EXPLANATORY MEMORANDUM TO THE

LANDFILL ALLOWANCES AND TRADING SCHEME (ENGLAND) (AMENDMENT) REGULATIONS 2005

2005 No. 880

1. This explanatory memorandum has been prepared by the Department for the Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Landfill Allowances and Trading Scheme (England) (Amendment) Regulations 2005 reduce the financial penalty for a waste disposal authority that fails in a scheme year to comply with its duty not to landfill more biodegradable municipal waste than the landfill allowances available to it. That financial penalty is reduced from £200 per tonne (of biodegradable municipal waste landfilled in breach of this duty) to £150 per tonne.

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

3.1 None

4. Legislative Background

4.1 These Regulations amend regulation 20(1) of the Landfill Allowances and Trading Scheme (England) Regulations 2004 ("the 2004 Regulations"). The 2004 Regulations provide the detail for the operation of the Landfill Allowances Trading Scheme (LATS) in England. The overall aim of this scheme is to reduce the amount of biodegradable municipal waste (BMW) sent to landfill for final disposal, and so meet England's share of the 1999 EC Landfill Directive targets set for the UK. Taken together, Part 1 of the Waste and Emissions Trading (WET) Act 2003 and the 2004 Regulations implement Articles 5(1) and (2) of the Landfill Directive in relation to England.

4.2 Under the WET Act, if an allocating authority for an area has made an allocation of landfill allowances for a scheme year, each waste disposal authority in the area owes a duty to the allocating authority to secure that the amount of biodegradable municipal waste sent to landfills in that year does not exceed the landfill allowances available to the authority for the same year (section 9(1) of the WET Act). A waste disposal authority that fails to comply with this duty is liable to a penalty (section 9(2) of the WET Act).

4.3 As originally drafted, regulation 20(1) of the 2004 Regulations provided that the penalty to which a waste disposal authority is liable under section 9(2) of the WET Act is the excess landfill for that authority multiplied by £200 ('excess landfill' in this context being defined in regulation 20(2) of the 2004 Regulations). These Regulations reduce that penalty to £150 per tonne.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 Not applicable

7. Policy background

7.1 The WET Act and the 2004 Regulations provide for the introduction of the Landfill Allowance Trading Scheme on 1 April 2005. The aim of this scheme is to reduce the amount of biodegradable municipal waste sent to landfill in the most cost-effective way. The basis of the scheme is to allocate a reducing number of landfill allowances to each waste disposal authority in England for each year between 2005/06 and 2019/20. Each waste disposal authority will be able to determine how to use its allocation of allowances in the most effective way. It will be able to trade allowances with other authorities, save them for future years (bank) or use some of its future allowances in advance (borrow).

7.2 For a scheme of this sort to operate effectively, a system of financial penalties is necessary to act as a disincentive to authorities to landfill more waste than the allowances available to them. Following consultation in 2003, the 2004 Regulations set the financial penalty at £200 per tonne. This was considered to be equivalent to the most expensive option for authorities diverting waste from landfill and therefore an effective disincentive.

7.3 However, in October 2004 Defra became aware of an unintended – and unforeseen - consequence of LATS in the setting of local authority budgets for the first year of the scheme (2005/06). In the absence of actual price data for landfill allowances (which is unavailable as the scheme has not yet begun), authorities were acting cautiously when taking account of LATS. Authorities in a position to sell allowances were assuming a zero return, whereas authorities with a need to buy allowances were assuming a maximum price equal to the level of the then penalty of £200 per tonne. This was putting pressure on local authority budgets.

7.4 Therefore, the decision was taken to reduce the financial penalty to £150 per tonne to help authorities budget for the introduction of the scheme, without putting additional pressure on council tax. This reduction reflects the fact that the marginal cost of diversion from landfill has reduced over the last year and therefore that the finanical penalty can still be effective if set at a lower level. The decision was taken following consultation with the Local Government Association and representatives from individual local authorities, who were supportive of this approach.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. A Regulatory Impact Assessment was completed for the 2004 Regulations (SI 2004/3212) and is available on the HMSO website at http://www.legislation.hmso.gov.uk/si/em2004/uksiem_20043212_en.pdf

8.2 The impact on the public sector is to help local authorities in allowing for the introduction of the Landfill Allowance Trading Scheme in their 2005/06 budgets.

9. Contact

Amy Glover at the Department for the Environment, Food and Rural Affairs (tel: 020 7082 8791 or e-mail: amy.glover@defra.gsi.gov.uk) can answer any queries regarding the instrument.