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STATUTORY INSTRUMENTS

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**2011 No. 2499**

**ENVIRONMENTAL PROTECTION**

**The Waste and Emissions Trading Act  
2003 (Amendment) Regulations 2011**

*Made - - - - 17th October 2011*

*Laid before Parliament 21st October 2011*

*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by—

- (a) section 2(2) of the European Communities Act 1972<sup>(1)</sup>, so far as relating to the amendments to the Waste and Emissions Trading Act 2003<sup>(2)</sup> and the Joint Waste Authorities (Proposals) Regulations 2009<sup>(3)</sup>; and
- (b) sections 6, 10 to 12, 15 and 26 of the Waste and Emissions Trading Act 2003, so far as relating to the amendments to the Landfill Allowances and Trading Scheme (England) Regulations 2004<sup>(4)</sup>.

The Secretary of State is a Minister designated<sup>(5)</sup> for the purposes of section 2(2) of the European Communities Act 1972 in relation to the environment.

The amendments to the Landfill Allowances and Trading Scheme (England) Regulations 2004 are made following consultation in accordance with section 27(2) of the Waste and Emissions Trading Act 2003.

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(1) 1972 c. 68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under European Union law in respect of devolved matters, the Secretary of State's function in relation to implementing those obligations continues to be exercisable as regards Scotland.

(2) 2003 c. 33.

(3) S.I. 2009/105.

(4) S.I. 2004/3212, amended by S.I. 2005/895; there are other amending instruments but none is relevant.

(5) S.I. 2008/301.

## PART 1

### General

#### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Waste and Emissions Trading Act 2003 (Amendment) Regulations 2011.

(2) Subject to paragraph (3), these Regulations come into force on 21st November 2011.

(3) Parts 3 and 4 come into force immediately after Part 2.

(4) Parts 3 and 4 extend to England and Wales only.

## PART 2

### Amendment of the Waste and Emissions Trading Act 2003

#### **Amendment of the Waste and Emissions Trading Act 2003**

2. Chapter 1 of Part 1 of the Waste and Emissions Trading Act 2003 (waste sent to landfills) is amended in accordance with regulations 3 to 8.

#### **Substitution of references to “biodegradable local authority collected municipal waste”**

3. In the following provisions, for “biodegradable municipal waste” substitute “biodegradable local authority collected municipal waste”—

- (a) section 4(1) (allocation of landfill allowances);
- (b) section 9(1) (duty not to exceed allowances);
- (c) section 10(2)(a) (monitoring authorities);
- (d) section 11(2)(d) and (f) (scheme regulations);
- (e) section 12(1) and (2)(b)(i) (powers in relation to waste disposal authorities).

#### **Amendment of section 4 (allocation of landfill allowances)**

4. In section 4—

- (a) for subsection (2) substitute—

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

- (b) at the end of subsection (4)(b) insert “including in particular how the authority has complied with the duty in subsection (2)”.

#### **Amendment of section 5 (alteration of allocations under section 4)**

5. In section 5—

- (a) for subsection (3) substitute—

“(3) In exercising the power under subsection (1), an authority must ensure that the total amount of waste authorised to be sent to landfills by allowances allocated by it for a

year does not cause the amount of biodegradable municipal waste sent to landfills for that year to exceed the amount specified for its area under section 1 or 2.”; and

- (b) at the end of subsection (4)(b) insert “including in particular how the authority has complied with the duty in subsection (3)”.

#### **Amendment of section 21 (“biodegradable waste” and “municipal waste”)**

6.—(1) For the heading of section 21 substitute—

“*“Biodegradable waste”, “municipal waste” and “local authority collected municipal waste”*”.

(2) In section 21—

(a) for subsection (2) substitute—

“(2) In this Chapter—

(a) “biodegradable municipal waste” means waste that is both biodegradable waste and municipal waste; and

(b) “biodegradable local authority collected municipal waste” means waste that is both biodegradable waste and local authority collected municipal waste.”;

(b) in subsection (3), for “subsection (2)” substitute “this section”; and

(c) after subsection (3) insert—

“(4) In subsection (2) “local authority collected municipal waste” means any municipal waste which is collected under arrangements made by a waste collection authority or a waste disposal authority.

(5) In subsection (4) “waste collection authority”—

(a) in relation to England and Wales and Scotland, has the same meaning as in Part 2 of the Environmental Protection Act 1990(6);

(b) in relation to Northern Ireland, means a district council.”.

#### **Amendment of section 25 (activities to which Chapter 1 does not apply)**

7. In section 25(1), after “biodegradable waste”, insert “, biodegradable local authority collected municipal waste”.

#### **Disapplication of certain penalty provisions where the allocating authority is the Secretary of State**

8. The following provisions cease to apply where the allocating authority is the Secretary of State—

- (a) section 9(3) and (4) (duty not to exceed allowances);
- (b) section 26(4) (penalties under Chapter 1: general).

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(6) 1990 c. 43. The definition of “waste collection authorities” in section 30(3) was amended by section 66(8) of, and Schedule 18 to, the Local Government (Wales) Act 1994 (c. 19), and by section 180 of, and paragraph 167(3) of Schedule 13 to, the Local Government etc. (Scotland) Act 1994 (c. 39).

## PART 3

### Amendment of the Landfill Allowances and Trading Scheme (England) Regulations 2004

#### **Amendment of the Landfill Allowances and Trading Scheme (England) Regulations 2004**

9. The Landfill Allowances and Trading Scheme (England) Regulations 2004 are amended in accordance with regulations 10 to 13.

#### **Amendment of regulation 2 (interpretation)**

10. In regulation 2(1), omit the definition of “collected municipal waste”.

#### **Substitution of “local authority collected municipal waste” and “biodegradable local authority collected municipal waste”**

11.—(1) In the following provisions, for “collected municipal waste” substitute “local authority collected municipal waste”—

- (a) regulation 11(1)(a) (obligation for waste disposal authorities to keep records and make returns);
- (b) regulation 13(2)(a) (determining the amount of biodegradable municipal waste in amounts of waste);
- (c) regulation 14(2)(a) (calculation of the amount of biodegradable municipal waste sent to landfills).

(2) In the following provisions, for “municipal waste” substitute “local authority collected municipal waste”—

- (a) regulation 11(1)(b) and (c) and (2);
- (b) regulation 14(2)(b) and (c) (other than in the phrase “biodegradable municipal waste”).

(3) In the following places, for “biodegradable municipal waste” substitute “biodegradable local authority collected municipal waste”—

- (a) regulation 11(6)(b);
- (b) the cross-heading of regulation 13;
- (c) regulation 13(2)(a) to (c);
- (d) the cross-heading of regulation 14;
- (e) regulation 14(1)(a) and (b) and (2)(a), (b) and (c);
- (f) regulation 15(1) and (4)(a) (utilisation of landfill allowances);
- (g) regulation 16(3)(e)(i) (landfill allowances register);
- (h) regulation 20(2) (penalties: exceeding allowances);
- (i) regulation 23 (guidance to waste disposal authorities);
- (j) the heading of the Schedule (amount of biodegradable municipal waste in certain types of waste);
- (k) the Table in the Schedule.

(4) In regulation 16(3)(f)(iii), for “biodegradable waste” substitute “biodegradable local authority collected municipal waste”.

**Amendment of regulation 13 (determining the amount of biodegradable municipal waste in amounts of waste)**

12. In regulation 13—

(a) in paragraph (2)(b) and (c), for “separated municipal waste” substitute “separated local authority collected municipal waste”; and

(b) for paragraph (3) substitute—

“(3) In paragraph (2)—

“amount of local authority collected municipal waste” means the amount of local authority collected municipal waste for any period of time, but such period must be not less than three months;

“nearest relevant amount” means—

(a) the nearest tonne; or

(b) where the amount of biodegradable local authority collected municipal waste referred to in paragraph (2)(c) is—

(i) less than 10 tonnes, the nearest 100 kilograms;

(ii) less than 1 tonne, the nearest 10 kilograms;

“separated local authority collected municipal waste” means waste which has been separated from other local authority collected municipal waste, whether the separation occurs before or after the waste has been collected under arrangements made by a waste collection authority or waste disposal authority.”.

**Amendment of regulation 20 (penalties: exceeding allowances)**

13. Omit regulation 20(3) and (4).

## PART 4

### Amendment of the Joint Waste Authorities (Proposals) Regulations 2009

**Amendment of the Joint Waste Authorities (Proposals) Regulations 2009**

14. In the Joint Waste Authorities (Proposals) Regulations 2009(7), for paragraph 7 of Schedule 2 substitute—

“7.—(1) If the proposed joint waste authority has the function of disposing of biodegradable local authority collected municipal waste, the arrangements to ensure the fulfilment of its duties as a waste disposal authority for the purposes of the Waste and Emissions Trading Act 2003(8).

(2) In this paragraph, “biodegradable local authority collected municipal waste” has the meaning given by section 21 of that Act(9).”.

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(7) S.I. 2009/105.

(8) 2003 c. 33.

(9) Amended by regulation 6(2) above.

17th October 2011

*Taylor of Holbeach*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend Chapter 1 of Part 1 of the Waste and Emissions Trading Act 2003 (c. 33) (“the 2003 Act”). They also amend the Landfill Allowances and Trading Scheme (England) Regulations 2004 (S.I. 2004/3212) (“the 2004 Regulations”) and the Joint Waste Authorities (Proposals) Regulations 2009 (S.I. 2009/105) (“the 2009 Regulations”).

The amendments in Part 2 introduce the term “local authority collected municipal waste” to the 2003 Act. The term is used in provisions relating to the setting up and operation of landfill allowance schemes and is distinguished from the use of the term “municipal waste” (defined in section 21 of the 2003 Act) to describe the waste that must be diverted from landfills under Article 5(2) of Council Directive 1999/31/EC on the landfill of waste (OJ No L 182, 16.7.1999, p 1).

The amendments in Parts 3 and 4 provide for the use of the term “local authority collected municipal waste” in the 2004 Regulations and the 2009 Regulations.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.