

EXPLANATORY MEMORANDUM TO
THE WASTE AND EMISSIONS TRADING ACT 2003 (AMENDMENT ETC)
REGULATIONS 2013

2013 No. 141

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

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

2. **Purpose of the instrument**

2.1 This instrument brings the Landfill Allowance Trading Scheme (LATS) to an end in England at the close of the 2012/13 scheme year. It includes revocations and savings provisions with respect to the period for reconciling landfill allowances in relation to the 2012/13 scheme year. The Regulations maintain existing obligations placed on waste disposal authorities to keep records and make returns to the Environment Agency in respect of local authority collected municipal waste. These returns are made through WasteDataFlow, the web based system for municipal waste data reporting by UK local authorities to government. The information provided in these returns is needed to report on recycling targets as required under the Waste Framework Directive (Directive 2008/98/EC). This information may also be helpful to calculate the local authority element of targets under the Landfill Directive (Directive 1999/31/EC). Penalties apply for failure to comply with these obligations, and monitoring duties are placed on the Environment Agency with respect to these obligations.

3. **Matters of special interest to the Joint Committee on Statutory Instruments and the Select Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 These Regulations amend sections 4(1) and 24(1) of the Waste and Emissions Trading Act 2003 (“the 2003 Act”) and revoke The Landfill Allowances and Trading Scheme (England) Regulations 2004 so that the landfill allowance trading scheme (“LATS”) ceases to operate in England from the end of the current compliance year, namely 1st April 2013 and onwards. Part 1 of the 2003 Act gives legal effect to the obligations imposed by Article 5(1) and (2) of Council Directive 1999/31/EC (“the Landfill Directive”) which was adopted on 26 April 1999 and entered into force on 16 July 1999. The 2003 Act enables the Secretary of State to set the maximum amounts of

biodegradable municipal waste which may be sent to landfills from each country of the UK. The Act enables a landfill allowance system to be set up which limits the amount of biodegradable waste that waste disposal authorities may send to landfill on the basis of allocations made by allocating authorities for each country of the UK. The 2003 Act also requires the Secretary of State and the appropriate authority for each country of the UK to adopt a national strategy for the reduction of biodegradable waste sent to landfills. LATS enables landfill allowances to be transferred whether by trade or otherwise between waste disposal authorities. It has been used to help local authorities meet landfill reductions as required by the Landfill Directive in the most cost effective and flexible way. LATS is ceasing to operate in England as it is no longer considered to have any significant effect on landfill diversion. The key deterrent driving landfill diversion in England is landfill tax (see section 39(1) of the Finance Act 1996 and Part 3 to that Act).

4.2 Regulation 4 of this statutory instrument retains existing obligations for waste disposal authorities in England to keep records and make returns to the Environment Agency in respect of local authority collected municipal waste. Regulation 5 provides for penalties associated with those obligations and regulation 6 places monitoring duties on the Environment Agency. Article 11(2) of Council Directive 2008/98/EC (the revised Waste Framework Directive) establishes a recycling target for household and similar waste streams (at least paper, metal, plastics and glass), and the information provided by waste disposal authorities in their returns under these Regulations is needed to ascertain how local authority collected municipal waste is disposed of, and to help establish whether the targets set in Article 11(2) of Council Directive 2008/98/EC are met. In addition, under these reporting obligations, local authorities will provide information about the tonnage of local authority collected biodegradable municipal waste sent to landfill, which may be used to calculate the local authority element of the targets established under Articles 5(1) and (2) of the Landfill Directive.

4.3 Following discussion with the European Commission in 2009/10, Defra concluded that the UK's approach to meeting the Landfill Directive targets should be changed to encompass more commercial waste collected by the private sector where this is similar in nature or composition to household municipal waste. As a result of this changed approach (implemented by The Waste and Emissions Trading Act 2003 (Amendment) Regulations 2011 (S.I. 2011/2499)) the department reviewed relevant policies including LATS to assess how England would meet its share of the UK Landfill target requirements. One of the key conclusions reached as a result of this review was that LATS no longer provides a significant effect on landfill diversion in England.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom with respect to the revisions made to the Waste and Emissions Trading Act 2003. Regulations 4 to 6 of this instrument extend to England and Wales only; but the changes made by these regulations will only apply in England.

6. European Convention on Human Rights

Lord de Mauley has made the following statement regarding Human Rights:

In my view, the provisions of the Waste and Emissions Trading Act 2003 (Amendment etc.) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 Articles 5(1) and (2) of the Landfill Directive (1999/31/EC) set challenging targets for Member States to reduce the amount of biodegradable municipal waste sent to landfill. This reflects the Directive's overall objective to prevent or reduce as far as possible the negative effects of land filling on the environment, including reducing the production of methane gas from landfills, as well as any resultant risk to human health.

7.2 For the UK these targets are to reduce the amount of biodegradable municipal waste (BMW) sent to landfill to:

75% of the total amount produced in 1995 by 2010

50% of the total amount produced in 1995 by 2013

35% of the total amount produced in 1995 by 2020

Member States are liable to infraction proceedings for failing to meet these targets.

7.3 These targets were transposed into UK legislation by the Waste and Emissions Trading Act 2003 ("WET Act"). This also provides the legal basis for landfill allowance trading schemes across the UK. The Landfill Allowance Trading Scheme was set up in 2005 in England as the primary driver for meeting the English share of the UK's landfill diversion targets. It is a cap and trade scheme dealing with the biodegradable waste that is land filled by local authorities.

7.4 The 2011 Government Waste Review announced the ending of the LATS Scheme after the 2012/13 scheme year in England following a twelve week public consultation process undertaken in March – June 2010. This commitment is also included in the Red Tape Challenge Implementation Plan.

7.5 The penalties and trading under LATS have been suspended in Scotland since 2008. Work is underway to bring forward an Instrument to formally revoke the Scottish LATS regime (with the exception of certain reporting requirements etc that need to be retained), and this is expected to be delivered around March/April 2013. Northern Ireland will review their Landfill Allowances Scheme (NILAS) after policy and legislative instruments have been put in place which can achieve the continued diversion of biodegradable municipal waste from landfill in the absence of the Scheme. The Welsh Government currently has no plans to end its Landfill Allowance Scheme.

7.6 Analysis of the range of policies needed to enable England to meet landfill diversion targets in 2013 and 2020, along with responses to the March-June 2010 consultation demonstrated that LATS is no longer the major driver for diverting waste from landfill in England. LATS has undoubtedly kick-started efforts to drive waste away from landfill. However, the rising level of landfill tax now has the greater impact. This is currently £64 per tonne. It will rise to £72 per tonne in April 2013, and will not fall below £80 per tonne from 2014/15 to 2019/20. This is now the more significant driver for local authorities to reduce the waste they send to landfill, deliver the associated environmental benefits and so meet the Landfill Diversion targets.

7.7 LATS has proven effective in helping to influence local authorities to take action to divert biodegradable waste from landfill. This has been achieved through a combination of waste prevention measures, increasing recycling and composting, and investing in waste treatment facilities. England has met the 2010 EU Landfill Diversion Target, and is making good progress towards meeting the 2013 and 2020 targets. However given LATS is no longer the key driver for local authorities diverting waste from landfill it is now right to end the Scheme after the 2012/13 scheme year and rely instead on existing measures such as the Landfill Tax to deliver the required reductions in the amount of waste sent to landfill. This approach is consistent with the direction of the Government's wider review of waste policies by removing unnecessary burdens on those affected.

- Consolidation

7.8 The Department does not intend to consolidate the legislation which is amended by this instrument.

8. Consultation outcome

8.1 A public consultation was held in March - June 2010. This consultation addressed the changes necessary to enable the UK to report to the European Commission on a revised approach to the landfill diversion targets. This includes setting out the new interpretation of the definition of municipal waste; revisions to the 1995 baseline and targets; and the reporting and monitoring obligations necessary to enable robust reporting against the targets to the European Commission at a UK level. For England only it also sought views on the future of the Landfill Allowance Trading Scheme, and the most effective combination of policies Defra should pursue, that address both the local authority and private sector elements of municipal waste, to provide the necessary confidence that England is on track to meet its targets. Views were requested on a number of consultation questions regarding options for reporting and monitoring obligations, policies to divert biodegradable waste from landfill and amending existing legislation. The consultation was aimed at local authorities and the waste management industry. Legislation was introduced in 2011 to reflect the new interpretation of the term "municipal waste" (The Waste and Emissions Trading Act 2003 (Amendment) Regulations 2011 and the Landfill (Maximum Landfill Amount) Regulations 2011).

8.2 There were seventy one responses to the consultation, of which fifty nine were from local authorities. The majority of consultation responses to the question asking whether LATS is an effective policy to assist England meet its share of the UK landfill diversion targets (45 out of the 66 responses) indicated that the Landfill Tax is now a greater driver than LATS for meeting landfill diversion targets in England. As part of the 2011 Waste Review, the Government announced that LATS will cease to operate at the close of the 2012/13 scheme year. A number of consultation respondents supported the retention of WasteDataFlow as a reporting mechanism for local authorities. The Government Response to the consultation stated that this reporting mechanism would be retained. The legislation ending the Scheme retains existing obligations on waste disposal authorities to keep records and make returns to the Environment Agency as part of the WasteDataFlow mechanisms. The link to the consultation on the Defra website is <http://webarchive.nationalarchives.gov.uk/20110318132354/http://www.defra.gov.uk/corporate/consult/landfill-diversion/index.htm>

9. Guidance

9.1 No formal guidance is considered necessary at this stage. The decision to end LATS in England is now well known to stakeholders – this was originally announced as part of the Waste Review in June 2011. Details of the decision have been publicised through the Defra website, LATS Newsletters and meetings with representative bodies such as the National Association of Waste Disposal Officers (NAWDO). The Environment Agency will write to each local authority, advising them that legislation ending the Scheme has been laid and is due to come into force at the end of March for England. The letter will also say that the requirement to enter data into WasteDataFlow will remain when LATS ends, acknowledging that this mechanism is valued by local authorities, and government as it serves a number of purposes beyond its initial role, i.e. reporting on Landfill Diversion Targets.

10. Impact

10.1 There are no direct costs or benefits to business, charities or voluntary bodies as LATS is a regime that has only applied to local authorities.

10.2 The Impact Assessment attached to this memorandum states that the impact on the public sector from removal of this instrument is a reduction in administrative burdens for local authorities (£5.58 million over the period to 2020). This Impact Assessment was originally published in June 2011 as part of the Government Review of Waste Policy in England. The assessment of options was based on a two part analysis to determine whether (a) current policy measures will achieve Landfill Directive Targets and (b) whether LATS is still required. Analysis was primarily undertaken using internal economic modelling which took into account existing policy levers. The projections indicated that the targets would be met under the central scenario and that LATS had been superseded by the landfill tax. Sensitivity analysis was conducted to take into account significant changes to household waste arising growth and rate of diversion of waste from landfill. The modelling to consider whether LATS is still required took into account the

existing and publicly announced changes to existing policy instruments. The model results indicated that LATS had been superseded by the landfill tax. There have been no announced changes to the landfill tax rate since the publication of the impact assessment and therefore the model results would be unchanged. Further, new data on the rate of household waste arising growth and metrics that contribute to the rate of diversion from landfill would also not affect the conclusions. However, some passages in the impact assessment are dated, for example the narrative in the “Stakeholder Views” section of the Assessment refers to the current rate of landfill tax being £56 per tonne (2011/12) – the current standard rate is now £64 per tonne (2012/13). This change affects the narrative background to the Impact Assessment, but not its substance or conclusions. The key conclusion reached that ending LATS after 2012/13 would have no impact on waste sent to landfill or on meeting landfill diversion targets remains unchanged. It would remove any burden that LATS places on local authorities.. The present value of the admin burden saving for local authorities is quoted in the Impact Assessment as £5.58m.

10.3 The Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk .

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 As stated in the Impact Assessment, there are no plans to monitor or review this instrument. The landfill allowances and trading scheme only applies to local authorities therefore there are no direct costs or benefits to businesses, charities or voluntary bodies. However, the department will continue to monitor data on municipal waste sent to landfill to ascertain progress towards meeting the Landfill Diversion Targets and the revised Waste Framework Directive targets

13. Contact

Andrew Baxter at the Department for Environment, Food and Rural Affairs Tel: 020 7238 6151 or email: Andrew.Baxter@defra.gsi.gov.uk can answer any queries regarding the instrument.