



HM TREASURY



HM Revenue
& Customs

Modernising landfill tax legislation

summary of consultation responses

December 2009



HM TREASURY



HM Revenue
& Customs

Modernising landfill tax legislation

summary of consultation responses

December 2009



Official versions of this document are printed on 100% recycled paper. When you have finished with it please recycle it again.

If using an electronic version of the document, please consider the environment and only print the pages which you need and recycle them when you have finished.

© Crown copyright 2009

The text in this document (excluding the Royal Coat of Arms and departmental logos) may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

For any other use of this material please write to Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU or e-mail: licensing@opsi.gov.uk

ISBN 978-1-84532-660-9
PU860

Contents

		Page
Chapter 1	Introduction	3
Chapter 2	What constitutes a taxable disposal	5
Chapter 3	Wastes that qualify for the lower rate of tax	17
Annex A	List of respondents	25
Annex B	Number of responses by question and group of respondents	29

1

Introduction

Introduction

1.1 Landfill tax, introduced on 1 October 1996, is a UK wide tax on the disposal of waste by way of landfill at landfill sites permitted (or licensed) under environmental legislation (unless specifically exempted).

1.2 Following an announcement in the Budget 2009, the Government conducted a thirteen-week consultation (22 April to 24 July 2009), that sought to address two key aspects of the legislation, underpinning the administration of landfill tax:

- the definition of a taxable disposal of waste at a landfill site; and
- the definition of wastes that should qualify for the lower rate of tax.

1.3 The Government received 105 responses from a variety of sources. A list of those who responded is set out in Annex A.

1.4 During the consultation, HM Treasury and HM Revenue and Customs (HMRC) engaged extensively with industry bodies, business representative bodies, environmental non-governmental organisations and others with an interest in the subject.

1.5 The Government is grateful for all the responses received and for the active participation of all those who contributed to the consultation process. Chapters 2 and 3 provide a non-interpretative summary of the responses received.

Next steps

1.6 The Government will publish its response to the consultation in spring 2010.

Respondents

1.7 The respondents to the consultation can be grouped into eight distinct categories. Table 1.A summarises these groups and sets out the number of responses received.

Table 1.A: Group of respondents and number of responses

Group	Number of responses
A Businesses that do not operate a landfill site but produce waste	24
B Local, district or county councils	21
C Trade associations and governing bodies	19
D Businesses that operate a commercial landfill site	17
E Businesses that operate a landfill site but do not accept third party waste	14
F Agents who represent a number of large companies	4
G Environmental groups	4
H Members of Parliament or Regional Assemblies	2
Total	105

Responses to individual questions

1.8 This summary is split into two chapters. Chapter 2 summarises the responses in relation to the definition of a taxable disposal of waste at a landfill site, and Chapter 3 summarises responses received relating to the definition of wastes that qualify for the lower rate of tax. Annex B contains a breakdown of who responded to each of the 26 questions asked in the consultation paper.

1.9 In some cases respondents provided an answer to a question asked in the consultation paper but it did not directly answer what was asked. Such responses are contained in a column marked “other” in the relevant tables in Chapters 2 and 3.

2

What constitutes a taxable disposal

2.1 In the first half of the consultation, the Government considered options for redrawing the way in which landfill tax legislation defines what constitutes a taxable disposal of waste at a landfill site. In response to the Court of Appeal judgment in the Waste Recycling Group (WRG) case, it has become timely to review and modernise the administrative and legislative arrangements of the tax to provide greater certainty and clarity for taxpayers.

2.2 The consultation focused on the need to establish, for the purposes of the tax, the area, the activities and the material.

Defining the area in which a taxable disposal takes place

2.3 The consultation pointed out that current approaches to environmental regulation across the UK means that the tipping area is now more readily identified in site permits. Under the separate permitting arrangements in place in England and Wales, Scotland and Northern Ireland each site permit refers specifically to the part of the site that is actually a landfill (in terms of it being a tipping area), clearly differentiating it from parts of the site that are not landfill.

2.4 In defining the area in which a taxable disposal takes place, the consultation lead option was to legislate so that the taxable area on a site is identifiable as a tipping area within a landfill site as stated in a permit issued under:

- the Environmental Permitting (England and Wales) Regulations 2007 (2007 No. 3538);
- the Pollution Preservation and Control (Scotland) Regulations 2000 (SSI 2000 No 323); and
- the Pollution Preservation and Control (Northern Ireland) Regulations 2003 (SR 2003 No 46).

Question 1: Under this option what, if anything, that is currently taxed would fall out of the tax?

2.5 Most respondents (79 per cent) to this question could not envisage any material that would become non-taxable if the lead option were adopted.

2.6 The remaining 21 per cent of responses did not put forward any material that *would* fall out of tax under these arrangements, but instead suggested material that *should* be excluded from tax, such as brine treatment solids, daily cover and landfill site engineering works.

Taxable area – alternative approach

2.7 The consultation pointed out that an alternative to describing the taxable area was to link the definition to the EU Landfill Directive definition of landfill, which specifies a waste disposal site for the deposit of the waste onto or into land (i.e. underground), including:

- internal waste disposal sites (i.e. landfill where a producer of waste is carrying out its own waste disposal at the place of production); and

- a permanent site (i.e. more than one year) which is used for temporary storage of waste;

but excluding:

- facilities where waste is unloaded in order to permit its preparation for further transport for recovery, treatment or disposal elsewhere; and
- storage of waste prior to recovery or treatment for a period of less than 3 years as a general rule; or
- storage of waste prior to disposal for a period of less than 1 year.

Question 2: Do you see any advantages in defining the taxable area of a landfill as set out in the EU Landfill Directive?

2.8 The responses to this question were split. Of those who answered that there were advantages, 50 per cent cited the exemption of up to three years for the storage of waste prior to recovery or treatment under the EU Landfill Directive.

2.9 Of those who could not present any advantages, 39 per cent simply answered 'no' without providing background to their answers. The remaining respondents provided a number of differing opinions, including inefficiency and overly bureaucratic processes, and suggestions that specific material should be included as an exemption.

Table 2.A: Summary of responses to Question 2

Q2	Group	Yes	No	Other
A	Businesses not operating landfill sites	2	5	0
B	Local authorities/councils	2	2	1
C	Trade/sector organisations	4	3	0
D	Landfill site operators	4	3	0
E	Businesses landfilling own waste	6	3	1
F	Agents	0	2	0
G	Environmental groups	0	0	0
H	Members of Parliament/Assemblies	0	0	0
	Total	18	18	2

Defining taxable activities

2.10 The consultation stated that current approaches to environmental regulation across the UK meant that the phase of a landfill's operation in which disposal is carried out is now more readily identifiable. Under the separate permitting arrangements in place in England and Wales, Scotland and Northern Ireland, there is a clear distinction between this phase and, for example, pre-disposal site engineering and post-disposal site restoration.

2.11 In defining the taxable activities of a landfill site, the consultation lead option was to legislate to provide that the taxable activities in a taxable area would be those taking place during the operational phase as identified in a permit issued under:

- the Environmental Permitting (England and Wales) Regulations 2007 (2007 No. 3538);
- the Pollution Prevention and Control (Scotland) Regulations 2000 (SSI 2000 No 323); and

- the Pollution Prevention and Control Regulations (Northern Ireland) 2003 (SR 2003 no 46).

Question 3: Are you aware of any circumstances where this proposal would mean that activities which are currently within the tax (or will be from 1 September when the changes announced at Budget 2009 come into effect) would fall out of the tax?

2.12 The vast majority of those who answered said that no material would fall out of the tax should the consultation proposals be implemented. The remaining respondents, who answered ‘no’, went on to suggest material that *should* become exempt, such as temporary engineering works and daily cover.

2.13 Only two respondents to this question could identify material that would fall out of the tax, namely material used for cell construction and capping of a landfill site.

2.14 Some respondents pointed out that the phases of landfill operations sometimes occur simultaneously across the site with site engineering, for example, also taking place during the operational phase of a landfill.

Table 2.B: Summary of responses to Question 3

Q3	Group	Yes	No	Other
A	Businesses not operating landfill sites	0	5	0
B	Local authorities/councils	0	3	0
C	Trade/sector organisations	1	5	2
D	Landfill site operators	1	4	2
E	Businesses landfilling own waste	0	9	0
F	Agents	0	2	0
G	Environmental groups	0	0	0
H	Members of Parliament/Assemblies	0	0	0
	Total	2	28	4

Question 4: Are you aware of any circumstances where activities not currently subject to tax (or not subject to tax from 1 September 2009) would become subject to tax as a result of the proposal?

2.15 Of those who suggested activities in response to this question, most brought up the Government’s intention to tax daily cover and temporary engineering works. Many (although not all) did not realise that Budget 2009 had announced that this change would come into effect from 1 September 2009 and that the change was not affected by the consultation.

2.16 Some respondents were concerned that some “qualifying materials” exempt from landfill tax by the Landfill Tax (Site Restoration and Quarries) Order 1999 (SI 1999/2075) would be taxable if the lead option in Chapter 3 of the consultation was implemented.

Table 2.C: Summary of responses to Question 4

Q4	Group	Yes	No	Other
A	Businesses not operating landfill sites	4	3	0
B	Local authorities/councils	0	3	0
C	Trade/sector organisations	1	3	1
D	Landfill site operators	4	0	2
E	Businesses landfilling own waste	5	2	3
F	Agents	0	3	0
G	Environmental groups	0	0	0
H	Members of Parliament/Assemblies	0	0	0
	Total	14	14	6

Taxable activities – alternative approach

2.17 The consultation proposed an alternative approach to defining taxable activities would be to specify the disposal phase of a landfill by exemption. For example, activities prior to disposal, such as site construction, would be explicitly exempted from tax, as would activities after disposal, such as capping.

Question 5: Are there any arguments to support the option of using exemptions to remove certain activities from the tax in order to define the taxable activities?

2.18 This was a technical question arising from the proposal to tax all material in a landfill site and then take material out of tax as policy dictated by way of exemption. Many respondents (notably non-landfill site operators) used the question to propose introducing wider tax exemptions. Respondents across all organisations (including landfill site operators) proposed exemption for daily cover, including temporary engineering works, etc.

2.19 Of those that responded to this question, there was a strongly held view that the proposal for exempting plant machinery and equipment only where it is in the tipping area for less than three months was wrong. They pointed out that plant machinery and equipment could legitimately be in the tipping area for far longer.

2.20 A number of legitimate uses of material for engineering purposes were highlighted which were not identified for exemption in the consultation document. Further details were provided by respondents in their answers to Question 8.

Table 2.D: Summary of responses to Question 5

Q5	Group	Yes	No	Other
A	Businesses not operating landfill sites	7	4	0
B	Local authorities/councils	9	1	0
C	Trade/sector organisations	3	4	0
D	Landfill site operators	6	3	0
E	Businesses landfilling own waste	9	1	1
F	Agents	2	1	0
G	Environmental groups	0	0	0
H	Members of Parliament/Assemblies	0	0	0
	Total	36	14	1

Question 6: Are there any other approaches to defining taxable activities?

2.21 Those who responded 'no' to this question stated that they could not think of any alternatives. Those who answered 'yes', however, provided a number of suggestions including:

- exemptions for haul roads, daily cover and bunds;
- a hybrid of the lead option and alternative approach; and
- exemptions if certain environmental permit restrictions were met.

Table 2.E: Summary of responses to Question 6

Q6	Group	Yes	No	Other
A	Businesses not operating landfill sites	3	5	0
B	Local authorities/councils	3	1	0
C	Trade/sector organisations	1	4	0
D	Landfill site operators	3	1	0
E	Businesses landfilling own waste	1	8	1
F	Agents	0	1	0
G	Environmental groups	0	0	0
H	Members of Parliament/Assemblies	0	0	0
	Total	11	20	1

Defining the taxable material

2.22 The consultation pointed out that there were circumstances in which it would not be appropriate to tax material entering the taxable area during the period of the taxable activities – for example, plant machinery and equipment undertaking tipping should not be taxed, as this was clearly not waste. The consultation stated that the Government believed the use of waste for engineering purposes where the purpose of that waste was to act as a substitute for virgin material should not be taxed. The use of material to construct barriers on the bottom or top (cap) of a landfill would not, in any case, be taxable, as this use would not take place during the operational phase of the landfill.

2.23 The consultation lead option was to allow for these circumstances by exclusions for:

- capital items which enter the taxable area during the period of the taxable activities on a short-term, temporary basis - that is, the item was in the area for less than three months;
- cell bunds and side wall lining systems forming part of the engineering structure;
- mineral material including clay used to form separate cells on the base of the landfill as part of the engineered containment; and
- pipework within the body of the landfill used for the extraction of gas or leachate.

2.24 Under this option, daily cover and material used to construct temporary engineering features, such as haul roads and protective barriers (“bund”), would be subject to tax at the point of permanent incorporation into the fill of the landfill site.

Question 7: How could landfill site operators demonstrate to HMRC that material had only been placed in the taxable area on a temporary basis?

2.25 Some respondents (17 per cent) suggested:

- accurate record keeping of quantities of materials in and out of the site, and recording their characterisation;
- transfer and consignment note records; and
- making the assessment of whether something qualifies for exemption by reference to its substance rather than how long it would be there.

2.26 Others mentioned the three month limit for capital items, stating that this was an unrealistic time limit given that plant machinery and equipment could be on the same site, and in the same area, for a number of years.

2.27 The largest single response (20 per cent) to this question, however, related to ash produced in coal-fired power stations with respondents suggesting adopting Article 2(g) of the Landfill Directive (Directive 1993/31/EC). This explicitly states that: "storage of waste prior to recovery or treatment for a period of less than three years as a general rule" was not classified as landfill.

Question 8: Is there anything else that should be excluded from tax on the grounds it is not waste or it is a use of waste for engineering purposes?

2.28 Over 10 per cent of those who answered Question 8 did not support the proposal to include exemptions from the tax. The main points raised by this group of respondents were:

- it would provide loopholes for abuse and would be cumbersome and difficult to regulate;
- existing exemptions on the classifications of waste under environmental regulation should be used; and
- providing the definition of what was considered waste was robust enough, no exclusions should be necessary. Many highlighted construction work outside of the active phase.

2.29 Over half of the respondents to this question who believed that material should be excluded from the tax on the grounds that it was not waste, or it was a use of waste for engineering purposes, cited engineering material, daily cover and material for site restoration. The main justification for excluding daily cover was that it was a requirement of obtaining a permit to operate a landfill site.

2.30 Other materials mentioned by those answering "yes" to this question were plant machinery and equipment used to collect landfill gas (even though these were in fact part of the exclusions listed under the lead option). Some respondents also stated that other potential engineering uses, which should be excluded from taxation and which may be within the waste body, are materials used for the construction of leachate wells (or risers) and landfill gas wells. In addition to the pipework used for leachate and gas extraction, there is also aggregate used to fill the ring of the borehole and support the well casing. The main issue with the plant machinery was the time limit imposed (see answers to Question 7).

Table 2.F: Summary of responses to Question 8

Q8	Group	Yes	No	Other
A	Businesses not operating landfill sites	6	3	1
B	Local authorities/councils	10	1	0
C	Trade/sector organisations	7	0	0
D	Landfill site operators	12	0	1
E	Business landfilling own waste	10	1	0
F	Agents	2	1	0
G	Environmental groups	1	0	0
H	Members of Parliament/Assemblies	0	0	0
	Total	48	6	2

Taxable material – alternative approach

2.31 The consultation set out an alternative approach to defining taxable materials, namely to define waste for the purposes of the tax by reference to the EU Waste Framework Directive (Directive 2006/12/EC). This is transposed in Great Britain by section 75 of the Environmental Protection Act 1990. In Northern Ireland, it is transposed by Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (1997 No. 2998 (N.I. 19)).

Question 9: What other arguments are there for or against defining waste for the purposes of tax (with waste defined by reference to the EU definition of waste)?

2.32 Of the 48 per cent of respondents who provided arguments against the proposals to define waste for the purposes of tax, many cited that the EU definition did not take into account fully the environmental impacts of the waste. Others stated that the current legal definitions following the Waste Recycling Group ruling were sufficient to cover all materials.

2.33 Those who agreed with the alternative proposal supported aligning the definition of waste for tax purposes with the EU definition of waste on the grounds that this would provide a simpler definition for tax purposes. Other respondents suggested that this would incentivise the use of other waste management techniques, thereby reducing the amount of waste sent to landfill.

Table 2.G: Summary of responses to Question 9

Q9	Group	Broadly positive	Broadly negative	Broadly neutral
A	Businesses not operating landfill sites	5	1	1
B	Local authorities/councils	1	2	1
C	Trade/sector organisations	1	4	0
D	Landfill site operators	4	2	0
E	Businesses landfilling own waste	2	6	1
F	Agents	0	1	0
G	Environmental groups	0	0	1
H	Members of Parliament/Assemblies	0	0	0
	Total	13	16	4

What constitutes a taxable disposal

2.34 The consultation sought suggestions for alternative approaches and options for defining what constitutes a taxable disposal.

Question 10: Aside from the options outlined, can you envisage other approaches and options not considered which might be viable or preferable for defining what constitutes a taxable disposal?

2.35 Those who suggested other approaches (22 per cent) wanted the system in place prior to 1 September 2009 (i.e. before the legislative changes made in response to the Waste Recycling Group ruling) to be retained (e.g. not taxing daily cover), as they thought that this was the best way of ensuring that only 'true' waste was taxed. In support of their arguments, many cited previous legal rulings such as the Waste Recycling Group judgment of 2008.

Table 2.H: Summary of responses to Question 10

Q10	Group	Yes	No	Other
A	Businesses not operating landfill	3	4	0
B	Local authorities/councils	3	1	0
C	Trade/sector organisations	5	1	0
D	Landfill site operators	3	0	1
E	Businesses landfilling own waste	3	5	1
F	Agents	1	1	0
G	Environmental groups	0	0	0
H	Members of Parliament/Assemblies	0	0	0
	Total	18	12	2

Practical consequences – consignment to tipping area on entering the site

2.36 The consultation stated that, in many cases, waste entering the site for disposal was immediately consigned to the tipping area. In such circumstances, under the lead options, information gained about the waste at the point it entered the site should be sufficient for the purposes of establishing tax liability at the tax point. No additional weighing or characterising was required. On this basis, there would be no additional administrative burden.

2.37 Under the lead options in the consultation paper, waste would have to be consigned to the tipping area within a certain period of it entering the site. Were consignments not to occur within this time, additional weighing or characterisation would be necessary.

Question 11: What should be the time limit between waste entering the site and it being consigned to the tipping area (waste consigned outside this limit would be required to be submitted to additional weighing or characterisation)?

2.38 A range of time limits was proposed, from thirteen weeks to five years, with the most common response being three years. Many of those who answered the question provided details about why there should be a delay but only a small number (30 per cent) actually suggested a quantitative answer.

2.39 A number of respondents to this question made the point that keeping the tax point at the gate of the site would preclude the need for a time limit. A number of local authorities thought the proposal was overly complicated and that there would be additional costs associated with loading and weighing this material more than once. They thought that operators would have difficulty identifying the consigner of the waste, leading to disputes.

Table 2.I: Summary of responses to Question 11

Q11	Group	Time limit for tipping				
		Up to 6 months	6 months to 1 year	1 to 3 years	Over 3 years	No time limit suggested
A	Business not operating landfill sites	0	2	0	0	7
B	Local authorities/ councils	1	0	0	0	8
C	Trade/ sector organisations	0	0	2	0	3
D	Landfill site operators	2	0	1	1	4
E	Businesses landfilling own waste	0	0	3	1	5
F	Agents	0	0	0	0	3
G	Environmental groups	0	0	0	0	1
H	Members of Parliament/ Assemblies	0	0	0	0	0
	Total	3	2	6	2	31

2.40 The consultation explained that, in a few cases, waste entering the landfill site and intended for ultimate disposal may first be put to a temporary use in, for example, a haul road or bund. Under the consultation's lead option, it would be a requirement that such waste be weighed and characterised immediately prior to tipping (the tax point). There might be some additional administrative burden associated with this requirement. However, the amount of waste involved would be modest.

Question 12: What would be the administrative costs associated with temporary use prior to disposal?

2.41 Of those that answered this question, 41 per cent stated specifically that there would be no significant increase in administrative costs as a result of this proposal. In addition, 24 per cent stated that if the tax point were to be when the waste entered the taxable area, regardless of when it was disposed, this would never be an issue. Of the remaining respondents none mentioned any specific increases in costs.

Question 13: What records are already generated which could be used to establish the tax liability of material used for haul roads, bunds etc?

2.42 The following records that are already generated and that could be used to establish liability were suggested in response to this question:

- weighbridge records;
- waste transfer notes; and
- environmental permit records.

Question 14: What scope is there to use volume to weight calculations, or similar proxies, as opposed to actual weighing?

2.43 Although many respondents to this question mentioned that operators already have proxies available to them as contingency arrangements, most suggested that proxies would not be appropriate, and that the weighbridge remains the best method available, with a few respondents going on to state that the volume to weight calculations should never be used.

Practical consequences – other issues

2.44 The consultation explained that, under the lead options set out in the paper, HMRC envisaged taking powers to request information about temporary features in close proximity to a taxable area. This would give HMRC a degree of forewarning that the material used to construct such features may, in due course, become subject to taxable disposal.

2.45 Under the consultation's lead option, it was envisaged that, as now, a landfill tax account would be held by the operator together with supporting information.

Question 15: Landfill tax legislation currently provides for the tax point to be the invoice date. Would such a tax point continue to be appropriate under the lead options and what adaptations might be necessary?

2.46 The majority (79 per cent) of respondents to this question agreed that the invoice date should remain the tax point under the proposed changes. The main reasons given for this were complexity of other solutions and administrative burdens.

Table 2.J: Summary of responses to question 15

Q15	Group	Yes	No	Other
A	Businesses not operating landfill sites	3	1	2
B	Local authorities/councils	2	0	0
C	Trade/sector organisations	2	1	1
D	Landfill site operators	5	1	0
E	Businesses landfilling own waste	8	0	0
F	Agents	2	0	0
G	Environmental groups	0	0	0
H	Members of Parliament/Assemblies	0	0	0
	Total	22	3	3

Question 16: Do you envisage any practical consequences arising from the lead options which are not discussed here?

2.47 The most common practical consequence raised in response to this question was that waste may change its composition between entering the site, and therefore being weighed, and being disposed of in the taxable area. This could be a change in the water content, or removal of material that could be recycled.

2.48 Other consequences mentioned were the environmental impacts of having too shallow a daily cover layer due to the increased cost, changes to the administration system, the cost that would be incurred, as well as the possibility of illegal disposals or fly-tipping.

Table 2.K: Summary of responses to Question 16

Q16	Group	Yes	No	Other
A	Businesses not operating landfill sites	2	2	1
B	Local authorities/councils	8	1	0
C	Trade /sector organisations	4	1	0
D	Landfill site operators	3	1	2
E	Businesses landfilling own waste	0	0	0
F	Agents	1	1	0
G	Environmental groups	0	0	0
H	Members of Parliament/Assemblies	1	0	0
	Total	19	6	3

Taxable disposal – general comments

2.49 When answering the questions in Chapter 2 of the consultation paper, a number of respondents provided information that could not be allocated to specific questions. The issues raised centred mainly on definitions included within the consultation document and areas not covered under this consultation, such as the taxation of daily cover and temporary engineering works.

3

Wastes that qualify for the lower rate of tax

Lower rate – lead option

3.1 The second half of the consultation proposed following various tests in European legislation for determining which wastes are inert for tax purposes. The benefit of the lower rate would be restricted to these wastes. There would be an end to lower rating on the basis of wastes listed as inert or inactive only for the purposes of the tax.

3.2 The consultation stated that the tests in European legislation provided for a meaningful understanding of waste and its impact. By restricting the benefit of the lower rate according to these tests, the environmental integrity of the tax would be strengthened. There would be greater certainty that lower rated wastes were properly inert.

3.3 The consultation explained that waste was not inert under European legislation where it is mixed with non-inert waste whereas, under current landfill tax legislation, mixed loads may be lower rated where the non-inert part of the load was an incidental quantity.

Question 17: Can you supply information on the extent to which the wastes listed in paragraph 3.8 of the consultation document are still produced in the UK? Do you agree that these wastes are currently lower rated and would become standard rated under the lead option?

3.4 The respondents to this question stated what would become taxable at the standard rate and, although not asked at this point, went on to say whether they agreed or disagreed with this possibility.

3.5 Most councils that replied stated the reclassification of incinerator bottom ash would be contrary to the aims of the tax as it would remove any incentives to investing in energy from waste facilities that deal with municipal waste.

3.6 Electricity producers stated that imposing the standard rate of tax on waste ash from power generation would have a disproportionate impact on the indigenous coal industry owing to the higher ash content of UK coal.

3.7 The salt industry suggested that minerals extracted from brine should continue to be lower rated.

Table 3.A: Summary of responses to Question 17

Q17	Group	Yes	No	Other
A	Businesses not operating landfill sites	11	1	0
B	Local authorities/councils	14	0	0
C	Trade/sector organisations	11	1	1
D	Landfill site operators	9	0	0
E	Businesses landfilling own waste	14	0	0
F	Agents	1	1	0
G	Environmental groups	2	0	0
H	Members of Parliament/Assemblies	0	0	0
	Total	62	3	1

Question 18: Are you aware of any other wastes which would cease to be lower rated under the proposal?

3.8 Although there were a lot of suggestions of material that would cease to be lower rated, most were listed as such in paragraph 3.8 of the consultation document. Some respondents did, however, list other materials that would become subject to the standard rate of landfill tax. These were:

- slightly contaminated soil;
- utility arisings from gas main excavations;
- fragmented waste and mixed timber; and
- non-inert construction soil and stones.

3.9 Some respondents requested that the existing landfill tax rules for mixed loads, where the non-inert part of the load is of incidental quantity, should remain.

Table 3.B: Summary of responses to Question 18

Q18	Group	Yes	No	Other
A	Businesses not operating landfill sites	4	4	0
B	Local authorities/councils	1	12	0
C	Trade/sector organisations	3	5	1
D	Landfill site operators	4	2	0
E	Businesses landfilling own waste	4	9	0
F	Agents	1	1	0
G	Environmental groups	0	1	0
H	Members of Parliament/Assemblies	0	0	0
	Total	17	34	1

Question 19: Are you aware of any wastes which would be brought into the lower rate of tax under the proposal?

3.10 Many of those who reported items that would become lower rated following the proposed changes re-iterated the list presented in the impact assessment on page 38 of the consultation. A few respondents stated that, based on the environmental tests listed in the consultation, plasma furnace slag would become lower rated.

3.11 As with earlier questions, a number of respondents suggested what *should* be lower rated, including non-recyclable plastics and mechanical biological treatment waste.

3.12 A few respondents also questioned the environmental justification of the proposals that could result in the reclassification of the materials listed in the impact assessment, which stated on page 38:

“These classes of waste are of a nature that could cause environmental damage if disposed of without sufficient levels of monitoring and environmental protection.”

Table 3.C: Summary of responses to Question 19

Q19	Group	Yes	No	Other
A	Businesses not operating landfill sites	3	6	0
B	Local authorities/councils	7	3	0
C	Trade/sector organisations	4	5	1
D	Landfill site operators	1	6	0
E	Businesses landfilling own waste	8	4	0
F	Agents	0	1	0
G	Environmental groups	0	1	0
H	Members of Parliament/Assemblies	0	0	0
	Total	23	26	1

Question 20: What would be the impact on particular industries of restricting the lower rate to wastes that are inert according to the EU Landfill Directive? Please quantify impacts or provide data to support arguments.

3.13 Whilst some respondents expressed the view that aligning lower rated wastes with the EU Landfill Directive would give greater clarity for businesses and certainty that wastes were properly inert, most respondents were concerned over the increase in landfill tax liability that businesses would incur. A number cited the impacts of the tax increase on certain industries.

3.14 Many respondents highlighted there would be impacts on the competitiveness of UK-based businesses compared with mainland Europe. This was particularly evident in the responses from electricity producers and utility companies.

3.15 Coal producers, electricity producers and their representative organisations said that due to the higher ash content of UK coal, electricity generators may choose to use other internationally traded coals with a lower ash content. This, they continued, could have a significant negative impact on the UK coal industry.

Question 21: To what extent are alternative waste management solutions (other than landfill) available for wastes that would cease to be lower rated? What would be the costs associated with these solutions?

3.16 When asked about alternative waste management solutions, many respondents affected by the proposals stated that they had explored all possibilities of recycling or reusing the waste beyond the current levels. Alternatives to landfill had not been identified, since markets were already saturated. Many suggested that changing the classification of lower rated wastes would have no beneficial effect on reuse because if the companies could sell their waste as a usable product, they would already be doing so, rather than sending it to landfill.

3.17 Local authorities said that investment in energy from waste facilities to divert waste away from landfill, would increase the quantity of bottom ash waste produced.

Lower rating – alternative approach

3.18 The consultation acknowledged that, while proposing that the criterion for lower rating waste should be entirely based on the waste's inert characteristics, there may be environmental arguments for introducing additional criteria for lower rating waste. These would have to be carefully balanced against the need to develop a robust legislative basis for the tax and to comply with European State Aid rules.

Question 22: What additional criteria for lower rating waste might be appropriate? Which wastes would be lower rated should these criteria be introduced and in what quantities? What tests might such wastes be subject to? What would be the environmental benefits?

3.19 Many agreed that lower rating should be based on environmental impacts, but thought that stable waste should be included as these wastes do not degrade, resulting in no production of greenhouse gases and a very low risk of leaching.

3.20 Some respondents said that the Waste Acceptance Criteria were not introduced to determine tax on waste but set to determine the nature of waste accepted at landfill and the level of associated engineering controls.

3.21 Other respondents suggested setting landfill tax rates to reward good environmental behaviour, including lower rates for wastes from mechanical biological treatment. Others suggested aligning rates to the six classifications of waste as per Table 1 of Council Decision 19 December 2002: 2003/33/EC.

Lower rate transitional arrangements – lead option

3.22 The consultation suggested that there might be a case for transitional arrangements to assist in managing the impact of wastes moving from the lower rate to the standard rate of tax.

3.23 The consultation's lead option was to delay the implementation of the more restrictive definition for a year from the implementation of the other changes in the consultation paper. This delay would provide an opportunity to find alternative waste management options for the wastes in question.

Question 23: What are your views on the option of delaying the restriction of the lower rate? Would there be any quantifiable benefit in delaying for longer than a year from implementation of the other changes?

3.24 Of those who supported the idea of delaying the restriction of the lower rate, most cited the delay as allowing time for planning and implementing the changes to their accounting systems. Other responses stated that a delay would allow additional time to research alternative waste management solutions. However, most respondents stated that there was little point in introducing a transitional period of only 12 months as this would not be long enough to provide an incentive to develop and explore alternative options or approaches to waste management.

Table 3.D: Summary of responses to Question 23

Q23	Group	Broadly positive	Broadly negative	Broadly neutral	Other
A	Businesses not operating landfill sites	6	2	2	0
B	Local authorities/councils	11	1	1	0
C	Trade/sector organisations	9	1	0	1
D	Landfill site operators	5	1	0	0
E	Businesses landfilling own waste	11	1	0	0
F	Agents	0	1	1	0
G	Environmental groups	1	2	0	0
H	Members of Parliament/ Assemblies	0	0	0	0
	Total	43	9	4	1

Lower rate transitional arrangements – alternative approaches

3.25 An alternative transitional approach was suggested in the consultation, namely giving waste moving from the lower rate to the standard rate the benefit of a separate transitional rate for a defined period of time. This transitional rate would be set at a point between the standard and lower rate and would be applied to wastes on a list prescribed in legislation.

Question 24: What are the benefits and disadvantages of a transitional rate?

3.26 The benefits of a transitional rate, as suggested by 69 per cent of respondents, was that it would allow time to assess the impacts of the changes, allow industries to develop alternative waste management solutions and lessen the financial impact of these changes.

3.27 The disadvantages put forward to the introduction of a transitional period were that the delay would have a negative impact on the UK economy and the environment, would hinder development of more efficient waste management solutions, and would increase administrative burdens.

Table 3.E: Summary of responses to Question 24

Q24	Group	Benefits	Disadvantages	Other
A	Businesses not operating landfill sites	5	4	1
B	Local authorities/councils	12	0	0
C	Trade/sector organisations	5	3	0
D	Landfill site operators	2	4	0
E	Businesses landfilling own waste	9	0	0
F	Agents	0	1	0
G	Environmental groups	0	1	1
H	Members of Parliament/Assemblies	0	0	0
	Total	33	13	2

Question 25a: What should be the level of the transitional rate?

3.28 Although this question did give rise to a good number of responses, only two respondents suggested a financial value, both of which were between £5 and £10.

Question 25b - How long should the transitional rate be kept in place?

3.29 There was a greater focus on the second part of the question. However, as with the first half of this question, the number of respondents who provided a value for the transitional period was low. The favoured time frame was over five years with nine respondents wanting at least 10 years (six of these from electricity producers). There were additional comments received, which focused on the effect this change could have on achieving the targets set out in the EU Landfill Directive.

3.30 The single largest response was for the transitional rate to be escalated over a period of time until it reached the level of the standard rate.

Table 3.F: Summary of responses to Question 25b

Q25B	Group	Time transitional rate to be kept in place				
		Up to 1 year	1 to 3 years	3 to 5 years	Over 5 years	No time limit suggested
A	Businesses not operating landfill sites	1	2	1	1	2
B	Local authorities/councils	0	1	1	1	10
C	Trade/sector organisations	1	1	4	1	3
D	Landfill site operators	0	2	0	0	3
E	Businesses landfilling own waste	0	0	0	6	3
F	Agents	0	0	0	0	0
G	Environmental groups	0	0	0	0	0
H	Members of Parliament/Assemblies	0	0	0	0	0
	Total	2	6	6	9	21

Question 26: Which wastes which are currently lower rated should be able to benefit from the transitional rate?

3.31 The wastes suggested by the respondents were those wastes that would become subject to the standard rate following the proposed re-classification. The most prominent wastes suggested were pulverised fuel ash and incinerator bottom ash.

Lower rating – General comments

3.32 As with the taxable disposal section of the consultation, some comments did not fit the questions asked. The main points raised by respondents were to question the validity of the assertion that there was an environmental driver for changing the scope of the lower rate. Many argued that the materials that would become standard rated waste produced little more environmental damage than those that would continue to be lower rated.

3.33 Other points raised were the underestimation of effects within the impact assessment regarding the additional revenue and that existing exemptions were not covered in this consultation, particularly the quarry exemption.

A

List of respondents

- 1 Advanced Plasma Power Limited
- 2 Aggregate Industries Limited
- 3 Alex Smiles Ltd
- 4 Association for Organics Recycling
- 5 Association of Electricity Producers
- 6 Augean PLC
- 7 Barr Environmental Ltd
- 8 Biffa Ltd
- 9 Biogenie Site Remediation Ltd
- 10 British Aggregates Association
- 11 British Association of Colliery Management
- 12 British Gypsum
- 13 British Metals Recycling Association
- 14 British Retail Consortium
- 15 British Salt
- 16 British Waterways
- 17 Brunner Mond (UK) Limited
- 18 Cambridgeshire County Council
- 19 Chartered Institute of Taxation
- 20 Chartered Institute of Wastes Management
- 21 Chemical Industries Association
- 22 Coallmp
- 23 Confederation of British Industry
- 24 Confederation of UK Coal Producers
- 25 Corus
- 26 CSR Associates
- 27 Deloitte LLP
- 28 Devon County Council

- 29 Donarbon Ltd of Waterbeach
- 30 Drax Power Limited
- 31 Dudley M.B.C
- 32 E.ON UK
- 33 East Sussex County Council
- 34 EDF Energy
- 35 EEF
- 36 Eggborough Power Ltd
- 37 Enpure Ltd
- 38 Environment Agency
- 39 Environmental Industries Commission
- 40 Environmental Services Association
- 41 Foundry Industry Environmental Committee
- 42 Friends of the Earth
- 43 Gateshead Council
- 44 Graphite Resources
- 45 Green Alliance
- 46 Halton Borough Council
- 47 Hampshire County Council
- 48 HRM Resources Limited
- 49 Huber Technology
- 50 Ineos Enterprises Limited, Brine & Water Business
- 51 International Power plc
- 52 Kirklees Council
- 53 Knox Associates (UK) Ltd
- 54 Lafarge Aggregates Limited
- 55 Lancashire County Council
- 56 Leicestershire County Council
- 57 Local Authority Recycling Advisory Committee
- 58 Magnesium Elektron UK
- 59 Merseyside Waste Disposal Authority
- 60 Mick George Ltd
- 61 Millennium Inorganic Chemicals (MIC)
- 62 Mineral Products Association

- 63 MJM Strategies Ltd
- 64 MVV Environment
- 65 National Association of Waste Disposal Officers
- 66 National Grid
- 67 Newry & Mourne District Council
- 68 Norfolk Environmental Waste Services Ltd
- 69 Northamptonshire County Council
- 70 Northern Ireland Assembly
- 71 Outokumpu Stainless
- 72 Patersons Quarries Ltd
- 73 Pennon Group PLC
- 74 Peter Brett Associates LLP - On behalf of Association of Geotechnical & Geoenvironmental Specialists
- 75 Price Waterhouse Coopers
- 76 Public Interest Agents
- 77 r3 Environmental Technology Ltd
- 78 Rio Tinto Alcan
- 79 Rockwood Additives Limited
- 80 RWE Npower
- 81 Scottish & Southern Electric
- 82 Scottish Power
- 83 Scottish Resources Group
- 84 Sembcorp Utilities (UK) Limited
- 85 Severn Waste Services, Mercia Waste Management
- 86 Shropshire Council
- 87 Silica and Moulding Sands Association
- 88 Sims Metal Management
- 89 Sita UK
- 90 South Cambridgeshire District Council
- 91 Southern Waste Management Partnership
- 92 Staffs Municipal Waste Strategy
- 93 Stoke on Trent City Council
- 94 Tarmac Ltd
- 95 Tetronics Limited

- 96 Thames Water
- 97 UK Coal Mining Ltd
- 98 Veolia Environmental Services (United Kingdom) Plc
- 99 Waste Recycling Group
- 100 Waste Watch
- 101 West London Waste Authority
- 102 Western Riverside Waste Authority
- 103 William Cook Cast Products Limited
- 104 Willie Rennie MP
- 105 Yorwaste Ltd

B

Number of responses by question and group of respondents

	Businesses not operating landfill sites	Businesses not operating landfill sites	Local authorities/councils	Trade/sector organisations	Landfill site operators	Businesses landfilling own waste	Agents	Environmental groups	Members of Parliament/Assemblies	Totals
Q1	8	4	5	8	11	3	0	0	39	
Q2	7	5	7	7	10	2	0	0	38	
Q3	5	3	8	7	9	2	0	0	34	
Q4	7	3	5	6	10	3	0	0	34	
Q5	11	10	7	9	11	3	0	0	51	
Q6	8	4	5	4	10	1	0	0	32	
Q7	7	2	7	6	9	3	0	0	34	
Q8	10	11	7	13	11	3	1	0	56	
Q9	7	4	5	6	9	1	1	0	33	
Q10	7	4	6	4	9	2	0	0	32	
Q11	9	9	5	8	9	3	1	0	44	
Q12	3	8	4	5	9	0	0	0	29	
Q13	3	3	5	6	9	1	0	0	27	
Q14	7	8	4	7	10	1	0	0	37	
Q15	6	2	4	6	8	2	0	0	28	
Q16	5	9	5	6	0	2	0	1	28	
Q17	12	14	13	9	14	2	2	0	66	
Q18	8	13	9	6	13	2	1	0	52	
Q19	9	10	10	7	12	1	1	0	50	
Q20	16	5	10	7	14	2	2	1	57	
Q21	11	13	12	8	14	2	1	1	62	
Q22	13	11	11	6	14	1	3	1	60	
Q23	10	13	11	6	12	2	3	0	57	
Q24	10	12	8	6	9	1	2	0	48	
Q25	7	13	10	5	9	0	0	0	44	
Q26	7	11	5	2	9	0	0	0	34	

HM Treasury contacts

This document can be found in full on our website at:

hm-treasury.gov.uk; and
hmrc.gov.uk

If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

Correspondence and Enquiry Unit
HM Treasury
1 Horse Guards Road
London

SW1A 2HQ

Tel: 020 7270 4558

Fax: 020 7270 4861

E-mail: public.enquiries@hmtreasury.gov.uk

ISBN 978-1-84532-660-9



9 781845 326609 >