

Jane Hutt AC / AM  
Y Gweinidog Cyllid ac Arweinydd y Tŷ  
Minister for Finance and Leader of the House



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: SF/JG/0069/12

Rosemary Butler AM  
Presiding Officer  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

11 January 2012

*Dear Rosemary,*

### **The Landfill Allowances (Wales) (Amendment) Regulations 2012**

I am writing to inform you that it has become necessary to breach the 21 day rule in relation to these Regulations. The Regulations were made on 10 January 2012, laid in the Table Office on 12 January 2012 and come into force on 15 January 2012.

These Regulations amend terminology used in the Landfill Allowances Scheme (Wales) Regulations 2004 so that it aligns with new terminology recently introduced into the Waste and Emissions Trading Act 2003.

The Regulations also revoke two earlier sets of regulations designed to achieve the same result and undo the amendments that those earlier regulations sought to introduce. These Regulations are made under the Waste and Emissions Trading Act 2003.

In November last year the Act was amended to introduce terminology to distinguish between two categories of municipal waste: biodegradable municipal waste disposed of solely by the public sector and all biodegradable municipal waste, regardless of whether it is disposed of by the public or private sector.

The Landfill Allowances Scheme (Wales) Regulations 2004 set out the details of how the landfill allowances scheme operates in Wales. That Scheme is established under Waste and Emissions Trading Act and regulates the amount of biodegradable municipal waste that local authorities can send to landfill. Because the terminology used in the Act to describe the waste covered by the landfill allowances scheme has been changed, those changes need to be carried through to the Landfill Allowances Scheme (Wales) Regulations 2004. If they are not, the Act and the Regulations would use different terms to mean the same thing and that could produce legal ambiguity and would be unhelpful to users of the legislation.

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To address the inconsistency the Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011 ("the first Regulations") were made and came into force on 21 November 2011 (the same day that the changes to the Act came into force). The Constitutional and Legislative Affairs Committee identified that one of the powers relied on to make those Regulations was not cited in the preamble. The Government accepted that that had potential to raise ambiguity about whether one particular amendment had been made to the 2004 Regulations and undertook to make that amendment within six weeks.

The first Regulations were revoked and remade in the Landfill Allowances (Wales) (Amendment) (No. 2) Regulations 2011 ("the second Regulations") so that all the amendments could be contained in one statutory instrument, rather than two. The second Regulations were due to come into force on 16 January 2012.

The second Regulations should have undone the amendments made by the first Regulations before attempting to make those amendments again. The fact that they did not raised the potential for uncertainty about the precise effect of the second Regulations in some respects and about certain provisions of the 2004 Regulations that they were to affect.

The 2012 Regulations undo the amendments to the Landfill Allowances Scheme (Wales) Regulations 2004, revoke both sets of earlier regulations and makes the amendments to the 2004 Regulations afresh.

The omission came to light after the second Regulations were made and so it was not possible to rectify the situation other than by amending the second Regulations before they come into force or by revoking and remaking them. Although it would have been possible to revoke and remake the second Regulations after they had come into force, and thus to comply with the 21 day rule, that approach would have resulted in a period of time during which the precise effect of the law would be unclear.

The Government concluded that the best result for users of the legislation would be to prevent uncertainty arising at all. Breaching the 21 day rule was the only way to achieve that result.

The Regulations were laid in Table Office on 12 January 2012.

A copy of this letter goes to David Melding AM, Chair of the Constitutional and Legislative Affairs Committee, and to Steven George, Clerk to the Committee.

*Yours sincerely,*  
*Jane*

**Jane Hutt AC / AM**

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