

Scottish Landfill Tax - further clarity and certainty: consultation analysis

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Introduction

The Scottish Government is committed to providing clarity and certainty to taxpayers and their customers regarding the application of Scottish Landfill Tax (SLfT), reflecting the Scottish approach to taxation and to ensure a level playing field across the waste and recycling industry.

The Scottish Government invited views on a proposed amendment to the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014.

Following careful consideration of the responses to the consultation and relevant tax tribunal decisions, the government has refined its approach to address issues raised. This document summarises respondents' views, and the government's response.

Background

Scottish Landfill Tax replaced UK Landfill Tax in Scotland on 1 April 2015. The tax is intended to support the Scottish Government's ambitions to foster a more circular economy and the delivery of our targets to reduce waste, increase recycling, and cut the amount of waste sent to landfill.

The tax is collected from operators or controllers of a landfill site based upon the weight and type of waste material. The cost of the tax is ultimately borne by waste producers and the waste industry, as well as local authorities disposing of municipal waste.

The Scottish Government's view is that the existing legislation clearly delineates the scope of the tax. There have however been long running challenges as to when a taxable disposal has occurred for the purpose of UK Landfill Tax and, more recently, for Scottish Landfill Tax.

Disputes about the correct tax treatment can ultimately be resolved through the tax tribunal and court system and the Scottish Government will take no position on any individual case. However, any period of dispute can undermine the circular economy objectives of the tax, create additional expense for taxpayers and result in an uneven playing field across the waste industry.

To avoid these negative impacts, the Scottish Government proposed an amendment to the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014 ("the Order") called the Scottish Landfill Tax (Prescribed Landfill Site Activities) (Amendment) Order 2022.

Proposed amendment

In summary, the proposed amendment on which the Scottish Government consulted:

- Provides that **any** use of material in a landfill cell is taxable unless specifically excluded in the Order.

- Creates for the purposes of the Order, a definition of a landfill cell:
 - "landfill cell" means a structure within a landfill site formed of an impermeable layer at its base and sides and, save where the cell only contains inert material, at the top of the unit or structure;"
 - "impermeable layer" means any layer, liner, seal or cap that has the function of preventing the transmission of liquids or gases
- Specifically lists the following activities as being excluded from being prescribed as taxable disposals:
 - the use of material to form a layer immediately above the base of that cell and which performs the function of drainage; and
 - the insertion of pipes or pumps into a landfill cell for the purposes of the extraction or control of surplus liquid or gas from or within that cell.

The Consultation

The consultation ran from 25 November 2021 to 31 December 2021. 15 responses were received in total, of which 14 were received online via Citizen Space and a further 1 received by email and post. Discussions were also held with local authority and industry representatives.

A list of respondent organisations is available in **Annex A** and where permission has been given responses have been published in full.

The consultation set out nine, primarily qualitative, questions and sought views on the proposed draft amending Order.

The consultation paper can be found here – [Scottish Landfill Tax - further clarity and certainty](#)

Question 1 Responses

The first question in the consultation asked; “Do you agree that proposed amendments provide greater clarity and certainty?”

Overall respondents were supportive of the proposed changes with the majority agreeing that they provided greater clarity and certainty for taxpayers and customers. Three respondents did not agree that the proposed amendment provided greater clarity and certainty.

One respondent noted that although the proposed changes align in substance with the position applicable to the landfill tax regime in England and Northern Ireland it may be prudent to delay any proposed changes to the Order until the outcome of HM Treasury’s, [Landfill Tax Review - Call for Evidence](#) is known. This open call for evidence does not propose any changes to UK landfill tax but is intended to ensure that it continues to support the UK government’s environmental objectives.

Three respondents expressed concerns about the amendment inadvertently expanding the scope of the tax by limiting the engineering activities which fall outside the scope of the tax. They also noted that the current guidance provided by Revenue Scotland (SLFT3002) allows for a range of engineering activities occurring within the landfill cell to be excluded from the scope of tax and suggested there needed to be clarification regarding which engineering activities are outside the scope of tax.

One of these respondents argued specifically that the proposed amendment represents an impediment to the use of materials which have been recovered from being waste and conflicts with the Waste Framework Directive and Scottish zero waste ambitions. They requested clarification of the Scottish Government's intent with regards to recovered material.

Other respondents also noted there was still potential scope for ambiguity in the application of the draft proposals and a need for additional clarifications regarding the tax treatment of specific engineering activities. The specific issues raised were expanded on in responses to subsequent questions.

One respondent suggested there are additional issues in relation to the current Order which were not addressed in the consultation and where clarity would be welcome. In particular, it was proposed that some material used to create temporary roads should not be taxable. This was on the basis that some temporary site roads may involve high specification construction work expected to last a long time. It was also suggested that the requirements regarding notification of non-disposal areas would benefit from clarification.

Question 2 Responses

The second question asked; "Are the definitions of a "landfill cell" or "impermeable layer" unclear or open to interpretation?"

There were mixed views on the clarity of these definitions, with six respondents stating the definitions were unclear or open to interpretation. The majority of the issues raised were with the definition of the impermeable layer.

Two respondents argued that the proposed definition of the impermeable layer did not align with environmental definitions and generally accepted waste sector terminology. They suggested that the definitions should be aligned more closely with the landfill engineering functions detailed within the Landfill (Scotland) Regulations 2003

Two respondents suggested that there should be clarification regarding the tax treatment of materials which are used for the construction of the impermeable layer. It was suggested that the legislation should make specific reference to the construction of the impermeable layer not being a taxable activity.

One respondent questioned whether the definition of a landfill cell could be extended to include any impermeable storage structure on the landfill site.

One respondent noted the benefits of aligning definitions with those adopted for UK Landfill Tax in England and Northern Ireland since 2018 and stated that they found this beneficial to avoid confusion and accidental error, as well as reducing the risk of waste tourism.

Question 3 – Responses

Question 3 of the consultation asked: “The amendment order provides that any use of material in a landfill cell is taxable unless specifically excluded in the Order. Is this new prescription unclear or open to interpretation?”

The majority of respondents found the new prescription to be clear and not open to interpretation.

Several respondents suggested there needed to be clarification to the guidance regarding which engineering activities are outside the scope of tax.

Three respondents specifically suggested that additional clarification was required regarding the tax status of the protective “fluff” layer which prevents damage to the landfill cell liner or cap.

One respondent did not consider that there is a justification for treating all material within a landfill cell as waste where it could be demonstrated that such material has not been discarded as waste.

One respondent requested clarification regarding whether it was the intention to classify all non-waste and recovered waste materials used to fulfil a legitimate landfill engineering function as disposal of waste and therefore a taxable disposal.

Question 4 – Responses

Question 4 of the consultation asked; “Are any of the activities listed as excluded from prescription unclear or open to interpretation?”

The majority of the respondents indicated that some of the activities listed as excluded from prescription were unclear. Most respondents noted that the infrastructure required for the extraction or control of liquid or gas extends beyond just pipes and pumps. It was suggested that all the infrastructure associated with gas and liquid control should therefore be excluded from prescription.

Other respondents requested clarification regarding the tax treatments of various specific landfill engineering activities. One respondent suggested that, without a definition of “material”, any object temporarily placed within the landfill cell could be classified as ‘material’ and become taxable including, for example mobile plant.

Question 5 – Responses

Question 5 of the consultation asked; “Should any additional activities be prescribed or excluded from prescription?”

Six respondents suggested additional activities should be excluded from prescription.

Two respondents suggested that material used to form the protective “fluff” layer should be excluded from tax on the basis that it is an integral part of the landfill cell. The existing order prescribes as taxable material used in constructing temporary roads. One respondent argued that operators often have to bring in suitable stone/brick to create roads and so some of the material used in the construction of temporary roads should not be taxable as a consequence.

One respondent suggested that non waste and recovered waste materials be excluded from prescription when used to fulfil an engineering function. To protect against low quality materials being used they suggested that the Scottish Government should set out the quality protocols that any recovered waste must adhere to, along with record keeping requirements for landfill operators to demonstrate adherence.

One respondent suggested that genuine engineering activities should be excluded in the prescribed activities list, or set out clearly in the Revenue Scotland guidance to confirm they remain exempt.

Question 6 – Responses

Question 6 of the consultation asked; “Do you foresee any practical difficulties with the proposed changes?”

The majority of respondents did not foresee any practical difficulties. However, four respondents noted the importance of further guidance being provided by Revenue Scotland to ensure that key terms and definitions are clearly understood by all parties.

One of these respondents argued specifically that the proposed amendment represents an impediment to the use of materials which have been recovered from being waste and conflicts with the Waste Framework Directive and Scottish zero waste ambitions. They requested clarification of the Scottish Government’s intent with regards to recovered material.

Question 7 & 8 – Responses

Question 7 of the consultation asked; “Do you have any information which could inform any final Business and Regulatory Impact Assessment?”

Question 8 of the consultation asked; “Do you have any information which could inform any other impact assessments?”

The majority of respondents did not provide any information to inform impact assessments

Three respondents considered that the proposed amendments had the potential to alter the scope of tax to include current non-taxable engineering activities. It was

noted that any ambiguity or uncertainty about the application of the amendment order could result in disputes between operators and Revenue Scotland. They argued that this would result in higher costs for customers and the impact should be quantified and subject to impact studies. It was also noted that these changes will be coming at a time when landfill operators are transitioning to the ban on landfill of biodegradable municipal waste.

One respondent suggested that the impact on the use of incinerator bottom ash should be taken into consideration.

Question 9 – Responses

Question 9 of the consultation asked; “Would you like to provide any other information that should inform the consultation?”

Other issues which were raised include consideration of:

- the tax treatment of non-hazardous waste soils
- the potential interactions with the tax treatment of incinerator bottom ash.
- the interaction with the ban on Biodegradable Municipal Waste.

Next Steps

The Scottish Government thanks all organisations who responded to this consultation and those who took part in discussions. The responses and accompanying engagement have proven useful when considering if changes were required to the amending Order.

The Scottish Government notes the broad support from respondents for greater clarity in relation to taxable disposals and will therefore continue with plans to introduce the amending Order. This order will ensure that SLfT continues to support the Scottish Government’s circular economy ambitions.

The Scottish Government recognises however that a number of respondents expressed concern that the proposed legislation might inadvertently expand the scope of SLfT.

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.

In light of these concerns, the Scottish Government will amend the definition of impermeable layer to the following:

- “impermeable layer” means 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 Scottish Government will also add the following to the list of activities excluded from prescription in the amending Order.

- 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.
- The use of plant or equipment for waste or environmental management purposes.

Having also closely considered relevant tax tribunal decisions, and in order to reduce the potential for uncertainty across the waste industry, the Scottish Government intends to confirm that material used in the construction of cell walls is subject to tax. The list of prescribed landfill site activities will include the use of material to create or maintain a cell bund or cell wall. This will be defined as follows:

- cell bund or cell wall means a structure within a disposal area which separates or contains units of waste.

Having carefully considered all the potential engineering activities identified in the responses and having made the changes above, 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.

Revenue Scotland will shortly be publishing updated guidance relating to the revised Prescribed Landfill Site Activities Order. This guidance will be published on the Revenue Scotland Website at [SLfT3002 - Landfill site activities prescribed as being subject to tax](#).

It is recognised a number of additional issues were raised in relation to SLfT which are outside the specific purview of the proposed amendment. The Scottish Government would welcome any further evidence on these issues and will continue to keep them under consideration

Annex A – Organisational Respondents

Soilutions Ltd

PwC

Shetland Islands Council

CIWM Scotland

SRMA (Scotland) Limited trading as the Resource Management Association
Scotland

Rock Solid Processing Limited

Barr Environmental Ltd.

Scottish Environmental Services Association

FCC Recycling (UK) Limited

SUEZ Recycling and Recovery UK Ltd

Law Society of Scotland

Stirling Council



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