emberson:** The estimates that we have are set out in the bill's accompanying documents.

**Malcolm Chisholm:** Are they based on 5 per cent of material going to landfill or on something else?

**Eleanor Emberson:** I am afraid that revenue Scotland has not made these projections, but my understanding is that they are based on the full information available to the policy teams and the complete policy framework. My colleague Mr Robinson seems to be indicating that that is the case.

**Ronnie Robinson:** That is my understanding.

**Malcolm Chisholm:** So it is based on the 5 per cent figure.

I wonder whether you can clarify for me exactly what the £300,000 for SEPA is being given for, because I am not entirely clear in my mind about that. Last week, the Chartered Institution of Wastes Management expressed concern about the adequacy of that sum, but what is your understanding of what the money is for?

**Eleanor Emberson:** I assume that you are referring to the estimated £300,000 for annual running costs for SEPA.

**Malcolm Chisholm:** Yes.

**Eleanor Emberson:** Page 25 of the financial memorandum contains a breakdown of our current best estimate. I emphasise that all the revenue Scotland and SEPA figures in the memorandum represent our best estimates at the time the legislation was being put together, and as requested I have provided the committee with a very high-level timeline of our work. As we work through things in more detail, we will refine our estimates and understanding, but the breakdown on page 25 is the current planning assumption.

**Malcolm Chisholm:** Does SEPA think that that sum of money is adequate to carry out the necessary work to tackle the problem of illegal dumping?

**John Kenny:** The enforcement around illegal dumping is not included in that £300,000 figure.

**Malcolm Chisholm:** That is probably the problem that was in the back of my mind. Not having page 25 of the financial memorandum in front of me, I was not entirely sure whether the figure covered that. Is that not a striking omission?

**John Kenny:** As I have said, we have not formally decided where the line should be drawn in that regard, but when and if SEPA takes on that role there will be negotiations about the finances to support that. I also point out that the wider funding for revenue Scotland might be used to add to that figure.

**Malcolm Chisholm:** When you say "that role", do you mean the role of monitoring?

**John Kenny:** I mean enforcement. At this stage, we have agreed what SEPA will be doing, but discussions have still to take place about the enforcement role and who will be best placed to undertake that.

**Malcolm Chisholm:** How much money do you currently spend on illegal dumping work? I presume that you already carry out activities in that area.

**John Kenny:** That brings me back to my earlier point about synergies. SEPA is already undertaking that work and putting a significant amount of resource into identifying the sites; if we want to go to the next stage of enforcing the landfill tax and collecting it from the individuals concerned, that will involve significant resource. It is a different activity.

**Malcolm Chisholm:** Do you think that your identification work will simply continue as at present? One could argue that you should be doing more given the financial gain to be made.

**John Kenny:** That is correct. You make a very valid point.

**Malcolm Chisholm:** But that has not been factored into the current figure.

**John Kenny:** No. It would also form part of the discussions.

**Malcolm Chisholm:** That will do just now. Thank you very much.

10:45

**Jamie Hepburn:** As I listened to Michael McMahon's line of questioning, it occurred to me that waste that does not go to landfill will, I presume, go if not to one of the illegal dumping sites that are encompassed in the bill—if of course it is being dumped illegally—then to a recycling plant, of which there are a number in my constituency. Without going into the specifics—after all, that is not what this evidence session is about—I know that at one of those plants waste can be piled fairly high and open to the naked eye of those who live fairly nearby. Of course, it is not a landfill site, but to my constituents that is a rather moot point. Should such sites be encompassed in the scope of the bill?

**John Kenny:** I do not think so. SEPA's view is that the purpose of the landfill tax is to divert material away from landfill to be treated in a more environmentally friendly way that protects the environment and which turns waste and what can be recovered from it into a resource. That is the policy driver behind the tax.

**Jamie Hepburn:** I presume that, under the licence that is granted to operators, waste should not be stored for a certain period of time. If that happens, it might not turn the plant into a de facto permanent landfill site, but what is the difference to those who live nearby? The waste is still sitting there for a certain length of time. I am aware that you will have powers of enforcement, including the power to fine operators, but is there any merit in encompassing such sites in the scope of the bill? I know that they are not illegal dumping sites, but what if they are not operating as they should be? Again, it is something of a moot point. If illegal

dumping sites are encompassed by the bill, should those sites, too, be encompassed?

**John Kenny:** I should clarify that we are talking about illegal landfill sites.

**Jamie Hepburn:** I am aware of what it means, but I am talking about a particular issue.

**John Kenny:** I think that the bill should stick with landfill because getting into the issue that you have highlighted would be a different ball game and we would have to think through the impact on industry and so on. The focus should stay on landfill.

That said, controls and systems are in place to regulate the sites to which you refer. They will have a permit with conditions stipulating, for example, that X number of tonnes can be stored for X number of days, or that there should be no offensive odour outwith the boundary. The way to tackle such issues is by ensuring that the permit is being complied with.

**Jamie Hepburn:** It will not surprise Mr Kenny to hear that I am in regular contact with SEPA about this site, which I will not mention and with which I will not take up any more time just now.

The number of trucks that bring refuse through communities to such sites is the same as the number that go to landfill sites. Are those areas viewed as having merit with regard to getting support through the landfill communities fund?

**John Kenny:** It would depend on the tie-in with landfill. That brings me back to my response to Mr McMahon's question about the disposal of waste on different sites. As it stands, the fund supports only those who are affected by landfill. Of course, what you have suggested could be put into the mix in discussions about what the fund should or should not be spent on.

**The Convener:** I thank our witnesses. As that brings us to the end of this evidence session, I suspend the meeting to allow for a changeover of witnesses.

10:48

*Meeting suspended.*

10:52

*On resuming—*

**The Convener:** We continue to take evidence on the Landfill Tax (Scotland) Bill at stage 1 from our second panel of witnesses this morning. I welcome John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth, and Alistair Brown, Stuart Greig and John St Clair of the Scottish Government bill team, all of whom are familiar to the committee.

We do not expect an opening statement, cabinet secretary, unless you are desperate to give one.

**The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney):** I could provide one if it would be helpful, but I suspect that the committee would have heard some of it before. I am happy to answer questions.

**The Convener:** We shall go straight to questions, then.

The first question is about forecasts. It is highly likely that the Scottish Government's zero waste plan will see both the quality and the type of material in landfill in Scotland change substantially, with far less material going to landfill and what is landfilled mostly being inert materials.

We have looked at Office for Budget Responsibility predictions before. Its prediction for receipts for the financial year 2015-16 was £151 million in March 2012 and £105 million in March this year. What are the Scottish Government's current estimates for the financial year 2015-16? Given the fact that the bill will allow the collection of tax from illegal dumping, has that played a part in your figures? If so, how much is the tax expected to raise in 2015-16?

**John Swinney:** The Scottish Government has not made a specific estimate of the expected tax receipts from landfill tax in 2015-16. However, we have noted the significant change in the OBR's predictions and projections for landfill tax receipts in Scotland. The difference that the convener has cited between the OBR's March 2012 forecast for 2015-16 and its March 2013 forecast—£151 million compared with £105 million—illustrates the substantial change that can occur in the OBR forecasts. The £105 million forecast strikes me as much more conceivable, whereas I found the £151 million figure utterly inconceivable.

My expectation is that, in the coming period, we will see a long-term reduction in the revenue from landfill tax. We accept that the success and effectiveness of recycling policies, which are part and parcel of the Scottish Government's wider approach to achieving the emissions reductions that are required under climate change legislation, will result in a reduction in receipts from landfill tax. Clearly, we will need to deal with that as a Government.

**The Convener:** You have not mentioned the additional revenue that might come from the taxation of illegal dumping. How does that come into your figures?

**John Swinney:** The taxation of illegal dumping is an extra tool that we are putting into the bill that will enable us to do three things. First, it will provide a further disincentive to illegal practice.

People should not be able to avoid the disposal costs that are legitimately charged by legitimate operators, in which landfill tax will be a part of the calculation. Secondly, it will strengthen the business opportunity for landfill operators to dispose of materials properly and effectively in accordance with the wider regulatory infrastructure. Thirdly, it will bring all the activity into the Government's wider environmental agenda for more sustainable disposal of waste and utilisation of resources within our society.

I would not characterise the taxation of illegal dumping as a revenue raiser, as it is primarily a disincentive. If the result is that more revenue is raised, there will probably be a double impact for us because there will be a fine for the illegal dumping and a charge when the waste goes to a legitimate landfill site for disposal.

I accept that financial benefits may arise from the crackdown on illegal dumping, but the motivation behind the taxation of illegal dumping is not purely and simply to provide a revenue raiser. The provision is there to ensure the enforcement of the existing legal framework. If that gives rise to a further benefit to the public purse, so be it.

**The Convener:** My reason for asking is the effect on the block grant adjustment. Would that revenue be included in the negotiations and discussions on the final block grant adjustment? Clearly, we need to try to hone down what effect that might have.

**John Swinney:** It is difficult enough to predict tax rates, but it is even more difficult to predict the proceeds from a fine-type element of the legislative provision. I can see no real or credible basis for that being advanced as part of the block grant adjustment.

**The Convener:** Let me move on to the delegated power provisions.

The Delegated Powers and Law Reform Committee's report on the bill states:

"Section 41(3) of the Bill creates a bespoke type of Parliamentary procedure which is referred to ... as ... 'provisional affirmative procedure'"

and which means that

"were a provisional affirmative instrument to be made immediately prior to the summer recess the Parliament's approval of the instrument continuing to have effect would not be required to be obtained until 28 days after the Parliament returns from recess. In such cases therefore new measures imposing taxation could be in place for up to 3 months before the Parliament is required to approve them".

The question is this: why does the Scottish Government consider it appropriate to modify the basis of taxation without securing the agreement of Parliament through the affirmative procedure?

11:00

**John Swinney:** Essentially, it comes down to giving the Government the opportunity to take forward tax changes and tax measures when we consider it necessary for them to have immediate effect. I accept that this is new territory for the Parliament, because we have not previously taken decisions of the character that we are now required to take in relation to tax provisions.

Although I recognise the scenario that the Delegated Powers and Law Reform Committee has painted, I contend that it represents an implication of the Parliament moving into a different space because of the necessity to apply provisions that have early effect. We will consider carefully the issues raised by the Delegated Powers and Law Reform Committee as the bill progresses through Parliament. We are obviously interested in the Finance Committee's views on issues material to it.

**The Convener:** The Delegated Powers and Law Reform Committee's report on the bill states:

"Section 35(1) permits the Tax Authority to delegate any of its functions (other than functions of legislating) to SEPA... when a statutory function has been designated that should be publicly and clearly identified so that persons regulated by the regime understand who is authorised to take what steps. No provision for the publication of such delegations is provided for in the bill."

The Scottish Government has advised that

"there would be an opportunity to revisit this in the Tax Management (Scotland) Bill to be brought forward next year. However the Government has not given any firm commitment to do so."

Can you give us a commitment to do that?

**John Swinney:** I certainly give the committee the assurance that I will look very carefully at the issue that has been raised. The Government has every desire to be transparent when it comes to all these matters, so I am happy to consider the issues that are raised, although the composition of the tax management bill, which is due to be introduced in the next parliamentary year, obviously also has potential implications for how these matters are dealt with. We will certainly explore the issue and respond to the questions in the Delegated Powers and Law Reform Committee's report.

**The Convener:** Quite a lot of evidence has been taken on the Scottish landfill communities fund, which will be created under sections 18 and 20 of the Landfill Tax (Scotland) Bill. It remains unclear whether the negative or affirmative procedure will be used. Can you provide some clarification? Does the Scottish Government intend to hold a consultation on the draft order in advance of its introduction?

**John Swinney:** We intend to consult before we use the subordinate legislation powers. The Government would take that approach on all such matters. I assure the committee that there would be a further consultation before the powers were used.

During the consultation on the bill, we undertook extensive consultation and had feedback from a number of parties on the proposals that the Government has set out for the landfill tax communities fund. Broadly, it is fair to say that there was a pretty positive reaction to the Government's proposals, which indicates that we are moving in the right direction on many of the issues. There will obviously be further consultation when we come to exercise the powers.

**The Convener:** I want to cover one last issue before I let in colleagues—that of certainty, which came up in evidence last week and the previous week.

Stephen Freeland of the Scottish Environmental Services Association said:

"We represent an industry that is looking to make investment decisions for alternative non-landfill infrastructure, the viability of which will depend on what landfill tax will be, so it would have been nice to have an indication of what that tax will be. Similarly, for the differential rates—the potential third rate of tax—it would be interesting to know what that might be and to what materials it might apply ... it would be useful to have that on the face of the bill."—[*Official Report, Finance Committee*, 12 June 2013; c 2776.]

Craig Hatton from North Ayrshire Council added:

"Given the challenges to public sector finances, we look to plan further and further ahead. The council set a two-year budget last time and has a 10-year financial plan so that it can plan ... for the significant changes that it needs to make to face those challenges."

He went on to say:

"procurement exercises take about five years, so we need quite a good lead-in time to manage the public finances and to enable procurement exercises and new methods of collection ... If the lead-in is too short, we merely act and make the wrong decision."—[*Official Report, Finance Committee*, 12 June 2013; c 2783.]

He made the point that he would like the landfill tax rates to be set as early as possible and at least three years in advance. If that had been done, the rates would have been set last year.

What is the Scottish Government's view of that? When are the rates likely to be set? That has been a key aspect of the evidence that we have received from a number of people.

**John Swinney:** There are two different issues that the committee must consider. One of them relates to the investment approach, which the first witness that the convener cited was making a point about, and the investment decisions that

individual operators make about participation in the implementation of the Government's zero waste strategy. Frankly, those investment decisions will not be driven by what the landfill tax rates are this year or next year; they will be driven by the opportunity that exists to make a return by participating in the zero waste strategy.

For example, I readily accept that, if a company were to embark on a proposition to recycle particular elements of waste, it would look to see whether it was likely that in a number of years' time, as part of the zero waste strategy, there would be a ready flow of materials that would provide it with a core for its business activity. That is a long-term investment decision. Mr Lochhead regularly discusses such issues with the waste industry, and we very much welcome the participation of the private sector in resolving some of the issues, through selling its services to public authorities.

As I said, those are long-term investment decisions that will be influenced not by what the landfill tax rates are this year or next year, but by whether, as a country, we will dispose of materials that such companies can utilise and make an economic return from. That should not be confused with the setting of the landfill tax rates in any given year.

The second point is about the setting of the tax rates. As I have said to the committee on other issues, I am keen to set tax rates in a timescale that is of assistance to industry, but it must also give us sufficient clarity on the proceeds that we are likely to realise for the public finances. That has an effect on the implications of the block grant adjustment mechanism into the bargain.

I have not stated at what stage we will set the rates. I am certainly considering whether it would be relevant to do that at around budget time in September 2014, but I have yet to make a final decision. We can consider that further as part of the committee proceedings.

**The Convener:** On that latter point, local authorities seem to be saying that they need a longer period to allow them to make the investment decisions that they need to make.

We have been told in evidence by organisations such as the Scottish Environmental Services Association that a price differential of as little as £10 a tonne could affect whether waste remains in Scotland or goes to England and vice versa. If rates are not set early on, authorities might not take some of the investment decisions that you have mentioned. They might feel that they do not need to do so because, if the rates are significantly different, waste would depart Scotland. They are looking for certainty in their long-term business planning.

**John Swinney:** I have already stated clearly that the rates in Scotland will be set no lower than those in the rest of the UK in 2015. I am mindful of the information that has been put in the public domain to suggest that a relatively small differential in cost might lead to waste transit.

To return to the answer that I have just given, I contend that the long-term investment decisions have relatively little to do with landfill costs, and everything to do with the long-term implementation of the zero waste strategy. As part of that strategy—which is an integral part of our agenda for tackling carbon emissions—we have to reduce the amount of waste that we put into landfill. That is not a point of debate or contention. It therefore follows, in terms of offering policy certainty, that opportunities in the waste disposal environment will present themselves as perfect candidates for long-term investment for individual companies that are interested in that area of activity.

**The Convener:** You say that the rates will not go lower than the UK rates, but the issue is how high they may potentially go.

**John Swinney:** I recognise the issues that industry has raised concerning the variations in cost that might lead to differential practice in transit for waste disposal, and I will be mindful of them when I set the rate of tax.

**The Convener:** Thank you. I will now open up the session to colleagues round the table.

**Jamie Hepburn:** The convener mentioned the block grant adjustment, and I would like to explore that with you, cabinet secretary.

It is clear that the landfill tax is somewhat different from the other devolved taxation powers, and you have said that we hope to decrease the revenue that is accrued through the tax. That is perhaps an issue with regard to how we progress any negotiations on the block grant adjustment.

Some concern has been expressed about the possibility of a gap emerging in future years between the adjustment and the revenues that are accrued. North Ayrshire Council mentioned that issue in our previous evidence session. Do you think that the concern is legitimate? If so, is it uppermost in your mind as you progress negotiations on the block grant adjustment? Perhaps you can tell us where those negotiations are just now.

**John Swinney:** The negotiations are on-going. I am not in a position to tell you—not because I am keeping the information private, but because I do not know—the extent to which the UK Government will want to resolve those issues before the spending round is announced next Wednesday. As I understand it, that announcement will provide us with our budget numbers for 2015-16, which is



when stamp duty land tax and UK landfill tax will be abolished in Scotland.

The issues are very relevant for the process of setting the budget that will be announced to the House of Commons next Wednesday. I cannot tell the committee whether there will be agreement on those questions between now and then, or whether they will be left as issues to be resolved.

The convener has written to me to say that the committee will be unable to provide a view on the block grant adjustment in light of the fact that it has not heard from the Chief Secretary to the Treasury. However, the committee must be aware that there may well be an element missing from the budget round announcement by the Chancellor of the Exchequer next Wednesday because we do not yet know what the block grant adjustment mechanism will be. That addresses the issue in general.

11:15

On the specifics of landfill tax, in discussions on block grant adjustment we have to avoid, in essence, a solution for each of the individual small taxes, because they will be different. We know that landfill tax receipts will go down in the medium term. The OBR's initial estimates suggested significant growth in landfill tax receipts from £115 million in 2011-12 to £157 million in 2016-17. The only people on the planet who thought that must have been the people in the OBR, because nobody else would ever have come to that conclusion. At least we are now in a more sensible place about the pattern of landfill tax: receipts will go down.

The way to address the issue is to have a discussion and an agreement that relates to all the devolved small taxes, taking into consideration the fact that there is likely to be a loss of revenue on landfill tax, and come to a reasonable position on the totality of block grant adjustment that should be taken into account. As I said, that is still the substance of discussion that is going on with the Treasury on these questions.

**Jamie Hepburn:** I do not know whether you can tell us, but do you have any sense that that argument has been taken on board?

**John Swinney:** I do not know. That would require me to foresee the outcome of the discussions with the Treasury. The discussions have not concluded and are on-going. I do not think that they will be resolved by next Wednesday—I will be very surprised if they are—so we will have to talk further about the details.

The OBR has now given us a more credible expectation of revenue, and we can give the UK Government—and we have given it—our

expectations of the consequences of the tax. In the financial memorandum, we predict a decline in landfill tax revenues from about £107 million in 2015-16 to about £40.5 million in 2025. We are likely to see that decline take its course within those parameters, and that has to be reflected in the block grant adjustment.

**John Mason:** I will press you on some of the points that the convener raised. I take the point that investment in recycling facilities is driven by policy direction and not just by what the rate happens to be in a particular year. However, the policy direction has driven the rate, because the UK policy has been to increase the rates escalator, or whatever it is. Therefore, people have known that rates would increase, which surely encouraged investment in recycling facilities and suchlike. Will it not continue to be the case that policy drives the rates and the rates drive the investment?

**John Swinney:** We can debate to a significant degree how all those things interact, but I contend that the policy framework is the key point. In essence, it structures what we have to do as a society, and that therefore gives a signal to industry as to what is required to be undertaken. That is complemented by what I have said, in that we will set our tax rate at a rate no lower than it is in the rest of the UK. That puts the matter into a framework that is pretty clear on the direction that we are taking.

The fact that Parliament unanimously passed the Climate Change (Scotland) Act 2009 offers long-term certainty, as the act requires the Government to deliver on carbon reduction targets, and waste policy is an essential ingredient in that process. That gives a reliable framework within which operators can make their plans.

**John Mason:** Presumably, the concern is that, if the rate in Scotland was higher, on the one hand, that would be an incentive to invest more in reuse and recycling but, on the other hand, it would be an incentive to move waste south and therefore a disincentive to invest in reuse and recycling in Scotland. The point is that the rate is a factor in all of that, is it not?

**John Swinney:** We have to be mindful of the role of the rate in that calculation. The point that I am trying to make about the short-term announcement of the rate is that the rate is not the factor that drives investment. The factor that drives investment—and has to drive it—is whether we are on a long-term and committed path to a zero waste objective in Scotland. That is the crucial signal to industry that there is a long-term business opportunity here in Scotland. Yes, of course it will be made possible by the rates that we charge, but if the industry thinks for a second that our position on zero waste is one of, “Here

today, gone tomorrow,” investment will not come to Scotland.

I want to be absolutely crystal clear with the committee that a key element of the Government's measures to reduce carbon emissions is the success of our zero waste strategy. That is the signal to invest for the business community. Of course I accept that the rates are material in that process, but they are a subset of the overall policy direction that the Government is taking.

**John Mason:** In its evidence, the Chartered Institute of Taxation claimed that

“the resource that is being protected is land”,

which struck me as slightly odd. Obviously, we are trying to protect land, but the aim is wider than that, is it not?

**John Swinney:** I am not altogether sure that I quite understand the point.

**John Mason:** The CIT said that, because we are trying to protect land, the tax should not be based on the weight of waste, whereas my understanding is that as well as trying to protect the land, we are trying to reduce landfill.

**John Swinney:** That is it precisely—yes.

**John Mason:** I just wanted to clarify that point.

**John Swinney:** The agenda is about a whole host of other things, too. It is about resource utilisation in its widest sense. It is about giving a signal to householders and businesses on how we utilise different materials in our daily personal or working lives and whether there is a necessity for us to reuse something or whether it is just to be disposed of. Those can be terribly casual decisions that we make, but the zero waste strategy is about getting individuals and organisations to think more holistically about how they use resources. The point that the CIT raised does not in any way sum up the objectives of the Government agenda in that respect.

**John Mason:** I asked the SEPA representatives on the previous panel whether the islands and remote communities are being treated fairly, as there has been some suggestion that we should perhaps have different rates for the islands. However, SEPA's answer was that perhaps it is just slightly less strict with the islands because they do not have the facilities for reuse and recycling that we have in more urban areas. Does that continue to be your view as well?

**John Swinney:** Yes, although I am happy to explore the issue in more substance to see whether there is a particular disincentive. Through my regular visits to the Scottish islands, I am aware of the efforts to which the island authorities have gone to promote and encourage recycling and effective waste management in communities.

However, I am certainly happy to consider further the issues that are raised to ensure that the island communities are being treated fairly, given the facts with which they are wrestling.

**John Mason:** The issue of SEPA's resources has come up a few times. We know that a certain amount of illegal dumping goes on. Would more resources for SEPA reduce that, or is the equation not as simple as that? If it is missing things at the moment, will it miss things in the future?

**John Swinney:** SEPA receives grant in aid from the Government and it levies charges relevant to its functions. Without its charges going up significantly, grant in aid has fallen as SEPA has become a more proportionate organisation and has operated more efficiently. I pay tribute to the leadership of SEPA, who have taken forward that agenda effectively in the past six years. SEPA's performance is strong, and it operates and functions efficiently and effectively.

The issues of enforcement and tackling illegal dumping are difficult and complex. SEPA operates closely with other public authorities in our localities. Through some of those channels, it might be possible to identify examples of illegal dumping that could be tackled in a focused and effective way. That is what we would expect SEPA to do. I do not think that that automatically requires us to consider increasing the resources that are available to SEPA. It has always worked collaboratively at a local level.

On the issue of cracking down on illegal dumping, we have allocated resources as part of the outline planning of revenue Scotland to explore the compliance activity for the new taxes that we are introducing. A team in revenue Scotland, which we estimate will be made up of eight members of staff, will undertake compliance activity in that respect. We need to look at the whole picture of what SEPA is doing on the ground with local authorities, and what revenue Scotland can add to the enterprise to try to tackle the activity.

**John Mason:** Earlier, I asked representatives of revenue Scotland whether they saw it as part of their role to maximise the tax take. That might have been a little bit unfair, as that might be part of the tax management bill that we will consider in due course. However, grey areas will appear in any legislation as it is applied. I know that HMRC believes that it is its duty to push in the direction of getting more tax when there is a grey area. Do you see revenue Scotland doing that as well?

**John Swinney:** My perspective is that revenue Scotland's job is to raise the appropriate level of revenue. I do not say that as a sort of, “On the one hand this, on the other hand that,” kind of answer. Revenue maximisation is a stage beyond what I

expect revenue Scotland to do. I want it to get the tax that is due under the legislation that we pass. The issue of what is appropriate to be collected is part of what I am wrestling with in advance of my statements to Parliament next Tuesday in the stage 3 proceedings on the Land and Buildings Transaction Tax (Scotland) Bill.

On the Landfill Tax (Scotland) Bill, if somebody is illegally dumping but that passes all the tests in the bill, I would expect revenue Scotland to raise the revenue as it is its duty to do so. Do I expect revenue Scotland to go out looking for illegal dumpers? Yes, I do. In my view, that will be getting in the appropriate tax. Similarly, I expect all the good and effective operators throughout the country that run good sites in an effective and well-managed fashion to pay the landfill taxes that are due, which I know for a fact that they do at present. So the issue is really about ensuring that the appropriate level of taxation is raised. I am not setting revenue Scotland off on a revenue-maximisation strategy; I just want it to do the job properly, fully and in accordance with law.

11:30

**John Mason:** That is helpful.

I will touch on one more area. The committee has spent quite a lot of time on getting evidence on the landfill communities fund, and a few issues have been raised. The first is whether ENTRUST or an equivalent is needed or whether that is just a waste of money and we could, in effect, have 2 per cent more going into good causes.

A second issue is whether the money should be spent just in the area around a landfill site or whether it should be spent more widely—for example, for beavers in Argyll, and things like that. The Scottish Wildlife Trust told us quite a lot about how the beavers project in Argyll is funded by the landfill communities fund but not because of the neighbouring site—it is because of other sites further away. The point was raised that money is being moved around a lot. I suspect that Mr McMahon will say more about this, but one question is whether the money should be available for a national pot or should be available only locally. A third issue is whether, if the money is just to be local, the limit of a 10-mile radius around a site is appropriate.

**John Swinney:** There were a number of points in there.

**John Mason:** I did not want the convener to stop me halfway through.

**John Swinney:** For the sake of completeness, I should make it clear to the committee that beavers are not just in the area of the Argyll project, because they are numerous in the rivers in the

area in which I live, having somehow got there. I will just leave that for the committee to ponder.

I am open to further discussion on the points that John Mason raised and I would be interested in the committee's view on them. Instinctively, I think that it would be difficult simply to operate a local distribution scheme based on the view that, because there is a landfill site in an area, the immediate proximity should be the beneficiary. Actually, although the landfill site is there, community proceeds come from the landfill tax because householders and businesses across the country play an active part in the recycling regime. So, although people might not have the landfill site beside them, they play their part in separating waste into different commodities, which is part of the regime that determines how much goes to landfill and how all that is comprised. I am therefore not persuaded at this stage by the view that, because the waste is put into landfill sites locally, the scheme should be handled locally. However, I am open to discussion on that question.

On the administration, there is a lot of work to be done on the most efficient way of delivering the fund. Some of the admin costs for the fund that I have seen are on the high side. I think that we can do that admin in more efficient ways, and we will explore those.

Since 1996-97, Scotland has received 7 per cent of the landfill communities fund but been responsible for 9.2 per cent of receipts. We have paid 9.2 per cent of the landfill tax, but our projects have received only 7 per cent of the proceeds. That says to me that we have an opportunity to ensure that there is more significant benefit in Scotland as a consequence of keeping the pot within Scotland and administering it more efficiently and at a lower cost.

**The Convener:** To follow on from John Mason's point about islands, I must say that I do not think that the authorities are particularly lenient in islands. If a cow drops dead on Arran, the carcass cannot be buried in the corner of the field—it still has to be shipped all the way to the mainland. There are strong environmental regulations on islands, just as there are everywhere else.

**Gavin Brown:** Cabinet secretary, you talked about the Government's thinking on when the rates might be confirmed for April 2015. When you confirm them, will you simply announce the rates for one financial year, will there be three-year rates or will you give an indication of what the rates will be over the next couple of years? Do you have a view on that at this stage?

**John Swinney:** I certainly accept that, if there is to be an escalator, for example, having knowledge of that has been helpful. I am mindful of that point

in determining how much detail we will set out when we set the dates of the first instance.

**Gavin Brown:** The convener asked most of the questions that the Delegated Powers and Law Reform Committee raised. However, he did not ask one point about section 13(4), which concerns the amount of tax for qualifying material. Orders that are made under that section will sometimes be made under provisional affirmative procedure, which is what the convener asked about, but also sometimes under negative procedure.

**John Swinney:** Can I just check the reference, Mr Brown?

**Gavin Brown:** It is section 13(4) of the bill or paragraphs 13 onwards of the Delegated Powers and Law Reform Committee's report. I do not know whether you have that report in front of you.

**John Swinney:** I do not have that report in front of me, but I have the bill.

**Gavin Brown:** You have already been asked about the provisional affirmative procedure, so I will not ask about that, but orders that are made under that section can also be made under negative procedure in cases where the tax is being narrowed—for example, things are coming out of it.

The Delegated Powers and Law Reform Committee says in its report:

"the lead committee may wish to consider whether reduction in liability or the provision of exemptions for certain types of activity might be sufficiently controversial as to merit the affirmative procedure rather than the negative procedure provided for in the Bill."

Does the Government have a formal response to that statement?

**John Swinney:** My view is based on the fact that a reduction of burden is envisaged in such circumstances and I assume that that would be less controversial, which is why it would be considered appropriate to use the negative procedure.

Chewing that over, I suppose that there could be perspectives within the Parliament that would consider a reduction of burden to be controversial or unwelcome. Therefore, there may be a necessity for wider scrutiny, so if the committee has further reflections on that point or is concerned by the approach that we are taking, I am happy to consider that.

**Michael McMahon:** I return to the point that John Mason touched on, about the idea of allowing for funding of wider environmental objectives that are not specific to any one location. There are certain parts of the country, notably mine, where—

**John Swinney:** Not to make it in any way parochial.

**Michael McMahon:** To be entirely parochial, the road network lends itself to logistics and distribution in the local economy, and we are therefore subjected—if that is the right word—to a number of landfill sites in the vicinity of the M80, the M8 and the M74. It is interesting that there is an idea that, because wider Scotland contributes to landfill, it should somehow benefit from the landfill communities fund. I had always thought that the principle of the landfill communities fund was that, if an area is blighted by having the landfill dumps, it would benefit in some way from local investment out of the taxes and revenues that are raised from the dumps to which it is subjected. I find it strange that anyone would argue that, because they helped to generate the need for landfill, other areas should benefit somehow from the distribution of the fund. Could you expand further on that rationale?

**John Swinney:** I am not sure that my explanation in response to Mr Mason was the clearest that I have ever given in Parliament. I concede that point in response to Mr McMahon's question, and I quite appreciate the seriousness of the issue that he raises about his constituency from the perspective of that locality.

The point that I was trying to make is that landfill tax is a proceed of what is being disposed of in landfill, and if we are disposing of less material in landfill, that is a product of the actions of citizens and businesses right across the country, because our approach to better waste management is being bought into right across the country. My point was that, if there is a community proceed coming out of landfill, there is therefore a possibility of that having a wider benefit to projects throughout the country.

I am not saying that that is the Government's thinking; I am simply saying that the argument is valid in exploring the best direction to give to the community landfill tax fund effort. That must be countered by the pretty firm point that Mr McMahon has made about the fact that his constituency is affected, as other constituencies will be, and that they should be the ones that receive the proceeds. There is an interesting debate to be had about the right approach to take, which I am sure we can flush out during the passage of the bill and going forward. I certainly would not want for a moment to suggest that the answer that I have given to Mr Mason is the Government's last word on the subject—far from it.

**Michael McMahon:** That is an interesting response. Maybe during that debate we can strike a deal that, since my area has had all the landfill sites for the past decades, other communities

should take all the pyrolysis plants that are now springing up to deal with waste management. Thank you for your response, cabinet secretary.

**Jean Urquhart (Highlands and Islands) (Ind):**

My question is a variation on a theme. We are talking about a community fund that will diminish with the success of the programme, as we head towards zero landfill. If I open a little factory that takes rags and timber and dirty cans and makes grand pianos out of them—which is how creative we have to be, I suspect—I could argue that my community is having the trucks coming in not to contribute to landfill but so that the waste can be used, so why would the area in which such an enterprise is located not be eligible for some of the tax revenue?

Given that the policy framework is setting the scene for society having to be aware of recycling and saving, it seems that there are two issues that need to be dealt with as a result. One is the need to reduce waste so that there is not so much of it; the other is—to repeat what you said yourself, cabinet secretary—that we should treat waste as a resource that we can use. Are we going to see some of the money in the meantime, or a different fund, so that we can be creative in that way? There are colleges throughout Scotland with product or industrial product design courses that could yield various ways of using waste.

11:45

**John Swinney:** A lot of the activity that is envisaged—to expand Jean Urquhart's point—essentially is encapsulated in the role of zero waste Scotland. That is the function of that organisation: to work with partners and, in some circumstances, to be supported by Scottish Enterprise or Highlands and Islands Enterprise in developing business propositions that emerge from those types of activities. Therefore the answer is yes. Part and parcel of what we are trying to encourage in the zero waste agenda is a focus in society on the reuse, adaptation and redeployment of resources that are no longer required for their primary function in a particular area. I think that “reduce, reuse, recycle” is the mantra that Mr Lochhead has put forward—I hope that that is the right word order. There will be mechanisms in place to enable support to be taken forward in that fashion.

**Jean Urquhart:** I want also to mention the islands, where there are issues that need to be addressed. I think that I am right in saying that Shetland does not send any waste off the island. That is an example of resilience and resourcefulness. Shetland is producing district heat schemes and there has been quite a big investment, including some Government money, in

recycling glass into other products. That is worth looking at.

**John Swinney:** It is right that the example of Shetland involves district heating, as part of a waste incineration proposition. As I said in my answer to John Mason, I will explore the issue in relation to the islands to determine whether there is fairness in how that is being taken forward.

**Malcolm Chisholm:** I want to pick up on a couple of points. You used the figure of 7 per cent at one stage; you seemed to be implying that 7 per cent of the overall UK money for the community fund was coming to Scotland. Is that what you meant, or did you mean that 7 per cent of the overall landfill tax in Scotland went to the community fund—if you can see the distinction?

**John Swinney:** I was saying that Scotland's share of landfill tax receipts—the total UK pot—since 1996-97 is 9.2 per cent but we have received only 7 per cent of the landfill communities fund to contribute to projects in Scotland.

**Malcolm Chisholm:** So you are saying that 93 per cent went to the rest of the UK.

**John Swinney:** I am, yes.

**Malcolm Chisholm:** I wanted to clarify that.

You also said words to the effect that you expect SEPA to detect illegal dumping. Do you expect SEPA just to continue the work that it is doing currently in that regard, or do you expect it to step up its efforts because there is now a financial incentive to detect people?

**John Swinney:** It is not so much that there is a financial incentive. The point is that there will be a tax to be charged on that activity. To go back to my answer to John Mason, the law provides for a tax to be applied on illegal dumping. Therefore I would expect SEPA to pursue that as part of its activities. As part of the arrangements that I have put in place, operating under the umbrella of revenue Scotland, there will be compliance support and assistance for SEPA in doing that.

**Malcolm Chisholm:** In last week's session, concerns were expressed about the £300,000 that is being given to SEPA for various activities. However, when I asked SEPA about the issue this morning, I was told that there was no extra money for stepping up its activities with regard to detecting illegal dumping. Will that be a problem?

**John Swinney:** SEPA is a very good example of an organisation that could have kept on coming to the Government, saying, “We want more money—we need to put up our charges.” However, after being asked by ministers to examine its internal operations and find ways of operating very efficiently, it has been able to reduce the required grant in aid, keep charges at a

very stable level and improve its internal operation. Instead of following the option of simply asking for more money, it has got on with making itself more efficient. It is a very good example in that respect, and I am confident that it will be able to operate in that way.

**Malcolm Chisholm:** If SEPA had enforcement powers, would the situation change and would extra resources be required? I do not know when a decision will be taken on that, but there seems to be some doubt over it at the moment.

**John Swinney:** SEPA is already able to fine illegal dumpers and indeed does so, but the bill provides for a tax charge to be applied into the bargain. I am confident that the agency already operates in the space that would enable it to act in this fashion.

**Malcolm Chisholm:** On the big question of the effect on the budget and the block grant adjustment, which Jamie Hepburn has already raised, I should say that, when I asked your officials about this issue two weeks ago, I got it all wrong. Now that I have fully understood it, am I right in thinking that your opening position would be that the block grant adjustment should be only £40 million because that is envisaged as the amount of money that will be raised in the long run from the tax?

**John Swinney:** That would be a very reasonable conclusion to reach in the negotiations. I will offer it as my closing position to the UK Government.

**Malcolm Chisholm:** Is the £40 million based on the assumption that the target in the zero waste plan of only 5 per cent of waste going to landfill by 2025 will be met?

**John Swinney:** Yes. Obviously, in basing our calculations for 2025 on the 5 per cent figure, we are making a number of assumptions, but that is the basis of it.

**Malcolm Chisholm:** You have said that you will not impose rates lower than those in the rest of the UK. It would of course be tempting to impose higher rates because one would think that that would be an incentive not to use landfill. However, we have already discussed cross-border considerations; moreover, as SEPA has suggested, if the rate is too high it will encourage the illegal dumping of, say, asbestos—although one could argue that, as a general principle, a too-high rate will encourage illegal dumping anyway. What range of factors would you consider in deciding whether to raise the rate instead of keeping it the same?

**John Swinney:** I have to be mindful of all these different factors; for example, I have acknowledged that relatively small cost

differentials could encourage cross-border activity. I do not think that such practices are in anyone's interest because not only will they displace tax income that ordinarily should be raised in Scotland but further emissions will be incurred in travelling longer distances. A variety of factors will have to be considered and reconciled, but I am adamant that the setting of rates must be compatible with and should in no way undermine the Government's long-term journey to reduce waste in Scotland as part of the zero waste strategy.

For completeness, I point out that, if Scotland were independent, it would be contrary to current European regulation and directives to transport any waste across the border. Perhaps the prospect of keeping waste in that context might persuade Mr Chisholm and some of his colleagues of the merits of Scottish independence, but the Government is very clear about its policy direction and the long-term achievement of our environmental targets and therefore has to take a set of measures to support that agenda.

**Jamie Hepburn:** The cabinet secretary might already have answered this, convener, but I want to ask a brief question for absolute clarity. I know that illegal dumping will be brought within the scope of the landfill tax and Mr Swinney has made it clear that, at present, SEPA can impose fines on individuals or organisations that dump waste illegally. However, I think that the cabinet secretary also said that the bill will provide for fines and tax charges to be applied. Does that mean that organisations will be fined as well as taxed for this activity?

**John Swinney:** Organisations could be fined, could face a tax charge and could also face charges for proper disposal by a recognised operator.

**Jamie Hepburn:** So there could be criminal proceedings.

**John Swinney:** Indeed.

**Jamie Hepburn:** That is helpful.

**The Convener:** That concludes the committee's questions, cabinet secretary, but not mine.

In 2011-12, the landfill tax revenue in Scotland was £98 million and, as you said earlier, in 2025 you will be looking for about £40.5 million. I do not want to take issue with Malcolm Chisholm's figures again, but does that not mean that you will be looking for a block grant adjustment of about £57.5 million? Moreover, do you have year-on-year figures to show how you reach that £40.5 million? You said that you had indicative figures, but how strong are your figures in that respect?

**John Swinney:** The 2025 figure has been reached by calculating where we think we will be with regard to waste recycling. I am pretty sure

that we could work out a year-by-year staged assumption, but we would be getting into a certain level of expectation about the block grant adjustment, which we might well have to get into in order to reach an agreement.

As for how all of this fits together, I said earlier to Mr Hepburn that there is a certain variability in our expectations about whether the taxes that are being deployed to us will go up or go down. The block grant adjustment mechanism must take account of that in the round, and that is the point that I will be advancing in our dialogue with the UK Government.

**The Convener:** My understanding was that the aim of the landfill communities fund is, as Michael McMahon suggested, to support blighted communities. However, in your comments, you seemed to suggest almost changing the fund's definition. Is it still the Scottish Government's intention to ensure that, broadly speaking, the fund will continue to focus on blighted communities? I realise that it will have some flexibility, but should that not be the fund's core purpose?

**John Swinney:** I acknowledge that that is the fund's core but, as we embark on this approach, we need to explore whether we can construct the fund in a way that best meets the expectations of communities in Scotland and which recognises some of the factors that I have highlighted in my evidence.

**The Convener:** The fact is that the fund will be declining year on year. You said earlier that, although Scotland had raised 9.2 per cent of the tax in the UK, it received only 7 per cent of the landfill communities tax money. According to RSPB Scotland, the potential value of credits in the fund amounts to £74.25 million a year in the UK, which means that Scotland's share is about £1.6 million or £1.7 million less than it should be. Why is Scotland not getting the 9.2 per cent or thereabouts share that it is actually raising? Is it because projects are not coming forward?

12:00

**John Swinney:** As this is a bidding process, convener, the short answer can only be that insufficient projects are coming forward from communities in Scotland.

**The Convener:** Given that revenue and the fund itself are declining year on year, is there any merit in encouraging more communities to make bids, or do you believe that we should be making more bids for projects to try to get our share above 9.2 per cent?

**John Swinney:** The tax will be devolved in April 2015, so there is not an awful lot of time—just short of two years—to make an impact in that

respect. The clear lesson in all of this is that we have to be very effective in how we engage communities and motivate them to be part of this process.

**The Convener:** Finally, on enforcement, although SEPA has the power to instigate environmental enforcement action on illegal sites, HMRC cannot collect the tax on those operators and, as we have discussed, that encourages illegal dumping. Earlier, SEPA and revenue Scotland made it clear that discussions are on-going about who will be responsible for enforcement in the case of non-payment and for pursuing these illegal dumpers. What is the Scottish Government's view on the matter?

**John Swinney:** The framework is being put in place under the auspices of revenue Scotland, which will be using SEPA as the contact point for collecting and administering the tax and ensuring that it is properly collected. That is the most effective explanation that I can give.

**The Convener:** Thank you for that clarification.

That concludes our questions, and I thank the cabinet secretary and his officials, and members for their questions. At the start of the meeting, the committee agreed to take the next item in private. I now close the public part of the meeting and will allow a couple of minutes for the public and the official report to leave.

12:02

*Meeting continued in private until 12:08.*





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