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Finance and Public Administration Committee

Subordinate Legislation: The Scottish Landfill Tax (Prescribed Landfill Site Activities) Amendment Order 2022



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Finance and Public Administration Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any report or other document containing proposals for, or budgets of, public revenue or expenditure or proposals for the making of a Scottish rate resolution, taking into account any report or recommendations concerning such documents made by any other committee with power to consider such documents or any part of them;

(b) any report made by a committee setting out proposals concerning public revenue or expenditure;

(c) Budget Bills; and

(d) any other matter relating to or affecting the revenue or expenditure of the Scottish Administration or other monies payable into or expenditure payable out of the Scottish Consolidated Fund.

(e) matters relating to public service reform and the National Performance Framework within the responsibilities of the Deputy First Minister and public administration.

2. The Committee may also consider and, where it sees fit, report to the Parliament on the timetable for the Stages of Budget Bills and on the handling of financial business.

3. In these Rules, “public expenditure” means expenditure of the Scottish Administration, other expenditure payable out of the Scottish Consolidated Fund and any other expenditure met out of taxes, charges and other public revenue.



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Introduction

1. At its meeting on 20 September 2022, the Finance and Public Administration Committee took evidence from the Minister for Public Finance and Community Wealth, Tom Arthur MSP, in relation to—

[The Scottish Landfill Tax \(Prescribed Landfill Site Activities\) Amendment Order 2022](#)

2. The Official Report of the evidence session is available on the [Committee's website](#).

The Scottish Landfill Tax (Prescribed Landfill Site Activities) Amendment Order 2022

3. The Order was laid before Parliament on 1 July 2022 and is subject to made affirmative procedure, meaning the Order came into force immediately. It must be approved by the Parliament within a specified number of days to remain in force. This Order requires the Parliament to approve it within a 28-day period from 1 July 2022 (excluding the period of parliamentary recess).
4. It amends [the Scottish Landfill Tax \(Prescribed Landfill Site Activities\) Order 2014](#), and prescribes activities to be treated as a ‘taxable disposal’ for the purposes of Scottish Landfill Tax (SLfT).
5. The [policy note](#) in relation to the 2022 instrument states that the Order provides that any use of material in a landfill cell is taxable unless specifically excluded in the Order or otherwise exempted from the tax. Examples of ‘landfill cells’ are trenches and pits.
6. The Order follows a period of consultation in 2021. The [consultation](#) sought views on a proposed draft amending Order. 15 responses were received. The Scottish Government published a [consultation analysis](#) on 1 July 2022.
7. Of the 15 respondents, nine agreed that the proposed amendment would provide greater certainty and clarity to taxpayers and their customers while three disagreed, and three selected “Don’t Know”.
8. According to the consultation analysis—
 there were two main concerns raised by respondents: firstly, the need to specify in more detail the various engineered layers of the impermeable layer bounding the landfill cell; and secondly the need for clarification regarding the tax treatment of specific engineering activities, particularly in relation to infrastructure necessary for gas and liquid control.
9. Following the consultation, the Scottish Government has refined the definition of impermeable layer, expanded the list of activities excluded from prescription and specified that the list of prescribed landfill site activities will include the use of material to create or maintain a cell bund or cell wall—
 - "impermeable layer" has been defined as the geological barrier, whether formed of a single mineral layer or such mineral layer combined with an artificial sealing liner or cap, located at the external facing perimeter of a landfill cell, that has the function of preventing the escape of liquids or gases from that landfill cell;
 - the insertion of pipes, pumps or associated infrastructure into a landfill cell for the purposes of the extraction or control of surplus liquid or gas from or within that cell and the use of plant or equipment for waste or environmental management purposes have been added to the list of activities excluded from

prescription;

- cell bund or cell wall has been defined as a structure within a disposal area which separates or contains units of waste.

10. In relation to concerns raised regarding potential engineering activities, the consultation analysis noted that—

” the Scottish Government does not consider any engineering activities which are not intended to be within the scope of SLfT will be taxed as a result of this amendment. It is not considered that the amendment will introduce any additional limitations on the use of recovered material.

11. The Delegated Powers and Law Reform (DPLR) Committee, which considers the technical aspects of the instrument, considered the Regulations on [6 September 2022](#). While the DPLR Committee had no issues to report, it did comment on the timing of the instrument (the SSI has been in force since 1 July 2022 but due to recess, the Parliament has not had the opportunity to consider it) and recommended in its [report](#) that—

” Firstly, as far as possible, the Scottish Government should avoid a situation such as this in the future; and secondly, where this is not possible, it would be helpful for the Scottish Government to provide a fuller explanation of the reasons for the timing of the instrument.

12. In his evidence to the Finance and Public Administration Committee on [20 September 2022](#), the Minister provided the following information on the timescales for the implementation of the instrument and for the consultation that preceded it:

” Fundamentally, in November and December of last year, we consulted on a proposal for the amendment order. As the committee will appreciate, we took some time to consider the responses that we received via that consultation, and to engage in further discussions with stakeholders. There was then a decision from the Upper Tribunal for Scotland, which was publicised in May and which, naturally, we wanted to take further time to consider. In effect, therefore, the first practicable date on which to make and lay the order was 1 July. Given that we need to provide certainty and clarity to taxpayers and their customers, it would not have been appropriate to wait until after the summer recess had concluded.

13. Following the discussion, the Minister for Public Finance and Community Wealth, moved motion [S6M-05325](#) in his name—

That the Finance and Public Administration Committee recommends that the Scottish Landfill Tax (Prescribed Landfill Site Activities) Amendment Order 2022 (SSI 2022/233) be approved.

14. Motion [S6M-05325](#) was agreed to without division. The Finance and Public Administration Committee therefore recommends that the Scottish Landfill Tax (Prescribed Landfill Site Activities) Amendment Order 2022 be approved.

