

## Revenue Scotland SLfT guidance on waste fines.

### Consultation Response Form

Please complete this form and email to the address below no later than 29 July 2016.

[slft@revenue.scot](mailto:slft@revenue.scot)

If you wish to submit your response in PDF format please also provide a version in Word. This will help us with collating and analysing all responses.

Alternatively, you can request a hard copy of this form by writing to us at the address below or phoning 03000 200 310. Hard copy responses should be sent to:

SLfT Guidance Consultation  
Revenue Scotland  
PO Box 24068  
Victoria Quay  
EDINBURGH EH6 9BR

#### 1. Name/Organisation

##### Organisation Name (Leave blank if responding as an individual)

Scottish Environmental Services Association

##### Main business activities of organisation

Trade association

Title Mr  Ms  Mrs  Miss  Dr  other

Surname

Freeland

Forename

Stephen

#### 2. Postal Address

SESA

ECCI

High School Yards

Edinburgh

Postcode EH1 1LZ

Phone 0131 651 4680

Email [s-freeland@esauk.org](mailto:s-freeland@esauk.org)

**3. Permissions - I am responding as...**

**Individual / Group/Organisation**

*Please tick*

(a) Do you agree to your response being made available to the public (on the Revenue Scotland website)?

Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

**Please tick ONE of the following boxes**

Yes, make my response, name and address all available

Yes, make my response available, but not my name and address

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (on the Revenue Scotland website).

Are you content for your **response** to be made available?

Yes  No

(d) Are you content for Revenue Scotland to contact you again in relation to this or any similar consultation exercises?

Yes  No

4. Revenue Scotland tries to operate to Adam Smith's principle of certainty for the tax payer about their tax liability. How easy will it be to be sure of the tax due on each load of waste fines disposed of to landfill under the new guidance?

The draft guidance is an improvement on the existing version, which was issued in October 2015 without consultation, or even any notification of its existence. We particularly welcome acknowledgement in the consultation draft that qualifying fines can be produced from loads of mixed waste inputs provided the material has been subjected to a satisfactory treatment process. Revenue Scotland's previous stance on this issue had the potential to seriously undermine investment in Scotland's recycling infrastructure.

While pleased that amendments to the consultation draft guidance broadly reflect the main points discussed at a recent Revenue Scotland focus group meeting, we nonetheless offer the following additional comment:

References throughout the guidance to the 10% LOI threshold are inconsistent and have the potential to introduce ambiguity. Our understanding is that for fines to be treated as qualifying material they should give an LOI result of *10% or under*. References throughout the guidance to qualifying fines returning a result of "less than 10%" (section 1.1, appendix 2 flowchart and elsewhere) would appear to suggest that a result of 10% would attract the standard rate of tax on that load. We suggest that all such references throughout the guidance are amended to be consistent with that provided in section 6.

Section 1.2 aims to offer examples of the types of treatment processes that could produce qualifying fines. However, there are simply too many waste treatment configurations capable of producing qualifying fines to provide any sort of meaningful list of examples. In this regard we therefore suggest that the guidance focuses on those processes which are not capable of producing qualifying fines (deliberate shredding; or artificial blending or mixing of material).

Particular care is required with regard to shredding (example 3 of section 1.2) and the guidance should seek to distinguish between sham treatment process (deliberate shredding to produce fine outputs) and the entirely legitimate role of shredding as a pre-conditioning stage of a waste treatment process with the purpose of creating a more consistently sized material to improve plant or process efficiency.

Section 1.2 notes that waste fines cannot qualify for the lower rate of tax if it contains non-qualifying material that could reasonably have been removed. We note scope for varying interpretation between all parties concerned on what should constitute "reasonable".

From previous discussion with Revenue Scotland, it was our understanding that the flowchart (in appendix 2) would be amended to more clearly emphasise that step 1 applies at point of the landfill site (and not the producer of the waste fines). As above, the last step in the flowchart should be amended to LOI returning a result of 10% or under.

5. Part 8 of the guidance on Lol test methodology includes instruction to use a sample size of 5g. This sample size has been chosen because a larger one could risk incomplete combustion and therefore affect the Lol result.

Do you agree that specifying a sample size of 5g will lead to fair and consistent Lol test results?

We are not convinced by Revenue Scotland's argument in support of a 5g sample size (compared to 20g). A 5g sample would clearly be less representative than 20g and more liable for results to be skewed by the presence of small amounts of non-qualifying material.

20g samples should not result in any discernible increase in costs and we understand that most laboratories consider 20g the optimum weight. Furthermore, it is difficult to envisage a situation whereby a larger 20g sample could ever increase the potential for incomplete combustion.

It also worth noting that there can be some variation in the LOI test results produced by laboratories and that some flexibility in the re-test arrangements (section 11) might be useful until such time that the new testing regime becomes more established.

We welcome Revenue Scotland's acknowledgement that any weight loss during the initial drying process should not be a factor of the LOI calculation method – the calculation should of course be based on the dried material only. While reference to such has been removed from the text (in section 8) the 'LOI summary calculation' (also in section 8) has not been amended accordingly.

6. The frequency of testing table at part 12 of the guidance explains how certain indicators should be used to determine how frequently Lol tests should be carried out on waste fine streams.

Do you agree that the table supports a fair and consistent approach to the classification of waste?

The table of risk indicators is an improvement on the current guidance.

7. Do you have any other comments you would like to make about this guidance?

Yes  No

If you ticked 'yes', please provide your comments or suggestions:

We remain concerned about aspects of appendix 3 (pre-acceptance questionnaire), particularly section 2 ("geographical origin of the waste input stream"). While the reference to "geographical origin" is rather ambiguous we were at least satisfied by the outcome of recent discussions on this matter where Revenue Scotland confirmed that it was the geographical origin of the landfill customer that should be provided on the form (i.e. the processing facility which had produced the waste fines). However, despite such assurances, we understand that Revenue Scotland has since reviewed this position and is considering whether to require disclosure of the geographical origin of the input waste stream (i.e. the waste producing customers of the processing facility producing the waste fines).

It is worth noting that even a modest sized MRF would have in excess of 1000 customers. This would therefore place considerable additional administrative burdens on an already complex tax regime, and in some cases would simply be impracticable. We would question how this data (geographical origin of waste producers) would in any way fulfil the purposes of the *landfill tax regime* and suspect that the request for this information would perhaps be more useful for SEPA's wider strategy on building a better understanding of material flows through the economy. This is an entirely separate project and it would be inappropriate to use the tax regime for this purpose.

We can only imagine that this data might have been useful in identifying patterns of "waste tourism", with waste producers in the rest of the UK potentially seeking to take advantage of a less stringent LOI threshold in Scotland. However, clearly this will not be a relevant consideration upon the guidance taking effect in October, with Revenue Scotland applying the same LOI threshold of 10% as the rest of the UK from this date.

This is an example of unnecessary duplication as SEPA already requests such information from operators in their site returns while, depending on how "geographical origin" is to be defined and applied, there are also commercial sensitivity implications. Depending on the availability of this data, informed assumptions on the waste management arrangements in place for any given waste producer within a certain area (particularly larger businesses) could easily be made.

We invite Revenue Scotland to confirm the rationale for requiring more detailed information beyond that of the geographical location of the waste fine producing facility. Mass balance analysis of site returns and duty of care (under the entirely separate permitting regime) would provide a more appropriate and useful means of understanding waste arisings or material flows

in any given area. To require such through the tax regime is simply un-necessary duplication.

Finally, we note that the industry has been offered considerably less time to prepare for the new LOI regime than alluded to on page 2. The LOI threshold to accompany the new mandatory regime was not confirmed until January 2016, and with clarity on a number of key points lacking, even now, until the outcome of this current consultation process.