



The Scottish Parliament
Pàrlamaid na h-Alba

FINANCE COMMITTEE

AGENDA

19th Meeting, 2013 (Session 4)

Wednesday 19 June 2013

The Committee will meet at 10.00 am in Committee Room 2.

1. **Decision on taking business in private:** The Committee will decide whether to take items 3, 4 and 5 in private.

2. **Landfill Tax (Scotland) Bill:** The Committee will take evidence from—

Eleanor Emberson, Director of Financial Strategy and Head of Revenue Scotland, and Nicky Harrison, Chief Operating Officer, Revenue Scotland, Scottish Government;

John Kenny, Head of National Operations, and Ronnie Robinson, Principal Policy Officer, National Operations Waste Unit, Scottish Environment Protection Agency;

and then from—

John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth, Alistair Brown, Deputy Director, Fiscal Responsibility Division, John St Clair, Senior Principal Legal Officer, and Stuart Greig, Bill Team Leader and Head of Zero Waste, Fiscal Responsibility and Environmental Quality Divisions, Scottish Government.

3. **Regulatory Reform (Scotland) Bill:** The Committee will consider the written evidence and consider its submission to the lead committee on the Financial Memorandum.
4. **Children and Young People (Scotland) Bill:** The Committee will consider its approach to the Financial Memorandum.
5. **Work programme:** The Committee will consider its work programme.

FI/S4/13/19/A

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The papers for this meeting are as follows—

Agenda item 2

Paper by the Clerk

FI/S4/13/19/1

Agenda item 3

PRIVATE PAPER

FI/S4/13/19/2 (P)

Agenda item 4

PRIVATE PAPER

FI/S4/13/19/3 (P)

Agenda item 5

PRIVATE PAPER

FI/S4/13/19/4 (P)

Finance Committee

19th Meeting, 2013 (Session 4), Wednesday 19 June 2013

Landfill Tax (Scotland) Bill: Stage 1

Introduction

1. The Finance Committee has been designated as the lead committee for consideration of the [Landfill Tax \(Scotland\) Bill](#). The purpose of this paper is to provide information to the Committee in advance of its fourth and fifth oral evidence sessions at Stage 1 when it will hear from—

- Eleanor Emberson of Revenue Scotland, and John Kenny and Ronnie Robinson of SEPA; and then from
- The Cabinet Secretary for Finance, Employment and Sustainable Growth, Alistair Brown, Stuart Greig and John St Clair, all from the Scottish Government Bill Team.

2. Copies of the Bill and accompanying documents have been circulated to members along with a [SPICe briefing on the Bill](#). [Written submissions](#) from SEPA are attached at Annexe B. The Official Reports of the previous evidence sessions on 5 and 12 June are available on the [Committee's webpage](#).

Background

3. The role of the Committee at Stage 1 is to consider and report on the general principles of the Bill. It issued a [call for evidence](#) (attached at Annexe A) on 24 April and the responses received have been published on the Committee's [Landfill Tax \(Scotland\) Bill webpage](#).

Bill purpose

4. The purpose of the Bill is “to make provision about the taxation of disposals to landfill.”

Policy Memorandum

5. The [Policy Memorandum](#) states that—

“The Bill is one of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012 (the 2012 Act). Under the terms of the 2012 Act, the Scottish Parliament has responsibility for taxes on land transactions and disposals to landfill. This Bill deals with the latter responsibility and makes provisions for a Scottish tax on disposals to landfill, to be called the Scottish Landfill Tax.”

6. It goes on to note that the Bill is intended to—

- “establish a tax system that supports the rationale for the use of taxes and charges in environmental policy so as to compensate for the impacts on the environment (and perhaps people), which are side-effects of processes of production and consumption, and the costs of which would not otherwise enter into the calculations of those responsible for the processes;
- ensure the tax aligns with the aims of the Zero Waste Plan, including promoting high levels of recycling and diverting material/resources from landfill into more sustainable forms of use or treatment;
- help ensure that market distortions caused by illegal operations through which tax is evaded do not undermine legitimate business ventures;
- establish a tax that is simple and efficient for landfill operators to understand and comply with, including for those operating landfill sites across the UK, and which is transparent to operators and to wider stakeholders;
- establish a system of collection and enforcement that is aligned with the principles of better regulation;
- incorporate a tax credit scheme that provides an incentive to operators of landfill sites to contribute financially to projects that meet environmental and social objectives;
- create a system that is cost effective to operate in relation to the revenues generated.”

Financial Memorandum

7. The Committee would normally consider the Financial Memorandum (FM) for each Bill and report to the lead committee. As it is the lead committee for this Bill, it will consider the FM as part of its Stage 1 scrutiny and address any particular issues relating to it in its Stage 1 report. The FM is set out in paragraphs 14 to 29 of the [Explanatory Notes](#).

Office for Budget Responsibility (OBR) Forecasts

8. There are no Scotland-specific figures for landfill tax revenues available from HMRC as revenue receipts are based upon reporting at a company level rather than by landfill site, and many companies operate across the UK. The SG states [in its consultation](#) that, whilst it is difficult to accurately forecast future revenues from landfill tax in Scotland, “it is highly likely the Scottish Government's Zero Waste Plan will see both the quality and type of material landfilled in Scotland change substantially, with far less material going to landfill and what is landfilled being largely inert materials.”

9. The OBR forecasts Scottish landfill tax receipts by assuming a constant share of

UK landfill tax receipts based on an average of the last three years. It does not appear to take account of the impact of SG policy on receipts. The first three forecasts were as follows—

March 2012

£ million	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Landfill Tax	115	123	132	145	151	157

December 2012

£ million	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Landfill Tax	98	97	96	105	107	107	110

March 2013

£ million	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Landfill Tax	98	99	95	104	105	105	108

Delegated Powers Provisions

10. The Delegated Powers and Law Reform Committee (DPLRC) published [its report](#) (attached at Annexe C) on the Bill's delegated powers provisions on 11 June. The DPLRC sought to draw the Committee's attention to the following specific points—

The “Provisional Affirmative Procedure” – Paragraphs 16 and 22

“Section 41(3) of the Bill creates a bespoke type of Parliamentary procedure which is referred to in the DPM as “provisional affirmative procedure”. Instruments made subject to this procedure are laid before the Parliament and may come into force immediately but will cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless the Parliament has previously approved them by resolution.”

“The Committee considers it worth drawing to the attention of the lead committee 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.”

Affirmative or Negative Procedure – Paragraphs 25 and 26

“The Committee sought further information from the Scottish Ministers as to why it considered it appropriate to be able to modify the basis of taxation (which is

central to the Bill) in any manner without obtaining the agreement of the Parliament via the affirmative procedure. The Scottish Government response simply states that it is justifiable to distinguish the procedure on the basis of whether it extends or reduces liability.

The Committee is content with the circumstances in which the provisional affirmative procedure will apply. It is also content that provision which amends primary legislation should be subject to the affirmative procedure. It considers that 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.”

Delegation of Powers to SEPA – Paragraphs 36 to 39

“Section 35(1) permits the Tax Authority to delegate any of its functions (other than functions of legislating) to SEPA. The delegation of the function does not affect the Tax Authority’s responsibility for the exercise of the function or the Authority’s ability to carry out such functions.

The Committee considers that it seems sensible for non-legislative functions of the Tax Authority to be capable of being delegated to SEPA. SEPA already collects data from all landfill sites in Scotland as part of the permitting process and is knowledgeable about the type and quantity of material being deposited and likely to incur tax. Nevertheless, the Committee considers that when a statutory function has been delegated 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.

On raising this matter with the Scottish Government it has indicated that it is mindful of the need for transparency and accountability in the delegation of functions from Revenue Scotland to SEPA. It advises 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.

The Committee strongly recommends that the Scottish Government improve the transparency and accountability of the delegation of functions from the Tax Authority to SEPA by requiring publication of any such delegation.”

11. The SG Bill Team has also confirmed that sections 18 and 20 provide for the creation of a Scottish Landfill Communities Fund and for conditions relating to the Fund to be set by regulation. The timing of the introduction of the regulations and whether the negative or affirmative procedure will be used appears unclear. Additionally, it is not

clear whether the SG intends to hold a consultation on the draft order in advance of its introduction.

Conclusion

12. The Committee is invited to consider the above information along with the attachments at Annexes A, B and C in its oral evidence sessions.

**Alan Hunter,
Assistant Clerk to the Committee**

ANNEXE A

LANDFILL TAX (SCOTLAND) BILL: CALL FOR EVIDENCE

The Committee is seeking views on the general principles of the Bill and in particular—

- whether the Bill is consistent with the four principles underlying the Scottish Government's approach to taxation – certainty, convenience, efficiency and proportionate to the ability to pay;
- the decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax;
- the use of the same list of qualifying materials as specified in the Landfill Tax (Qualifying Material) Order 2011;
- the intention to set tax rates in subordinate legislation and in “such a way that rates will follow closely UK rates”;
- the power in the Bill to establish more than two tax rates and to vary the list of material qualifying for different tax rates in subordinate legislation;
- the provisions which will allow the tax authority to pursue taxes evaded through the illegal dumping of waste;
- the list of activities and materials which are exempt from landfill tax;
- the Scottish Landfill Communities Fund;
- the role of Revenue Scotland in the administration of the tax;
- the role of SEPA in the administration of the tax;
- the formula for calculating the adjustment to the block grant;
- the financial implications of the Bill as estimated in the Financial Memorandum.

ANNEXE B

Written Submission on Scottish Landfill Tax (Scotland) Bill

A copy of the original written submission from SEPA can be accessed via the link below—

- [SEPA Written Submission](#)

SEPA has also provided an additional written submission in advance of its oral evidence session which is attached below—



Finance Committee
The Scottish Parliament
Edinburgh EH99 1SP

13 June 2013

By email: finance@scottish.parliament.uk

Dear Sir/Madam

LANDFILL TAX (SCOTLAND) BILL

I refer to the Committee's call for oral evidence on the above Bill. Further to our written evidence submitted on 24 May 2013, and in advance of SEPA's oral evidence session on 13 June, I should like to summarise our role and views on the broad objectives of the Bill.

The Scottish Environment Protection Agency (SEPA) is responsible for the regulation of most environmental legislation in Scotland including the permitting of landfill sites and the enforcement of illegal waste activities and ongoing compliance issues.

We believe that the proposed Bill supports the Scottish Government zero waste policies. We also support the proposed structure of the Bill, which is similar to the existing Landfill Tax, to minimise uncertainties to taxpayers and aid implementation.

SEPA already receives submissions of data and payment of fees from landfill site operators and as such, there are synergies between our current role and the administration of the landfill tax returns. We also have experience of developing and running systems which handle financial transfers from multiple sources and record income against different charging schemes.

The taxation of illegal landfilling activities will be a further tool to deter such activities, increase business for legitimate companies, reduce environmental harm, encourage alternative waste technologies and the reuse and recycling of material which is currently disposed of.

SEPA supports the proposals to establish the Landfill Communities Fund in Scotland.

We look forward to presenting oral evidence to the Committee on 19 June.

Yours faithfully

John Kenny
Head of National Operations

ANNEXE C

Delegated Powers and Law Reform Committee: 34th Report, 2013 (Session 4) Landfill Tax (Scotland) Bill

A copy of the Delegated Powers and Law Reform Committee's report can be accessed via the link below—

- http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/Reports/sur-13-34w.pdf