



Department of the
Environment

www.doeni.gov.uk

The Northern Ireland Landfill Allowances Scheme – Allocating Authority Guidance for District Councils.

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The purpose of this guidance

1. This guidance is given by the Department of the Environment in its role as Allocating Authority under the Waste and Emissions Trading Act 2003 ('the WET Act')¹ and is issued under regulation 22 of The Landfill Allowances Scheme (Northern Ireland) Regulations 2004 ('the Scheme Regulations')². *Please note that references to the Allocating Authority in this guidance are references to the Department of the Environment in its role as Allocating Authority.*
2. The purpose of this guidance is to clarify the Department's role in the Northern Ireland Landfill Allowances Scheme ('the Scheme'), certain aspects of the operation of the Scheme and our interpretation of the definition of 'collected municipal waste'. It has been produced primarily for district councils.
3. The Northern Ireland Environment Agency has issued separate guidance in its role as Monitoring Authority under the WET Act. This guidance provides practical information for councils on the transfer of allowances, keeping records and making returns, and the mass-balance calculation:
http://www.ni-environment.gov.uk/nilas_guidance_to_dcs_august_2008.pdf

Functions of the Allocating Authority

4. The primary function of the Allocating Authority is to allocate the allowances to district councils (under section 4 of the WET Act)¹. The allocations have now been made and can be found on our website:

¹ <http://www.opsi.gov.uk/acts/acts2003/20030033.htm>

² <http://www.opsi.gov.uk/sr/sr2004/20040416.htm>

http://www.doeni.gov.uk/index/protect_the_environment/waste/landfill.htm

5. The Department will also oversee the operation of the Scheme and also has the role of advising the Minister on whether penalties should be applied and whether there is a need to suspend borrowing and transferring of allowances. In its role as Allocating Authority, the Department can re-allocate allowances should the need become apparent.

The suspension of borrowing and transfer and re-allocation of allowances

6. Under Regulation 8 of the Scheme Regulations, the Department may suspend any or all district councils from borrowing and transferring landfill allowances, subject to certain considerations. These are:
 - For years between target years, if there is a risk that Northern Ireland as a whole will exceed its maximum amount for the scheme year; or,
 - If it is necessary to reallocate allowances.
7. The Department may suspend a particular district council from borrowing and transferring landfill allowances, if it has reason to believe:
 - the district council is exceeding its allowances;
 - the district council is not complying with the Scheme Regulations;
 - that an unauthorised person may attempt, or has attempted to, submit a borrowing or transfer request to the Monitoring Authority on behalf of the district council.
8. If a decision is made by the Department to suspend the borrowing and transfer of allowances, we will notify affected councils within 5 working days. Councils may then dispute the grounds for the suspension; within 4 weeks of receiving a dispute we will give the grounds for dispute consideration and respond to the council accordingly.

9. If the Department is considering such a suspension within a reconciliation period, we will pay particular attention to the impact the suspension might have on Northern Ireland's ability to meet the targets for that year. This will be particularly relevant when suspension would prevent a council from mitigating any excess landfill.

10. We do not believe that such a course of action is likely to be required, except in the most extreme circumstances. We have now established the NILAS Implementation Steering Group. One of the primary functions of this Group will be to closely monitor the performance of the NILAS and, in particular, the operation of the transfer mechanism, both within and between Waste Management Groups. This will include close assessment of performance against IAPs and commitments to developing infrastructure. The emphasis will be on co-ownership of the problem (between central and local government) and a sharing of the risk: a partnership focussed on continuous improvement.

11. We believe that once this Group is fully engaged with the task, the majority of circumstances that could potentially lead to suspension can be resolved before actual suspension becomes a necessity. It is, however, a possibility that circumstances could arise that would require suspension in order to reallocate allowances. One could be, for example, changes to local government in Northern Ireland as a consequence of the Review of Public Administration (see www.rpani.gov.uk for information).

12. Section 5 of the WET Act provides a power for the Allocating Authority to alter the allocation at any time. Again, we do not believe that such a course of action is likely to be necessary, except in the most extreme circumstances. If used, this power is subject to the restriction that allowances already used cannot be withdrawn and that the Allocating Authority must ensure that the total amount of biodegradable municipal waste sent to landfill for the year specified does not exceed the limits set, for that year, for Northern Ireland as a whole. The WET Act also

requires that, if such a course is taken, the Allocating Authority must publish a statement detailing the alteration and explaining the basis of it.

Collected Municipal Waste

13. The Scheme Regulations require councils to report data for 'collected municipal waste' and 'municipal waste' to the Monitoring Authority. This data will form the basis of the Monitoring Authority's calculation of the amount of biodegradable municipal waste landfilled by each council.

14. Section 21(3) of the WET Act states 'municipal waste means –

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

15. Our interpretation is that 'collected municipal waste' is all waste which comes into the possession or under the control of a district council with the following exceptions:

- Industrial waste, collected from industrial premises and taken for disposal or treatment separately from any other waste or industrial waste brought to a civic amenity site and stored separately from any other waste before being taken for disposal or treatment.
- Construction and demolition waste that is collected and taken for disposal or treatment separately from any other waste or construction and demolition waste brought to a civic amenity site and stored separately from any other council waste before being taken for disposal or treatment.

(Note: industrial waste and construction and demolition waste that is collected with other waste ("co-mingled" collection) will be

counted as collected municipal waste for NILAS purposes, as will commercial waste that is collected by councils).

- Commercial waste that is delivered to council-owned or council-run landfills, where the council has no part in the collection or disposal arrangements that have led to the delivery.
- Abandoned cars.

16. Collected municipal waste includes Waste Electrical and Electronic Equipment (WEEE) brought to civic amenity sites or to waste transfer stations, including WEEE separately collected.

Commercial waste

17. District Councils have a duty under Article 20(1)(b) of the Waste and Contaminated Land Order 1997 ('the 1997 Order') to arrange for the collection of commercial waste where requested to do so by the occupier. A council would not be able to reduce their collected municipal waste by arranging for a private operator to collect such waste. In these circumstances, it would still be deemed to be under the control of the council. If a council decides not to collect any commercial waste when requested to do so under Article 20(1)(b) of the 1997 Order, and does not arrange for its collection by a private contractor, it is acting in breach of its duty.

Review of the Scheme

18. Following the consultation exercise undertaken in early 2004 on the design of the Scheme, we gave a commitment to review formally the operational arrangements and mechanisms after two years. The Department issued a NILAS review consultation paper in January 2008. The subsequent review found that overall the Scheme was working effectively, serving its purpose allowing collaboration between

councils to meet their targets in the most cost effective way. The full NILAS Review Report can be accessed via the following hyperlink:

http://www.doeni.gov.uk/index/protect_the_environment/waste/landfill.htm

19. The Monitoring Authority is required by Regulation 9(2) of the Scheme Regulations to keep under review the 'deeming provision' that forms the basis of the mass balance calculation (i.e. the percentage of municipal waste which is assumed to be biodegradable). In 2007 the Monitoring Authority commissioned RPS Consulting Engineers to undertake a NI municipal waste compositional study. The study concluded that in Northern Ireland the percentage of municipal waste which is biodegradable is estimated to be 64%. Consequently, the Department has amended the Landfill Allowances Scheme (Northern Ireland) Regulations 2004 to reflect this revised assumption. The full RPS report can be accessed via the following hyperlink:

http://www.ni-environment.gov.uk/waste_compositional_study_2007-08_full_report.pdf

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