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## EXPLANATORY NOTE

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

These Regulations are made under the Waste and Emissions Trading Act 2003 (“the Act”) for the purpose of implementing Articles 5(1) and (2) of Council Directive 99/31/EC on the landfill of waste (O.J. No. L 182, 16.7.1999, p.1) in Scotland. They make provision for implementing Chapter 1 of Part 1 of the Act (waste sent to landfills) including the landfill allowances scheme under that Part. The Regulations, apart from Regulation 8 (transfer of landfill allowances); (which comes into force on 1st April 2008) come into force on 1st April 2005.

Part 1 sets out the general provisions. Regulation 1 concerns the citation, commencement and extent of the Regulations and regulation 2 deals with interpretation. Regulation 3 is concerned with the giving and submission of various documents and provision is made for electronic communications and the use of websites. Regulation 4 also enables the use of electronic registers (for the purpose of regulation 16) and the provision of electronic forms.

Part 2 includes provisions on the allocation, banking, borrowing and transfer of landfill allowances. After the Scottish Ministers have made an allocation of landfill allowances under section 4 of the Act, regulation 5 requires the monitoring authority to assign reference numbers to those allowances and to allocate them to the landfill allowance accounts of waste disposal authorities.

Regulations 6 to 8 concern the banking, borrowing and transfer of landfill allowances. Subject to certain exceptions, landfill allowances which are not utilised in one scheme year are automatically banked to the next (regulation 6). Under regulations 7 and 8, requests must be submitted to the monitoring authority before landfill allowances can be borrowed or transferred. Provided the relevant conditions in regulations 7(9) and 8(8) are satisfied these requests will be accepted. Regulation 9 enables the Scottish Ministers to suspend waste disposal authorities from banking, borrowing and transferring landfill allowances in the circumstances specified in regulation 9(1) and (2).

Part 3 concerns the monitoring of the landfill allowances scheme. Regulation 10 provides that SEPA is the monitoring authority for Scotland, and consequently that authority is subject to the duties in section 10(2) of the Act. Regulation 14 requires the monitoring authority to calculate how much biodegradable municipal waste is sent to landfill by each waste disposal authority in a scheme year, and regulation 15 requires the monitoring authority to reconcile this amount with the waste disposal authority’s allowances for that year. Assumptions about the amount of biodegradable municipal waste in amounts of waste apply in relation to specified functions of the monitoring authority (regulation 13 and the Schedule to the Regulations).

Regulations 11 and 12 impose obligations on waste disposal authorities and landfill operators respectively to keep specified records and make specified returns to the monitoring authority. The information in the returns is necessary to enable the monitoring authority to carry out its functions under the Act and the Regulations.

Part 4 contains provisions on the landfill allowances register. The monitoring authority must maintain that register (regulation 16), and either the Scottish Ministers or the monitoring authority may, subject to certain conditions, amend incorrect information on the register (regulation 17). Under regulation 18 the register must be made available for inspection by members of the public, who may also obtain copies of any entries on payment of a reasonable charge.

Part 5 contains provisions on penalties. Regulations 19 and 20 specify how penalties under sections 9 (failure to comply with duty not to exceed allowances) and 12(3) (failure to comply with

**Status:** *This is the original version (as it was originally made).*

requirements imposed under regulation 11 of these Regulations) of the Act are calculated. Regulation 21 makes provision for when penalties are due and for interest in the event of late payment.

Part 6 concerns guidance. Regulation 22 requires waste disposal authorities to have regard to any guidance issued by the Scottish Ministers in exercising functions in relation to biodegradable municipal waste.

A regulatory impact assessment in relation to these Regulations has been placed in the library of the Scottish Parliament. Copies can be obtained from the SEPA Sponsorship and Waste Unit, Scottish Executive Environment and Rural Affairs Department (SEERAD), Victoria Quay, Leith, EH6 6QQ.