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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 93**

**LANDFILL TAX**

**The Scottish Landfill Tax (Qualifying Material) Order 2016**

*Approved by the Scottish Parliament*

<i>Made</i>	- - - -	<i>10th February 2016</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>11th February 2016</i>
<i>Coming into force</i>	- -	<i>1st October 2016</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 13(4) and 14(7) of the Landfill Tax (Scotland) Act 2014<sup>(1)</sup> and all other powers enabling them to do so.

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

**Citation, commencement and application**

1.—(1) This Order may be cited as the Scottish Landfill Tax (Qualifying Material) Order 2016 and comes into force on 1st October 2016.

(2) This Order has effect in relation to taxable disposals made, or treated as made, on or after 1st October 2016.

**Interpretation**

2. In this Order—

“fines” are fractions of material produced by a waste treatment process that involves an element of mechanical treatment;

“LOI percentage threshold” means the amount of non-qualifying material contained in fines, as indicated by the percentage of the mass of those fines lost on ignition;

“LOI test” means a test to determine the LOI percentage threshold of fines, conducted in accordance with guidance published by Revenue Scotland;

“non-qualifying material” means any material other than qualifying material;

“qualifying fines” are fines that consist entirely of qualifying material or consist entirely of material that, in accordance with a direction contained in guidance published by Revenue

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(1) 2014 asp 2. There are amendments to this Act not relevant to this Order.

Scotland, must be treated as qualifying material if it would be such material but for a small quantity of non-qualifying material;

“transfer note” means a transfer note within the meaning of regulation 3 of the Environmental Protection (Duty of Care) (Scotland) Regulations 2014<sup>(2)</sup>.

### **Qualifying material**

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

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

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

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

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

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

### **Qualifying fines**

**4.**—(1) Qualifying fines must not be treated as qualifying material unless the conditions in paragraph (2) are met.

(2) The conditions are that—

- (a) where the owner of the fines immediately prior to the disposal and the registrable person are not the same person, the registrable person holds a transfer note in respect of the fines;
- (b) the registrable person holds such evidence as is specified in guidance published by Revenue Scotland that the fines are qualifying fines;
- (c) where a LOI test has been conducted on any part of the fines—
  - (i) the material has been heated to a temperature of 440°C for a minimum of 5 hours; and
  - (ii) the LOI percentage threshold does not exceed 10%; and
- (d) where a registrable person has been directed by Revenue Scotland to conduct a LOI test of a quantity of material proposed to be disposed of as qualifying fines, that person conducts the test.

(3) No material disposed of by a registrable person as fines is to be treated as qualifying material unless the registrable person has conducted the LOI test.

### **Revocation**

**5.** The Scottish Landfill Tax (Qualifying Material) Order 2015<sup>(3)</sup> is revoked.

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(2) S.S.I. 2014/4.

(3) S.S.I. 2015/45.

St Andrew's House,  
Edinburgh  
10th February 2016

*JOHN SWINNEY*  
A member of the Scottish Government

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE

Article 3

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

**Notes**

(1) Group 1 comprises only—

- (a) rock;
- (b) clay;
- (c) sand;
- (d) gravel;
- (e) sandstone;
- (f) limestone;
- (g) crushed stone;
- (h) china clay;
- (i) construction stone;
- (j) stone from the demolition of buildings or structures;
- (k) slate;
- (l) sub-soil;
- (m) silt; and
- (n) dredgings.

(2) Group 2—

- (a) comprises only—
  - (i) glass, including fritted enamel;
  - (ii) ceramics, including bricks, bricks and mortar, tiles, clay ware, pottery, china and refractories; and
  - (iii) concrete, including reinforced concrete, concrete blocks, breeze blocks and aircrete blocks; and
- (b) does not include—
  - (i) glass fibre and glass-reinforced plastic; or
  - (ii) concrete plant washings.

- (3) Group 3—
  - (a) comprises only—
    - (i) moulding sands, including used foundry sand;
    - (ii) clays, including moulding clays and clay absorbents (including Fuller’s earth and bentonite);
    - (iii) mineral absorbents;
    - (iv) man-made mineral fibres, including glass fibres;
    - (v) silica;
    - (vi) mica; and
    - (vii) mineral abrasives; and
  - (b) does not include—
    - (i) moulding sands containing organic binders; or
    - (ii) man-made mineral fibres made from glass-reinforced plastic and asbestos.
- (4) Group 4 comprises only—
  - (a) vitrified wastes and residues from thermal processing of minerals where, in either case, the residue is both fused and insoluble; and
  - (b) slag from waste incineration.
- (5) Group 5—
  - (a) comprises only—
    - (i) bottom ash and fly ash from wood or waste combustion; and
    - (ii) bottom ash and fly ash from coal or petroleum coke combustion (including when burnt together with biomass); and
  - (b) does not include fly ash from sewage sludge, municipal, clinical and hazardous waste incinerators.
- (6) Group 6 comprises only—
  - (a) calcium based reaction wastes from titanium dioxide production;
  - (b) calcium carbonate;
  - (c) magnesium carbonate;
  - (d) magnesium oxide;
  - (e) magnesium hydroxide;
  - (f) iron oxide;
  - (g) ferric hydroxide;
  - (h) aluminium oxide;
  - (i) aluminium hydroxide;
  - (j) zirconium dioxide.
- (7) Group 7 includes calcium sulphate, gypsum and calcium sulphate based plasters but does not include plasterboard.

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## EXPLANATORY NOTE

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

Article 3 of this Order provides that, subject to the conditions in that article, the material listed in column 2 of the Schedule is qualifying material for the purposes of the lower rate of Scottish landfill tax. The Schedule lists, in 8 groups, the description of the qualifying materials with any conditions listed alongside. Notes to the Schedule amplify the descriptions.

Article 4 of this Order provides for conditions that must be met in relation to material that consists of fines where a loss on ignition test in accordance with guidance published by Revenue Scotland must be carried out.

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