WELSH STATUTORY INSTRUMENTS

2004 No. 1490 (W.155)

ENVIRONMENTAL PROTECTION, WALES

The Landfill Allowances Scheme (Wales) Regulations 2004

Made - - - -	*8 June 2004*
Coming into force - -	*25 June 2004*

The National Assembly for Wales, acting in exercise of the powers conferred upon it by sections 10, 11, 12, 13, 15, 16, 26 and 36 of the Waste and Emissions Trading Act 2003(**1**) makes the following Regulations:

PART 1

General

Citation, commencement and application

1. These Regulations:

(a) may be cited as the Landfill Allowances Scheme (Wales) Regulations 2004;

(b) come into force on 25 June 2004;

(c) apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

"the Act" ("*y Ddeddf*") means the Waste and Emissions Trading Act 2003;

"the Assembly" ("*y Cynulliad*") means the National Assembly for Wales;

"collected municipal waste" ("*gwastraff trefol a gasglwyd*") means municipal waste which comes into the possession or under the control of—

(i) a waste collection authority, or

(ii) a waste disposal authority

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

(**1**) 2003 c. 33. *See* sections 12(4) and 13(7) for definitions of "prescribed".
(**2**) 1990 c. 43

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

"European Waste Catalogue" ("*Catalog Gwastraff Ewropeaidd*") means the list of wastes established pursuant to Commission Decision 2000/532/EC(**4**);

"reconciliation period" ("*cyfnod cysoni*") means the period of 3 months following the end of each scheme year;

"relevant authority" ("*awdurdod perthnasol*") means—

(a) the monitoring authority, and

(b) the Assembly;

"waste collection authority" ("*awdurdod casglu gwastraff*") means a County or County Borough Council acting in pursuance of functions conferred on it as a waste collection authority;

"waste disposal authority" ("*awdurdod gwaredu gwastraff*") means a County or County Borough Council acting in pursuance of functions conferred on it as a waste disposal authority;

"waste facility" ("*cyfleuster gwastraff*") means a facility for the disposal or recovery of waste other than a landfill; for the purposes of this definition, "disposal" and "recovery" have the same meaning as in Article 1(e) and (f) of Council Directive 75/442/EEC on waste(**5**).

(2) In these Regulations —

(a) references to an amount of waste are references to an amount of waste by tonnage; and

(b) references to waste being sent by a waste disposal authority to 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.

Notices, notifications and submissions of forms

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

(a) that other person has an address for the purposes of electronic communications the form, notice, return or notification may be made by way of such communications, or

(b) regulation 4(3)(b) applies, the form may be completed and submitted to the authority on the website.

Electronic registers and forms

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

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

(**3**) 2000 c. 7.

(**4**) OJ L 226, 6.9.2000, p.3, as amended by Commission Decisions 2001/118/EC (OJ L 47, 16.2.2001, p.1), and 2001/119/EC (OJ L 47, 16.2.2001, p.32) and Council Decision 2001/573/EC (OJ L 203, 28.7.2001, p.18).

(**5**) OJ L 194, 25.7.1975, p.39; as amended by Council Directive 91/156/EEC (OJ L 78, 26.3.1991, p.32) and Commission Decision 96/350/EC (OJ L 135, 6.6.1996, p.32).

(3) Any form provided by the monitoring authority for the purposes of these Regulations may be provided—

(a) in an electronic form, and

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

PART 2

Monitoring

Monitoring authority

5. The Environment Agency is the monitoring authority for Wales.

Obligation for waste disposal authorities to keep records and make returns

6.—(1) A waste disposal authority must keep records containing the following information for each scheme year—

(a) the amount of collected municipal waste;

(b) the amount of municipal waste sent to landfills by the authority; and

(c) the amount of municipal waste sent to other waste facilities by the authority.

(2) In relation to municipal waste mentioned in sub-paragraphs (1)(b) and (c) the record must contain details of—

(a) the total amount sent to each landfill or waste facility; and

(b) the description of the waste, and the appropriate code for the waste, in the list of hazardous waste pursuant to European Waste Catalogue for, the waste;

(3) The records under paragraph (1) must be kept for a period of three years beginning on the day after the date that the reconciliation period for the scheme year ends.

(4) A waste disposal authority must submit to the monitoring authority a return containing the information in paragraph (1) for each 3 month period ending on 31 March, 30 June, 30 September and 31 December within one month of the end of that period.

(5) The monitoring authority, or a person authorised in writing by the monitoring authority, may by notice require a waste disposal authority to—

(a) produce for inspection, or for removal for inspection elsewhere, any of the records that it is required to maintain under paragraph (1);

(b) supply the monitoring authority with information about, or evidence as to, matters connected with the sending of biodegradable municipal waste to landfills;

and to do so in such form, at such reasonable place and within such reasonable time as is specified in the notice.

(6) The monitoring authority, or a person authorised in writing by the monitoring authority, may make copies of any records produced or supplied under paragraph (5).

Obligation for operators of landfills to keep records and make returns

7.—(1) An operator of a landfill must keep records containing the following information for each scheme year—

(a) the amount of each load of municipal waste accepted at the landfill;

(b) the description of the waste, and the appropriate code for the waste, in the European Waste Catalogue;

(c) the County or County Borough in which the municipal waste originated; and

(d) any treatment applied to the waste before it was landfilled.

(2) The records under paragraph (1) must be kept for a period of three years beginning on the day after the day that the reconciliation period for the scheme year ends.

(3) An operator of a landfill must submit to the monitoring authority a return containing the information in paragraph (1) for each 3 month period ending on 31 March, 30 June, 30 September and 31 December within one month of the end of that period.

(4) The monitoring authority, or a person authorised in writing by the monitoring authority, may, by notice, require an operator of a landfill to produce for inspection, or for removal for inspection elsewhere, any records that the operator is required to maintain under paragraph (1), in such form, at such reasonable place and within such reasonable time as is specified in the notice.

(5) The monitoring authority, or a person authorised in writing by the monitoring authority, may make copies of any records produced under paragraph (4).

(6) A person authorised in writing by the monitoring authority may enter at any reasonable time and, if need be, by reasonable force, premises other than premises used as a dwelling, occupied by a person concerned in the operation of a landfill for the purposes of—

(a) searching for records relating to the operation of a landfill;

(b) inspecting records relating to the operation of a landfill or removing them for inspection elsewhere;

(c) copying records relating to the operation of a landfill.

(7) A person entering any premises under paragraph (6), may take with him or her—

(a) any other person duly authorised by the monitoring authority;

(b) if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable;

(c) any equipment or materials required for any purpose for which the power of entry is being exercised.

(8) The power of the monitoring authority, or a person authorised by the monitoring authority, under paragraphs (4) to (6) includes power to require any person to afford to them, such reasonable facilities and assistance within the person's control as are necessary to enable the monitoring authority and authorised person to exercise their powers

(9) In this regulation "operator of a landfill" means the person who has control over the landfill.

(10) In this regulation, "treatment" has the same meaning as in Article 2(h) of Council Directive 1999/31/EC on the landfill of waste(**6**).

Determining the amount of biodegradable municipal waste in an amount of waste

8. For the purposes of these Regulations, the amount of biodegradable waste in an amount of collected municipal waste is deemed to be 61 per cent of the collected municipal waste.

Reconciliation of landfill allowances

9. No later than two months after the end of the reconciliation period, the monitoring authority must determine in relation to each waste disposal authority the amount of biodegradable municipal waste sent to landfills.

(**6**) OJ L 182, 16.7.1999, p.1.

PART 3

Registers

Landfill allowances register

10. The monitoring authority must establish and maintain a landfill allowances register which, in relation to each waste disposal authority for each scheme year, contains—

(a) the allowance allocated under section 4 of the Act;

(b) any alteration of the allowance referred to in paragraph (a) under section 5 of the Act;

(c) the amount of biodegradable municipal waste sent to landfills by that waste disposal authority; and

(d) the balance of the following:

(i) the allowance registered under paragraph (a), as altered by any alteration registered under paragraph (b), (the "total allowance"); and

(ii) the amount of biodegradable municipal waste sent to landfills by that waste disposal authority as registered under paragraph (c).

Penalties register

11. The Assembly must establish and maintain a register to be known as "the penalties register" which, in relation to each waste disposal authority, must contain the following information—

(a) any liability of that authority to a penalty under Part 1, Chapter 1 of the Act;

(b) the amount of the penalty;

(c) the date when payment of the penalty is due;

(d) the amount of any interest incurred under regulation 15;

(e) details of any decision to—

(i) extend the time for paying the whole or part of the penalty or any interest on it under section 26(1)(c)(i) of the Act.

(ii) relieve the waste disposal authority, in whole or in part, from liability to the whole or part of the penalty or any interest on it under section 26(1)(c)(ii) of the Act; and

(f) the date that any payment in respect of a penalty or interest on a penalty was made to the Assembly.

Availability of registers

12. In relation to any register maintained under this Part, a relevant authority must—

(a) make the register maintained by it under this Part available for inspection by members of the public at its principal office free of charge at all reasonable times; and

(b) afford to members of the public facilities for obtaining copies of entries in that register on payment of a reasonable charge.

PART 4

Penalties

Penalties: exceeding allowances

13. The amount of the penalty to which a waste disposal authority is liable under section 9(2) of the Act is £200 per tonne of biodegradable municipal waste sent to landfill in excess of that authority's total allowance for that scheme year.

Penalties: failure to comply with reporting requirements

14.—(1) Except where paragraphs (2) and (4) apply, the amount of the penalty to which a waste disposal authority is liable under section 12(3) of the Act is £1,000.

(2) Where a waste disposal authority—

(i) understates the amount of collected municipal waste or the amount of municipal waste sent to landfills; or

(ii) overstates the amount of municipal waste diverted to other waste facilities,

the penalty to which a waste disposal authority is liable under section 12(3) of the Act is £200 per tonne of the error.

(3) For the purposes of paragraph (2), "the error" is the amount by which the actual amount of biodegradable municipal waste which was sent to landfill by the waste disposal authority in the scheme year exceeds the amount of biodegradable municipal waste which would have been sent to landfill for that year if the figures stated by the authority had been correct.

(4) Where a waste disposal authority fails to submit any returns in relation to a scheme year in accordance with regulation 6(4), that authority is liable to a penalty equal to £400 for each tonne of the total allowance allocated to that authority for that scheme year.

Penalties: general

15.—(1) Where a waste disposal authority is liable to a penalty, the Assembly may assess the amount due by way of penalty and notify the waste disposal authority accordingly.

(2) The penalty is due one month after the date on which the waste disposal authority is notified by the Assembly of the amount of the penalty under paragraph (1).

(3) Where a waste disposal authority is liable to a penalty under the Act and does not pay the penalty by the date upon which it is due under paragraph (2), the waste disposal authority is liable to pay interest on the penalty for the period which—

(a) begins on the date under paragraph (2); and

(b) ends on the day before the day on which the penalty assessed under paragraph (1) is paid.

(4) Interest under this regulation is payable at a rate of one percentage point above LIBOR on a day to day basis.

(5) For the purposes of paragraph (4), "LIBOR" means the sterling three month London interbank offered rate in force during the period between the date on which the penalty becomes due and the date on which the penalty is paid to the Assembly.

(6) Where a penalty has been assessed and notified to a waste disposal authority under paragraph (1), the penalty and any interest incurred under paragraph (3) is recoverable as a civil debt.

(7) For the purposes of this regulation, references to penalties include references to interest when payable.

PART 5

Guidance

Guidance to waste disposal authorities

16. A waste disposal authority, in exercising functions in relation to waste that is or contains biodegradable municipal waste, shall have regard to any guidance issued by the Assembly for the purposes of these regulations.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(**7**)

D. Elis-Thomas
The Presiding Officer of the National Assembly

8 June 2004

(**7**) 1998 c. 38.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Waste and Emissions Trading Act 2003(**8**) ("the Act") is intended to achieve in the UK significant reductions in the quantity of biodegradable municipal waste sent to landfills, as required by Article 5 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste(**9**)) ("the Landfill Directive"). The Act sets the framework for the creation of a landfill allowance scheme.

Section 1 of the Act obliges the Secretary of State to specify by regulations the maximum amount of biodegradable municipal waste that may be sent to landfills from the United Kingdom, England, Scotland, Wales and Northern Ireland. The maximum amount that may be authorised for the United Kingdom as a whole must be consistent with the obligations under Article 5 of the Landfill Directive.

Section 4 of the Act obliges the National Assembly for Wales ("the Assembly") to allocate allowances to waste disposal authorities in Wales. The total allocation of allowances must not exceed the maximum specified in relation to Wales under section 1 of the Act.

These Regulations supplement the Waste and Emissions Trading Act 2003, by making detailed provision for the monitoring and enforcement of the landfill allowances allocated to waste disposal authorities under the Act.

Part 1 of the Regulations includes provisions on citation, commencement and application (regulation 1); interpretation (regulation 2); notices, notifications and submissions of forms (regulation 3); and electronic registers and forms (regulation 4).

Part 2 concerns monitoring.

Regulation 5 appoints the Environment Agency ("the Agency") as the monitoring authority for Wales.

Regulation 6 imposes obligations on waste disposal authorities to keep detailed records on waste collection and the amount of waste sent to landfills; to make returns to the Agency; and to make other information available to the Agency on written notice.

Regulation 7 imposes obligations on operators of landfills to keep detailed records concerning waste accepted at landfills; to make returns to the Agency; and to make other information available to the Agency.

Regulation 8 provides that for the purposes of the Regulations, the amount of biodegradable waste in an amount of collected municipal waste is deemed to be 61 per cent.

Regulation 9 obliges the Agency to determine the amount of biodegradable municipal waste sent to landfills by each waste disposal authority.

Part 3 concerns registers.

Regulation 10 requires the Agency to establish and maintain a landfill allowances register.

Regulation 11 obliges the Assembly to establish and maintain a penalties register.

Regulation 12 obliges the Agency and the Assembly to ensure that the registers for which they are responsible are made available to the public.

Part 4 concerns penalties.

(**8**) 2003 c. 33
(**9**) OJ L 182, 16.7.1999, p.1

Regulation 13 makes provision for penalties to be imposed on waste disposal authorities for exceeding the allocated allowances.

Regulation 14 makes provision for penalties to be imposed on waste disposal authorities for failing to comply with the reporting requirements under these Regulations.

Regulation 15 makes general provision for penalties.

Part 5 concerns guidance.

Regulation 16 makes provision for guidance to waste disposal authorities.