Status: *This version of this Instrument contains provisions that are prospective.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Landfill Allowances Scheme (Scotland) Regulations 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCOTTISH STATUTORY INSTRUMENTS

2005 No. 157

ENVIRONMENTAL PROTECTION

The Landfill Allowances Scheme (Scotland) Regulations 2005

Made - - - - 16th March 2005
Coming into force in accordance with regulation 1(2) and (3)

The Scottish Ministers, in exercise of the powers conferred on them by sections 6, 7, 10 to 13, 15, 16, 26 and 36 of the Waste and Emissions Trading Act 2003(**1**) ("the Act") and all other powers enabling them in that behalf, having consulted in accordance with section 27(2) of the Act such bodies or persons appearing to them to be representative of the interests of–

[a] waste disposal authorities in Scotland;

[b] persons concerned in the operation of landfills in Scotland;

[c] any other affected persons;

as they consider appropriate, hereby make the following Regulations, a draft of which has in accordance with section 28(4) of the Act (since these Regulations include the first regulations to be made by the Scottish Ministers under sections 6, 7 and 11 of the Act), been laid before, and approved by a resolution of, the Scottish Parliament:

PART 1

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Landfill Allowances Scheme (Scotland) Regulations 2005.

(2) Except as specified in paragraph (3) below, these Regulations shall come into force on 1st April 2005.

(3) Regulation 8 shall come into force on 1st April 2008.

(4) These Regulations extend to Scotland only.

(**1**) 2003 c. 33. The relevant powers in sections 6, 7, 10 to 13, 15, 16 and 26 are expressed to be exercisable by the allocating authority. In relation to Scotland, the Scottish Ministers are an allocating authority under section 24(1) of the Act.

Commencement Information

I1 Reg. 1 in force at 1.4.2005, see **reg. 1(2)**

Interpretation

2.—(1) In these Regulations–

"the Act" means the Waste and Emissions Trading Act 2003;

"collected municipal waste" means municipal waste which is recovered or disposed of in pursuance of arrangements made by a waste disposal authority or a waste collection authority;

"disposal" has the same meaning as in Article 1(e) of Council Directive 75/442/EEC on waste(**2**);

"electronic communication" has the same meaning as in section 15(1) of the Electronic Communications Act 2000(**3**);

"European Waste Catalogue" means the list of wastes which, pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Article 1(4) of Council Directive 91/689/EEC(**4**) on hazardous waste, is set out in Commission Decision 2000/532/EC(**5**);

"landfill allowance account" means the landfill allowance account contained in the landfill allowances register under regulation 16(2);

"Landfill Directive" means Council Directive 99/31/EC on the landfill of waste(**6**);

"operator of a landfill" means the person who has control over the operation of the landfill;

"reconciliation period" means the period of 6 months following the end of a scheme year;

"recovery" has the same meaning as in Article 1(f) of Council Directive 75/442/EEC on waste;

"relevant authority" means–

(a) the monitoring authority;

(b) the Scottish Ministers;

"scheme year" means a year beginning with 1st April in any of 2005 to 2019(**7**);

"treatment" has the same meaning as in section 22(4) of the Act;

"vintage" means in respect of landfill allowances allocated for–

(a) different scheme years, the chronological order in which those allowances were allocated;

(b) for the same scheme year, the order in which those landfill allowances were allocated for that year; and

"waste facility" means a facility for the disposal or recovery of waste other than a landfill;.

(**2**) O.J. No. L 194, 25.7.1975, p.39, as amended by Council Directive 91/156/EEC (O.J. No. L 78, 26.3.1991, p.32), Council Directive 91/692/EEC (O.J. No. L 377, 31.12.1991, p.48) and Commission Decision 96/350/EC (O.J. No. L 135, 6.6.1996, p.32).
(**3**) 2000 c. 7.
(**4**) O.J. No. L 377, 31.12.1991, p.20; as amended by Council Directive 94/31/EC (O.J. No. L 168, 2.7.1994, p.28) and Corrigendum to Directive 91/689/EC (O.J. L 23, 30.1.1998, p.39).
(**5**) O.J. No. L 226, 6.9.2000, p.3; as amended by Commission Decisions 2001/118/EC (O.J. No. L 47, 16.2.2001, p.1), 2001/119/EC (O.J. No. L 47, 16.2.2001, p. 32) and Council Decision 2001/573/EC (O.J. No. L 203, 28.7.2001, p.18).
(**6**) O.J. No. L 182, 16.7.1999, p.1.
(**7**) The definition of "scheme year" in section 23(1) of the Act was amended by S.I.2004/1936, regulation 2(2).

(2) In these Regulations references to waste being sent by a waste disposal authority to a landfill or a waste facility are references to waste being sent to such a landfill or facility in pursuance of arrangements made by the authority.

(3) In these Regulations a landfill allowance is available to a waste disposal authority for a scheme year if–

(a) for the purposes of regulation 7 it has–

(i) been allocated to the authority for that scheme year, and

(ii) not subsequently been transferred or withdrawn;

(b) for all other purposes it has been–

(i) allocated to the authority for that scheme year, or

(ii) banked, borrowed or transferred to that scheme year,

and not subsequently been banked, borrowed, transferred or withdrawn.

Commencement Information

I2 Reg. 2 in force at 1.4.2005, see **reg. 1(2)**

Giving notices and notifications, and the submission of forms and returns

3.—(1) Subject to paragraph (2), where under these Regulations a person is required or authorised to–

(a) submit a form, notice or return to another person; or

(b) notify another person of any matter;

the form, notice, return or notification must be in writing.

(2) Where–

(a) that other person has an address for the purposes of electronic communications–

(i) any return may be submitted, or

(ii) any notice or notification may be given,

by way of such communications;

(b) regulation 4(3)(a) applies, the form may be submitted to the monitoring authority by way of electronic communications to the address specified in the form;

(c) regulation 4(3)(b) applies, the form may be submitted to the monitoring authority via the website;

(d) a relevant authority maintains a website for the purpose of enabling returns to be submitted to the monitoring authority, any return which is enabled to be so submitted may be submitted to the monitoring authority via the website.

Commencement Information

I3 Reg. 3 in force at 1.4.2005, see **reg. 1(2)**

Electronic registers and forms

4.—(1) The register established or maintained under regulation 16 may be in electronic form.

(2) Where that register is in electronic form, that authority may make it available for inspection by the public on a website maintained by the authority for that purpose.

(3) Any form provided by the monitoring authority under these Regulations may be provided–

(a) in an electronic form, or

(b) for completion and submission to the monitoring authority on a website maintained by a relevant authority for that purpose.

Commencement Information

I4 Reg. 4 in force at 1.4.2005, see **reg. 1(2)**

PART 2

Allocation and the banking, borrowing and transfer of landfill allowances

Allocation of allowances

5. As soon as reasonably practicable after the Scottish Ministers have complied with section 4(4) of the Act, the monitoring authority must assign all landfill allowances allocated to a waste disposal authority under that section–

(a) to the waste disposal authority's landfill allowance account;

(b) a unique reference number (which may include any letter) from which the following information may be ascertained–

(i) the waste disposal authority to which the allowance is allocated,

(ii) the year for which the allowance is allocated,

(iii) the vintage of the allowance for that year.

Commencement Information

I5 Reg. 5 in force at 1.4.2005, see **reg. 1(2)**

Banking landfill allowances

6.—(1) All landfill allowances which–

(a) are available to a waste disposal authority for a scheme year, and

(b) have not been utilised for that scheme year after the monitoring authority complies with regulation 15,

must be banked for use in the following scheme year.

(2) Paragraph (1) does not apply–

(a) in a target year,

(b) where the following scheme year is a target year.

Commencement Information

I6 Reg. 6 in force at 1.4.2005, see **reg. 1(2)**

Borrowing of landfill allowances

7.—(1) Subject to paragraphs (2) and (3), a waste disposal authority may borrow for use in a scheme year (other than the scheme years mentioned in paragraph (3)) up to 5% of the landfill allowances available to it for the following scheme year (rounded down to the nearest whole allowance).

(2) Paragraph (1) does not apply–

(a) in a target year,

(b) where the following scheme year is a target year;

(3) In respect of a scheme year which begins on 1st April 2005, 1st April 2006 or 1st April 2007, a waste disposal authority may borrow for use in the relevant scheme year up to 10% of the landfill allowances available to it for the following scheme year (rounded down to the nearest whole allowance).

(4) Where a waste disposal authority intends to borrow a landfill allowance it must submit a borrowing request to the monitoring authority before the end of the reconciliation period for the scheme year.

(5) A borrowing request must–

(a) be made on the form provided by the monitoring authority;

(b) specify–

(i) the name of the waste disposal authority,

(ii) the number of landfill allowances which it intends to borrow.

(6) The monitoring authority is not required to consider a borrowing request unless it is made in accordance with paragraph (5).

(7) If the conditions in paragraph (9) are satisfied the monitoring authority must–

(a) remove the number of landfill allowances specified in the borrowing request from the part of the waste disposal authority's landfill allowance account relating to the following scheme year;

(b) include those allowances in the part of the account relating to the scheme year;

(c) notify the waste disposal authority which made the request–

(i) that its request has been accepted,

(ii) of the amendments that have been made to its landfill allowance account.

(8) If the conditions in paragraph (9) are not satisfied the monitoring authority must notify the waste disposal authority–

(a) that its request has not been accepted,

(b) of the reasons why.

(9) The conditions referred to in paragraphs (7) and (8) are that–

(a) the borrowing request complies with paragraphs (1), (2) or, as the case may be, (3);

(b) the number of landfill allowances specified in the request are available to the waste disposal authority for the following scheme year;

(c) accepting the borrowing request would not cause the waste disposal authority to exceed the limit on borrowing under paragraph (1) or, as the case may be, paragraph (3); and

(d) the authority is not suspended from borrowing landfill allowances under regulation 9.