

# **A Consultation on Scottish Landfill Tax Loss on Ignition Testing for Waste Fines**

**November 2015**

## **SUMMARY OF CONSULTATION QUESTIONS**

**Question 1: Do you think the Scottish Government should introduce a statutory Loss on Ignition testing regime for fine waste material?**

**Question 2: What are the benefits to the waste and wider resource sector of introducing a statutory Loss on Ignition regime?**

**Question 3: What are the costs to your business of setting up Loss on Ignition testing for waste fines to comply with UK or Revenue Scotland testing regimes?**

**Question 4: What in your opinion is the best method for creating a representative sample?**

**Question 5: At what temperatures should the Loss on Ignition test be conducted at and why?**

**Question 6: What loss threshold is a reasonable measure to categorise residual fine waste material as qualifying material (containing a small amount of contamination)?**

**Question 7: What would be an appropriate frequency for individual waste streams of qualifying fines to be tested?**

**Question 8: Please provide any comments you may have on tax avoidance and evasion relating to the waste fines, Loss on Ignition testing and the lower rate of SLfT. Please include any suggestions for discouraging the artificial blending and shredding of waste for tax purposes.**

**Question 9: Do you believe that the proposed definition of waste fines covers potential qualifying fine materials that arrive at a landfill sites as residue following the mechanical sorting and treatment of waste?**

**Question 10: Are there any viable alternatives to Loss on Ignition testing of residual waste fines when trying to determine if they consist of qualifying material?**

**Question 11: Do you have any further comments on residual waste fines and Loss on Ignition testing not already covered in this consultation?**

## Chapter 1: Introduction

### Purpose

1. Scottish Ministers have committed to introducing a statutory testing regime for waste fines under Scottish Landfill Tax (SLfT). The purpose of this consultation is for the Scottish Government to gather views from landfill operators, waste managers, waste and resource sector companies, local authorities and other interested stakeholders on the introduction of such a statutory testing regime. As a result of the consultation, we hope to fully understand the impacts a proposed mandatory testing system will have on the waste management industry and corresponding waste streams and identify ways to prevent the potential for tax evasion.

### Scope

2. On 21 January 2014, the Landfill Tax (Scotland) Act 2014 (SLfT Act) was given Royal Assent. SLfT replaced UK Landfill Tax (LfT) in Scotland on 1 April 2015.
3. This consultation offers an opportunity to comment on tax policy as it relates to SLfT and waste fines.
4. The consultation will be open until **Tuesday 29 December 2015**.

### Background

5. During the '*Scottish Landfill Tax – A Consultation on Subordinate Legislation*'<sup>1</sup> (published on 16 May 2014), several companies called for additional clarity on the tax treatment of waste fines in order that all landfill site operators are made fully aware of their obligations, to assist them in determining the correct amount of SLfT payable and to allow them to compete fairly. Some respondents also noted that a lack of clarity in legislation and guidance could increase the overhead costs for recycling facilities and undermine efforts in other areas to improve recycling infrastructure.

6. The waste and secondary resource sector and in particular landfill site operators requested greater certainty to assist their decision making on whether the lower rate of tax applied to the handling of fine material produced through mechanical treatment processes. Some industry representatives expressed concern that the lower rate policy was not being consistently applied across the industry. Many respondents also expressed concerns over the ability to obtain an evidence base to verify that particular loads of waste/trommel fines qualify at the lower rate.

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<sup>1</sup> <http://www.gov.scot/Publications/2014/05/3748>

## Policy rationale

7. The introduction of a testing regime for “waste fines” is intended to provide waste producers, waste carriers and landfill operators with a means to provide demonstrable evidence that loads, or consignments of waste containing screening fines of qualifying material, qualify for tax at the lower rate.

8. The Scottish Government, together with Zero Waste Scotland, continues to support the waste and resources sector and its role in creating a resilient and more circular economy, where we minimise waste and keep valuable resources in as high value use for as long as possible.

9. 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.

10. The Scottish Government recognises that providing landfill site operators and the waste industry with a means to correctly determine the SLfT rate for waste fines (a residue of waste treatment, recycling and sorting processes) is essential to creating a fair and competitive market environment and will help avoid disincentivising investment in materials recovery and recycling facilities through the inaccurate application of SLfT.

## The UK position

11. The UK Government placed a Loss on Ignition (LOI) testing regime on a statutory footing on 1 April 2015. The secondary legislation<sup>2</sup> consists of amending regulations (mainly for keeping information and samples) and an Order which sets the test and qualifying conditions.

12. The Finance Act 2015 (in schedule 15) inserts sections 42(3A) and (3B) and 63A(2) to (5) to the Finance Act 1996 to facilitate the above order and amendments to the UK Landfill Tax Regulations 1996<sup>3</sup>.

13. The primary legislation above creates the concept of an additional qualifying category, “qualifying fines”, alongside “qualifying material”. The “fines” can consist of qualifying and non-qualifying material. It also sets secondary legislation powers such as testing and maintaining samples.

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2 <https://www.gov.uk/government/publications/draft-legislation-the-landfill-tax-amendment-regulations-2015-the-landfill-tax-qualifying-fines-order-2015-and-guidance>.

3 [http://www.legislation.gov.uk/ukpga/2015/11/pdfs/ukpga\\_20150011\\_en.pdf](http://www.legislation.gov.uk/ukpga/2015/11/pdfs/ukpga_20150011_en.pdf).

## Current Scottish position

14. An LOI test was introduced in Revenue Scotland guidance in September 2015 to provide a measure which is to be used, in combination with other factors, as part of a process to establish whether residual waste fines qualify at the lower rate of tax. Revenue Scotland guidance provides industry with a means of demonstrating eligibility at the lower rate, using an LOI testing regime as set out in Annex A. This guidance broadly reflects the UK position, providing a specific section relating to qualifying fines containing a small amount of non-qualifying material that includes methodology for LOI sample preparation. The inclusion of this specific section on waste fines addresses the waste industry's previous concerns relating to a lack of certainty on how residual waste fines should be treated for tax purposes.

15. The Scottish Ministers are committed to the introduction of a statutory LOI testing regime to provide certainty and encourage a consistent approach to the taxation of residual waste fines. A decision was taken not to legislate in the first year of operation of SLfT to allow industry time to prepare, including the set-up of contractual arrangements for testing and for the procurement of testing equipment. Ministers have previously stated that any changes to the tax will be preceded, where possible, with appropriate lead in times to allow industry to adapt.

16. We are keen to hear how experience from both the UK and Scottish testing regimes can help inform the development of a statutory testing regime for Scottish Landfill Tax.

Question 1: Do you think the Scottish Government should introduce a statutory Loss on Ignition testing regime for fine waste material?

Question 2: What are the benefits to the waste and wider resource sector of introducing a statutory Loss on Ignition regime?

Question 3: What are the costs to your business of setting up Loss on Ignition testing for waste fines to comply with UK or Revenue Scotland testing regimes?

## Chapter 2: Proposal

17. The Scottish Government intends to make changes to secondary legislation, including introducing a new Qualifying Materials Order and any necessary amendments to the Scottish Landfill Tax (Administration) Regulations 2014. Subject to the outcome of this consultation, these will be laid in the Scottish Parliament early in 2016 for commencement on 1 April 2016.

18. We propose that fine materials arriving at landfill sites as a residue from waste and mechanical treatment works will be eligible for an LOI test to enable the landfill operator to evidence that a load consists of qualifying material, taxable at the lower rate. The fine material will have to consist of materials in the schedule of the Qualifying Materials Order (Annex B).

### Acceptance checks

19. LOI testing on its own will not be the only measure to determine the tax rate of fine waste residues. As part of their duty of care, waste producers must classify the waste that their business produces. WM3 is the current UK standard that they must use.

20. In order for the lower rate of SLfT to apply to the load of fine qualifying material, it must not be classed as hazardous waste under WM3. It is proposed that the person disposing of the waste should be asked to provide evidence of the non-hazardous classification of the load under WM3. Landfill operators should review this evidence and be satisfied that it appears to be a true and accurate assessment. A copy of this evidence should be retained by the landfill operator to support the lower rate of SLfT applied to the load.

### Making a representative sample

21. It is proposed that the testing regime will be primarily focused on individual waste flows. For the regime to work equitably it is important that the procedure for taking samples does not encourage bias. Any sample of fines sent for testing should be representative of the whole load relating to a waste flow. Revenue Scotland have set out their procedure for taking samples in Annex A.

### Loss on ignition test for fines

22. An LOI test determines the organic content of material. The difference in the mass of the tested material before and after the ignition process is used to calculate the LOI result. The LOI result will inform whether the waste is liable at the lower rate of SLfT, but is not the only determining factor. We propose to specify the test in legislative guidance, however some important test parameters may be in legislation.

23. The Scottish Government is aware that a number of tests already exist for LOI, for example standard tests such as EN 12879, EN 15935, the prescribed test HMRC<sup>4</sup> have developed specifically for “waste fines” and the regime that Revenue Scotland have set out in Annex A. It is the intention that prescribed conditions for sample tacking and testing will be in legislative guidance, however some important testing parameters may have to be included in legislation.

Question 4: What in your opinion is the best method for creating a representative sample?

Question 5: At what temperatures should the Loss on Ignition test be conducted at and why?

Question 6: What loss threshold is a reasonable measure to categorise residual fine waste material as qualifying material (containing a small amount of contamination)?

#### Frequency of testing

24. It will be the responsibility of the landfill operator to ensure they are confident the waste stream is being assessed at the correct rate of tax, for them to retain evidence and for them to decide the appropriate frequency of testing to ensure this.

25. Revenue Scotland has stipulated in its current legislative guidance that testing should be completed according to particular waste streams (Annex A).

Question 7: What would be an appropriate frequency for individual waste streams of qualifying fines to be tested?

#### Tax evasion and avoidance

26. The Scottish Government has considered the potential for a statutory testing regime to create opportunities for tax avoidance. For example we are aware that historically, under UK LfT, there have been cases of operators and waste producers shredding material in order to qualify at the lower rate of tax. As is stated in Revenue Scotland’s legislative guidance, shredding waste for the purposes of claiming the lower rate of tax is not permissible.

27. The Scottish Government is also aware of the possibility that waste could be blended artificially in order to evade tax. The Scottish Government is keen to hear your views on identifying how best to avoid any tax evasion through the waste fines testing regime.

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<sup>4</sup> <https://www.gov.uk/government/publications/excise-notice-lft1-a-general-guide-to-landfill-tax/excise-notice-lft1-a-general-guide-to-landfill-tax#lower-rate-qualifying-fines>

Question 8: Please provide any comments you may have on tax avoidance and evasion relating to the waste fines, Loss on Ignition testing and the lower rate of SLfT. Please include any suggestions for discouraging the artificial blending and shredding of waste for tax purposes.



## Chapter 3: Qualifying Material and Waste Fines

### Qualifying materials

28. The purpose of this consultation is to seek views on how to apply landfill tax to residual waste fines. ‘Qualifying material’ is defined as material which is listed in and meets the conditions set out in The Scottish Landfill Tax (Qualifying Material) Order 2015 (Annex B). ‘Standard rate material’ is material which is not listed (and does not meet the conditions set out) in that Order and charged at the standard rate of tax. The lower rate of tax applies to waste that consists entirely of qualifying material and the standard rate of tax applies to waste that consists entirely of non-qualifying material. The standard rate of tax also applies to waste that consists of both qualifying material and non-qualifying material unless Revenue Scotland direct that the amount of non-qualifying material is “small” and the waste may be taxed at the lower rate.

29. As Revenue Scotland state in their guidance, the lower rate of tax may be applied to a load containing a “small amount” of standard-rated material if such material was formed with the lower-rated waste at the same time, or it is used as necessary packaging and all reasonable and practical measures have been taken to prevent, reduce and remove the standard-rated material from the lower-rated material.

30. It is the responsibility of the landfill operator to ensure the correct rate of SLfT is applied and the right amount of SLfT is paid to Revenue Scotland for each load disposed of at their site(s). This judgement is based on the description on the waste transfer note that accompanies the movement of most waste in the UK, a visual inspection of the waste and any other documentary evidence required by the operator to support their decision.

### Waste fines

31. In order for the testing regime to have an effect it will be necessary to define waste fines in legislation. The Scottish Government proposes to define “waste fines” as: “particles produced by a waste treatment process that involves an element of mechanical treatment”. In addition, the load must be categorised as European Waste Catalogue code 19 12 12 on the transfer note (it is already a pre-requisite of the existing Qualifying Materials Order that a load be accompanied by a transfer note: <http://www.legislation.gov.uk/ukxi/2005/895/schedule/1/made>).

Question 9: Do you believe that the proposed definition of waste fines covers potential qualifying fine materials that arrive at a landfill sites as residue following the mechanical sorting and treatment of waste?

Question 10: Are there any viable alternatives to Loss on Ignition testing of residual waste fines when trying to determine if they consist of qualifying material?

Question 11: Do you have any further comments on residual waste fines and Loss on Ignition testing not already covered in this consultation?

## Chapter 4: Responding to this consultation

- This consultation is your opportunity to share your views on statutory LOI testing for waste fines.
- We are inviting written responses to this consultation paper **by Tuesday 29 December 2015**.
- Please send your response through: <https://consult.scotland.gov.uk/fiscal-responsibility/landfill-tax-loss-on-ignition-testing>

### Handling your response

32. If you ask for your response not to be published, we will regard it as confidential and treat it accordingly. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### Next steps

33. If you tell us we can make your response public, we will put it in the Scottish Government Library and on the Scottish Government consultation web pages. We will check all responses where agreement to publish has been given for any wording that might be harmful to others before putting them in the library or on the website. If you would like to see the responses please contact the Scottish Government Library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

### What happens next?

34. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision about the finalised versions of the relevant legislation. We will issue a report on this consultation which will be published on the Scottish Government's website on the Citizenspace website: <https://consult.scotland.gov.uk/fiscal-responsibility/landfill-tax-loss-on-ignition-testing>

## **Comments and complaints**

35. If you have any comments about how this consultation exercise has been conducted, please send them to:

David Kerrouchi

Fiscal Responsibility Division  
Scottish Government  
Area 2F South  
Victoria Quay  
Edinburgh  
EH6 6QQ

## **Scottish Government consultations**

36. This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at: [www.gov.scot/consultations](http://www.gov.scot/consultations)

37. The Scottish Government has an e-mail alert system for consultations. This system, called SEconsult, allows individuals and organisations to register and receive a weekly email with details of all new consultations (including web links). SEconsult complements, but in no way replaces, Scottish Government distribution lists. It is designed to allow people with an interest to keep up to date with all Scottish Government consultation activity. You can register at SEconsult: <http://www.gov.scot/consultations/seconsult.aspx>

## ANNEX A

### Revenue Scotland Guidance

In the first year of operation of SLfT, LOI testing is not subject to a legislative requirement. Revenue Scotland has, however, provided for LOI testing in its guidance during this year, for the reasons set out below.

Landfill operators and waste producers asked for clarification about what Revenue Scotland, in its guidance, meant by a 'small amount' of non-qualifying material in loads that otherwise would qualify for the lower rate of SLfT. Following discussions with those stakeholders, Revenue Scotland directed in its guidance that loads of waste fines should be subjected to LOI testing to ensure that they contain no more than a small amount of non-qualifying material. Where the criteria are met, the lower rate may be applied to such loads.

Revenue Scotland will review this part of its guidance in the light of any new legislative requirement following on from this consultation. Its current guidance is reproduced below and is available online at:

<https://www.revenue.scot/scottish-landfill-tax/guidance/slft-legislation-guidance/determining-tax/slft2006>

### Waste Fines

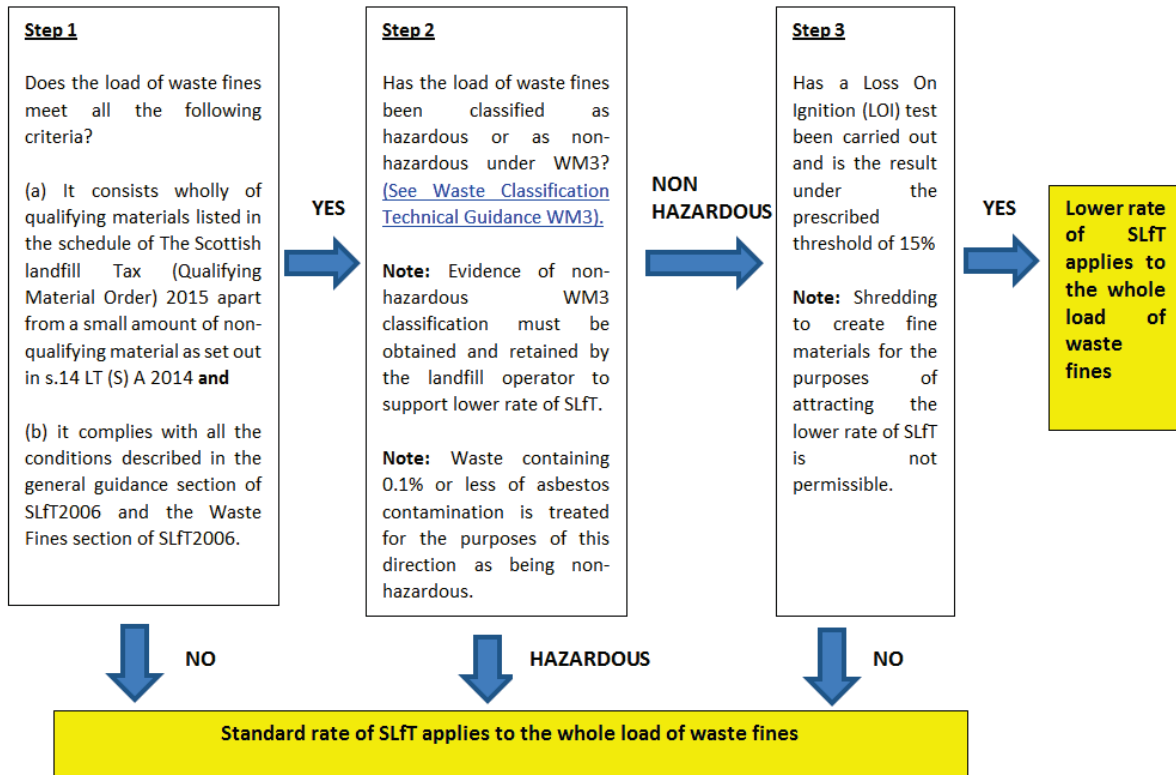
From the 1 October 2015, under this direction made under section 14 of the LT(S)A 2014 we will require you to apply the following legislative guidance in order to determine whether a load consisting of waste fines only, is chargeable at the standard or lower rate of SLfT when disposed of to landfill.

For the purposes of SLfT, fines are particles produced by a waste treatment process that involves an element of mechanical treatment. Qualifying fines are:

- fines that consist of materials listed in the Schedule to The Scottish Landfill Tax (Qualifying Material) Order 2015; and
- contain no more than a small amount of any other (i.e. non-qualifying) material; and
- do not result from any deliberate or artificial blending or mixing of any material prior to disposal at a landfill site
- have been shredded only as part of a pre-conditioning process of the waste prior to its treatment
- are not classified as hazardous under WM3 classification

## Flowchart for determining the rate of SLfT chargeable per load of waste fines

All of the conditions of the qualifying fines flow chart must be met in order for each load of waste fines to be liable at the lower rate of SLfT.



### WM3 Classification

As part of their duty of care, waste producers must classify the waste that their business produces. (See: Technical Guidance WM3: Guidance on the Classification and assessment of waste)

In order for the lower rate of SLfT to apply to the load of fines, it must not be classed as hazardous waste under WM3. The person disposing of the waste should be asked to provide evidence of the non-hazardous classification of the load under WM3. You should review this evidence and be satisfied that it appears to be a true and accurate assessment. A copy of this evidence should be retained by you to support the lower rate of SLfT applied to the load.

### Loss On Ignition (LOI) Test for Fines

An LOI test determines the organic content of material. The difference in the mass of the tested material before and after the ignition process is used to calculate the LOI result. The LOI result will inform whether the waste is liable at the lower rate of SLfT, but is not the only determining factor. For fines to be classified as qualifying for the lower rate, they must give an LOI result of 15% or under.

## **Prescribed Test**

### ***Making a Representative Sample***

The sample of fines you send for testing must be representative of the whole load or stockpile. To take a representative sample the following methodology applies:

- the sample must be taken from across the whole load or stockpile of waste fines i.e. top, middle and bottom
- a composite (master) sample must be produced from a mix of sub-samples taken from at least 6 different places across the whole quantity of fines
- the sub-samples must be selected at random
- the sub-samples must be thoroughly mixed to ensure that a representative 1kg composite sample is sent for testing

## **LOI Test Methodology**

You must arrange to undertake the LOI test prescribed below for SLfT purposes:

### ***Sample preparation***

- dry the 1 kg sample at a temperature of between 30° C and 50° C, until a constant weight is achieved
- cone and divide the 1kg sample to select a 200g sub-sample
- remove material, exceeding 20 mm that conforms to Group 1 and Group 2 of the Scottish Landfill Tax (Qualifying Material) Order 2015 from the sub-sample. Record the weight of the sub-sample and of the removed material
- grind the remaining part of the sub-sample to a particle size of 2mm or less to produce a homogenous sample. Any material not passing the 2mm sieve must be added back into the ground sample and the combined sample mixed and homogenised

This prepared sample should be retained in the event that a retest is necessary.

### ***Sample treatment***

- take a minimum of 5g of the homogenous ground sample and place in a dried, weighed dish and weigh
- dry in an oven at 180° C to a constant weight, cooling in a desiccator for a minimum of 45 minutes
- record the weight
- transfer the sample to a muffle furnace at a temperature of 440° C for a minimum of 5 hours
- cool in a desiccator as before and reweigh

### **LOI calculation**

Calculate the LOI between 180° C to 440° C as a percentage of the dried material taking into account the mass of removed Group 1 and Group 2 material and any weight loss during the initial drying process.

### **What if a Tested Sample Is Above the LOI Threshold?**

#### **Actions to take if a sample is above the LOI threshold**

- You must declare the quantity of fines to Revenue Scotland and pay tax on it at the standard rate of Scottish Landfill Tax until the waste stream tests below the LOI threshold of 15% on five successive occasions.
- You may need to increase the frequency of testing of subsequent loads to be certain they qualify for the lower rate of SLfT.
- You must notify Revenue Scotland of the test result , providing all the requested details on the **Loss on Ignition Test Result Form**.

#### **Loss on Ignition Test Result Form**

A Loss on Ignition Test Result Form must be completed each time a sample gives a LOI test result of over 15%. You should submit all completed forms with the SLfT return for the period in which the test(s) took place and no later than 44 days after the end of the quarterly accounting period in which the test took place.

Please read the notes below before you complete the **Loss on Ignition Test Result Form**, and include all the information required.

#### **Operator details**

Please provide details of the Landfill Site Operator including the Scottish Landfill Tax registration number, name, address of site and contact telephone number of the person signing the **Loss on Ignition Test Result Form** declaration.

#### **Sample date and location**

Please provide the date the sample was taken from the load or stockpile of waste fines, as well as the details of the specific landfill site or other location the sample was obtained from.

#### **Test date**

Please provide the date the LOI test was undertaken.

#### **Test carried out by**

Please provide the details of the organisation that conducted the LOI test.

#### **Test result (LOI %)**

Please provide a copy of the original LOI test result percentage and report supplied by the laboratory e.g. a copy of the test certificate or laboratory report.

**Waste producer details**

Please provide details of the waste producer including name, address, type of facility and contact number.

**Details of the waste stream**

Please provide details of the waste stream from which the non-qualifying fines originated from, including the 6 digit European Waste Code (EWC) and geographic origin.

**Action carried out for results above the threshold**

Please provide details of what action has been taken as a result of the quantity of fines having exceeded the LOI threshold.

**Can a sample be retested that is above the LOI threshold?**

If the prescribed test is conducted and the result is above the LOI threshold, you may conduct a single retest provided the following conditions are met:

1. the original prepared 200g sub-sample of fines must be retested.
2. the first LOI result must be no more than 0.5% above the LOI threshold.
3. the prescribed retest must be conducted before the end of the same tax quarter as the original test.

In such circumstances, if the retest result is within the LOI threshold, you may treat this as the test result for determining liability to SLfT.

**Power to direct a test**

Where we consider it necessary for the protection of the revenue against mistake or fraud, we can direct that a representative sample of fines is taken and sent for testing at your cost. In such circumstances, the results of that test may be used to determine the liability to Scottish landfill tax.

**What records must I keep for qualifying fines?**

You may need to justify your decision to us. You must therefore keep and provide sufficient evidence to substantiate applying the lower rate of SLfT to any particular disposal of waste fines.

You must make and preserve records to show that fines disposed of at your landfill site were qualifying fines, for a period of 5 years. This could include waste transfer notes, evidence the material is not classified as hazardous waste under WM3, LOI test results and evidence of visual inspections.

In cases of doubt tax will be charged at the standard rate for each load of waste fines unless you can demonstrate that it qualifies for the lower rate of SLfT.



**2015 No. 45****LANDFILL TAX****The Scottish Landfill Tax (Qualifying Material) Order 2015***Approved by the Scottish Parliament**Made - - - - 3rd February 2015**Laid before the Scottish Parliament 5th February 2015**Coming into force - - 1st April 2015*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 13(4) and 14(7) of the Landfill Tax (Scotland) Act 2014<sup>(5)</sup> and all other powers enabling them to do so.

Before making this Order, the Scottish Ministers have complied with the requirements of section 13(8) of that Act.

**Citation, commencement and application**

—(1) This Order may be cited as the Scottish Landfill Tax (Qualifying Material) Order 2015 and comes into force on 1st April 2015.

This Order has effect in relation to taxable disposals made, or treated as made, on or after 1st April 2015.

**Qualifying material**

—(2) Subject to paragraphs (3) and (4), the material<sup>(6)</sup> listed in column 2 of the Schedule is qualifying material for the purposes of section 13(4) of the Landfill Tax (Scotland) Act 2014.

The Schedule is to be construed in accordance with the notes contained in it.

The material listed in column 2 of the Schedule must not be treated as qualifying material unless any condition set out alongside the description of the material in column 3 of the Schedule is met.

Where the owner of the material immediately prior to the disposal and any operator<sup>(7)</sup> of the landfill site at which the disposal is made are not the same person, material must not be treated as qualifying material unless it meets the relevant condition referred to in paragraph (5).

The relevant condition is that a transfer note includes in relation to each type of material of which the disposal consists a description of the material which—

- accords with its description in column 2 of the Schedule;
- accords with a description listed in a note to the schedule (other than by way of exclusion); or
- is some other accurate description.

In paragraph (5), “transfer note” means a transfer note within the meaning of regulation 3 of the Environmental Protection (Duty of Care) (Scotland) Regulations 2014<sup>(8)</sup>.

<sup>(5)</sup> 2014 asp 2. There are amendments to this Act not relevant to this Order.

<sup>(6)</sup> “material” is defined in section 39 of the Landfill Tax (Scotland) Act 2014.

<sup>(7)</sup> “operator” is defined in section 12(2) of the Landfill Tax (Scotland) Act 2014.

<sup>(8)</sup> S.S.I. 2014/4.

St Andrew's House,  
Edinburgh  
3rd February 2015

*JOHN SWINNEY*  
A member of the Scottish Government

## SCHEDULE

Article 2

<i>Column 1 Group</i>	<i>Column 2 Description of material</i>	<i>Column 3 Conditions</i>
1	Rocks and soils	Naturally occurring
2	Ceramic or concrete materials	
3	Minerals	Processed or prepared
4	Furnace slags	
5	Ash	
6	Low activity inorganic compounds	
7	Calcium sulphate	Disposed of in a landfill cell where no biodegradable waste is accepted
8	Calcium hydroxide and brine	Deposited in a brine cavity

### Notes

(1) Group 1 comprises only—

rock;  
 clay;  
 sand;  
 gravel;  
 sandstone;  
 limestone;  
 crushed stone;  
 china clay;  
 construction stone;  
 stone from the demolition of buildings or structures;  
 slate;  
 sub-soil;  
 silt; and  
 dredgings.

Group 2—

comprises only—

glass, including fritted enamel;  
 ceramics, including bricks, bricks and mortar, tiles, clay ware, pottery, china and refractories;  
 and  
 concrete, including reinforced concrete, concrete blocks, breeze blocks and aircrete blocks;  
 and

does not include—

glass fibre and glass-reinforced plastic; or  
 concrete plant washings.

Group 3—

comprises only—

- moulding sands, including used foundry sand;
- clays, including moulding clays and clay absorbents (including Fuller's earth and bentonite);
- mineral absorbents;
- man-made mineral fibres, including glass fibres;
- silica;
- mica; and
- mineral abrasives; and

does not include—

- moulding sands containing organic binders; or
- man-made mineral fibres made from glass-reinforced plastic and asbestos.

Group 4 comprises only—

- vitrified wastes and residues from thermal processing of minerals where, in either case, the residue is both fused and insoluble; and
- slag from waste incineration.

Group 5—

comprises only—

- bottom ash and fly ash from wood or waste combustion; and
- bottom ash and fly ash from coal or petroleum coke combustion (including when burnt together with biomass); and

does not include fly ash from sewage sludge, municipal, clinical and hazardous waste incinerators.

Group 6 comprises only—

- calcium based reaction wastes from titanium dioxide production;
- calcium carbonate;
- magnesium carbonate;
- magnesium oxide;
- magnesium hydroxide;
- iron oxide;
- ferric hydroxide;
- aluminium oxide;
- aluminium hydroxide;
- zirconium dioxide.

Group 7 includes calcium sulphate, gypsum and calcium sulphate based plasters but does not include plasterboard.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

Article 2 of this Order provides that, subject to the conditions in that article, the material listed in column 2 of the Schedule is qualifying material for the purposes of the lower rate of Scottish landfill tax. The Schedule lists, in 8 groups, the description of the qualifying materials with any conditions listed alongside. Notes to the Schedule amplify the descriptions.

In making this Order, the Scottish Ministers had regard to the criteria published under section 13(7)(d) of the Landfill Tax (Scotland) Act 2014 and to other factors they considered relevant. The criteria were published by the Scottish Ministers in January 2015 and can be found at <http://www.scotland.gov.uk/Topics/Government/Finance/scottishapproach/landfilltax/qualifyingmaterialorders>.



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