

**EXPLANATORY MEMORANDUM TO THE  
THE LANDFILL (MAXIMUM LANDFILL AMOUNT) (NORTHERN  
IRELAND) REGULATIONS 2004**

**This explanatory memorandum is laid before Parliament by Command of Her Majesty.**

Department for Environment, Food and Rural Affairs

**Description**

1. The Landfill (Maximum Landfill Amount)(Northern Ireland) Regulations 2004 ('the Regulations') specify the maximum amounts of biodegradable municipal waste ('BMW') that can be sent to landfills from Northern Ireland for the non-target years between the target years ending in 2010 and 2013 consistent with the UK's obligations under Article 5(2) of Council Directive 1999/31/EC on the landfill of waste ('EC Landfill Directive'). These Regulations will follow on from the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 (SI 2004/1936).

**Matter of special interest to the JCSI/SCSI**

2. There are no matters of special interest for the Department to bring to the attention of the committee.

**Legislative Background**

3. The Regulations are made under the powers conferred upon the Secretary of State by section 2 of the Waste and Emissions Trading Act 2003 ('WET Act'). Regulations made under these provisions are subject to approval in both Houses of Parliament.
4. Before exercising the powers contained in section 2 to set maximum amounts of BMW sent to landfills in non-target years, 2010/11 and 2011/12 for Northern Ireland, the agreement of the Department of the Environment for Northern Ireland is required. The agreement of the Department of the Environment for Northern Ireland was given on 13 September 2004.
5. Northern Ireland will be implementing national regulations to ensure that the targets set out in the Regulations can be achieved.

**Extent**

6. The Regulations extend to Northern Ireland only.

**European Convention on Human Rights**

7. In the view of the Secretary of State for Environment, Food and Rural Affairs, the Rt Honourable Margaret Beckett MP, the provisions of these draft

Regulations are compatible with the Convention rights, as defined in section 1 of the Human Rights Act 1998.

## **Policy background**

### ***The EC Landfill Directive and the WET Act***

8. Articles 5(1) and (2) of the EC Landfill Directive set a series of targets for member states to meet. For the UK these targets are to reduce the amount of BMW sent to landfill to 75% of 1995 levels by 2010, to 50% of 1995 levels by 2013 and to 35% of 1995 levels by 2020. These target dates take into account the four year derogation in Article 5(2) of the Directive for member states that landfilled over 80% of their waste in 1995. The UK qualifies for this derogation.
9. With the aim of helping each of the countries of the UK to meet their share of the UK's overall targets, the WET Act makes provisions for setting up landfill allowances schemes in England, Scotland, Wales and Northern Ireland. These schemes will operate to limit the amount of BMW sent to landfill in the UK.
10. The WET Act provides for the setting of maximum amounts of BMW that can be sent to landfills both for non-target and target scheme years (sections 1 to 3); the allocation of landfill allowances to waste disposal authorities (WDAs) (sections 4 and 5); and for the landfill allowances schemes themselves (sections 6 to 16). Under the Act a 'scheme year' is any year during which a landfill allowances scheme operates, and a 'target year' is a scheme year for which targets have been set under the EC Landfill Directive. The definition of "target year" has been drafted on the assumption that the UK will utilise the four year derogation (section 23(1), as amended by SI 2004/1936).
11. Maximum amounts for target years are set under section 1 of the WET Act and amounts for non-target years under section 2. If no maximum amount is set for a non-target year under section 2, the default rule in section 3 applies.

### ***The Landfill (Maximum Landfill Amount)(Northern Ireland) Regulations 2004***

12. These Regulations specify the maximum amount of BMW that may be sent to landfills from Northern Ireland in the scheme years which will begin on 1st April 2010 and 1st April 2011 (respectively the sixth and seventh scheme years under the WET Act for Northern Ireland). These are the scheme years between the first and second target years, for which the maximum amounts for Northern Ireland (as specified by SI 2004/1936) are 470,000 and 320,000 tonnes respectively.
13. If these Regulations are not made the default rule in section 3 of the WET Act would apply to the sixth and seventh scheme years. This rule would specify maximum amounts for these years of 420,000 and 370,000 tonnes respectively.

14. However, during 2012 thermal treatment is planned to be introduced in Northern Ireland which will deliver the maximum amount for the second target year. The Department of the Environment in Northern Ireland want the maximum amounts for the sixth and seventh years to be specified to take account of this planned infrastructural development. Consequently, the Regulations specify maximum amounts for these years of 469,937 and 465,950 tonnes respectively; these amounts should enable Northern Ireland's district councils to comply with their requirements without having to divert investment funding from the planned thermal treatment facility.

### **Impact**

15. A regulatory impact assessment has been prepared on the Regulations. Other regulatory impact assessments have been carried out by the Department for Environment, Food and Rural Affairs on the WET Act and the draft Landfill Allowances and Trading Scheme (England) Regulations. The devolved administrations are responsible for carrying out impact assessments on any national regulations.

### **Contact**

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September 2004

**THE LANDFILL ALLOWANCES AND TRADING SCHEME (ENGLAND)  
REGULATIONS 2004 AND THE LANDFILL (MAXIMUM LANDFILL  
AMOUNT) (NORTHERN IRELAND) REGULATIONS 2004  
TRANSPOSITION NOTE**

**MEMORANDUM SHOWING IN RELATION TO ENGLAND THE METHOD  
OF IMPLEMENTATION OF AND THE BODY RESPONSIBLE FOR  
ARTICLES 5(1) and (2) OF THE LANDFILL DIRECTIVE 1999/31/EC**

**MEMORANDUM SHOWING IN RELATION TO NORTHERN IRELAND  
THE METHOD OF IMPLEMENTATION AND BODY RESPONSIBLE FOR  
ARTICLES 5(1) and (2) OF THE LANDFILL DIRECTIVE 1999/31/EC**

The Landfill Allowances and Trading Scheme (England) Regulations 2004, together with the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 and the Waste and Emissions Trading Act 2003 (“the WET Act”) transpose Articles 5(1) and (2) of Council Directive 1999/31/EC on the landfill of waste (‘the EC Landfill Directive’) with respect to England.

The Landfill (Maximum Landfill Amount) (Northern Ireland) Regulations 2004 together with the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004, the WET Act and (when they are made) regulations in respect of the landfill allowances scheme for Northern Ireland transpose Articles 5(1) and (2) of the EC Landfill Directive with respect to Northern Ireland.

The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 and the WET Act also transpose Articles 5(1) and (2) (in part) for Scotland and Wales.

**Background**

Landfilling is the most common form of waste disposal across Europe. However, differences in technical standards and operating practices between member states have led to numerous incidents of gross land and water pollution. In response, the European Commission has introduced a number of measures to regulate landfill disposal and to establish a common framework that promotes waste prevention, minimisation, re-use, recycling and recovery as alternatives to landfill disposal.

The EC Landfill Directive introduces progressive measures to further prevent or reduce as far as possible the negative effects of landfilling waste on the environment and on human health. One of these measures is to reduce the amount of biodegradable waste sent to landfill for final disposal. Article 5(2) sets a series of targets for Member States to reduce the amount of biodegradable municipal waste (BMW) sent to landfill based on their 1995 waste arisings. The Directive provides a four year derogation for member states who landfilled over 80% of their waste in 1995. The UK is making use of this derogation. The reductions under the Directive (taking into account the four year derogation) are:

- By 2010 to reduce the amount of BMW going to landfill to 75% of that produced in 1995;
- By 2013 to reduce the amount of BMW going to landfill to 50% of that produced in 1995;
- By 2020 to reduce the amount of BMW going to landfill to 35% of that produced in 1995.

The details of how these requirements have been transposed in relation to **England** are discussed in more detail in the table below.

<b>Article</b>	<b>Objective</b>	<b>Implementation</b>	<b>Responsibility</b>
Articles 5(1) and (2)	<b>To set up a national strategy to reduce the amount of biodegradable waste going to landfill, including the measures to achieve the BMW targets which are set out in Article 5(2).</b>	<p>The WET Act, together with the Landfill Allowances and Trading Scheme (England) Regulations 2004, and the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 (insofar as they relate to England).</p> <p>The Landfill Allowances and Trading Scheme (England) Regulations 2004 set out the detailed operation of the landfill allowances scheme for England. This scheme is designed to ensure that England's share of the Article 5(2) targets, as specified in the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004, is achieved.</p>	<p>The Secretary of State, the Environment Agency and waste disposal authorities.</p> <p>Under the WET Act and the Landfill Allowances and Trading Scheme (England) Regulations 2004 these authorities have duties, and exercise functions, in relation to the landfill allowances scheme for England.</p>

The details of how these requirements have been transposed in relation to **Northern Ireland** are discussed in more detail in the table below.

<b>Article</b>	<b>Objective</b>	<b>Implementation</b>	<b>Responsibility</b>
Articles 5(1) and (2)	<b>To set up a national strategy to reduce</b>	The WET Act, together with the Landfill	The Department of the Environment

	<p><b>the amount of biodegradable waste going to landfill, including the measures to achieve the BMW targets which are set out in Article 5(2).</b></p>	<p>(Maximum Landfill Amount) (Northern Ireland) Regulations 2004, the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 (insofar as they relate to Northern Ireland) and the forthcoming regulations in respect of the landfill allowances scheme for Northern Ireland.</p> <p>The Landfill (Maximum Landfill Amount) (Northern Ireland) Regulations 2004 specify the maximum amount of biodegradable municipal waste allowed to be sent to landfills from Northern Ireland in the scheme years 2010/11 and 2011/12.</p> <p>Further regulations in respect of the landfill allowances scheme for Northern Ireland, which when they are made will set out the detailed operation of the landfill allowances scheme for Northern Ireland. This scheme will be designed to ensure that Northern Ireland's share of the Article 5(2) targets, as specified in The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 and The Landfill (Maximum Landfill</p>	<p>Northern Ireland, the Environment and Heritage Service and waste disposal authorities.</p> <p>Under the WET Act and the forthcoming regulations in respect of the landfill allowances scheme for Northern Ireland these authorities have duties, and exercise functions, in relation to the landfill allowances scheme for Northern Ireland.</p>
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		Amount) (Northern Ireland) Regulations 2004, is achieved.	
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## **Final Regulatory Impact Assessment on Implementing The Landfill Allowances (Maximum Landfill Amount Northern Ireland) Regulations 2004**

### **1. Title**

1.1 This Regulatory Impact Assessment deals with the Regulations implementing the non-target year maximum amounts of biodegradable municipal waste (BMW) sent to landfill for the scheme years 2010/11 and 2011/12 for Northern Ireland under the Waste and Emissions Trading Act 2003: 'The Landfill Allowances (Maximum Landfill Amount Northern Ireland) Regulations 2004'.

### **2. Purpose and intended effect of the measure**

#### **(i) The objective**

2.1 The Regulations implement section 2(1)(d) of the Waste and Emissions Trading (WET) Act. The WET Act implements Articles 5(1) and (2) of the EC Landfill Directive 1999, providing the basis for landfill allowance schemes in each country of the UK.

2.2 The overall aim of the landfill allowance schemes is to reduce the amount of biodegradable municipal waste (BMW) sent to landfill for final disposal in the UK and so meet the targets under the Directive. Each country of the UK will implement its own scheme, but the principle behind them is the same; local authorities responsible for the disposal of municipal waste will be allocated a decreasing number of landfill allowances for each year between 2005/06 and 2019/20. Authorities will only be able to landfill as much BMW as they hold allowances for and so the amount of BMW landfilled will decrease each year.

2.3 This set of Regulations, which follow on from The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004, allocates the maximum amounts of BMW allowed to be sent to landfill from Northern Ireland as 469,937 and 465,950 tonnes for the 2010/11 and 2011/12 (non-target) scheme years respectively.

2.4 The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 (SI 2004/1936), which came into force on 22 July 2004, have already set the maximum tonnage of biodegradable municipal waste allowed to be sent to landfills from Northern Ireland in the target years ending in 2010, 2013 and 2020; and in the scheme years leading up to the 2010 target year.

#### **(ii) Background**

2.5 Article 5(2) of the Landfill Directive sets challenging targets to reduce the amount of BMW being sent to landfill. The reduction targets set by the Directive are:

- By 2006 to reduce the amount of BMW going to landfill to 75% of that produced in 1995;
- By 2009 to reduce the amount of BMW going to landfill to 50% of that produced in 1995;
- By 2016 to reduce the amount of BMW going to landfill to 35% of that produced in 1995.

2.6 The Directive allows member states which landfilled over 80% of their municipal waste in 1995 to postpone the targets by up to four years. The Government intends to use this four year derogation so the target years for the UK are 2010, 2013 and 2020.

2.7 The UK produced 18.27 million tonnes of BMW in 1995. Therefore, by 2010 the amount of BMW landfilled in the UK must not exceed 13.70 million tonnes per annum. By 2013 this maximum is further reduced to 9.13 million tonnes and by 2020 the amount must not exceed 6.39 million tonnes per annum.

2.8 The Waste and Emissions Trading (WET) Act was granted Royal Assent in November 2003. The Act provides for the Secretary of State to specify in regulations the maximum amount of BMW permitted to be sent to landfills in target years from the UK as a whole and from each country of the UK. It also provides for the Secretary of State to specify, by agreement with each country, the amount of BMW that may be sent to landfills from that country in a scheme year that is not a target year.

2.9 The WET Act also provides the basis for the introduction of landfill allowance schemes in each country of the UK. In Northern Ireland, the Department of the Environment's scheme will allow authorities to borrow allowances from future allocations and to transfer allowances to other authorities on a non-monetary basis.

2.10 The landfill allowances scheme in Northern Ireland is being launched on 1 April 2005.

2.11 The Landfill Directive includes the following definitions:

Biodegradable waste is "all waste that is capable of undergoing aerobic or anaerobic decomposition, such as—  
food and garden waste, and paper and paperboard."

Municipal waste is defined as:

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

A landfill is defined as “a site for the deposit of waste onto or into land, where the site is— (a) a waste disposal site, or (b) used for the storage of waste.”

### **(iii) Risk assessment**

2.12 In the process of anaerobic decomposition, biodegradable waste produces methane which is a powerful greenhouse gas and is explosive. Methane comprises 20% of the gas that causes global warming. A quarter of all UK emissions come from landfill. The UK produces 15% of all EU methane emissions and 13% of EU methane emissions come from waste. Assuming that the EU produces one-third of world methane emissions, the UK's landfills produce 0.25% of world greenhouse gas emissions; some 0.25% of this will be produced from biodegradable municipal waste (BMW).

2.13 Greenhouse gases are so called because they build up in the atmosphere trapping in heat generated by the sun, acting like a greenhouse and allowing the warm air to gradually heat up the earth. The build up of these gases has the potential to permanently change the climate of the earth. The damage costs associated with extreme weather are likely to rise as such events become more frequent in the future due to climate change. If we continue to dispose of BMW through landfill, the threat becomes greater and the possibility to halt the change smaller.

2.14 Liquid leachate and other gas emissions can also result from landfills, and may threaten the local environment including air, soil and water quality. The Environment Agency holds a National Incident Recording System 2 which was introduced in 2001 and collects reports of leachate incidents relating to landfill that are reported to the Agency from across the country. In the calendar year 2001 there were 19 incidents reported to the Agency. In calendar year 2002 there were 35 incidents reported. Between January 1 and May 31 2003 there have been 15 incidents reported. Details of the incidents range from a member of the public reporting sewage discharging into a river from a sewer outfall, or leeching from a pipe at a named waste site, to a report saying that an alarm has been sounding from a site for the last 24 hours or that an odd odour is emanating from a site.

2.15 The UK produces around 420 million tonnes of waste each year, of which approximately 30 million tonnes is municipal waste. According to the latest available data, in 2000/01 the UK sent 81% of collected municipal waste to landfill, making it the main source of waste disposal for all four countries. The requirement to move away from landfill has been well known within the waste management industry and amongst waste producers for at least the last decade, although it has been appreciated by all that strategic change will take time to implement. Government has made clear its objectives by implementing targets for recycling and re-use of waste both for local authorities and for commercial and industrial waste producers. Waste Strategy 2000 and the Northern Ireland Waste Management Strategy 2000 clearly identify landfill as the bottom of the waste hierarchy and the least desirable option in dealing with waste.

2.16 Failure to meet the targets in the EC Landfill Directive would mean that the UK could face a non-compliance fine of up to £500,000 per day after the first target date in 2010. This fine is designed to be sufficiently strident to convince member states that investing in different waste strategies is a more acceptable alternative than being forced to pay the fine. Missed targets will also lead to greater greenhouse gas emissions and hence potentially greater impacts on global warming.

### **3. Options**

## ***Option 1***

### **3.1 *Do nothing:***

By doing nothing the default rule in section 3 of the WET Act will apply for the scheme for years 2010/11 and 2011/12.

## ***Option 2***

### **3.2 *Allocate maxima for the non-target years 2010/11 and 2011/12***

Under this option, the maximum amounts for the 2010/11 and 2011/12 are set, in accordance with a profile the Department of the Environment Northern Ireland has developed with its District Councils. The profile includes a step-change during 2012, upon the introduction of thermal treatment to deliver the second target in 2013.

## **4. Benefits**

4.1 This RIA does not examine the costs and benefits of diverting waste from landfill in order to meet the biodegradable municipal waste targets. The costs of meeting the Landfill Directive targets were examined in the RIA that accompanied 'A Way With Waste' (DETR, 1999) and the costs of the individual landfill allowance schemes will be discussed in RIAs accompanying the relevant regulations. This RIA does not consider these issues again, but limits itself to the costs and benefits of setting the targets through the Regulations.

### **4.2 *Option 1***

- Economic

Northern Ireland will be obliged to follow the default-rule for allocating allowances after 2010. Doing so would set steeper targets for the years 2010/11 and 2011/12. This would not be in-line with District Council waste management plans and investment strategies developed prior to the introduction of the WET Act and would not provide any economic benefit.

- Environmental

Although there would be environmental benefits to gain from diverting a higher amount of biodegradable municipal waste away from landfill this is limited by the short time span. Arguably, therefore the benefits would be minimal. Also, by requiring the diversion to take place sooner than absolutely required by the Landfill Directive, overall compliance with the second target year might be jeopardised.

- Social

Whilst properly regulated landfill can go some way to mitigating the impact of disposing waste to landfill there are social impacts associated with disposing BMW in landfill. The risk assessment at section 2(iii) outlines some of the effects of landfill sites such as climate change, other gas emissions and leachate contamination of watercourses – all of which have social and health impacts. A reduction in the

amount of BMW sent to landfill would reduce these social impacts. Other local social benefits would be a reduction in traffic to and from the landfill site.

### **4.3 Option 2**

- Economic

By setting the targets in the years 2010/11 and 2011/12, District Councils will be able deliver the necessary landfill reductions in line with their respective waste management plans and investment strategies.

- Environment

Whilst the diversion of biodegradable municipal waste will be slower than under option 1 Northern Ireland will still meet its 2013 target under the Directive, achieving the same environmental goal.

- Social

This option will ultimately have the same social benefits as option 1. The risk of the 2013 target being breached is minimal under this option increasing the likelihood of the public benefiting from reducing the amount of BMW sent to landfill.

## **5. Costs**

5.1 This RIA does not examine the costs and benefits of diverting waste from landfill in order to meet the biodegradable municipal waste targets, nor does it discuss the costs and benefits of the particular landfill allowances schemes to be implemented Northern Ireland. The costs of meeting the Landfill Directive targets were examined in the RIA that accompanied 'A Way With Waste' (DETR, 1999) and the costs of the individual landfill allowance schemes will be discussed in RIAs accompanying the relevant regulations. This RIA does not consider these issues again, but limits itself to the costs and benefits of setting the targets through the Regulations.

### **Option 1**

- Economic

This will mean that District Councils will have to make steeper annual reductions to meet the landfill targets, thereby increasing the risk of Northern Ireland failing to meet its targets. Subsequently the UK would face infraction procedures which incur fines and high administration costs, as well as fines imposed by the European Court of Justice (ECJ) at a maximum of £500,000 a day for not meeting the Directive target on the second target year date of 16 July 2013. As the country responsible for the breach of the UK targets, these fines would be passed down to Northern Ireland.

- Environmental

Reducing landfill allowances more quickly than absolutely required by the Landfill Directive would put Northern Ireland's district councils at risk of financial penalties, despite the fact that their waste management plans have and are being developed to deliver those targets. This situation would exacerbate the difficulty of diverting BMW from landfill rather than facilitate this diversion. District councils might be

forced to redirect funds from the investments in facilities to pay penalties under the Northern Ireland landfill allowances scheme. This could, in fact, delay the environmental benefits of increased diversion beyond 2013 and put the UK at risk of breaching the Directive and facing EC infraction fines.

- Social

*Option 1 will require greater investment than planned by district councils. These costs are likely to be passed on to the public. The risk of infraction fines will also inevitably fall to the ratepayer.*

### *Option 2*

- Economic

The gradual reductions in 2010/11 and 2011/12 until the introduction of the thermal treatment in 2012, will reduce the costs incurred by the district councils in meeting the targets as they have waste management strategies in place to deal with the amount of BMW. Therefore, with this option Northern Ireland will be able to meet its 2013 target.

- Environmental

Under this option the reduction in the amount of BMW allowed to be sent to landfill is more gradual making the environmental costs continued risk of emissions of greenhouse gases and the risk of contamination by leachate from landfill sites. However, this cost is insignificant given the short time span and that the option will deliver the ultimate goal.

- Social

The gradual reductions under this option are in-line with district councils waste management strategies and investment plans. Therefore there are no additional social costs associated with this option.

## **6. Equity and fairness**

6.1 Costs will not fall unfairly on different parts of Northern Ireland or on rural areas compared to urban ones. The Department of the Environment Northern Ireland carried out a rural proofing exercise to consider the impact of reducing the amount of BMW sent to landfill on rural populations in comparison to urban populations. No significant additional impact was identified for either section of the population.

6.2 As obligated by section 75 of the Northern Ireland Act 1998 the Department considered whether there was a need to carry out an equality impact assessment. However, it was agreed that the policy was not likely to have a tangible impact on any of the section 75 groups on the basis of differing political opinion, religious background, sexual orientation etc.

6.3 Limiting the amount of BMW Northern Ireland can send to landfill will enable Northern Ireland to move towards a more sustainable management of its waste. Landfill has for a long time been the favoured method of waste disposal (mainly due to the relatively low cost), but as seen above this method has environmental costs. Limiting the amount of waste sent to landfill will have significant environmental benefits for Northern Ireland.

## **7. Small Firms' Impact Test**

7.1 The Landfill Directive as a whole will impact upon small waste management businesses as requirements and restrictions on landfill site operators will increase and demand for their services may fall in the medium to long term. In addition, small businesses are less able to offer alternative forms of treatment and disposal. However, the restrictions on biodegradable municipal waste will only have a limited effect as it is only a small proportion of the amount of waste landfilled and no landfill site takes BMW alone.

## **8. Competition assessment**

8.1 It is clear that meeting the targets set out in the Landfill Directive will have large implications for the waste industry – both in terms of a change in existing procedures and facilities and new opportunities for commercial activity. The markets affected by the requirements in these Regulations are for the services supplied by waste management companies for landfill, recycling / composting and incineration.

8.2 As mentioned above, while there is likely to be a small loss in revenue for landfill site operators, there will also be an increase in diversion of BMW to recycling, composting and incineration. These changes will affect the cost of waste disposal and will shift the balance in competition away from landfill to favour diversion processes. This will impact on existing facilities as well as providing new opportunities for commercial activity.

## **9. Enforcement and Sanctions**

9.1 The Regulations are to be made under the powers conferred upon the Secretary of State by sections 2 of the WET Act. Enforcement of the targets will be carried out under the powers given to the Secretary of State and the Department of the Environment Northern Ireland in the WET Act.

9.2 Should the UK breach its targets in any target year (or exceed the level of the previous target year in any scheme year after 2010), it is intended that EC infraction fines will be passed down to the countries responsible for the breach of the UK targets. The WET Act gives the Secretary of State and the Department of the Environment Northern Ireland the right to pass some or all, of any fine imposed by the EC on to those district councils responsible for that breach. The Act also provides for penalties to be imposed on district councils that fail to comply with their obligation not exceed their targets in any scheme year.

## **10. Monitoring and review**

10.1 The WET Act provides for each administration to appoint a monitoring authority for its area. In the case of Northern Ireland the monitoring authority will be the Environment and Heritage Service. The monitoring authority will have responsibility for monitoring how much BMW is sent to landfill, supplying information and notifying the administration when a local authority may be liable to a sanction under the national scheme.

10.2 The Department of the Environment Northern Ireland will be responsible for reviewing any national legislation it puts in place to meet the targets in these Regulations. If the Department of the Environment Northern Ireland wishes to amend their non-target year maximum figures, they will need to make a request to the Secretary of State to amend the Regulations.

## **11. Consultation**

11.1 The issue of how best to meet the Landfill Directive targets has been the subject of two consultation papers in Northern Ireland.

11.2 The Department of Environment consulted with the 'Northern Ireland Landfill Allowances Scheme Consultation' on the detail of the scheme in January 2004.

## **12. Summary and Recommendations**

12.1 This RIA identifies one option which would set BMW targets for the scheme years for Northern Ireland and one business as usual option.

### **12.2 Option 1 – *Do nothing***

By doing nothing local authorities in Northern Ireland will be allocated allowances via the straight-line reduction post-2010. This could pose a significant risk as local authorities in Northern Ireland will face difficulties in meeting the targets set, in accordance with the default-rule. This would significantly increase the cost of Northern Ireland meeting its non target year landfill maximum in 2010/11 and 2011/12. Increased costs could jeopardise investment delaying the introduction of thermal treatment and would risk Northern Ireland failing to meet its 2013 target. This in turn could result in the UK breaching the EC Landfill Directive target in 2013. The UK would then face infraction and fines of potentially up to £500,000 a day for not meeting the target year maxima. These fines would be passed down to Northern Ireland.

### **12.3 Option 2 – *Allocate maxima for the non-target years up to 2013***

This is the preferred option as it would allow local authorities to gradually reduce the amount of BMW sent to landfill, in accordance with their respective waste management strategies until the introduction of thermal treatment in 2012. This will be less costly for local authorities and decrease the likelihood of Northern Ireland breaching its targets. Consequently, this option will reduce the risk that the UK will breach its Landfill Directive targets.

*Summary of the costs and benefits of different options*

	<b>Costs</b>	<b>Benefits</b>
<b>Option 1</b> – Do nothing (WET Act default rule)	Local authorities will face high costs of diversion as more BMW will have to be diverted away from landfill under the straight-line reduction post-2010 and this could result in failure to meet the targets. As a result, the UK could face infraction procedures and potential fines of £500,000 per day for failing to meet its targets. Therefore, the fines would be passed down to Northern Ireland, which would be responsible for the breach.	There would be some environmental benefits in diverting more waste away from landfill sooner.
<b>Option 2</b> – Allocate maxima for the non-target years leading up to 2013	The cost of diversion will be reduced as local authorities will be able to gradually divert BMW, until the introduction of thermal treatment in 2012.	The cost of diversion would be reduced as district councils would have waste management strategies in place to meet the specified landfill reduction targets in 2010/11 and 2011/12.

12.4 It is therefore recommended that regulations allocating non-target year maximums for BMW sent to landfills in 2010/11 and 2011/12 in Northern Ireland be made.

**13. Declaration**

**I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.**

**Signed**            **Elliot Morley**

**Date**            **22<sup>nd</sup> September 2004**

**Mr Elliot Morley**  
**Minister for Environment and Agri-Environment**  
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