Draft Regulations laid before Parliament under section 28(2) of the Waste and Emissions Trading Act 2003, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

ENVIRONMENTAL PROTECTION, ENGLAND

The Landfill Allowances and Trading Scheme (England) Regulations 2004

Made - - - -

Coming into force - - 1st April 2005

The Secretary of State, in exercise of the powers conferred upon her by sections 6, 7, 10 to 13, 15, 16 and 26 of the Waste and Emissions Trading Act 2003(**1**) ("the Act"), and having consulted in accordance with section 27(2) of the Act such bodies or persons appearing to her to be representative of —

(a) the interests of waste disposal authorities in England as she considers appropriate;

(b) the interests of persons concerned in the operation of landfills in England as she considers appropriate;

(c) any other affected persons as she considers appropriate;

makes the following Regulations, a draft of which (since these Regulations include the first regulations to be made by the Secretary of State under sections 6, 7 and 11 of the Act) has been laid before and approved by a resolution of each House of Parliament in accordance with section 28(2) of the Act:

PART 1

General

Citation, commencement and application

1.—(1) These Regulations may be cited as the Landfill Allowances and Trading Scheme (England) Regulations 2004 and come into force on 1st April 2005.

(2) These Regulations apply to England 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. Section 24(1) provides that the allocating authority for England is the Secretary of State.

Interpretation

2.—(1) In these Regulations—

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

"collected municipal waste" means municipal waste which comes into the possession or under the control of—

(a) a waste disposal authority, or

(b) a waste collection authority within the area of the disposal authority,

whether or not the waste comes into the possession or under the control of that authority under or by virtue of the Environmental Protection Act 1990(**2**);

"disposal" has the same meaning as in Council Directive 75/442/EEC on waste(**3**);

"electronic communication" has the same meaning as in section 15(1) of the Electronic Communications Act 2000(**4**);

"European Waste Catalogue" means the list of wastes which, pursuant to Article 1(a) of Council Directive 74/442/EEC on waste and Article 1(4) of Council Directive 91/689/EEC(**5**) on hazardous waste, is set out in Commission Decision 2000/532/EC(**6**);

"landfill allowance account" means the landfill allowance account contained in the landfill allowances register under regulation 16(2) and (3);

"Landfill Directive" means Council Directive 99/31/EC on the landfill of waste(**7**);

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

"recovery" has the same meaning as in Council Directive 75/442/EEC on waste;

"relevant authority" means—

(a) the monitoring authority,

(b) the Secretary of State;

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

"vintage" means in respect of landfill allowances allocated—

(a) for 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;

"waste collection authority" has the same meaning as in Part 2 of the Environmental Protection Act 1990; and

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

(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.

(**2**) 1990 c. 43.
(**3**) 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).
(**4**) 2000 c. 7.
(**5**) 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).
(**6**) O.J. No. L 226, 6.9.2000, p. 3; as amended by Commission Decision 2001/118/EC (O.J. No. L 47, 16.2.2001, p.1), Commission Decision 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).
(**7**) O.J. No. L 182, 16.7.1999, p. 1.

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

(a) for the purposes of regulation 7 if 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 if 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.

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 or give 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.

(3) Any notification given in writing by the Secretary of State under these Regulations may be given by addressing it to the waste disposal authority and—

(a) leaving it at, or

(b) sending it by post to,

the authority's principal office.

Electronic registers and forms

4.—(1) Any register maintained under these Regulations may be in an electronic form.

(2) Where any register is in an electronic form a relevant authority may make the register 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 via a website maintained by a relevant authority for that purpose.

PART 2

Allocation and the banking, borrowing and transfer of landfill allowances

Allocation of allowances

5. As soon as reasonably practicable after the Secretary of State has 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.

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.

Borrowing of landfill allowances

7.—(1) A waste disposal authority may borrow for use in a scheme year 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 year is a target year.

(3) 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.

(4) 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.

(5) The monitoring authority is not required to consider a borrowing request unless it is made in accordance with paragraph (4).

(6) If the conditions in paragraph (8) 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.

(7) If the conditions in paragraph (8) 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.

(8) The conditions referred to in paragraphs (6) and (7) are that–

(a) the borrowing request complies with paragraph (2),

(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), and

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

Transfer of landfill allowances

8.—(1) A waste disposal authority may transfer to any other waste disposal authority, whether by way of trade or otherwise, landfill allowances which—

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

(b) have not been utilised.

(2) But a waste disposal authority must not transfer an allowance from any scheme year for which the allowance is available to the authority unless the transfer is to that scheme year.

(3) Where a waste disposal authority ("the transferor") agrees to transfer a landfill allowance to another waste disposal authority ("the transferee") the transferor must submit a transfer request to the monitoring authority before the end of the reconciliation period for the scheme year in which the agreement is made.

(4) A transfer request must—

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

(b) specify–

(i) the names of the transferor and transferee,

(ii) the number of landfill allowances to be transferred,

(iii) for each landfill allowance the scheme year for which the allowance is available to the transferor,

(iv) the date the transfer was agreed,

(v) the price (if any) to be paid.

(5) The monitoring authority is not required to consider a transfer request unless it is made in accordance with paragraph (4).

(6) If the conditions in paragraph (8) are satisfied, the monitoring authority must–

(a) delete the landfill allowances from the transferor's landfill allowance account;