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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 157**

**The Landfill Allowances Scheme (Scotland) Regulations 2005**

**PART 3**

**Monitoring**

**Monitoring authority**

**10.** SEPA is the monitoring authority for Scotland.

**Obligation for waste disposal authorities to keep records and make returns**

**11.—(1)** A waste disposal authority must keep records containing the following information for each scheme year—

- (a) the amount by weight of collected municipal waste;
- (b) the amount by weight of municipal waste sent to landfills by the authority; and
- (c) the amount by weight of municipal waste sent to waste facilities by the authority.

(2) In relation to municipal waste mentioned in paragraph (1)(b) and (c) the records must contain details of—

- (a) the total amount of waste by weight sent to each landfill or waste facility,
- (b) the description of, and the appropriate code in the European Waste Catalogue for, the waste referred to in sub-paragraph (a).

(3) The records under paragraph (1) must be kept for a period of 3 years beginning on the day after the day on which the reconciliation period for the scheme year ends.

(4) A waste disposal authority must submit to the monitoring authority a return containing the information in paragraphs (1) and (2) for each 3 month period in a scheme year ending on 31 March, 30 June, 30 September and 31 December within 3 months of the end of that period in such form and to such extent as specified by the monitoring authority.

(5) The monitoring authority, or a person authorised in writing by the monitoring authority, may by notice require a waste disposal authority to—

- (a) produce for inspection or for removal for inspection elsewhere, records it is required to keep under paragraph (1);
- (b) supply the monitoring authority with information about, or evidence as to, matters connected with the sending of biodegradable municipal waste to landfills;

and to do so in such form, at such reasonable place and within such reasonable time as is specified in the notice.

(6) The monitoring authority, or a person authorised in writing by the monitoring authority, may make copies of any records produced or information or evidence supplied under paragraph (5).

### **Obligation for operators of landfills to keep records and make returns**

**12.**—(1) An operator of a landfill must, if required to do so by the monitoring authority, keep records containing the following information for each scheme year—

- (a) the amount by weight of each load of municipal waste accepted at the landfill;
- (b) the description of, and the appropriate code in the European Waste Catalogue for, the waste;
- (c) the area in which the municipal waste originated and the waste disposal authority for that area;
- (d) any treatment applied to the waste at the landfill before it was landfilled.

(2) The records under paragraph (1) must be kept for a period of 3 years beginning on the day after the day on which the reconciliation period for the scheme year ends.

(3) An operator of a landfill must, if requested to do so by the monitoring authority, submit to that authority a return in such form as is specified in the request containing the information in paragraph (1) for each scheme year within 3 months of the end of that scheme year.

(4) The monitoring authority, or a person authorised in writing by the monitoring authority, may by notice require an operator of a landfill to produce for inspection or for removal for inspection elsewhere, records the operator is required to keep under paragraph (1), in such form, at such reasonable place and within such reasonable time as is specified in the notice.

(5) The monitoring authority, or a person authorised in writing by the monitoring authority, may make copies of records produced under paragraph (4).

(6) A person authorised in writing by the monitoring authority may enter at any reasonable time (and, if need be, by reasonable force) premises other than premises used as a dwelling, occupied by a person concerned in the operation of a landfill for the purposes of—

- (a) finding records which are required to be kept under paragraph (1),
- (b) inspecting them or removing them for inspection elsewhere,
- (c) copying them.

(7) A person entering any premises under paragraph (6), may be accompanied by—

- (a) any other person duly authorised by the monitoring authority;
- (b) if the authorised person has reasonable cause to apprehend any serious obstruction in gaining entry to the premises, a constable;
- (c) any equipment or materials required for any purpose for which the power of entry is being exercised.

(8) The power of the monitoring authority, or a person authorised by the monitoring authority, under paragraphs (5) to (7) includes power to require any person to afford to them such reasonable facilities and assistance—

- (a) within the person's control, or
- (b) in relation to which the person has responsibilities,

as are necessary to enable the monitoring authority or an authorised person to exercise the power.

### **Determining the amount of biodegradable municipal waste in amounts of waste**

**13.**—(1) The provisions in this regulation apply for the purposes of—

- (a) determining whether a waste disposal authority is liable to a penalty under section 9 of the Act;
- (b) the provisions in—

- (i) section 10(2)(a), (b) and (d) of the Act,
  - (ii) regulation 14.
- (2) For the purposes mentioned in paragraph (1) it must be assumed that—
- (a) the amount of biodegradable municipal waste in an amount of collected municipal waste is 63% by weight (rounded up to the nearest tonne);
  - (b) an amount of separated municipal waste is comprised only of those types of waste which it is the purpose of the process of separation to separate;
  - (c) where an amount of separated municipal waste is comprised of a type of waste which is listed in the first column of the table in the Schedule to these Regulations, the amount of biodegradable municipal waste by weight in that type of waste is the corresponding amount in the second column of that table (rounded up to the nearest relevant amount).
- (3) In paragraph (2)—
- “amount of collected municipal waste” means the amount of collected municipal waste for any period of time, but such period must not be less than three months;
- “nearest relevant amount means”
- (a) the nearest tonne, or
  - (b) where the amount of biodegradable 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; and
- “separated municipal waste” means waste which has been separated from other municipal waste, whether the separation occurs before or after the waste comes into the possession or under the control of a waste disposal authority or a waste collection authority.

### **Calculation of the amount of biodegradable municipal waste sent to landfills**

**14.—**(1) No later than 5 months after the end of a scheme year, in relation to each waste disposal authority the monitoring authority must—

- (a) calculate in accordance with paragraphs (3) and (4), the amount of biodegradable municipal waste sent to landfills by the authority during the scheme year;
- (b) prepare, in accordance with regulation 15, a draft reconciliation for the authority by reconciling the allowances available to the authority for the scheme year with the amount of biodegradable municipal waste sent to landfills by the authority as calculated under sub-paragraph (a); and
- (c) notify the authority of—
  - (i) the calculation under sub-paragraph (a),
  - (ii) the draft reconciliation under sub-paragraph (b).

(2) Paragraph (1) only applies where, in accordance with regulation 11(4), the waste disposal authority has submitted a return for each 3 month period in the scheme year.

(3) In making the calculation referred to in paragraph (1)(a) the monitoring authority shall carry out the following steps—

- (a) calculate the amount of biodegradable municipal waste by weight in the amount of collected municipal waste for the scheme year;
- (b) if any municipal waste is sent to any waste facilities, subtract from the amount calculated under sub-paragraph (a) the amount of biodegradable municipal waste by weight which is sent to those waste facilities;

- (c) if any of the municipal waste mentioned in sub-paragraph (b) is sent to landfills after treatment at the waste facilities mentioned in the same paragraph, add to the amount calculated under sub paragraph (b) the amount of biodegradable municipal waste by weight which is sent to those landfills.
- (4) The monitoring authority must round the amount calculated in accordance with paragraph (3) up to the nearest tonne.

#### **Utilisation of landfill allowances**

**15.**—(1) As soon as reasonably practicable after the end of the reconciliation period the monitoring authority must reconcile the allowances available to each waste disposal authority with the amount of biodegradable municipal waste sent to landfills by the waste disposal authority, as calculated under regulation 14(1)(a), by deeming allowances to have been utilised in accordance with paragraphs (2) and (3).

(2) Landfill allowances available to a waste disposal authority for the scheme year must be utilised in the following order—

- (a) allowances originally allocated to another waste disposal authority which have been transferred to the landfill allowance account;
- (b) allowances banked from an earlier scheme year;
- (c) allowances borrowed from a later scheme year;
- (d) any other allowances.

(3) Within each category in paragraph (2), allowances must be utilised according to the order of their vintage.

(4) The monitoring authority must deem allowances to have been utilised until—

- (a) the number of allowances deemed to have been utilised is equal to the number of allowances needed to authorise the amount of biodegradable municipal waste sent to landfills by the waste disposal authority, as calculated under regulation 14(1)(a); or
- (b) no more allowances are available to that authority for the scheme year.