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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 England. 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 come into force on 1st April 2005.

Part 1 sets out the general provisions. Regulation 1 concerns the citation, commencement and application 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 and the provision of electronic forms.

Part 2 includes provisions on the allocation, banking, borrowing and transfer of landfill allowances. After the Secretary of State has 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(8) and 8(8) are satisfied these requests will be accepted. Regulation 9 enables the Secretary of State to suspend waste disposal authorities from banking, borrowing and transferring landfill allowances in the circumstances in regulation 9(1) and (2).

Part 3 concerns the monitoring of the landfill allowances scheme. Regulation 10 provides that the Environment Agency is the monitoring authority for England, 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 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 registers. The monitoring authority must maintain a landfill allowances register (regulation 16), and the Secretary of State must maintain a penalties register (regulation 17). Under regulation 19 these registers 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. Regulation 18 enables the monitoring authority and the Secretary of State to amend incorrect information on a register.

Part 5 contains provisions on penalties. Regulations 20 and 21 specify how penalties under sections 9 (failure to comply with duty not to exceed allowances) and 12(3) (failure to comply with requirements imposed under regulation 11 of these Regulations) of the Act are calculated. Regulation 22 makes provision for when penalties are due and for interest in the event of late payment.

**Status:** This is the original version (as it was originally made).

Part 6 concerns guidance. Regulation 23 requires waste disposal authorities to have regard to any guidance issued by the Secretary of State in exercising functions in relation to biodegradable municipal waste.

A transposition note setting out how the Government will transpose Articles 5(1) and (2) of the Landfill Directive into law in relation to England has been prepared and copies can be obtained from Waste Landfill Policy, Department for Environment, Food and Rural Affairs, Zone 7/E8 Ashdown House, 123 Victoria Street, London SW1E 6DE. A copy has been placed in the library of each House of Parliament.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business has been prepared for these Regulations. Copies can be obtained from Waste Landfill Policy, Department for Environment, Food and Rural Affairs, Zone 7/E8 Ashdown House, 123 Victoria Street, London SW1E 6DE. A copy has been placed in the library of each House of Parliament.