



HM Revenue
& Customs

Landfill Tax - Liability of waste 'fines'

Consultation document

Publication date: 30 June 2014

Closing date for comments: 19 September
2014

Subject of this consultation:	The introduction of a Loss on Ignition (LOI) test that will assist operators of landfill sites to determine the correct tax liability of fines (residual waste from waste processing produced by mechanical treatment plants).		
Scope of this consultation:	The Government announced in Budget 2014 that it will introduce an LOI test by April 2015. The lower rate of landfill tax will apply where fines meet an LOI threshold of 10% or less. This consultation sets out a proposal for how the testing regime will operate, including processes for the testing of samples and record-keeping requirements.		
Who should read this:	Operators of landfill sites and mechanical treatment plants and other waste industry interests including representative bodies in England, Wales and Northern Ireland.		
Duration:	The consultation starts on 30 June 2014 and the closing date for responses is 19 September 2014.		
Lead official:	Claire Williams, HM Revenue & Customs.		
How to respond or enquire about this consultation:	Responses or enquiries should be sent by e-mail to - landfill-tax.consultation@hmrc.gsi.gov.uk or by post to – Laura Wood, Environmental Taxes Team HM Revenue and Customs 3W Ralli Quays 3 Stanley Street Salford M60 9LA		
Additional ways to be involved:	Please contact the Landfill Tax Helpline on 03000 588445 if you would like to discuss your response. Representatives from HMRC will be attending the following events and will be available to discuss any questions you have on the consultation: <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;">3 July 2014 Waste'14 Salford City Stadium</td> <td style="width: 50%; vertical-align: top;">17 September 2014 RWM NEC Birmingham</td> </tr> </table> http://skiphiremagazine.co.uk/waste14/ http://www.rwmexhibition.com/	3 July 2014 Waste'14 Salford City Stadium	17 September 2014 RWM NEC Birmingham
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After the consultation:	Draft legislation will be made available later in 2014 and, following any comments, it will be introduced to come into force in April 2015. The responses to this consultation, and to subsequent consultation on the draft legislation, will be used to produce detailed guidance for those affected.		

Getting to this stage:

This consultation document reflects proposals arising from a government-industry working group which includes representatives from HM Revenue and Customs, HM Treasury, the Environment Agency, the Environmental Services Association and the United Resource Operators Consortium.

Previous engagement:

This issue has not been the subject of any recent formal consultation although extensive informal dialogue has taken place over recent months.

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On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

1. Introduction

Landfill tax

1.1 Landfill tax was introduced on 1 October 1996 so it is not a new tax nor will the changes outlined in this document make any changes to the scope of the tax. The tax supports the UK's waste policy and contributes to the public finances. It is payable to HM Revenue and Customs (HMRC) by landfill site operators who may pass on the costs by way of increased charges to those disposing of waste at their sites. The tax currently applies across the UK but, from April 2015, it will no longer apply in Scotland following the decision to devolve the tax. The Scottish Parliament plans to introduce its own landfill tax from this date.

1.2 Landfill sites are liable to be registered for the tax if they are permitted for waste disposal under environmental legislation concerning waste management.

1.3 There are two rates of tax:

- a standard rate (currently £80 per tonne) for active wastes such as household waste which decays; and
- a lower rate (currently £2.50 per tonne) for less-polluting wastes.

1.4 Waste that qualifies for the lower rate of tax is specified in the Landfill Tax (Qualifying Material) Order 2011. Please see the Annex for a summary of the Order. The landfill tax legislation also provides that where a load of waste is essentially made up of qualifying (less-polluting) wastes but there is also a small amount of non-qualifying material, the load can be lower-rated.

1.5 It is the responsibility of the landfill operator to ensure the correct rate of tax is applied and the right amount of tax is paid to HMRC for each load disposed of at their site. This judgment is based on the description on the waste transfer note that accompanies the movement of most waste in the UK and on a visual inspection of the waste. Other documentary evidence supplied to the operator may be used to support the decision but does not override the requirement for waste transfer notes.

1.6 By ensuring that waste producers incorporate the full cost of waste disposal into business decisions, landfill tax encourages the development of sustainable waste management options, including recycling and anaerobic digestion.

Drivers for change

1.7 Landfill site operators are responsible for paying landfill tax to HMRC and have asked for greater certainty on which to base their decisions on lower rating. Some industry representatives are concerned that the lower rate policy is not being equitably applied across the industry. They have called for additional clarity so that all landfill site operators are made fully aware of their obligations and to allow them to compete fairly.

1.8 HMRC clarified its guidance on the classification of material that qualifies for the lower rate of tax in May 2012 but, despite additional clarification in June and July 2012, there has been some continuing uncertainty as to the evidential requirements for demonstrating that this rate applies to certain wastes. Following discussions with the Environmental Services Association (ESA) (which represents the waste management industry, including landfill site operators), environmental regulators and policy departments, HMRC published further draft guidance for informal consultation in autumn 2013.

1.9 There was a lot of interest in this informal consultation. Following a review of responses, HMRC set up a government-industry working group including representatives from HM Treasury, the Environment Agency, the Environmental Services Agency and the United Resource Operators' Consortium (UROC) (which represents the SME skip hire and waste transfer/treatment sector including mechanical treatment plants). This working group considered the issues and developed a specific proposal that could be put to the wider industry for consultation.

1.10 There was general agreement in the working group that, while HMRC's draft guidance was helpful for most of the wastes liable to the lower rate, the evidential requirements are problematic in respect of waste 'fines'. These are the smaller fractions of waste produced by any waste treatment process that includes an element of mechanical treatment. These fines are separated from other material using screening equipment (including large rotating screened cylinders called trommels) and can include a wide variety of wastes, including soil, paper, plastic, wood, metal etc.

1.11 At present, fines are not separately identified within landfill tax legislation although they can be lower-rated if they comprise solely materials listed in the Landfill Tax (Qualifying Material) Order 2011 or comprise mainly such materials, save for a small amount of non-qualifying material.

Loss on Ignition (LOI) Test

1.12 The working group agreed that an objective laboratory test needed to be made available to test waste at the point it is disposed of to landfill. This test would assist landfill site operators in assessing landfill tax liability in cases where there was uncertainty and would be used on a mandatory basis to test a random selection of samples to assure that the lower rate was being applied accurately and consistently. The same test could also be used on a voluntary basis by those sending waste fines to landfill so that they are aware of the tax liability of their waste and to give them information about what they need to do to their fines to qualify for the lower rate. This may encourage investment in machinery to reduce the polluting content of fines. The working group identified that the well-established Loss on Ignition (LOI) laboratory test would be a suitable test as it determines the biodegradable and/or combustible element of the waste, which is indicative of the likely pollution potential, and therefore a reasonable means of identifying the tax liability.

1.13 In order for the LOI test to be usable in supporting decisions on the landfill tax liability of fines, a regime needs to be developed covering a range of issues, such as when it should be used, how often, who should undertake it, what constitutes a pass

and the consequences of failing. The government-industry working group concluded that this regime needed to have mandatory elements to it to make it effective.

1.14 As a result of the recommendations made by this working group, the Government announced in Budget 2014 that it would introduce an LOI testing regime covering fines produced from the processing of waste at mechanical treatment plants by April 2015; and that fines would be eligible for the lower rate of tax only if the result of the LOI test was below a 10% threshold (the biodegradable and/or combustible element of the waste). It was further announced that a consultation would take place in summer 2014 on the detail of how the testing regime would work.

1.15 Subsequent discussions with the government-industry working group highlighted issues with rounding of LOI test results i.e. an LOI test result of 9.99% could be rounded to 10% but would actually be below the 10% threshold announced in Budget 2014. Therefore, the proposal set out in this consultation paper is that the threshold should be up to and including 10%. The working group also considered whether there should be any tolerance to allow for vagaries in the testing process. However, it concluded that the 10% figure was itself generous in terms of making an allowance for contamination of lower rated loads with standard rated material and that operators of mechanical treatment plants should, in reality, be striving to achieve test results of less than 10% LOI on their waste fines. Indeed, as is set out in the detailed proposal in chapter 2 below, waste fines from those plants that consistently achieve test results below 8% are likely to be tested less frequently than those that achieve results of between 8% and 10%.

Objective of this consultation

1.16 This document contains proposals, developed by the government-industry working group, for how the LOI testing regime will operate. The Government is open to comments in response to this consultation that challenge the proposed process (or, alternatively, elements of it).

1.17 The proposals set out in this consultation paper will not affect waste going to Scottish landfill sites since they will not come into effect before April 2015, by which time the UK landfill tax will not apply in Scotland (see paragraph 1.1).

2. Identifying fines that qualify for the lower rate of tax

2.1 This chapter looks at the current approach to establishing the tax liability of fines and then goes on to consider options for administering an LOI testing regime.

Current situation

2.2 We estimate there are approximately 6,000 waste transfer and treatment plants in England, Wales and Northern Ireland, of which about 450 produce fines, with approximately 4.5 million tonnes being produced each year. There are about 200 landfill site operators registered for landfill tax across the UK.

2.3 Where fines are taken to landfill sites for disposal, it is the responsibility of the landfill site operator to identify the correct liability to landfill tax and to pay that tax to HMRC. Operators will base their decisions on the following:

- pre-acceptance of waste checks
- the landfill tax rules on lower rating, including 'mixed loads'
- the description of the waste on the waste transfer note, and
- a visual inspection of the waste.

In addition, some landfill site operators already carry out an LOI test to support their decisions on landfill tax liability.

Pre-acceptance checks

2.4 Landfill site operators undertake a number of pre-acceptance checks with their customers in line with good commercial practice. They will hold evidence of 'Basic characterisation' from waste producers under environmental regulation. The precise nature of the pre-acceptance checks will vary depending on the landfill operator. Many enter into contracts with those disposing of waste and, as part of the process, the waste disposer is required to provide information about the nature of their waste and frequency of disposal, among other things.

Landfill tax lower rating rules, including 'mixed loads'

2.5 Where a disposal to landfill contains both standard-rated and lower-rated materials (a so-called 'mixed load'), tax is due on the whole load at the standard rate. However, the presence of a small amount of standard-rated waste in a mainly lower-rated load, can be ignored and the whole load treated as taxable at the lower rate. Whether an amount of standard rated waste is small will depend on the circumstances and is a matter of fact and degree. However, factors to consider are:

- The amount of standard rated material in a load must be incidental. This means that it must not have been deliberately or artificially blended or added to the

qualifying material(s) after or in connection with removal from its originating site. Adding or blending materials, so increasing the amount going to landfill, is inconsistent with waste hierarchy and the duty of care on waste producers, both of which derive from European legislation.

- The difficulty in separating the standard rated materials from the lower rated waste. However, this cannot alone be used to justify applying the lower rate of tax (for example, if the standard rated waste is more than a small amount of the total load). Reasonable steps should have been taken to segregate or separate the standard rated material from the load.
- The standard rated materials in a load of mainly qualifying material must not be of an amount to classify the load as hazardous. The landfill site operator should always consult relevant guidance from their environmental regulator when assessing hazardous properties of waste.
- If a mixed load is classified as non-hazardous, this does not automatically mean that it can be treated as lower rated. The standard rated element of the load must still be small and incidental in relation to the qualifying material in order for the load to qualify for the lower rate.

2.6 For loads consisting of fines, the lower rate applies where the fines that come out of the trommel constitute those materials, or a mix of those materials, included within the Landfill Tax (Qualifying Material) Order 2011. By a mix of materials we mean a mix of qualifying materials from different Groups within the Order.

Waste transfer notes

2.7 For the lower rate of tax to apply, the waste transfer note, which is required for most movements of waste in the UK, must accurately describe the waste in such a way that it can be related to the terms used in the Landfill Tax (Qualifying Material) Order 2011. The waste transfer note may cover individual loads or it may be a 'season ticket' covering a number of loads to be sent for disposal to a site over a period of time.

2.8 For loads of fines, the waste transfer note must clearly state from which qualifying materials, or mix of qualifying materials, the fines were derived. If the fines comprise mainly qualifying material with a small amount of non-qualifying material, the waste transfer note should also include an accurate description of the non-qualifying element together with an indication that it was 'small' where appropriate.

2.9 A general description that simply states 'fines' on a waste transfer note does not clearly evidence that the constituent materials are listed in the Order and such loads are liable to the standard rate of landfill tax.

Visual inspection

2.10 The final part of the landfill site operator's check for tax liability is a visual check of the waste at the landfill site. This takes place at the weighbridge and when the waste is tipped for disposal. Even if the operator accepts the waste, he will be able to indicate to the customer at this stage that the load will be charged at the standard rate if the visual inspection indicates that to be clearly appropriate.

Future position

Summary of proposal

2.11 From April 2015, **in order to be considered eligible for the lower rate of landfill tax, any load of fines sent to landfill must have an LOI of 10% or less.** To help landfill site operators and waste producers in meeting this new requirement, a new LOI testing regime will be introduced for fines. This testing regime will support the existing pre-acceptance checks, visual checking of loads and analysis of waste transfer notes and other paperwork, all of which will continue. Landfill operators will continue to be required to keep evidence to justify their decisions for lower rating a load of fines though the nature of some of that evidence will change to some extent.

2.12 The LOI test should be a standard test used for the purposes of testing fines. The test will be arranged by the landfill operator on samples of waste taken from their site when the fines are sent for disposal. The sample must be sent to an accredited laboratory for testing. HMRC will have the power to direct additional testing where there are any doubts about an original test or for where it has reasonable grounds to do so for protection of the revenue as well as to undertake random testing where considered necessary.

2.13 Given the volume of fines sent to landfill in the UK annually (see paragraph 2.2), it is clearly impossible to test every load. However, the Government's proposal set out below, stipulates that landfill operators will need to test samples of waste from all their customers periodically and sets out a minimum level of testing. Operators will be able to use the test more often if they consider it appropriate to do so (for example, because they have concerns about the tax liability as a result of a visual inspection or for any other reason) and the level of testing for a customer's loads will increase where the customer's loads fail the tests. The landfill operator will undertake the tests randomly so that their customers will not know in advance when their waste will be tested.

2.14 Loads arriving at the landfill site will be identified as requiring testing and samples will be taken and sent for laboratory analysis by the landfill operator. Any load failing the test will be liable to the standard rate of tax and there will be other consequences that are outlined in paragraph 2.39.

Government proposal in detail

2.15 This section sets out the Government's proposal in more detail covering:

- Scope of the testing regime
- Requirements for waste transfer notes
- Pre-acceptance checking of waste
- Visual inspections of waste
- Standard LOI test
- Frequency of testing
- Selection of representative samples for testing
- Keeping samples and records

- Implications of LOI tests of more than 10%
- HMRC powers, and
- Transitional arrangements.

Scope of the testing regime

2.16 Paragraph 1.10 provides a general definition of waste 'fines' as the smaller fractions of waste produced by any waste treatment process that includes an element of mechanical treatment (referred to in this document as mechanical treatment plants. These fines are separated from other material using screening equipment (including large rotating screened cylinders called trommels) and could include a wide variety of wastes including soil, paper, plastic, wood, metal etc.

2.17 For the purposes of landfill tax, only a load of fines that can meet the LOI threshold of 10% will be eligible for the lower rate. In practice this means the load will need to comprise mainly materials listed in Group 1 and 2 of the Landfill Tax (Qualifying Material) Order 2011. As explained in paragraph 1.15, the 10% threshold is a generous figure and allows for a small amount of contamination. The factors outlined in paragraph 2.5 continue to be relevant in determining what is small.

2.18 Subject to advice on legal drafting, the Government intends to define fines as set out in paragraph 2.17 and to add a new Group to the 2011 Order covering fines from mechanical treatment plants produced through the process of segregation, sorting and screening. There will be a condition that the fines must have an LOI of 10% or lower.

2.19 Fines that do not meet the definitions and standards set out for the proposed testing regime will continue to be liable to the standard rate of landfill tax. In line with the current policy on mixed loads (see paragraph 2.5), processes which add standard rated materials to mainly Group 1 and 2 materials, such as blending and shredding processes, will be excluded from the scope of the testing regime and from the scope of the definition of fines set out in the amended 2011 Order. Similarly, processes which add Group 1 and 2 materials to mainly standard rated materials will also be excluded. A load comprising material from such processes will remain liable to the standard rate of landfill tax.

Question 1 - scope

Does the proposed scope of the testing regime provide a workable basis? If not what changes would you like to see made?

Requirements for waste transfer notes

2.20 The Government proposes that a description of 'fines with an LOI of no more than 10%' on a waste transfer note would be indicative that the waste should be lower rated, although the other conditions for lower rating would need to be met (for example, pre-acceptance checks, the passing of the LOI test where the load was sent for testing).

2.21 A description of 'fines' on a waste transfer note will continue to be liable to the standard rate of landfill tax. A description of 'fines' is insufficient to

demonstrate that the waste comprises lower rated material - the waste transfer note must state 'fines with an LOI of no more than 10%'.

Pre-acceptance checking of waste

2.22 The existing pre-acceptance checks that landfill operators already undertake with their customers (see paragraph 2.4 above) will continue to help landfill operators to assess the eligibility to the lower rate of the fines they receive. From April 2015 they will also assist in deciding the frequency of LOI tests required for each of their customers.

2.23 The Government proposes that, as a minimum, landfill site operators will issue a questionnaire and declaration for completion by their mechanical treatment plant customers that produce fines for disposal at landfill. The purpose will be to obtain information about the mechanical treatment plant and more particularly about the waste the plant intends to send for disposal. The details on this questionnaire will allow the landfill site operator to determine the testing regime required.

2.24 The information required on the questionnaire will include:

- Type of operation
- Details of wastes handled
- Process types
- Procedures for storage of fines
- Procedures for handling hazardous waste and other materials such as gypsum and plasterboard etc.
- Output details for different wastes
- Tonnages of qualifying materials likely to be sent to the landfill site operator.

The questionnaire and declaration will need to be reviewed at appropriate intervals to ensure that the information provided reflects current practice. The landfill site operator will be best placed to know how often this needs to be done but, as a minimum, there should be an annual review. HMRC will expect more frequent reviews to take place if, for example, there is any reason to doubt the veracity of the information provided by the plant operator or if a load from a particular plant fails an LOI test.

2.25 Fines that do not meet the definitions and standards set out for the proposed testing regime will continue to be liable to the standard rate of landfill tax. The information from the pre-acceptance checks, reviewed at appropriate intervals, must indicate that the fines fall within the scope of the testing regime.

2.26 As part of the pre-acceptance checks, landfill site operators may also request their customer conducts LOI tests on their fines and provide evidence to them of the outcome of the tests. Mechanical treatment plants may wish to test their fines at an accredited laboratory as a matter of good practice. This will not alter the obligations placed on landfill site operators to conduct their own testing.

Question 2 – pre-acceptance checking of waste

- (a) Do you foresee any problem with this pre-acceptance process and in providing this information? Do you think there might be a better or different way of establishing the potential content of fines? If so, please provide details.
- (b) Should landfill operators be seeking any additional information or are some of the above requirements unnecessary (if so, which and why)?

Visual inspections of waste

2.27 A load will continue to be liable to the standard rate of landfill tax if a visual inspection indicates that to be clearly appropriate The requirement for a visual inspection by the landfill site operator of each load prior to acceptance on to the landfill site will remain. The only change will be that operators may opt to send samples from particular loads for LOI testing based on their visual inspection (though in practice some operators do this already).

Standard LOI test

2.28 The Government is aware that there are standard tests for determining the LOI of dry matter, although not specifically for 'fines' material. For example, EN 12879 and EN 15935 specify methods for the determination of the LOI of a dried sample of sludge, and treated biowaste soil and waste respectively at 550°C.

2.29 The Government proposes that a uniform approach to LOI testing is used for the purposes of the tax. Samples should be sent to a laboratory that is accredited by the United Kingdom Accreditation Service (UKAS).

Question 3 – standard LOI test

Do you consider that adopting a standard LOI test is a reasonable approach? If so, what should that standard test be and why?

Frequency of testing

2.30 Landfill site operators should send samples of fines for testing where there are grounds to believe that the waste is (or may not be) lower rated either as a result of visual inspection or because of inconsistencies in the documentation it has received from the customer. The operator should assess how often it needs to test waste from each of its customers in order to be satisfied as to the correct tax liability of loads from that customer. Operators are not limited to one sample/test per customer per day. It may, for example, be appropriate to sample every load received from a particular customer in one day if there are reasonable grounds to do so.

2.31 Even where the operator does not consider the above grounds for testing exist, they should randomly (not pre-announce) select samples of waste from all customers that are sending fines to their landfill site that have the expectation that their waste will be lower rated.

2.32 The Government intends to prescribe a minimum (but no maximum) frequency of 1 test per 1000 tonnes per mechanical treatment plant and to set out a list of risk

factors that landfill site operators must consider which would trigger more frequent testing of waste from a particular customer. These factors enable operators to adopt a risk-based approach by applying their knowledge of their customers and the waste stream as opposed to a more statistical sampling frequency. The risk factors include:

- Waste that is atypical of what you might expect to receive from that mechanical treatment plant (based, for example, on the questionnaires previously provided by the plant)
- Suspicion of a high LOI based on observation (visual, odour)
- Contamination identified on tipping the load in the disposal area e.g. some high LOI waste hidden at the bottom of the load
- Intelligence that the waste producer may knowingly be sending high LOI material to landfill
- Knowledge that the process that produces the waste means that there is a high risk that significant non-inert wastes are accepted into the trommel process. High risk wastes could include mixed municipal waste (for example, 'black bag waste'), food waste, dredgings and sewage screenings
- A previous LOI test result from the customer of the same waste stream of between 8% and 10%. As explained in paragraph 1.15, fines comprising only materials listed in the Landfill Tax (Qualifying Material) Order 2011 are expected to achieve an LOI test well within the 10% threshold. An LOI result at the higher end of this scale should automatically trigger an increased frequency of testing
- Previous LOI test or tests from the same customer of more than 10% (see 'implications of LOI tests of more than 10%' below)
- A customer disposing of fewer than 1000 tonnes of a fines' waste stream in a period of 6 months

In addition, a request from a landfill site operator's customer for an LOI test of their waste should not be unreasonably refused by the landfill site operator and would add to the number of tests undertaken.

2.33 The Government intends to review this minimum level of testing and the above risk factors after the new regime has been running for 12 months, with a view to seeing whether it needs to be more prescriptive over the frequency of testing.

Question 4 – frequency of testing

- (a) Are the steps outlined above reasonable and, if not, what concerns do you have and why? Are there any additional risk factors that landfill site operators should take into account in relation to identifying the level and frequency of testing?*
- (b) Is the proposed minimum level of testing workable/reasonable? If not what frequency of testing do you think would be reasonable and why? Is the proposed minimum level of testing adequate to ensure a level playing field between operators?*

Selection of representative samples for testing

2.34 In order to reduce bias in sampling, the Government proposes that samples must be taken in a standard way, as follows:

- The whole load must be available for sampling, including the middle and bottom (if this is not possible at the weighbridge then additional samples will need to be taken after the load has been tipped in the disposal area)
- A composite (master) sample must be produced from a mix of sub-samples taken from 6 or more places within a load
- The sub-samples must be selected at random
- The sub-samples must be thoroughly mixed to ensure that a representative composite mix is available for analysis

From the master sample a smaller sample will be sent for LOI testing.

Question 5 – selection of representative samples for testing

- Does this proposal appear reasonable and practical? If not, why not and what could be done to make it so?*
- Are there alternative approaches that could be taken to ensure the selection of a representative random sample?*

Keeping samples and records

2.35 The Landfill Tax Regulations 1996 provide that every registrable person shall preserve specified records (including business and accounting records), a landfill tax account, waste transfer notes and any other original or copy records in relation to material brought onto, or removed from, the landfill site for 6 years.

2.36 The Government proposes that landfill operators should also retain details of all pre-acceptance checks and LOI test results (passes and failures) for 6 years and make them available to HMRC on request. They should also maintain an audit trail showing that tax has been accounted for at the standard rate following a failed test.

2.37 The Government also proposes that the physical samples (master untested) taken will need to be kept and stored for a period of 6 months, and should be uniquely identified so that they can be matched with the results.

Question 6 – keeping samples and records

- Does the 6 month period for retention of samples seem reasonable and practical, and if not – what alternative would you suggest and why?*
- Should there be any additional stipulations with regard to storage (for example, conditions in which samples should be retained)?*

Implications of LOI tests of more than 10%

2.38 The proposal outlines the circumstances when landfill operators will be liable to account to HMRC for the standard rate of landfill tax on 'fines' prior to becoming subject to the testing regime. These are:

- Paragraphs 2.19 and 2.25 - fines that do not meet the definitions and standards set out for the proposed testing regime will continue to be liable to the standard rate of landfill tax. The information from the pre-acceptance checks, reviewed

at appropriate intervals, must indicate that the fines fall within the scope of the testing regime.

- Paragraph 2.21 - a description of 'fines' on a waste transfer note will continue to be liable to the standard rate of landfill tax.
- Paragraph 2.27 - a load will continue to be liable to the standard rate of landfill tax if a visual inspection indicates that to be clearly appropriate.

2.39 Where a tested load fails the 10% LOI threshold, the Government proposes that the landfill site operator will:

- be liable to account to HMRC for the failed load at the standard rate of landfill tax
- need to take a more critical look at subsequent loads from that mechanical treatment plant and increase the frequency of testing of its loads – these would keep increasing in frequency in the event of further failures. Operators of mechanical treatment plants can request further testing at an early stage to demonstrate that the earlier failure was atypical but any further test must be selected randomly and not pre-arranged
- notify HMRC of all LOI test failures at least quarterly, including details such as which mechanical treatment plant the fines came from and the extent of failure. HMRC will conduct spot checks and targeted interventions and will consider the failure reports in deciding where to target its compliance action

2.40 HMRC will review this policy after 12 months and discuss with the government–industry working group whether any changes are needed.

Question 7 – implications of LOI tests of more than 10%

- (a) *Is this a reasonable approach to dealing with loads that do not pass the 10% threshold?*
- (b) *Can you suggest any alternative workable proposals for dealing with failed tests that are both fair and encourage future compliance?*

HMRC powers

2.41 The Government proposes that HMRC will have powers to direct landfill site operators to arrange for additional testing in order to verify that the correct tax liability has been applied. This could be in response to specific concerns that the wrong liability was being declared or for routine assurance purposes.

2.42 Landfill site operators are currently liable to penalties and interest on under-declared tax and for failure to comply with the requirements of the landfill tax legislation. Details of the current penalties and interest can be found in Notice LFT1 *A general guide to landfill tax*.

2.43 The proposal outlines the circumstances when landfill site operators will be liable to account for the standard rate of landfill tax to HMRC, and the requirements of the testing regime. The Government proposes to include failure to comply with these within the provisions for penalties and interest.

Question 8 – HMRC powers

Are there any additional powers that would be useful to protect the revenue, create a level playing field and/or make the testing regime more effective?

Transitional arrangements

2.44 In the months ahead of the formal introduction of the LOI regime, landfill site operators should, where possible, start conducting pre-acceptance checks with their existing customers where they are not already doing so. They should also undertake at least one LOI test for each customer per fines waste stream. We understand that some operators are already undertaking such tests as a matter of good practice. The pre-April LOI tests will provide an indication of the eligibility for lower rating of fines produced by that waste producer. This will assist the waste producer in determining what additional steps they need to undertake for their waste to pass the LOI test and will assist landfill operators in determining how frequently waste from that producer needs to be tested from April 2015.

2.45 Prior to April 2015, landfill tax liability of fines will be determined under the existing rules.

3. Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	<p>Any Exchequer Impact will be assessed following consultation. The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at a future fiscal event.</p>				
Economic impact	<p>This measure is not expected to have any significant economic impact.</p>				
Impact on individuals and households	<p>As landfill operators are those responsible for performing tests and pay landfill tax on waste, this measure will not have a direct impact on individuals or households.</p>				
Equalities impacts	<p>This measure concerns the taxation of businesses and there will be no direct impact on individuals. As such it is very unlikely that there will be any impact on equality.</p>				
Impact on businesses and Civil Society Organisations	<p>This proposal will affect operators of mechanical treatment plants and other producers of fines as well as landfill operators upon whom the tax liability falls, and any other customers upon whom additional cost or tax liability may be passed. There are currently around 200 registered landfill site operators and 450 mechanical treatment plants that produce fines in England, Wales and Northern Ireland.</p> <p>The cost to a landfill site operator is equal to the monetary fee of the LOI test charged by the laboratory plus the administrative/time costs of the pre-acceptance checks and storage of samples. The cost of an LOI test on a sample is roughly £10 and is carried out by testing laboratories, taking one to two weeks. Given a minimum testing of one in every thousand tonnes, plus possible additional tests for failed samples and small producers, total fees paid by business for the tests would likely be between £50,000 and £100,000.</p> <p>Checks and testing may already be carried out by some landfill operators implying a negligible cost for those operators. However, producers of fines are also encouraged to carry out their own checks prior to delivery to landfill operators and the extent to which they do this affects the total cost to businesses. Administrative costs will be estimated later following information provided by the consultation.</p>				

Impact on HMRC or other public sector delivery organisations	Operational costs to HMRC are predicted to be negligible.
Other impacts	No other significant impacts are expected from this measure.

Questions:

HMRC would welcome comments on the assessment of impacts in the Taxes Impact Assessment.

9. What proportion of fines currently produced would fail the 10% LOI threshold?
10. How much potential is there for this proportion to fall given changes in production or other processes?
11. What proportion of fines currently submitted to landfill site operators is standard rated?
12. What are the necessary set-up costs (one-off costs) necessary within your business to comply with this measure?
13. What are the estimated continuing/annual costs of complying with this measure (e.g. time spent on pre-acceptances checks, storage costs for samples, cost of submitting sample for LOI test to testing laboratory)?
14. What impact would this measure have on prices for customers of landfill operators, mechanical treatment plants and other producers of fines?
15. Do you expect this measure to have a significantly larger impact on small businesses, and if so why?

4. Summary of Consultation Questions

Questions on Government proposal

Question 1 - scope

Does the proposed scope of the testing regime provide a workable basis? If not what changes would you like to see made?

Question 2 - pre-acceptance checking of fines

(a) Do you foresee any problem with this pre-acceptance process and in providing this information? Do you think there might be a better or different way of establishing the potential content of fines? If so, please provide details.

(b) Should landfill operators be seeking any additional information or are some of the above requirements unnecessary (if so, which and why)?

Question 3 – standard LOI test

Do you consider that adopting a standard LOI test is a reasonable approach? If so, what should that standard test be and why?

Question 4 - frequency of testing

(a) Are the steps outlined above reasonable and, if not, what concerns do you have and why? Are there any additional risk factors that landfill site operators should take into account in relation to identifying the level and frequency of testing?

(b) Is the proposed minimum level of testing workable/reasonable? If not, what frequency of testing do you think would be reasonable and why? Is the proposed minimum level of testing adequate to ensure a level playing field between operators?

Question 5 - selection of representative samples for testing

(a) Does this proposal appear reasonable and practical? If not, why not and what could be done to make it so?

(b) Are there alternative approaches that could be taken to ensure the selection of a representative random sample?

Question 6 - keeping samples and records

(a) Does the 6 month period for the retention of samples seem reasonable and practical and, if not, what alternative would you suggest and why?

(b) Should there be any additional stipulations with regard to storage (for example, conditions in which samples should be retained)?

Question 7 - implications of LOI tests more than 10%

(a) Is this a reasonable approach to dealing with loads that do not pass the 10% threshold?

(b) Can you suggest any alternative workable proposals for dealing with failed tests that are both fair and encourage future compliance?

Question 8 - *HMRC powers*

Are there any additional powers that would be useful to protect the revenue and/or make the testing regime more effective?

Questions on impact assessment

Question 9 - What proportion of fines currently produced would fail the 10% LOI threshold?

Question 10 - How much potential is there for this proportion to fall given changes in production or other processes?

Question 11 - What proportion of fines currently submitted to landfill operators is standard rated?

Question 12 - What are the necessary set up costs (one-off costs) necessary within your business to comply with this measure?

Question 13 - What are the estimated continuing/annual costs of complying with this measure (e.g. time spent on pre-acceptances checks, storage costs for samples, cost of submitting sample for LOI test to testing laboratory)?

Question 14 - What impact would this measure have on prices for customers of landfill operators, mechanical treatment plants and other producers of fines?

Question 15 - Do you expect this measure to have a significantly larger impact on small businesses, and if so why?

5. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

Responses should be sent by 19 September 2014 to:

Laura Wood, Environmental Taxes Team
HM Revenue and Customs
3W Ralli Quays
3 Stanley Street
Salford M60 9LA

Or by e-mail to landfill-tax.consultation@hmrc.gsi.gov.uk

Please contact the Landfill Tax Helpline on 03000 588445 if you would like to discuss your response or have any enquiries.

A summary of the questions in this consultation is included at chapter 4

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC Inside Government](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

Olly Toop, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex: Summary of the Landfill Tax (Qualifying Material) Order 2011

Group	Description of material	Conditions	Notes
1	Rocks and soils	Naturally occurring	<p>Group 1 comprises only</p> <ul style="list-style-type: none"> i. rock ii. clay iii. sand iv. gravel v. sandstone vi. limestone vii. crushed stone viii. china clay ix. construction stone x. stone from the demolition of buildings or structures xi. slate xii. sub-soil xiii. silt xiv. dredgings.
2	Ceramic or concrete materials		<p>Group 2 comprises only</p> <ul style="list-style-type: none"> i. glass, including fritted enamel ii. ceramics, including bricks, bricks and mortar, tiles, clay ware, pottery, china and refractories iii. concrete, including

			<p>reinforced concrete, concrete blocks, breeze blocks and aircrete blocks</p> <p>Group 2 does not include</p> <p>i. glass fibre and glass-reinforced plastic, and</p> <p>ii. concrete plant washings.</p>
3	Minerals	Processed or prepared	<p>Group 3 comprises only</p> <p>i. moulding sands, including used foundry sand.</p> <p>ii. clays, including moulding clays and clay absorbents (including Fuller's earth and bentonite)</p> <p>iii. mineral absorbents</p> <p>iv. man-made mineral fibres, including glass fibres</p> <p>v. silica</p> <p>vi. mica</p> <p>vii. mineral abrasives.</p> <p>Group 3 does not include</p> <p>i. moulding sands containing organic binders</p> <p>ii. man-made mineral fibres made from glass-reinforced plastic and asbestos.</p>

4	Furnace slags		<p>Group 4 comprises only</p> <p>i. vitrified wastes and residues from thermal processing of minerals where, in either case, the residue is both fused and insoluble, and</p> <p>ii. slag from waste incineration.</p>
5	Ash		<p>Group 5 comprises only</p> <p>i. bottom ash and fly ash produced only from wood or waste combustion</p> <p>ii. bottom ash and fly ash from coal or petroleum coke combustion (including when burnt together with biomass)</p> <p>Group 5 does not include fly ash from sewage sludge, municipal, clinical and hazardous waste incinerators.</p>
6	Low activity inorganic compounds		<p>Group 6 comprises only</p> <p>i. calcium based reaction wastes from titanium dioxide production</p> <p>ii. calcium carbonate</p> <p>iii. magnesium carbonate</p> <p>iv. magnesium oxide</p>

			<ul style="list-style-type: none"> v. magnesium hydroxide vi. iron oxide vii. ferric hydroxide viii. aluminium oxide ix. aluminium hydroxide x. zirconium dioxide.
7	Calcium sulphate	Disposed of in landfills for non-hazardous waste in a cell where no biodegradable waste is accepted	<p>Group 7 includes</p> <ul style="list-style-type: none"> i. calcium sulphate ii. gypsum iii. calcium sulphate based plasters. <p>Group 7 does not include plasterboard.</p>
8	Calcium hydroxide and brine	Deposited in brine cavity.	

