Waste and Emissions Trading Act 2003

2003 CHAPTER 33

An Act to make provision about waste and about penalties for non-compliance with schemes for the trading of emissions quotas. [13th November 2003]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

WASTE

CHAPTER 1

WASTE SENT TO LANDFILLS

Landfill targets

1 Target years

(1) The Secretary of State must by regulations specify the maximum amount by weight of biodegradable municipal waste allowed, in each scheme year that is a target year, to be sent to landfills from each of—

(a) the United Kingdom,
(b) England,
(c) Scotland,
(d) Wales, and
(e) Northern Ireland.

(2) Amounts specified under subsection (1)(a) must be consistent with the obligations of the United Kingdom under Article 5(2) of Council Directive 1999/31/EC.

(3) The total of the amounts specified under subsection (1)(b) to (e) for a year must not exceed the amount specified under subsection (1)(a) for that year.

(4) The Secretary of State must consult—

(a) the Scottish Ministers before specifying amounts under subsection (1)(c);

(b) the National Assembly for Wales before specifying amounts under subsection (1)(d);

(c) the Department of the Environment before specifying amounts under subsection (1)(e).

(5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the coming into force of this section.

Commencement Information

I1 S. 1 in force at 20.7.2004 by S.I. 2004/1874, **art. 2**

2 Non-target years

(1) The Secretary of State may by regulations specify the maximum amount by weight of biodegradable municipal waste allowed, in a scheme year that is not a target year, to be sent to landfills from—

(a) England;

(b) Scotland;

(c) Wales;

(d) Northern Ireland.

(2) The power under subsection (1)(b) is exercisable only with the agreement of the Scottish Ministers.

(3) The power under subsection (1)(c) is exercisable only with the agreement of the National Assembly for Wales.

(4) The power under subsection (1)(d) is exercisable only with the agreement of the Department of the Environment.

Commencement Information

I2 S. 2 in force at 20.4.2004 by S.I. 2004/1163, **art. 2**

3 Non-target years: default rules

(1) If—

(a) for England, Scotland, Wales or Northern Ireland no amount is specified under subsection (1) of section 2 for a year to which that subsection applies, and

(b) the year is followed (whether or not immediately) by a target year,

Status: *Point in time view as at 01/04/2005.*
Changes to legislation: *There are currently no known outstanding effects for the Waste and Emissions Trading Act 2003. (See end of Document for details)*

the following sections of this Chapter shall have effect as if for that year ("the default-rule year") there had been specified under section 2(1) for that area the amount given by the formula set out in subsection (2).

(2) The formula is—

$$L \quad \frac{(L - N)(B + 1)}{(G + 1)}$$

(3) The formula shall be applied in accordance with subsection (4) if there is no scheme year falling between—

(a) the last target year before the default-rule year, and

(b) the default-rule year,

for which an amount has been specified under section 2(1) for the area; otherwise the formula shall be applied in accordance with subsection (5).

(4) Where the formula is to be applied in accordance with this subsection—

L is the amount specified under section 1 for the area for the year that is the last target year before the default-rule year,

N is the amount specified under section 1 for the area for the year that is the first target year after the default-rule year,

G is the number (if any) of scheme years falling between those target years,and

B is the number (if any) of scheme years falling between—

(a) the earlier of those target years,and

(b) the default-rule year.

(5) Where the formula is to be applied in accordance with this subsection—

L is the amount specified under section 2(1) for the area for the year that is the last scheme year before the default-rule year for which an amount has been specified for the area under section 2(1) ("the last fixed year"),

N is the amount specified under section 1 for the area for the year that is the first target year after the default-rule year,

G is the number (if any) of scheme years falling between the last fixed year and that target year, and

B is the number (if any) of scheme years falling between the last fixed year and the default-rule year.

(6) For the purposes of subsections (3) and (4), the year ending with 16th July in 2004 shall be taken to be a target year for which the amount specified under section 1 for England, Scotland, Wales or Northern Ireland is such amount as may be specified in regulations made by the Secretary of State.

(7) The Secretary of State shall secure that an amount specified under subsection (6) is, or is a fair estimate of, the amount of biodegradable municipal waste sent to landfills from the area concerned in the year ending with 31st March 2001.

(8) Before making regulations under subsection (6), the Secretary of State shall consult the Scottish Ministers, the National Assembly for Wales and the Department of the Environment.

(9) Subsection (8) may be satisfied by consultation before, as well as by consultation after, the coming into force of this section.

Commencement Information

I3 S. 3 in force at 3.12.2004 by S.I. 2004/3192, **art. 2**

Landfill allowances scheme

4 Allocation of landfill allowances

(1) Each allocating authority must—

(a) for each scheme year that is a target year, and

(b) for each other scheme year for which an amount is specified under section 2 for its area,

make among waste disposal authorities in its area an allocation of allowances authorising the sending in that year of amounts of biodegradable municipal waste to landfills.

(2) In performing the duty under subsection (1), an allocating authority must ensure that the total amount of biodegradable municipal waste authorised to be sent to landfills by the allowances it allocates for a year does not exceed the amount for the year specified under section 1 or 2 for its area.

(3) An allocation under subsection (1) must be made before the beginning of the year to which it relates.

(4) As soon as an authority has made an allocation under subsection (1), it must publish a statement—

(a) detailing, in relation to each waste disposal authority in its area, what allowances have been allocated to it, and

(b) explaining the basis of the allocation.

(5) Nothing in this section shall be taken as requiring any allowances to be allocated to any particular waste disposal authority.

Commencement Information

I4 S. 4 in force at 25.6.2004 for W. by S.I. 2004/1488, **art. 2**

I5 S. 4 in force at 17.9.2004 for N.I. by S.R. 2004/399, **art. 2(1)(a)**

I6 S. 4 in force at 3.12.2004 for E. by S.I. 2004/3181, **art. 2(a)**

I7 S. 4 in force at 3.2.2005 for S. by S.S.I. 2005/52, **art. 2(a)**

5 Alteration of allocations under section 4

(1) An authority that has made an allocation under section 4 may at any time alter the allocation, subject to subsections (2) and (3).

(2) The power under subsection (1) does not extend to withdrawing an allowance that has already been utilised.

(3) In exercising the power under subsection (1), an authority must ensure that the total amount of biodegradable municipal waste authorised to be sent to landfills by allowances allocated by it for a year does not exceed the amount for the year specified under section 1 or 2 for its area.

(4) As soon as an authority has exercised the power under subsection (1), it must publish a statement—

(a) detailing the alteration, and

(b) explaining the basis of it.

Commencement Information

I8 S. 5 in force at 25.6.2004 for W. by S.I. 2004/1488, **art. 2**

I9 S. 5 in force at 17.9.2004 for N.I. by S.R. 2004/399, **art. 2(1)(b)**

I10 S. 5 in force at 3.12.2004 for E. by S.I. 2004/3181, **art. 2(a)**

I11 S. 5 in force at 3.2.2005 for S. by S.S.I. 2005/52, **art. 2(a)**

6 Borrowing and banking of landfill allowances

(1) An allocating authority may by regulations make provision for a waste disposal authority in its area to utilise for a scheme year landfill allowances allocated to it for a different scheme year.

(2) Regulations under subsection (1) may not provide for—

(a) the utilisation for a target year of allowances not allocated for that year;

(b) the utilisation for a scheme year later than a target year of allowances allocated for a scheme year earlier than that target year;

(c) the utilisation for a scheme year earlier than a target year of allowances allocated for a scheme year later than that target year.

(3) Regulations under subsection (1) may (in particular)—

(a) make provision relating only to allowances allocated for specified scheme years;

(b) make provision for allowances allocated for a scheme year to be utilised for a different scheme year only if—

(i) that different scheme year is a specified scheme year;

(ii) specified conditions are satisfied;

(c) make provision for quantitative limits on inter-year utilisation of allowances;

(d) make provision authorising the allocating authority to suspend inter-year utilisation of allowances—

(i) whether indefinitely or for a fixed period, and

(ii) whether generally or to a limited extent;

(e) make provision for a person to carry out, in relation to inter-year utilisation of allowances, all or any of the functions of registrar and overseer;

(f) make provision imposing, or enabling the imposition of, requirements on waste disposal authorities to provide information in relation to their inter-year utilisation of allowances;

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Changes to legislation: *There are currently no known outstanding effects for the Waste and Emissions Trading Act 2003. (See end of Document for details)*

(g) make provision for an authority to be liable to a penalty if it fails to comply with a requirement imposed on it by or under provision of the kind mentioned in paragraph (f);

(h) make provision generally in connection with the administration or regulation of inter-year utilisation of allowances;

(i) make provision for the levying of fees and charges on persons engaged in inter-year utilisation of allowances;

(j) make provision creating offences for breaches of provisions of regulations under subsection (1).

(4) In subsection (3) "specified" means specified by, or determined in accordance with, regulations under subsection (1).

7 Trading and other transfer of landfill allowances

(1) An allocating authority may by regulations make provision for waste disposal authorities in its area to transfer, whether by way of trade or otherwise, landfill allowances allocated by that or any other allocating authority.

(2) Regulations under subsection (1) may not authorise—

(a) the acquisition of landfill allowances by a person who is not a waste disposal authority;

(b) the utilisation for a target year of allowances not allocated for that year;

(c) the utilisation for a scheme year later than a target year of allowances allocated for a scheme year earlier than that target year;

(d) the utilisation for a scheme year earlier than a target year of allowances allocated for a scheme year later than that target year.

(3) Regulations under subsection (1) may (in particular)—

(a) make provision for allowances to be acquired, or disposed of, only if—

(i) allocated by the allocating authority or by specified allocating authorities;

(ii) allocated for specified scheme years;

(iii) specified conditions are satisfied;

(b) make provision for quantitative limits on the transfer of allowances;

(c) make provision for controlling prices or values put on allowances for the purpose of transferring them;

(d) make provision authorising the allocating authority to suspend the transfer of allowances—

(i) whether indefinitely or for a fixed period, and

(ii) whether generally or to a limited extent;

(e) make provision for allowances acquired by a waste disposal authority to be utilised by the authority for a scheme year only if allocated for that scheme year or for specified scheme years;

(f) make provision for licensing and regulating persons engaged as brokers in the transfer of allowances;

(g) make provision for a person to carry out, in relation to the transfer of allowances, all or any of the functions of registrar, clearing house and overseer;

(h) make provision imposing, or enabling the imposition of, requirements on waste disposal authorities to provide information in relation to their acquisition and disposal of allowances;

(i) make provision for an authority to be liable to a penalty if it fails to comply with a requirement imposed on it by or under provision of the kind mentioned in paragraph (h);

(j) make provision generally in connection with the administration or regulation of the trading of allowances;

(k) make provision for the levying of fees and charges on persons engaged (in any capacity) in the trading of allowances;

(l) make provision creating offences for breaches of provisions of regulations under subsection (1) or of conditions of a broker's licence.

(4) In subsection (3) "specified" means specified by, or determined in accordance with, regulations under subsection (1).

8 Offences under regulations under sections 6 and 7

(1) This section applies where—

(a) regulations under section 6(1) are making provision of the kind mentioned in section 6(3)(j), or

(b) regulations under section 7(1) are making provision of the kind mentioned in section 7(3)(l).

(2) The regulations may provide for an offence to be triable—

(a) only summarily, or

(b) either summarily or on indictment.

(3) Where the regulations provide for an offence to be triable only summarily, they may provide for the offence to be punishable—

(a) by imprisonment for a term not exceeding such period as is stated in the regulations (which may not exceed three months), or

(b) by a fine—

(i) not exceeding such amount as is so stated (which may not exceed level 5 on the standard scale), or

(ii) not exceeding such level on the standard scale as is so stated, or

(c) by both.

(4) Subsections (5) and (6) apply where the regulations provide for an offence to be triable either summarily or on indictment.

(5) They may provide for the offence to be punishable on summary conviction—

(a) by imprisonment for a term not exceeding such period as is stated in the regulations (which may not exceed three months), or

(b) by a fine—

(i) not exceeding such amount as is so stated (which may not exceed the statutory maximum), or

(ii) expressed as a fine not exceeding the statutory maximum, or

(c) by both.

(6) They may provide for the offence to be punishable on conviction on indictment—

(a) by imprisonment for a term not exceeding such period as is stated in the regulations (which may not exceed two years), or
(b) by a fine, or
(c) by both.

9 Duty not to exceed allowances

(1) If the allocating authority for an area has made an allocation under section 4 for a scheme year, each waste disposal authority in the area owes a duty to the allocating authority to secure that the amount of biodegradable municipal waste sent to landfills in that year in pursuance of arrangements made by the waste disposal authority does not exceed the amount authorised by the landfill allowances available to that authority for the year.

(2) A waste disposal authority that fails to comply with a duty imposed on it by subsection (1) is liable to a penalty.

(3) If—
(a) a waste disposal authority is liable under subsection (2) to a penalty in respect of a target year, and
(b) the total amount of biodegradable municipal waste sent in the year to landfills in pursuance of arrangements made by waste disposal authorities in the United Kingdom exceeds the amount specified for the year under section 1(1)(a),

the authority is also liable to a supplementary penalty.

(4) If—
(a) a waste disposal authority is liable under subsection (2) to a penalty in respect of a scheme year that is not a target year,
(b) that scheme year ("the penalty year") is later than the first target year, and
(c) the total amount of biodegradable municipal waste sent in the penalty year to landfills in pursuance of arrangements made by waste disposal authorities in the United Kingdom exceeds the amount specified under section 1(1)(a) for the last target year before the penalty year,

the authority is also liable to a supplementary penalty.

(5) For the purposes of this section, the landfill allowances available to a waste disposal authority for a scheme year are the landfill allowances held by the authority at the end of the year that have not been utilised for an earlier scheme year and that, in the case of—
(a) allowances allocated to the authority for an earlier or later scheme year, or
(b) allowances originally allocated to another waste disposal authority,

are allowed by regulations under section 6 or 7 to be utilised by the authority for the year.

Commencement Information

I12 S. 9 in force at 25.6.2004 for W. by S.I. 2004/1488, **art. 2**
I13 S. 9 in force at 17.9.2004 for N.I. by S.R. 2004/399, **art. 2(1)(c)**
I14 S. 9 in force at 1.4.2005 for E. by S.I. 2004/3181, **art. 2(b)**
I15 S. 9 in force at 1.4.2005 for S. by S.S.I. 2005/52, **art. 2(b)**

Scheme operation and monitoring etc

10 Monitoring authorities

(1) Each allocating authority must by regulations appoint a person to be the monitoring authority for its area.

(2) The monitoring authority for an area shall—

(a) monitor the operation in the area of the provisions of this Chapter relating to landfill allowances and, in particular, monitor how much biodegradable municipal waste is sent to landfills in pursuance of arrangements made by waste disposal authorities in the area;

(b) audit the performance of waste disposal authorities in the area in complying with their obligations under this Chapter;

(c) comply with any directions by the allocating authority for the area as to the supply to the allocating authority of information acquired by the monitoring authority in carrying out any of its functions under this Chapter;

(d) without delay notify the allocating authority for the area of any case where it appears to the monitoring authority that a waste disposal authority in the area is or may be liable to a penalty under this Chapter;

(e) comply with any directions by the allocating authority for the area as to the supply to the allocating authority of information or evidence in connection with any case where it appears to the allocating authority or the monitoring authority that a waste disposal authority in the area is or may be liable to a penalty under this Chapter;

(f) co-operate with the monitoring authority for any other area.

Commencement Information

I16 S. 10 in force at 25.6.2004 for W. by S.I. 2004/1488, **art. 2**
I17 S. 10 in force at 17.9.2004 for N.I. by S.R. 2004/399, **art. 2(1)(d)**
I18 S. 10(1) in force at 3.12.2004 for E. by S.I. 2004/3181, **art. 2(a)**
I19 S. 10(1) in force at 3.2.2005 for S. by S.S.I. 2005/52, **art. 2(a)**
I20 S. 10(2) in force at 1.4.2005 for S. by S.S.I. 2005/52, **art. 2(b)**
I21 S. 10(2) in force at 1.4.2005 for E. by S.I. 2004/3181, **art. 2(b)**

11 Scheme regulations

(1) An allocating authority may by regulations make provision for the purpose of carrying into effect, in relation to its area, the provisions of this Chapter relating to landfill allowances.

(2) Regulations under subsection (1) may (in particular)—

(a) make provision about the manner of allocation of, or evidence of entitlement to, landfill allowances;

(b) make provision for the maintaining of registers of matters relating to landfill allowances;

(c) make provision about what amounts to the utilisation of landfill allowances;

(d) make provision for determining the amount of biodegradable municipal waste in an amount of waste;

(e) make provision imposing, or enabling the imposition of, requirements on waste disposal authorities in the area to produce evidence as to amounts of waste, or of waste of any description, sent to landfills in pursuance of arrangements made by them;

(f) make provision requiring waste disposal authorities in the area, in exercising functions in relation to waste that is or contains biodegradable municipal waste, to have regard to guidance specified in the regulations (including future guidance);

(g) make provision imposing or conferring additional functions on the monitoring authority for the area.

(3) Regulations under subsection (1) may provide for a waste disposal authority that fails to comply with a requirement of the regulations to be liable to a penalty.

12 Powers in relation to waste disposal authorities

(1) An allocating authority may, for purposes connected with the sending of biodegradable municipal waste to landfills, by regulations make provision for requiring waste disposal authorities in its area to—

(a) maintain prescribed records;

(b) gather prescribed information by carrying out prescribed operations on prescribed waste;

(c) make prescribed returns to the monitoring authority for the area.

(2) An allocating authority may by regulations make provision for enabling the monitoring authority for its area, or persons authorised by the monitoring authority—

(a) to require waste disposal authorities in the area to produce, for inspection or for removal for inspection elsewhere, records they are required to maintain by provision made under subsection (1);

(b) to require waste disposal authorities in the area to supply the monitoring authority with—

(i) information about matters connected with the sending of biodegradable municipal waste to landfills;

(ii) evidence to substantiate information supplied for the purpose of complying with requirements imposed under sub-paragraph (i);

(iii) evidence to substantiate entries in records maintained for the purpose of complying with provision made under subsection (1);

(c) to specify the form in which, the place at which and the time at or by which records are to be produced or information or evidence is to be supplied;

(d) to copy records that are produced.

(3) A waste disposal authority that fails to comply with a requirement imposed on it under this section is liable to a penalty.

(4) In subsection (1) "prescribed" means prescribed by or under regulations under that subsection.

13 Powers in relation to landfill operators

(1) An allocating authority may, for purposes connected with the sending of biodegradable municipal waste to landfills, by regulations make provision for requiring a person concerned in the operation of a landfill to—

(a) maintain prescribed records;
(b) gather prescribed information by carrying out prescribed operations on prescribed waste;
(c) make prescribed returns, or provide prescribed information or prescribed evidence, to prescribed persons.

(2) A person commits an offence if he fails to comply with a requirement imposed on him under subsection (1).

(3) An allocating authority may by regulations make provision enabling the monitoring authority for its area, or persons authorised by the monitoring authority—
(a) to require persons concerned in the operation of a landfill to produce records related to the operation of the landfill for inspection or for removal for inspection elsewhere;
(b) to specify the form in which, the place at which and the time at or by which records are to be produced;
(c) to copy records that are produced;
(d) to enter premises (with or without a constable, with any necessary equipment or material and, if need be, by force) for the purposes of—
(i) finding records relating to the operation of a landfill,
(ii) inspecting them or removing them for inspection elsewhere, and
(iii) copying them;
(e) to require persons to afford, to a person exercising any power conferred under paragraphs (a) to (d), such facilities and assistance within their control or in relation to which they have responsibilities as are necessary to enable the person to exercise the power.

(4) A person commits an offence if—
(a) he intentionally obstructs a person exercising a power conferred under subsection (3), or
(b) he fails to comply with a requirement imposed on him under that subsection.

(5) A person guilty of an offence under subsection (2) or (4)(a) is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum;
(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

(6) A person guilty of an offence under subsection (4)(b) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) In subsection (1) "prescribed" means prescribed by or under regulations under that subsection.

14 Disclosure of information by monitoring and allocating authorities

(1) A monitoring authority may disclose any of its monitoring information to any other monitoring authority, or to any allocating authority, for the purpose of facilitating the carrying out by the recipient of any of its functions under this Chapter.

(2) An allocating authority may disclose any of its monitoring information to any other allocating authority for the purpose of facilitating the carrying out by the recipient of any of its functions under this Chapter.

(3) For the purposes of this section, a monitoring authority's "monitoring information" is information or evidence—

(a) acquired by it in carrying out any of its functions under this Chapter, or

(b) disclosed to it after having been acquired by another monitoring authority in carrying out any of its functions under this Chapter.

(4) For the purposes of this section, an allocating authority's "monitoring information" is information or evidence—

(a) acquired by it in carrying out any of its functions under this Chapter, or

(b) disclosed to it after having been acquired by a monitoring authority, or another allocating authority, in carrying out any of its functions under this Chapter.

(5) Subsections (1) and (2) shall be treated as additional to, and as not prejudicing the generality of, section 113 of the Environment Act 1995 (c. 25) (disclosure of information).

15 Monitoring information: registers

(1) An allocating authority may by regulations make provision requiring the monitoring authority for its area to maintain a register containing such of its monitoring information as is of a description specified by the regulations.

(2) For the purposes of subsection (1), a monitoring authority's "monitoring information" is information or evidence—

(a) acquired by it in carrying out any of its functions under this Chapter, or

(b) disclosed to it after having been acquired by another monitoring authority in carrying out any of its functions under this Chapter.

16 Registers: public access

An allocating authority may, in relation to a register that a person is required to maintain by regulations under this Chapter made by the authority, by regulations—

(a) make provision for public inspection of such of the information contained in the register as is of a description specified by the regulations;

(b) make provision for members of the public to obtain copies of information in the register that is open to public inspection under paragraph (a), including provision for the payment of reasonable charges.

Strategies for reducing landfilling of biodegradable waste

17 Strategy for England

(1) The Secretary of State must have a strategy for reducing—

(a) the amount of biodegradable waste from England that goes to landfills, and

(b) the amount of biodegradable waste from outside England that goes to landfills in England.

(2) The strategy required by subsection (1) must (in particular) include measures to achieve the targets specified for England under sections 1 and 2.

(3) The measures mentioned in subsection (2) include (in particular) measures to achieve the targets by recycling, composting, biogas production, materials recovery or energy recovery.

(4) Before formulating policy for the purposes of subsection (1), the Secretary of State must—

(a) consult the Scottish Ministers, the National Assembly for Wales, the Department of the Environment, the Environment Agency and the Mayor of London,

(b) consult such bodies or persons appearing to him to be representative of the interests of local government as he considers appropriate,

(c) consult such bodies or persons appearing to him to be representative of the interests of industry as he considers appropriate, and

(d) carry out such public consultation as he considers appropriate.

(5) The Secretary of State must set out in a statement any policy formulated for the purposes of subsection (1).

(6) The Secretary of State must, as soon as a statement is prepared for the purposes of subsection (5), send a copy of it to—

(a) the Scottish Ministers,

(b) the National Assembly for Wales, and

(c) the Department of the Environment.

(7) Where subsection (1) is satisfied by policies set out in a statement under section 44A of the Environmental Protection Act 1990 (c. 43) (national waste strategy), if the statement was prepared before the coming into force of that subsection it does not matter that the policies were not formulated for the purposes of that subsection.

(8) In section 353(4) of the Greater London Authority Act 1999 (c. 29) (Mayor's duty to have regard to national waste strategy, and guidance relating to it, when preparing his municipal waste management strategy)—

(a) before the word "and" at the end of paragraph (a) there is inserted—

"(aa) the strategy required by section 17 of the Waste and Emissions Trading Act 2003 (landfill strategy for England)," and

(b) in paragraph (b), for "that strategy" there is substituted " those strategies (or either of them) ".

(9) In section 354(2)(b) of that Act (directions about content of Mayor's municipal waste management strategy given for purposes of implementing policies in national waste strategy), after "(national waste strategy)" there is inserted " or of the policies contained in the strategy required by section 17 of the Waste and Emissions Trading Act 2003 (landfill strategy for England) ".

Commencement Information

I22 S. 17 in force at 20.7.2004 by S.I. 2004/1874, **art. 2**

18 Strategy for Scotland

(1) The Scottish Ministers must have a strategy for reducing—

(a) the amount of biodegradable waste from Scotland that goes to landfills, and

(b) the amount of biodegradable waste from outside Scotland that goes to landfills in Scotland.

(2) The strategy required by subsection (1) must (in particular) include measures to achieve the targets specified for Scotland under sections 1 and 2.

(3) The measures mentioned in subsection (2) include (in particular) measures to achieve the targets by means of recycling, composting, biogas production, materials recovery or energy recovery.

(4) Before formulating policy for the purposes of subsection (1), the Scottish Ministers must—

(a) consult the Secretary of State, the National Assembly for Wales, the Department of the Environment and the Scottish Environment Protection Agency,

(b) consult such bodies or persons appearing to them to be representative of the interests of local government as they consider appropriate,

(c) consult such bodies or persons appearing to them to be representative of the interests of industry as they consider appropriate, and

(d) carry out such public consultation as they consider appropriate.

(5) The Scottish Ministers must set out in a statement any policy formulated for the purposes of subsection (1).

(6) The Scottish Ministers must, as soon as a statement is prepared for the purposes of subsection (5), send a copy of it to—

(a) the Secretary of State,

(b) the National Assembly for Wales, and

(c) the Department of the Environment.

(7) Where subsection (1) is satisfied by policies set out in a statement prepared before the coming into force of that subsection, it does not matter that the policies were not formulated for the purposes of that subsection.

(8) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the coming into force of this section.

Commencement Information

I23 S. 18 in force at 1.4.2005 by S.S.I. 2005/52, **art. 2(b)**

19 Strategy for Wales

(1) The National Assembly for Wales must have a strategy for reducing—

(a) the amount of biodegradable waste from Wales that goes to landfills, and

(b) the amount of biodegradable waste from outside Wales that goes to landfills in Wales.

(2) The strategy required by subsection (1) must (in particular) include measures to achieve the targets specified for Wales under sections 1 and 2.

(3) The measures mentioned in subsection (2) include (in particular) measures to achieve the targets by means of recycling, composting, biogas production, materials recovery or energy recovery.

(4) Before formulating policy for the purposes of subsection (1), the Assembly must—
- (a) consult the Secretary of State, the Scottish Ministers, the Department of the Environment and the Environment Agency,
- (b) consult such bodies or persons appearing to it to be representative of the interests of local government as it considers appropriate,
- (c) consult such bodies or persons appearing to it to be representative of the interests of industry as it considers appropriate, and
- (d) carry out such public consultation as it considers appropriate.

(5) The Assembly must set out in a statement any policy formulated for the purposes of subsection (1).

(6) The Assembly must, as soon as a statement is prepared for the purposes of subsection (5), send a copy of it to—
- (a) the Secretary of State,
- (b) the Scottish Ministers, and
- (c) the Department of the Environment.

(7) Where subsection (1) is satisfied by policies set out in a statement under section 44A of the Environmental Protection Act 1990 (c. 43) (national waste strategy), if the statement was prepared before the coming into force of that subsection it does not matter that the policies were not formulated for the purposes of that subsection.

Commencement Information
I24 S. 19 in force at 25.6.2004 by S.I. 2004/1488, **art. 2(1)**

20 Strategy for Northern Ireland

(1) The Department of the Environment must have a strategy for reducing—
- (a) the amount of biodegradable waste from Northern Ireland that goes to landfills, and
- (b) the amount of biodegradable waste from outside Northern Ireland that goes to landfills in Northern Ireland.

(2) The strategy required by subsection (1) must (in particular) include measures to achieve the targets specified for Northern Ireland under sections 1 and 2.

(3) The measures mentioned in subsection (2) include (in particular) measures to achieve the targets by means of recycling, composting, biogas production, materials recovery or energy recovery.

(4) Before formulating policy for the purposes of subsection (1), the Department must—
- (a) consult the Secretary of State, the Scottish Ministers and the National Assembly for Wales,

(b) consult such bodies or persons appearing to it to be representative of the interests of local government as it considers appropriate,

(c) consult such bodies or persons appearing to it to be representative of the interests of industry as it considers appropriate, and

(d) carry out such public consultation as it considers appropriate.

(5) The Department must set out in a statement any policy formulated for the purposes of subsection (1).

(6) The Department must, as soon as a statement is prepared for the purposes of subsection (5), send a copy of it to—

(a) the Secretary of State,

(b) the Scottish Ministers, and

(c) the National Assembly for Wales.

(7) Where subsection (1) is satisfied by policies set out in a statement prepared before the coming into force of that subsection, it does not matter that the policies were not formulated for the purposes of that subsection.

(8) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the coming into force of this section.

Commencement Information

I25 S. 20 in force at 17.9.2004 by S.R. 2004/399, **art. 2(2)**

Interpretation of Chapter 1

21 "Biodegradable waste" and "municipal waste"

(1) In this Chapter "biodegradable waste" means any waste that is capable of undergoing anaerobic or aerobic decomposition, such as—

food and garden waste, and

paper and paperboard.

(2) In this Chapter "biodegradable municipal waste" means waste that is both biodegradable waste and municipal waste.

(3) In subsection (2) "municipal waste" means—

(a) waste from households, and

(b) other waste that, because of its nature or composition, is similar to waste from households.

22 "Landfill"

(1) In this Chapter "landfill" means a site for the deposit of waste onto or into land where the site is—

(a) a waste disposal site, or

(b) used for the storage of waste.

(2) In determining whether a site is a landfill for the purposes of this Chapter, the following activities at the site are to be ignored—

(a) the temporary storage of waste if the site is used for such storage for less than one year;

(b) the unloading of waste in order to permit the waste to be prepared for further transport for recovery, treatment or disposal elsewhere;

(c) the storage of waste, prior to recovery or treatment, for a period of less than three years as a general rule;

(d) the storage of waste, prior to disposal, for a period of less than one year.

(3) The fact that a site for the deposit of waste is at the place of production of the waste does not prevent the site from being a landfill for the purposes of this Chapter.

(4) In subsection (2) "treatment" means the physical, thermal, chemical or biological processes, including sorting, that change the characteristics of waste in order to—

(a) reduce its volume,

(b) reduce its hazardous nature,

(c) facilitate its handling, or

(d) enhance its recoverability.

23 "Scheme year" and "target year"

[[F1](1) In this Chapter—

"scheme year" means—

(a) for England, Scotland and Northern Ireland, a year beginning with 1st April in any of 2005 to 2019; and

(b) for Wales—

(i) the period of six months beginning with 1st October 2004, or

(ii) a year beginning with 1st April in any of 2005 to 2019;

"target year" means a scheme year ending with 31st March in 2010, 2013 or 2020.**]**

(2) The Secretary of State may by regulations amend subsection (1) for the purpose of—

(a) providing for a different day to be the first day of a scheme year;

(b) adding or omitting one or more scheme years;

(c) providing for a scheme year to be a period shorter or longer than a year;

(d) changing the target years or any of them;

(e) adding or omitting one or more target years.

(3) Before making regulations under subsection (2), the Secretary of State shall consult the Scottish Ministers, the National Assembly for Wales and the Department of the Environment.

Textual Amendments

F1 S. 23(1) substituted (22.7.2004) by Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 (S.I. 2004/1936), regs. 1, **2(2)**

Status: *Point in time view as at 01/04/2005.*
Changes to legislation: *There are currently no known outstanding effects for the Waste and Emissions Trading Act 2003. (See end of Document for details)*

24 Other definitions

(1) For the purposes of this Chapter, the "allocating authority"—
- (a) for England is the Secretary of State,
- (b) for Scotland is the Scottish Ministers,
- (c) for Wales is the National Assembly for Wales, and
- (d) for Northern Ireland is the Department of the Environment.

(2) In this Chapter, any reference to an allocating authority's "area" is to the area for which it is the allocating authority for the purposes of this Chapter.

(3) In this Chapter "landfill allowances" means allowances allocated under section 4(1).

(4) References in this Chapter to the monitoring authority for an area are to the monitoring authority designated for the area by regulations under section 10(1).

(5) In this Chapter "waste disposal authority"—
- (a) in relation to England, Wales and Scotland has the same meaning as in Part 2 of the Environmental Protection Act 1990 (c. 43);
- (b) in relation to Northern Ireland means a district council.

Supplementary

25 Activities to which Chapter 1 does not apply

(1) References in this Chapter to sending biodegradable waste, or biodegradable municipal waste, to landfills do not include—
- (a) the spreading of sludges (including sewage sludges and sludges resulting from dredging operations), or similar matter, on the soil for the purposes of fertilisation or improvement,
- (b) the deposit of non-hazardous dredging sludges alongside small waterways from out of which they have been dredged,
- (c) the deposit of non-hazardous sludges in surface water or in the bed or subsoil of surface water, or
- (d) the deposit of unpolluted soil resulting from—
  - (i) prospecting for, or the extraction, treatment or storage of, mineral resources, or
  - (ii) the operation of quarries.

(2) For the purposes of this section, sludge is "non-hazardous" if it is not hazardous waste for the purpose of Council Directive 91/689/EEC.

26 Penalties under Chapter 1: general

(1) Where a waste disposal authority in an allocating authority's area is liable to a penalty under this Chapter—
- (a) the amount of the penalty is that specified by, or calculated under, regulations made by the allocating authority under subsection (3);
- (b) the penalty, and any interest on it, is to be paid to the allocating authority; and
- (c) the allocating authority may—

(i) extend the time for paying the whole or part of the penalty or any interest on it;

(ii) relieve the waste disposal authority, in whole or in part, from liability to the penalty or any interest on it.

(2) Relief under subsection (1)(c) may be given—

(a) in respect of an amount after (as well as before) it becomes due;

(b) in a particular case or in cases of a particular description;

(c) unconditionally or subject to conditions.

(3) An allocating authority may, as regards penalties under this Chapter to which waste disposal authorities in its area are liable, by regulations—

(a) make provision specifying the amounts of penalties or rules for calculating their amounts;

(b) make provision as to when payments in respect of penalties are due;

(c) make provision for interest where payments in respect of penalties are due but unmade;

(d) make provision for recovering or setting off, and securing, unpaid amounts in respect of penalties or interest.

(4) Provision under subsection (3) relating to supplementary penalties under section 9(3) or (4) in respect of waste sent to landfills in a scheme year may be made after the end of that year.

27 Regulations under Chapter 1: consultation

(1) This section applies to regulations under this Chapter, other than regulations under section 1, 2, 3 or 23.

(2) Before making regulations to which this section applies, an allocating authority shall (subject to subsection (4))—

(a) consult such bodies or persons appearing to it to be representative of the interests of waste disposal authorities in its area as it considers appropriate,

(b) consult such bodies or persons appearing to it to be representative of the interests of persons concerned in the operation of landfills in its area as it considers appropriate, and

(c) consult such bodies or persons appearing to it to be representative of any other affected persons as it considers appropriate.

(3) In subsection (2)(c) "affected person" means a person appearing to the allocating authority to be a person who will or may be affected by the regulations.

(4) The allocating authority need not consult as mentioned in paragraph (a) or (b) of subsection (2) if it appears to the authority that the interests mentioned in that paragraph will not be affected by the regulations.

(5) Subsection (2) may be satisfied by consultation before, as well as by consultation after, the coming into force of this section.

28 Regulations under Chapter 1: procedural provisions

(1) A statutory instrument that—

(a) contains regulations under this Chapter made by the Secretary of State, and

(b) is not subject to any requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) No affirmative-procedure regulations shall be made by the Secretary of State unless a draft of the statutory instrument containing the regulations (whether containing them alone or with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.

(3) A statutory instrument that—

(a) contains regulations under this Chapter made by the Scottish Ministers, and

(b) is not subject to any requirement that a draft of the instrument be laid before, and approved by a resolution of, the Scottish Parliament,

shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) No affirmative-procedure regulations shall be made by the Scottish Ministers unless a draft of the statutory instrument containing them (whether containing them alone or with other provisions) has been laid before, and approved by a resolution of, the Scottish Parliament.

(5) A statutory rule that—

(a) contains regulations under this Chapter made by the Department of the Environment, and

(b) is not subject to affirmative resolution within the meaning of section 41(4) of the 1954 Act,

shall be subject to negative resolution within the meaning of section 41(6) of that Act.

(6) A statutory rule that contains (whether alone or with other provisions) affirmative-procedure regulations made by the Department of the Environment shall be subject to affirmative resolution within the meaning of section 41(4) of the 1954 Act.

(7) In this section—

"affirmative-procedure regulations" means—

(a) regulations under section 1 or 2, and

(b) the first regulations to be made under each of sections 6, 7 and 11 by each of the Secretary of State, the Scottish Ministers and the Department of the Environment;

"the 1954 Act" means the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

CHAPTER 2

WASTE MANAGEMENT IN WALES

29 Municipal waste management strategies

(1) The National Assembly for Wales may by regulations make provision for requiring a local authority to have for its area a strategy for the management of waste.

(2) Regulations under subsection (1) may (in particular)—

(a) specify matters to be addressed by a strategy;

(b) specify wastes to which a strategy is to relate;
(c) make provision about policies to be included in a strategy;
(d) make provision in connection with review or revision of a strategy;
(e) make provision for consultation, or about other procedural matters, in connection with the formulation of policy for the purposes of a strategy;
(f) make provision for requiring the preparation of statements setting out policies formulated for the purposes of a strategy;
(g) make provision about the contents of such statements;
(h) make provision about the form of such statements;
(i) make provision for publicising such statements once prepared, for publishing them, for sending copies of them to persons specified in the regulations and for public inspection of them;
(j) make provision for the supply of copies of such statements, including provision for the payment of reasonable charges;
(k) make provision for requiring a local authority, when formulating policy for the purposes of a strategy or preparing such a statement, to have regard to guidance (including future guidance);
(l) make provision about when duties imposed by the regulations are to be performed, including provision for duties to be performed by times specified in directions given by the Assembly.

(3) In this section "local authority" means a county council, or county borough council, in Wales.

30 Provision of information about waste by local authorities

(1) The National Assembly for Wales may by regulations make provision requiring a local authority to provide the Assembly with information—
(a) of a description specified by the regulations, and
(b) relating to, or to a description of, waste that is or has been in, or may or will come into, the authority's area.

(2) Regulations under subsection (1) may—
(a) make provision in connection with the collection, verification or certification of information whose provision is required by such regulations;
(b) make provision about the form in which, and the means by which, information is to be provided;
(c) make provision about when duties imposed by the regulations are to be performed, including provision for duties to be performed by times specified in directions given by the Assembly.

(3) In this section "local authority" means a county council, or county borough council, in Wales.

CHAPTER 3

WASTE MANAGEMENT IN ENGLAND

31 Directions to waste collection authorities in England

(1) Part 2 of the Environmental Protection Act 1990 (c. 43) (waste on land) is amended as follows.

(2) In section 48 (duties of waste collection authorities as respects collected waste), after subsection (1) (collection authority to deliver collected waste to places directed by disposal authority) there is inserted—

"(1A) A waste collection authority in England which is not also a waste disposal authority must discharge its duty under subsection (1) above in accordance with any directions about separation of waste given by the waste disposal authority for its area."

(3) In section 51 (functions of waste disposal authorities), after subsection (4) there is inserted—

"(4A) A waste disposal authority in England which is not also a waste collection authority may in directions under subsection (4)(a) above include requirements about separation that relate to waste as delivered, but may do so only if it considers it necessary for assisting it to comply with any obligation imposed on it by or under any enactment.

(4B) Before exercising its power to include requirements about separation in directions under subsection (4)(a) above, a waste disposal authority shall consult the waste collection authorities within its area.

(4C) In exercising its power to include requirements about separation in directions under subsection (4)(a) above, a waste disposal authority shall have regard to any guidance given by the Secretary of State as to the exercise of that power.

(4D) A waste disposal authority which includes requirements about separation in directions given under subsection (4)(a) above shall notify the waste collection authorities to which the directions are given of its reasons for including the requirements."

(4) After section 52 there is inserted—

"**52A Payments for delivering waste pre-separated**

(1) A waste disposal authority in England which is not also a waste collection authority shall pay to a waste collection authority within its area such amounts as are needed to ensure that the collection authority is not financially worse off as a result of having to comply with any separation requirements.

(2) A waste disposal authority in England which is not also a waste collection authority may pay to a waste collection authority within its area—

(a) which performs its duty under section 48(1) above by delivering waste in a state of separation, but

(b) which is not subject to any separation requirements as respects the delivery of that waste,

contributions of such amounts as the disposal authority may determine towards expenditure of the collection authority that is attributable to its delivering the waste in that state.

(3) The Secretary of State may by regulations make provision about how amounts to be paid under subsection (1) above are to be determined.

(4) Regulations under subsection (3) above may include provision for amounts to be less than they would otherwise be (or to be nil) if conditions specified in the regulations are not satisfied.

(5) Any question arising under subsection (1) above shall, in default of agreement between the paying and receiving authorities, be determined by arbitration.

(6) A waste collection authority in England which is not also a waste disposal authority shall supply the waste disposal authority for its area with such information as the disposal authority may reasonably require—

(a) for the purpose of determining amounts under this section, or

(b) for the purpose of estimating any amounts that would fall to be determined under this section were the collection authority to be subject to particular separation requirements.

(7) In this section "separation requirements", in relation to a waste collection authority, means requirements about separation included in directions given to it under section 51(4)(a) above."

Commencement Information

I26 S. 31 in force at 1.1.2005 by S.I. 2004/3319, **art. 2**

32 Joint municipal waste management strategies: England

(1) The waste authorities for a two-tier area must, at all times after the end of the period of 18 months beginning with the day on which this Act is passed, have for the area a joint strategy for the management of—

(a) waste from households, and

(b) other waste that, because of its nature or composition, is similar to waste from households.

(2) The waste authorities for a two-tier area must keep under review the policies formulated by them for the purposes of subsection (1).

(3) The waste authorities for a two-tier area must, before formulating policy for the purposes of subsection (1), carry out such consultation as they consider appropriate.

(4) The waste authorities for a two-tier area must set out in a statement any policy formulated by them for the purposes of subsection (1).

(5) The waste authorities for a two-tier area must—

(a) when formulating policy for the purposes of subsection (1), and

(b) when preparing a statement under subsection (4),

have regard to any guidance given by the Secretary of State.

(6) The waste authorities for a two-tier area in Greater London must, when formulating policy for the purposes of subsection (1), have regard to the Mayor of London's municipal waste management strategy or, where that strategy has been revised, to that strategy as revised.

(7) Where the waste authorities for a two-tier area prepare a statement under subsection (4) —

(a) they must take such steps as in their opinion will give adequate publicity in the area to the statement;

(b) they must send a copy of the statement—

(i) to each of the Secretary of State and the Environment Agency, and

(ii) if the area is in Greater London, to the Mayor of London;

(c) each of the authorities must keep a copy of the statement available at all reasonable times at one of its offices for inspection by the public free of charge; and

(d) each of the authorities must supply a copy of the statement to any person who requests one, on payment by the person of such reasonable charge as the authority requires.

(8) Where subsection (1) is satisfied in relation to a two-tier area by policies set out in a statement prepared before the coming into force of that subsection—

(a) it does not matter that the policies were not formulated for the purposes of subsection (1), but

(b) subsection (2) shall apply as though the policies were formulated for the purposes of subsection (1).

(9) Subsection (3) may be satisfied by consultation before, as well as by consultation after, the coming into force of that subsection.

(10) The Secretary of State may by regulations make provision for subsection (1) to apply, in relation to a two-tier area specified or described in the regulations, with the substitution for "18 months" of some longer period.

(11) A statutory instrument that contains regulations under subsection (10) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(12) In section 353 of the Greater London Authority Act 1999 (c. 29) (Mayor's duty to prepare municipal waste management strategy), after subsection (3) there is inserted—

"(3A) In revising the municipal waste management strategy the Mayor is to have regard to any strategies which authorities in Greater London have for the purposes of section 32 of the Waste and Emissions Trading Act 2003 (joint waste management strategies for areas where disposal authority is not also collection authority)."

Modifications etc. (not altering text)

C1 S. 32(1)-(7) applied (with modifications) (E.) (1.1.2005) by Joint Municipal Waste Management Strategies (Disapplication of Duties) (England) Regulations 2004 (S.I. 2004/3242), regs. 1(1), **4**

C2 S. 32(1)-(7) restricted (E.) (1.1.2005) by Joint Municipal Waste Management Strategies (Disapplication of Duties) (England) Regulations 2004 (S.I. 2004/3242), regs. 1(1), **2**, 3

Commencement Information

I27 S. 32 partly in force; s. 32(10)(11) in force at Royal Assent; s. 32(1)-(9) in force 13.1.2004 see s. 40(6)

I28 S. 32(12) in force at 1.1.2005 by S.I. 2004/3320, **art. 2**

33 Power to disapply duties under section 32

(1) The Secretary of State may by regulations make provision for a duty under section 32(1) to (7)—

(a) not to apply to an authority if conditions specified in the regulations are met;

(b) not to apply to an authority if, on an application made in accordance with the regulations, the Secretary of State is satisfied that conditions specified in the regulations are met;

(c) not to apply to the waste authorities for a two-tier area if, by reason of provision under paragraphs (a) and (b), it applies to one or more, but not all, of them;

(d) not to apply to the waste authorities for a two-tier area if, on an application made in accordance with the regulations, the Secretary of State is satisfied that conditions specified in the regulations are met.

(2) The power under paragraph (a) or (b) of subsection (1) must be exercised so that provision under that paragraph will cause a duty under section 32(1) to (7) not to apply to an authority only if—

(a) the standard of the authority's performance in carrying out functions of its has been at, or above, a particular level, and

(b) that level is—

(i) the level that, in the Secretary of State's opinion, counts as satisfactory performance, or

(ii) a level that, in his opinion, is higher than that level.

(3) The power under paragraph (d) of subsection (1) must be exercised so that provision under that paragraph will cause a duty under section 32(1) to (7) not to apply to the waste authorities for a two-tier area only if—

(a) as respects at least one of the authorities, the standard of its performance in carrying out functions of its has been at, or above, a particular level, or

(b) as respects at least two of the authorities, each has so carried out functions of its that the overall standard of their performance in carrying out those functions has been at, or above, a particular level,

and (in either case) that level is one mentioned in subsection (2)(b).

(4) Subject to subsection (2), the conditions that may be specified under subsection (1)(a) include (in particular) conditions that may be met only in the case of authorities that from time to time are, by reason of provision made by or under an enactment, of a particular category.

(5) Regulations under subsection (1) may include—

(a) provision about the duration of any disapplication under that subsection of a duty;

(b) provision postponing the application of a duty on the coming to an end of a disapplication under that subsection of the duty;

(c) provision modifying the application of subsections (1) to (7) of section 32 in relation to a two-tier area where a duty under those subsections applies to one or more, but not all, of the waste authorities for the area.

(6) A statutory instrument that contains regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) A reference in subsection (2)(a) or (3)(a) or (b) to functions of an authority is to functions of the authority in any capacity (and not only to functions of its in its capacity as a waste disposal authority or waste collection authority).

34 Interpretation of Chapter 3

In this Chapter—

(a) "two-tier area" means the area of a waste disposal authority in England which is not also a waste collection authority;

(b) "the waste authorities" for a two-tier area are—

(i) the waste disposal authority for the area, and

(ii) the waste collection authorities within the area; and

(c) "waste disposal authority" and "waste collection authority" have the same meaning as in Part 2 of the Environmental Protection Act 1990 (c. 43).

CHAPTER 4

MISCELLANEOUS AND SUPPLEMENTARY

35 Repeal of duty to prepare recycling plans in England and Wales

The following provisions are repealed—

(a) section 49 of the Environmental Protection Act 1990 (collection authorities' waste recycling plans),

(b) sections 353(3) and 361 of the Greater London Authority Act 1999 (c. 29) (which refer to section 49 of the 1990 Act), and

(c) paragraph (a) of section 7(2) of the Local Government Act 2000 (c. 22) (power to amend etc. section 49(1)(c) of the 1990 Act).

Commencement Information

I29 S. 35(a) in force at 25.6.2004 for W. by S.I. 2004/1488, **art. 2**

I30 S. 35(a) in force at 1.1.2005 for E. by S.I. 2004/3321, **art. 2**

I31 S. 35(b) in force at 1.1.2005 by S.I. 2004/3320, **art. 2**

I32 S. 35(c) in force at 25.6.2004 by S.I. 2004/1488, **art. 2(1)**

36 Regulations under Part 1

(1) Any power to make regulations under this Part includes—

(a) power to make different provision for different cases, and

(b) power to make incidental, supplementary, consequential or transitional provision or savings.

(2) Power to make regulations under section 23(2)(a), (b) or (c) also includes—

(a) power to make different provision in relation to England, Scotland, Wales and Northern Ireland respectively, and

(b) power to make consequential provision amending section 3(6).

(3) Any power to make regulations under this Part is exercisable by statutory instrument, subject to subsection (4).

(4) Any power of the Department of the Environment to make regulations under this Part is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

37 Meaning of "waste" in Part 1

(1) In this Part "waste" means anything that—

(a) is waste for the purposes of the Waste Directive, and

(b) is not excluded from the scope of that Directive by Article 2 of that Directive.

(2) For the purposes of this section "the Waste Directive" means Council Directive 75/442/EEC as amended by—

(a) Council Directives 91/156/EEC and 91/692/EEC, and

(b) Commission Decision 96/350/EC.

PART 2

TRADING OF EMISSIONS QUOTAS

38 Pollution regulations: emissions trading schemes

In Schedule 1 to the Pollution Prevention and Control Act 1999 (c. 24) (purposes for which provision may be made by regulations under section 2), after paragraph 21 there is inserted—

"**Emissions quota trading schemes: penalties**

21A (1) The regulations may authorise the inclusion in a trading scheme of—

(a) provision for penalties in respect of contraventions of provisions of the scheme;

(b) provision for the amount of any penalty under the scheme to be such as may be set out in, or calculated in accordance with—

(i) the scheme, or

(ii) the regulations (including regulations made after the scheme).

(2) In this paragraph "trading scheme" means a scheme of the kind mentioned in paragraph 1(3)."

39 Penalty provisions of UK Greenhouse Gas Emissions Trading Scheme 2002

(1) If incorporated in a participation agreement, the penalty provisions of the Scheme shall have statutory effect between the parties to the agreement.

(2) Subsection (1) applies in relation to agreements entered into before, as well as in relation to agreements entered into after, this section comes into force.

(3) In that subsection—

"participation agreement" means an agreement that has the effect that a person is a participant in the Scheme;

"penalty provisions" means provisions for penalties for non-compliance with the Scheme;

"the Scheme" means the UK Greenhouse Gas Emissions Trading Scheme 2002 (which was made on behalf of the Secretary of State on 8th March 2002) as amended from time to time (whether before or after this section comes into force).

Commencement Information

I33 S. 39 in force at 20.4.2004 by S.I. 2004/1163, **art. 2**

PART 3

GENERAL

40 Commencement

(1) Sections 1 to 3, 17, 31, 32(12), 35(b) and 39 come into force on such day as the Secretary of State may by order appoint.

(2) Sections 4, 5, 9 and 10 come into force—

(a) in relation to England, on such day as the Secretary of State may by order appoint;

(b) in relation to Scotland, on such day as the Scottish Ministers may by order appoint;

(c) in relation to Wales, on such day as the National Assembly for Wales may by order appoint;

(d) in relation to Northern Ireland, on such day as the Department of the Environment may by order appoint.

(3) Section 18 comes into force on such day as the Scottish Ministers may by order appoint.

(4) Sections 19 and 35(c) come into force on such day as the National Assembly for Wales may by order appoint.

(5) Section 20 comes into force on such day as the Department of the Environment may by order appoint.

(6) Section 32(1) to (9) comes into force at the end of the period of two months beginning with the day on which this Act is passed.

(7) Section 35(a) comes into force—

(a) in relation to England, on such day as the Secretary of State may by order appoint;

(b) in relation to Wales, on such day as the National Assembly for Wales may by order appoint.

(8) Any power under this section to appoint a day includes power to appoint different days for different purposes.

(9) A person who has power under this section to appoint a day for the coming into force of a provision may by order make in connection with the coming into force of that provision such transitional provision as the person considers necessary or expedient.

(10) Any power to make an order under this section is exercisable by statutory instrument, subject to subsection (11).

(11) Any power of the Department of the Environment to make an order under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

41 Extent

(1) Subject to the following provisions, this Act extends to England and Wales, Scotland and Northern Ireland.

(2) Sections 17, 19, 29 to 31, 32(1) to (11), 33, 34 and 35(a) and (c) extend only to England and Wales.

(3) Section 18 extends only to Scotland.

(4) Section 20 extends only to Northern Ireland.

(5) Sections 32(12), 35(b) and 38 extend only to England and Wales, and Scotland.

42 Short title

This Act may be cited as the Waste and Emissions Trading Act 2003.

Status:
Point in time view as at 01/04/2005.

Changes to legislation:
There are currently no known outstanding effects for the Waste and Emissions Trading Act 2003.