

Finance and Public Administration Committee

23rd Meeting, 2022 (Session 6), Tuesday 20
September 2022

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

Overview

1. This paper invites the Committee to take evidence from the Minister for Public Finance, Planning and Community Wealth, Tom Arthur MSP, in relation to the [Scottish Landfill Tax \(Prescribed Landfill Site Activities\) Amendment Order 2022](#) (SSI 2022/233).

Purpose of the Regulations and the scrutiny procedure

2. The Order, which was laid before Parliament on 1 July 2022, amends the [Scottish Landfill Tax \(Prescribed Landfill Site Activities\) Order 2014¹](#), and prescribes activities to be treated as a ‘taxable disposal’ for the purposes of Scottish Landfill Tax (SLfT).

3. 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.

Background to the Order

4. One condition for a disposal to be a taxable disposal is that it is “a disposal of material as 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.

5. Barr Environmental Limited is a waste management company located in Scotland. It claimed that some waste received at landfill was exempt from the SLfT on the basis that it was later used for engineering of outer cell walls and for restoration at landfill sites. However, Revenue Scotland, which collects the SLfT, argued that this use of waste counted as disposals and so was liable to landfill tax. In May 2022, an appeal by Barr to the Upper Tribunal for Scotland against a decision of the First-tier Tribunal for Scotland Tax Chamber that material used in the

¹ The 2014 Order was considered by the Session 4 Finance Committee in [January 2015](#).

construction of landfill cell walls should be taxed at the standard rate was [partially successful](#)².

6. The Scottish Government has now legislated (by way of this Order) to provide what it calls “further clarity and certainty” regarding when a taxable disposal has been made.

7. 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.

8. 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”.

9. 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.”

10. 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.

11. 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

² <https://www.letsrecycle.com/news/court-overturms-barrs-99m-landfill-tax-bill/>
<https://www.mrw.co.uk/news/landfill-firm-wins-99m-tax-battle-07-06-2022/>

amendment. It is not considered that the amendment will introduce any additional limitations on the use of recovered material.”

Process

12. The Order has been laid under the ‘made affirmative’ procedure, meaning the Order came into force immediately on 1 July 2022. 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).

13. 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.”

14. The Committee may also wish to note the report “[Inquiry into the use of the made affirmative procedure during the coronavirus pandemic](#)”, published in February 2022 by the DPLR Committee, which concluded that “any such expedited affirmative procedure must allow for robust scrutiny. The desire to consider legislation prior to it coming into force should not come at any cost, nor should it become habitual.”

15. As lead committee, this Committee is invited to—

- take evidence from the Minister; and then
- consider motion [S6M-05325](#) lodged in the name of the Minister for Public Finance, Planning and Community Wealth—

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.

16. During formal consideration of this motion, *Standing Orders* provide that only the Minister and Members may participate in the debate.

Next steps

17. The Committee will thereafter report to the Parliament setting out its recommendation on the instrument, by the deadline of 26 September 2022.

Committee clerks
September 2022