



Department
for Environment
Food & Rural Affairs

Redeveloping land affected by contamination or underdeveloped land: the potential cost barrier of landfill tax

Call for Evidence on a Proposed Landfill Tax Grant Scheme

Date: 21st July 2022

Closing Date: 18th August 2022

We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



© Crown copyright 2022

This information is licensed under the Open Government Licence v3.0. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at

soil.health@defra.gov.uk

www.gov.uk/defra

Contents

Executive Summary	4
Introduction	5
Background.....	6
Proposed Approach	8
Question Group 1 – Definition and Prevalence of the Landfill Tax Trap	10
Question Group 2 – Environmental Criteria	11
Question Group 3 – Financial and Socio-Economic Criteria	13
Question Group 4 – About You.....	14
Call for Evidence Further Information	15
Confidentiality and Data Protection.....	16

Executive summary

The government is aware of instances in which the redevelopment, remediation, and / or protection of land affected by contamination or the consequences of previous development may be prevented by the cost of landfill, including the Landfill Tax. Landfill Tax has been highly effective since its implementation in diverting waste from landfill and underpinning the waste hierarchy by encouraging more sustainable waste management solutions. However, it is not intended that this tax should act in certain instances to prevent the redevelopment, remediation, or protection of land in the economic, environmental, and social interest of local communities.

This Call for Evidence seeks information on the prevalence of instances where Landfill Tax is considered an insurmountable barrier to the redevelopment of land affected by contamination or the consequences of previous development in England, and views on the need for, and design of, a possible scheme to support local authorities (including Combined Authorities and Mayoral Development Corporations) and government departments and their agencies to overcome this issue.

Introduction

Prevalence and Location of Land Affected by Contamination and Underdeveloped Land

The government expects that land affected will be most prevalent in areas which possess a higher concentration of former industrial sites and prevailing land values which are below the national average. It is also considered probable that many sites of this type may have fallen into escheat due to their negative development value. The government seeks further specific information on the prevalence and location of affected land in the questions below.

Definition of Land Affected by Contamination, Contaminated Land and Underdeveloped Land

Land Affected by Contamination (Land Contamination)

All land that might have contamination present which may make the site unsuitable for either its current or proposed new use. This includes land which may or may not meet the statutory definition of contaminated land.

Contaminated Land

Contaminated Land is defined in Part 2A of the Environmental Protection Act. This specifically refers to land where substances in, on or under the land cause an unacceptable risk to the environment, health or other specified receptors making the land unsuitable for its current use.

For land to be determined as contaminated land it must appear to the local authority to be in such a condition, by reason of substances in, on or under the land where:

- significant harm is being caused to people, environment, property or protected species, (or there is a significant possibility of such harm being caused)
- significant pollution is being caused to surface waters (for example rivers, lakes, estuaries and coastal waters, or groundwater (or there is a significant possibility of such pollution being caused)
- harm is being caused to people as a result of radioactivity (or there is a significant possibility of harm being caused)
- there is a risk that erosion will cause harm to human health and/or the environment

Underdeveloped Land

Vacant and derelict land, brownfield land, and under-utilised land with some construction and vacant premises are some examples of what might be considered “underdeveloped” so long as a good case is made. When justifying how their sites are “underdeveloped”, applicants should consider the environmental, financial and socio-economic criteria set out later in this document.

Background

Landfill Tax (LFT) was introduced on 1 October 1996 to encourage the diversion of waste away from landfill and towards more environmentally friendly waste management options such as recycling, re-use and recovery. It is widely recognised as successful in achieving this objective and since 2000, local authority waste sent to landfill in England has fallen by 90%. LFT is a weight-based tax due on material disposed of at permitted landfill sites in England and Northern Ireland (it has been devolved to Scotland and Wales) and those sites that should have a permit but do not. There are two rates of tax:

- A standard rate (currently £98.60 per tonne)
- A lower rate (currently £3.15 per tonne) for the least polluting material

Landfill operators will typically factor in their liability to pay landfill tax when setting the gate fee that they charge their customers for receiving material at their site.

Landfill operators registrable for Landfill Tax must submit a return to HMRC for each accounting period and pay the tax liability established by that return. A return will normally cover a 3-month period and will show the date by which it must be filed and payment made (the due date). Unless a taxpayer is on non-standard accounting periods, the due date is the last working day (excluding any weekends or public holidays) of the month following the end of the return period.

Economics of Remediation and Redevelopment

Remediation for these purposes refers to returning land that is contaminated or underdeveloped to a condition where it is suitable for redevelopment **OR** bringing land affected by contamination back into beneficial use, so it is suitable for use (including both current or proposed new uses) that serve the needs of the local community and aids nature recovery. There are a number of possible barriers to remediation of land, but financial considerations are a major factor in almost all cases. Much land remediation in England occurs in the course of house building or other economic development. In these cases, the costs of remediation – including site surveys and appropriate in situ treatment and / or removal of waste materials – are generally met by the landowner or developer and will be affordable in the context of the land value uplift secured through the project. Where remediation falls outside of the planning regime, i.e. residential sites that were built on old industrial/brownfield sites before relevant regulations came into effect, this cost usually falls to local authorities where the ownership of the site is unknown. This will include the costs of any Landfill Tax associated with waste that cannot be otherwise dealt with appropriately in or ex situ.

When landfill tax was introduced, provisions were included in the Finance Act (Section 43A & 43B) which enabled persons carrying out reclamation of land to apply for a contaminated land landfill tax exemption certificate. This served as a method of incentivising the clean-up of contaminated land. As more approaches involving decontaminating waste on site emerged this exemption was phased out between

December 2008 and April 2012. The additional revenue available to the Government from ending this exemption was recycled to extend land remediation relief.

Land values play an important role in the economics of remediation. Land values vary widely nationally. For example, in 2019, Redcar and Cleveland in the North East had an average land value for residential development of £400K / hectare. By contrast, in the Cambridge local authority area, this was £6.25m / hectare – a more than 15-fold differential. Unlike land values, the average costs of site remediation, including any LfT due, is more constant nationwide. Where landfill is used to remediate a site for its intended use, LfT can account for a sizeable portion of total remediation costs. However, this can vary widely depending on the nature of the waste and other site-specific factors.

Taken together, the government recognises that the costs of remediation are more likely to represent a financial barrier to the viability of economic redevelopment and the future safety of land affected by contamination and underdeveloped land in areas outside the South and South East, and that LfT will represent a significant component of that cost burden in a presently unknown but likely non-negligible proportion of cases.

Proposed approach

The government wishes to understand the frequency of instances of LfT acting as a barrier to remediation for redevelopment and the protection of the environment and human health and to seek views on a possible, targeted mechanism to provide relief. Specifically, we consider that a grant model which functions to refund some or all of the costs of LfT to local authorities – subject to carefully designed financial additionality and environmental protection criteria – could represent an effective, targeted, and fiscally neutral intervention.

In Budget 2018, the government announced a 2 year £10m pilot scheme to facilitate the clearance of former waste sites that met certain criteria around abandonment, ownership and the like. This scheme offered to pay a grant equivalent to the invoiced Landfill Tax from waste cleared from the sites. The scheme was administered by the Environment Agency. A number of sites were considered and submitted applications. One site was cleared using the mechanism but others proved more complex, either due to land ownership or low potential value post-clearance. One of the originally considered sites was, in the end, cleared commercially without intervention.

Any new scheme will build on the lessons learnt from this previous scheme, such as:

1. The pilot scheme proved to be complex and onerous in its administration and application. Initially the EA had no legal powers to administer the scheme which took time to resolve. The EA then had to address complex issues around Due Diligence and the application of State Aid when private developers were involved.
2. The scheme benefits were predominantly economic rather than environmental although there are clear environmental benefits in looking to bring land back into use. The scheme was focussed on the reimbursement of landfill tax incurred in the remediation of sites which was administered by the EA. This caused conflict with Local Authority zero waste to landfill aspirations and Net Zero ambitions.
3. Remediation of abandoned sites is complex and costly with clearance costs running into millions of pounds. The success of the scheme was dependant on operational areas working in partnership with others to identify and agree solutions with remediation only possible in circumstances where the value of the land post clearance exceeded the total cost of clearance.
4. Abandoned waste sites have long complex histories. The EA needed to ensure that all enforcement options had been exhausted before they could apply the scheme. Courts have powers to direct the remediation of sites that have been abandoned, where criminal offences can be proved and the offender has the means to undertake the required work. This rightly limited the number of sites eligible for remediation under the scheme.
5. Landownership caused a range of issues. It is essential to ensure that landowners responsible for the original deposits of waste do not benefit financially from any support scheme.

This call for evidence therefore seeks views on a functional definition of the barrier faced by the Landfill Tax obligation or the location and frequency of sites which may be presently affected, and the necessary criteria for a targeted scheme to relieve these burdens while avoiding unintended consequences such as undermining the waste hierarchy or landfill tax revenues.

Question group 1: Definition and Prevalence of the Landfill Tax Trap

We propose that a site falls within the Landfill Tax Trap if:

1. The use of landfill is reasonably necessary to dispose of some or all of the contamination or material present at the site to realise opportunities for remediation, economic development, or to secure long term environmental or human health protection of surrounding land or water body, AND
2. LfT obligations arising from the disposal of material from remediation to landfill would result in the total costs of site remediation exceeding the land value uplift from bringing land affected by contamination back into beneficial use, so it is suitable for use that serves the needs of the local community, BUT
3. All other costs of remediation, absent the LfT obligation, would be less than the land value uplift.

These criteria are intended to ensure that the Landfill Tax Trap, and hence any new policy intervention, is only applicable when landfilling is required in the course of remediation (and hence LfT would be due) and where the costs of meeting this LfT obligation would make the difference between being able or unable to remediate the site on commercial terms. We consider that land value uplift is the appropriate benchmark against which to assess the costs of remediation when determining viability. This is because, if the land value uplift is less than the costs of remediation, the site will have net negative value to any owner who undertakes remediation with a view to sale at current market value. A site owner would be unlikely to progress remediation in these circumstances and hence no LfT would be paid either.

Q1. Do you consider that this definition represents a fair definition of the Landfill Tax Trap?

- a. Yes
- b. No
- c. If no, how would you alter the definition?

Q2. Are you aware of any specific site or sites that you believe meet the above definition of the Landfill Tax Trap? If yes, please provide details including a summary of the location, type of contamination, estimated land value or other benefits, if remediation where to take place, and estimated cost of remediation including likely Landfill Tax obligation if known.

- a. Free text option to collect information on possible sites.

Q3. What type of site should qualify as meeting the Landfill Tax Trap definition?

- a. Redevelopment only
- b. Sites where land remediation will have a wider economic, environmental, and socio-economic benefit, including through improvements to public health
- c. Other, please specify

Question group 2: Environmental criteria

The government considers that any grant to help resolve instances of the Landfill Tax Trap must not have the effect of undermining the waste hierarchy, or inadvertently incentivising or rewarding illegal dumping or other waste crime.

In many instances, in situ or ex situ remediation of contamination is appropriate and can be undertaken in preference to the use of landfill without disproportionate loss of socioeconomic opportunities.

We welcome views on following criteria which we consider may help to target a grant scheme appropriately while avoiding environmental harms:

1. The applicant must demonstrate that use of landfill is reasonably necessary, and steps have been taken to minimise the quantity of waste that will be landfilled. Reasonableness may be evidenced with respect to:
 - a. The nature of the waste and / or the location of the site meaning there is a lack of a suitable alternative,
 - b. The treatment operation that would be carried out to move up the waste hierarchy and minimise the amount of disposal to landfill,
 - c. Restrictions to the future utility of the site post-remediation (e.g., due to instability) absent removal and landfilling,
 - d. Disproportionate delay and opportunity costs arising from an alternative remediation method, and / or
 - e. Current or imminent pollution that may cause harm to the environment.
2. The applicant should evidence that the contamination has been present for a minimum period of time prior to the commencement of any new grant offer, ensuring contamination is historic and so removing any incentive to add new contamination to the site.
3. No party benefitting from the remediation or planned development should be subject to any past or current legal action in respect of the contamination to be removed.

Q4. Do you think these criteria are appropriate and sufficient to proportionately protect the waste hierarchy?

- a. Yes
- b. No
- c. If no, please provide details

Q5. What should count as historic contamination?

- a. 1-4 Years
- b. 5-10 Years
- c. 10 Years+
- d. Other, please specify

Q6. Who should scrutinise whether a proposed project meets these environmental criteria?

(Free Text)

Q7. What evidence do you consider that you / an applicant could be reasonably asked to present to demonstrate that a proposed project meets these environmental criteria?

(Free Text)

Question group 3: Financial and socioeconomic criteria

The government intends that any grant will be such that the expenditure is at least offset by the **additional** Landfill Tax revenue resulting from the developments which it enables. This can be achieved by ensuring that a grant is only available in cases where LfT would otherwise render the remediation project uneconomical and hence no LfT revenue would have been paid.

Any grant should also act to unlock tangible social and economic benefits for local communities as a result of the remediation of a site that could not otherwise have been achieved.

We welcome views on following criteria which we consider may help protect these financial and socioeconomic principles:

1. The applicant is a local authority or other public body who either owns the site (whether directly or through a Development Corporation or similar) or else is prepared to buy it from the Crown Estate (where in escheat).
2. The applicant must supply evidence that LfT is acting as a financial barrier to remediation in line with criteria 2 and 3 of the Landfill Tax Trap definition above.
3. The applicant must evidence that a plan is in place to secure timely redevelopment or other clear social or environmental benefit post-remediation, with any necessary planning permissions already in place.
4. The applicant must evidence that they are able to meet all other remediation costs and agrees that the grant will only be paid at the point the LfT has been paid by the landfill operator and the applicant has provided evidence of invoicing.

Q8. Do you agree that application should be restricted to local authorities?

- a. Yes
- b. No
- c. If no, please provide details

Q9. What evidence do you think an applicant should reasonably be expected to provide that LfT is acting as a financial barrier to remediation?

- a. (Free Text)

Q10. What evidence do you think an applicant should reasonably be expected to provide that a plan is in place to secure redevelopment or other public benefit?

- a. (Free Text)

Q11. What evidence do you think an applicant should reasonably be expected to provide that all other costs of development are affordable to them?

- b. (Free Text)

Question Group 4: About you

1. Would you like your response to be confidential?

- a. Yes
- b. No
- c. If you answered yes to this question, please give your reason.

(Free Text)

2. What is your name?

(Free Text)

3. What is your email address?

(Free Text)

4. It would be helpful for our analysis if you could indicate which of these sectors you most align yourself/your organisation with for the purpose of this consultation (please tick / circle one which is most applicable to you):

- a. local authority
- b. developer
- c. non-governmental organisation
- d. member of the general public
- e. landowner
- f. Lead Local Flood Authorities
- g. other (please state).

5. If you are responding on behalf of an organisation, what is its name?

(Free Text)

Call for Evidence Further Information

Geographical Scope

England only.

Responsible Body

This call for evidence is led by Defra's Access, Landscapes, Peatland and Soil Division in partnership with HM Treasury.

Audience

This is a public call for evidence, and it is open to anyone with an interest to respond. The call for evidence should be of particular interest to Local Authorities and developers who are interested in redeveloping, remediating, and protecting land affected by contamination.

Duration

This call for evidence will run for 4 weeks. The call for evidence opens 21 July 2022 and closes 18 August 2022.

Responding to this call for evidence

Please respond to this call for evidence using the citizen space consultation hub at:

By email to: Soil.Health@defra.gov.uk

Or in writing to:

Call for Evidence on the Proposed Landfill Tax Grant Scheme

Consultation Coordinator, Defra

Second Floor, Foss House, Kings Pool

1 to 2 Peasholme Green

York

YO1 7PX

After the call for evidence

The government will publish a summary of responses shortly after the call for evidence closes on 18 August.

Confidentiality and data protection

A summary of responses to this consultation will be published on the UK government website at: www.gov.uk/defra. An annex to the consultation summary will list all organisations that responded but will not include personal names, addresses or other contact details.

Defra may publish the content of your response to this consultation to make it available to the public without your personal name and private contact details (for example your home address and email address).

If you click on 'Yes' in response to the question asking if you would like anything in your response to be kept confidential, you are asked to state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality.

The reason for this is that information in responses to this consultation may be subject to release to the public or other parties in accordance with the access to information law (these are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA)).

We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances. In view of this, your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance these obligations for disclosure against any obligation of confidentiality.

If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances.

If you click on 'No' in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won't make your personal name and private contact details publicly

available.

There may be occasions when Defra will share the information you provide in response to the consultation, including any personal data with external analysts. This is for the purposes of consultation response analysis and provision of a report of the summary of responses only.

This consultation is being conducted in line with the [Cabinet Office's Consultation Principles](#)

Please find our latest privacy notice uploaded as a related document alongside our consultation document.

If you have any comments or complaints about the consultation process, please address them to:

Call for Evidence on the Proposed Landfill Tax Grant Scheme

Consultation Coordinator, Defra

Second Floor, Foss House, Kings Pool

1 to 2 Peasholme Green

York

YO1 7PX

Or email: consultation.coordinator@defra.gov.uk

Consultee feedback on the online survey

Dear Consultee,

Thank you for taking your time to participate in this online survey. It would be appreciated, if you can provide us with an insight into how you view the tool and the areas you feel is in need of improvement, by completing our feedback questionnaire.

Overall, how satisfied are you with our online consultation tool?

Answer: (single choice)

very satisfied

satisfied

neither satisfied nor dissatisfied

dissatisfied

very dissatisfied

do not know

Please give us any comments you have on the tool, including suggestions on how we could improve it.

(Free Text)