

## BRIEFING NOTE

**Lobbying for a Change in  
Legislation on Landfill Tax**

**11<sup>th</sup> November 2014**

### **1. Purpose of the Report**

To promote, seek approval and direction for the lobbying of central government for a change in legislation on landfill tax when Local Authorities are remediating Contaminated Land where no polluter can be found.

### **2. Background Information**

The landfill tax was introduced in the UK in 1996 as a financial disincentive to what is known as “dig and dump” i.e. remediating land by excavation and disposal of contaminated soils/materials at landfills. The tax was also an incentive to utilise more sustainable methods of remediation.

Part 2a of the Environmental Protection Act 1990 imposes a duty on Local Authorities to inspect their district to determine land that meets that statutory definition of Contaminated Land and to seek its remediation by either voluntary or enforcement action. Where the original polluter and/or the developer of the land are no longer a legal entity to pursue then liability will default to the current landowner.

In 2013 Defra withdrew the capital grant funding that was made available to Local Authorities for the remediation of contaminated land where a polluter could not be found. This has left Local Authorities with a statutory duty outlined in the paragraph above and no capital funding to effectively deal with our industrial land contamination legacy where a polluter cannot be found other than to clean up the land ourselves [works in default] and initiate cost recovery procedures, often on families living within our districts.

The remediation of contaminated land in residential gardens is difficult and challenging and the only real practical way to do it is by excavation, disposal at landfill and replacement with clean materials. As such there is very little you can do to avoid using landfills in this scenario and the associated landfill tax. The costs attributed to landfill tax from the remediation of residential properties are considered to be between 30% to 60% of the total cost of the project so not an insignificant figure. For a typical project remediating 20 properties at a total cost of £400k this would equate to between £120k to £240k on landfill taxes.

In instances where either the land owner is an unknowing resident or a Local Authority deciding to foot the bill we feel that the landfill tax on the contaminated soils sent to landfill should be waived in these circumstances.

### **3. Recommendation**

We seek a steer on the following:

1. Should Wakefield Council lobby for such changes?
2. If 'Yes' how should we go about it? i.e. A letter to Secretary of State for the Environment; LGA; Environment Agency Chief Exec.
3. If 'Yes' should we promote this lobbying with other Local Authorities to try and gain their support?

### **4. Attachments**

Annexe 1 - A draft letter is attached for your consideration

Annexe 2 - House of Commons Debate

### **5. Contact Officer**

Diane Widdowson  
Service Manager Environmental Health

## Annexe 1 – Draft Letter

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Dear

**RE: CHANGE IN LANDFILL TAX LEGISLATION  
TO WAIVE THE LANDFILL TAX ON SOILS FROM CONTAMINATED  
RESIDENTIAL PROPERTIES**

The landfill tax was introduced in the UK in 1996 as a financial disincentive to what is known as “dig and dump” i.e. remediating land by excavation and disposal of contaminated soils/materials at landfill sites. The tax was also an incentive to utilise more sustainable methods of remediation.

Part 2A of the Environmental Protection Act 1990 imposes a duty on Local Authorities to inspect their district to determine land that meets that statutory definition of Contaminated Land and to seek its remediation by either voluntary or enforcement action. Where the original polluter and/or the developer of the land are no longer a legal entity, then liability will default to the current landowner who, in most cases, will not have had any prior knowledge of contamination issues.

In 2013 Defra withdrew the capital grant funding that was made available to Local Authorities for the remediation of contaminated land where a polluter could not be found. This has left Local Authorities with a statutory duty outlined in the paragraph above and no capital funding to effectively deal with our industrial land contamination legacy where a polluter cannot be found other than to clean up the land ourselves [works in default] and initiate cost recovery procedures, often on families living within our districts.

The remediation of contaminated land in residential gardens is challenging and costly and the only real practical way to achieve remediation is by excavation and disposal of contaminated soils at a suitably licensed landfill site, and consequently attracts landfill tax. The costs attributed to landfill tax from the remediation of residential properties are considered to be between 30% to 60% of the total cost of the project so not an insignificant figure. For a typical project remediating 20 properties at a total cost of £400,000 this would equate to between £120,000 to £240,000 on landfill taxes.

From 2000, Local Authorities were able to apply for DEFRA funding in the form the Contaminated Land Capital Project Programme to cover the cost of remediation works such as this. This capital program was effectively withdrawn in December 2013.

For the above reasons and in instances where:

1. The land is determined as Contaminated Land; and
2. The Expert Panel setup by DEFRA agree on this decision; and
3. No known polluter can be found; and
4. The land is currently residential; and
5. Either the landowner or Local Authority pays for remediation

We feel that the landfill tax on the contaminated soils sent to landfill should be waived in these circumstances.

The inspection of potentially contaminated sites by Local Authorities is for various reasons grinding to a halt in most areas. We feel that the above action would help revive this somewhat stalled legislation.

Yours sincerely

## Annexe 2 – House of Commons Debate [10<sup>th</sup> September 2014]

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### Blanefield (Landfill Tax Liability)

7:28 pm

#### **Anne McGuire (Shadow Minister (Work and Pensions); Stirling, Labour)**

I am grateful for the opportunity to raise my concerns about the application of the landfill tax across the UK to cases in which, due to time elapsed and the lack of any responsible polluter, the burden of liability for contaminated land remediation costs, plus landfill tax and value added tax, falls on the occupier of that land. The incidence of contaminated land across the UK is apparently wide scale with limited public funds available to assist businesses and residential occupiers who find themselves bearing the considerable burden of such costs where they are at no fault in the creation of the contamination.

My understanding is that the landfill tax was introduced in the 1996 Budget as one of a series of measures aimed at reducing waste placed in landfill sites. Part of the aim of the tax—a laudable aim—was to tackle polluters of land that required remediation to make it safe, with a tax on top that could be used to penalise and discourage polluters. For recent instances of such contamination it may be, and often is, possible to identify and penalise the polluters, but as many sites are a legacy from this country's industrial past, the polluter has often disappeared into the mists of time.

I initiated this debate to raise the plight of 13 residents and their families who are the unfortunate victims of the landfill tax legislation. Blanefield is a village in the Stirling constituency to the north-west of Glasgow. In the 19th century it was home to a large calico printing works, which I understand at its peak may have employed 500 men, women and, given the historical time, children. With the demise of the calico printing trade at the end of that century there was overcapacity and factories like the Blanefield printworks closed down. By 1910 the last of the buildings had been demolished and the site lay dormant until the late 1950s, when a residential housing development was built on it.

Rolling forward, in 2012 a random soil analysis was carried out by the local authority and it found traces of lead and arsenic left as a legacy of the printing process. Under the Environment Act 1990 there is a responsibility on the local authority to ascertain whether land is deemed “contaminated land”. The local authority in Stirling believes, based on the scientific outcomes of its investigation of the ground and the risk assessment, that there is evidence that the land is in such a condition that it presents a “significant possibility of...harm” to human health.

In this case we are talking about a printworks demolished more than 100 years ago, and unfortunately, as you can imagine, Madam Deputy Speaker, the council has been unable to identify any party who “caused or knowingly permitted” the presence of the substances in question, because the owners of the printing works went out of business over a century ago and there is no indication of a successor company. Also, the council has no evidence that any of the developers who built the current dwelling houses on the site knew about the contamination. Part IIA of the Act provides that in the absence of a

causer or knowing permitter, the liability falls on the owners or occupiers of the affected land.

Here we come to the nub of the problem for the owners of a group of 13 homes identified as owning land affected by lead and arsenic contamination. The latest estimate of the cost of remediation to these 13 gardens is over £600,000, including value added tax. Liability for the individual proprietors of the 13 gardens varies from £14,000 to £100,000.

Under the 1990 Act, statutory guidance provides that where an appropriate person of this kind owns and occupies a dwelling on the contaminated land in question, the enforcing authority should consider waiving or reducing its cost recovery where that person satisfies the authority that at the time he or she purchased the dwelling they did not know, and could not reasonably be expected to have known, that the land was adversely affected by the presence of a pollutant. It further provides that any such waiver or reduction should be to the extent needed to ensure that the person in question bears no more of the cost of remediation than it appears reasonable to impose having regard to their income, capital and outgoings.

The Library has clarified for me that although the 1990 Act regulates contaminated land remediation, environmental issues, as the Minister will no doubt tell me, are devolved to the Scottish Government. I am advised, though, that contaminated land soil was originally exempt from the landfill tax. However, that exemption was phased out in 1998 due to concerns that soil was not being cleaned, but simply landfilled. I understand that until 2008 land remediation specialist companies did not have to pay landfill tax when they disposed of contaminated soils. But the Government argued that this exemption encouraged remediators to take the easy “dig and dump” route, rather than follow a more sustainable option, cleaning and reusing soil. They then announced that they would end the exemption for the contaminated sites, although the Government promised that any money they received would be reinvested through an expansion of existing rebates for remediation. These arrangements appear to apply only to companies and not to individuals who find themselves liable to pay the landfill tax for remediation of contaminated soil.

Given that the implementation of land remediation is now a devolved issue—I am sure the Minister will expect me to recognise that, but his time will come after my contribution—I am aware that the funding to mitigate the remediation costs of individuals and residents such as those on the Blanefield site in Scotland is available via Scottish budgets. In 2008 the previous Scottish Executive set up a contaminated land grant fund of £17 million available to Scottish local authorities. The new Scottish Government did not continue this fund but instead, under their single outcome agreements with local authorities, included a sum to allow them to take responsibility for funding in such situations. In the Blanefield case Stirling council has made available a sum of £125,000 towards the remedial works needed.

Aside from this substantial liability for residents, matters are exacerbated by their liability for landfill tax and value added tax levied on residents. These taxes remain reserved to the Treasury. Although they will be devolved to the Scottish Parliament, that devolution will not take place until 2015, so this is very much an issue for those currently on the Treasury Bench. I hope

the Minister will agree that it could not have been the intention of Government when introducing the landfill tax in 1996 or in 2000, when some changes were brought in, to impose such a draconian burden on residents who inherited a remediation bill.

In the Blanefield case the local authority has come forward with the likely costs of the remediation work plus landfill tax and VAT. This works out to a total of £633,000 for the 13 affected residents. We do not need a calculator to work out what the burden on individual residents would be. Even taking into account the council grant of £125,000, this leaves the residents liable for £483,000. Individual liability ranges from £11,000 up to £79,000. Astonishingly—I hope the Minister will accept this—the landfill tax element of these bills forms up to 61% of the remediation costs for some individuals. With the addition of VAT that element rises to 79% of the total burden being placed on my 13 constituents.

At this point I feel it is relevant to show the impact of the imposition of landfill tax on the 13 residents affected. Many of the residents are approaching retirement, have retired or have families, and the spectre of this potential burden on them is the cause of a range of stress-related deteriorating health problems. One resident commented to me that

“everyday major financial decisions cannot be made without the spectre of this financial liability hanging over us”.

Another commented that his wife is a keen gardener and knowing that the garden that she has tended and cared for will be destroyed in the near future is hard to take. So it is not just a financial issue for some of those involved.

A repeated concern expressed by residents is that their properties are worth considerably less or nothing due to these remediation costs, a situation that is particularly galling as the landfill tax and VAT elements are such a major component of their bills. So that the Minister does not think that I am exaggerating, I want to give him just a couple of examples. At one house the works cost £6,158 and the total cost without the council grant is £14,855. The landfill tax plus VAT represents 59% of that. If we take into account the Stirling council grant, the same house will have a reduced burden of £10,996, but the percentage of the landfill tax and VAT will be 73% of the total bill. In another case, at the other end of the spectrum, a bill that starts out at around £42,000 rises to £79,319, 78% of which is for the landfill tax and VAT. Therefore, there is a significant financial burden.

Another resident told me that they used all their savings to buy their property in Blanefield. Given the blight that the contamination places on the properties, that means real difficulties for them and anyone who might wish to purchase their house in future, because mortgage companies will not lend funds against the property.

What comes over strongly in the representations I have received from residents is that they are innocent victims of a polluter that existed over 100 years ago. Although the remediation costs alone, less the assistance offered by the local authority, could possibly be managed, the additional burden of the landfill tax and VAT takes it beyond their means. For that reason, I ask the Minister to look again at my previous request, outlined in my letter of 24 June, for the landfill tax and possibly the VAT elements in this case to be waived.

The Minister will know that I wrote to him subsequently in August seeking a meeting to discuss the situation. I am still awaiting a response to that request, but the burden on

my constituents is so great that I thought it appropriate to raise the matter on the Floor of the House in an Adjournment debate. In his reply of 19 July, he pointed out the involvement of Stirling council and stated that

“he hopes they will consider any additional hardship in accordance with the Statutory Guidance”.

I trust that, in taking on the concerns I have raised in this short debate, he will acknowledge that the burden on my constituents, which I am seeking to ameliorate, is a substantial landfill tax and the associated VAT, which is not, and should not be, the responsibility of either the local authority or the Scottish Parliament; it is quite firmly the responsibility of Her Majesty’s Treasury.

In the meantime, as well as reconsidering a waiver—I hope that he will—perhaps the Minister will look at the option of working with the local authority to mitigate the costs of the landfill tax and the VAT. That way, the Treasury would need to deal with only one agency, rather than 13 individual residents. Alternatively, it could be managed through the links with the Scottish Government. I hope that he will be flexible enough in looking at ways that this could be managed. I hope he will not give me a message tonight about precedent and how difficult it is, because I think that he might be able to find ways of dealing with it.

My constituents have been in limbo since they discovered that their land was affected, with their properties and their lives effectively blighted. As I stated earlier, I cannot believe that any Government, either of my party or the Minister’s, ever intended the landfill tax to impact on individuals in the way it has for the 13 Blanefield residents in my constituency. I hope that he will look at the case again and take action in whatever way he deems appropriate to help them by raising the burden of the landfill tax and VAT, which create the bulk of their liability. I look forward to his response, but I say to him that where there is a will there is a way, and the Treasury is expert in finding a way. I hope that he will be able to find a way tonight to help my 13 constituents who are facing a burden that they never expected.

7:44 pm

**Sajid Javid (The Economic Secretary to the Treasury; Bromsgrove, Conservative)**

I congratulate Mrs McGuire on securing the debate and representing her constituents with such passion and eloquence. The households she has referred to have come into very difficult circumstances through no fault of their own, as she has said. I am sure that every Member present can appreciate the pressures and stress that the situation is causing everyone involved. It is absolutely right that the right hon. Lady has brought this issue to the Chamber’s attention and allowed us to give it the consideration it deserves.

I will begin by reiterating some of the facts of the case. I will then provide some further background about the current legislation in this area. Finally, I will suggest what I believe is the best course of action for the right hon. Lady and her constituents.

As the right hon. Lady has explained, the residents under discussion live in properties that were built on the grounds of a former Victorian printworks. Following a



recent inspection by the Scottish Environment Protection Agency, the land on which those properties were built has been deemed contaminated. The law now requires that this land be remediated.

As the right hon. Lady has explained, the liability for that remediation is laid out in the contaminated land regime. In the first instance, it is right that the polluter will be held liable to cover the cost of remediation. However, as we have heard, in this instance the original polluter—namely the Victorian printworks—is no longer in existence. In the absence of the original polluter, the responsibility for carrying out the remediation works, under the Environmental Protection Act 1990, falls to the current landowner.

It is worth making it clear that in about 90% of cases involving contaminated land, the land will be remediated when the site is redeveloped for future use, as stipulated under planning policy. In most instances, the liability will fall on a company or business, which will be better placed to cover the costs of remediation. In the small percentage of remaining cases, however, the costs of remediating the land will fall on owner-occupiers.

Of course, in most circumstances the value of the land will rise once it has been decontaminated. In this respect, the logic of the law is to ensure that the landowner, who will be set to gain from the increase in the value of the land, should also be the person liable for the costs of the clean-up. Unfortunately, in the instance under discussion, this means that the liability is set to fall on 13 households, to which absolutely no blame can be attached.

As the right hon. Lady will be aware, the landfill tax aims to reduce the environmental damage caused by sending waste to landfill. In increasing the cost of landfill, the tax also aims to encourage more sustainable waste technologies, such as recycling. At a national level the tax has been successful in achieving those goals. Waste material is increasingly being diverted away from landfill towards reuse or recycling. The tax has also been successful in ensuring that the environmental damage associated with the disposal of such waste is properly reflected in the landfill price.

As the right hon. Lady acknowledges, the tax is designed to ensure that the polluter pays, and she is right to point out that in this particular instance the original polluter will not be paying. I am sympathetic to the argument. However, it will not be possible for the contaminated waste in this instance to be exempt from landfill tax, as the right hon. Lady proposes. It may be useful, in explaining why such action is not possible, to set out how the landfill tax currently operates.

Under the current system, the tax liability falls on the landfill operator, not the person delivering the waste. Those landfill operators must check the content of the waste to determine what rate of tax to apply. There is, however, no requirement on the site operator to satisfy themselves as to the origin of the waste or the type of business, local authority or private individual that has delivered it to them. Therefore, introducing an exemption, as requested, would require a fundamental change to the structure of the tax. It would also place an excessive future burden on all landfill operators, who would be forced to check and verify the origin of each item of waste that had been sent for disposal at their site.

It is also worth remembering that a change such as that suggested by the right hon. Lady would be legislatively complex. It would require amendments to primary legislation. That would mean, first, that it could not be made with the haste required for

the right hon. Lady's constituents to benefit; and secondly, that it could create a more complex law on landfill. As hon. Members will unfortunately be only too well aware, complexity in any tax can increase the opportunity for evasion. While she has suggested changes to the current legislation, for wholly the right reasons, certain unscrupulous individuals or businesses may well seek to use such an exemption for wholly the wrong reasons to reduce their own tax liabilities. So while I acknowledge and sympathise with the real difficulties that these households, in particular, are facing, it would be extremely difficult for the Government to alter national policy to benefit her constituents without creating unintended issues for landfill policy as a whole.

I therefore believe that this is an issue that would be best resolved at a local level. As the right hon. Lady may know, the national legislation sets out the framework that explains how responsibility for covering the costs of remediation should work and how they are determined. As she said, it is the local authority's responsibility to apportion the liability. It is my understanding that in this instance the issue of determining who should bear responsibility for remediation of the land was performed by Stirling council's legal services department.

**Anne McGuire (Shadow Minister (Work and Pensions); Stirling, Labour)**

I do not think that anybody is disputing the role of the local authority in this. It has carried out that role and within its responsibilities it has made a substantial and significant contribution to the costs. The issue that I wish to raise with the Minister lies directly within his jurisdiction. It is about the liability of individuals to bear the responsibility of this—an unintended consequence of previous legislation. I would have hoped that he would be able to be creative in thinking of ways in which these individuals would not have to be liable.

**Sajid Javid (The Economic Secretary to the Treasury; Bromsgrove, Conservative)**

I can assure the right hon. Lady that I have looked at this very carefully. She will already have heard some of the reasons why it is extremely difficult to make such a change, even if it were desired, because it would require a change in primary legislation within the time needed to benefit these individuals.

I understand that, as the right hon. Lady said, Stirling council has put forward a £125,000 grant towards the remediation costs. I also understand that it has promised to consider any additional hardship in accordance with the statutory guidance. On top of that, my officials at the Treasury have recently been in touch with their equivalents at Stirling council, and it is their understanding that loans secured against the property's resale value may also be offered to affected households. I therefore urge the right hon. Lady to continue to pursue this issue with Stirling council on behalf of her constituents. I have asked my officials to explore what additional support the local authority may be able to provide. She asked whether I would meet her to discuss this issue in further detail, and of course I would be happy to do so.

I completely understand the right hon. Lady's frustration about this issue, and I entirely sympathise with all the households involved. This is not a situation that any home owner would want to go through, nor one that any hon. Member would want any of their constituents to go through.

I hope that both the right hon. Lady and the home owners involved will understand why I do not believe that an intervention at national level is the answer. I also hope that with

her help, and that of the local authority and Treasury officials, those home owners will be able to resolve the issue locally.

Question put and agreed to.

House adjourned.