



# **Analysis of Responses to the Public Consultation on Proposed Landfill Tax Subordinate Legislation**

AMEC E&I UK Ltd

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Zero Waste Scotland works with businesses, individuals, communities and local authorities to help them reduce waste, recycle more and use resources sustainably.

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## Executive Summary

The Scotland Act 2012 came into force in Scotland on 1 May 2012. It gave Scottish Government a range of tax raising powers, one of which was the ability to administer and collect Landfill Tax from 1 April 2015, if it should decide to do so. Following an initial consultation exercise between December 2012 and January 2013 and passage of the Landfill Tax (Scotland) Act 2014, the Scottish Government drafted subordinate legislation. In May 2014, they released a consultation asking for respondents' views on this draft in order to gauge their support and identify ways to improve it further. This report contains a summary of the responses received.

The consultation included questions on the list of materials to be subject to a lower rate of landfill tax, on whether SEPA and local authorities should be exempt from landfill tax when cleaning up illegal dumps and cases of insolvency and on proposals relating to the funding mechanism and operational structure of the Scottish Landfill Communities Fund.

- **Question 1 - Do you agree with the list of materials to be subject to the lower rate of tax, as set out in the draft Qualifying Materials Order?**

The list received support from the majority of respondents. Respondents commonly expressed their desire for the list to be consistent with that for UK Landfill Tax in order to prevent 'waste tourism'. There were objections to the classification of ash and the lack of inclusion of Loss on Ignition rules for 'fine' waste.

- **Question 2 - Do you agree with the list of prescribed landfill site activities that are to be taxable under Scottish Landfill Tax?**

85% of respondents agreed with the list. The most common response was to question why non-landfill-related activities such as road building are to be taxed.

- **Question 3 - Do you agree with the proposal to exempt the Scottish Environment Protection Agency and Local Authorities from Scottish Landfill Tax that may arise from work to clear and restore sites as a result of illegal dumping or the insolvency of a landfill site operator?**

Only one of the 48 respondents disagreed with this proposal. They suggested that it was unfair that private landowners should have to pay for cleanup of waste dumped illegally on their land while SEPA and local authorities would be exempt. Other respondents stressed that SEPA and local authorities should still exhaust all options in recovering tax from illegal dumping or insolvent operations.

- **Question 4 - Do you agree that water should not be discounted in the weighing process when determining liability for Scottish Landfill Tax?**

The response to this proposal was negative, in some cases strongly so. Objections came from organisations in almost every respondent group, with most commenting that implementation of this measure would have severe financial implications. In total, 64 comments were made on the question by respondents – the greatest number of comments for any question in this consultation.

- **Question 5 - Do you agree with the Scottish Government's approach to allowing credit for bad debt?**

Responses to the proposal were positive but there was concern about the use of public funds to alleviate commercial debts.

- **Question 6 - Do you agree with the Scottish Government's proposed distribution mechanism for the Scottish Landfill Communities Fund?**

Respondents were in support of this mechanism but sought clarification of the rationale for disbanding ENTRUST and more information on the roles and responsibilities of all parties.

- **Question 7 - Do you agree with the proposed objectives of the Scottish Landfill Communities Fund?**

There was general support for the proposed objectives. Several respondents mentioned the need for a level playing field to avoid unfair competition between the private sector, public sector and third sector.

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- **Question 8 - Do you agree that that the proximity rule of 10 miles should be extended to waste transfer stations?**

36 respondents (75%) agreed with this proposal. Those who objected felt that transfer stations posed minimal impact to local communities compared to landfill sites

- **Question 9 - Do you agree that the 14 day period provision in section 26 of the Landfill Tax (Scotland) Act 2014 should be removed to align the environmental and tax return periods?**

Most respondents were in favour of this proposal, but they stressed the need for a 'light touch' approach upon its implementation in order to reduce costs and cash flow issues for landfill site operators.

- **Question 10 - Do you have any other comments on the draft regulations?**

20 respondents made additional comments.

- **Question 11 - Do you have any comments on the draft Business Regulatory Impact Assessment?**

23% of the 48 respondents replied to this question. Overall, respondents felt that there was insufficient information to comment on the impact to their organisation and industry.

- **Question 12A - Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on particular groups of people?**

21% of the 48 respondents replied to this question. The most frequent comment was voiced by the charities: removing or simplifying the complex administrative burdens of the LCF scheme would improve participation.

- **Question 12B - Please also tell us what potential there may be within these ideas to advance equality of opportunity between different groups and to foster good relations between different groups?**

Overall the comments indicated support and encouragement for the scheme with the majority of comments stating that the existing fund has had positive impacts across communities.

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## 1 Introduction

### 1.1 Overview of the consultation

The Scotland Act 2012 came into force in Scotland on 1 May 2012. It gave Scottish Government a range of tax raising powers, one of which was the ability to administer and collect Landfill Tax from 1 April 2015. Following an initial consultation between December 2012 and January 2013, Scottish Government developed the Landfill Tax (Scotland) Bill, This Bill was introduced to the Scottish Parliament on 17<sup>th</sup> April 2013 and subsequently received Royal Assent on 21 January 2014 becoming the Landfill Tax (Scotland) Act. The next stage is to develop subordinate legislation, in this case the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order.

The Scottish Government issued the draft Regulations for consultation on 16th May 2014. This consultation asked for views on the draft subordinate legislation and ways in which the tax could operate effectively and efficiently in Scotland. Specifically it included questions on the list of materials to be subject to a lower rate of landfill tax, on whether SEPA and local authorities should be exempt from landfill tax when cleaning up illegal dumps and cases of insolvency, and on proposals relating to the funding mechanism and operational structure of the Scottish Landfill Communities Fund.

### 1.2 The Scottish Government's approach to Scottish Landfill Tax

The Zero Waste agenda, as enshrined in the Zero Waste Plan and the Waste (Scotland) Regulations 2012, enables an ambitious programme of change that aims to create an environment where we make the best use of resources by minimising Scotland's demand on primary resources, and maximising the reuse, recycling and recovery of resources instead of treating them as waste.

Through the Zero Waste Plan and the Low Carbon Economic Strategy, the Scottish Government continues to support the growth of a sector that will play an increasingly important role in creating a resilient and sustainable economy. This includes direct support through Zero Waste Scotland, including the 'Safeguarding Scotland's Resources scheme', a loan fund, and large/small scale capital grants to stimulate investment and innovation across the sector.

The financial savings that can be made through adopting alternatives to landfill are now central to the economics of waste management. Furthermore, the tax has helped establish the stable policy landscape needed to underpin long-term investment decisions on waste and resources infrastructure and collection systems. During a time of significant change in the waste and resources industry, these regulations are designed to support the Zero Waste Plan and maintain a stable landscape when, on 1 April 2015, UK Landfill Tax ceases to have effect in Scotland and Scottish Landfill Tax is introduced.

The Revenue Scotland and Tax Powers Act 2014 makes provisions for a Scottish tax system to enable the collection and management of LBTT, Scottish Landfill Tax and provides the legislative platform for any future tax that may come under the jurisdiction of the Scottish Parliament. It establishes Revenue Scotland as the tax authority responsible for the collection and management of Scotland's devolved taxes from 1 April 2015. Revenue Scotland currently exists as an administrative function within the Scottish Government, however, from early 2015 it will exist as a non-Ministerial department responsible to the Scottish Parliament. Some of the operational functions of Revenue Scotland with respect to Scottish Landfill Tax will be devolved to the Scottish Environment Protection Agency (SEPA). Revenue Scotland will retain overall responsibility for the collection and management of the two devolved taxes, including the Scottish Landfill Communities Fund (SLCF).

Revenue Scotland (and SEPA if delegated powers), will have the power to issue penalty notices to taxpayers or to their agents for non-compliant behaviour with respect to the devolved taxes. It will also have the power to apply discretion with respect to reducing or waiving penalties in certain circumstances and must issue guidance on how discretion will be exercised.

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There will be three kinds of financial penalties for non-compliant behaviour - fixed penalties, daily penalties, and percentage-based penalties, where the penalty is linked to the potential loss in tax revenues. Revenue Scotland will also have the power to inspect records, enter business premises to carry out investigations in relation to tax activity and to seek a summary warrant from the sheriff court to collect unpaid taxes and/or penalties owed.

It is anticipated that this legislation will come into force from 1<sup>st</sup> April 2015.

### 1.3 Context in Scotland

In 2012 there were 58 landfill sites run by 52 operators disposing of around 4.35m tonnes of Scotland's waste. The majority of this was mixed wastes and mineral wastes (including construction and demolition waste) which together made up 96% of the total. About 36% of the waste landfilled in Scotland originated from households and the remainder was produced by commerce and industry.

The Pollution Prevention and Control permitting system set specific requirements for landfill management. But more recently the Waste (Scotland) Regulations 2012 have brought in changes to how to the management of waste in Scotland. Two specific measures are:

- A ban on materials collected separately for recycling going to landfill or incineration (1 Jan 2014)
- A ban on biodegradable municipal waste going to landfill (1 Jan 2021)

Therefore there will be changes to the composition and amount of waste being sent to landfill which will have future implications for strategic landfill allocations.

### 1.4 Overview of Respondents

In total, 48 respondents replied to the consultation. These were grouped into eleven categories as depicted in Table 1. The full list of respondents can be found in Appendix A.

Group	No. of Respondents	% of total
Charities, Trusts, NDPBs and LCF Beneficiaries	10	21%
Commercial Consultancies/Trade Bodies	4	8%
Individual Respondents	2	4%
Landfill Communities Fund Distributive Bodies/Organisations	6	13%
Local Authorities and their Representative Bodies	6	13%
Manufacturing Companies/Trade Bodies	3	6%
Regulators	3	6%
Utility Companies/Trade Bodies	4	8%
Waste Management Companies/Trade Bodies	8	17%
Waste/Environmental Professional Representative Bodies	2	4%
	<b>48</b>	<b>100%</b>

**Table 1** Respondent Categories

The range of respondents is similar to that from the first consultation representing waste management companies, non-departmental public bodies (NDPBs), charities and trusts, commercial consultancies, Scottish local authorities, regulators, utility companies and Landfill Communities Fund (LCF) Distributors. A number of recipients of the Landfill Tax Community Fund also replied and their responses have been included within the "Charities, Trusts and NDPBs" group.

The responses were focused, with most respondents commenting only on questions relevant to them. Issues that would be caused to stakeholders by implementing the proposals suggested in the draft

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regulations have been presented and explained well. Overall the responses are informative and include recommendations for how the respondents would like to proceed.

## 2 Question Responses

### 2.1 Q1 - Tax rates and qualifying materials

There are currently two rates of landfill tax; Active and Inert. In order to maintain stability and consistency for industry, the Scottish Government has set the same list of qualifying materials for the lower rate of tax that applies to UK Landfill Tax (the Landfill Tax (Qualifying Material) 2011). The Scottish Government sought to understand if respondents agreed with its intended plan for the list of materials to be subject to the lower rate of tax.

Do you agree with the list of materials to be subject to the lower rate of tax, as set out in the draft Qualifying Materials Order?	Yes	No	No comment	It needs to stay consistent with UK to prevent waste tourism	LOI test rules for fines should be considered/ implemented	It needs measurable definitions
Charities, Trusts, NDPBs and LCF Beneficiaries	2		8			
Commercial Consultancies/Trade Bodies	2	1	1	1	2	
Individual Respondents			2			
Landfill Communities Fund Distributive Bodies/Organisations			6			
Local Authorities and their Representative Bodies	2	3	1			1
Manufacturing Companies/Trade Bodies	1		2			
Regulators			3			
Utility Companies/Trade Bodies	1	3		3		1
Waste Management Companies/Trade Bodies	5	1	2	1	5	2
Waste/Environmental Professional Representative Bodies	2			1	2	1
<b>TOTAL</b>	<b>15</b>	<b>8</b>	<b>25</b>	<b>6</b>	<b>9</b>	<b>5</b>
<i>Response % compared to no. of respondents</i>	<i>31%</i>	<i>17%</i>	<i>52%</i>	<i>13%</i>	<i>19%</i>	<i>10%</i>
<i>Response % compared to all answering Q1</i>	<i>65%</i>	<i>35%</i>		<i>26%</i>	<i>39%</i>	<i>22%</i>

**Table 2 Q1 Responses**

48% of respondents responded to the question. The responses to this question were generally positive, with 65% of Q1 respondents in favour of the list. Several respondents stated that the existing 2011 Qualifying Materials Order “remains fit for purpose” (SESA, Viridor), with most agreeing that “the materials identified cover all appropriate inert waste streams” (West Dunbartonshire Council). There was agreement that a two rate system should be maintained and the flexibility “to review the list of qualifying materials going forward” was welcomed (SOLACE, COSLA and the Waste Managers Network).

However, of the 23 respondents to reply to Q1, 35% did not agree with the list. For some, this was due to a feeling that more clarity is needed, for others a specific objection to the presence or lack of presence of a specific material on the list. These "No" respondents fell into the following groups: commercial consultancies (1), local authorities (3), utility companies (3) and waste management companies (1).

The utility companies EDF Energy and ScottishPower Generation both matched the reply of their trade association, Energy UK, which objected to the definition of ash within Group 5, Note 5 of The Scottish Landfill Tax (Qualifying Material) Order 2014. PwC also raised this issue, stating that the definition of ash used "*would cause significant compliance issues for the power generation industry*".

Energy UK states that the definition of ash used in this list is copied from The Landfill Tax (Qualifying Material) (Amendment) Order 2012 which Energy UK understood to have lapsed from about 21 May 2012 after the UK Government decided that the 2012 SI would not be approved by the House of Commons. PwC corroborates this in their own answer to Q1, adding that "*SI 2012/940 did not receive Royal Assent as a result of representations made by affected parties and that consultation is on-going*". Energy UK et al. request that ash should be defined using the definition in The Landfill Tax (Qualifying Material) Order (2011) in which ash qualifies for the lower rate of landfill tax.

Furthermore, Energy UK, EDF Energy and SP Generation strongly recommend that if "*Scottish Ministers pursue proposals to vary the Groups of material qualifying for the lower rate of taxation or introduce additional tax rates*", they should be consulted, especially for any proposed changes to Group 5 (Ash). Overall, the definition of ash was mentioned by 17% of respondents to Q1.

Viridor, FCC Environment (UK) Ltd and the trade association SESA (Scottish Environmental Services Association) expressed the desire for "*greater clarity on the application of the lower rate of tax to prevent the widespread and deliberate misclassification of waste for the purposes of benefitting from the lower tax rate*". Scottish Water, SOLACE, COSLA and the Waste Managers Network corroborated this, stating "*the guidance is open to interpretation*" (Scottish Water) and "*the definitions provided as guidance need to be measurable to ensure that all Landfill Operators apply consistent interpretation*" (SOLACE, COSLA and the Waste Managers Network). 22% of respondents answering Q1 mentioned the need for measurable definitions.

The main interest of Viridor, FCC Environment (UK) Ltd and SESA, however, was for Loss of Ignition test rules for 'fine' waste and/or trommel fines to be considered. They state that there is a current consultation from HMRC on the liability of fine waste, which proposes that fines sent to landfill will only meet the lower tax rate if their loss on Ignition is less than 10%. This proposed approach was very popular amongst respondents, with the above respondents calling it "*more scientific*" and others calling for it to be implemented immediately (Binn Eco Park).

Most respondents requested that Loss of Ignition test rules should receive a consultation similar to that held by HMRC so that the issue can be discussed (CIWM Scotland Centre, PwC, the Chartered Institute of Taxation, SESA and five of the waste management companies). This was the most common issue raised by respondents to Q1, with 39% of Q1 respondents mentioning it.

There was also an extremely strong feeling amongst Q1 respondents that, in future, "*the list of qualifying materials should broadly remain the same as the rest of UK to avoid cross border movement of waste*" (CIWM Scotland Centre, Energy UK, William Tracey Ltd). This issue of "waste tourism" was also raised in the previous consultation and continues to evoke strong concerns. "*It is important that the definition of qualifying materials and landfill tax rates are consistent across administrative boundaries within Scotland, England and Wales to provide a consistent, stable regime for both ash producers and landfill operators who operate within the three jurisdictions*" (Energy UK).

Other issues raised included a statement that materials on the list should be consistent with those classified as inert under environmental law (Ernst & Young LLP), a suggestion that "orphaned" materials be added to the list (Avondale Environmental Ltd) and desires for specific issues to be clarified or reworded (including SITA UK Ltd, Avondale Environmental Ltd and North Ayrshire Council).

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## 2.2 Q2 - Prescribed activities on landfill sites

Section 6 of the Landfill Tax (Scotland) Act 2014 provides an Order-making power to prescribe "landfill site activity", which is then to be treated (a) as a disposal at the landfill site of the material involved in the activity as waste, (b) as a disposal of that material made by way of landfill, and (c) as a disposal at the landfill site of that material. These powers will be exercised by the Scottish Government by means of a Prescribed Activities Order, which it has drafted. The Scottish Government is interested in knowing the level of respondent support for this draft.

Do you agree with the list of prescribed landfill site activities that are to be taxable under Scottish Landfill Tax?	Yes	No	No comment	Why tax non-landfill activities at landfill sites? eg. road building	Are materials used to cover disposal areas at cessated landfills taxed?	Mirroring UK legislation would avoid market distortion and waste tourism
Charities, Trusts, NDPBs and LCF Beneficiaries	2		8			
Commercial Consultancies/Trade Bodies	1	2	1	1		1
Individual Respondents	1		1			
Landfill Communities Fund Distributive Bodies/Organisations			6			
Local Authorities and their Representative Bodies	5		1	2		
Manufacturing Companies/Trade Bodies			3		1	
Regulators			3			
Utility Companies/Trade Bodies	3		1			
Waste Management Companies/Trade Bodies	4	1	3	1	1	1
Waste/Environmental Professional Representative Bodies	1		1			
<b>TOTAL</b>	<b>17</b>	<b>3</b>	<b>28</b>	<b>4</b>	<b>2</b>	<b>2</b>
<i>Response % compared to all responses</i>	<i>35%</i>	<i>6%</i>	<i>58%</i>	<i>8%</i>	<i>4%</i>	<i>4%</i>
<i>Response % compared to all answering Q2</i>	<i>85%</i>	<i>15%</i>		<i>20%</i>	<i>10%</i>	<i>10%</i>

**Table 3 Q2 Responses**

41.5% of respondents provided a response to this question. Of the 20 respondents who provided a response to Q2, 85% agreed with the prescribed list while 15% disagreed.

The respondent categories that provided the most positive replies included Local Authorities and their Representative Bodies (5 responses), Waste Management Companies and their Trade Bodies (4 responses) and Utility Companies and their Trade Bodies (3 responses). The three negative responses were provided by Commercial Consultancies and Trade Bodies (2 responses) and Waste Management Companies and Trade Bodies (1 response).

Respondents made the following comments:

- The most common comment related to the taxation of certain materials used in beneficially managing landfill sites (this comment was made by 20% of Q2 respondents). Examples provided included the taxation of materials used in building roads in landfill sites, when similar activities outside landfill sites would not be liable to tax. The Chartered Institute of Taxation noted that *"it is difficult to see why building a road inside a landfill site should be considered as a disposal of waste"*

*when the same activity done outside a site would not be. The same would be true of the building of a hard standing area". SITA UK Ltd noted that "Over recent years operators of landfills have increasingly come under pressure in obtaining suitable soils for the purpose of daily cover from soil producers. The primary reason for this is competition from Paragraph 19 areas where soils are being placed and tax does not apply. We are finding that Paragraph 19 areas are not being utilised as first envisaged; they are temporary stock pile areas, however we are finding that they are becoming more permanent with the exemption being extended thus creating inert landfills. We would like to see a tightening of these exemptions to ensure they are meeting the intended purpose or stop the taxation of soils utilised for daily cover".*

- DSM Nutritional Products (UK) Ltd and SITA UK Ltd pointed out that it is assumed that the taxation of materials used to cover a disposal area during cessation in landfill excludes materials used in the final capping layer due to its benefits to the soil matrix.
- Ernst and Young LLP and SITA UK Ltd suggested that mirroring the UK list of prescribed activities should alleviate concerns of waste tourism.
- PricewaterhouseCoopers LLP (PwC) identified a potential overlap of the Scottish and UK regimes *"at the date of devolution on 1 April 2015, there will be material on landfill sites on which UK landfill tax, but not Scottish landfill tax, has been paid or exempted. Should those materials then be used for a prescribed landfill activity on or after 1 April 2015 then the Regulations as they stand would require that a Scottish landfill tax should be paid on top of UK landfill tax already paid"*.
- PwC also highlighted that the list of prescribed landfill activities matches the UK list for which there are or have been several litigations. By mirroring UK landfill tax provisions, the Scottish Government leaves the same litigation challenges open in respect of the Scottish Landfill Tax.
- COSLA, SOLACE and the Waste Managers Network request clarity on the liability of "end of waste" classified materials to Scottish Landfill Tax.

### 2.3 Q3 - Tax exemption for site restoration

The Scottish Government is keen to ensure that both illegal sites and sites where the operator has become insolvent are properly restored. Currently, if a landfill site operator becomes insolvent then SEPA or the Local Authority (LA), having already tried to utilise the site's financial provision, may have to clean the site up. Where material has been illegally disposed, SEPA or the Local Authority may have to remove it to a landfill site after not being able to establish the responsible person. In these circumstances, Scottish Landfill Tax would be incurred if taken for disposal by SEPA or the LA. The Scottish Government would like to know if respondents approve of its proposal to exempt SEPA and local authorities from paying Landfill Tax in these circumstances.

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Do you agree with the proposal to exempt SEPA and Local Authorities from Scottish Landfill Tax that may arise from work to clear and restore sites as a result of illegal dumping or the insolvency of a landfill site operator?	Yes	No	No comment	Could reduce SEPA and LAs' determination to pursue these cases	Landowner must pay for cleaning of illegal dumping on private land. Unfair?	Should also apply to fly-tipped waste
Charities, Trusts, NDPBs and LCF Beneficiaries	3		7			
Commercial Consultancies/Trade Bodies	2		2			
Individual Respondents	1		1			
Landfill Communities Fund Distributive Bodies/Organisations			6			
Local Authorities and their Representative Bodies	5		1		1	1
Manufacturing Companies/Trade Bodies	1		2			
Regulators			3			
Utility Companies/Trade Bodies	3	1		3	1	
Waste Management Companies/Trade Bodies	6		2	2	1	
Waste/Environmental Professional Representative Bodies	2			1		1
<b>TOTAL</b>	<b>23</b>	<b>1</b>	<b>24</b>	<b>6</b>	<b>3</b>	<b>2</b>
<i>Response % compared to all responses</i>	<i>48%</i>	<i>2%</i>	<i>50%</i>	<i>13%</i>	<i>6%</i>	<i>4%</i>
<i>Response % compared to all answering Q3</i>	<i>96%</i>	<i>4%</i>		<i>25%</i>	<i>13%</i>	<i>8%</i>

**Table 4 Q3 Responses**

50% of the respondents provided a response to this question. Of those answering Q3, 96% agreed with the prescribed list while 4% disagreed.

The respondent categories that agreed with the proposals included Waste Management Companies and their Trade Bodies (6 responses), Local Authorities and their Representative Bodies (5 responses) and Utility Companies and their Trade Bodies (3 responses). The remainder of the responses were relatively evenly spread, except for Landfill Fund Distributors and Regulators who made no comment. The one negative response was made by a utility company (Scottish Water).

In total, 17 comments were made on the question by respondents covering a broad range of issues.

The most common comment, made in 21% of responses to Q3, was the observation that irrespective of the proposal to exempt SEPA and local authorities from Scottish Landfill Tax in such instances, they should still exhaust all options in recovering tax from illegal dumping or insolvent operations. For example, SESA noted that *"this should not simply provide a convenient alternative to exhausting all possible avenues to recovering tax from the illegal (or insolvent) operator in the first instance"*. North Ayrshire Council noted that it would welcome additional measures to recompense organisations for other costs involved in remediating illegal dumping. East Dunbartonshire Council stated that the proposals should consider increasing bonds and/or insurance for restoration

The next most common response (made in 13% of replies to Q3) was that illegal dumping often occurs on private land, and under the current proposals there would be no exemption in Scottish Landfill Tax for private landowners, which makes the proposal inconsistent. For example, *"Scottish Water often experiences fly tipping on its sites and absorbs the costs of the removal of this wastes and its subsequent disposal to landfill. This proposal will introduce an inconsistent approach to*

*disposal of fly-tipped waste with some parties being exempt from Scottish Landfill Tax and others exempt*” (Scottish Water). Scottish Water also suggested that implementation of this measure could in some cases encourage the movement of illegally dumped material from private land to public land.

Two respondents (COSLA, SOLACE and Waste Managers Network (joint response) and CIWM Scotland Centre) suggested that the exemption could be made to all fly-tipped wastes. In a similar theme, two respondents (COSLA, SOLACE and Waste Managers Network and Scottish Borders Council) advocated exempting marine litter voluntarily brought ashore from Scottish Landfill Tax.

## 2.4 Q4 - Weighing waste

The current UK Landfill Tax system actively discourages the de-watering of waste by allowing water to be discounted, which encourages excess water to be allowed into the landfill mass. This adds to the generation of leachate and increases pollution. The Scottish Government proposes that water should not be regarded as a discountable constituent for the purposes of Scottish Landfill Tax calculations to encourage more dewatering to take place.

Do you agree that water should not be discounted in the weighing process when determining liability for Scottish Landfill Tax?	Yes	No	No comment	Would lead to an increase in disposal costs and be difficult to enforce	Cheap disposal still offered in UK, so risk of waste tourism and fewer tax receipts here	Ignores other impacts like volume needed, decomposition time, etc
Charities, Trusts, NDPBs and LCF Beneficiaries	1	3	6		4	1
Commercial Consultancies/Trade Bodies		3	1	1	1	1
Individual Respondents			2			
Landfill Communities Fund Distributive Bodies/Organisations			6			
Local Authorities and their Representative Bodies	4	1	1	1		
Manufacturing Companies/Trade Bodies		2	1	1	1	2
Regulators			3			
Utility Companies/Trade Bodies	3	1		1		4
Waste Management Companies/Trade Bodies	1	7		5	5	2
Waste/Environmental Professional Representative Bodies		2		2	2	1
<b>TOTAL</b>	<b>9</b>	<b>19</b>	<b>20</b>	<b>11</b>	<b>13</b>	<b>11</b>
<i>Response % compared to all responses</i>	<i>19%</i>	<i>40%</i>	<i>42%</i>	<i>23%</i>	<i>27%</i>	<i>23%</i>
<i>Response % compared to all answering Q4</i>	<i>32%</i>	<i>68%</i>		<i>39%</i>	<i>46%</i>	<i>39%</i>

**Table 5 Q4 Responses**

59% of the respondents replied to the question. Of the respondents who provided a response to Q4, only 9 (32%) agreed with the proposal, while 19 (68%) disagreed. Overall, the response to this proposal was negative, in some cases strongly so. Objections came from organisations in almost every respondent group, excluding Regulators and Distributive Environmental Bodies which did not comment.

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Out of the 9 responses in favour of the proposal, 4 were from Local Authorities and their Representative Bodies and 3 were from Utility Companies. The greatest opposition to the proposals were from Waste Management Companies and Trade Bodies (with 7 opposed compared to 1 in favour), Charities, Trusts, NDPBs and LCF Beneficiaries (with 3 opposed and 1 in favour), and unanimous opposition from organisations in the Commercial Consultancies and Trade Bodies, Manufacturing Companies and Trade Bodies and Waste/Environmental Professional Representatives groups.

In total, 64 comments were made on the question by respondents – the greatest number of comments for any question in this consultation.

The proposal that water should not be discounted in the weighing process when determining liability for Scottish Landfill Tax provoked strong opposition amongst a number of respondents. 11 respondents (39% of those who replied to Q4) argued that the proposal would raise disposal costs and reduce competitiveness of Scottish companies, with Scottish Leather Group Ltd stating that the proposal could have “severe” financial implications. Several respondents estimated the annual costs of removing the discount as being in six figures (e.g. FCC Environment (UK) Ltd, John R Adam and Sons Ltd, Scottish Leather Group Ltd), while 13 respondents (46% of those responding to Q4) stated that this could give rise to waste tourism to elsewhere in the UK and result in less Landfill Tax receipts in Scotland. FCC Environment (UK) Ltd stated that *“the policy intention of stimulating innovation in dewatering is unlikely due to the proximity to the cheaper disposal options elsewhere in the UK”*.

William Tracey Ltd noted that the business regulatory impact assessment is yet to be concluded and it is imperative to the consideration of the removal of the water discount. Several respondents noted that some wastes require water to be added for the wastes to be managed (e.g. William Tracey Ltd cited the example of the addition of water during end of life vehicle scrappage; PricewaterhouseCoopers LLP cited the necessary addition of water to filter cake and ash and the use of water in collecting street sweepings).

Scottish Leather Group Ltd highlighted the fact that a number of incentives to de-water already exist, stating “liquid wastes are banned from landfill; waste carriers will not collect skips containing high moisture wastes (leakage etc); placing non-dewatered wastes in skips is an inefficient use of space (increased carriage costs). The consultation has “misunderstood” current logistics.”

11 respondents (39% of those who replied to Q4) stated that the proposal did not provide sufficient consideration of the environmental, health and safety and financial impacts required in dewatering. Robertson Metals Recycling Ltd stated: *“The company objects to the withdrawal of a water discount applied to the waste disposal costs on the basis that water is added during the shredding process and is integral in the process as it contributes to reducing the risks of flame events within the shredder, helps control other environmental emissions and provides a safer working environment for employees”*. SOLACE, COSLA and the Waste Managers Network commented *“de-watering could simply lead to increased energy utilisation to dry certain wastes and to avoid landfill tax, only for the waste to be re-hydrated in the landfill and cause pollution. It may also under some circumstances prolong degradation and therefore stabilisation of the fill.”*

John R Adam & Sons Ltd stated that adding water is a requirement of their metal recycling site “to protect employees, reduce risk of fire, to reduce risk of explosion, to reduce other emissions to the environment”.

Although mostly in support of the proposal, Utility Companies highlighted handling and transport concerns: “EDF Energy has concerns that handling and transport of Group 5 (Ash) has the potential to create significant dust and environmental nuisance impacts at both production areas and landfill disposal areas. Furthermore, in a worst case scenario adopting this proposal may restrict the type of vehicles that could be used to transport combustion ashes securely, increasing disposal costs which would ultimately have to be passed on to electricity consumers”. EDF Energy goes on to propose that Group 5 (ash) water should be discounted when determining Landfill Tax liability, a position repeated by Energy UK and ScottishPower Generation.

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Other comments focused on the fact that the existence of water has little further pollution risk and is already sufficiently managed. FCC Environment (UK) Ltd stated that “*the level of water within the discounted tonnage spread across the landfills in Scotland will have little impact on further pollution risk and the resources used to treat this extra water are already part of the infrastructure at most landfills in Scotland*”.

Other comments included a desire to see projections of quantities and how it would affect business before making a final comment (3 comments), and a view that the proposal would increase the benchmark costs of landfill in Scotland, and subsequent impacts on recycling costs leading to reprocessing elsewhere (1 comment).

Although the majority of the comments were critical of the proposals, some were supportive. Local authorities and COSLA, SOLACE and the Waste Managers Network in particular all commented that the current system of discounting water is “*cumbersome and not entirely accurate on a load by load basis, thus making the system prone to abuse and evasion*”. This view was echoed by North Ayrshire Council and West Dunbartonshire Council.

## 2.5 Q5 - Credit - bad debt

If a landfill site operator issues an invoice for a deposit and the customer enters an insolvency procedure, the landfill site operator will be able to apply for relief credit for a portion of the bad debt. The credit will only be for the Scottish Landfill Tax element of the debt and the credit will be for the same proportion of Scottish Landfill Tax that the outstanding bad debt forms of the whole. The Scottish Government wishes to know if respondents agree with this approach to allowing credit for bad debt.

Do you agree with the Scottish Government's approach to allowing credit for bad debt?	Yes	No	No comment	Why should public funds be used to write off private sector debt?	Landfill operator must prove action was taken to pursue debts	Creates unnecessary work for the landfill tax administrators
Charities, Trusts, NDPBs and LCF Beneficiaries		1	9	1		
Commercial Consultancies/Trade Bodies	2	1	1			
Individual Respondents	1		1			
Landfill Communities Fund Distributive Bodies/Organisations	1	1	4	1		
Local Authorities and their Representative Bodies	1	3	2	3	1	2
Manufacturing Companies/Trade Bodies	1		2			
Regulators			3			
Utility Companies/Trade Bodies	2		2			
Waste Management Companies/Trade Bodies	4		4		1	
Waste/Environmental Professional Representative Bodies	1		1			
<b>TOTAL</b>	<b>13</b>	<b>6</b>	<b>29</b>	<b>5</b>	<b>2</b>	<b>2</b>
<i>Response % compared to all responses</i>	<i>27%</i>	<i>13%</i>	<i>60%</i>	<i>10%</i>	<i>4%</i>	<i>4%</i>
<i>Response % compared to all answering Q5</i>	<i>68%</i>	<i>32%</i>		<i>26%</i>	<i>11%</i>	<i>11%</i>

**Table 6 Q5 Responses**

40% of respondents replied to this question. The response was generally positive, with 68% of those who replied to Q5 agreeing with the approach to provide credit for bad debt. 32% disagreed with the

approach to provide credit for bad debt. The group with the most objections was Local Authorities and their Representative Bodies (3 responses).

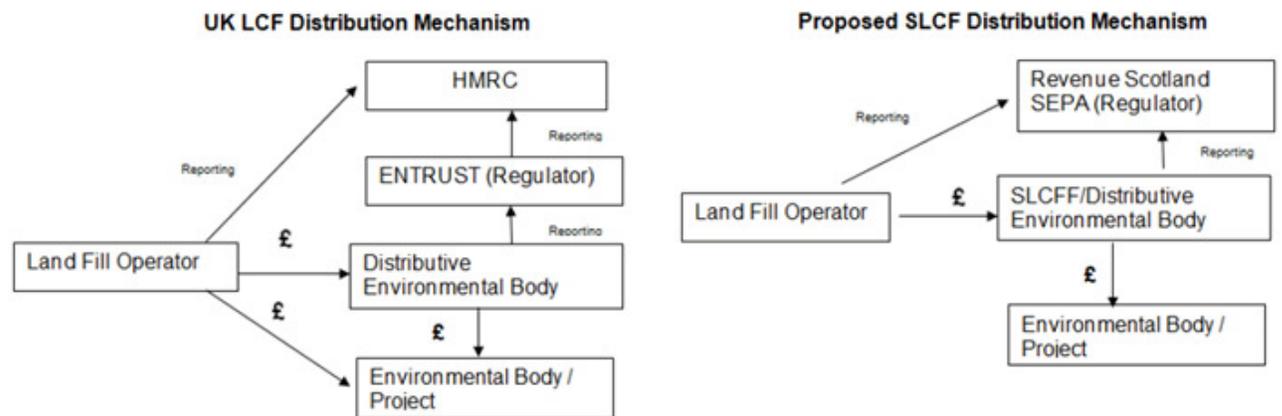
26% of respondents replying to Q5 raised concerns over the use of public funds to settle commercial debts in the private sector. These predominantly came from local authorities and public bodies (East Dunbartonshire Council, Scottish Natural Heritage, North Ayrshire Council and SOLACE, COSLA and the Waste Managers Network – the other respondent being SITA UK Ltd). Respondents showed concern that the public funds will reduce the expectation upon landfill operators to operate in a responsible manner: *“The system proposed reduces the need for landfill operators to have robust business planning in place for the provision and recovery of bad debt”* (North Ayrshire) and *“Landfill operators should have systems in place to control debt leading to abuse and a less stringent financial control over debts by landfill operators”* (East Dunbartonshire Council). Two respondents reiterated these comments and suggested that, in response and in practice, landfill tax operators who receive the relief must demonstrate they have taken action to pursue debts (William Tracey Ltd and joint respondents SOLACE, COSLA and the Waste Managers Network).

Two respondents raised concerns and requests for further information regarding the additional administration costs of operating two response systems (North Ayrshire Council and SOLACE, COSLA and the Waste Managers Network).

Other responses requested clarification of the regulations and definitions (William Tracey Ltd and the Chartered Institute of Taxation). William Tracey Ltd has asked that a tighter definition of “insolvency” be applied, while the Chartered Institute of Taxation requested a significant rewording of the terminology to reflect UK legislation, which they justify by saying that debt relief is based upon non payment of bad debts for a specified period, not the debt being “written off” when charged against a company’s profit or loss as stated in the draft regulations.

## 2.6 Q6 - Scottish Landfill Communities Fund Part 1

Figure 1 sets out how funds are distributed in the UK Landfill Communities Fund (LCF) model and how it is proposed that funds will be distributed in the Scottish LCF (SLCF).



**Figure 1** Distribution of funding: comparison of the UK LCF and Scottish LCF<sup>1</sup>

The Scottish Government would like to know if respondents agree with the Scottish LCF distribution mechanism it has proposed.

<sup>1</sup> Scottish Landfill Tax Consultation, Chapter 7, Page 9.  
<http://www.scotland.gov.uk/Publications/2014/05/3748/9>

Do you agree with the Scottish Government's proposed distribution mechanism for the Scottish Landfill Communities Fund?	Yes	No	No comment	Abolishing ENTRUST has increased complexity and bureaucracy	Have the LCF distributive bodies report to SEPA	Need clarity in the role of stakeholders and division of responsibility
Charities, Trusts, NDPBs and LCF Beneficiaries	10					
Commercial Consultancies/Trade Bodies			4			
Individual Respondents	2					
Landfill Communities Fund Distributive Bodies/Organisations	4	1	1	1		1
Local Authorities and their Representative Bodies	6			1	1	3
Manufacturing Companies/Trade Bodies			3			
Regulators	2	1				1
Utility Companies/Trade Bodies			4			
Waste Management Companies/Trade Bodies	4	1	3	1	1	
Waste/Environmental Professional Representative Bodies	1	1		1	1	
<b>TOTAL</b>	<b>29</b>	<b>4</b>	<b>15</b>	<b>4</b>	<b>3</b>	<b>5</b>
<i>Response % compared to all responses</i>	<i>60%</i>	<i>8%</i>	<i>31%</i>	<i>8%</i>	<i>6%</i>	<i>10%</i>
<i>Response % compared to all answering Q6</i>	<i>88%</i>	<i>12%</i>		<i>12%</i>	<i>9%</i>	<i>15%</i>

**Table 7 Q6 Responses**

69% of respondents provided a response to this question. 88% of those who replied to Q6 agreed with the proposed distribution mechanism for the Scottish Landfill Communities Fund. Support for this proposal was evenly distributed amongst the eleven groups. All ten organisations in the Charities, Trusts, NDPBs and LCF Beneficiaries grouping supported the proposal.

The most frequent comment, made by 15% of Q6 respondents, was a request for greater information on the role and responsibilities of all parties (these comments came from: The Levensat Trust, SOLACE, COSLA and the Waste Managers Network, Scottish Borders Council, ENTRUST, North Ayrshire Council). For example, as the text implies, the funding is to be passed from Landfill Operator to Distributive Environmental Body (DEB) - further information would be particularly prudent for North Ayrshire Council which acts as both a Landfill Operator and a Distributive Environmental Body.

Comments from respondents highlighted uncertainty and confusion as to the rationale for disbanding ENTRUST - and the benefits this is expected to bring. SESA, Scottish Natural Heritage, BCCF Environmental, Viridor and the Scottish Borders Council questioned the rationale for abolishing ENTRUST; "[the decision] *would seem to increase complexity and bureaucracy*" (SESA). Viridor added that "*the Forum breaks the direct link between landfill operators and Environmental Bodies, which rather than streamlining the process (a stated policy intention) only serves to add an additional layer of bureaucracy.*" These comments were reiterated by SESA, BCCF Environmental, the Scottish Borders Council and ENTRUST who expect the forum to increase costs in managing what it perceives will be a "*large, unwieldy organisation*".

Remaining comments questioned the membership and operation of the new forum. ENTRUST questioned if the very existence of the SLCF forum is in a conflict of interest with itself over how SEPA will access reliable data to inform Revenue Scotland; "*we do not consider that a model under which the DEBs report to an organisation which is run by the DEBs themselves can be viewed as transparent*

*and independent"* and that *"there is no independent person on the forum who can ensure that the self reporting is of verified data"*. The Scottish Borders Council stated that there is still a lack of detail on how the proposed distribution mechanism will work. Scottish Natural Heritage raises concerns that the process is *"complicated due to the variety and size of the DEBs involved"* with funds distributed in several ways; to the detriment of community groups unable to establish which funds they are eligible to apply to. Regarding membership, the Scottish Borders Council requires clarification regarding the process of membership, stating that *"there is no mention of an appeals process in the event of a DEB not being approved for registration"*.

Some respondents suggested retaining the current system, since nothing currently prevents DEBs reporting to SEPA (Scottish Natural Heritage, SESA). These respondents believe that the current system can be improved with minor simplifications / clarifications to the applications and appeals process (Scottish Natural Heritage, SESA, Scottish Borders Council).

Though there were strong feelings on this matter, it is worth noting that only four respondents (12% of those who replied to Q6) explicitly disagreed with the proposed distribution mechanism for the Scottish Landfill Communities Fund; SESA, BCCF Environmental, Viridor and ENTRUST.

## 2.7 Q7 - Scottish Landfill Communities Fund Part 2

The Scottish Government proposes that projects and activities that meet one of the following objectives will be considered for SLCF funding:

- 1 Land Reclamation, Remediation or Restoration
- 2 Community based recycling and reuse projects
- 3 Public parks and public amenities
- 4 Biodiversity conservation
- 5 The restoration of places of worship and historic buildings
- 6 The provision of administrative, financial or other similar services to environmental bodies enrolled with the Scottish Landfill Communities Fund Forum and registered with SEPA.

The Scottish Government would like to know if respondents agree with this list of proposed objectives.

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Do you agree with the proposed objectives of the Scottish Landfill Communities Fund?	Yes	No	No comment	There is competition between SESA members and third sector	Need clarification that SLCF monies will not favour third sector/LAs	Need clear definition of community based recycling/reuse projects
Charities, Trusts, NDPBs and LCF Beneficiaries	10			2		2
Commercial Consultancies/Trade Bodies	1		3			
Individual Respondents	2					
Landfill Communities Fund Distributive Bodies/Organisations	5	1		2	1	1
Local Authorities and their Representative Bodies	6					
Manufacturing Companies/Trade Bodies			3			
Regulators	3					
Utility Companies/Trade Bodies	3		1			
Waste Management Companies/Trade Bodies	4	2	2	3	2	2
Waste/Environmental Professional Representative Bodies	1	1		2	2	
<b>TOTAL</b>	<b>35</b>	<b>4</b>	<b>9</b>	<b>9</b>	<b>5</b>	<b>5</b>
<i>Response % compared to all responses</i>	<i>73%</i>	<i>8%</i>	<i>19%</i>	<i>19%</i>	<i>10%</i>	<i>10%</i>
<i>Response % compared to all answering Q7</i>	<i>90%</i>	<i>10%</i>		<i>23%</i>	<i>13%</i>	<i>13%</i>

**Table 8 Q7 Responses**

81% of respondents provided a response to the question. Of the Q7 respondents, 90% agreed with the proposed objectives of the Scottish Landfill Communities Fund.

In summary, where comments were provided, respondents demonstrated a feeling of discontent that there is competition between the private sector and third sector/local authorities. Nine respondents (23% of those answering Q7) reiterated concerns surrounding the current competition between the private sector and "community-based recycling schemes" in the third sector (SESA, RSPB Scotland, SITA UK Ltd, Viridor, Viridor Credits, William Tracey Ltd, CIWM Scotland Centre, FCC Environment (UK) Ltd and LINK). Respondents justified these concerns by stressing the importance of ensuring a balanced marketplace where third sector organisations are not given an unfair advantage over the private sector. SESA, SITA UK Ltd, William Tracey Ltd and Scottish Natural Heritage emphasise that "unless the Scottish Government provides much needed clarification that from the outset, the allocation of SLCF monies will not distort the market in favour of the third sector", [they] suggest that objective B is removed".

There was a conflict in comments between whether Local Authority work should be included in objective B. LINK requested that "the fund should not fund projects that are the responsibility of local authorities or Zero Waste Scotland" - this is repeated by RSPB Scotland. None of the local authorities raised any opinions regarding their inclusion in, or exclusion from, objective B. However, six respondents reiterated the need for a level playing field, including both private sector players (Viridor, Viridor Credits, William Tracey Ltd) and public or professional bodies (CIWM Scotland Centre, SESA and FCC Environment (UK) Ltd).

## 2.8 Q8 - Scottish Landfill Communities Fund Part 3

The Scottish Government recognises that waste transfer stations, where taxable waste to be landfilled is often collected for forward transportation to a landfill site, can cause a dis-amenity to local communities. For this reason it is proposed that community and environmental projects in the vicinity of waste transfer stations should also be eligible to be considered for funding from the SLCF.

Do you agree that that the proximity rule of 10 miles should be extended to waste transfer stations?	Yes	No	No comment	Radius should be more than 10 miles	Extend scheme to other waste sites e.g. materials recycling facilities	Develop robust definition for landfills, MRFs and transfer st handling residual waste
Charities, Trusts, NDPBs and LCF Beneficiaries	9	1		6		1
Commercial Consultancies/Trade Bodies	1		3	1	1	
Individual Respondents	2					
Landfill Communities Fund Distributive Bodies/Organisations	5		1		1	
Local Authorities and their Representative Bodies	6			2	1	
Manufacturing Companies/Trade Bodies			3			
Regulators	3			1		
Utility Companies/Trade Bodies	3		1			
Waste Management Companies/Trade Bodies	5	1	2			5
Waste/Environmental Professional Representative Bodies	2					1
<b>TOTAL</b>	<b>36</b>	<b>2</b>	<b>10</b>	<b>10</b>	<b>3</b>	<b>7</b>
<i>Response % compared to all responses</i>	<i>75%</i>	<i>4%</i>	<i>21%</i>	<i>21%</i>	<i>6%</i>	<i>15%</i>
<i>Response % compared to all answering Q8</i>	<i>95%</i>	<i>5%</i>		<i>26%</i>	<i>8%</i>	<i>18%</i>

**Table 9 Q8 Responses**

79% of respondents replied to the question. 95% of those who answered Q8 agreed that the proximity rule of ten miles should be extended to include waste transfer stations. Two respondents (5% of those answering Q8) disagreed; Avondale Environmental Ltd and Grangemouth Rugby Club.

Responses predominantly requested clarity in what constitutes a “transfer station”. Calls for a clear definition of a “transfer station” were sought from the private sector and included SESA (who also requested a limit to only the larger sites), Binn Eco Park, SITA UK Ltd, Viridor, William Tracey Ltd, Scottish Wildlife Trust and FCC Environment (UK) Ltd. CIWM Scotland Centre asked for minimum tonnages to be applied when defining a transfer station. Some respondents suggested the definition could be extended to include Community Recycling Centres (Scottish Borders Council) or MRFs handling residual waste (William Tracey Ltd, BCCF Environmental).

Several respondents requested that the ten mile radius be increased to allow affected communities and lands beyond the ten mile radius to be eligible for funding (RSPB Scotland, Froglife, Scottish Natural Heritage, Scottish Borders Council, SOLACE, COSLA and the Waste Managers Network). None of these respondents specify a new limit except Archaeology Scotland which suggested increasing the 10 mile radius to 25 miles.

Of the two respondents who opposed the extension, Avondale Environmental Ltd and Grangemouth Rugby Club, both felt that waste transfer stations pose minimal impact upon communities which would split funding away from those living closer to landfills.

## 2.9 Q9 - Accounting and invoicing periods

SEPA's role in administering Scottish Landfill Tax enables new links to be made with its existing permitting role for landfill sites. However, the 14 day invoicing period provision in S26 of the Scottish Landfill Tax Act (which changes the tax point to the invoice date) is an obstacle to aligning the two mechanisms. The Scottish Government sought views on any effects that the removal of this provision may have on the operation of landfill sites.

Do you agree that the 14 day period provision in section 26 of the Landfill Tax (Scotland) Act 2014 should be removed to align the environmental and tax return periods?	Yes	No	No comment	The change could/would cause cash flow issues for landfill operators	Light touch needed to minimise cash flow problems for landfill operators	The effect on landfill site operators would be minimal
Charities, Trusts, NDPBs and LCF Beneficiaries	2		8			
Commercial Consultancies/Trade Bodies	1	1	2		1	
Individual Respondents	1		1			
Landfill Communities Fund Distributive Bodies/Organisations	1		5			
Local Authorities and their Representative Bodies	4		2			2
Manufacturing Companies/Trade Bodies			3			
Regulators			3			
Utility Companies/Trade Bodies	3		1			
Waste Management Companies/Trade Bodies	2	3	3	1	1	
Waste/Environmental Professional Representative Bodies	1	1		1	2	
<b>TOTAL</b>	<b>15</b>	<b>5</b>	<b>28</b>	<b>2</b>	<b>4</b>	<b>2</b>
<i>Response % compared to all responses</i>	<i>31%</i>	<i>10%</i>	<i>58%</i>	<i>4%</i>	<i>8%</i>	<i>4%</i>
<i>Response % compared to all answering Q9</i>	<i>75%</i>	<i>25%</i>		<i>10%</i>	<i>20%</i>	<i>10%</i>

**Table 10 Q9 Responses**

42% of the respondents replied to this question. Overall, the responses were positive, with 75% of Q9 respondents in favour of removing the 14 day invoicing period. Agreement was voiced from the majority of respondent groups (excluding Manufacturing companies/trade bodies and regulators). It was generally agreed that alignment would improve clarity and auditability of landfill tax returns (which will make it easier to find errors) and ensure fairness for all landfill site operators (PwC). The increases to consistency would also improve their "robustness and veracity" (SOLACE, COSLA and the Waste Managers Network). Local authorities were noticeably in favour of the measure.

Objections to the measure came from waste management companies and their representatives, who claimed that the change would have the potential to cause initial cash flow problems for landfill operators (SESA, Avondale Environmental Ltd). The present system allows landfill operators the flexibility to create a tax point to fit the invoice date, which suits their corporate accounting systems (SESA, Viridor & FCC Environment (UK) Ltd). Without this flexibility, landfill operators would have to calculate Scottish Landfill Tax "on a completely different basis from the English landfill tax return and

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*at a different point in time*" (FCC Environment (UK) Ltd). Ernst and Young LLP corroborated this, suggesting that this measure could mean landfill operators need to "change their LFT accounting systems and potentially re-train staff", and possibly even "operate multiple LFT accounting systems" – one for Scottish sites and one for sites in the rest of the UK.

Respondents who wished the removal of the 14 day period (20% of the total respondents to Q9) suggested putting measures in place to minimise cash flow problems for landfill operators (what they termed a "light touch" approach) in the early stages of implementation. These respondents were CIWM Scotland Centre, SESA, FCC Environment (UK) Ltd and PwC. PwC explained in detail why they felt this was necessary:

*"Unless some relieving mechanism is introduced there will be a financial impact to the proposed change as it means that there will be a one-off acceleration of landfill tax payments at the date of the first return period. The size of the financial impact will obviously be dependent on the scale of the operation and amount of landfill tax obligations which arise during the 14 day period which is being brought forward. If there are 58 landfill sites across Scotland with an average quarterly landfill tax liability of £1 million, bringing 14 additional days into the return would lead to a one-off cash cost to the industry of £9 million (£1,000,000\*14 days/91 days\*58 sites)."*

Not all respondents felt this way - COSLA, North Ayrshire Council, SOLACE and the Waste Managers Network (who together represented 20% of respondents to Q9) felt that, since the change would be a one off alignment, the impact on landfill site operators would be minimal.

### 2.10 Q10 – Further comments

Question 10 allows respondents the opportunity to make any further comments on the draft regulations.

Do you have any other comments on the draft regulations?	Yes	No	No comment	Proposed additions and/or variations	Sections are ambiguous, require different terminology or redrafting	Clearer guidance needed on direction of LFT to enable orgs to plan ahead
Charities, Trusts, NDPBs and LCF Beneficiaries	2		8		2	
Commercial Consultancies/Trade Bodies	2		2	1		
Individual Respondents			2			
Landfill Communities Fund Distributive Bodies/Organisations	1		5		1	
Local Authorities and their Representative Bodies	5		1	2		4
Manufacturing Companies/Trade Bodies	2		1			
Regulators	1		2		1	
Utility Companies/Trade Bodies	1		3		1	1
Waste Management Companies/Trade Bodies	5		3	2	2	
Waste/Environmental Professional Representative Bodies	1		1			
<b>TOTAL</b>	<b>20</b>	<b>0</b>	<b>28</b>	<b>5</b>	<b>7</b>	<b>5</b>
<i>Response % compared to all responses</i>	<i>42%</i>	<i>0%</i>	<i>58%</i>	<i>10%</i>	<i>15%</i>	<i>10%</i>
<i>Response % compared to all answering Q10</i>	<i>100%</i>	<i>0%</i>		<i>25%</i>	<i>35%</i>	<i>25%</i>

## Table 11 Q10 Responses

20 respondents (42% of total) provided a response to the question. There was a high level of variance in the nature of responses, but this is to be expected when asking such an open question.

Five respondents (25% of those answering Q10) proposed additions and/or variations including:

- variations in tax regime, including interim tax rate for bio-stabilised wastes (Binn Eco Park)
- a third rate for fine waste should be considered (SITA UK Ltd, Ernst & Young LLP)
- offsetting tax liability against investment in circular economy taking geographical constraints into consideration (North Ayrshire Council, COSLA, SOLACE and the Waste Managers Network)

Seven respondents (35% of those answering Q10) made specific comments stating that certain sections were ambiguous and therefore require different terminology or redrafting (including RSPB Scotland, William Tracey Ltd, ENTRUST and Scottish Water). For example:

- *"Fly Ash in the QMO section (5) (a) (i) vs (b) is ambiguous"* (Binn Eco Park)
- *"The wording in regulation 2 (5) creates uncertainty in relation to what is required in a transfer note"* (William Tracey Ltd)
- *"Consideration should be given to replacing the term "Environmental Body" with "project deliverer" in order to avoid confusion with "Distributive Environmental Bodies"* (RSPB Scotland, Scottish Wildlife Trust)
- *"We note the version of the draft regulations which was included within the consultation. This draft, insofar as it relates to the SLCF, is similar to the Landfill Tax Regulations 1996, and does not incorporate all of the changes which would be necessary if the proposals in the consultation were to be implemented."* (ENTRUST)
- *"The consultation states that where a weighbridge is not available on site, then one must be used if it is 'within close enough proximity of a site so as not to incur excessive costs'. Definitions of 'close enough proximity' and 'excessive costs' are required to avoid uncertainty"* (Scottish Water)

Five respondents (25% of those answering Q10, including three local authorities and Scottish Water) asked for clearer guidance on what direction landfill tax will take in the future, so that they can plan ahead financially and decide on their approach to concerning problems such as flytipping. COSLA, SOLACE and the Waste Managers Network placed *"an urgent request for the provision by Scottish Ministers of short, medium or long-term certainty of landfill tax rates, stressing that any further delay could have a detrimental effect on the procurement or provision by of waste infrastructure/services by the council"*. These respondents also stated their position as being against the return of the Landfill Allowance Scheme.

Other comments included:

- Four respondents concerned that the draft regulations may undermine investment in treatment infrastructure (Ernst & Young LLP, Viridor, North Ayrshire Council, COSLA, SOLACE and the Waste Managers Network).
  - North Ayrshire Council, COSLA, SOLACE and the Waste Managers Network suggested that the regulatory regime needs greater emphasis on producer responsibility, rather than disposal.
  - ENTRUST and an anonymous respondent disagreed with the allocation of responsibilities and powers: *"the Forum is described as being the regulatory body (Regulation 26(2)(d)(i)) which apparently has power to revoke the enrolment of an EB (see Regulation 26(3)). Whilst we agree that SEPA as regulator should have the power to revoke the enrolment of EBs where this is at the request of the EB, we do not consider it appropriate that the Forum should have this power."* (ENTRUST)
  - DSM Nutritional Products (UK) Ltd suggests that the regulations should offer assistance to producers in finding beneficial uses for waste streams or help to achieve end of waste status. Binn Eco Park suggested enabling the use of inert wastes as flood defences.
  - Some respondents reiterated their desire for rates to be kept reasonably consistent with the rest of UK in order to prevent tax avoidance and waste tourism (an anonymous respondent, PwC, Scottish Water, West Dunbartonshire Council).
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## 2.11 Q11 - Business & Regulatory Impact Assessment

Question 11 allows respondents the opportunity to comment upon the draft Business and Regulatory Impact Assessment.

Do you have any comments on the draft Business Regulatory Impact Assessment?	Yes	No	No comment	Concern that ministers can alter classifications without consultation	Insufficient information to confirm impact upon respondent or industry	Strong objection in fear of high costs and consequences
Charities, Trusts, NDPBs and LCF Beneficiaries			10			
Commercial Consultancies/Trade Bodies			4			
Individual Respondents		1	1			
Landfill Communities Fund Distributive Bodies/Organisations			6			
Local Authorities and their Representative Bodies	3		3		3	
Manufacturing Companies/Trade Bodies	1		2		1	
Regulators			3			
Utility Companies/Trade Bodies	1		3			
Waste Management Companies/Trade Bodies	4	1	3	1	1	2
Waste/Environmental Professional Representative Bodies	2			1		
<b>TOTAL</b>	<b>11</b>	<b>2</b>	<b>35</b>	<b>2</b>	<b>5</b>	<b>2</b>
<i>Response % compared to all responses</i>	<i>23%</i>	<i>4%</i>	<i>73%</i>	<i>4%</i>	<i>10%</i>	<i>4%</i>
<i>Response % compared to all answering Q11</i>	<i>85%</i>	<i>15%</i>		<i>15%</i>	<i>38%</i>	<i>15%</i>

**Table 12 Q11 Responses**

11 respondents (23% of total) had comments on the draft Regulatory Impact Assessment. The organisations offering replies were mostly in the following groups: Waste Management Companies/Trade Bodies (4 responses), Local Authorities and Representative Bodies (3 responses) and Waste/Environmental Professional Representative Bodies (2 responses).

The private sector expressed concerns over the financial implications upon businesses of removing the water discount. Both FCC Environment (UK) Ltd and Scottish Leather Group Ltd raised the possibility that the water reduction proposal could have an adverse impact on businesses. Viridor and William Tracey Ltd both raised the prospect of increased movement of waste to England and Wales ("waste tourism") to make use of the water discount there. William Tracey Ltd expanded upon this to suggest a conflict with the Scottish Government's carbon commitments if waste contractors were to increase haulage to cheaper alternatives outside Scotland.

Overall, Q11 respondents felt that there was insufficient information to comment on the impact to their organisation and industry. This was a response reported by the local authorities; East Dunbartonshire Council, North Ayrshire Council and SOLACE, COSLA and the Waste Managers Network. Other respondents included FCC Environment (UK) Ltd and Scottish Leather Group Ltd who required further information but each await the BRIA.

## 2.12 Q12A - Equality Impact Assessment A

The Equality Impact Assessment (EQIA) on the proposed replacement of UK Landfill Tax with a Scottish Landfill Tax gives respondents the opportunity to identify any potential adverse impacts and consider how this work can better promote equality of opportunity and good relations.

A. Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on particular groups of people?	Yes	No	No comment	Maintain support to small rural communities	Reducing administrative burdens will encourage participation	Including transfer stations will benefit more communities
Charities, Trusts, NDPBs and LCF Beneficiaries	4		6		4	2
Commercial Consultancies/Trade Bodies			4			
Individual Respondents	1		1	1		
Landfill Communities Fund Distributive Bodies/Organisations	1		5			
Local Authorities and their Representative Bodies	3		3			
Manufacturing Companies/Trade Bodies			3			
Regulators			3			
Utility Companies/Trade Bodies			4			
Waste Management Companies/Trade Bodies	1		7			
Waste/Environmental Professional Representative Bodies		1	1			
<b>TOTAL</b>	<b>10</b>	<b>1</b>	<b>37</b>	<b>1</b>	<b>4</b>	<b>2</b>
<i>Response % compared to all responses</i>	<i>21%</i>	<i>2%</i>	<i>77%</i>	<i>2%</i>	<i>8%</i>	<i>4%</i>
<i>Response % compared to all answering Q12A</i>	<i>91%</i>	<i>9%</i>		<i>9%</i>	<i>36%</i>	<i>18%</i>

**Table 13 Q12A Responses**

Ten respondents (21% of total) provided comments in response to the question. The top two groups providing a response were Charities, Trusts, NDPBs and LCF Beneficiaries (4 responses) and Local Authorities and Representative Bodies (3 responses).

Respondents recognised the support that the fund has provided to small communities to date (Greengairs Community Council) and praised the consultation process for its wide reaching and open approach (an anonymous respondent).

The majority of comments suggested that removing or simplifying the complex administrative burdens of the LCF scheme would improve participation (RSPB Scotland, Archaeology Scotland and the Scottish Wildlife Trust and LINK). RSPB Scotland, Archaeology Scotland and the Scottish Wildlife Trust reflected this point, each stating; *“it is felt that simplifying and reducing the administration burden that has prevailed in the current LCF scheme will help promote a better understanding of the scheme with local communities and encourage more local communities, NGO’s and other eligible parties to apply”*. Each of these three respondents also stated their support for increasing the ten mile limit to both include transfer stations and allow communities at a further distance to benefit from the fund.

SOLACE, COSLA and the Waste Managers Network asked that the scope be increased from “places of worship” to include community groups.

## 2.13 Q12B - Equality Impact Assessment B

The Equality Impact Assessment (EQIA) on the proposed replacement of UK Landfill Tax with a Scottish Landfill Tax gives respondents the opportunity to identify any potential adverse impacts and consider how this work can better promote equality of opportunity and good relations.

<b>B. Please also tell us what potential there may be within these ideas to advance equality of opportunity between different groups and to foster good relations between different groups?</b>	<b>Yes</b>	<b>No</b>	<b>No comment</b>	<b>Maintain infrastructure and links between towns</b>	<b>Has encouraged communities to enhance their facilities</b>	<b>Works well - improved relationships between community groups</b>
Charities, Trusts, NDPBs and LCF Beneficiaries	2		8		1	1
Commercial Consultancies/Trade Bodies			4			
Individual Respondents	1		1	1		
Landfill Communities Fund Distributive Bodies/Organisations	1		5			1
Local Authorities and their Representative Bodies	2		4			
Manufacturing Companies/Trade Bodies			3			
Regulators			3			
Utility Companies/Trade Bodies			4			
Waste Management Companies/Trade Bodies	1		7			
Waste/Environmental Professional Representative Bodies	1		1			
<b>TOTAL</b>	<b>8</b>	<b>0</b>	<b>40</b>	<b>1</b>	<b>1</b>	<b>2</b>
<i>Response % compared to all responses</i>	<i>17%</i>	<i>0%</i>	<i>83%</i>	<i>2%</i>	<i>2%</i>	<i>4%</i>
<i>Response % compared to all answering Q12B</i>	<i>100%</i>	<i>0%</i>		<i>13%</i>	<i>13%</i>	<i>25%</i>

**Table 14 Q12B Responses**

Eight respondents (17% of total) provided comments in response to the question including private companies, local authorities, individual respondents, charities and trusts. Overall the comments provided support and encouragement for the scheme with the majority of comments stating that the fund has had positive impacts across communities, improving relationships between community groups and providing valuable experiences and skills (Froglife and an anonymous respondent). The Scottish Wildlife Trust stated, "*the LCF scheme has been successful in empowering communities, NGO's and others to protect and enhance their local facilities and natural environment*".

The Chartered Institute of Taxation has explicitly responded to the question in suggesting that "*multi-lingual and cross culture engagement or awareness material*" could advance equality of opportunity between different groups. In addition, an individual respondent, Richard Peddie, stressed the need to improve communication links such as roads and pathways between towns to improve engagement and communication.

## 3 Conclusion

The use of a Yes/No tick box for each question has revealed that the vast majority of responses support the draft regulations. 88% of the responses to Questions 1-9 were either "Yes" or "No comment".

This does not mean that no action needs to be taken. Many respondents have serious concerns which require consideration despite their willingness to tick the Yes box. Furthermore, 12% of all responses were "No" answers, and these responses mostly came from those who would be most affected by what was proposed. Question 4 received the greatest concern (Q4 regards the inclusion of water in the weighing process which determines liability for Scottish Landfill Tax), being the only Question to receive more "No" answers than "Yes" answers.

Nevertheless, respondents have been cooperative and their suggestions are understandable and well reasoned. This provides the Scottish Government with areas for consideration together with potential solutions to current concerns.



## Appendix A Full List of Respondents

Grouping	Respondent
Charities, Trusts, NDPBs and LCF Beneficiaries	Archaeology Scotland Falkirk Area Riders Access Group Froglife Grangemouth Rugby Club LINK National Trust for Scotland RSPB Scotland Scottish Natural Heritage Scottish Waterways Trust Scottish Wildlife Trust
Commercial Consultancies/Trade Bodies	Chartered Institute of Taxation Ernst & Young LLP PricewaterhouseCoopers LLP (PwC) The Law Society of Scotland
Individual Respondents	Jacqueline Brown Richard L Peddie
Landfill Communities Fund Distributive Bodies/Organisations	BCCF Environmental Fife Environmental Trust SITA Trust Ltd The Levensat Trust Viridor Credits ANON
Local Authorities and their Representative Bodies	East Dunbartonshire Council Greengairs Community Council North Ayrshire Council Scottish Borders Council SOLACE, COSLA and the Waste Managers Network West Dunbartonshire Council
Manufacturing Companies/Trade Bodies	ANON DSM Nutritional Products (UK) Ltd Scottish Leather Group Ltd
Regulators	ENTRUST Scottish Canals Tarbert (Loch Fyne) Harbour Authority
Utility Companies/Trade Bodies	EDF Energy Energy UK Scottish Water ScottishPower Generation
Waste Management Companies/Trade Bodies	Avondale Environmental Ltd Binn Eco Park FCC Environment (UK) Ltd John R Adam & Sons Ltd Robertson Metals Recycling Ltd SITA UK Ltd

Grouping	Respondent
	Viridor William Tracey Ltd
Waste/Environmental Professional Representative Bodies	CIWM Scotland Centre SESA



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