

Explanatory Memorandum to the Landfill Allowances Scheme (Wales) (Amendment) Regulations 2012.

This Explanatory Memorandum has been prepared by Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Landfill Allowances Scheme (Wales) (Amendment) Regulations 2012.

John Griffiths

Minister for Environment and Sustainable Development
10 January 2012

1. Description

- 1.1 This instrument revokes the Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011 and undoes the amendments that those Regulations made to the Landfill Allowances Scheme (Wales) Regulations 2004. This instrument also revokes and remakes the Landfill Allowances Scheme (Wales) (Amendment) (No. 2) Regulations 2011.
- 1.2 The instrument introduces new terms to the 2004 Regulations to describe the waste covered by the Landfill Allowances Scheme. The amendments are made to carry through identical but separate amendments made to the Waste Emissions and Trading Act 2003 (“the WET Act”).

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 This instrument comes into force less than 21 days after being laid before the Assembly.
- 2.2 The amendments to the 2004 Regulations made by these Regulations were made previously by the Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011 (“the first Regulations”). As a result of a point identified by the Committee, the Government undertook to make further amending regulations within six weeks. The Committee’s report and the Government’s response is available here:
<http://senedd.assemblywales.org/ieListDocuments.aspx?CId=219&MId=445&Ver=4>.
- 2.3 The first Regulations were revoked and remade in the Landfill Allowances Scheme (Wales) (Amendment) (No. 2) Regulations 2011 (“the second Regulations”) so that all the amendments would be contained in one statutory instrument, rather than two. The second Regulations were due to come into force on 16 January 2012.
- 2.4 The second Regulations should have undone the amendments made by the first Regulations before attempting to make those amendments again. The fact that they did not raised the potential for uncertainty about the precise effect of the second Regulations in some respects and about certain provisions of the 2004 Regulations that they were to affect.
- 2.5 The 2012 Regulations undo the amendments to the Landfill Allowances Scheme (Wales) Regulations 2004, revoke both sets of earlier regulations and makes the amendments to the 2004 Regulations afresh.
- 2.6 The omission came to light after the second Regulations were made and so it was not possible to rectify the situation other than by amending the second Regulations before they come into force or by revoking and

remaking them. Although it would have been possible to revoke and remake the second Regulations after they had come into force, and thus to comply with the 21 day rule, that approach would have resulted in a period of time during which the precise effect of the law would have been unclear.

- 2.7 The Government concluded that the best result for users of the legislation would be to prevent uncertainty arising at all. Breaching the 21 day rule was the only way to achieve that result. The Presiding Officer has been notified of the breach by letter.

3. Legislative background

- 3.1 This instrument is made under sections 11, 12, 24 and 26 of the Waste and Emissions Trading Act 2003.
- 3.2 This statutory instrument follows the negative procedure.

4 Purpose & intended effect of the legislation

- 4.1 The purpose of the legislation is to align the terminology used in the Landfill Allowances Scheme (Wales) Regulations 2004 with new terminology being introduced into the Waste and Emissions Trading Act 2003. The legislation is intended to have a neutral effect.
- 4.2 The 2003 Act was amended by the Secretary of State in the Waste and Emissions Trading Act 2003 (Amendment) Regulations 2011 which came into force on 21 November 2011. The amendments to the 2003 Act introduced new terminology to distinguish between the range of municipal waste covered by the Landfill Allowances Scheme and the wider range of municipal waste covered by landfill reduction targets set under the Act.
- 4.3 The European Union Landfill Directive aims to prevent or reduce negative effects on the environment from landfilling of waste. The Landfill Directive also specifically states that measures should be taken to reduce the production of methane gas from landfills through the reduction of the landfill of biodegradable waste. Article 5(2) of the Landfill Directive requires member states to reduce the total amount of biodegradable municipal waste (BMW) landfilled to levels based on a 1995 baseline.
- 4.4 The UK transposed the requirements of article 5(2) of the Landfill Directive through the Waste Emissions and Trading Act 2003 and landfill targets are set for each UK administration under regulations made under the Act (the Landfill (Scheme and Maximum Landfill Amount) Regulations 2011).

- 4.5 As part of ensuring that the landfill targets are met the Waste Emissions and Trading Act 2003 requires each UK administration to allocate landfill allowances to waste disposal authorities in their area. These allowances authorise authorities to send a maximum amount of biodegradable municipal waste to landfill each year.
- 4.6 Before the Waste Emissions and Trading Act 2003 was amended it allowed each UK administration to allocate landfill allowances up to its own landfill target limit. This meant that the Waste Emissions and Trading Act 2003 technically allowed each administration to divide up its maximum limit between waste disposal authorities in its area.
- 4.7 Because private contractors also dispose of biodegradable municipal waste, allowing each administration to divide up the maximum limit solely between waste disposal authorities would have been inconsistent with the UK's obligations to regulate all biodegradable municipal waste going to landfill.
- 4.8 To address this inconsistency the 2003 Act was amended to remove the power to allocate the total maximum limit solely between waste disposal authorities. Those amendments were made by the Secretary of State in the Waste and Emissions Trading Act 2003 (Amendment) Regulations 2011. Associated amendments were also made by those Regulations so that the terms used in the Act to describe the waste covered by the Landfill Allowances Scheme were distinguishable from the terms used to describe the wider category of waste covered by the targets.
- 4.9 The Landfill Allowances Scheme (Wales) (Amendment) Regulations 2012 substitute the new terms in the 2004 Regulations so that the terminology used in the Regulations is consistent with the terminology used in the Act.
- 4.10 These amendments were previously made by the Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011 ("the first Regulations") which came into force on 21 November 2011. These Regulations undo those earlier amendments and revoke the first Regulations, together with the Landfill Allowances Scheme (Wales) (Amendment) (No. 2) Regulations 2011 ("the second Regulations"). The second Regulations are revoked before they come into force.

5 Consultation

- 5.1 Consultation must be carried out before making regulations about the Landfill Allowances Scheme unless the regulations do not affect waste disposal authorities, landfill operators or other interested persons.
- 5.2 These Regulations are specifically designed to preserve existing arrangements and therefore to prevent any effect on waste disposal authorities, landfill operators or other interested persons. They make

the technical changes necessary to prevent unintended consequences arising from technical changes made to the Waste and Emissions Trading Act 2003. Consultation is therefore not required under the Act.

- 5.3 In parallel to the Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011 being laid, the Welsh Government notified local authorities, the Welsh Environmental Services Association and the Environment Agency to the legislation and the reasons for it; and to the fact that the legislation is not intended to affect the operation of the Landfill Allowances Scheme.
- 5.4 These Landfill Allowances (Wales) (Amendment) Regulations 2012 remake those Regulations without any additional policy changes and so these Regulations do not alter the earlier position..

6 Regulatory Impact Assessment (RIA)

- 6.1 A regulatory impact appraisal has not been completed. This is a technical change designed to prevent confusion about how the law operates in relation to the Landfill Allowances Scheme. The legislation is not intended to have any impact on local authorities, the private or voluntary sectors or the public.