

Update to the Scottish Landfill Tax Business and Regulatory Impact Assessment

Title of Proposal

The Scottish Landfill Tax (Qualifying Material) Order 2016

Purpose and intended effect

- **Background**

This document is an update to the Final Business and Regulatory Impact Assessment (BRIA) carried out for the Landfill Tax (Scotland) Act 2014¹, specifically looking at the business impacts resulting from changes relating to the introduction of Loss on Ignition (LOI) testing. The original BRIA contains the complete costing of impacts to Government, local authorities and businesses with the introduction of a Scottish Landfill Tax. An additional update to the BRIA above was published on Wednesday 17 December 2014², which looked at impacts of secondary legislation including the setting of , The Scottish Landfill Tax (Qualifying Material) Order 2015 which the above order will replace.

Additional information can also be found in two research papers carried out by Eunomia Research on behalf of the Scottish Government. The first is a paper is called, 'Landfill Tax An Economic Assessment'³ The second is a research paper to support landfill tax policy entitled, 'Understanding the Policy Options for Implementing a Scottish Specific Landfill Tax'.

<http://www.zerowastescotland.org.uk/ScottishSpecificLandfillTax>.

The Scottish Government intends for *The Scottish Landfill Tax (Qualifying Materials) Order 2016* to replace *The Scottish Landfill Tax (Qualifying Materials) Order 2015* to include LOI testing of small waste particles/fines produced as a result of mechanical waste treatment processes. The introduction of a testing regime for fine waste residues produced through waste treatment processes (often referred to as 'waste fines') is the final provision in the tax's legislative implementation. A decision was made by Scottish Ministers to delay the introduction of mandatory testing to allow businesses to set up contracts, make changes to waste treatment lines and procure testing equipment.

An LOI test is a test where material is heated to a prescribed temperature for a set amount of time and the loss in mass is calculated. An LOI test determines the organic content of material. The difference in the mass of the tested material before and after the ignition process is used to calculate the LOI result, this is known as the 'loss threshold'. The LOI result will inform how stable the material is in the landfill environment and whether the waste disposed of is liable at the lower rate of SLfT.

¹ <http://www.gov.scot/Publications/2013/06/8957/1>

² <http://www.gov.scot/Publications/2014/12/6274/5>.

³ <http://www.zerowastescotland.org.uk/LandfillTaxEconomicAssessment>

The test will not be the only determining factor, in accordance with Revenue Scotland Guidance⁴ visual inspections and WM3⁵ waste acceptance checks will also be required to ensure that the material disposed of consists of qualifying material (as listed in the schedule of the Order). A prescribed test will be published in Revenue Scotland legislative guidance which will meet the test parameters as set out in the Order.

- **Objective**

The replacement Order is intended to introduce a testing regime for waste fines produced through waste treatment processes, to help ensure that the lower rate of SLfT is applied consistently and equitably across industry. This document is intended as a supplement to the original Business and Regulatory Impact Assessment, specifically looking at the testing of waste fines for tax purposes.

- **Rationale for Government intervention**

The Scottish Government is introducing a testing regime following engagement with industry stakeholders. The UK Government legislated and introduced an LOI testing regime for waste fines which took effect on the 1 April 2015.

Respondents to “*Scottish Landfill Tax - A Consultation on Subordinate Legislation*”⁶ requested that the Scottish Government introduce a similar testing condition to help businesses apply the lower rate of tax equitably across industry.

As a result of this feedback Scottish Ministers confirmed they would introduce a statutory testing regime and published a second consultation specifically looking at the potential business and waste sector impact:

<https://consult.scotland.gov.uk/fiscal-responsibility/landfill-tax-loss-on-ignition-testing>.

The establishment of a testing regime and ensuring that the lower tax rate is correctly and equitably applied will help Scotland to continue to benefit from the important role that landfill tax has played in driving waste away from landfill and in creating the stable policy landscape needed to underpin long-term investment decisions on infrastructure and collection systems. In doing so, the proposals will contribute to the National Outcome on valuing and enjoying our built and natural environment and protecting it and enhancing it for future generations.

⁴ <https://www.revenue.scot/scottish-landfill-tax/guidance/slft-legislation-guidance>

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/427077/LIT_10121.pdf

⁶ <http://www.gov.scot/Publications/2014/08/3162>

Consultation

- **Within Government**

Preparatory work for the consultation paper and drafting of the Order involved discussions across a wide range of Government interests including:

- Fiscal Responsibility Division
- Environmental Quality Division
- Revenue Scotland
- Scottish Environment Protection Agency (SEPA)
- Scottish Government Legal Directorate
- Her Majesty's Revenue and Customs (HMRC) (UK Government)
- Her Majesty's Treasury (UK Government)

- **Public Consultation**

Workshop

The Scottish Government held a stakeholder workshop at the Revenue Scotland Devolved Tax Collaborative on 8 December 2015. Delegates expressed concern in relation to the timetable for introducing the mandatory LOI regime. Delegates stated that should changes were to come into force on the 1 April 2016 then that this would not give landfill operators enough time to prepare and make appropriate investment in order to comply with the new regime. Concerns around the timing of a mandatory testing regime included:

- Time for planning
- Leaving appropriate time for setting up testing contracts with laboratories
- The time window for procuring testing equipment
- Making technical changes to waste treatment lines
- Securing funding from boards/executive management teams
- Leaving enough time for waste producers to also required time to look at their processes

In response to these concerns Scottish Ministers have set 1 October 2016 as the effective date for the new Order.

Written Consultation

The consultation ran from 13 November to 29 December 2015. The Scottish Government received ten written responses to the consultation. Of these:

- Seven were from the waste management and treatment sector (W H Malcolm Ltd; The Binn Group; FCC Environment; Levenseat Ltd; SUEZ; and Scottish Environmental Services Association);
- One was from Scottish local government;
- One was from the Chartered Institute of Taxation; and
- One was from PricewaterhouseCoopers.

Two respondents wished for their identity and answers to remain anonymous.

The majority of respondents (nine out of the ten respondents with one unsure response) were supportive of the introduction of a mandatory LOI testing regime.

The majority of respondents were of the view that the introduction of a testing regime would help provide certainty and create a 'level playing field'. There was a feeling that the current system is open to interpretation with the potential for landfill operators, waste carriers and producers seeking to seek to gain a competitive advantage by interpreting the guidance in a liberal way.

Respondents from the waste industry such as W H Malcolm, SUEZ (formerly SITA), Levenseat Ltd, Binn Farm Group and the Scottish Environmental Services Association shared opinions that the current arrangements serves to drive down market prices due to uncertainty about how the rate is being applied across industry. Respondents stated that by placing a testing regime on a statutory footing, providing clear and prescriptive guidance whilst strictly enforcing the regime would help ensure that the lower rate was applied equitably across landfill sites and help drive investment in alternative treatment options further up the waste hierarchy. A full analysis of the consultation is available on the Scottish Government Citizenspace website⁷.

Business

Officials from Scottish Government, SEPA and Revenue Scotland visited the Binn Group at Binn Farm on 7 January (a materials recovery plant) in Glenfarg, Perthshire to look at waste treatment lines and the production of waste fines, and to discuss treatment options for waste fines and the impacts of introducing LOI testing for tax purposes. Officials have also had discussions on LOI testing with the Scottish Environmental Services Association.

⁷ <https://consult.scotland.gov.uk/fiscal-responsibility/landfill-tax-loss-on-ignition-testing>

Options

The options Ministers considered were:

Option 1 - to maintain the status quo and “do nothing” leaving, ‘*The Scottish Landfill Tax (Standard Rate and Lower Rate) Order 2015*’ in place; or

Option 2 - lay a replacement order to introduce LOI testing for waste fines.

Sectors and groups affected

The change to the Order (Option 2) will affect operators of mechanical treatment plants and other producers of fines as well as landfill operators upon whom the tax liability falls, and any other customers upon whom additional cost or changes in tax liability may be passed.

There are currently around 35 registered landfill site operators in Scotland and approximately a similar number of sizable material recovery facilities. Since the test will apply at the point the waste is disposed of to landfill the main additional administrative burdens will be on operators of landfill sites, however evidence from the consultation exercise suggests all these costs will be passed on to landfill operator customers/waste producers.

Benefits

Option 1 – Do Nothing Approach

As Revenue Scotland already have requirements for the testing of waste fines in place it is unlikely that the waste industry would benefit financially from there being not being a requirement in statute.

The waste management industry could benefit from reduced management time that would be required for organisations to familiarise themselves with the new rules, the negation of potential IT changes and staff training that may be required as a result of changes to guidance that could be required following the establishment of a statutory testing regime.

Option 2 – Introduce Loss on Ignition Testing for Waste Fines

Benefits associated with the introduction of a statutory requirement for the testing of waste fines include:

- helping to provide certainty to industry on how the lower rate should be applied to waste fines;
- that it will ensure that the lower rate was applied equitably across all landfill sites;
- that it will help drive investment in alternative treatment options further up the waste hierarchy;
- that an evidence based and scientifically prescribed test will reduce tax avoidance and evasion.

Costs

Option 1 – Do Nothing Approach

Evidence from the consultation would suggest that the option of maintaining current arrangements would help maintain uncertainty in how the lower rate of tax was being applied across industry which could continue to drive down costs as certain landfill operators sought to gain a competitive advantage by applying a 'liberal' interpretation to current guidance.

This in turn would serve to reduce investment in alternative treatment processes and technologies and impede progress in trying to move the treatment of waste fines up the waste hierarchy.

Option 2 – Introduce Loss on Ignition Testing

Tonnage of Waste Fines in Scotland

SEPA have tried to establish the amount of waste fines that are disposed of in landfill in Scotland using Waste Data Flow returns. Inconsistency in the application of European Waste Codes (EWC) and the fact that waste fines could be categorised by a number of EWC codes alongside other types of material (such as residual waste) means that direct and accurate data on the quantity fines deposited in landfill cannot be obtained. An approximate quantity of waste fines deposited at landfill sites however may be obtained through more qualitative analysis of individual returns.

Table 1 outlines the number of sites that used the word "fines" to describe their waste going to landfill in quarter two of 2015/16. However the actual amount of fines is likely to be higher as there is no pre-requisite for them to identify their waste as 'waste fines'.

Table 1 Sites that used the word "Fines" to describe their waste going to Landfill

• 19,634.52 T	Lower Rate
• 753.45 T	Standard Rate
• 833.82 T	Exempt
• 21,221.79 T	TOTAL

Table 2 shows the amount of material that is disposed of to landfill under the European waste code 19 12 12 in quarter two of 2015/16. This is waste produced through mechanical treatment that does not consist of wood, metals, glass, paper textiles and other material that would be liable to the standard rate of landfill tax.

Table 2 Wastes disposed of at 19 12 12 (which could be fines or a mix of fines and residual landfill waste)

• 51,058.06 T	Lower Rate
• 107,818.42 T	Standard Rate
• 23,325.9 T	Exempt
• 182,202.38 T	TOTAL

The figures in table 2 however will also include non-waste fine residual waste alongside waste fines. The Scottish Government therefore estimates that the quantity of waste fines eligible at the lower rate of Scottish Landfill tax, and likely to be tested, is between 19,634 tonnes to 51,058 tonnes at around 36,000 tonnes a quarter or 144,000 tonnes a year.

Definition of EWC: 19 12 12⁸

European Waste Catalogue Code 19 12 12: wastes from the mechanical treatment of waste (for example sorting, crushing, compacting, pelletising) not otherwise specified: other wastes (including mixtures of materials) from mechanical treatment of wastes other than those mentioned in 19 12 11.

Frequency of Testing

A determining factor that will affect costs of implementing a statutory testing for businesses is the frequency at which landfill operators and waste producers will have to test waste streams. Revenue Scotland will prescribe this in guidance and the Scottish Government are aware that they are currently reviewing this with support from SEPA.

If Revenue Scotland follows a similar approach to the UK, the frequency of testing would be variable depending on how unstable a waste stream is. For example if it is a particular type of waste that consistently produces fines that produce a result far beneath the threshold, then the tests would be much less frequent in comparison to a waste stream of fines that produce inconsistent LOI results. Practically this would mean prescribing a frequency of testing table that dictated testing one load for every 1000 tonnes or every six months for a low risk stream, one load for every 500 tonnes or every three months for a medium risk stream and every load for a high risk waste stream.

The Scottish Government approximates that of the waste fines eligible at the lower rate testing in the first year would average out at between around one test every 250 tonnes and one test 500 tonnes across industry.

⁸ https://www.sepa.org.uk/media/139107/euro_waste_catalogue.pdf

Testing Costs

Evidence from industry during the recent consultation suggests that costs of LOI testing per sample have been increasing as demand has increased and now stands at around £30 to £40 a sample.

The Scottish Government therefore estimates that the cost of testing across industry will be approximately between £11,520 and £23,000 in the first year.

There are a number of potential costs in addition to actual testing that have been identified that the Scottish Government will not be able to quantify, these include one-off costs and continuing costs outlined below.

One-off costs may include:

- time needed by management to familiarise themselves with the new rules;
- potential need for IT system changes;
- new LOI sampling training for site staff.

Continuing costs may include:

- sampling – any changes to current processes for selecting a representative sample will be specified in legislative guidance by Revenue Scotland
- sending samples to laboratories
- storing samples in case they need to be reviewed, including by Revenue Scotland;
- maintaining a log of test results;
- reporting the results of failed tests to Revenue Scotland.

Competition Assessment

The Scottish Government, following evidence obtained through the consultation exercise⁹, understands that the introduction of LOI testing will have a positive impact on competition at the lower end of the waste hierarchy by reducing tax avoidance and evasion and help ensure the lower rate of Scottish Landfill tax is applied equitably across industry. The introduction of LOI testing will not directly or indirectly limit the number or range of suppliers of waste treatment and disposal services. The measure should provide landfill operators, and waste treatment suppliers with the ability of to compete fairly based on levels of service and cost. The measure will not limit the choices and information available to businesses.

⁹ <https://consult.scotland.gov.uk/fiscal-responsibility/landfill-tax-loss-on-ignition-testing>

In December 2015, stakeholders identified the creation of a 'level playing field' as a key benefit of introducing the LOI testing regime in Scotland. This suggests that there is currently a distortion in free competition between waste operators in Scotland and RUK as a result of LOI not applying to all operators. This distortion will be removed by the proposal to introduce it in Scotland.

Implementation will be under the jurisdiction of Revenue Scotland who may require additional information from landfill operators potentially including new forms and procedures.

Legal Aid Impact Test

None of the proposals in this order are likely to give rise to increased use of legal processes or create new rights or responsibilities or have possible impacts on the legal aid fund.

Enforcement, sanctions and monitoring

The collection and management of LBTT will be undertaken by Revenue Scotland, using the powers set out in the, '*Revenue Scotland and Tax Powers Act 2014*' (RSTPA).

The RSTPA sets out the tax management system that will underpin devolved taxes in Scotland. It sets out the powers and duties of taxpayers and Revenue Scotland and outlines the investigatory powers of Revenue Scotland. The RSTPA also sets out the process for issuing penalties in respect of non-compliant behaviour and contains provisions for debt enforcement.

The RSTPA also provides for the establishment of the Scottish Tax Tribunals to hear appeals against devolved taxes, which will ultimately become part of the unified Scottish Tribunals from 2017 and sets out the reviews and appeals process.

Implementation and delivery plan

The collection of the SLfT lower rate, including the implementing a LOI scheme, will be undertaken by Revenue Scotland. Under powers for the delegation of Revenue Scotland's functions as set out in the RSTPA, SEPA will assist Revenue Scotland as delegated by them.

Summary and recommendation

The Scottish Government recommends that Loss on Ignition testing is introduced, alongside other measures already present in Revenue Scotland Guidance, in helping determine the organic content and stability of waste fines and the corresponding correct rate of tax.

• **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1 – Do Nothing	None	None
2 – Introduce LOI Testing	Introduction of a testing regime will help provide certainty and create a competitive 'level playing field' through ensuring the lower rate of tax is applied consistently and equitable across industry	Costs of testing to industry will be between £11,520 and £23,000 in the first year.

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