

EXPLANATORY MEMORANDUM TO
THE WASTE AND EMISSIONS TRADING ACT 2003 (AMENDMENT) REGULATIONS
2011

2011 No. 2499

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 This instrument amends the Waste and Emissions Trading Act 2003 (“WET Act”) and, in England, the Landfill Allowances and Trading Scheme (England) Regulations 2004 (“LATS Regulations”) to reflect a new interpretation of the term ‘municipal waste’. The instrument also makes amendments to the Landfill Allowances and Trading Scheme (England) Regulations 2004 (“2004 Regulations”) and the Joint Waste Authorities (Proposals) Regulations 2009 (“2009 Regulations”) as a consequence of this revised interpretation.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 The WET Act sets out a definition of the term ‘municipal waste’ based on the Landfill Directive (1999/31/EC). The UK’s interpretation of ‘municipal waste’ has been widened to include more commercial waste collected by the private sector. The instrument will introduce a new term for the category of waste that continues to be covered by the landfill allowance scheme, ‘local authority collected municipal waste’, in order to distinguish it from the broader term, ‘municipal waste’. The instrument introduces the new term into the appropriate places in the WET Act, the 2004 Regulations and the 2009 Regulations. The instrument also removes the provisions allowing supplementary penalties to be applied to waste disposal authorities in England (these currently have the effect of allowing an EU infraction fine for failing to meet Landfill Directive targets to be passed on to waste disposal authorities exceeding their allowances).

5. **Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom in respect of the revisions to the WET Act. The changes to the 2004 Regulations and the 2009 Regulations extend to

England and Wales only (and will only apply in England, reflecting the scope of the regulations they amend).

6. European Convention on Human Rights

Lord Taylor has made the following statement regarding Human Rights:

In my view the provisions of the Waste and Emissions Trading Act 2003 (Amendment) Regulations 2011 are compatible with the Convention rights.

7. Policy background

7.1 The Landfill Directive (1999/31/EC) set challenging targets for Member States to reduce the amount of biodegradable municipal waste sent to landfill. This was in line with its overall objective to prevent or reduce as far as possible the negative effects of landfilling on the environment, including reducing the production of methane gas from landfills, as well as any resultant risk to human health. The Directive includes the following definition of municipal waste (Article 2):

waste from households, as well as other waste which, because of its nature or composition, is similar to waste from household[s].

It defines 'biodegradable waste' as:

any waste that is capable of undergoing anaerobic or aerobic decomposition, such as food and garden waste, and paper and paperboard.

7.2 These definitions are used as the basis for the landfill diversion targets included in Article 5(2) of the Directive. The UK's targets are to reduce the amount of biodegradable municipal waste (BMW) sent to landfill to:

75% of the total amount produced in 1995 by 2010

50% of the total amount produced in 1995 by 2013

35% of the total amount produced in 1995 by 2020

Member States are liable to infringement proceedings for failing to meet these targets.

7.3 These targets were transposed into UK legislation by the WET Act. This also provides the legal basis for landfill allowance schemes in each of the four administrations in the UK. These schemes were established as the primary means for ensuring that the UK as a whole met the Directive targets.

7.4 The definition of municipal waste set out in the Directive was included in the WET Act. However, in further developing the landfill allowance schemes it was felt necessary to provide greater clarity to the definition of municipal waste. In doing so, municipal waste was in practice defined as waste collected under arrangements made by

local authorities. The landfill allowance schemes were established to only apply to local authorities.

7.5 However, discussions with the European Commission led us to agree that the UK's existing approach was focused too narrowly on waste collected by local authorities; that it focused on too small a subset of the totality of waste produced and that the environmental objectives of the Directive to reduce the negative effects of landfilling were better addressed by a broader interpretation of the definition. The UK changed its interpretation to include more commercial waste collected by the private sector.

7.6 This changed interpretation substantially increases the amount of BMW that is subject to the diversion targets under the Landfill Directive, as a much larger proportion of commercial and industrial waste is now included within the definition. Whereas previously "municipal waste" only applied to waste managed by local authorities it will now extend to cover waste managed by private sector waste management companies. This requires a corresponding increase in the amount of such waste that is allowed to be sent to landfill by England, the Devolved Administrations and the UK as a whole, as set out in the Landfill (Maximum Landfill Amount) Regulations 2011. Changing the way municipal waste is counted means that the baseline upon which the landfill diversion targets were set has to be revised, and therefore also the targets for the UK. Defra has agreed revisions to these targets with the European Commission, which broadly double the existing targets. The reclassification of municipal waste, and the revised targets set out in the Landfill (Maximum Landfill Amount) Regulations 2011, are not expected to significantly change the existing management arrangements.

7.7 The new term, 'local authority collected municipal waste', is needed to cover the municipal waste collected and dealt with by local authorities for the purposes of landfill allowances schemes to distinguish it from the waste covered by the broader term 'municipal waste' (which also includes waste collected by the private sector). Landfill allowances schemes are cap and trade schemes dealing with the biodegradable municipal waste landfilled by local authorities in the UK. They were set up as the primary means for the UK to meet its share of the diversion targets under the Landfill Directive. As announced in the Government Review of Waste Policy in England 2011, the Landfill Allowance Trading Scheme (LATS) currently operating in England will be ended after the 2012/13 scheme year, but will continue to be enforced until then. Provision is needed to support LATS until it ends, and also to support equivalent schemes in other administrations in the UK.

7.8 The instrument also removes the provision allowing supplementary penalties to be applied to waste disposal authorities in England. Under the new interpretation of 'municipal waste' diversion targets under the Landfill Directive now apply to all municipal waste (including that collected by the private sector), not just that collected by waste disposal authorities. Setting individual obligations on waste disposal authorities is no longer considered a necessary or appropriate way to meet the overall target.

8. Consultation outcome

8.1 A consultation was held in March 2010 which set out our intention to change our interpretation. The consultation asked for views on the best term to describe the element of municipal waste collected by local authorities.

There were seventy one responses to the consultation of which fifty nine were local authorities. The majority of respondents were clear that a term was needed to differentiate between the municipal waste collected by local authorities and that collected by the private sector. 'Local Authority Collected Waste' appeared to be the most broadly favoured option, but this term might be thought of as including non-municipal waste collected by local authorities. The term 'Local Authority Collected Municipal Waste' is used in this instrument as it makes it clear that this is a subset of the new interpretation of 'municipal waste'. The link to the consultation on the Defra website is

<http://webarchive.nationalarchives.gov.uk/20110318132354/http://www.defra.gov.uk/corporate/consult/land-fill-diversion/index.htm>

9. Guidance

9.1 No formal guidance is considered necessary as the legislation does not require any change in the behaviour of local authorities or others who collect municipal waste.

10. Impact

10.1 The instrument is not considered as having an impact on business, charities or voluntary bodies.

10.2 The instrument is not considered as having an impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 There is no need to carry out a review on this amending instrument as it is not considered as having an impact on businesses, charities, voluntary bodies or the public sector.

13. Contact

Andrew Baxter at the Department for Environment, Food and Rural Affairs Tel: 020 7238 4382 or email: Andrew.Baxter@defra.gsi.gov.uk can answer any queries regarding the instrument.