

## **Constitutional and Legislative Affairs Committee**

(CLA(4)-11-11)

**CLA48**

### **Constitutional and Legislative Affairs Committee Draft Report**

**Title: The Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011**

**Procedure: Negative**

These Regulations revise the terminology in the Landfill Allowances Scheme (Wales) Regulations 2004 (the Regulations) to ensure consistency with other legislation under the Waste and Emissions Trading Act 2003 (the Act).

#### **Technical Scrutiny**

As these Regulations do not cite all the powers used to make the principal Regulations, it is necessary to be very careful to refer to the correct ones when making amendments. In this case no reference is made in the introductory paragraph to sections 12(2) and 15 of the Act, which are considered relevant to the changes made here to regulations 6 and 10 respectively of the principal Regulations.

The Assembly is invited to pay special attention to these Regulations under Standing Order 21.2 (vi).

#### **Merits Scrutiny**

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

#### **Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**November 2011**

**The Government has responded as follows:**

**The Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011**

#### **Section 12**

The Government accepts the Committee's point about section 12(2) which should have been cited in the enabling powers. Section 12(2) is

the power under which the amendment to regulation 6(5)(b) of the principal regulations can be made. The amendments to the remainder of regulation 6 are made under section 12(1) of the Act

The Government acknowledges that the omission may produce ambiguity about whether an amendment to regulation 6(5)(b) of the principal regulations has been made. Although the Government considers it unlikely that the term “biodegradable municipal waste” could be interpreted as relating to anything other than the waste dealt with by waste disposal authorities under the landfill allowances scheme, the Government will make regulations to amend regulation 6(5)(b) of the principal regulations within six weeks.

## **Section 15**

The Government believes that the amendments to regulation 10 of the principal regulations are authorised by section 11(1) and (2)(b) of the Act and that section 15 of the Act is concerned with information of a different character to that currently dealt with by regulation 10 of the principal regulations. The Government concludes that the citation of section 12 in the principal regulations was an error. The reasons which lead us to these conclusions are explained below.

There are two provisions in the Act which confer power to make provision about the maintenance of registers; sections 11 and 15.

Section 11(1) of the Act confers power to make provision for the purpose of carrying Chapter 1 of the Act into effect. By section 11(2)(b), those regulations can make provision for the maintaining of registers of matters relating to landfill allowances.

Section 15 of the Act is more specific and confers power to make regulations requiring the monitoring authority to maintain a register containing “monitoring information” of a description specified in the regulations. “Monitoring information” is information or evidence that is:

- acquired by the monitoring authority in carrying out its functions under the Act; or
- disclosed to the monitoring authority by another monitoring authority which has acquired the information or evidence in carrying out its own functions under the Act.

The Government interprets “acquired” and “disclosed” in section 15 to mean that the information or evidence in question is information or evidence which is initially in the possession of someone other than the monitoring authority and which is subsequently obtained by the monitoring authority during the course of carrying out its monitoring role under the landfill allowances scheme.

We reach this view because of the nature of the monitoring authority's role under the Act and thus the context in which information and evidence is likely to be acquired by, or disclosed to, a monitoring authority.

Broadly speaking, a monitoring authority's role is to monitor the operation of the landfill allowances scheme generally, to monitor the amount of biodegradable collected municipal waste sent to landfills in particular and to audit the performance of waste disposal authorities in complying with their duties under the Act.

To enable it to carry out this role, the Act allows regulations to require waste disposal authorities to make returns to the monitoring authority. The Act also allows regulations to permit the monitoring authority to require waste disposal authorities to produce records for inspection or removal and to supply information and evidence relating to the sending of biodegradable municipal waste to landfill. In addition to this, the Act allows regulations to permit the monitoring authority to obtain records kept by landfill operators, using force if necessary.

The Government believes that it is in this context that information or evidence will be "acquired" by the monitoring authority and thus it will be the same kind of information obtained in a similar context by another monitoring authority that will be "disclosed" to a monitoring authority.

Regulation 10 of the principal regulations does not relate to this kind of information. Instead, it concerns:

- (a) information that is brought into existence as a result of decisions made and published under the Act by the Welsh Ministers; that is to say, the allowances allocated to each waste disposal authority under section 4 of the Act and any alterations to those allocations made under section 5 of the Act; and
- (b) information which the monitoring authority itself creates; that is to say:
  - (i) the amount of biodegradable collected municipal waste sent to landfill by each waste disposal authority; and
  - (ii) the balance between that amount and the amount for which the waste disposal authority holds landfill allowances.

The information at (i) is the product of applying a statutory factor of 61% to the amount of collected municipal waste sent to landfill by a waste disposal authority. Part of the information needed to make this

calculation will be contained in a waste disposal authority's records and returns to the monitoring authority and those records and returns will be "acquired" by the monitoring authority in carrying out its functions under the Act. The Government does not consider that the resulting calculation is either "acquired by" or "disclosed to" the monitoring authority.

The information at (ii) is the product of subtracting the amount at (i) from the number of allowances held by the authority and published by the Welsh Ministers under section 4 and / or 5 of the Act. Again, the Government does not consider that the resulting calculation is information or evidence "acquired by" or "disclosed to" the monitoring authority.

For these reasons the Government considers that the provision made at regulation 10 of the principal regulations is authorised by section 11(1) and (2)(b) of the Act.