



HM Revenue
& Customs

Landfill Tax: Extending the scope to illegal disposals of waste

Summary of Responses
September 2017

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1. Introduction

- 1.1 The illegal dumping of waste evades Landfill Tax, blights local communities, and makes it difficult for legitimate operators to compete in the sector.
- 1.2 In response to growing concerns over levels of non-compliance in the waste sector, HMRC launched a strategy to tackle Landfill Tax evasion in 2015 and has continued to work closely with the environment protection agencies to develop a joined up response to the risks in the sector.
- 1.3 As part of this strategy, at spring Budget 2017 the government announced its intention to consult on whether to bring illegal waste sites within the scope of Landfill Tax.
- 1.4 The illegal dumping of waste can take various forms, ranging from small scale, opportunist fly tipping to large scale, and highly organised criminal activity. This consultation focused on more organised, large scale, illegal waste sites.
- 1.5 The consultation was published on 20 March and closed on 5 May 2017. It set out the reasons for extending the scope of Landfill Tax to materials disposed of at illegal waste sites and requested views on:
 - how to define an illegal waste site
 - the criteria for determining a taxable disposal
 - the persons liable for the tax
 - how to quantify the amount of tax due
 - the Scottish and Welsh government's approach to illegal waste sites.

Overview of comments

- 1.6 HMRC received 35 responses from across the industry, local authorities, legal advisors and others. HMRC also held a meeting with industry, and Environment Agency (EA) representatives to discuss this proposal.
- 1.7 There was widespread support for the proposal with 34 of the respondents welcoming the changes.
- 1.8 The majority of respondents cautioned that any changes to the scope of Landfill Tax should not penalise innocent landowners, or those legitimately operating a business without a permit.
- 1.9 The one respondent who was not supportive of the measure suggested that the current environmental fines should be increased to include an amount of Landfill Tax.
- 1.10 Some respondents also recommended that HMRC needed to work closely with the EA, The Department of Environment, Food and Rural Affairs (Defra), and in some cases local authorities.
- 1.11 Defra and the EA are supportive of these changes and are working collaboratively with HMRC to ensure there is a consistent cross-government approach to waste crime.
- 1.12 This document summarises respondents' views, and the government's response.

2. Background

- 2.1 Landfill Tax was introduced on 1 October 1996 as a disincentive to landfilling material and to encourage the switch to more environmentally friendly alternatives. Since the introduction of the tax in the UK, landfilling is down more than 60%.
- 2.2 Landfill Tax is due on material disposed of at landfill sites in England, Wales and Northern Ireland, which have an environmental permit or licence for waste disposal. HMRC collects the tax from permitted operators or controllers of a landfill site based on the weight and type of material.
- 2.3 There are two rates of the tax:
 - a standard rate (currently £86.10 per tonne); and
 - a lower rate (currently £2.70 per tonne) for the least polluting material.
- 2.4 Following consultation in 2016, the government is making changes to the definition of a taxable disposal for Landfill Tax purposes, to bring greater clarity and certainty for landfill site operators, and put beyond doubt material that is within the scope of the tax. These changes will come into effect on 1 April 2018.
- 2.5 This consultation focused on whether to extend the scope of Landfill Tax to disposals of material at illegal waste sites. These illegal waste sites operate outside the scope of Landfill Tax making the activity attractive to rogue operators who exploit the disparity of tax treatment and undercut legitimate operators. This proposal aims to remove the tax advantage that incentivises this type of criminal activity, and level the playing field for legitimate operators.
- 2.6 Landfill Tax was devolved to Scotland in April 2015, and will be devolved to Wales from April 2018. Both the Scottish and Welsh governments have provisions in their respective legislation for a charge on material deposited at illegal waste sites. While it is too early to assess the impact of these different approaches, the proposals in this consultation document are intended to address a risk that is prevalent across the UK.
- 2.7 Defra and the environmental protection agencies in England and Northern Ireland are responsible for the regulation and enforcement of environmental policy. They have a range of powers and sanctions to address breaches of environmental regulations. HMRC is responsible for the administration and collection of Landfill Tax, and has a range of civil and criminal powers to address tax evasion and non-compliance.
- 2.8 HMRC works closely with Defra and the environmental protection agencies to ensure a joined up, cross-government approach to tackling waste crime.
- 2.9 The government has invested an additional £20m in the EA in response to the increase in criminal activity in the waste sector. This has helped the EA close down 824 illegal waste sites in England in 2016/17. In spite of this increased activity, during the same year a further 852 new illegal waste sites were identified. By the end of 2015/16, there were 601 known illegal waste sites still operating in England.

- 2.10 At present, when environmental protection agency fines are levied for regulatory breaches, they often do not match the profits derived from the unlawful activity. For example, in 2016, three people were charged for illegally dumping 6,000 tonnes of waste. The fines levied through environmental legislation totalled £170,000. If the illegally dumped material had been liable to Landfill Tax, it would have resulted in a tax bill of more than £500,000, plus a penalty of up to 100% of the tax, and interest. In this scenario, it could have resulted in the illegal waste site operator facing a tax liability of over £1 million.
- 2.11 Last year the government gave local authorities the power to issue Fixed Penalty Notices for small-scale incidents of fly tipping, and in April this year the government published its Litter Strategy for England. This set out the strategic aim of delivering a substantial reduction in litter and littering within a generation by applying best practice in education, enforcement and infrastructure. The scope of this consultation focused on the larger scale, more organised end of the waste crime spectrum.
- 2.12 In October 2016, HMRC published the first standalone tax gap for Landfill Tax. The tax gap is the difference between the amount of tax that should in theory be collected and that which is actually collected. The Landfill Tax gap for 2014/15 is estimated at £150 million, representing 12% of theoretical liabilities. This does not include an amount for waste illegally deposited at illegal wastes sites as it is currently outside the scope of the tax. As such, the potential revenue lost if material disposed of at illegal waste sites is included will be higher.
- 2.13 In autumn 2017, the government plans to consult on measures to improve the regulation of the waste industry and introduce legislation to enhance the EA's powers which will further tackle poor performance and illegality in the sector.

3. Responses

- 3.1 HMRC received 35 responses to the consultation, 34 of which were supportive of extending the scope of Landfill Tax to illegal waste sites.
- 3.2 A number of respondents commented on topics that are outside the scope of this consultation, such as environmental licencing and permitting regimes. These comments are not included in this consultation response document. Where appropriate, they have been forwarded to the relevant government department for information.
- 3.3 The first three questions were aimed at determining who the respondents were. These are summarised in the table below and a full list of respondents can be found in Annex A.

	Individual	Business	Trade Body or Association	Local Authority	Solicitor/ Adviser	Charity	Other
Number of respondents	2	9	10	7	5	1	1

Illegal Waste Sites

- 3.4 Questions 4 and 5 considered how to define an illegal waste site for Landfill Tax purposes.

Question 4: Are you aware of any circumstances where it would be difficult to distinguish between a site that is illegally operating without a permit or licence, and a site that is exempt?

The Environment Agency use the following definition of an illegal waste site:

“A site operating without the appropriate permit for the activity being carried out where multiple loads of waste are deposited, treated, stored or disposed of, and where activity is, or appears to us to be taking place in an organised manner. The activities at the site will generally (but not always) be known to the landowner or the legal occupier of the site and will often be run as a business.”

Question 5: Do you agree the above definition would provide a good starting point for HMRC? Can you suggest any other hallmarks that should be included?

- 3.5 The majority of respondents felt this definition was a fair starting point as it would help align the HMRC definition with EA’s. Some felt the environmental regulations were sufficiently clear and that there would be no issue distinguishing between sites operating legally or illegally.
- 3.6 One respondent highlighted there were different permitting regimes in Northern Ireland and England, advising consideration needed to be given to varying practices between the two.

- 3.7 The majority of respondents stressed the importance of protecting innocent landowners whose land is used as an illegal waste site.
- 3.8 Many respondents pointed out that there are Codes of Practice and Quality Protocols are not specifically referenced within the consultation. Where an operator meets the conditions within a Code of Practice or Quality Protocol the EA would not require them to have an environmental permit, and they would not be considered an illegal waste site.
- 3.9 Many respondents felt the onus should be on the site operator to prove they are operating with a permit; however, a few felt the onus should be on HMRC to demonstrate sites met the illegal waste site criteria.
- 3.10 Some respondents commented that the definition needed to be better explained to allow operators within the waste sector to understand their responsibilities, with many respondents pointing out ambiguity of the following terms within the definition:
- disposal
 - multiple loads
 - organised manner
 - run as a business
 - over a period of time.
- 3.11 A few respondents asked for the definition to be expanded to cover:
- Waste stored in breach of a permits
 - Fly-tipping
 - Waste abandoned in transit
 - Waste originally admitted into a site for treatment which is subsequently not treated and sent to landfill without tax being paid,
 - Sites operating adjacent to illegal sites
- 3.12 Many respondents referred to the high level of crime in this area, with a small number suggesting that joint working across HMRC, Defra and EA critical to addressing the problem.
- 3.13 One respondent commented that we needed to ensure that perpetrators of waste crime could not escape through any loopholes.

Government response to questions 4 and 5

The government welcomes the substantial support for this proposal.

The government is attracted to the EA definition and will consider further whether any changes are necessary, taking into account the differences in environmental legislation between England and Northern Ireland. The proposed definition will be included in the technical consultation and draft legislation later this year.

The government is committed to protecting innocent landowners who have undertaken the necessary due diligence, and will consider how they can be exempted from a

charge to tax. Guidance will also be developed to help customers understand how they can protect themselves from becoming liable for a tax charge in due course.

The government notes the views on who should have the onus for demonstrating that a site is operating without a licence, and believes that it is in the interest of every operator to know and be able to demonstrate whether they need a licence. Where an operator can demonstrate they are compliant with a recognised waste exemption, Code of Practice or Quality Protocol, they will remain outside the scope of the tax.

The definition of a taxable disposal

Question 6: What do you think about the proposal to tax all of the material deposited at an illegal waste site, regardless of whether the person making the deposit intended to dispose of that material?

Question 7: Are there any risks or wider consequences we should be aware of with this “deemed disposal” approach?

- 3.14 The vast majority of respondents supported the proposal to tax all material at an illegal waste site and felt it would act as a strong deterrent. However, a small number of respondents disagreed that the tax should be extended to materials being stored, treated or used at the site.
- 3.15 A few respondents felt this approach could be seen as heavy-handed, with one respondent feeling it was unfair, and the onus should be put firmly on HMRC to prove the deposit was in fact made without the appropriate licence or permit.
- 3.16 One respondent suggested HMRC should offer the illegal operators the opportunity to clear the site before any tax is imposed.
- 3.17 A few respondents cautioned that on sites of multiple occupancy, the tax could be levied against the wrong individual.

Government response to questions 6 and 7

The government believes that treating all deposits of material at a site without a permit as ‘deemed disposals’ will be a strong deterrent to waste crime, and avoid any dispute over the intention of the person making the deposit.

The government notes the comment on giving the illegal site operator an opportunity to dispose of the waste before any tax is levied. We have considered this but feel it would create a potential loophole where the waste could be transferred to another illegal site and the operator continue to evade the tax.

In relation to shared sites and neighbouring sites, the government will review how to limit the charge to tax on those involved in the illegal disposal, and protect innocent operators.

Removal of material from an illegal waste site

- 3.18 Questions 8 - 11 considered the tax implications of material that was subsequently disposed of correctly, including any Landfill Tax charged on material deposited at a permitted landfill site.

Question 8: What are your views on how HMRC should deal with the possibility of double taxation?

Question 9: Do you think a credit system would be workable?

Question 10: What evidence could be produced that the material had been taxed under the illegal waste provisions?

Question 11: Do you think a credit system could be exploited? If so, how?

- 3.19 Overall, this was one of the less well received parts of the proposal with respondents' views mixed on the possibility of double taxation and the implementation of a credit system.
- 3.20 Some respondents were attracted to possibility of a charge to tax at an illegal waste site and another charge to tax when the material was subsequently disposed of at a permitted landfill site on the basis that it would act as an additional penalty.
- 3.21 A few respondents suggested that when Landfill Tax had already been levied on the material at a site without a permit or licence, the local authority, environment protection agency or innocent landowner who subsequently has to clear the site should not have to face any additional charge to Landfill Tax.
- 3.22 There were mixed responses on whether a credit system would be workable with a few respondents suggesting an exemption system would be less onerous than a credit system, and provided contaminated land exemption certificates as an example.
- 3.23 Many respondents pointed out the risks of introducing a credit or exemption system as additional material could be added whilst loads were in transit, and operators could make bogus claims for exemption or credits for 'shadow' loads. However, some respondents felt as long as there is accurate record keeping, robust policing, and enforcement the system should work.
- 3.24 In terms of evidence, the vast majority of respondents to this question said the evidence of a further disposal would have to come from HMRC in the form of either receipts or certificates, with others suggesting evidence such as duty of care records and weighbridge tickets classifying loads as illegal waste could be used.

Government response to questions 8 - 11

After careful consideration, the government has decided not to pursue a credit or exemption system on the basis that it would be vulnerable to abuse. It would also be inconsistent with the logic of the tax to waive the Landfill Tax charges on any material

removed from an illegal waste site, as the tax is intended to incentivise alternative waste treatment, recycling and re-use.

The government believes there is a clear distinction between a charge to tax at an illegal waste site which is intended to deter the unlawful disposal of waste, from a charge to tax at a permitted landfill site which is to incentivise alternative waste disposal methods.

The government will therefore retain a charge to tax on disposals of material at a permitted landfill site, regardless of whether that material has been subject to a charge to Landfill Tax at an illegal waste site. This approach is consistent with the current Landfill Tax regime, where material can be subject to a second charge to tax when moved from one permitted site to another.

The government notes the views on the limiting the possible credit or exemption to either a landowner, environmental protection agency or local authority. However, these persons will still face the additional costs of removing the waste, such as transportation; adding unnecessary burdens to innocent landowners and the public purse.

The definition of a taxable person

3.25 Questions 12 and 13 considered who should be liable to the charge to tax.

Question 12: We are interested in your views on whether it would be appropriate to extend the liability to people other than the illegal waste site controller?

Question 13: Other than the illegal waste site controller, who in the supply chain do you think should be liable for the Landfill Tax? How far up the supply chain do you think liability should be extended?

3.26 All respondents who answered these questions supported the principle of extending the liability to people other than the illegal waste site controller, although many respondents made clear in doing so HMRC should not extend the liability to innocent landowners.

3.27 The majority of respondents believed joint and several liability should sit with anyone who was knowingly involved in the illegal disposal of waste. The liability should extend up the supply chain to include waste producers, but that it should only penalise those complicit in the disposal of the waste at a site without a licence or permit.

3.28 One respondent felt joint and several liability should not apply to those who were on the periphery of activities such as professional advisors, and another respondent suggested the liability should be apportioned, and based on the scale of each person's involvement in the activity.

3.29 Some respondents stipulated liability should only be extended to those who could be proven to have financially gained from the disposal.

Government response to questions 12 -13

The government notes the general support for the principle of extending liability beyond the illegal waste site operator. Accordingly, the government will develop the legislation to jointly and severally tax those parties involved the waste supply chain. This will include anyone judged to be facilitating the illegal disposal, where there is evidence that they failed to exercise due diligence, or are judged to be complicit.

In relation to those on the periphery of the activity, the government will review the case for extend the scope of the tax to waste brokers. This will give HMRC to power to penalise these people if they are knowingly involved in the disposal of waste at an illegal waste site and deter their involvement in the activity.

Due diligence

Question 14: We are interested in your views on due diligence, and whether the examples above are representative of the types of steps that a responsible person should take. Do you think due diligence provisions could be strengthened without adding unnecessary burdens and/or any present opportunities that could be exploited?

- 3.30 A few respondents felt the due diligence requirements as they stood were sufficient and any more changes would be too onerous on businesses. However some respondents felt the due diligence requirements were insufficient and a more robust approach was needed to strengthen the requirements of all parties including producers.
- 3.31 One respondent suggested HMRC needed a clear statement of requirement to ensure each party understood their responsibilities, and the records that would need to be retained and could act accordingly. Another respondent suggested as it currently stood the general public were largely unaware of Duty of Care and their requirements under it.
- 3.32 Some respondents pointed towards the Electronic Duty of Care System run by Defra and suggested that this should be adopted to act as an audit trail.

Government response to question 14

The government shares the view that the current Duty of Care requirements are sufficient for due diligence purposes, and is mindful of the need to keep administration burdens to a minimum. HMRC will continue to work with the trade bodies and environment protection agencies to refine and develop guidance before any changes to the legislation come into force.

Quantifying the amount of tax due

Question 15: Can you provide any practical suggestions for how HMRC could estimate the weight of material at illegal waste sites?

- 3.33 The majority of those who responded to this question pointed towards existing practices used by those in the industry to estimate the weight of material, with some respondents suggesting that an estimation of waste volume could be multiplied by standard factors to give an accurate estimation of weight.
- 3.34 Some respondents suggested topographical surveys, using qualified surveyors, geophysical investigation or aerial Light Detection and Ranging (LIDAR) surveys.

Government response to question 15

The government notes there is an established system for estimating the weight of material deposited at a site, and will develop the system around the standard multipliers used across the sector. This will provide the basis for a fair and reasonable estimation of the weight of the material so any tax charged will be proportionate. This is in line with current practices if no weighbridge is available. Where it is not possible to adopt this approach, HMRC will consider other tools available, such as LIDAR surveys.

Question 16: Do you agree that it would be reasonable to apply the standard rate of Landfill Tax to all material disposed of at an illegal waste site? If not, can you suggest a method for determining the standard and lower rated materials?

- 3.35 The vast majority of respondents felt this was a reasonable course of action to take at illegal waste sites, however a small number of respondents suggested that if the bulk of material was chargeable at the lower rate, this should be taken into consideration. One respondent suggested a sliding scale could be applied.
- 3.36 One respondent suggested the burden of proof should be on the operator to prove the waste fits the lower rate criteria.

Government response to question 16

The government notes the support for this approach and believes one of the main reasons for illegally dumping waste is to evade the standard rate of Landfill Tax. Taxing all material dumped at an illegal waste site at the standard rate of Landfill Tax would act as a strong deterrent, simplify the tax system, and avoid costly disputes over the composition of the material.

Question 17: Do you agree that it would be appropriate to extend the penalty provisions to illegal waste sites?

- 3.37 The vast majority of respondents agreed that extending HMRC's penalty provisions would be appropriate, and felt that it would act as a further deterrent to criminals undertaking this activity.

- 3.38 Many respondents pointed out that due consideration should also be given to prosecutions, and using powers contained within the Proceeds of Crime Act 2002 (POCA 2002) to seize assets and monies from those benefiting from the crime.
- 3.39 One respondent said penalties should only be applied following successful prosecution, however another cautioned that it might be difficult to collect penalties from the guilty parties.
- 3.40 One respondent suggested HMRC should consider a discounted penalty system to encourage illegal site operators to remove waste.

Government response to question 17

The government intends to apply the penalty provisions within Finance Act 2008. As the vast majority of cases will involve deliberate behaviour a tax geared penalty of between 35% and 100% of the tax due will be charged. This will act as a strong signal that the government is determined to clamp down on those who are determined to break the rules.

The government will ensure that there will be criminal offences available to HMRC after the implementation of this measure, and where criminal prosecution is appropriate, HMRC will be able to use the powers contained in POCA 2002 to seize proceeds of crime.

Question 18: Do you think that the above mix of civil and criminal sanctions presents a strong deterrent to tackling the risk of tax loss at illegal waste sites? If not, can you suggest any other ways HMRC could strengthen its response?

- 3.41 The majority of respondents agreed the described mix of civil and criminal sanctions would act as a strong deterrent, some went on to expand that HMRC should look to apply criminal sanctions where possible.
- 3.42 A few respondents felt adding HMRC into this field alongside the EA would strengthen the fight against waste crime and two respondents suggested that HMRC should work closely with other bodies such as local authorities to achieve these goals.
- 3.43 One respondent felt there should be a hierarchy in regards to what agency took action first, i.e. Environment Agency first then HMRC to follow.

Government response to question 18

The government welcomes the support for this proposal in making waste crime less financially attractive to criminals. HMRC and the EA will continue to work together to tackle waste crime and provide guidance and support to help protect legitimate operators.

The approach in Scotland and Wales

Question 19: While it is too early to assess the impact of these approaches, we would be interested in whether there are any aspects of the Scottish and Welsh approaches that you think we should consider further?

- 3.44 A few respondents felt it was too early to draw any best practice from the approach that has been taken in Scotland and Wales to waste crime, but stressed that action should be taken to avoid “waste tourism” which would encourage illegal dumping in England and Northern Ireland if the penalties were seen as less robust in those places.
- 3.45 One respondent suggested introducing a higher rate on illegal disposals as expected in Wales.

Government response to question 19

The government will continue to monitor the results of the approach adopted in Scotland and Wales, and HMRC will continue to work with partner agencies to tackle the risk of cross border waste crime.

The government believes the extension of Landfill Tax and an additional penalty of up to 100% of the tax will provide a strong deterrent in line with the approach adopted across other taxes.

Assessment of impacts

Question 20: Are there any unintended consequences that we need to be aware of to help inform our understanding of the impacts?

- 3.46 One respondent suggested HMRC should further build up the environmental costs quoted at the ‘Assessments of Impact’ (section 9) of the consultation to gain a better view of the environmental implications.
- 3.47 One respondent suggested criminals may change their modus operandi once these rules come into force to avoid detection.
- 3.48 Another respondent believed that criminals would abandon illegal sites once the extension to the tax came into force, which would put an extra burden on landowners and the environmental protection agencies.

Government response to question 20

The government notes that no substantive unintended consequences have been identified, and believes this measure will have a positive environmental impact. HMRC will further develop the Tax Information and Impact Note published alongside the legislation.

HMRC will work with the environmental protection agencies in England and Northern Ireland to monitor the changing modus operandi of criminals in the waste sector and to mitigate the risk of site abandonment. HMRC will also pursue those liable for the tax irrespective of whether the site has been abandoned.

4. Next steps

- 4.1 It is the government's intention that these amendments to the legislation will be introduced as part of the winter Finance Bill 2017, and will come into force on 1 April 2018.
- 4.2 The government will publish draft legislation in September 2017 for technical consultation which will run for 8 weeks. We would welcome any comments you have on this draft legislation.
- 4.3 A Tax Information and Impact Note (TIIN) will be published in September 2017.
- 4.4 If you have any comments on the draft legislation, please send them to James Wilson preferably by email to: landfilltax.consultation@hmrc.gsi.gov.uk
- 4.5 Alternatively, comments may be sent by post to the following address:

Caroline Arrowsmith
HM Revenue & Customs
3rd Floor West, Ralli Quays
3 Stanley Street Salford
M60 9LA

Annexe A: List of stakeholders consulted

The following individuals, businesses/trade associations, and organisations submitted written responses:

Arc 21
Belfast City Council
Biffa
Canal and River Trust
CIWM
CL:AIRE
DAC Beachcroft Solicitors
Deloitte
Energy UK
Environment Agency
Environment Industry Commission
Environmental Law Association
Environmental Services Association
FCC Environment
Ged Duckworth
Hyndburg Borough Council- Community Safety Partnership
Ian Maxted
Kent County Council
Lancashire Fire and Rescue
Leicestershire County Council
Mid Ulster District Council
Pennine Lancashire Community Safety Partnership
PWC
Resources and Waste UK
Rural Arisings
SUEZ
Tyre Industry Federation
UK Steel
UROC
Veolia
Vertase FLI Ltd
Viridor
WestEnviro
Whitemoss Landfill