



Landfill tax : recent developments

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Landfill tax was introduced on 1 October 1996: this country's first tax with an explicit environmental purpose. It is administered by HM Revenue & Customs and collected from landfill site operators.¹ It is charged at a standard rate per tonne on 'active wastes' (such as household wastes that decay), and at a lower rate on inactive or inert wastes. When the tax was first introduced, the standard rate of tax was £7, and the lower rate was £2. Following concerns about the limited environmental impact the new tax was having, the standard rate of tax has been increased consistently since 1999. In that year the Government committed to increasing the rate of tax by at least £1 a tonne each year. This 'duty escalator' was increased to £3 a tonne in 2005, and then to £8 a tonne in 2007. At present the standard rate is £40 per tonne, whereas the lower rate of tax is £2.50, having been increased just once, in April 2008. The tax raised £420 million in its first year of operation;² it is estimated it will raise £1 billion in 2008-09.³ Since the introduction of the tax, the proportion of waste sent to landfill has fallen by around a third, accompanied by a similar increase in recycling.

In the 2009 Budget the Government stated that it would continue to increase the standard rate of tax by £8 a tonne each year at least until 2013.⁴ At this time the Treasury launched a consultation on changing the scope of the tax to take account of changes in environmental protection regulation, and the industry's working practices, as well as litigation, which has threatened to remove a significant amount of waste from the scope of the tax.⁵

This note discusses recent developments concerning the landfill tax. Two other Library notes look at the tax's introduction, and at the landfill communities fund – a tax credit scheme to reduce the environmental impact of landfill sites.⁶ Guidance on the tax for site operators is available on HM Revenue & Customs' website;⁷ statistical data on tax receipts and landfill volumes is published on the UK Trade Info site.⁸

¹ Initially the tax was administered by HM Customs & Excise; the department was merged with the Inland Revenue in April 2005.

² HC Deb 31 July 1998 c 667W

³ *Budget 2009* HC 407 April 2009 p231

⁴ HC 407 April 2009 para 7.61

⁵ HM Treasury/HM Revenue & Customs, *Modernising landfill tax legislation*, April 2009. The paper notes that "since 1997, the tax has contributed to a 32% reduction in the proportion of waste sent to landfill and a similar increase in recycling" (p7).

⁶ *Landfill tax : introduction & early history*, SN/BT/237, 6 October 2009; *Landfill communities fund*, SN/BT/1060, 6 October 2009

⁷ HMRC, *A general guide to landfill tax: Notice LFT1*, September 2009

⁸ HMRC, *Landfill tax Bulletin*, September 2009. At: <https://www.uktradeinfo.co.uk/index.cfm?task=bulllandfill>

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1 Introduction

Landfill tax is levied per tonne of waste at two rates: a standard rate on active waste, and a lower rate on inactive or inert waste (such as ceramics, concrete and ash).⁹ Certain types of material deposited in a landfill are exempt from the tax (such as mining & quarrying waste, or materials dredged from waterways and harbours). The tax is paid by the landfill site operator, who is required to assess the volume of waste when it is disposed, usually using a weighbridge. A load which contains both active and inactive material would be fully liable to tax at the standard rate, though operators may ignore the presence of an incidental amount of standard-rated waste in a mainly lower-rated load.

Since the introduction of the tax, site operators have been encouraged to fund local community environmental projects, under a scheme allowing them to offset this type of grant against their liability to the tax, up to a specified limit. Initially, operators were entitled to claim a tax credit of 90 per cent of a contribution to an approved environmental body, up to a maximum of 20 per cent of their landfill tax bill in a 12 month period. Third parties, including local authorities and government agencies, can make contributions to the site operator for the 10 per cent of contributions that the operators are unable to claim in tax credits. This credit is claimed on the operator’s landfill tax return covering the period in which they make the contribution.

An example of how the system of credits and contributions has worked is set out below:¹⁰

	£
Landfill tax payable by landfill site operator	100
Landfill site operator contributes £20 and claims tax credits on 90 per cent of the amount contributed	18
Net landfill tax paid to Customs by site operator	82

⁹ The categories of landfill which qualify for the lower rate are set out by Order (SI 1996/1528).
¹⁰ source: *Appropriation Accounts 1999-2000* HC 25-VI 9 February 2001 p R16

The net cost to the landfill site operator of contributing to the environmental body

The contribution to the environmental body	20
Less landfill tax credit	18
Net cost of contribution to landfill operator	2
Third party contribution may be made to landfill tax operator representing 10 per cent of the amount paid to the environmental body	2
Net cost of contribution to landfill site operator	0

Approval for environmental bodies eligible to receive landfill credits is given by a regulator, ENTRUST, set up to oversee the scheme. In brief, these bodies must be non-profit distributing, their work cannot benefit any of the individual site operators whose donations they receive, and they cannot be controlled directly or indirectly by a local authority or by a site operator.

Projects funded under the scheme are required to satisfy certain criteria, or 'objects' – set out in regulations:

- Remediation or restoration of land which cannot now be used because of a ceased activity
- Reduction of pollution
- Provide or improve a general public amenity
- Protect or enhance a species or its environment where it naturally occurs
- Restoration of religious buildings or historic structures
- Provision of support services by one organisation enrolled with ENTRUST to another.¹¹

In November 2002 the Government announced this scheme, initially called the Landfill Tax Credit Scheme, would be reformed from 1 April 2003.¹² There were two key changes. First, the size of the scheme was cut substantially: local community environmental projects could continue to receive funding, but this would be worth about one third of the current scheme (around £47 million at this time). The remainder of the scheme's funding (about £110 million) would be allocated to public spending to encourage sustainable waste management. Second, the maximum credit a landfill site operator could claim against their annual landfill tax liability was cut from 20% to 6.5%.¹³ This percentage has been amended several times since then, and now stands at 6%.¹⁴

Updated guidance on the operation of the landfill communities fund, as it is now known, is published by ENTRUST, and is available from its internet site.¹⁵

¹¹ These provisions are set out in secondary legislation (specifically, reg 33 of SI 1996/1527, as amended).

¹² *Pre-Budget Report* Cm 5664 November 2002 p140. Further details were given in a Ministerial statement (HC Deb 3 February 2003 cc 5-7WS) and in, *Budget 2003* HC 500 April 2003 p165.

¹³ under the *Landfill Tax (Amendment) Regulations* SI 2003/605, which amended SI 1996/1527 accordingly

¹⁴ Under SI 2008/770. At the time it was estimated that the maximum credit claimable for 2008-09 would be £70m (HMRC Budget Note BN81, 12 March 2008).

¹⁵ ENTRUST, *The landfill communities fund : an introduction*, 2009. This is available at: <http://www.entrust.org.uk/home/lcf/how-it-works>

2 A duty rate escalator (1999-2002)

In his March 1999 Budget the then Chancellor Gordon Brown announced that “to reduce the amount of waste going to landfill, the landfill tax, £10 per tonne in 1999, will in future rise by £1 per tonne per year.”¹⁶ At this time it was proposed that the duty rate escalator should apply for at least 5 years when, by 2004, the rate would be £15 per tonne. Details were given in a press notice:

Landfill tax is a key part of the Government’s forthcoming Waste Strategy, to be published in May 1999. The new Waste Strategy will put the UK on course towards the sustainable waste management system that we need to resolve one of the key environmental challenges of the next century. The Waste Strategy involves a programme of increases in landfill tax to encourage the development of alternative waste management practices ... The rate increase builds on the important role played to date by the tax with almost a third of companies considering waste minimisation, re-use and recycling following its introduction. Analysis to date suggests that a long term programme of increases in landfill tax could significantly reduce the proportion of waste expected to be landfilled ...

As tax liability rises due to increased tax rates more funds become potentially available under the scheme. Operators can claim up to 90 per cent tax credit against donations they make to environmental projects, subject to these credits not exceeding 20 per cent of their annual landfill tax bill. From 1 August 1999 operators using the scheme will have up to an additional month every quarter to claim tax credits. They can also have contribution years that match their accounting years. Further technical changes will be made to give greater transparency. The lower rate of tax has had effects, with the re-use and recycling of construction waste at an all time high. However, it has also led to a shortage of materials for the restoration of landfill sites, in particular for filling mineral workings, which has an adverse environmental impact. To address this problem, an exemption for inert waste used to restore landfill sites and fill working and old quarries (announced last Budget) will be operative from 1 October 1999.¹⁷

In July 1999 the Environment, Transport and Regional Affairs Committee published a report on the tax which argued it had been set too low to change the way waste was disposed of:

The majority of the evidence we received during our inquiry strongly supported the introduction of the Landfill Tax as one of the UK’s first primarily environmental taxes. Witnesses also approved the hypothecation of revenues from the tax for environmental purposes. We agree and support, in principle, the introduction of additional environmental taxes. However, the Landfill Tax [has] ... shortcomings which provide lessons for such future taxes.

[The tax] has been set at a level which is too low to change waste disposal options. In setting the level of future environmental taxes, the Government should decide whether the main aim is to make sure the polluter pays (in which case it will raise money but will not necessarily change behaviour) or to change behaviour (in which case a higher rate of tax may be required). The tax has had undesirable effects, including an increase in fly-tipping and the imposition of a serious and, in the short term, largely unavoidable financial burden on local authorities. When establishing future taxes, it will be

¹⁶ HC Deb 9 March 1999 c182

¹⁷ HM Customs & Excise Budget press notice C&E5, 9 March 1999. Provision to increase the rate of landfill tax was made in section 124 of the *Finance Act 1999*. This was scrutinised at the Committee stage of the Finance Bill on 15 June 1999: SC Deb (B) cc 620-40.

necessary to provide funds (which would normally be a fraction of the revenues raised from the tax) to mitigate such consequences.¹⁸

The Committee returned to the subject of the tax in its report on waste management published in March 2001, arguing that the tax was “little more than an irritant to those making provision for waste management”:

If one accepts that the primary purpose of the landfill tax is to reduce the amount of waste being landfilled, then it is currently failing. Many witnesses argued that, even with the £1 escalator in place, these tax levels were too low to divert waste away from landfill and that the tax would continue to fail until the rate of the tax was increased. Eighty per cent of the waste management industry believe it should be increased and several witnesses suggested that the tax needed to double before it would start to have a meaningful effect. The Government argues that it is too early to tell what effect the tax is having and that the introduction of a much higher rate of tax would be inappropriate until it has established itself. But without a higher rate of tax, landfill remains cheap: the average gate fee for landfill in the UK is markedly lower than is found in many other European countries.

There are two very good arguments for the landfill tax not being increased to a much higher level without other changes taking place. Firstly, the impact that the landfill tax has on local authorities, which currently contribute around 60% of the gross tax yield. By the nature of the tax, local authorities end up paying out relatively large sums in landfill tax but are unable to access any of the Landfill Tax Credits to change their waste management systems to avoid paying such high amounts of tax. Further, because there is no direct charging to households for waste, the tax is not faced directly by the public. This is not the way that such a tax should work: those who pay it (and particularly those who pay large amounts) must be able to take action to reduce their liability, at least in the long-term. We deal with this matter in the section on the Landfill Tax Credit Scheme below. [This is not reproduced here.]

The other main argument against a higher tax is that in the current climate it would simply act as an additional incentive for the construction of incinerators. We agree that this is likely to be the case but we have made recommendations above which should ensure that the role which incineration plays is a moderate and appropriate one, even in a system which involves a much higher landfill tax. Neither of these arguments against a higher landfill tax is particularly convincing when used by Government, which has power to change the system to ensure that a higher landfill tax has only positive effects.

The landfill tax at its present level is too small an incentive to change established behaviour significantly: it is little more than an irritant to those making provision for waste management. We are disappointed that the Government are using the 'wait and see' argument before acting to raise the landfill tax to an effective level. The Government should have the courage of its convictions and use the landfill tax to provide a strong incentive to move away from a landfill-based system of waste disposal. We recommend that the landfill tax be increased to at least £25 per tonne over the next 5 years with all funds from the increased tax rate going into the Landfill Tax Credit Scheme. This recommendation cannot be seen in isolation and must be implemented together with those we make for the Landfill Tax Credit Scheme and our proposal for an incineration tax.¹⁹

¹⁸ *Thirteenth Report: The Operation of the Landfill Tax*, 14 July 1999 HC 150 1998-99 para 76. The Committee also made recommendations concerning the landfill tax credit scheme not touched on here.

¹⁹ *Fifth Report: Delivering Sustainable Waste Management*, 21 March 2001 HC 36 2000-01 para 133-6

In response the Government argued that it was only fair to phase in these rate increases:

Increasing the cost of landfill compared with other waste management options encourages waste producers to seek - and the waste management industry to offer - more sustainable alternatives. We have already announced that there will be staged increases in the active rate of the tax until 2004 when it will stand at £15 per tonne for active waste. This rate of increase represents a balance between the need to send clear and increasingly strong economic signals to reduce reliance on landfill, and the need to provide those who will be affected with time to plan and develop alternative waste management services and facilities.²⁰

In the 2002 Budget it was confirmed that the standard rate would be increased to £13 a tonne.²¹ When this provision was scrutinised at the Committee stage of the Finance Bill, Christopher Chope noted that a further increase in the tax was anticipated in the explanatory notes to the Bill, and asked the then Economic Secretary, John Healey, to clarify the Government's position:

Mr. Chope: I have no quarrel with the increase of £1, which was first announced in 1999. Will the Economic Secretary explain why the explanatory notes state: "The Government anticipates that the standard rate of landfill tax will need to be increased significantly in the medium term, beyond the current £1 per tonne . . . increase."? What is meant by the "medium term"? Is that beyond 2004? What is meant by "significantly"? Why do the Government anticipate that requirement? ...

John Healey: ... The hon. Member for Christchurch (Mr Chope) should see the explanatory notes as a clear declaration of the analyses and serious policy work that we are undertaking on the problems of waste production, waste management and waste disposal. It also signals our serious policy intent, but at this stage I am not in a position to pre-empt the decisions that we will take on the matter. However, it is only fair to signal that the Government are giving close attention to it.²²

3 The Strategy Unit's report on waste (2002-2004)

Prior to the November 2002 Pre-Budget Report, there was speculation in the press that the Government were considering a 'significant increase' in the rate of the tax.²³ In his Pre-Budget Statement the Chancellor announced the Government would "consult on what will be a revenue-neutral proposal to raise the landfill levy by £3 per tonne per year from 2005-06."²⁴ At this time the Cabinet Office Strategy Unit published its conclusions to its review of waste policy, which included a recommendation to substantially increase the level of the tax. The Unit's report highlighted the importance of reducing the volume of waste going into landfill:

Household waste is a particular problem. The quantity produced is rising by 3% per year (faster than GDP and faster than in most other nations). The waste mountain will double by 2020 adding £1.6bn per year to waste disposal costs. The way England manages its waste harms the environment and squanders resources. Nearly 80% of

²⁰ *Fourth Special Report*, 5 March 2002 HC 659 2001-02 para 115-6

²¹ HM Customs and Excise Budget notice CE15, 17 April 2002. This increase was implemented under section 122 of the *Finance Act 2002*.

²² SC Deb (F) 20 June 2002 cc 490-2

²³ "Chancellor to float hefty rise in landfill taxes", *Financial Times*, 24 October 2002; "Green will be Brown's colour", *Observer*, 17 November 2002

²⁴ HC Deb 27 November 2002 c324

household waste goes to landfill, far more than in most other European countries. By contrast, the recycling rate in England – at 12% – is well below that in many other EU countries some of whom recycle over 40% of household waste.²⁵

It discussed two options for reducing the volume of waste sent to landfill sites: either a further increase in the landfill tax, or banning waste from landfill. However, there would be several disadvantages to introducing an outright ban, the second of these options, without trying other options first:

- it would allow less flexibility within the waste management system compared to economic incentives;
- it could be counterproductive if, for some wastes, landfilling is the most cost-effective option; and
- it would force all firms to comply regardless of the costs.²⁶

The report went on to argue that the rates of landfill tax charged in the past had been too low to effect any substantive behavioural change:

When the landfill tax was introduced the rates were based on estimates of the environmental externalities (i.e. the environmental costs that are not reflected in the market price) associated with disposing of waste at landfill ... Current policy for the standard rate is based on the escalator announced in 1999. In effect, the landfill tax has become more of a “behavioural” tax, designed to reduce further our reliance on landfill, and encourage a shift towards more sustainable waste disposal practices.

Since the introduction of the tax, there has been a 60% reduction in the volumes of ‘inactive’ waste sent to landfill sites, whilst the volume of ‘active’ waste sent to landfill has remained broadly unchanged. The latter is explained by the fact that the costs of landfill, including landfill tax, remain low compared to other alternative methods of treatment/disposal. Moreover, landfill disposal costs represent a relatively small proportion of business operating expenses.²⁷

European experience with charging landfill taxes at high rates suggested that the gradual introduction of a much higher rate,²⁸ accompanied by a ban on specific waste products, was preferable, to avoid imposing unacceptable burdens on local authorities:

Of the total revenue sourced from active waste, approximately 46% is paid by business and the remaining 54% by local authorities. Some analysis has shown that for business sectors, a landfill tax as high as £45/tonne would mean that waste management costs would rise to at most only a few tenths of a percent of turnover in any one sector. However, this analysis would need to be supplemented by more work to look at the impact in more detail ...

Of those countries which have a landfill tax, the UK currently has the lowest tax rates for active waste ... apart from France (which has an escalator of 1 Euro per tonne per increases ... As the UK also has relatively low gate fees²⁹ the overall cost of landfill remains low compared to other countries ...

²⁵ Strategy Unit, *Waste not, want not: a strategy for tackling the waste problem*, November 2002 p5

²⁶ *ibid.* p76

²⁷ *ibid.* p73

²⁸ The report provides some data on landfill tax rates and prices in other countries (*ibid.* p74).

²⁹ The price charged by the waste management facility for dealing with the waste.

Like businesses, a rise in landfill tax will provide local authorities with an incentive to fund alternative ways of managing and disposing of waste. For example, increasing recycling through civic amenity sites and bring sites – the lowest cost ways of recycling – would become economically attractive options. It is not envisaged that the operation of the tradable allowances scheme³⁰ ... will be adversely affected by increases in the landfill tax. It supplements the effect of the tax by providing an additional incentive to ensure that targets under Article 5 of the Directive relating to biodegradable municipal waste will be met. However, significant rises in landfill tax rates to those approaching the highest rates in Europe, could remove the incentive for local authorities to trade allowances as the net cost of diverting waste to alternative waste management options falls.

Lessons from the introduction of high rates of landfill tax in other countries include:

- the importance of signalling the increase 2 to 3 years in advance to allow time for the transition and the development of alternatives; and
- there may be advantages in banning specific waste products from landfill sites in parallel with the tax increase.

Based on SU analysis of the relative prices of waste management options, a landfill tax rate of £35/t would provide a sufficient incentive to change behaviour and reduce reliance on landfill as the major waste management option. This is broadly in line with previous estimates.^{31,32}

In the Pre-Budget Report the Government provisionally accepted these recommendations, with the proviso that a tax rate of £35 could be introduced in a revenue neutral fashion:

The current landfill tax escalator, introduced in 1999, commits the Government to raise the standard rate of tax for active waste by £1 per tonne each year until 2004-05, by which time it will have reached a rate of £15 per tonne. As announced in Budget 2002, there is a strong case for increasing the tax rate significantly in future years to provide incentives for the development of alternatives to landfill and to reduce the volume of waste disposed in this way.

The Government will therefore consult on a revenue neutral proposal to increase the landfill tax escalator to £3 per tonne in 2005-06 and to increase the rate of tax by at least £3 per tonne in future years, on the way to a medium- to long-term rate of £35 per tonne. The Government's intention is that increases will be introduced in a way that is revenue neutral to business as a whole. The Government will consult with stakeholders on options for the package, including the recycling of revenue, before making its decisions.³³

It was estimated that a £3 increase would raise £140 million in 2005-06.³⁴ Industry and local authorities cautiously welcomed this proposal; environmental groups were more positive:

The landfill tax on waste will nearly treble from £13 to £35-a-tonne during the next 10 years in a move the Treasury said sent a "significant long-term signal" to industry and

³⁰ [Provision to introduce the scheme was made by the *Waste and Emissions Trading Act 2003*The Landfill Allowance Trading Scheme started on 1 April 2005; for further details see DEFRA's site at: <http://www.defra.gov.uk/environment/waste/localauth/lats/index.htm>].

³¹ See for example Biffa, *Future Perfect*, 2002 and the House of Commons Environment, Transport and Regional Affairs Committee Fifth Report HC 36 2000-01

³² *Waste not, want not*, November 2002 pp 73-6

³³ *Pre-Budget Report* Cm 5664 November 2002 p139

³⁴ HC 500 April 2003 p185

local authorities. Ministers are to consult on a revenue neutral proposal to increase the tax by £3 per tonne a year from 2005-06. The announcement of the medium-term target - a much higher rise than had been predicted - and of the increased annual escalation of the tax, was designed to give industry time to plan for the change, John Healey, economic secretary to the Treasury, said.

The Confederation of British Industry said businesses “remain to be convinced” of the need to raise the tax by £3 per tonne each year. It welcomed the chancellor Gordon Brown's decision to consult before raising the tax, warning that green taxes often damage competitiveness with little environmental benefit. Local authorities reacted warily to the proposed tax rise, saying that more funding was needed to help cut waste before they were hit with the higher tax. “Unless significant increases in landfill tax announced today are recycled into waste-cutting measures, council taxpayers will feel the pain, without any environmental gain.”

The sharp tax rises should help the government to avoid punitive fines threatened by the European Commission if Britain meets targets set in the landfill directive. Ministers believe the new tax regime will drive changes in technology, as well as waste consumption behaviour. The need for a £35-a-tonne target was endorsed by the Environmental Services Agency, a trade body for the waste management industry. Dirk Hazell, chief executive, said: “A landfill tax of this level is necessary to make other forms of management - such as recycling - viable on a scale necessary for the UK to achieve compliance with EU law.”³⁵ Environmental groups said the landfill tax increases were welcome, but too slow.³⁶

In its response to the Pre-Budget Report, the Environmental Audit Committee suggested that the long run-in period proposed by the Government should be significantly shortened:

Our concern is that such an approach—based on slow incremental change—is excessively cautious, and may not stimulate the investment and step change in behaviour that is required ... we have received considerable evidence that the private sector is willing to invest substantial sums of money in developing alternative and 'higher tech' approaches to waste management, but that it will only do so if the Government sets out a clear, long-term strategy which would make it profitable for the companies concerned.³⁷ It will take at least nine years for the Landfill Tax to reach £35 per tonne— widely seen as the minimum level required to stimulate significant changes in behaviour. We recommend that the Treasury increases the rate of Landfill Tax more steeply than is currently proposed, so as to reach this level in a much shorter period of time.³⁸

The Committee repeated this recommendation in its report on waste, published just after Budget 2003, going on to comment that, “the Treasury's behaviour over the landfill tax, and the absence of any further environmental measures in the Budget, reinforces our view, expressed in our report on the Pre-Budget Report 2002, that it remains timid in its use of fiscal instruments to tackle environmental issues.”³⁹

³⁵ The ESA also welcomed the announcement in a press notice issued at the time: *UK's waste management industry welcomes £35 per tonne landfill tax target*, 27 November 2002.

³⁶ “Landfill tax rise ‘sends strong signal to industry’”, *Financial Times*, 28 November 2002

³⁷ [The Committee cites the evidence it took in preparing its report on waste published on 23 April 2003: HC 99-II 2002-03; see in particular the exchange with Dirk Hazell, Chief Executive of the Environmental Services Association (ESA) on 29 January 2003 in Q 283.]

³⁸ *Fourth report: Pre-Budget Report 2002*, 1 April 2003 HC 167 2002-03 paras 18-19

³⁹ *Fifth report: Waste - an audit*, 23 April 2003 HC 99-I 2002-03 para 62

The increase in the standard rate of landfill tax to £14 from 1 April 2003 was announced prior to the Budget, in a Ministerial Statement:

The Economic Secretary to the Treasury (John Healey): Legislation will be introduced in the Finance Bill 2003, to take effect from 1 April 2003, which will increase the standard rate of landfill tax from £13 per tonne to £14 per tonne. The increase is part of a series of £1 per tonne escalator increases, announced in Budget 1999. These increases have been publicised in the landfill public notice (LFT1). HM Customs and Excise is writing to all landfill operators registered for the tax to confirm the date of the change.⁴⁰

Further details on the Government's long term plans to recycle future increases in landfill tax revenues to business were given in *Budget 2003*:

As stated in the 2002 Pre-Budget Report, increases in the standard rate of landfill tax will be introduced in a way that is revenue neutral to business as a whole. Discussions with business and other stakeholder groups have indicated that there is broad support for a package of measures, including some tailored support to those sectors facing the greatest waste management challenges. The Government will pursue this through further development of options and further consultation with stakeholders. Decisions on a package of measures will be announced in the 2003 Pre-Budget Report.⁴¹

Provision was made in the *Finance Act 2003* (section 187) to increase the standard rate of tax from £13 per tonne to £14 per tonne, with effect from 1 April 2003, and from £14 per tonne to £15 per tonne with effect from 1 April 2004.

This measure was debated by the Committee of the Whole House on 14 May 2003.⁴² Speaking for the Conservatives Howard Flight argued that "the tax stems from a panic to meet the targets laid down [under the 1999 European landfill directive] and from the primary motivation of raising revenue ... [the Government] should not base the tax increases on fiscal and short-term considerations, but consider them in the light of an effective long-term waste policy."⁴³ Simon Thomas asked about the rate of increase, arguing that "the waste companies [want] an accelerated increase in the economic drivers toward waste minimisation ... those companies see clearly that we will not meet our recycling obligations and our more important European obligations to reduce the amount of waste that we send to landfill without a much stronger driver in the economic market."⁴⁴

The then Economic Secretary John Healey responded to these points by saying:

The hon. Member for Ceredigion [Mr Thomas] urged the Government to increase the rate of landfill tax more quickly in order sooner to reach what we set as the medium to long-term level of £35 per tonne. Our research and the recommendations of several reports suggest that that level will result in alternatives to landfill being more widely available and becoming more economically viable. As the hon. Gentleman will know from his work on the Select Committee on Environmental Audit, that view is widely shared. Given the lead times for investment, however, the most important factor in

⁴⁰ HC Deb 31 March 2003 c 38WS. At the time of the Budget details of the new rate were given in, HM Customs and Excise Budget notice CE2, 9 April 2003.

⁴¹ *Budget 2003* HC 500 April 2003 p 164

⁴² HC Deb 14 May 2003 cc 390-400

⁴³ HC Deb 14 May 2003 c392

⁴⁴ HC Deb 14 May 2003 c392

stimulating a shift in behaviour away from landfill is not the current rate of the tax, but the confidence, knowledge and certainty that it will reach the medium to long-term level of £35 per tonne. That gives the lie to the accusation by the hon. Member for Arundel and South Downs [Mr Flight] that we have a short-term set of policies.⁴⁵

In February 2004 the Government published research on possible ways to recycle increases in landfill tax to business; this identified two high priority options “targeted grants, and funding for increases in promotional, capacity building and advisory services”, though the report discussed a range of other options “to be helpful for business in reducing waste sent to landfill.”⁴⁶ The report summarised the attractions of these two options as follows:

Promotional, Capacity Building and Advisory Services There is considerable existing evidence to demonstrate that this type of support is very cost-effective, both in achieving waste reductions and also in developing markets for recyclables. It is also unlikely to present a problem with respect to the EU State Aid Rules and can be tailored to meet the needs of particular business sectors – both in terms of size and the sectors expected to bear the heaviest landfill tax burden.

Targeted Grants Targeted grants are, in the Consultants' view, the most flexible and cost-effective of the available instruments for disbursing revenues to support the development of alternatives to landfill, and can be designed to deliver precisely targeted and quantified support for a wide variety of projects or activities (investment and non-investment) across different priority business sectors. They can present problems in certain circumstances with the EU state aid rules, but are particularly effective in leveraging additional investment from the private sector. They are also effective for the voluntary sector. The effort and costs involved in applying for grants can be reduced by, for example, the introduction of simplified procedures for small grants and the provision of consultancy help and advice to prospective beneficiaries.⁴⁷

In November 2004 DEFRA announced the launch of a ‘Business Resource Efficiency and Waste’ (BREW) programme, to come on stream from April 2005; for its first year of life the programme would include funding for advice services to business to reduce their waste, and for the development of new markets for a number of ‘difficult’ business wastes.⁴⁸

The programme lasted three years, distributing £284m in total: as a written answer in March 2008 explained, “from 2008-09, budgets previously under the BREW programme will be amalgamated into a single, more focused approach of allocating DEFRA funding to increase resource efficiency and reduce carbon emissions. Funding for business resource efficiency will be focused on providing the necessary evidence to encourage businesses to change behaviour, rather than funding profit-making business beyond that point. This move forms part of a purposeful strategy by DEFRA towards behaviour change for a low-carbon Britain.”⁴⁹

⁴⁵ HC Deb 14 May 2003 c398

⁴⁶ HM Treasury press notice 11/04, 11 February 2004

⁴⁷ HM Treasury/Integrated Skills Ltd, *An assessment of options for recycling landfill tax revenue*, 2004 pviii

⁴⁸ DEFRA press notice, 22 November 2004. A summary of the programme was given in the PBR in December 2004 (Cm 6408 December 2004 p152).

⁴⁹ HC Deb 28 March 2008 cc2274-6W. Over this period tax receipts grew from £672m in 2004/05, up to £877m in 2007/08 (HMRC, *Landfill tax Bulletin*, July 2009: Table 2)

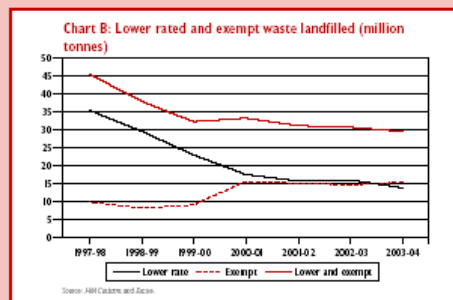
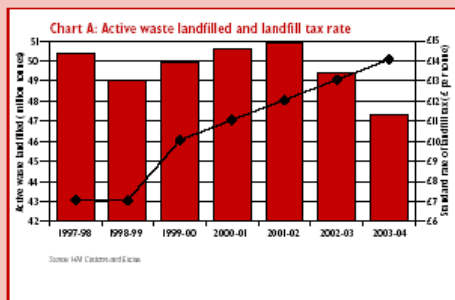
4 Increasing the duty escalator (2005-2008)

In Budget 2005 the Government confirmed that the standard rate would be increased by £3 per tonne.⁵⁰ Provision to increase the rate to £18 from 1 April 2005 was made by section 99 of the *Finance Act 2005*. The timing of the General Election curtailed Parliamentary scrutiny of this legislation, so that this particular measures was not debated by the House,⁵¹ However, the Budget report provided a short assessment of the tax since its introduction:⁵²

Box 7.4: Assessment of the landfill tax

The landfill tax was introduced in October 1996. In Budget 2003, to reduce reliance on landfill further, the Government announced that landfill tax on active waste would increase annually by at least £3 a tonne from April 2005 on the way to a medium- to long-term rate of £35 a tonne.

The total volume of waste disposed to landfill fell by almost 20 per cent between 1997-98 and 2003-04. As shown in Chart A, since the Government's announcement of increases to the landfill tax on active waste, the volume of such waste has fallen by over 4 per cent. The quantity of inactive or inert waste disposed to landfill fell by 60 per cent between 1997-98 and 2003-04. Even allowing for the fact that some of this material may have been reclassified as exempt, there is still an overall reduction in inert or exempt material of 16 million tonnes (35 per cent) over the period, as shown in Chart B.



It is too early to reach a conclusive view on the changes in waste management investment since April 2003. However, initial analysis of waste management planning decisions suggests that there has been a shift away from landfill towards investment in alternative waste management options, although landfill remains an important means of waste disposal. In England, approved planning decisions (i.e. where planning permission has been granted) for landfill sites fell by 14 per cent between 2002-03 and 2003-04. Over the same period, approved decisions for waste treatment sites rose by 52 per cent and for composting facilities increased by 55 per cent. The greatest number of decisions in 2003-04 was for treatment (28 per cent of all approved decisions) followed by landfill (22 per cent of all approved decisions). However the Government recognises that further investment in alternatives to landfill is still required.

The landfill tax has been effective in diverting waste from landfill. Increasing the rate on active waste is one of a number of measures to help put the UK on course to achieve the target of reducing biodegradable municipal waste landfilled in 2010 to 75 per cent of that landfilled in 1995.

⁵⁰ HM Customs & Excise Budget Note CE14, 16 March 2005

⁵¹ All the Bill's stages in the Commons were taken on 6 April 2005 (HC Deb cc 1432-1491).

⁵² HC 375 March 2005 p 167

The standard rate was increased a further £3 to £21 a tonne the following year, in the 2006 Budget;⁵³ the Budget report gave some details of the impact that the increase in the standard rate had had on landfill volumes: “The increases in the standard rate of landfill tax are contributing to a move away from over-reliance on landfill and provisional figures show that between 1997 and 2005, the volume of active waste disposed at landfill sites fell by almost 16 per cent, with the biggest fall occurring in the last year.”⁵⁴ A written answer in June 2006 explained that, “provisional figures show that over the period 1997-98 to 2005-06 the total amount of waste landfilled in the UK at sites registered for landfill tax fell by 25 per cent, while the amount of active waste landfilled fell by 14 per cent.” Notably, regional estimates of the impact of the tax are not available: the origin of landfilled waste is not recorded on the site operator’s tax return.⁵⁵ Unsurprisingly, given the Government’s approach to setting the tax rate, this change received relatively little attention in the press, or comment in the House.⁵⁶

In the 2006 PBR, the Government signalled a change in its approach: although the duty rate would rise by £3 from April 2007, it would “consider whether the standard rate of landfill tax needs to increase more steeply from 2008 onwards, or go beyond the £35 per tonne already committed to for the medium to long-term, in order to encourage greater diversion of waste from landfill and more sustainable waste management options.”⁵⁷ As it transpired, in his 2007 Budget the Chancellor Alistair Darling, announced that that the escalator would more than double, to £8 from April 2008 until 2010-11 at the earliest. From 1 April 2008 the standard rate would be set at £32 a tonne, and the lower rate would rise, for the first time since the tax had been introduced, to £2.50.⁵⁸ It was estimated that these changes would raise £175m in 2008-09, rising to £325m in 2009-10.⁵⁹ Despite the scale of this measure, the new rates were only debated briefly during scrutiny on the Finance Bill,⁶⁰ and there was little coverage in the press.⁶¹

The next year saw the same sequence of events: in the 2008 Budget the Government confirmed that the standard rate would rise by another £8, to £40, from 1 April 2009 – and provision was made in the Finance Bill that year. During the proceedings of the Finance Bill, the then Economic Secretary Kitty Ussher explained why the Government had taken to legislating for duty rises one year in advance:

We are legislating for next year’s increases this year, because—the hon. Member for Taunton is entirely right—we wish to provide certainty and to achieve a behavioural impact on firms seeking to invest. It is consistent with the approach that we have taken in the Bill on other environmental taxes—the climate change levy and the aggregates

⁵³ HM Revenue & Customs Budget Notice BN54, 22 March 2006. The increase in the standard rate had been announced in the Pre-Budget report some months before (Cm 6701 December 2005 para 7.76).

⁵⁴ HC 968 March 2006 para 7.86

⁵⁵ HC Deb 9 October 2006 c285W

⁵⁶ For example, in their report on the 2006 Budget the Treasury Committee discussed environmental taxation, but looked at air passenger duty in detail – and made next to no mention of the landfill tax (*Fourth report*, 24 April 2006 HC 994 2005-06 para 93-102).

⁵⁷ Cm 6984 December 2006 para 7.84

⁵⁸ HC 342 March 2007 para 7.90

⁵⁹ HC 342 March 2007 p209

⁶⁰ Public Bill Committee (Finance Bill) 10 May 2007 cc 107-9. The increase in duty rates for 1 April 2007, and for 1 April 2008, were set by section 15 of the *Finance Act 2007*.

⁶¹ The *Daily Telegraph* reported that the new duty rates were encouraging councils to phase out the weekly collection of rubbish (“Stealth tax ‘is killing the weekly bin round’”, 25 April 2007).

levy—and with the approach that we took last year. Pre-announcing something as early as possible has a maximum affect on behaviour.⁶²

On this occasion David Gauke, for the Conservatives, and Jeremy Browne, for the Liberal Democrats, were both generally supportive of the tax, but raised concerns about the impact of a higher tax rate on fly-tipping, and the budgets of local authorities; the Minister replied to these concerns by saying:

On the issue of rate increases encouraging fly-tipping, we recognise that fly-tipping is a significant antisocial problem affecting communities, landowners and regulators alike. That is why my colleagues at Department for Environment, Food and Rural Affairs have been working with the Environment Agency to develop and implement a waste crime action plan, which aims to improve prevention, detection and enforcement with regards to fly-tipping ... In my constituency, it seems to be the determination and dedication of local authority staff, rather than the standard rate of landfill tax that makes a difference ...

A number of local authorities have claimed that the increases have not been adequately factored in, adding pressure to council tax bills. ... but the answer is that that is not the case. The cost of landfill tax was taken into account when agreeing the sustainable settlement with local authorities. It is sufficient to ensure that excessive council tax rises are avoided. The local government settlement that provides continued real term increases with an average, annual increase of 1 per cent. above inflation takes into account local government's landfill tax liability, including the increased costs that we are discussing today.⁶³

5 Recent developments

In the 2009 Budget the Government announced that the duty escalator would be extended to 2013 at the earliest:

Landfill tax remains a cornerstone of waste management policy in the UK. By increasing the costs of sending waste to landfill, the tax encourages use of, and investment in, sustainable alternative treatment options, such as sorting machinery, recycling and anaerobic digestion. Budget 2009 announces that the standard rate of landfill tax will continue to increase by £8 per tonne on 1 April each year from 2011 to 2013, so that the tax continues to incentivise investment in more sustainable alternatives to reduce reliance on landfill, delivering emissions savings equivalent to 0.7 MtCO₂ per year. Budget 2009 also announces that the lower rate applying to inactive wastes will be frozen at £2.50 per tonne for 2010-11.⁶⁴

Along with the Budget, the Treasury also launched a consultation on modernising the scope of the tax. As the paper explains, there are three reasons why a review is necessary at this time:

- changes in environmental protection regulation, including the obligation to classify landfills as either hazardous, non-hazardous or inert;

⁶² Public Bill Committee (Finance Bill) 15 May 2008 c255

⁶³ *ibid.*

⁶⁴ HM Treasury, *Budget 2009*, HC 407, April 2009, para 7.61

- changes in industry practice, including more sophisticated technology and a reduction in the number of landfill businesses and sites across the UK, and
- the challenge posed by litigation to the tax base.⁶⁵

Focusing on the last of these changes, in 2008 the Court of Appeal considered an appeal by a waste management company that their use of inert waste on a site, either to cover over active waste to be treated, or to build roads on-site, did not constitute a taxable disposal.⁶⁶ As the legislation stands, a taxable disposal of waste at a landfill site is defined primarily by reference to the place of disposal (this is the landfill site), and the intentions of the person when discarding of this waste. The Court held this material was clearly not being discarded, and its treatment for tax purposes should not be dictated by the fact that the *original* owner of this material had got rid of it for this purpose.

As a temporary solution, legislation to bring certain wastes back into the scope of the tax was included in the *Finance Bill 2009*. When this was debated at the Committee stage of the Bill, the Exchequer Secretary, Sarah McCarthy-Fry, gave some insight into the implications of the WRG case:

The Waste Recycling Group case means that we are now in a position in which landfill tax legislation relating to use of waste on site does not reflect our policy intention. The use of waste at a landfill site is, in effect, disposal in terms of environmental impact. It is treated as disposal under environmental protection regulation and, on that basis, it should be taxed as disposal. However, the WRG judgment means that, at present, no tax is due. Let me give an example. The use of inert waste as a protective cover for landfill at the end of the working day has the same disamenity of lorry movements and noise as the general landfilling of inert waste. Therefore, it is right that the lower rate of landfill taxable for inert waste should apply to this use for daily cover.

The WRG case means that the Government are receiving less revenue from landfill tax. We estimate that it will amount to £200 million over three years if not addressed. The changes introduced by this schedule will mitigate such revenue losses. However, I stress that this is a case of mitigating revenue losses and not extending the application of the tax.

The Government are determined that landfill tax should remain robust and a cornerstone of our policy for reducing the UK's reliance on landfill. To that end, the schedule provides powers to make a Treasury order, prescribing landfill site activities that are taxable in addition to taxable disposals that are already caught by landfill tax legislation. We have published a draft of the Treasury order, which we intend to lay following Royal Assent. It lists eight uses of waste at a landfill site and they are all uses that do not involve the creation of a tangibly engineered structure. The order will be subject to approval by the House within 28 days of it being made. The House will therefore have an opportunity to debate it in due course.⁶⁷

However, as the Treasury's consultation paper explains, "the Government believes that a more comprehensive rethink of the legal definition of a taxable disposal of waste at a landfill

⁶⁵ HM Treasury, *Modernising landfill tax legislation*, April 2009

⁶⁶ *Commissioners for Her Majesty's Revenue and Customs v Waste Recycling Group Limited* [2008] EWCA Civ 849, (the WRG case)

⁶⁷ Public Bill Committee (Finance Bill) 25 June 2009 c639. This Order – SI 2009/1929 – was debated on 26 October 2009 (First Delegated Legislation Committee); it took effect on 1 September 2009.

site is now appropriate. The WRG case has demonstrated that landfill tax is not fully in line with current environmental protection regulation and waste industry practice.”⁶⁸

In addition to modernising this definition, the paper also sets out proposals to modernise the scope of the lower rate of tax, to align it with European rules on the classification of waste – resulting in some materials becoming liable to the standard rate:

The Government proposes to follow the 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 only for the purposes of the tax. The tests in European legislation provide 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 are properly inert ...

A number of wastes that are currently lower rated may not be inert in terms of European legislation. Under this option such wastes would cease to be lower rated. They appear to include:

- coal fly ash (pulverised fuel ash);
- bottom ash and slag and boiler dust;
- furnace slags including slag from waste incineration;
- used foundry sand;
- gypsum/ calcium sulphate;
- brine waste;
- red mud; and
- low activity inorganic compounds.

Waste is not inert under European legislation where it is mixed with non-inert waste. Under current landfill tax legislation, mixed loads may be lower rated where the non-inert part of the load is an incidental quantity.⁶⁹

The consultation closed on 24 July, though the paper states that the Government does not plan to legislate until the *Finance Bill 2010*, with changes coming into effect sometime after that.

This reform was discussed during the Committee stage of the Finance Bill, when provision to set the standard rate at £48 from 1 April 2010 was scrutinised. The Conservative spokesman, Greg Hands, queried the proposed changes to those wastes qualifying for the lower rate:

Some of the Government’s suggestions may dramatically increase the tax on waste that currently qualifies for the lower rate. The document’s lead option for that category would restrict the lower rate to waste that is classified as “inert” under the EU landfill directive. It is not clear whether the Government regard that change as a requirement of the directive or regard harmonisation with the criteria in the directive and other parts of the European framework as desirable in itself. The Government’s references to falling behind recent developments in “thinking” rather suggest the latter—that it is in keeping with the framework rather than a positive requirement of the directive.

⁶⁸ [Modernising landfill tax legislation](#), April 2009 para 1.14

⁶⁹ [Modernising landfill tax legislation](#), April 2009, paras 3.5-3.8

It is not clear what the precise implications of the change will be; perhaps the Minister could set out the Treasury's view. Up to £160 million of additional revenue is identified in the impact assessment, but the fact that the consultation explicitly asks the industry the questions: "Are you aware of any other wastes which would cease to be lower rated under the proposal?" and "Are you aware of any wastes which would be brought into the lower rate of tax under the proposal?" suggests that the Treasury and HMRC are not completely certain of the effects of their lead option. It would be unfortunate if a consultation that began with the fallout from one court case ended up triggering many others.⁷⁰

The then Exchequer Secretary, Angela Eagle, replied to these points:

[The hon. Member] ... is right to point out that we are proposing to change the way that inert materials are currently classified, which will result in the Treasury gaining £160 million of additional revenue. The understanding of the impact of particular waste, and in what circumstances waste can be considered inert, has—believe it or not—moved on considerably in recent years. In particular, the issue has been considered at length, resulting in European legislation and the putting in place of a sophisticated waste testing regime. Subject to the outcome of that consultation, the Government are proposing to follow the European legislation and testing regime in order to determine, for tax purposes, which wastes are inert. That will mean that we have greater certainty that lower rated wastes are properly inert, in line with up-to-date thinking. That may mean that certain waste, which was previously lower rated, may become standard rated. But this is the right outcome in environmental terms if the wastes in question are not, in fact, really inert. So we are bringing the entire structure up to date.⁷¹

During the debate both Mr Hands, and Mark Field, asked whether the £8 duty escalator was sustainable, and might not lead to a significant rise in fly-tipping; on this issue, Ms Eagle said the following:

We think the levels are sustainable. The Government recognise that fly-tipping is a significant antisocial problem affecting communities, landowners and regulators. We have been working via the Department for Environment, Food and Rural Affairs with the Environment Agency. In 2007-08, fly-tipping on public land fell by 7.5 per cent., which I hope the Committee will welcome. As well as a decrease in fly-tipping overall, enforcement action and successful prosecutions have increased by 26 per cent. on previous years. We are beginning to get to a stage where we are dealing with the problem of fly-tipping, as well as making the case, as the hon. Member for Taunton did so eloquently, about new waste infrastructure that can help to give us the capacity to recycle substantial amounts of waste.⁷²

In the *Pre-Budget Report* in December 2009, the Government stated that it had received over 100 responses to the consultation:

The Government will now undertake further discussions with landfill operators on the proposals relating to what is a taxable disposal. Given the potentially significant impact on certain sectors of industry, the Government will also work with the relevant environmental authorities to understand in more detail the characteristics of materials

⁷⁰ Public Bill Committee (Finance Bill) 2 June 2009 c172

⁷¹ *op.cit.* c178. The Committee did not divide on the Clause

⁷² *op.cit.* c175

the consultation proposed should no longer be covered by the lower rate of tax. Further details will be outlined in the Government response to the consultation next spring.⁷³

The department published a summary of the responses it had received, alongside the PBR;⁷⁴ respondents had been asked if the Government's lead option were chosen, what material, if any, would fall out of tax:

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

On the reclassification of inert material, the Government had asked for views on using the criteria provided by the EU Landfill Directive:

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. 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. 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.⁷⁵

The paper reiterates that the Government aims to publish its response in spring 2010.

⁷³ Cm 7747 December 2009 para 7.53

⁷⁴ This is available on the Treasury's site at: http://www.hm-treasury.gov.uk/bud_bud09_landfilltax.htm

⁷⁵ *Modernising landfill tax legislation : summary of consultation responses*, December 2009 para 2.5-6, 3.13-4