
STATUTORY RULES OF NORTHERN IRELAND

2004 No. 416

**The Landfill Allowances Scheme
(Northern Ireland) Regulations 2004**

PART 2

**ALLOCATION AND THE BORROWING AND
TRANSFER OF LANDFILL ALLOWANCES**

Allocation of allowances

5.—(1) As soon as reasonably practicable after the Department has complied with section 4(4) of the Act, the monitoring authority must assign all landfill allowances allocated to a district council under that section –

- (a) to the district council's landfill allowance account;
- (b) a unique reference number (which may include any letter) from which the following information may be ascertained –
 - (i) the district council to which the allowance is allocated,
 - (ii) the year for which the allowance is allocated, and
 - (iii) the vintage of the allowance for that year.

Borrowing of landfill allowances

6.—(1) A district council may borrow for use in a scheme year 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 year is a target year.

(3) Where a district council 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.

(4) A borrowing request must –

- (a) be made on the form provided by the monitoring authority; and
- (b) specify –
 - (i) the name of the district council, and
 - (ii) the number of landfill allowances which it intends to borrow.

(5) The monitoring authority is not required to consider a borrowing request unless it is made in accordance with paragraph (4).

(6) If the conditions in paragraph (8) are satisfied the monitoring authority must –

- (a) remove the number of landfill allowances specified in the borrowing request from the part of the district council'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; and
 - (c) notify the district council which made the request –
 - (i) that its request has been accepted, and
 - (ii) of the amendments that have been made to its landfill allowance account.
- (7) If the conditions in paragraph (8) are not satisfied the monitoring authority must notify the district council –
- (a) that its request has not been accepted, and
 - (b) of the reasons why.
- (8) The conditions referred to in paragraphs (6) and (7) are that –
- (a) the borrowing request complies with paragraph (2),
 - (b) the number of landfill allowances specified in the request are available to the district council for the following scheme year,
 - (c) accepting the borrowing request would not cause the district council to exceed the limit on borrowing under paragraph (1), and
 - (d) the district council is not suspended from borrowing landfill allowances under regulation 8.

Transfer of landfill allowances

7.—(1) Subject to paragraph (2), a district council may transfer to any other district council landfill allowances which –

- (a) are available to the district council for a scheme year, and
- (b) have not been utilised.

(2) A district council must not transfer an allowance from any scheme year for which the allowance is available to another district council unless the transfer is to that scheme year.

(3) Where a district council (“the transferor”) agrees to transfer a landfill allowance to another district council (“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; and
- (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, and
 - (iv) the date the transfer was agreed.

(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) allocate 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; and
- (c) notify the transferor and transferee –
 - (i) that the request has been accepted, and
 - (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, and
 - (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 8.

Suspension of borrowing and transferring of landfill allowances

8.—(1) The Department may suspend any or all district councils from borrowing and transferring landfill allowances if it considers –

- (a) in a scheme year between target years that there is a risk that the total amount of biodegradable municipal waste sent to landfills by district councils in Northern Ireland will exceed the maximum amount for Northern Ireland which is specified under (or pursuant to section 3(1) of the Act is treated as having been specified under) section 2(1)(d) of the Act, or
- (b) it necessary to exercise its power under section 5 of the Act (alteration of allocations under section 4).

(2) The Department may suspend a district council from borrowing and transferring landfill allowances if it has reason to believe that –

- (a) the district council 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 district council.

(3) If the Department suspends a district council from borrowing and transferring landfill allowances under paragraph (1) or (2), at the same time it must notify the monitoring authority and the district council of –

- (a) that fact, and
- (b) the reasons for the suspension.

(4) The Department may cancel a suspension if in any case falling within –

- (a) paragraph (1)(a), the Department is satisfied that there is no significant continuing risk that the total amount of biodegradable municipal waste sent to landfills by district councils in Northern Ireland will exceed the maximum amount mentioned in that paragraph;
- (b) paragraph (1)(b) –

- (i) the allocation of landfill allowances has been altered, or
 - (ii) the Department no longer considers that an alteration is necessary;
 - (c) paragraph (2)(a), the Department is satisfied that the failure to comply is unlikely to recur;
 - (d) paragraph (2)(b), the Department is satisfied that there is no further risk of the unauthorised submission of a borrowing or transfer request.
- (5) If the Department cancels a suspension under paragraph (4), at the same time it must notify the monitoring authority and any district council which, as a consequence, is no longer suspended from borrowing and transferring landfill allowances of –
- (a) that fact, and
 - (b) the reasons for cancelling the suspension.
- (6) The effect of suspending a district council from borrowing and transferring landfill allowances is that no landfill allowances may be –
- (a) transferred to or from the district council’s landfill allowance account under regulation 7,
 - (b) borrowed within that account under regulation 6.
- (7) In paragraph (2)(b) “unauthorised person” means a person who is not authorised by a district council to submit borrowing or transfer requests on the district council’s behalf.