

**Explanatory Memorandum to the Landfill Allowances Scheme (Wales)
(Amendment) (No. 2) Regulations 2011.**

This Explanatory Memorandum has been prepared by Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Landfill Allowances Scheme (Wales) (Amendment) (No. 2) Regulations 2011.

John Griffiths

Minister for Environment and Sustainable Development

19 December 2011

1. Description

- 1.1 This instrument revokes and remakes the Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011. They introduce new terms to describe the waste covered by the Landfill Allowances Scheme. The amendments are made to carry through identical but separate amendments being made to the Waste Emissions and Trading Act 2003 ("the WET Act").
- 1.2 The Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011 are being remade to clarify the powers under which the 2004 Regulations are being amended.. The 2011 Regulations did not cite section 12(2) of the WET Act as a power relied on to make the amendment to regulation 6(5)(b) of the Landfill Allowances Scheme (Wales) Regulations 2004.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 These Regulations respond to a point raised by the Committee at its meeting on 14 November 2011 (*CLA(4)-11-11*). The Committee reported that the 2011 Regulations should have cited section 12(2) of the WET Act as one of the powers under which the Regulations were made.
- 2.2 The Government accepted that the omission of a reference to section 12(2) in the preamble may have produced ambiguity about whether an amendment to regulation 6(5)(b) of the 2004 regulations had in fact been made and undertook to amend section 6(5)(b) within six weeks. These Regulations do so.
- 2.3 The Government respectfully took a different view about the need to cite section 15 of the WET Act as an enabling power and these Regulations therefore do not do so.

3. Legislative background

- 3.1 This instrument is made under sections 11, 12, 24 and 26 of the Waste and Emissions Trading Act 2003.
- 3.2 This statutory instrument follows the negative procedure.

4 Purpose & intended effect of the legislation

- 4.1 The purpose of the legislation is to align the terminology used in the Landfill Allowances Scheme (Wales) Regulations 2004 with new terminology being introduced into the Waste and Emissions Trading Act 2003. The legislation is intended to have a neutral effect.

- 4.2 The 2003 Act is being amended by the Secretary of State in the Waste and Emissions Trading Act 2003 (Amendment) Regulations 2011 which came into force on 21 November 2011. The amendments to the 2003 Act introduce new terminology to distinguish between the range of municipal waste covered by the Landfill Allowances Scheme and the wider range of municipal waste covered by landfill reduction targets set under the Act.
- 4.3 The European Union Landfill Directive aims to prevent or reduce negative effects on the environment from landfilling of waste. The Landfill Directive also specifically states that measures should be taken to reduce the production of methane gas from landfills through the reduction of the landfill of biodegradable waste. Article 5(2) of the Landfill Directive requires member states to reduce the total amount of biodegradable municipal waste (BMW) landfilled to levels based on a 1995 baseline.
- 4.4 The UK transposed the requirements of article 5(2) of the Landfill Directive through the Waste Emissions and Trading Act 2003 and landfill targets are set for each UK administration under regulations made under the Act (the Landfill (Scheme and Maximum Landfill Amount) Regulations 2011).
- 4.5 As part of ensuring that the landfill targets are met the Waste Emissions and Trading Act 2003 requires each UK administration to allocate landfill allowances to waste disposal authorities in their area. These allowances authorise authorities to send a maximum amount of biodegradable municipal waste to landfill each year.
- 4.6 At present the Waste Emissions and Trading Act 2003 allows each UK administration to allocate landfill allowances up to its own landfill target limit. This means that the Waste Emissions and Trading Act 2003 technically allows each administration to divide up its maximum limit between waste disposal authorities in its area.
- 4.7 Because private contractors also dispose of biodegradable municipal waste, allowing each administration to divide up the maximum limit solely between waste disposal authorities would be inconsistent with the UK's obligations to regulate all biodegradable municipal waste going to landfill in its area.
- 4.8 To address this inconsistency the 2003 Act is being amended to remove the power to allocate the total maximum limit solely between waste disposal authorities. These amendments are being made by the Secretary of State in the Waste and Emissions Trading Act 2003 (Amendment) Regulations 2011. Associated amendments are also being made by those Regulations so that the terms used in the Act to describe the waste covered by the Landfill Allowances Scheme are different to the terms used to describe the wider category of waste covered by the targets.

- 4.9 The Landfill Allowances Scheme (Wales) (Amendment) (No. 2) Regulations 2011 substitute the new terms in the 2004 Regulations so that the terminology used in the Regulations is consistent with the terminology used in the Act.
- 4.10 These amendments were previously made in the Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011 which came into force on 21 November 2011. One of the enabling powers relied on to make those Regulations was not cited in the preamble and so these Regulations revoke and remake the 2011 Regulations to make clear which powers are being exercised.

5 Consultation

- 5.1 Consultation must be carried out before making regulations about the Landfill Allowances Scheme unless the regulations do not affect waste disposal authorities, landfill operators or other interested persons.
- 5.2 These Regulations are specifically designed to preserve existing arrangements and therefore to prevent any effect on waste disposal authorities, landfill operators or other interested persons. They make the technical changes necessary to prevent unintended consequences arising from technical changes being made to the Waste and Emissions Trading Act 2003. Consultation is therefore not required under the Act.
- 5.3 In parallel to the Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011 being laid, the Welsh Government notified local authorities, the Welsh Environmental Services Association and the Environment Agency to the legislation and the reasons for it; and to the fact that the legislation is not intended to affect the operation of the Landfill Allowances Scheme.
- 5.4 The Landfill Allowances Scheme (Wales) (Amendment) (No.2) Regulations 2011 remake those Regulations without any additional changes and so these Regulations do not alter the earlier position..

6 Regulatory Impact Assessment (RIA)

- 6.1 A regulatory impact appraisal has not been completed. This is a technical change designed to prevent confusion about how the law operates in relation to the Landfill Allowances Scheme. The legislation is not intended to have any impact on local authorities, the private or voluntary sectors or the public.