

Scottish Landfill Tax: Further Clarity and Certainty

**A Consultation on Amending the Scottish
Landfill Tax (Prescribed Landfill Site
Activities) Order 2014**

November 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

1. Introduction

Purpose

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.

Given 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, the Scottish Government intends to legislate to provide additional clarity as to when a taxable disposal is considered to have occurred.

This clarity will be provided by an amendment to the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014. The proposed amendment is not intended to alter or expand the scope of the tax, but to confirm what is taxable.

This consultation is intended to gather views from landfill operators, waste managers, waste and resource sector companies, local authorities and other interested stakeholders on the proposed legislative amendment.

Scope

Scottish Landfill Tax is due on waste disposed of at landfill sites in Scotland.

This consultation offers an opportunity to comment on a proposed amendment to the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014 (“the Prescribed Activities Order”).

This consultation will run for a five week period from publication.

2. Background

Scottish Landfill Tax replaced UK Landfill Tax in Scotland on 1 April 2015. The tax seeks to encourage the prevention, reuse and recycling of waste. This supports the Scottish Government’s ambitions to foster a more circular economy.

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 explicit policy intention is that all material entering a landfill site should be subject to the tax, unless it is used in the final restoration of the site, stored in a non-disposal area or otherwise exempted.

Section 3 of the Landfill Tax (Scotland) Act 2014 defines a disposal as taxable if three conditions are met. A disposal is taxable if it is:

- a disposal of material as waste;
- made by way of landfill; and
- made at a landfill site.

In addition, section 6 of the Act provides an Order making power to prescribe a "landfill site activity" that is to be treated as a taxable disposal, even if the above conditions have not been met. These powers are presently exercised by means of the Prescribed Activities Order.

At present, the following activities are prescribed by the Order:

- the use of material to cover the disposal area during a short-term cessation in landfill disposal activity;
- the use of material to create or maintain a temporary haul road;
- the use of material to create or maintain temporary hard standing;
- the use of material to create or maintain a cell bund;
- the use of material to create or maintain a temporary screening bund, except where the material so used is naturally occurring material extracted from the landfill site in which the temporary screening bund is located;
- the temporary storage of ashes (including pulverised flue ash and furnace bottom ash);
- the use of material placed against the drainage layer or liner of the disposal area to prevent damage to that layer or liner; and
- those which give rise to a specific requirement for notification, giving of information or record keeping and that requirement is not complied with.

Revenue Scotland's current guidance regarding the Prescribed Activities Order can be found at Revenue.Scot – SLfT 3002.

3. Proposed Amendment

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 system. 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 therefore intends to introduce an amendment to the Prescribed Activities Order.

A draft copy of The Scottish Landfill Tax (Prescribed Landfill Site Activities)(Amendment) Order 2021 is accordingly provided at Annex A.

In summary, this:

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, 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 proposed amendment will not affect the tax treatment of currently prescribed activities in any way.

Additionally, regardless of this amendment, any material that is elsewhere defined as chargeable to or exempted from the tax will remain either chargeable or exempt, as applicable.

Timing

Following consultation and subject to consideration of the responses, the Scottish Government proposes to lay the amendment Order at the earliest possible opportunity.

As this is a provisional affirmative order, the Scottish Parliament would require to approve it within 28 days, beginning on the date it is made, for it to remain in force.

4. Impacts

Equal opportunities – The Scottish Government assessed the potential impacts of the Scottish Landfill Tax Act 2014 on equal opportunities. The proposed amendment, which stems from a power in the Act, does not discriminate with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly.

Human rights - The proposed amendment does not infringe on or affect any subject areas of the European Convention on Human Rights (ECHR). No differential impact on human rights or any impact on any individual's civil liberties through the proposals have been identified.

Business Impacts - No negative impacts on Scottish businesses have been identified by the proposed amendment. If the Scottish Government

decides to proceed with the proposed amendments a Business and Regulatory Impact Assessment (BRIA) will, if considered to be required, be published along with the legislation. This will take into consideration any comments on the impacts provided in response to this consultation, or raised in separate engagement with relevant stakeholders. A partial BRIA can be found at Annex B to this consultation.

Privacy impacts - The proposed amendment, if taken forward, would be subject to other legislation that prohibits, restricts access or relates to the disclosure of that information, for example the Data Protection Act 1998 or the Revenue Scotland and Tax Powers Act 2014. As a result, there are no privacy impacts resulting by way of the proposed amendment.

Island communities -The proposed amendment would have no identified differential impact on island and rural communities.

Local government - There are no identified additional responsibilities or costs to local authorities.

Sustainable development - The proposal will have no impact on sustainable development.

5. Questions

Question 1: Do you agree that the proposed amendment provides greater certainty and clarity to taxpayers and their customers?

Question 2: Are the definitions of a “landfill cell” or “impermeable layer” unclear or open to interpretation?

Please specify any issues, along with any suggestions that would provide greater clarity.

Question 3: 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?

Please specify any issues, along with any suggestions that would provide greater clarity.

Question 4: Are any of the activities listed as excluded from prescription unclear or open to interpretation?

Please specify any issues, along with any suggestions that would provide greater clarity.

Question 5: Should any additional activities be prescribed or excluded from prescription?

Please set out any proposals, along with an explanation as to why these activities should be prescribed or excluded.

Question 6: Do you foresee any practical difficulties with the proposed changes? If so, what are they and how could they be overcome?

Question 7: Do you have any information which could inform any final Business and Regulatory Impact Assessment?

Question 8: Do you have any information which could inform any other impact assessments?

6. Responding to the consultation

We are inviting responses to this consultation by 31 December 2021.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space at <https://consult.gov.scot/taxation-and-fiscal-sustainability/scottish-landfill-tax>.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Fully Devolved Taxes Unit
Directorate of Taxation and Fiscal Sustainability
Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response

not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy:

<https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at devolvedtaxes@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Annex A: Proposed Amendment Order

LANDFILL TAX

The Scottish Landfill Tax (Prescribed Landfill Site Activities)(Amendment) Order 2021

Made - - - - - ***
Laid before the Scottish Parliament ***
Coming into force - - - - - ***

The Scottish Ministers make the following Order in exercise of the powers conferred by section 6(1) of the Landfill Tax (Scotland) Act 2014⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Scottish Landfill Tax (Prescribed Landfill Site Activities)(Amendment) Order 2021 and comes into force on [].

Amendment of the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014

2. The Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014⁽²⁾ is amended in accordance with articles 3 and 4.

3. In article 2 (interpretation), after the definition of “haul road” insert—

““impermeable layer” means any layer, liner, seal or cap that has the function of preventing the transmission of liquids or gases

“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;”.

4. In article 3(1) (prescribed landfill site activities)—

(a) In sub-paragraph (g)—

- (i) for “disposal area” substitute “landfill cell”,
- (ii) omit “and”.

(b) Omit sub-paragraph (h),

(c) After sub-paragraph (g), insert—

“(h) any other use of material in a landfill cell, other than—

- (i) the use of material to form a layer immediately above the base of that cell and which performs the function of drainage,

(1) 2014 asp 2.
(2) S.S.I. 2014/367.

(ii) 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.

(j) any other landfill site activity to which paragraph (2) applies.”.

Annex B: Partial Business and Regulatory Impact Assessment

1. Title of Proposal

Amendment to the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014.

2. Purpose and intended effect

Background

Scotland is committed to building a circular economy, meaning we reduce demand for raw materials by keeping resources in use for as long as possible, extract maximum value from them, and minimise waste by encouraging reuse, repair and recycling, to ensure products last as long as possible.

Scottish Landfill Tax replaced UK Landfill Tax in Scotland on 1 April 2015. The tax seeks to encourage the prevention, reuse and recycling of waste, supporting the Scottish Government's ambitions to foster a more circular economy.

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.

A Business and Regulatory Impact Assessment was carried out in 2013 prior to the introduction of the Scottish Landfill Tax Act 2014 and associated secondary legislation including the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014 ("the Prescribed Activities Order").

3. Objective and rationale

The Scottish Government's explicit policy intention is that all material entering a landfill site should be subject to the tax, unless it is used in the final restoration of the site, stored in a non-disposal area or otherwise exempted.

Section 3 of the Landfill Tax (Scotland) Act 2014 defines that a disposal is taxable if it is a disposal of material as waste, made by way of landfill

and made at a landfill site. All three criteria must be satisfied for a disposal to be taxable.

In addition, section 6 of the act provides a power to prescribe a “landfill site activity”, that is to be treated as a taxable disposal. These powers are presently exercised by means of the Prescribed Activities Order.

The Scottish Government is of the view 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. In particular, these disputes have related to whether certain materials used in certain landfill site engineering activities have been disposed of as “waste” and are therefore taxable disposals.

While disputes about the correct tax treatment can ultimately be resolved through the tax tribunal system, 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.

The objective of the amendment to the Prescribed Activities Order is therefore to provide certainty about when a taxable disposal has occurred.

4. Consultation

Within Government

The following government agencies and departments have been consulted in the preparation of this partial Business and Regulatory Impact Assessment (BRIA):

Revenue Scotland has provided advice on the operation of Scottish Landfill Tax;

Scottish Environment Protection Agency has provided advice on landfill sites and environmental regulations;

Environment Directorate has provided advice on circular economy issues;

Scottish Government Legal Directorate has provided advice on legal issues.

Public Consultation

A formal consultation is being conducted to present the draft amendment order and seek thoughts on:

Whether this amendment provides additional clarity and certainty for taxpayers.

Whether the activities prescribed as taxable disposals are defined with sufficient clarity.

Whether the proposed amendment will result in any practical or operational difficulties for landfill operators.

Business

Consultation with businesses will take place during the public consultation process. It is expected that it will include virtual discussions and other engagement with key waste and recycling industry representative organisations.

5. Options

Option 1 - Amend the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014.

The Scottish Government is proposing to amend the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014 to reflect that any use of material in a landfill cell is taxable.

A set of defined exceptions, consistent with the activities that are not currently taxable, will be included in the Order.

Any material that is elsewhere defined as chargeable to or exempted from the tax will remain either chargeable or exempt, as applicable.

Option 2 – Do Nothing

Continue with existing Scottish Landfill Tax legislation, with no change.

Sectors and groups affected

Landfill site operators and their customers may be affected by this amendment to the Prescribed Activities Order.

Benefits

As stated above, the Scottish Government is of the view that the existing legislation clearly delineates the scope of Scottish Landfill Tax. It would therefore be possible to continue without this amendment to the Prescribed Activities Order.

However Option 1 will provide additional clarity regarding when a taxable disposal has been made. This will reduce the possibility of future disputes which need to be resolved through the tax tribunal system, causing expense for taxpayers and Revenue Scotland. This will also ensure a level playing field for all taxpayers and their customers.

Costs

The Scottish Government's view is there will not be any additional costs for taxpayers or their customers as a result of option 1. The amendment does not change the scope of tax and no additional administrative or operational requirements are imposed. This conclusion will be tested through public consultation and discussion with industry groups. Option 1 reduces the risk of future tax disputes, which may result in significant costs for both taxpayers and Revenue Scotland.

6. Scottish Firms Impact Test

Consultation with representative organisations will take place as part of the public consultation process.

7. Competition Assessment

The Scottish Government's view is that the amendment to the Prescribed Activities Order will not impact negatively on competition.

8. Consumer Assessment

The Scottish Government's view is that the amendments to the Prescribed Activities Order will not impact negatively on consumers.

9. Test run of business forms

The amendments to the Prescribed Activities Order will not introduce any new business forms.

10. Digital Impact Test

No digital impact is expected.

11. Legal Aid Impact

No legal aid impact is expected.

12. Enforcement, sanctions and monitoring

Revenue Scotland is responsible for the collection and management of the devolved taxes, including Scottish Landfill Tax. Sanctions for non-compliance with tax obligations are set out in the Revenue Scotland and Tax Powers Act 2014.

13. Implementation and delivery plan

Pending consideration of the consultation responses, The Scottish Landfill Tax (Prescribed Landfill Site Activities) (Amendment) Order 2021 will be laid in Parliament at the earliest practical date.

14. Post-implementation review

The Scottish Government will work with Revenue Scotland to monitor the effectiveness of The Scottish Landfill Tax (Prescribed Landfill Site Activities) (Amendment) Order 2021.

15. Summary and recommendation

We recommend amending the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order, providing additional clarity about when a taxable disposal has occurred and reducing any potential for uncertainty.

The proposed amendment does not change the scope of Scottish Landfill Tax and in the Scottish Government's view, the amendments do not bring any additional costs beyond those which were included in the impact assessment undertaken by the Scottish Government in relation to the introduction of the Scottish Landfill Tax Act 2014.

The proposed amendments provide certainty regarding when a taxable disposal has been made. This will reduce the possibility of future disputes which need to be resolved through the tax tribunal system and ensure a level playing field for all taxpayers.

This recommendation will be reviewed in light of further information gathered through further consultation with stakeholders, which will also be used to form any final BRIA.



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