STATUTORY RULES OF NORTHERN IRELAND

2004 No. 416

ENVIRONMENTAL PROTECTION

The Landfill Allowances Scheme (Northern Ireland) Regulations 2004

Made - - - - 29th September 2004
To be laid before Parliament under paragraph 7(3) of the Schedule to the Northern Ireland Act 2000

Coming into operation 1st April 2005

The Department of the Environment, in exercise of the powers conferred upon it 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 it to be representative of –

(a) the interests of district councils in Northern Ireland as it considers appropriate;

(b) the interests of persons concerned in the operation of landfills in Northern Ireland as it considers appropriate;

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

hereby makes the following Regulations.

PART 1

GENERAL

Citation and commencement and application

1.—(1) These Regulations may be cited as the Landfill Allowances Scheme (Northern Ireland) Regulations 2004 and shall come into operation on 1st April 2005.

(2) These Regulations apply to Northern Ireland 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 Northern Ireland is the Department of the Environment

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**2**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) 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 district council whether or not the waste comes into the possession or under the control of that district council under or by virtue of the Waste and Contaminated Land Order 1997(**3**);

"the Department" means the Department of the Environment

"disposal" has the same meaning as in Council Directive 75/442/EEC on waste(**4**);

"electronic communication" has the same meaning as in section 15(1) of the Electronic Communications Act 2000(**5**);

"European Waste Catalogue" means the list of wastes which, pursuant to Article 1(a) of Council Directive 75/442/EC on waste and Article 1(4) of Council Directive 91/689/EEC on hazardous waste(**6**), is set out in Commission Decision 2000/532/EC(**7**);

"landfill allowance account" means the landfill allowance account contained in the landfill allowances register under regulation 15(2) and (3);

"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 Department;

"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.

(3) In these Regulations references to waste being sent by a district council 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 district council.

(4) In these Regulations a landfill allowance is available to a district council for a scheme year –

(a) for the purposes of regulation 6 if it has –

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

(**2**) 1954 c. 33 (N.I.)
(**3**) S.I.1997/2778 (N.I. 19)
(**4**) O.J. No. L194, 25.7.1975, p. 39; as amended by Council Directive 91/156/EEC (O.J No. L78, 26.3.1991, p. 32), Council Directive 91/692/EEC (O.J. No. L377, 31.12.1991, p. 48) and Commission Decision 96/350/EC (O.J. No. L135, 6.6.1996, p. 32)
(**5**) 2000 c. 7
(**6**) O.J. No. L377, 31.12.1991, p. 20; as amended by Council Directive 94/31/EC (O.J. No. L168, 2.7.1994, p. 28) and Corrigendum to Directive 91/689/EEC (O.J. L23, 30.1.1998, p. 39)
(**7**) O.J. No. L226, 6.9.2000, p. 3; as amended by Council Decisions 2001/118/EC (O.J. No. L47, 16.2.2001, p. 1), 2001/119/EC (O.J. No. L47, 16.2.2001, p. 32) and 2001/573/EC (O.J. No. L203, 28.7.2001, p. 18)

(ii) not subsequently been transferred or withdrawn;

(b) for all other purposes if it has been –

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

(ii) borrowed or transferred to that scheme year,

and not subsequently been 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 Department under these Regulations may be given by addressing it to the district council and –

(a) leaving it at, or

(b) sending it by post to,

the district council'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 on a website maintained by a relevant authority for that purpose.

PART 2

ALLOCATION AND THE BORROWING AND TRANSFER OF LANDFILL ALLOWANCES

Allocation of allowances

5.—(1) As soon as reasonably practicable after the Department has complied with section 4(4) of the Act, the monitoring authority must assign all landfill allowances allocated to a district council under that section –

(a) to the district council's landfill allowance account;

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

(i) the district council to which the allowance is allocated,

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

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

Borrowing of landfill allowances

6.—(1) A district council 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 district council 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; and

(b) specify –

(i) the name of the district council, and

(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 district council'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; and

(c) notify the district council which made the request –

(i) that its request has been accepted, and

(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 district council –

(a) that its request has not been accepted, and

(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 district council for the following scheme year,

(c) accepting the borrowing request would not cause the district council to exceed the limit on borrowing under paragraph (1), and

(d) the district council is not suspended from borrowing landfill allowances under regulation 8.

Transfer of landfill allowances

7.—(1) Subject to paragraph (2), a district council may transfer to any other district council landfill allowances which –

(a) are available to the district council for a scheme year, and

(b) have not been utilised.

(2) A district council must not transfer an allowance from any scheme year for which the allowance is available to another district council unless the transfer is to that scheme year.

(3) Where a district council ("the transferor") agrees to transfer a landfill allowance to another district council ("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; and

(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, and

(iv) the date the transfer was agreed.

(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;

(b) allocate each landfill allowance to the transferee's landfill allowance account for the scheme year for which, immediately before the transfer, it was available to the transferor; and

(c) notify the transferor and transferee –

(i) that the request has been accepted, and

(ii) of the amendments that have been made to their landfill allowance accounts.

(7) If the conditions in paragraph (8) are not satisfied the monitoring authority must notify the transferor and transferee –

(a) that the request has not been accepted, and

(b) of the reasons why.

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

(a) the agreement complies with paragraphs (1) and (2),