



Briefing 07/44 July 2007

# Landfill Allowance Scheme (Scotland) Regulations 2005

To: All Chief Executives, Main Contacts and Email Contacts (Scotland)

CC: All Chief Executives, Main Contacts (England, Northern Ireland and Wales)

Scottish Executive Guidance for local authorities and SEPA

## **Key issues**

Regulations for local authorities and SEPA in relation to waste that is or contains biodegradable municipal waste (BMW).

Refers to banking, borrowing and transfer of Landfill Allowances.

Provides allocation of allowances for each local authority.

Composting and its importance in the diversion of BMW.

## **1. Introduction**

The regulations require local authorities, as waste disposal authorities exercising functions in relation to waste that is or contains biodegradable municipal waste (BMW), to have regard to any guidance issued by the Scottish Ministers under regulation 22. The document also contains general guidance to the Scottish Environment Protection Agency (SEPA). The objective of the guidance is to ensure a smooth and transparent operation of the Landfill Allowance Scheme. This follows consultation by the Executive with COSLA and SEPA in drawing up this guidance.

The detail of operational procedures has been set out by SEPA in its document "Landfill Allowance Scheme (Scotland) Regulations 2005: SEPA Guidance on Operational Procedures", available from the SEPA website: <http://www.sepa.org.uk/guidance/index/htm>

## **2. Allowances**

Under section 4 of the Waste and Emissions Trading Act 2003 (WETA), Ministers are obliged to make an allocation of allowances to local authorities in Scotland for each scheme year, within the total set for Scotland. The 'Scheme Year Regulations' set limits on total allocations in Scotland for each year, and were made with the agreement of Scottish Ministers. The allocations up to the first scheme year in 2009/10 are presented in Annex 'A' attached.

**Banking** is provided for in the Landfill Allowances Scheme (Scotland) Regulations (the Regulations) (regulation 6). Where a local authority is assessed to have landfilled a lower weight of BMW than their available allowances for that year, some allowances will remain unused. In most years however, it is anticipated that these allowances will remain unused. In most years, these allowances shall be banked, without limit, other than in target years and in a scheme year immediately preceding a target year. The reason that the Regulations do not allow banking into target years is that, in order to meet the targets nationally, it is crucial that only allowances allocated for target years are used in target years. Following the end of scheme years other than target years or years preceding target years, unused allowances are automatically banked in the electronic register, and are available for use in the following scheme year. There is no need for local authorities to take any action to secure this banking.

**Borrowing** is provided for in Regulation 7. Landfill allowances, can be brought forward from the following year subject to limits of 10% in the first three years of the scheme (2005/06, 2006/07 and 2008/09), and 5% thereafter. Borrowing is not allowed in target years or in a scheme year immediately preceding a target year. Local authorities can arrange to borrow within these limits through the electronic register. Borrowing requests within the limits can be made at any time until the end of the six month reconciliation period following the end of a scheme year.

**Transfer** within Regulation 8 allows transfer of landfill allowances commences on 1 April 2008. This, in combination with the similar trading regime in place for England, will allow trading across England and Scotland. Any surplus allowances held by local

authorities in the years before target years (which, as provided for in section 23 of WETA are 2009/10, 2012/13, and 2019/20), such as 2008/09, or in target years, such as 2009/10 that are not transferred to another local authority will be cancelled at the year end as banking is not permitted in these years.

Prior to April 2008, the Executive shall consider any reasonable requests from local authorities to reallocate allowances. This request would come jointly from a local authority wishing to transfer allowances, and a local authority which had arranged with this first authority to receive allowances. Such arrangements can only cover two Scottish local authorities. The Executive will only agree to such requests which comply with the conditions on transfer in the Regulations (regulation 8), and it is clear that the authority giving up allowances is able in all likelihood to function effectively without these allowances. The arrangement would involve equal but opposite adjustments to the allocation of allowances of each authority in the scheme year for which the transfer is being made (for example one authority's allowance account falling by 1000 tonnes, and the others rising by 1000 tonnes). This adjustment would not affect any future allocations, and transferred allowances could be banked in a similar way to other allowances.

### **3. Scope – “collected municipal waste”**

Regulation 11 requires local authorities to report data for “collected municipal waste.” It is this information that forms the basis of the calculation of the amount of biodegradable municipal waste held by the authority. The definition in regulation 2(1) is: “collected municipal waste” means municipal waste which is recovered or disposed of in pursuance of arrangements made by a waste disposal authority or a waste collection authority.

Collected municipal waste will be all waste for which the council makes arrangements, with the following exceptions:

- ❖ Abandoned vehicles and end-of-life vehicles
- ❖ Road maintenance waste
- ❖ Road sweepings collected by HGV road sweepers that are comprised overwhelmingly of mineral substances such as grit, salt and mineral oils
- ❖ Commercial waste that is delivered to council owned or run landfill sites, where the council has no part in the collection arrangements that have led to delivery. (This also applies in principle to domestic waste delivered to council owned or run landfill sites by third party waste operators, where the council has had no part in the collection arrangements that have led to this delivery. However, if these deliveries are of a significant scale, SEPA and the Scottish Executive should be consulted.)

- ❖ Industrial waste taken for disposal or treatment separately from any other waste
- ❖ Construction and demolition waste, including from refurbishment work that is collected and taken for disposal or treatment separately from any other waste. Bricks and rubble from households taken to civic amenity (CA) sites must be included in collected municipal waste.

Industrial waste, construction and demolition waste that is collected with other waste, and all commercial waste that is collected by or on behalf of a council's waste operations should be included in the returns for collected municipal waste.

Councils in many cases operate transfer stations, or have them operated on their behalf. These facilities will often handle a mixture of domestic, commercial and industrial waste, that might be delivered to the facility by the council itself, by operators working on behalf of the council or by independent waste operators or by a business that has created waste. Commercial waste will, in many situations be 'municipal waste' in terms of the landfill directive, as it will be similar to household waste.

Once a load of mixed industrial waste arriving at Materials Recovery Facilities (MRFs) has been mixed and sorted with municipal waste, it will be extremely difficult to identify where the tonnage has gone. Since the measurement of BMW landfilled relies on a mass balance system, this calculation cannot be robust if it is not known where the industrial waste has ended up, as between recycle and landfill. Therefore, mixed loads of industrial waste would have to be counted as collected municipal waste if they are mixed with other municipal waste in such a way that the industrial waste was not traceable.

Separately collected industrial waste that arrives at MRFs in loads with identified fractions of materials with a clear treatment or disposal destination (e.g. a load of industrial waste that is 50% construction and demolition waste suitable for reuse in road foundations and 50% mixed metals) can remain separate from the measurement of collected municipal waste. The data for monitoring the Landfill Allowance Scheme shall be collected by SEPA on the WasteDataFlow system and will look for any anomalous movements or omissions, and seek further explanation.

#### **4. Issues raised by composting**

Composting of biodegradable waste plays an important part in the diversion of BMW from landfill. A number of issues are raised by the range of composting activities that councils carry out. The SEPA guidance includes information on how it makes its assessments on when the use of compost can be considered as recovery. There are broadly four types of composting activity:

- ❖ Composting of mixed waste and intention to landfill (including as daily cover). The main purpose of this activity is to stabilise the mixed waste, so that there is a lower weight of BMW sent to landfill
- ❖ Mixed waste can also be composted with the intention that the resulting “biowaste” is recovered through use in licensed land restoration, including on closed landfill sites or another use that is judged to be recovery
- ❖ Composting of separately collected green/kitchen waste in a process without PAS 100 certification
- ❖ Composting of separately collected green/kitchen waste with PAS 100 certification

In order to think about how these activities should be reported for the landfill allowance scheme, it is useful to look at when it is diverted from landfill for the purpose of the landfill allowance scheme and when waste is recovered, and is no longer subject to waste controls. Diversion and recovery can be reversed – diversion is reversed if the material is sent to a landfill, recovery is reversed if a recovered material is subsequently discarded.

The Scottish Executive Guidance can be viewed in full at:  
[www.Scotland.gov.uk/Publications/2007/04/18110606/0](http://www.Scotland.gov.uk/Publications/2007/04/18110606/0)

#### **4. Conclusion**

SEPA has in discharging its monitoring duties under section 10(2) of the WET (waste and emissions trading) Act, to inform Ministers without delay where it appears to them that a local authority is or may be liable to a penalty. The Executive believes that this duty can be satisfactorily discharged if SEPA informs the named Executive contact within 10 working days of becoming aware that a local authority appears to be heading for “excess landfill”, even if they use their full borrowing potential.

The Landfill Allowance Scheme rests on using local authority waste as a proxy for municipal waste, as defined in the Landfill Directive. This was necessary to make the Directive operational in the UK. The Executive acknowledges that this creates an incentive for local authorities to reduce their activities in commercial waste, so as to reduce the diversion that they have to demonstrate in order to meet their allowances. Local authorities have the duty, if requested by the occupier of premises in its area, to offer a commercial waste service, for which they can levy a reasonable charge (section 45(1) (b) EPA). Local authorities will need to keep charges under review to ensure that charges reasonably reflect their costs. The Executive would be concerned if local authorities made unrealistically large increases in their commercial waste charges, or otherwise attempted to make a sudden switch from their commercial waste users to private contractors. A block transfer of commercial waste customers could be judged to be an arrangement made by the local authority for the purposes of measuring collected municipal waste.

In circumstances where SEPA and the local authority concerned disagree regarding the Regulations, the local authority can write to the Executive stating their differing interpretation, and the Executive may provide further clarification. While this is underway, SEPA's decision will remain valid.

APSE believes that although municipal waste levels collected fell in 2005/06 the trend over the last five years shows levels of waste rising at 0.5% per annum. The results for 2006/07 which will be published in autumn 2007 will provide further evidence if the trends of recent years will be sustained. Recycling and composting is increasing at a faster rate than the level of waste and has reached 27% for 2005/06 but is still not at a fast enough level to meet EU landfill targets by 2010 and still lags behind the majority of our European neighbours (sources Defra & National Audit Office).

In practice, APSE accepts that economies of scale exist at the disposal end of waste management but not in refuse collection because of the need for better local knowledge and the APSE view would be for collection responsibilities to remain local but with closer relationships developed with the WDA.

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**Annex A: The Allocation of Allowances (Tonnes)**

	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>	<b>2009/10</b>
<b>Aberdeen</b>	73076	60619	58080	55541	53004
<b>Aberdeenshire</b>	74496	62045	59686	57310	54917
<b>Angus</b>	26968	24788	24788	24788	24788
<b>Argyll &amp; Bute</b>	37009	30901	29802	28688	27560
<b>Clackmannanshire</b>	18842	15604	14925	14249	13574
<b>Dumfries &amp; Galloway</b>	50251	41487	39556	37641	35741
<b>Dundee</b>	31686	29838	29838	29838	29838
<b>East Ayrshire</b>	40876	33775	32232	30699	29177
<b>East Dunbartonshire</b>	37485	31203	30000	28790	27572

<b>East Lothian</b>	32327	26900	25854	24802	23744
<b>East Renfrewshire</b>	29395	24582	23743	22890	22023
<b>Edinburgh</b>	144511	119815	114735	109663	104597
<b>Falkirk</b>	66506	55142	52806	50473	48144
<b>Fife</b>	147030	121339	115648	110006	104413
<b>Glasgow</b>	213142	175980	167804	159693	151648
<b>Highland</b>	86216	71037	67593	64186	60817
<b>Inverclyde</b>	26940	22233	21190	20156	19131
<b>Midlothian</b>	30770	25411	24237	23071	21915
<b>Moray</b>	33881	28347	27395	26425	25437
<b>North Ayrshire</b>	45619	38049	36655	35246	33823
<b>North Lanarkshire</b>	111756	92271	87984	83731	79513
<b>Orkney</b>	1487	1400	1400	1400	1400
<b>Perth &amp; Kinross</b>	48252	41148	40511	39792	38990
<b>Renfrewshire</b>	59600	49421	47331	45244	43160
<b>Scottish Borders</b>	37051	30953	29867	28765	27648
<b>Shetland</b>	2694	2537	2537	2537	2537
<b>South Ayrshire</b>	44356	36833	35327	33818	32308
<b>South Lanarkshire</b>	103728	86776	83848	80868	77835
<b>Stirling</b>	41305	34383	33058	31725	30384
<b>West Dunbartonshire</b>	32772	27203	26080	24956	23832
<b>West Lothian</b>	55664	46184	44257	42331	40405
<b>Western Isles</b>	14310	11799	11236	10677	10125
<b>Total</b>	1800000	1500000	1440000	1380000	1320000