
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 157

The Landfill Allowances Scheme (Scotland) Regulations 2005

PART 2

Allocation and the banking, borrowing and transfer of landfill allowances

Allocation of allowances

5. As soon as reasonably practicable after the Scottish Ministers have 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) Subject to paragraphs (2) and (3), a waste disposal authority may borrow for use in a scheme year (other than the scheme years mentioned in paragraph (3)) 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 scheme year is a target year;

(3) In respect of a scheme year which begins on 1st April 2005, 1st April 2006 or 1st April 2007, a waste disposal authority may borrow for use in the relevant scheme year up to 10% of the

landfill allowances available to it for the following scheme year (rounded down to the nearest whole allowance).

(4) 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.

(5) 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.

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

(7) If the conditions in paragraph (9) 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.

(8) If the conditions in paragraph (9) 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.

(9) The conditions referred to in paragraphs (7) and (8) are that—

(a) the borrowing request complies with paragraphs (1), (2) or, as the case may be, (3);

(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) or, as the case may be, paragraph (3); and

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

Transfer of landfill allowances

8.—(1) Subject to paragraph (2) 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) 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 same 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;
 - (b) add 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;
 - (c) notify the transferor and transferee—
 - (i) that the request has been accepted,
 - (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,
 - (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),
 - (b) all landfill allowances are available to the transferor for the scheme years specified pursuant to paragraph (4)(b)(iii), and
 - (c) neither the transferor nor the transferee is suspended from transferring allowances under regulation 9.

Suspension of banking, borrowing and transferring of landfill allowances

- 9.—(1)** The Scottish Ministers may suspend any or all waste disposal authorities from banking, borrowing and transferring landfill allowances if they consider—
- (a) in a scheme year occurring between target years that there is a risk that the total amount of biodegradable municipal waste sent to landfills by waste disposal authorities in Scotland will exceed the maximum amount for Scotland which is specified under (or pursuant to section 3(1) of the Act is treated as having been specified under) section 2(1)(a) of the Act, or
 - (b) it necessary to exercise their power under section 5 of the Act (alteration of allocations under section 4).
- (2) The Scottish Ministers may suspend a waste disposal authority from banking, borrowing and transferring landfill allowances if they have reason to believe that—
- (a) the waste disposal authority has failed to comply with—
 - (i) its duty under section 9 of the Act (duty not to exceed allowances), or

- (ii) any requirement under these Regulations; or
 - (b) an unauthorised person may attempt, or has attempted, to submit a borrowing or transfer request to the monitoring authority on behalf of the waste disposal authority.
- (3) If the Scottish Ministers suspend a waste disposal authority from banking, borrowing and transferring landfill allowances under paragraphs (1) or (2), at the same time they must notify the monitoring authority and the waste disposal authority of–
 - (a) that fact,
 - (b) the reasons for the suspension.
- (4) The Scottish Ministers may lift a suspension if in any case falling within–
 - (a) paragraph (1)(a), they are satisfied that there is no significant continuing risk that the total amount of biodegradable municipal waste sent to landfills by waste disposal authorities in Scotland will exceed the maximum amount mentioned in that paragraph;
 - (b) paragraph (1)(b)–
 - (i) the allocation of landfill allowances has been altered, or
 - (ii) they no longer consider that an alteration is necessary;
 - (c) paragraph (2)(a), they are satisfied that the failure to comply is unlikely to recur;
 - (d) paragraph (2)(b), they are satisfied that there is no further risk of the unauthorised submission of a borrowing or transfer request.
- (5) If the Scottish Ministers lift a suspension under paragraph(4), at the same time they must notify the monitoring authority and any waste disposal authority which, as a consequence, is no longer suspended from banking borrowing and transferring landfill allowances of–
 - (a) that fact,
 - (b) the reasons for lifting the suspension.
- (6) The effect of suspending a waste disposal authority from banking, borrowing and transferring landfill allowances is that no landfill allowances may be–
 - (a) transferred to or from the waste disposal authority’s landfill allowance account under regulation 8,
 - (b) banked or borrowed within that account under regulation 6 or 7.
- (7) In paragraph (2)(b) “unauthorised person” means a person who is not authorised by a waste disposal authority to submit borrowing or transfer requests on the authority’s behalf.