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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 3**

**LANDFILL TAX**

**The Scottish Landfill Tax (Administration) Regulations 2015**

*Made - - - - 8th January 2015*

*Laid before the Scottish*

*Parliament - - - - 9th January 2015*

*Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 15, 18, 19, 20, 22(9), 23, 25, 30, 32 and 37(1) and (4) to (7) of the Landfill Tax (Scotland) Act 2014<sup>(1)</sup> and all other powers enabling them to do so.

**PART 1**

**Preliminary**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Scottish Landfill Tax (Administration) Regulations 2015.

(2) These Regulations come into force on 1st April 2015, except this Part and Part 2 which come into force on 16th February 2015.

**Interpretation**

2.—(1) In these Regulations—

“accounting period” means—

(a) in the case of—

(i) a registered person, each period of 3 months ending on the dates notified by Revenue Scotland;

(ii) a registrable person who is not registered, each period of 3 months; or

(b) in the case of any registrable person, such other period in relation to which the person is required by or under regulation 10 to make a return;

“the Act” means the Landfill Tax (Scotland) Act 2014;

“credit”, except where the context otherwise requires, means credit which a person is entitled to claim under Part 4 of these Regulations;

“disposal” means a taxable disposal (which expression has the meaning given in section 3(2) of the Act) made on or after 1st April 2015 and “disposed of” is to be construed accordingly;

“effective date of registration” means the date determined in accordance with section 22 of the Act upon which the person was or should have been registered;

“landfill invoice” means an invoice of the description in regulation 34;

“landfill site” has the meaning given in section 12(1) of the Act;

“the landfill tax bad debt account” has the meaning given in regulation 22(3);

“quarter” means a period of three months ending on the last day of March, June, September or December;

“registered person” means a person who is registered under section 22 of the Act and “register” and “registration” are to be construed accordingly;

“registrable person” has the meaning given in section 22(10) of the Act;

“registration number” means the identifying number allocated to a registered person and notified to that person by Revenue Scotland;

“return” means a return which is required to be made in accordance with regulation 10;

“the RSTP Act” means the Revenue Scotland and Tax Powers Act 2014(2);

“taxable business” means a business or part of a business in the course of which taxable activities (which expression has the meaning given in section 21(1) of the Act) are carried out;

“transfer note” means transfer note within the meaning of the Environmental Protection (Duty of Care) (Scotland) Regulations 2014(3);

“transfer site” is a facility authorised by SEPA for the storage or treatment of waste, or both, and which sends more than 2.500T of waste per annum offsite for the purpose of landfill, with a destination either inside Scotland or in the rest of the UK;

“working day” means any day of the week except Saturday, Sunday or a day which is a bank holiday or public holiday for Scotland.

(2) In these Regulations any question whether a person is connected with another shall be determined in accordance with section 1122 of the Corporation Tax Act 2010(4).

## PART 2

### Registration and provision for special cases

#### Notification of liability to be registered

3.—(1) A person who is required by section 22(3) of the Act to notify Revenue Scotland of an intention to carry out taxable activities shall do so in accordance with Revenue Scotland administrative arrangements, including the formatting of the notification.

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(2) 2014 asp 16.  
(3) S.S.I. 2014/4.  
(4) 2010 c.4.

(2) The notification referred to in this regulation shall be made within 30 days of the earliest date after 15th February 2015 on which the person either forms or continues to have the intention to carry out taxable activities.

### **Changes in particulars**

4.—(1) A person who has made a notification under regulation 3, whether or not it was made in accordance with paragraph (2) of that regulation, shall, within 30 days of—

- (a) discovering any inaccuracy in; or
- (b) any change occurring which causes to become inaccurate,

any of the information which was contained in or provided with the notification, notify Revenue Scotland in writing and furnish it with full particulars.

(2) Without prejudice to paragraph (1) above, a registrable person shall, within 30 days of any change occurring in any of the circumstances referred to in paragraph (4) below, notify Revenue Scotland in writing and furnish it with particulars of—

- (a) the change; and
- (b) the date on which the change occurred.

(3) A registrable person who discovers that any information contained in or provided with a notification under paragraph (1) or (2) above was inaccurate shall, within 30 days of discovering the inaccuracy, notify Revenue Scotland in writing and furnish it with particulars of—

- (a) the inaccuracy;
- (b) the date on which the inaccuracy was discovered;
- (c) how the information was inaccurate; and
- (d) the correct information.

(4) The circumstances mentioned in paragraph (2) above are the following circumstances relating to the registrable person or any taxable business carried on by that person—

- (a) the person's name, trading name (if different) and address and the landfill sites which the person operates;
- (b) the person's status, namely whether carrying on business as a sole proprietor, body corporate, partnership or other unincorporated body;
- (c) in the case of a partnership, the name and address of any partner.

(5) Any person failing to comply with a requirement imposed in any of paragraphs (1) to (3) above shall be liable to a penalty under section 209 of the RSTP Act.

(6) Where, in relation to a registered person, Revenue Scotland is satisfied that any of the information recorded in the register is or has become inaccurate, it may correct the register accordingly.

(7) For the purposes of paragraph (6) above, it is immaterial whether or not the registered person has notified Revenue Scotland of any change which has occurred in accordance with paragraphs (1) to (3) above.

### **Notification of cessation of taxable activities**

5. A person who is required by section 22(4) of the Act to notify Revenue Scotland of the person's having ceased to have the intention to carry out taxable activities shall, within 30 days of the person's so having ceased, notify Revenue Scotland in writing and shall therein inform it of—

- (a) the date on which the person ceased to have the intention of carrying out taxable activities; and

- (b) if different, the date on which the person ceased to carry out taxable activities.

### **Transfer of a going concern**

**6.—(1) Where—**

- (a) a taxable business is transferred as a going concern;
- (b) the registration of the transferor has not already been cancelled;
- (c) as a result of the transfer of the business the registration of the transferor is to be cancelled and the transferee has become liable to be registered; and
- (d) an application is made in respect of the transfer by both the transferor and the transferee,

Revenue Scotland may with effect from the date of the transfer cancel the registration of the transferor and register the transferee with the registration number previously allocated to the transferor.

(2) An application under paragraph (1) above shall be treated as the notification referred to in regulation 5.

(3) Where the transferee of a business has been registered under paragraph (1) above with the registration number previously allocated to the transferor—

- (a) any liability of the transferor existing at the date of the transfer to make a return or account for or pay any tax under Part 3 of these Regulations shall become the liability of the transferee;
- (b) any entitlement of the transferor, whether or not existing at the date of the transfer, to credit or payment under Part 4 of these Regulations shall become the entitlement of the transferee.

(4) In addition to the provisions set out in paragraph (3) above, where the transferee of a business has been registered under paragraph (1) above with the registration number previously allocated to the transferor during an accounting period subsequent to that in which the transfer took place (but with effect from the date of the transfer) and any—

- (a) return has been made;
- (b) tax has been accounted for; or
- (c) entitlement to credit has been claimed,

by either the transferor or the transferee, it shall be treated as having been done by the transferee.

**(5) Where—**

- (a) a taxable business is transferred as a going concern;
- (b) the transferee removes material as described in regulation 17(2) or (4); and
- (c) the transferor has paid tax on the disposal concerned,

then, whether or not the transferee has been registered under paragraph (1) above with the registration number previously allocated to the transferor, any entitlement to credit arising under Part 5 of these Regulations shall become the entitlement of the transferee.

### **Representation of unincorporated body**

**7.—(1) Where anything is required to be done by or under the Act (whether by these Regulations or otherwise) by or on behalf of an unincorporated body other than a partnership, it shall be the joint and several responsibility of—**

- (a) every member holding office as president, chairman, treasurer, secretary or any similar office;

(b) if there is no such office, every member holding office as a member of a committee by which the affairs of the body are managed; or

(c) if there is no such office or committee, every member;

but, subject to paragraph (2) below, if it is done by any of the persons referred to above that shall be sufficient compliance with any such requirement.

(2) Where an unincorporated body other than a partnership is required to make any notification such as is referred to in regulations 3 to 5, it shall not be sufficient compliance unless the notification is made by a person upon whom a responsibility for making it is imposed by paragraph (1) above.

(3) Where anything is required to be done by or under the Act (whether by these Regulations or otherwise) by or on behalf of a partnership, it shall be the joint and several responsibility of every partner; but if it is done by one partner or, in the case of a partnership whose principal place of business is in Scotland, by any other person authorised by the partnership with respect thereto that shall be sufficient compliance with any such requirement.

### **Bankruptcy or incapacity of registrable persons**

**8.—**(1) If a registrable person becomes bankrupt or incapacitated, Revenue Scotland may, from the date on which the registrable person became bankrupt or incapacitated, as the case may be, treat as a registrable person any person carrying on any taxable business of the registrable person; and any legislation relating to Scottish landfill tax shall apply to any person so treated as though that person were a registered person.

(2) Any person carrying on such business as aforesaid shall, within 30 days of commencing to do so, inform Revenue Scotland in writing of that fact and the date of the bankruptcy order or of the nature of the incapacity and the date on which it began.

(3) Where Revenue Scotland have treated a person carrying on a business as a registrable person under paragraph (1) above, they shall cease so to treat that person if—

(a) the registration of the registrable person is cancelled, whether or not any other person is registered with the registration number previously allocated to the registrable person;

(b) the bankruptcy is discharged or the incapacity ceases; or

(c) the person ceases carrying on the business of the registrable person.

(4) In relation to a registrable person which is a company, the references in this regulation to the registrable person becoming incapacitated shall be construed as references to its going into liquidation or receivership or entering administration; and references to the incapacity ceasing shall be construed accordingly.

## **PART 3**

### **Accounting, payment, and non-disposal areas**

#### **Interpretation**

**9.** In this Part, the first accounting period of a registrable person shall begin on the effective date of registration.

#### **Making of returns**

**10.—**(1) Subject to paragraph (3) below and save as Revenue Scotland may otherwise allow, a registrable person shall, in respect of each accounting period, make a return to Revenue Scotland.

(2) Subject to paragraph (3) below, a registrable person shall make each return not later than 44 days following the end of the period to which it relates.

(3) Where Revenue Scotland consider it necessary in the circumstances of any particular case, it may—

- (a) vary the length of any accounting period or the date on which it begins or ends or by which any return must be made;
- (b) allow or direct the registrable person to make a return in accordance with sub-paragraph (a) above;
- (c) allow or direct a registrable person to make returns to a specified address,

and any person to whom Revenue Scotland gives any direction such as is referred to in this regulation shall comply therewith.

### **Payment of tax**

**11.**—(1) Where a return is to be made under regulation 10, the tax or additional tax payable must be paid to Revenue Scotland at the same time as the return is made.

(2) Tax payable as a result of the amendment of a return must be paid at the same time as the amendment is made.

(3) For the purposes of subsections (1) and (2), tax is treated as paid if arrangements satisfactory to Revenue Scotland are made for payment of the tax.

(4) A return under regulation 10 must also include a declaration by the taxpayer that the return is, to the best of the taxpayer's knowledge, correct and complete.

(5) However, where the taxpayer authorises an agent to complete the return, the agent must certify in the return that the taxpayer has declared that the information provided in the return is to the best of the taxpayer's knowledge, correct and complete.

(6) Revenue Scotland shall not be obliged to reimburse any tax owed by it to an operator (as defined in section 12(2) of the Act) until any outstanding tax return has been made by the operator and tax in respect of the return has been paid to Revenue Scotland.

(7) See section 74 of the RSTP Act for the taxpayer's right to amend a return and sections 100 to 103 of that Act in respect of defences by Revenue Scotland of unjustified enrichment in respect of a claim by the taxpayer for reimbursement in respect of an overpayment of tax.

### **Non-disposal areas**

**12.**—(1) An officer of Revenue Scotland is authorised to require a person to designate a part of a landfill site (a "non-disposal area"), and a person must designate a non-disposal area if so required.

(2) Where material at a landfill site is not going to be disposed of as waste and Revenue Scotland considers, or one of its officers considers, there to be a risk to the collection of landfill tax—

- (a) the material must be deposited in a non-disposal area; and
- (b) a registrable person must give Revenue Scotland, or one of its officers, information and maintain a record in accordance with paragraph (4) below.

(3) A designation ceases to have effect if a notice in writing to that effect is given to a registrable person by Revenue Scotland.

(4) A registrable person must maintain a record in relation to the non-disposal area of the following information, and give this information to Revenue Scotland or to one of its officers if requested—

- (a) the weight and description of all material deposited there;

- (b) the intended destination or use of all such material and, where any material has been removed or used, the actual destination or use of that material;
- (c) the weight and description of any such material sorted or removed.

## PART 4

### Credit: general

#### Interpretation

**13.** In this Part—

“relevant accounting period” means—

- (a) in the case of an entitlement to credit arising under Part 5 of these Regulations, the accounting period in which the reuse condition or, as the case may be, the enforced removal condition was satisfied;
- (b) in the case of an entitlement to credit arising under Part 6 of these Regulations, the accounting period in which the period of one year from the date of the issue of the landfill invoice expired;
- (c) in the case of an entitlement arising under Part 7 of these Regulations, the accounting period in which the qualifying contribution was made;

“relevant amount” means the amount of the credit as determined in accordance with Part 5, 6 or 7 of these Regulations, as the case may be;

“relevant tax” means the tax, if any, that was required to have been paid as a condition of the entitlement to credit.

#### Scope

**14.—(1)** This Part applies to entitlements to credit arising under Part 5, 6 or 7 of these Regulations.

(2) No credit arising under any provision of these Regulations may be claimed except in accordance with this Part.

#### Claims in returns

**15.—(1)** Subject to paragraphs (2) and (3) below, a person entitled to credit may claim it by deducting its amount from any tax due from the person for the relevant accounting period or any subsequent accounting period and, where that is done, the person shall make a return for that accounting period accordingly.

(2) Where the entitlement to credit arises under Part 7 of these Regulations, paragraph (1) above shall apply as if there were substituted for “or any subsequent accounting period” the words “or any subsequent accounting period in the same contribution year as determined in relation to that person under regulation 27”.

(3) Revenue Scotland may make directions generally or with regard to particular cases prescribing rules in accordance with which credit may or shall be held over to be credited in an accounting period subsequent to the relevant accounting period; and where such a direction has been made that credit, subject to any subsequent such direction varying or withdrawing the rules, may only be claimed in accordance with those rules.

### **Payments in respect of credit**

16.—(1) Subject to paragraph (5) below, where the total credit claimed by a registrable person in accordance with this Part exceeds the total of the tax due from the person for the accounting period, Revenue Scotland shall pay to the person an amount equal to the excess.

(2) Where Revenue Scotland has cancelled the registration of a person in accordance with section 22(6) of the Act, and the person is not a registrable person, the person shall make any claim in respect of credit to which this Part applies by making an application in writing.

(3) A person making an application under paragraph (2) above shall furnish to Revenue Scotland full particulars in relation to the credit claimed, including (but not restricted to)—

- (a) except in the case of an entitlement to credit arising under Part 7 of these Regulations, the return in which the relevant tax was accounted for;
- (b) except in the case of an entitlement to credit arising under Part 7 of these Regulations, the amount of the tax and the date and manner of its payment;
- (c) the events by virtue of which the entitlement to credit arose.

(4) Subject to paragraph (5) below, where Revenue Scotland is satisfied that a person who has made a claim in accordance with paragraphs (2) and (3) above is entitled to credit, and that the person has not previously had the benefit of that credit, it shall pay to the person an amount equal to the credit.

(5) Revenue Scotland shall not be liable to make any payment under this regulation unless and until the person has made all the returns which the person was required to make.

## **PART 5**

### **Credit: permanent removals etc**

#### **Entitlement to credit**

17.—(1) An entitlement to credit arises under this Part where—

- (a) a registered person has accounted for an amount of tax and, except where the removal by virtue of which sub-paragraph (b) below is satisfied takes place in the accounting period in which credit arising under this Part is claimed in accordance with Part 4 of these Regulations, the registered person has paid that tax; and
- (b) in relation to the disposal on which that tax was charged, either—
  - (i) the reuse condition has been satisfied; or
  - (ii) the enforced removal condition has been satisfied.

(2) The reuse condition is satisfied where—

- (a) the disposal has been made with the intention that the material comprised in it—
  - (i) would be recycled or incinerated;
  - (ii) removed for use (other than by way of a further disposal) at a place other than a relevant site; or
  - (iii) removed for use in restoration of a relevant site and the material involved has previously been used to create or maintain temporary hard standing, to create or maintain a temporary screening bund or to create or maintain a temporary haul road;
- (b) that material, or some of it, has been recycled, incinerated or permanently removed from the landfill site, as the case may be, in accordance with that intention;



- (c) that recycling, incineration or removal—
    - (i) has taken place no later than one year after the date of the disposal; or
    - (ii) where water had been added to the material in order to facilitate its disposal, has taken place no later than five years after the date of the disposal; and
  - (d) the registered person has, before the disposal, notified Revenue Scotland in writing that the registered person intends to make one or more removals of material in relation to which sub-paragraphs (a) to (c) above will be satisfied.
- (3) For the purpose of paragraph (2)(a)(ii) above a relevant site is the landfill site at which the disposal was made or any other landfill site.
- (4) The enforced removal condition is satisfied where—
- (a) the disposal is in breach of the terms of the licence or permit, as the case may be, by virtue of which the land constitutes a landfill site;
  - (b) the registered person has been directed to remove the material comprised in the disposal, or some of it, by the Scottish Environment Protection Agency and the registered person has removed it, or some of it; and
  - (c) a further taxable disposal of the material has been made and, except where the registered person is the person liable for the tax chargeable on that further disposal, the registered person has paid to the site operator an amount representing that tax.
- (5) The amount of the credit arising under this Part shall be equal to the tax that was charged on the disposal; except that where only some of the material comprised in that disposal is removed, the amount of the credit shall be such proportion of that tax as the material removed forms of the total of the material.
- (6) In this regulation—
- “disposal area” means any area of a landfill site where any disposal takes place;
  - “hard standing” means a base within a landfill site on which any landfill site activity such as sorting, treatment, processing, storage or recycling is carried out;
  - “haul road” means any road within the landfill site which gives access to a disposal area;
  - “screening bund” means any structure on a landfill site (whether below or above ground) put in place to protect or conceal any landfill site activity or to reduce nuisance from noise.

## PART 6

### Credit: bad debts

#### Interpretation

**18.** In this Part—

- “claim” means a claim in accordance with Part 4 of these Regulations for an amount of credit arising under this Part and “claimant” shall be construed accordingly;
- “customer” means a person for whom a taxable activity is carried out by the claimant;
- “outstanding amount” means, in relation to any claim—
  - (a) if at the time of the claim the claimant has received no payment in respect of the amount written off in his accounts, the amount so written off; or
  - (b) if at that time he has received a payment, the amount by which the amount written off exceeds the payment (or the aggregate of the payments);

“relevant disposal” means any taxable disposal upon which a claim is based;

“security” means—

- (a) in relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and right of retention (other than a right of compensation or set-off); and
- (b) in relation to England, Wales and Northern Ireland, any mortgage, charge, lien or other security.

### **Scope**

**19.** An entitlement to credit arises under this Part where—

- (a) a registered person has carried out a taxable activity for a consideration in money for a customer with whom the registered person is not connected;
- (b) the registered person has accounted for and paid tax on the disposal concerned;
- (c) the whole or any part of the consideration for the disposal has been written off in the registered person’s accounts as a bad debt;
- (d) the registered person has issued a landfill invoice in respect of the disposal which shows the amount of tax chargeable;
- (e) that invoice was issued—
  - (i) within 14 days of the date of the disposal; or
  - (ii) within such other period as may have been specified by Revenue Scotland;
- (f) a period of one year (beginning with the date of the issue of that invoice) has elapsed; and
- (g) the following provisions of this Part have been complied with.

### **Amount of credit**

**20.** The credit arising under this Part shall be of an amount equal to such proportion of the tax charged on the relevant disposal as the outstanding amount forms of the total consideration.

### **Evidence required in support of claim**

**21.** The claimant, before making a claim, shall hold in respect of each relevant disposal—

- (a) a copy of the landfill invoice issued by the claimant;
- (b) records or any other documents showing that the claimant has accounted for and paid tax on the disposal; and
- (c) records or any other documents showing that the consideration has been written off in the claimant’s accounts as a bad debt.

### **Records required to be kept**

**22.—(1)** Any person who makes a claim shall make a record of that claim.

(2) The record referred to in paragraph (1) above shall contain the following information in respect of each claim made—

- (a) in respect of each relevant disposal—
  - (i) the amount of tax charged;
  - (ii) the return in which that tax was accounted for and when it was paid;
  - (iii) the date and identifying number of the landfill invoice that was issued;

- (iv) any consideration that has been received (whether before the claim was made or subsequently);
  - (v) the details of any transfer note;
  - (b) the outstanding amount;
  - (c) the amount of the claim;
  - (d) the return in which the claim was made.
- (3) Any records made in pursuance of this regulation shall be kept in a single account known as “the landfill tax bad debt account”.

### **Attribution of payments**

**23.—**(1) Where—

- (a) the claimant has carried out a taxable activity for a customer;
- (b) there exist one or more other matters in respect of which the claimant is entitled to a debt owed by the customer (whether they involve a taxable disposal or not and whether they are connected with waste or not); and
- (c) a payment has been received by the claimant from the customer,

the payment shall be attributed to the taxable activity and the other matters in accordance with the rule set out in paragraphs (2) and (3) below (and the debts arising in respect of the taxable activity and the other matters are collectively referred to in those paragraphs as debts).

(2) The payment shall be attributed to the debt which arose earliest and, if not wholly attributed to that debt, thereafter to debts in the order of the dates on which they arose, except that attribution under this paragraph shall not be made if the payment was allocated to a debt by the customer at the time of payment and the debt was paid in full.

(3) Where—

- (a) the earliest debt and the other debts to which the whole of the payment could be attributed arose on the same day; or
- (b) the debts to which the balance of the payment could be attributed in accordance with paragraph (2) above arose on the same day,

the payment shall be attributed to those debts by multiplying, for each such debt, the payment made by a fraction of which the numerator is the amount remaining unpaid in respect of that debt and the denominator is the amount remaining unpaid in respect of all those debts.

### **Repayment of credit**

**24.—**(1) Where—

- (a) a claimant has benefited from an amount of credit to which the claimant was entitled under this Part; and
- (b) either—
  - (i) a payment for the relevant disposal is subsequently received; or
  - (ii) a payment is, by virtue of regulation 23, treated as attributed to the relevant disposal,

the claimant shall repay to Revenue Scotland such amount as equals the amount of the credit, or the balance thereof, multiplied by a fraction of which the numerator is the amount so received or attributed, and the denominator is the amount of the outstanding consideration.

(2) Where the claimant—

- (a) fails to comply with the requirements of regulation 22; or

- (b) in relation to the documents mentioned in that regulation, fails to comply with either—
- (i) section 99(1) of the RSTP Act; or
  - (ii) any obligation arising under 111(4)(a) of that Act,

the claimant shall repay to Revenue Scotland the amount of the claim to which the failure to comply relates.

### **Writing off debts**

**25.—**(1) This regulation shall apply for the purpose of determining whether, and to what extent, the consideration is to be taken to have been written off as a bad debt.

(2) The whole or any part of the consideration for a taxable activity shall be taken to have been written off as a bad debt where—

- (a) the customer has become insolvent—
  - (i) through sequestration or bankruptcy or entering into any accommodation with the customer’s creditors; or
  - (ii) by going into insolvent winding up or by entering administration;
- (b) the claimant because of the insolvency of the customer has to any extent not been able to recover the consideration;
- (c) the claimant has written it off in accounts as a bad debt; and
- (d) the claimant has made an entry in relation to that activity in the landfill tax bad debt account in accordance with regulation 22 (and this shall apply regardless of whether a claim can be made in relation to that activity at that time).

(3) Where the claimant owes an amount of money to the customer which can be set off, the consideration written off in the landfill tax bad debt account shall be reduced by the amount so owed.

(4) Where the claimant holds in relation to the customer an enforceable security, the consideration written off in the landfill tax bad debt account shall be reduced by the value of the security.

## **PART 7**

### **Credit: bodies concerned with the environment**

#### **Interpretation and general provisions**

**26.—**(1) In this Part—

“approved body” means a body approved by the regulatory body under regulation 31(1)(a) as a distributing body for transferring qualifying contributions to projects enrolled with the approved body (and only such projects);

“approved object” has the meaning given in regulation 29;

“contributing third party” means a person who has made or agreed to make (whether or not under a legally binding agreement) a payment to a registered person to secure the making by the registered person of a qualifying contribution or to reimburse the registered person, in whole or in part, for any such contribution that person has made;

“income” means—

- (a) interest;

- (b) the proportion of any proceeds attributable to the initial acquisition and disposal of an asset (or part of an asset) purchased with a qualifying contribution (or part of a qualifying contribution); or
- (c) the proportion of any proceeds attributable to any subsequent acquisition and disposal of an asset (or part of an asset) purchased with the proceeds (or part of the proceeds) of—
  - (i) the initial acquisition and disposal representing the original qualifying contributions, or
  - (ii) any subsequent acquisition and disposal representing the original qualifying contributions,

through any number of transactions;

“project” means a body which has enrolled with the approved body to receive qualifying contributions which is promoting or engaged in a project that meets at least one of the objects of the approved body;

“qualifying contribution” has the meaning given in regulation 28;

“the independent panel” means an independent panel to be set up by the Scottish Ministers to hear appeals from persons whose applications for approval have been refused under regulation 31(1)(a) and to hear appeals from persons whose approval under regulation 31(1)(a) has subsequently been revoked under regulation 32(1)(i);

“the regulatory body” means any body in relation to which an approval of Revenue Scotland under regulation 32 has effect for the time being (or in relation to which an approval of SEPA has effect for the time being, in the event that Revenue Scotland has delegated to SEPA under section 4(1)(b) of the RSTP Act its approving function under regulation 32);

“running costs” includes any cost incurred in connection with the management and administration of a body or its assets.

(2) An approved body shall only be taken to spend a qualifying contribution in the course or furtherance of its approved objects—

- (a) in a case where the contribution is made subject to a condition that it may only be invested for the purpose of generating income, where the body so spends all of that income;
- (b) in a case not falling within sub-paragraph (a) above, where the body becomes entitled to income, where it so spends both the whole of the qualifying contribution and all of that income;
- (c) in a case not falling within either of sub-paragraphs (a) and (b) above, where the body so spends the whole of the qualifying contribution; or
- (d) where—
  - (i) it transfers any qualifying contribution or income derived therefrom to a project; and
  - (ii) that transfer is subject to a condition that the sum transferred shall be spent only in the course or furtherance of the approved body’s approved objects.

(3) Any approval, or revocation of such approval, by Revenue Scotland or the regulatory body shall be given by notice in writing to the body affected and shall take effect from the date the notice is given or such later date as Revenue Scotland or, as the case may be, the regulatory body may specify in it.

### **Entitlement to credit**

27.—(1) Subject to the following provisions of this regulation, an entitlement to credit arises under this Part in respect of qualifying contributions made by registered persons.

(2) Subject to paragraph (3) below, a person shall be entitled to credit in respect of 90 per cent of the amount of each qualifying contribution made by the person in any accounting period; and for this purpose a qualifying contribution made—

- (a) in one accounting period;
- (b) before the return for the previous accounting period has been made; and
- (c) before the period within which that return is required to be made has expired,

shall be treated as having been made in the accounting period mentioned in sub-paragraph (b) above (and not in the accounting period in which it was in fact made).

(3) In respect of the qualifying contributions made in each contribution year, a person shall not be entitled to credit of an amount greater than 5.6 per cent of the person's relevant tax liability.

(4) For the purpose of paragraph (3), the contribution year of a person is the person's first contribution year and then each period of 12 months beginning on 1st April.

(5) The reference in paragraph (4) to the first contribution year of a person is a reference to the period beginning with the person's effective date of registration and ending on the day immediately preceding the first day of the next contribution year.

(6) Where one contribution year ends and another contribution year begins in an accounting period, the amount of any qualifying contribution which, by virtue of paragraph (2), is treated as made in that period shall be apportioned, in accordance with paragraph (7), between those contribution years.

(7) The apportionment shall be on the basis of either—

- (a) the number of days of the accounting period that fall before 1st April and the number of days that fall on and after that day; or
- (b) the amount of tax charged on taxable disposals made in the accounting period before 1st April and the amount of tax charged on taxable disposals made in that period on and after that day,

whichever the registered person may choose.

(8) Subject to paragraph (9) below, the reference in paragraph (3) above to the relevant tax liability of a person is a reference to the aggregate of—

- (a) the tax payable by the person, if any, in respect of the accounting period in relation to which that liability falls to be determined; and
- (b) the tax payable by the person, if any, in respect of any earlier accounting period or periods which fall within the same contribution year as that accounting period;

and where in respect of any accounting period the person is entitled to a payment under regulation 16 the aggregate of the tax payable by that person in respect of the accounting periods mentioned in sub-paragraphs (a) and (b) above shall be reduced by the amount of that payment.

(9) For the purposes of paragraph (8) above any entitlement to credit arising under this Part shall be disregarded in determining the tax payable by a person in respect of any period.

### **Qualifying contributions**

**28.**—(1) A payment is a qualifying contribution if—

- (a) it is made by a registered person to an approved body (provided that the body has the object contained in regulation 29(5)(f) and is approved by the regulatory body (as approved by Revenue Scotland under regulation 32(1)(a)) and within 2 years of the approved body having received it, it has been transferred to a project (otherwise credit is lost but the registered person shall be repaid contributions);

- (b) it is made subject to a condition that the body shall spend the sum paid or any income derived from it or both only in the course or furtherance of its approved objects;
  - (c) the requirements of paragraphs (2) to (5) below have been complied with in relation to that payment; and
  - (d) it is not repaid to the registered person, or a contributing third party, in the same accounting period as that in which it was made.
- (2) A person claiming credit arising under this Part shall make a record containing the following information—
- (a) the amount and date of each payment the person has made to an approved body;
  - (b) the name and registration number of that body;
  - (c) the name and address of any contributing third party; and
  - (d) the amount of the payment made or to be made by the contributing third party and the date, or as the case may require, dates on which payment of the whole or any part of that amount—
    - (i) was received; or
    - (ii) is expected to be received.
- (3) A person claiming credit under this Part for a contribution in relation to which there is a contributing third party shall have provided to the regulatory body or, if they are performing the functions specified in regulation 31(1) below, to Revenue Scotland the following information—
- (a) the name and address of the contributing third party;
  - (b) the amount of the payment made or to be made by the contributing third party and the date, or as the case may require, dates on which payment of the whole or any part of that amount—
    - (i) was received; or
    - (ii) is expected to be received;
  - (c) the registration number of the approved body to whom the contribution was made.
- (4) A person claiming credit under this Part for a contribution in relation to which there is a contributing third party shall inform the approved body to which the contribution is made of the name and address of the contributing third party.
- (5) For the purposes of this Part where any qualifying contribution or income derived therefrom is transferred to a body as described in regulation 26(2)(d)—
- (a) the body to whom the sum is transferred shall be treated as having received qualifying contributions of the amount concerned; and
  - (b) that body shall be treated as having received those qualifying contributions from the registered person or persons who originally paid them (but this shall not give rise to any further entitlement to credit in respect of those contributions).

### **Bodies eligible for approval**

- 29.**—(1) A body is eligible to be approved by the regulatory body if—
- (a) it is—
    - (i) a body corporate; or
    - (ii) a trust, partnership or other unincorporated body;
  - (b) its objects are or include any of the objects within paragraph (5) below (approved objects);

- (c) it is precluded from distributing and does not distribute any profit it makes or other income it receives;
  - (d) it applies any profit or other income to the furtherance of its objects (whether or not approved objects);
  - (e) it is precluded from applying any of its funds for the benefit of any of the persons—
    - (i) who have made qualifying contributions to it; or
    - (ii) who were a contributing third party in relation to such contributions,
 except that such persons may benefit where they belong to a class of persons that benefits generally;
  - (f) it is not controlled by one or more of the persons and bodies listed in paragraphs (2) and (3) below; and
  - (g) none of the persons or bodies listed in paragraph (3) below is concerned in its management.
- (2) The persons and bodies mentioned in paragraph (1)(f) above are—
- (a) a local authority;
  - (b) a body corporate controlled by one or more local authorities;
  - (c) a registered person;
  - (d) a person connected with any of the persons or bodies mentioned in sub-paragraphs (a) to (c) above.
- (3) The persons and bodies mentioned in paragraph (1)(f) and (g) above are—
- (a) a person who controlled or was concerned in the management of a body the approval of which was revoked otherwise than under regulation 31(1)(d);
  - (b) a person who has been convicted of an indictable offence;
  - (c) a person who is disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005<sup>(5)</sup> (or any analogous disqualification provision);
  - (d) a person connected with any of the persons or bodies mentioned in sub-paragraphs (a) to (c) above;
  - (e) a person who is incapable by reason of mental disorder.
- (4) For the purpose of paragraph (3)(e) above, a person shall be treated as incapable by reason of mental disorder where—
- (a) in Scotland, the person is incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000<sup>(6)</sup>;
  - (b) in England and Wales, the person lacks capacity within the meaning of the Mental Capacity Act 2005<sup>(7)</sup> to administer and manage his property and affairs; or
  - (c) in Northern Ireland, the court has exercised any of its powers under Part VIII of the Mental Health (Northern Ireland) Order 1986 (whether or not by virtue of Article 97(2) of that Order),
- but shall cease to be so treated where the judge or court concerned has made a finding that the person is not or is no longer incapable of managing and administering his or her property and affairs.
- (5) Subject to paragraph (15) below, the objects of a body are approved objects insofar as they are any of the following objects—

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(5) 2005 asp 10.  
 (6) 2000 asp 4.  
 (7) 2005 c.9.



- (a) in relation to any land in Scotland the use of which for any economic, social or environmental purpose has been prevented or restricted because of the carrying on of an activity on the land which has ceased—
    - (i) reclamation, remediation or restoration; or
    - (ii) any other operation intended to facilitate economic, social or environmental use; but this is subject to paragraph (7) below;
  - (b) where it is for the protection of the environment, any community based recycling, re-use and waste prevention projects, but this is subject to paragraph (8) below;
  - (c) where it is for the protection of the environment, the provision, maintenance or improvement of—
    - (i) a public park in Scotland; or
    - (ii) another public amenity in Scotland, in the vicinity of a landfill site or transfer station, provided the conditions in paragraph (10) below are satisfied;
  - (d) where it is for the protection of the environment, and subject to paragraph (8) below, the conservation or promotion of biological diversity through—
    - (i) the provision, conservation, restoration or enhancement of a natural habitat in Scotland; or
    - (ii) the maintenance or recovery of a species in its natural habitat in Scotland, on land or in water situated in the vicinity of a landfill site or transfer station;
  - (e) where it is for the protection of the environment, the maintenance, repair or restoration of a building or other structure or a site of archaeological interest (including their landscape context) in Scotland which—
    - (i) is a place of religious worship or of historic, archaeological or architectural interest;
    - (ii) is open to the public; and
    - (iii) is situated in the vicinity of a landfill site or transfer station, provided the conditions in paragraph (10) below are satisfied;
  - (f) the provision of financial, administration and other similar services to bodies which are enrolled with an approved body which is registered with the regulatory body.
- (6) In paragraph (5)(d) above “biological diversity” has the same meaning as in the United Nations Environmental Programme Convention on Biological Diversity of 1992.
- (7) An object shall not be, or shall no longer be, regarded as falling within paragraph (5)(a) above if the reclamation, remediation, restoration or other operation—
- (a) is such that any benefit from it will accrue to any person who has carried out or knowingly permitted the activity which has ceased;
  - (b) involves works which are required to be carried out by a notice or order within paragraph (9) below; or
  - (c) is wholly or partly required to be carried out by a relevant condition.
- (8) An object shall not be, or shall no longer be, regarded as falling within paragraph (5)(b) or (d) above if it involves works or activities which—
- (a) are required to be carried out by a notice, requirement or order within paragraph (9) below;

- (b) are required to be carried out in accordance with an agreement made under section 16 of the National Parks and Access to the Countryside Act 1949<sup>(8)</sup>;
  - (c) are required to be carried out in accordance with an agreement made under section 15 of the Countryside Act 1968<sup>(9)</sup>;
  - (d) give effect to any provision of a management scheme under section 28J of the Wildlife and Countryside Act 1981<sup>(10)</sup> or are required to be carried out by a notice served under section 28K of that Act;
  - (e) are wholly or partly required to be carried out by a relevant condition; or
  - (f) are carried out with a view to profit.
- (9) The notices, requirements and orders mentioned in paragraphs (7) and (8) above are—
- (a) a remediation notice served under section 78E of the Environmental Protection Act 1990<sup>(11)</sup>;
  - (b) a requirement imposed by virtue of section 38(9) of that Act;
  - (c) an enforcement notice served under section 42 of that Act;
  - (d) any order granted following proceedings brought under section 42(6A)<sup>(12)</sup> of that Act for the purpose of securing compliance;
  - (e) a notice served under section 59 of that Act;
  - (f) a notice of surrender issued under regulation 28 of the Water Environment (Controlled Activities) (Scotland) Regulations 2011<sup>(13)</sup>;
  - (g) an enforcement notice served under regulation 32(2) of those Regulations;
  - (h) an order under regulation 49 of those Regulations;
  - (i) an enforcement notice served under regulation 55 of the Pollution Prevention and Control (Scotland) Regulations 2012<sup>(14)</sup>;
  - (j) a revocation notice served under regulation 50 of those Regulations;
  - (k) a suspension notice given under regulation 56 of those Regulations;
  - (l) an order under regulation 70 of those Regulations;
  - (m) a notice under sections 21 and 22 of the Radioactive Substances Act 1993<sup>(15)</sup>;
  - (n) any other notice, requirement or order by or under statute (whether by a court or other authority or otherwise) requiring the carrying out of measures or refraining from carrying out measures for the conservation or promotion of biological diversity as specified in paragraph (5)(d); or
  - (o) any remedial action required to be carried out under the Environmental Liability (Scotland) Regulations 2009<sup>(16)</sup>.
- (10) The conditions mentioned in sub-paragraphs (c) and (e) of paragraph (5) above are—
- (a) in a case falling within sub-paragraph (c), that the provision of the park or amenity is not required by a relevant condition; and

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<sup>(8)</sup> 1949 c.97.

<sup>(9)</sup> 1968 c.41.

<sup>(10)</sup> 1981 c.69. Sections 28 to 28R were substituted by the Countryside and Rights of Way Act 2000 (c.37), Schedule 9 paragraph 1.

<sup>(11)</sup> 1990 c.43. Section 78E was inserted by the Environment Act 1995 (c.25), section 57.

<sup>(12)</sup> Section 42(6A) was inserted by the Environment Act 1995, Schedule 22, paragraph 76(7).

<sup>(13)</sup> S.S.I. 2011/209.

<sup>(14)</sup> S.S.I. 2012/360.

<sup>(15)</sup> 1993 c.12.

<sup>(16)</sup> S.S.I. 2009/266.

- (b) in a case falling within either of those sub-paragraphs, that the park, amenity, site, building or structure (as the case may be) is not to be operated with a view to profit.
- (11) Where the objects of a body are or include any of the objects set out in paragraph (5) above, the following shall also be regarded as objects within that paragraph—
- (a) the use of qualifying contributions in paying the running costs of the body, but this is subject to paragraph (12) below;
  - (b) the use of qualifying contributions in paying a contribution to the running costs of the regulatory body.
- (12) The use of qualifying contributions in paying the running costs of the body shall only be regarded as an approved object if the running costs of the body attributable to funds applied by the body to the object do not exceed ten per cent of the funds so applied.
- (13) For the purposes of paragraph (1) above a body or person (in either case, for the purposes of this paragraph, “the person”) shall be taken to control a body where—
- (a) in the case of a body which is a body corporate, the person is empowered by statute to control that body’s activities or if the person is that body’s holding company within the meaning of section 1159 of and Schedule 6 to the Companies Act 2006, and an individual shall be taken to control a body corporate if the individual, were the individual a company, would be that body’s holding company within the meaning of that Act;
  - (b) in the case of a body which is a trust or a partnership, where—
    - (i) the person, taken together with any nominee of the person, or
    - (ii) any nominee of the person, taken together with any nominee of that nominee or any other nominee of the person,forms a majority of the total number of trustees or partners, as the case may be;
  - (c) in the case of any other body, where the person, whether directly or through any nominee, has the power—
    - (i) to appoint or remove any officer of the body;
    - (ii) to determine the objects of the body; or
    - (iii) to determine how any of the body’s funds may be applied.
- (14) For the purposes of paragraphs (7), (8) and (10) above a condition is relevant if it is—
- (a) a condition of any planning permission or other statutory consent or approval granted on the application of any person making a qualifying contribution to the body; or
  - (b) a term of an agreement made under section 75 of the Town and Country Planning (Scotland) Act 1997(17),

to which such a person is a party.

(15) The objects of a body referred to in paragraph (5) are approved subject to the condition that an approved body must not discriminate in selecting a project on the grounds of geographic location of a project (other than in respect of vicinity rules) or the objective of a project.

### **Obligations of approved bodies**

**30.**—(1) An approved body shall—

- (a) continue to meet all the requirements of regulation 29 above;
- (b) comply with such conditions as the regulatory body may impose from time to time under regulation 31(1)(b) (including any conditions varied under regulation 31(1)(c));

- (c) apply qualifying contributions and any income derived therefrom only to approved objects;
- (d) not apply any of its funds for the benefit of any of the persons who have made qualifying contributions to it or who were contributing third parties in relation to such contributions (except to the extent that they benefit by virtue of belonging to a class of persons that benefits generally);
- (e) make and retain records of the following—
  - (i) the name, address and registration number of each registered person making a qualifying contribution to the body;
  - (ii) the name and address of any contributing third party in relation to a qualifying contribution received by the body;
  - (iii) the amount and date of receipt of each qualifying contribution and the amount and date of receipt of any income derived therefrom;
  - (iv) in the case of a transfer of the whole or part of any qualifying contribution or income derived therefrom to or from the body, the date of the transfer, the amount transferred, the name and enrolment number of the body from or, as the case may require, to which it was transferred, the name, address and registration number of the person who made the qualifying contribution and the name and address of any contributing third party in relation to the qualifying contribution;
  - (v) in respect of each qualifying contribution and any income derived therefrom, including any such amount transferred to the body by another approved body, the date of and all other details relating to its expenditure;
- (f) provide the following information to the regulatory body or, if they are performing the functions specified in regulation 31(1) below, to Revenue Scotland within 7 days of the receipt by it of any qualifying contribution—
  - (i) the amount of the contribution;
  - (ii) the date it was received;
  - (iii) the name and registration number of the person making the contribution;
  - (iv) the name and address of any contributing third party in relation to the contribution notified to it by virtue of regulation 28(4) above;
- (g) notify the regulatory body within seven days of any transfer by that approved body of qualifying contributions or of income derived therefrom of—
  - (i) the date of the transfer;
  - (ii) the registration number of the approved body by which the transfer was made;
  - (iii) the amount transferred;
  - (iv) the name and registration number of the person who made the qualifying contribution;
  - (v) the name and address of any contributing third party in relation to the contribution; and
  - (vi) the approved objects to which the transferred funds are to be applied;
- (h) provide the regulatory body or, if they are performing the functions specified in regulation 31(1) below, Revenue Scotland with information from or access to the records referred to in sub-paragraph (e) above within 14 days (or such longer period as the regulatory body or, as the case may require, Revenue Scotland may allow) of a request being made for such information or access;

- (i) submit to the regulatory body or, if they are performing the functions specified in regulation 31(1) below, to Revenue Scotland within 28 days of the end of the relevant period determined in accordance with paragraph (2) below details of—
    - (i) qualifying contributions and any other income or profit whatsoever received by it;
    - (ii) any expenditure made by it during the period; and
    - (iii) any balances held by it at the end of the period;
  - (j) submit to the regulatory body at its request, not later than the day specified in paragraph (3), so many of the following details as it requires at any time during the relevant period—
    - (i) qualifying contributions and any other income or profit whatsoever received by it during the period;
    - (ii) any expenditure made by it during the period; and
    - (iii) any balances held during the period;
  - (k) if Revenue Scotland are performing the functions specified in regulation 31(1) instead of the regulatory body, submit, at their request, not later than the day specified in paragraph (3), so many of the following details as they may require at any time during the relevant period—
    - (i) qualifying contributions and any other income or profit whatsoever received by it during the period;
    - (ii) any expenditure made by it during the period; and
    - (iii) any balances held during the period;
  - (l) submit to the regulatory body at its request, not later than the fourteenth day following the day on which the request is made, independently audited financial accounts for the approved body's last financial year; but such a request may not be made earlier than 10 months following the end of that financial year;
  - (m) pay to the regulatory body an amount equal to 5 per cent of each qualifying contribution it receives, or such lesser amount as the regulatory body may require, towards its running costs within 14 days of receipt of a demand for payment;
  - (n) on making a transfer to a project of the whole or part of a qualifying contribution or of income derived therefrom, notify the registered person who made the qualifying contribution, and any contributing third party in relation to it, of—
    - (i) the date of the transfer;
    - (ii) the name and enrolment number of the body by or, as the case may require, to whom the transfer was made;
    - (iii) the amount transferred; and
    - (iv) the approved objects to which the transferred funds are to be applied; and
  - (o) ensure that projects only spend money from contributions (and any income derived from them) on approved objects.
- (2) For the purposes of paragraphs (1)(i), (1)(j) and (1)(k) the relevant period in respect of an approved body is—
- (a) in the case of the first such period, the period commencing with the date on which the body was approved and ending on the following 31st March; and
  - (b) in the case of subsequent periods, the period of 12 months commencing with the day after the end of the first or, as the case may require, a subsequent period.
- (3) The day referred to in paragraphs (1)(j) and (1)(k) is the twenty-eighth day following the day on which a request is made.

(4) Where an approved body submits details in accordance with a request made under paragraph (1)(j) or paragraph (1)(k) the requirement in paragraph (1)(i) shall not apply in respect of those details.

### **Functions of the regulatory body**

**31.**—(1) The regulatory body—

- (a) shall, on application being made to it by a body which is eligible to be approved under regulation 29 above, approve that body, with a body whose application is refused being entitled to an appeal to the independent panel whose decision shall be final;
- (b) must ensure the compliance of the approved bodies with their obligations imposed under regulation 30 and may—
  - (i) at the time a body is approved; or
  - (ii) subsequently, by notice delivered to that body, impose such conditions as it sees fit;
- (c) may, by notice delivered to a body, vary or revoke any condition of the approval;
- (d) shall revoke the approval of any body which applies for its approval to be revoked;
- (e) shall maintain a register of bodies which it has approved;
- (f) shall allocate an identifying number (the registration number) to each such body;
- (g) shall remove from the register any body whose approval has been revoked under sub-paragraph (d) or regulation 32(1)(i);
- (h) shall satisfy itself, by reference to such records or other documents or information as it thinks fit, whether or not the qualifying contributions received by the body have been spent by it only in the course or furtherance of its approved objects;
- (i) shall publish information regarding which bodies it has approved and which approvals have been revoked under sub-paragraph (d) or regulation 32(1)(i);
- (j) shall comply with such conditions as Revenue Scotland may impose from time to time under regulation 32(1)(b) (including any conditions varied under regulation 32(1)(c)); and
- (k) shall be entitled to investigate approved bodies and projects enrolled with approved bodies.

(2) Where—

- (a) Revenue Scotland revoke their approval of the regulatory body without approving another body with effect from the day after the revocation takes effect; and
- (b) they have not given notice in writing to each body which has been approved (and which has not been removed from the register), no later than the date such revocation takes effect, that they will be performing any of the functions specified in paragraph (1) above,

the approval of all such bodies shall be deemed to have been revoked on the day Revenue Scotland revoked their approval of the regulatory body.

### **Functions of Revenue Scotland**

**32.**—(1) Revenue Scotland—

- (a) may approve a body to carry out the functions prescribed by regulation 31(1) above;
- (b) may—
  - (i) at the time the body is approved; or
  - (ii) subsequently, by notice delivered to that body,

- impose such conditions as they see fit;
- (c) may, by notice delivered to the body, vary or revoke any condition of the approval;
- (d) may revoke the approval;
- (e) shall not approve a body without first revoking the approval for any other body with effect from a time earlier than that for which the new approval is to take effect;
- (f) for any time as regards which no approval has effect, may perform any of the functions specified in regulation 31(1);
- (g) may disclose to the regulatory body information which relates to the tax affairs of registered persons and which is relevant to the credit scheme established by this Part;
- (h) having regard to any information received from the regulatory body, may serve notices under regulation 33; and
- (i) may, with respect to the approval of a body approved under regulation 31(1)(a), revoke that approval if the approved body fails to comply with any requirement of regulation 30(1) but any person whose approval has been so revoked shall be entitled to appeal to the independent panel whose decision shall be final.

(2) Without prejudice to the generality of paragraph (1)(d) above, Revenue Scotland may revoke their approval of the regulatory body where it appears to them necessary to do so for the proper operation of the credit scheme established by this Part.

### **Repayment of credit**

**33.**—(1) Where a person has benefited from an amount of credit to which the person was entitled under this Part and Revenue Scotland serve upon the person a notice in relation to a qualifying contribution paid to an approved body—

- (a) specifying that—
  - (i) they are not satisfied that the contribution has been spent by the body only in the course or furtherance of its approved objects; or
  - (ii) they are not satisfied that any income derived from the contribution has been so spent by the body;
- (b) specifying a breach of a condition to which the approval of the body was made subject and which occurred before the contribution was spent by the body; or
- (c) specifying that—
  - (i) the approval of the body has been revoked; and
  - (ii) the contribution had not been spent by the body before that revocation took effect,

the person shall repay to Revenue Scotland the credit claimed in respect of the qualifying contribution.

(2) For the purpose of paragraph (1) above where—

- (a) repayment is required in relation to credit that has been claimed in respect of more than one qualifying contribution in an accounting period; and
- (b) regulation 27(3) applied so that the amount of credit was restricted,

the person shall be deemed to have claimed credit in respect of such proportion of each contribution made in that accounting period as the total credit claimed in accordance with that regulation forms of the total of the contributions made.

(3) Where—

- (a) a person has benefited from an amount of credit to which the person was entitled under this Part; and
- (b) the whole or a part of the qualifying contribution in respect of which the entitlement to credit arose has been repaid to the person or a person who was a contributing third party in relation to the qualifying contribution,

the person shall pay to Revenue Scotland an amount equal to 90 per cent of the amount repaid to the person or, as the case may require, to the contributing third party.

(4) Paragraph (5) below applies where—

- (a) a person has benefited from an amount of credit to which the person was entitled under this Part; and
- (b) the person is entitled to a payment under regulation 16 in respect of a later accounting period in the same contribution year as the accounting period in respect of which that credit was claimed.

(5) Where this paragraph applies the person shall pay to Revenue Scotland an amount equal to the difference between—

- (a) the aggregate of—
  - (i) the amount of the credit from which the person has benefited; and
  - (ii) any other amounts of credit arising under this Part which the person is or was entitled to claim,

in respect of that contribution year; and

- (b) the amount of credit which the person would have been entitled to claim if the person had in fact claimed the aggregate amount mentioned in sub-paragraph (a) above in the return for the accounting period in respect of which there was entitlement to payment under regulation 16.

(6) Where—

- (a) a person has benefited from an amount of credit to which the person was entitled under this Part; and
- (b) the person acquires an asset from a body to which the person has made a qualifying contribution for—
  - (i) no consideration; or
  - (ii) a consideration which is less than the open market value of the asset,

the person shall pay to Revenue Scotland an amount equal to 90 per cent of the amount by which the open market value exceeds the consideration; but this is subject to paragraph (7) below.

(7) A person required to pay an amount to Revenue Scotland by paragraph (6) above—

- (a) shall not be required to pay more than the total amount of relevant credit;
- (b) shall not be entitled to claim any further amounts of credit in respect of qualifying contributions made by the person to the body in question on or after the date on which the person acquired the asset.

(8) For the purposes of paragraphs (6) and (7) above—

- (a) “asset” includes land, goods or services and any interest in any of these;
- (b) the open market value of an asset is the amount of the consideration in money that would be payable for the asset by a person standing in no such relationship with any person as would affect that consideration;
- (c) “relevant credit” means credit arising under this Part—



- (i) from which a person has benefited; and
- (ii) which has arisen in respect of qualifying contributions made by the person to the body in question or treated by virtue of regulation 28(5) as having been received by that body from the person.

## PART 8

### Landfill invoices

#### Contents of a landfill invoice

- 34.**—(1) An invoice is a landfill invoice if it contains the following information—
- (a) an identifying number;
  - (b) the date of its issue;
  - (c) the date of the disposal or disposals in respect of which it is issued or, where a series of disposals is made for the same person, the dates between which the disposals were made;
  - (d) the name, address and registration number of the person issuing it;
  - (e) the name and address of the person to whom it is issued;
  - (f) the weight of the material disposed of;
  - (g) a description of the material disposed of;
  - (h) the rate of tax chargeable in relation to the disposal or, if the invoice relates to more than one disposal and the rate of tax for each of them is not the same, the rate of tax chargeable for each disposal;
  - (i) the total amount payable for which the invoice is issued; and
  - (j) where the amount of tax is shown separately, a statement confirming that that tax may not be treated as the input tax of any person.
- (2) In paragraph (1)(j) above “input tax” has the same meaning as in section 24(1) of the Value Added Tax Act 1994(18).

## PART 9

### Determination of weight of material disposed of

#### Scope

**35.** This Part applies for the purpose of determining the weight of material comprised in a disposal; and references in this Part to weight shall be construed as references to the weight of such material.

#### Basic method

**36.**—(1) Except where regulation 37 or 38 applies and subject to paragraph (2) below, a registrable person shall determine weight by weighing the material concerned.

(2) The weighing of the material shall be carried out at the time of the disposal; and for this purpose any time at which section 26 of the Act requires the disposal to be treated as made shall be disregarded.

### **Specified methods**

**37.**—(1) Except where regulation 38 applies, this regulation applies where Revenue Scotland has specified rules for determining weight in a notice published by it and not withdrawn by a further notice.

(2) A specification made by Revenue Scotland as described in paragraph (1) above may make provision for—

- (a) the method by which weight is to be determined;
- (b) the time by reference to which weight is to be determined.

(3) A specification made by Revenue Scotland as described in paragraph (1) above may provide

- (a) that it is to have effect only in relation to disposals of such descriptions as may be set out in the specification;
- (b) that it is not to have effect in relation to particular disposals unless Revenue Scotland is satisfied that such conditions as may be set out in the specification are met in relation to the disposals.

(4) Where this regulation applies the registrable person shall determine weight in accordance with the rules in the specification (and not in accordance with the rule in regulation 36).

### **Agreed methods**

**38.**—(1) This regulation applies where—

- (a) the registrable person and an authorised person have agreed in writing that weight shall be determined in accordance with rules other than those described in regulation 36 or specified under regulation 37; and
- (b) a direction under paragraph (3) below has not been made.

(2) Rules may be agreed under this regulation as regards—

- (a) the method by which weight is to be determined;
- (b) the time by reference to which weight is to be determined.

(3) Where rules have been agreed under this regulation and Revenue Scotland believes that they should no longer be applied because they do not give an accurate indication of the weight or they are not being fully observed or for some other reason, it may give a direction (which may be contained in guidance) that the agreed rules shall no longer have effect.

(4) Where this regulation applies the registrable person shall determine weight in accordance with the rules agreed (and not in accordance with the rule in regulation 36 or 37).

(5) Subject to paragraphs (6) to (8) below, rules may be agreed regarding the discounting of water if, and only if—

- (a) no water is present in the material naturally and the water is present because—
  - (i) it has been added for the purpose of enabling the material to be transported for disposal;
  - (ii) it has been used for the purpose of extracting any mineral; or
  - (iii) it has arisen, or has been added, in the course of an industrial process; or

- (b) the material is the residue from the treatment of effluent or sewage by a water treatment works.
- (6) Rules may not be agreed under paragraph (5) above where any of the material is capable of escaping from the landfill site concerned by leaching unless—
- (a) it is likely to do so in the form of water only; or
- (b) the leachate is to be collected on the site concerned and treated in order to eliminate any potential it has to cause harm.
- (7) Where the material falls within paragraph (5)(a) above rules may not be agreed under paragraph (5) above unless the total water which has been added, or (in a case falling within paragraph (5)(a)(iii) above) has arisen or has been added or both, constitutes 25 per cent. or more of the weight at the time of the disposal.
- (8) Where the material falls within paragraph (5)(b) above rules may not be agreed under paragraph (5) above except for the discounting of water which has been added prior to disposal (and not of water which is present in the material naturally).
- (9) For the purposes of paragraph (8) above any water which has been extracted prior to disposal shall be deemed to be water that has been added, except that where the water extracted exceeds the quantity of water added that excess shall be deemed to have been present naturally.

St Andrew's House, Edinburgh  
8th January 2015

*JOHN SWINNEY*  
A member of the Scottish Government

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## EXPLANATORY NOTE

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

These Regulations make provision for the administration and assurance of Scottish landfill tax. In particular:

- Part 1 provides for the commencement of the Regulations and defines expressions used in them.
- Part 2 regulates the registration of persons who intend to make taxable disposals. It provides for changes to the register and the removal from the register of persons who cease to intend to make taxable disposals. It also makes special provision for transfers of a going concern, partnerships and other unincorporated bodies and relating to the bankruptcy or incapacity of registered persons.
- Part 3 deals with accounting for tax by making returns, the keeping of a landfill tax account, the correction of errors, payment of the tax and retention of records.
- Part 4 deals with claims and payments in respect of credits of tax arising under Parts 5, 6 and 7.
- Part 5 provides for an entitlement to credit in circumstances relating to the recycling, incineration and permanent removal of waste.
- Part 6 provides for an entitlement to credit in respect of bad debts, and regulates the evidence required and records to be kept. It also provides for the attribution of payments to debts and the repayment of credit.
- Part 7 provides for an entitlement to credit for contributions made to bodies for expenditure on approved environmental objects. It also defines the roles and responsibilities of a special regulatory body and Revenue Scotland.
- Part 8 specifies what information a landfill invoice must contain.
- Part 9 sets out the basic method of determining the weight of material disposed of, and provides for specified and agreed methods to be used instead.