

**EXPLANATORY MEMORANDUM TO**  
**THE LANDFILL (AMENDMENT) REGULATIONS (NORTHERN IRELAND)**  
**2011**

**SR 2011 No. 101**

**Introduction**

This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly and is subject to negative resolution procedure.

**Background**

The EU Landfill Directive was adopted in 1999 and came into force on 16 July 2001. It introduced more stringent standards for the operational phase of landfills, and closure and aftercare procedures. In particular, the operator of a landfill site is responsible for monitoring and analysing landfill gas and leachate from the site and the groundwater regime in the vicinity of the site until the competent authority is satisfied that it is not likely to cause a hazard to the environment.

Due, in part, to the need to revise the regulatory regime first, the Landfill Regulations (Northern Ireland) 2003 (the 2003 Regulations), which transposed the Directive into Northern Ireland law, did not come into operation until 6 January 2004. A number of sites were closed during the 30 month transposition gap between the operational date of the Directive and the introduction of the 2003 Regulations. These sites closed in accordance with national legislation at that time, but subsequently became the focus of infraction proceedings for non compliance with the Directive requirements for closure and aftercare.

There is a significant risk of EU fines and, while it is not possible to state what these may amount to, France was fined £50 million per year for failure to comply with the EU Common Fisheries Policy. The proposed regulations are a key element in the UK Member State's defence against infraction.

The Regulations will:-

- amend the date from which landfill sites which close (or have closed) must comply with the EU Landfill Directive;
- redefine the term 'operator' to 'capture' sites that closed during the period 16 July 2001 to 5 January 2004.
- change the date from which landfills that finally ceased to accept waste for disposal are exempt from the Regulations.

**Detail**

The Regulations amend the 2003 Regulations as follows:-

**Regulation 3** amends regulation 2 (interpretation) to extend the definition of ‘operator’ to include

- (a) a person who held a disposal licence in respect of a landfill immediately prior to its cancellation or revocation in the period beginning on 16<sup>th</sup> July 2001 and ending on 5<sup>th</sup> January 2004 (“the specified period”);
- (b) a council which rescinded a resolution in respect of a landfill in the specified period under Article 13(4)(a) of the pollution Control and Local Government (Northern Ireland) Order 1978; and
- (c) a person who held a waste management licence or site licence in respect of a landfill in the specified period.

**Regulation 4** amends regulation 4(d) of the Landfill Regulations to exempt any landfill which finally ceased to accept waste for disposal prior to 16<sup>th</sup> July 2001.

**Regulation 5** amends regulation 15 of the Landfill Regulations (Closure and after-care procedures for landfills) and makes provision in a new regulation 15A for the Chief Inspector to serve a compliance notice, setting out closure and aftercare requirements, on relevant operators. A new regulation 15B sets out an operator’s rights of appeal against requirements in a compliance notice. A new regulation 15C provides ‘step in and charge’ powers for the Chief Inspector if there is an imminent risk of pollution, and regulation 15D sets out an inspector’s powers of entry and investigation.

**Regulations 6 - 8** amend the Pollution Prevention and Control Regulations (NI) 2003 (PPC Regs) to make it an offence to fail to comply with the requirement of a compliance notice, including the option of taking proceedings to the High Court.

The effect of these amendments is to properly apply the closure and aftercare standards required by the EU Landfill Directive to all privately or council operated landfill sites that closed during the period between 16 July 2001 and 5 January 2004. The requirements will apply from the date of coming into operation of the Landfill (Amendment) Regulations (Northern Ireland) 2011.

### **Consultation**

A consultation was carried out between 23 June and 15 September 2010. Nineteen responses were received. A summary of these comments will be made available on the Department’s website.

### **Human Rights and Equality Impact**

These Regulations have been confirmed as compatible with the European Convention on Human Rights. There are no equality or human rights impacts arising from the proposals.

### **Regulatory Impact Assessment**

A partial Regulatory Impact Assessment has been carried out and is attached as an appendix to the consultation document. A copy is available on the DOE website [www.doeni.go.uk/waste](http://www.doeni.go.uk/waste)