EXPLANATORY MEMORANDUM TO

THE LANDFILL (MAXIMUM LANDFILL AMOUNT) REGULATIONS 2011

2011 No. [XXXX]

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.

2. Purpose of the instrument

2.1 This instrument sets new maximum amounts of biodegradable municipal waste (BMW) that may be sent to landfill in England, Scotland, Wales, Northern Ireland and the United Kingdom as a whole in each scheme target year. This replaces the maximum amounts set out in the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 (S.I. 2004/1936) reflecting the revised interpretation of the term "municipal waste".

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

3.1 None.

4. Legislative Context

4.1 Section 1 of the Waste and Emissions Trading Act 2003 ("WET Act") requires the Secretary of State to set targets for reducing the amount of biodegradable municipal waste sent to landfill. The instrument provides updated maximum amounts for 2013 and 2020.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Lord Henley has made the following statement regarding Human Rights:

In my view the provisions of the Landfill (Maximum Landfill Amount) Regulations 2011 are compatible with the Convention rights.

7. Policy background

7.1 The Landfill Directive (1999/31/EC) set challenging targets for Member States to reduce the amount of biodegradable municipal waste sent to landfill. This was in line with its overall objective to prevent or reduce as far as possible the negative effects of

landfilling on the environment, including reducing the production of methane gas from landfills, as well as any resultant risk to human health. The Directive includes the following definition of municipal waste (Article 2):

waste from households, as well as other waste which, because of its nature or composition, is similar to waste from household[s].

It defines 'biodegradable waste' as:

any waste that is capable of undergoing anaerobic or aerobic decomposition, such as food and garden waste, and paper and paperboard.

7.2 These definitions are used as the basis for the landfill diversion targets included in Article 5(2) of the Directive. The UK's 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

7.3 These targets were transposed into UK legislation by the WET Act. This also provides the legal basis for landfill allowance schemes in each of the four administrations in the UK. These schemes were established as the primary means for ensuring that the UK as a whole met the Directive targets.

7.4 The definition of municipal waste set out in the Directive was included in the WET Act. However, in further developing the landfill allowance schemes it was felt necessary to provide greater clarity to the interpretation of municipal waste. In doing so, municipal waste was in practice defined as waste collected under arrangements made by local authorities. The landfill allowance schemes were established to only apply to local waste collection authorities.

7.5 However, discussions with the European Commission led us to agree that the UK's existing approach was focused too narrowly on waste collected by local authorities; that it focused on too small a subset of the totality of waste produced and that the environmental objectives of the Directive to reduce the negative effects of landfilling were better addressed by a broader interpretation of the definition. The UK changed its interpretation to include more commercial waste collected by the private sector.

7.6 This changed interpretation substantially increases the amount of BMW that is subject to the diversion targets under the Landfill Directive as a much larger proportion of commercial and industrial waste is now included within the definition. Whereas previously "municipal waste" only applied to waste managed by local authorities it will now extend to cover waste managed by private sector waste management companies. This requires a corresponding increase in the amount of such waste that is allowed to be sent to landfill by England, the Devolved Administrations and the UK as a whole, as set out in

the instrument. Changing the way municipal waste is counted means that the baseline upon which the landfill diversion targets were set has to be revised, and therefore also the targets for the UK. Defra has agreed revisions to these targets with the European Commission, which broadly double the existing targets. The reclassification of municipal waste, and the revised targets, are not expected to significantly change the existing management arrangements.

7.7 It is not considered necessary, at this stage, to introduce further specific measures, in addition to the current landfill tax and policies encouraging the recycling of waste, to deal with this additional waste. A comparison of the previous and revised figures is set out in the following table.

Landfill Diversion Targets ('000 tonnes)			
	2010	**2013**	**2020**
Previous Targets			
England	11,200	7,460	5,220
Scotland	1,320	880	620
Wales	710	470	330
Northern Ireland	470	320	220
UK	13,700	9,130	6,390
New Targets			
England	21,773	14,515	10,161
Scotland	2,697	1,798	1,258
Wales	1,378	919	643
Northern Ireland	919	612	429
UK	26,766	17,844	12,491

8. Consultation outcome

8.1 A consultation was held in March 2010 which set out our intention to change our interpretation. The consultation was not asking for views on the new interpretation or the revised targets but the policies needed to meet the new targets and implications for monitoring and reporting under the new interpretation.

8.2 There were seventy one responses to the consultation of which fifty nine were local authorities. The majority of respondents agreed with Defra's proposals. 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 guidance is considered necessary as the revised targets inform the allocations made by the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Department of the Environment.

10. Impact

10.1 The instrument is not considered as having an impact on business, charities or voluntary bodies.

10.2 The instrument is not considered as having an impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Allocating authorities (the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Department of the Environment) are required under the WET Act to make the allocations of allowances. The Act also allows the authorities to amend the allocations. Any changes would be made after review. Changes are determined by analysing forecasts of waste arisings and amounts diverted from landfill.

13. Contact

Gillian Neville at the Department for Environment, Food and Rural Affairs Tel: 020 7238 4382 or email: gneville@defra.gsi.gov.uk can answer any queries regarding the instrument.