

EXPLANATORY MEMORANDUM

The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

Department for Environment, Food and Rural Affairs

Description

1. The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 (the Regulations) divide the EC Landfill Directive targets for the UK between each country of the UK based on their 1995 waste arisings. The Regulations also specify the annual maximum amount by weight of biodegradable municipal waste (BMW) allowed to be sent to landfill in England, Scotland, Wales and Northern Ireland in the years leading up to the first target year in 2009/10. The Regulations amend the definition of “scheme year” in the Waste and Emissions Trading (WET) Act 2003.

Matter of special interest to the JCSI/SCSI

2. There are no matters of special interest for the Department to bring to the attention of the committee.

Legislative Background

3. The Regulations are made under the powers conferred upon the Secretary of State by sections 1 to 2, 23 and 36 of the WET Act. Regulations made under these provisions are subject to approval in both House of Parliament.
4. For regulations to be made under section 1 the Secretary of State must consult Scottish Ministers with reference to amounts for Scotland, the National Assembly with reference to amounts for Wales and the Department of the Environment with reference to amounts for Northern Ireland. This consultation took place and agreement was received from Scotland, Wales and Northern Ireland by 11 June 2004.
5. Powers under section 2 require the agreement of Scottish Ministers for amounts for Scotland, the National Assembly for amounts for Wales and the Department of the Environment for amounts for Northern Ireland. Agreement was received from Scotland, Wales and Northern Ireland on 11 June 2004.
6. Powers under section 23 also require the Secretary of State to consult the devolved administrations to amend the definition of a “scheme

year” in the Act. That this consultation took place and agreement was received from Scotland, Wales and Northern Ireland on 11 June 2004.

7. Each administration will be implementing national regulations to implement Landfill Allowances Schemes to deliver the targets set out in the Regulations. The Landfill Allowances and Trading Scheme (England) Regulations 2004 are due to be laid before both Houses for approval shortly.

Extent

8. The Regulations extend to the whole of the UK with regulation 4 specifically applying to England, regulation 5 to Scotland, regulation 6 to Wales and regulation 7 to Northern Ireland.

European Convention on Human Rights

9. In the view of the Secretary of State for Environment, Food and Rural Affairs, the Rt Honourable Margaret Beckett MP, the provisions of these draft Regulations are compatible with the Convention rights, as defined in section 1 of the Human Rights Act 1998.

Policy background

10. Articles 5(1) and (2) of the EC Landfill Directive sets a series of targets for member states to meet. For the UK these targets are to reduce the amount of BMW sent to landfill to 75% of 1995 by 2010, to 50% of 1995 levels by 2013 and to 35% of 1995 levels by 2020. These target dates take into account the four year derogation in Article 5(2) of the Directive for member states who landfilled over 80% of their waste in 1995. The UK qualifies for this derogation.
11. The targets under the Directive are very challenging and require a step-change in the way the majority of municipal waste is disposed of in the UK. To ensure that these targets are met the WET Act provides for the Secretary of State to set the maximum amounts of BMW which may be sent to landfills from each country of the UK in both target and non-target years.
12. Stakeholders responses to consultations carried out in England, Scotland, Wales and Northern Ireland highlighted a preference for changing the definition of a “scheme year” under the Act so that it was in line with the financial year rather than the target date set in the Directive. Waste disposal authorities across the UK thought that this would make managing budgets and completing audits a lot simpler. The Regulations therefore amend the scheme year so that it begins on 1 April for the years 2005 to 2019 for England, Scotland Wales and Northern Ireland. For Wales the scheme year is amended to provide an initial short six month year starting 1 October 2004, with years 2005 to 2009 beginning on 1 April as with the rest of the UK.

Impact

13. A regulatory impact assessment has been prepared on the Regulations. Other regulatory impact assessments have been carried out by the Department for Environment, Food and Rural Affairs on the WET Act and the draft Landfill Allowances and Trading Scheme (England) Regulations. The devolved administrations are responsible for carrying out impact assessments on any national regulations.

Contact

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June 2004

Final Regulatory Impact Assessment on Implementing The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004

1. Title

1.1 This Regulatory Impact Assessment deals with the Regulations implementing the non-target years and target years maximum amounts of biodegradable municipal waste sent to landfill for England, Scotland, Wales and Northern Ireland under the Waste and Emissions Trading Act 2003: 'The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004'. These Regulations also amend the definition of the scheme year for each country of the UK.

2. Purpose and intended effect of the measure

(i) The objective

2.1 The Regulations implement sections 1 and 2 of the Waste and Emissions Trading (WET) Act, amend section 23 and use powers under section 36 for the UK. The WET Act implements Articles 5(1) and (2) of the EC Landfill Directive 1999, providing the basis for landfill allowance schemes in each country of the UK.

2.2 The overall aim of the landfill allowance schemes is to reduce the amount of biodegradable municipal waste (BMW) sent to landfill for final disposal in the UK and so meet the targets under the Directive. Each country of the UK will implement its own scheme, but the principle behind them is the same; local authorities responsible for the disposal of municipal waste will be allocated a decreasing number of landfill allowances for each year between 2005/06 and 2019/20. Authorities will only be able to landfill as much BMW as they hold allowances for and so the amount of BMW landfilled will decrease each year.

2.3 This set of Regulations allocates the maximum amount of BMW allowed to be sent to landfill in England, Scotland, Wales and Northern Ireland for years beginning 1 April 2005 to 1 April 2008 (non-target years). The Regulations also allocate the maximum amount for Wales in the year beginning with 1 October 2004 and ending 31 March 2005, as Wales intends to have a short first year.

2.4 The Regulations also set the maximum amounts of BMW to be sent to landfills in the England, Scotland, Wales and Northern Ireland in target years (2010, 2013 and 2020) and the total figure for the UK in line with the Landfill Directive. The national target and non-target year allocations will enable the allocating authorities in each country to divide their national yearly targets amongst waste disposal authorities (WDAs) in their area in the form of landfill allowances.

2.5 Compliance with the Landfill Directive must be achieved by the 16 July in each target year. Therefore section 23(1) of the WET Act defines both scheme years and target years as a year beginning with 17 July. The Regulations amend these definitions so that for the purpose of the landfill allowance schemes, years will operate from 1 April to 31 March. In addition, the Regulations provide for a short six-month first year for Wales starting 1 October 2004.

(ii) Background

2.6 Article 5(2) of the Landfill Directive sets challenging targets to reduce the amount of BMW being sent to landfill. The reduction targets set by the Directive are:

- By 2006 to reduce the amount of BMW going to landfill to 75% of that produced in 1995;
- By 2009 to reduce the amount of BMW going to landfill to 50% of that produced in 1995;
- By 2016 to reduce the amount of BMW going to landfill to 35% of that produced in 1995.

2.7 The Directive allows member states which landfilled over 80% of their municipal waste in 1995 to postpone the targets by up to four years. The Government intends to use this four year derogation so the target years for the UK are 2010, 2013 and 2020.

2.8 The UK produced 18.27 million tonnes of BMW in 1995. Therefore, by 2010 the amount of BMW landfilled in the UK must not exceed 13.70 million tonnes per annum. By 2013 this maximum is further reduced to 9.13 million tonnes and by 2020 the amount must not exceed 6.39 million tonnes per annum.

2.9 The Waste and Emissions Trading (WET) Act was granted Royal Assent in November 2003. The Act provides for the Secretary of State to specify in regulations the maximum amount of BMW permitted to be sent to landfills in target years from the UK as a whole and from each country of the UK. It also provides for the Secretary of State to specify, by agreement with each country, the amount of BMW that may be sent to landfills from that country in a scheme year that is not a target year.

2.10 The WET Act also provides the basis for the introduction of landfill allowance schemes in each country of the UK. Defra and the Scottish Executive have chosen to make use of the trading mechanism and other flexibilities available under the Act to implement landfill allowance trading schemes. The Welsh Assembly Government are implementing a straight allowance allocation scheme, which does not allow the trading of allowances between authorities. In Northern Ireland, the Department of the Environment's scheme will allow authorities to borrow allowances from future allocations and to transfer allowances to other authorities on a non-monetary basis.

2.11 The Welsh landfill allowances scheme is due to be launched on 1 October 2004, with the schemes in England, Scotland and Northern Ireland being launched on 1 April 2005.

2.12 The Landfill Directive includes the following definitions:

Biodegradable waste is “all waste that is capable of undergoing aerobic or anaerobic decomposition and is municipal.”

Municipal waste is defined as:

- (a) waste from households; and
- (b) other waste that, because of its nature or composition, is similar to waste from households.

A landfill is defined as “any site for the deposit of waste onto or into land, where the site is a waste disposal site or a site used for the storage of waste.”

(iii) Risk assessment

2.13 In the process of anaerobic decomposition, biodegradable waste produces methane which is a powerful greenhouse gas and is explosive. Methane comprises 20% of the gas that causes global warming. A quarter of all UK emissions come from landfill. The UK produces 15% of all EU methane emissions and 13% of EU methane emissions come from waste. Assuming that the EU produces one-third of world methane emissions, the UK's landfills produce 0.25% of world greenhouse gas emissions; some 0.25% of this will be produced from biodegradable municipal waste (BMW).

2.14 Greenhouse gases are so called because they build up in the atmosphere trapping in heat generated from the sun, acting like a greenhouse and allowing the warm air to gradually heat up the earth. The build up of these gases has the potential to permanently change the climate of the earth. The damage costs associated with extreme weather are likely to rise as such events become more frequent in the future due to climate change. If we continue to dispose of BMW through landfill, the threat becomes greater and the possibility to halt the change smaller.

2.15 Liquid leachate and other gas emissions can also result from landfills, and may threaten the local environment including air, soil and water quality. The Environment Agency holds a National Incident Recording System 2 which was introduced in 2001 and collects reports of leachate incidents relating to landfill that are reported to the Agency from across the country. In the calendar year 2001 there were 19 incidents reported to the Agency. In calendar year 2002 there were 35 incidents reported. Between January 1 and May 31 2003 there have been 15 incidents reported. Details of the incidents range from a member of the public reporting sewage discharging into a river from a sewer outfall, or leeching from a pipe at a named waste site, to a report saying that an alarm has been sounding from a site for the last 24 hours or that an odd odour is emanating from a site.

2.16 The UK produces around 420 million tonnes of waste each year, of which approximately 30 million tonnes is municipal waste. According to the latest available data, in 2000/01 the UK sent 81% of collected municipal waste to landfill, making it the main source of waste disposal for all four countries. In 2001/02 England landfilled 22.3 million tonnes of municipal waste – 68% of this was BMW. The requirement to move away from landfill has been well known within the waste management industry and amongst waste producers for at least the last decade, although it has been appreciated by all that strategic change will take time to implement. Government has made clear its objectives by implementing targets for recycling and re-use of waste both for local authorities and for commercial and industrial waste producers. Waste Strategy 2000 clearly identifies landfill as the bottom of the waste hierarchy and the least desirable option in dealing with waste.

2.17 Failure to meet the targets in the EC Landfill Directive would mean that the UK could face a non compliance fine of up to £500,000 per day after the first target date in 2010. This fine is designed to be sufficiently strident to convince member states that investing in different waste strategies is a more acceptable alternative than being forced to pay the fine. Missed targets will also lead to greater green house gas emissions and hence potentially greater impacts on global warming.

3. Options

Option 1

3.1 Do nothing:

The EC Landfill Directive 1999/31/EC was adopted on 26 April 1999 and entered into force on 16 July 1999. Article 5(1) and (2) of the Directive require member states to reduce the amount of BMW sent to landfill. By doing nothing the UK will fail to transpose the Directive and will not meet the targets set.

3.2 Strictly speaking this is not really an option as the WET Act places a duty on the Secretary of State to specify by regulations that maximum amount of BMW allowed to be sent to landfill in each target year for the UK, England, Scotland, Wales and Northern Ireland. However, it is included as a “business as usual” scenario.

Option 2

3.3 Allocate target year maximums for each country of the UK:

This option would transpose the Directive and share the UK's targets for 2010, 2013 and 2020 between the four countries. However the scale of the change needed to meet the targets is challenging, as is the relatively short timescale for bringing about the change and Government would need to be assured that local authorities will deliver the reductions needed. There is still a large risk that the UK would breach the Directive and under this option the Government will find it more difficult to measure progress against the targets.

Option 3

3.4 *Allocate maximums amongst the four administrations for target years and the non-target years leading up to 2010:*

This option would meet the transposition requirements of the Directive and would significantly reduce the risk of the UK breaching its targets. Under this option the Directive target year maxima would still be divided amongst the four countries, but each administration will also be able to specify national targets for each scheme year between 2005/06 and 2008/09. This would prevent local authorities from leaving action to divert waste from landfill to the last minute, therefore increasing the likelihood that the UK will meet its targets.

4. Benefits

4.1 This RIA does not examine the costs and benefits of diverting waste from landfill in order to meet the biodegradable municipal waste targets, nor does it discuss the costs and benefits of the particular landfill allowance schemes to be implemented by each country. The costs of meeting the Landfill Directive targets were examined in the RIA that accompanied 'A Way With Waste' (DETR, 1999) and the costs of the individual landfill allowance schemes will be discussed in RIAs accompanying the relevant regulations. This RIA does not consider these issues again, but limits itself to the costs and benefits of setting the targets through the Regulations.

Option 1

4.2 The benefit of doing nothing would be to avoid expenditure on diverting BMW from landfill. However, this "saving" would only be in the short term as the requirements of the Landfill Directive and the increasing levels of Landfill Tax will ensure that the cost of sending waste to landfill will increase significantly and will no longer remain the cheapest method of disposing of waste.

Option 2

4.3 Dividing up the targets within the UK would allocate a share to England, Scotland, Wales and Northern Ireland. Each administration will then have the flexibility to decide how it wishes to achieve its target. The benefit of only setting targets for target years, is that each administration (and therefore also local authorities) will have the greatest flexibility in choosing the most appropriate diversion methods and will have a longer-time period to bring these on stream.

4.4 In theory, all local authorities could delay the diversion of BMW from landfill until 2009/10 and this would have an estimated cost saving for England of £732 million.¹ However, in reality this would be impractical as diversion will need to begin early to ensure systems are fully operational

¹ This estimate is based on a reduction trajectory between 2005/06 and 2009/10 of 0/0/0/0/100%, compared to equal yearly reductions (20/20/20/20/20%).

before 2009/10 and local authorities also have to meet challenging recycling targets in 2005/06, which would prevent them from completely delaying diversion until 2010. Therefore, the cost savings achieved by not setting targets before 2010 are unlikely to be any where as high as this estimate suggests – it is included simply for illustrative purposes. This option would also reduce the Government's certainty that the targets will be met and therefore it increases the risk that the UK will face financial penalties. As explained in more detail in paragraph 5.2, these fines could be as high as £500,000 per day and would therefore negate the effects of any cost saving that may have been achieved by not setting targets for non-target years.

Option 3

4.6 This option provides for each administration to set a gradual reduction in the amount of BMW sent to landfill in its area. By implementing a series of annual targets leading up to the 2010 target year local authorities will be encouraged to start planning now how they will deliver the necessary landfill reductions and to invest in waste diversion. The Government will be able to use these targets to monitor progress towards the Landfill Directive targets, allowing it to take correcting action if there seems to be a danger that the UK will breach its targets. This option will also deliver the environmental benefits of diversion from landfill earlier than option 2.

Business sectors affected

4.7 While meeting the reductions in BMW to landfill included in these Regulations will affect waste management companies (including landfill operators and incineration plants), waste producers, haulage companies, waste treatment plants and recycling facilities, the businesses directly affected by them are landfill operators.

4.8 The extent to which the targets will impact upon the above businesses will depend on how WDAs plan to divert BMW from landfill and what alternatives they use. With diversion of BMW from landfill, landfill operators may face falling revenues and some waste producers (whose waste is currently collected by local authorities) may experience higher costs. However, waste reprocessors and incinerator companies and recycling businesses may benefit from an increased demand for their services.

Equity and fairness

4.9 Costs will not fall unfairly on different parts of the UK or on rural areas compared to urban ones. As outlined above some businesses are likely to benefit at the expense of others. However, this can be justified on the grounds that limiting the amount of BMW the UK can send to landfill will enable the UK to move towards a more sustainable management of its waste. Landfill has for a long time been the favoured method of waste disposal (mainly due to the relatively low cost), but as seen above this method has environmental costs. Limiting the amount of waste sent to landfill will have significant environmental benefits for the UK.

5. Costs

5.1 This RIA does not examine the costs and benefits of diverting waste from landfill in order to meet the biodegradable municipal waste targets, nor does it discuss the costs and benefits of the particular landfill allowance schemes to be implemented by each country. The costs of meeting the Landfill Directive targets were examined in the RIA that accompanied 'A Way With Waste' (DETR, 1999) and the costs of the individual landfill allowance schemes will be discussed in RIAs accompanying the relevant regulations. This RIA does not consider these issues again, but limits itself to the costs and benefits of setting the targets through the Regulations.

Option 1

5.2 Doing nothing would mean that the UK would fail to implement adequately the EC Landfill Directive. The environmental and social cost would be that methane emissions from landfill would not be reduced. Subsequently the UK would face infraction procedures which incur fines and high administration costs, as well as fine imposed by the European Court of Justice (ECJ) in the region of £500,000 a day for not meeting the Directive targets after the first target year date of 16 July 2010. Infraction fines for non-implementation would be in the region of £65,000 per day.

Option 2

5.3 The administrative costs of this option are likely to be low, as data collection and monitoring for the purposes of reporting to the EU will only need to occur in target years. However, as there is no incentive to encourage planning and early investment there is a risk that the cost of meeting the target in 2010 could be greatly inflated. Unless there is an incentive to do otherwise, authorities faced with competing demands for resources may delay investing in the necessary infrastructure to make the reductions until the time of the first target year.

5.4 It is estimated that based on current landfill rates the UK would need to divert at least 3.2 million tonnes of BMW a year to meet the 2010 target. This increases to 7.5 million tonnes a year for 2013 and 10.1 million tonnes of BMW a year to meet the 2020 target. Such significant reductions need to be managed if Government is to feel confident that the targets will be met. Experience suggests that a steady reduction over a period of years is likely to be most effective. Last minute action is likely to be expensive and in reality would be unlikely to enable England to meet its target. Therefore, with this option there is still a sizeable risk that the UK would be fined by the ECJ.

Option 3

5.5 Administrative costs will be higher for this option than others as there will be more targets to monitor and more data to collect. Waste disposal authorities will have no choice but to start diverting BMW from landfill earlier than under option 2, which will lead to extra costs. The exact costs are

difficult to quantify here as they depend on many different factors and variables. These include the rate of reductions in each year prior to 2010, the design of the landfill allowance schemes introduced in each country and the measures local authorities choose to put in place to meet the targets in the Regulations.

6. Small businesses

6.1 The Landfill Directive as a whole will impact upon small waste management businesses as requirements and restrictions on landfill site operators will increase and demand for their services may fall in the medium to long term. In addition, small businesses are less able to offer alternative forms of treatment and disposal. However, the restrictions on biodegradable municipal waste will only have a limited effect as it is only a small proportion of the amount of waste landfilled and no landfill site takes BMW alone.

7. Competition assessment

7.1 It is clear that meeting the targets set out in the Landfill Directive will have large implications for the waste industry – both in terms of a change in existing procedures and facilities and new opportunities for commercial activity. The markets affected by the requirements in these Regulations are for the services supplied by waste management companies for landfill, recycling / composting and incineration.

7.2 As mentioned above, while there is likely to be a small loss in revenue for landfill site operators, there will also be an increase in diversion of BMW to recycling, composting and incineration. These changes will affect the cost of waste disposal and will shift the balance in competition away from landfill to favour diversion processes. This will impact on existing facilities as well as providing new opportunities for commercial activity.

8. Enforcement and Sanctions

8.1 The Regulations are to be made under the powers conferred upon the Secretary of State by sections 1 to 2, 23 and 36 of the WET Act. Enforcement of the targets will be carried out by the powers given to the Secretary of State and the Devolved Administrations in the WET Act.

8.2 Should the UK breach its targets in any target year (or exceed the level of the previous target year in any scheme year after 2010), it is intended that these fine will be passed down to the countries responsible for the breach of the UK targets. The WET Act gives the Secretary of State and the Devolved Administrations the right to pass some or all, of any fine imposed by the EC on to those local authorities responsible for that breach. The Act also provides for penalties to be imposed on authorities that fail to comply with their obligation not exceed their targets in any scheme year.

9. Monitoring and review

9.1 The WET Act provides for each administration to appoint a monitoring authority for its area. In the case of England and Wales this will be the Environment Agency, for Scotland it will be the Scottish Environmental Protection Agency and for Northern Ireland the Environment and Heritage Service. The monitoring authorities will have responsibility for monitoring how much BMW is sent to landfill, supplying information and notifying the administrations when a local authority may be liable to a sanction under the national scheme.

9.2 Each administration will be responsible for reviewing any national legislation it puts in place to meet these Regulations. If any of the Devolved Administrations wish to amend their non-target year maximum figures, they will need to make a request to the Secretary of State to amend the Regulations.

10. Consultation

10.1 The issue of how best to meet the Landfill Directive targets have been the subject of consultation in a number of papers in England, Scotland, Wales and Northern Ireland.

10.2 In the 1999 consultation paper "Limiting Landfill", DETR consulted on several options for meeting the Landfill Directive targets in England and Wales. A second consultation paper followed in 2001 outlining the basis of how a tradable permits scheme would work, and this was followed in August 2003 by the "Landfill Allowance Trading Scheme Consultation" which sought views on the detailed operation of a landfill allowance scheme in England. The Welsh Assembly Government published the 'Consultation on implementation of the Waste and Emissions Trading Bill including the Municipal Waste Management (Wales) Regulations' in July 2003.

10.3 The Scottish Executive published 'Reducing Landfill: A landfill allowance scheme' in December 2003, and the Department of Environment consulted with the 'Northern Ireland Landfill Allowances Scheme Consultation' in January 2004.

11. Summary and Recommendations

11.1 This RIA identifies two options which would set BMW targets for the UK and one business as usual option.

11.2 Option 1 – *Do nothing*

This is included as a business as usual scenario, that would result in the UK breaching the EC Landfill Directive. The UK would then face infraction and fines of potentially £500,000 a day for not meeting the target year maxima.

This option would also fail to reduce the potential long term environmental and social risks attributed to landfilling biodegradable waste.

11.3 Option 2 – *Allocate UK targets year maxima for the four countries* This option would transpose the Landfill Directive but would not offer Government any guarantees that local authorities were starting to move in the right direction. The risk that authorities would delay implementing measures to reduce the amount of BMW they send to landfill until the year before the first target should not be downplayed. Government maintains that waste disposal and management should remain the responsibility of local authorities and does not see merit in dictating how the amount of BMW sent to landfill should be reduced. However, in giving authorities the flexibility to plan their reductions based on their own particular areas' needs and resources Government still needs to be reassured that the targets will be met. In summary, this option still includes a significant risk that the UK will breach its Landfill Directive targets.

11.4 Option 3 – *Allocate maxima amongst the four administrations for target years and non-target years up to 2010*

This is the preferred approach as it addresses the concerns associated with option 2. Whilst it is likely to be more costly for the majority of local authorities to begin diverting waste from landfill earlier than is strictly necessary, the increased likelihood of meeting the targets and the reduced risk of incurring fines balance out these costs. Government will be able to monitor progress and take correcting action to assist local authorities that are struggling to meet their targets. The environmental benefits of beginning to reduce methane emissions from landfill before 2009 should also be taken into account.

Summary of the costs and benefits of different options

	Costs	Benefits
Option 1 – Do nothing (Business as usual)	The UK would face infraction procedures and potential fines of £500,000 per day for failing to meet its targets. Continued landfilling would also have environmental costs.	The UK would avoid the cost of reducing waste from landfill.
Option 2 – Allocate target year maximums for each country of the UK	Local authorities will have no incentive to begin early diversion and this increases the risk that the UK will	The cost of diversion would be delayed as local authorities would not need to meet any landfill reduction targets

	breach its targets.	before 2009/10.
Option 3 – Allocate both target and non-target year maximums for each country of the UK	Administrative costs for this option are higher as there will be more targets to monitor. Beginning diversion earlier than actually required by the Landfill Directive will have a higher cost, although the exact cost will depend on the measures taken by each country.	The Government will be able to monitor progress towards the 2010 target, allowing it to take correcting action if there is a danger the target will not be met. This option also brings forward the environmental benefits of diverting waste from landfill.

11.5 It is therefore recommended that regulations allocating non-target year and target year maximums for BMW set to landfills in England, Scotland, Wales and Northern Ireland be made.

12. Amending the definition of the scheme year

12.1 In addition to setting target and non-target year amounts for each country of the UK, the Regulations also amend the definition of the scheme year for each country. The WET Act defines a scheme year as 17 July to 16 July, which reflects the UK's reporting requirements under the Landfill Directive, although section 23(2) allows the Secretary of State to amend the definition of the scheme year. These Regulations alter the scheme year for each country so that it runs from 1 April to 31 March in line with most local authority financial years.

12.2 England, Wales and Northern Ireland consulted on the preferred option for the definition of the scheme year in their recent consultations. This revealed a strong preference for an April-March year – it was supported by 71% of respondents in England, and 66% of responses in Wales. Authorities in Northern Ireland also had a strong preference for an April – March year. The Scottish Executive did not consult on this issue, although many respondents commented that they would prefer the scheme year to align with their financial year and that it would be logical to use the same scheme year in each country of the UK.

12.3 The **benefits** of using an April – March year are that allowances will be allocated in line with the local authority financial year and current performance targets and this should reduce any unnecessary duplication of administrative work. England and Scotland are both operating allowance trading schemes as the means of meeting their landfill reduction targets, and many responses to England's consultation commented that this option would facilitate trading as local authorities will be able to set budgets with greater information on the current year's performance and the net level of allowances needed in the next year. Using an April – March year will also avoid the duplication of monitoring returns; local authorities have suggested that having, in effect, two annual

returns for waste would cause confusion and significant extra work. Meeting the targets three months earlier than is actually necessary will also bring forward the associated environmental benefits of increased diversion from landfill.

12.4 However, the need to make reductions required under the Landfill Directive three months early in each year would have an estimated total **cost** to local authorities in England up to 2020 of £138 million. This cost needs to be compared to the strong preference among local authorities for a 1 April to 31 March year. Local authority responses to the consultations suggested that the advantages in terms of administrative simplicity far outweighed the potential disadvantages of having to meet the targets three months earlier than strictly necessary. Many respondents, and notably the Local Government Association, argued that it would be impractical to use any other option.

12.5 On balance, the recommendation is therefore to amend the definition of the scheme year to 1 April – 31 March.

12. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed : Elliot Morley

Date: 27 May 2004

**Mr Elliot Morley
Minister for Environment and Agri-Environment
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TRANSPOSITION NOTE

The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004

Memorandum showing method of implementation and body responsible for Articles 5(1) and (2) of the Landfill Directive

The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 (the Regulations), together with the Waste and Emissions Trading (WET) Act 2003 transpose, Articles 5(1) and (2) of Council Directive 1999/31/EC on the landfill of waste. The Landfill Allowances and Trading Scheme (England) Regulations 2004 (when they come into force) will complete the transposition of Articles 5(1) and (2) for England and equivalent Regulations for Wales, Scotland and Northern Ireland are expected to be made shortly by the respective administrations.

Background

Landfilling is the most common form of waste disposal across Europe. However, differences in technical standards and operating practices between member states have led to numerous incidents of gross land and water pollution. In response, the European Commission has introduced a number of measures to regulate landfill disposal and to establish a common framework that promotes waste prevention, minimisation, re-use, recycling and recovery as alternatives to landfill disposal.

The Landfill Directive introduces progressive measures to further prevent or reduce as far as possible the negative effects of landfilling waste on the environment and on human health. One of these measures is to reduce the amount of biodegradable waste sent to landfill for final disposal. Article 5(2) sets a series of targets for Member States to reduce the amount of biodegradable municipal waste (BMW) sent to landfill based on their 1995 waste arisings. The Directive provides a four year derogation for member states who landfilled over 80% of their waste in 1995. The UK is making use of this derogation. The reductions under the Directive are:

- By 2010 to reduce the amount of BMW going to landfill to 75% of that produced in 1995;
- By 2013 to reduce the amount of BMW going to landfill to 50% of that produced in 1995;
- By 2020 to reduce the amount of BMW going to landfill to 35% of that produced in 1995.

Details of how these requirements have been transposed are discussed in more detail in the table below:

Article	Objective	Implementation	Responsibility
Article 5(1)	To set up a national strategy to reduce the amount of BMW going to landfill, including the measures to achieve the targets set out in Article 5(2).	The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004, together with the WET Act 2003 and regulations made there under ² .	The United Kingdom's targets: Secretary of State; National strategies: the respective administrations.
Article 5(2)	This Article sets targets for the reduction in the amount of BMW sent to landfill for final disposal.	<p>Regulation 3 of the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 implements Article 5(2) by setting targets for the UK and dividing these targets between each country of the UK based on each countries' 1995 waste arisings.</p> <p>To help ensure that these targets are met, regulations 4 to 7 specify the annual maximum amount by weight of BMW allowed to be sent to landfill in the years leading up to the first target year in 2009/10.</p>	In respect of the UK's targets: Secretary of State. In respect of an individual country's targets: Secretary of State for England; Scottish Ministers for Scotland; National Assembly for Wales for Wales; and the Department of the Environment for Northern Ireland.

² The Landfill Allowances and Trading Scheme (England) Regulations 2004 (when they come into force) complete the transposition for England. Equivalent Regulations are expected to be made shortly for Wales, Scotland and Northern Ireland.