

# **GUIDANCE ON SECTIONS 12(3) AND 26(1)(c) OF THE WASTE AND EMISSIONS TRADING ACT 2003: PENALTIES FOR FAILURE TO KEEP RECORDS AND MAKE RETURNS**

## **Introduction**

1. Section 12(3) of the Waste and Emissions Trading Act 2003 (the WET Act) provides for a waste disposal authority (WDA) to be liable to a financial penalty for failure to comply with a requirement imposed on it under section 12.
2. The requirements imposed under section 12 are set out in regulation 11 of the Landfill Allowances and Trading Scheme Regulations (England) 2004<sup>1</sup> (the LATS Regulations). Regulation 11 sets out the obligation for WDAs to keep records and make returns.
3. Regulation 11(1) requires a WDA to keep records containing the following information for each scheme year:
  - (a) the weight in tonnes of collected municipal waste;
  - (b) the weight in tonnes of municipal waste sent to landfills by the WDA; and
  - (c) the weight in tonnes of municipal waste sent to waste facilities whether by-
    - (i) the WDA; or
    - (ii) any waste collection authority within the area of the WDA.
4. Regulation 11(2) requires the records to contain details, in relation to municipal waste mentioned in regulation 11(1)(b) and (c), of:
  - (a) the total weight in tonnes of waste sent to each landfill or waste facility;
  - (b) the standard description of, and the appropriate code in the European Waste Catalogue<sup>2</sup> for, the waste sent to each landfill or waste facility.
5. Regulation 11(4) requires the records to be kept for two years from the end of the relevant reconciliation period<sup>3</sup>. Regulation 11(5) requires the WDA to make quarterly returns to the monitoring authority containing the information required by regulations 11(1) and 11(2).

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<sup>1</sup> (SI 2004/3212)

<sup>2</sup> WasteDataFlow (WDF) is an online web-based system that enables WDAs to meet the requirement under the LATS Regulations to report quarterly data to the Environment Agency (EA), which is the monitoring authority for England. WDF lists waste types and not European Waste Catalogue (EWC) codes. A WDA which makes a return through WDF will be required to provide waste types but not EWC codes. The EA will then make the link between the types of waste listed on WDF and the corresponding EWC code.

<sup>3</sup> The reconciliation period is a period of six months following the end of each scheme year.

6. The purpose of this guidance is to outline the procedure for the application of penalties under section 12(3) of the WET Act and to set out the Secretary of State's policy in relation to the exercise of her powers under section 26(1)(c). Under section 26(1)(c), the Secretary of State has the power to extend the time for the whole or part of a penalty to be paid, or to relieve a WDA, in whole or in part, from liability to a penalty or any interest on it.
7. Guidance was published in April 2005 on penalties under section 9(2) of the WET Act<sup>4</sup>, which provides for a WDA to be liable to a financial penalty if it landfills more biodegradable municipal waste than is authorised by the landfill allowances available to it for that year.

### **The application and notification of penalties**

8. As noted above, regulation 11 of the LATS Regulations requires WDAs to maintain certain records and make quarterly returns to the monitoring authority. By regulation 21 of the LATS Regulations, a WDA will be liable to a financial penalty of £1000 for each requirement imposed on it by regulation 11 with which it fails to comply.
9. For instance, a WDA will be liable to a financial penalty if it fails to do any of the following:
  - for each scheme year, keep records of the weight in tonnes of:
    - (a) collected municipal waste;
    - (b) municipal waste sent to landfills by the WDA;
    - (c) municipal waste sent to waste facilities, whether by the WDA or by a waste collection authority in its area;
    - (d) municipal waste sent to each landfill or waste facility (regulations 11(1) and (2));
  - keep the records for a period of two years from the end of the relevant reconciliation period (regulation 11(4));
  - submit to the monitoring authority a quarterly return containing the information in the records (or makes a late return or an incomplete return) (regulation 11(5));
  - produce the records for inspection to the monitoring authority on receipt of a notice from the monitoring authority (regulation 11(6)(a));
  - supply the monitoring authority with information about, or evidence as to, matters connected with the sending of biodegradable municipal waste to landfills (regulation 11(6)(b)).
10. Where a WDA is liable to a penalty and the Secretary of State assesses and notifies the WDA of the amount of the penalty<sup>5</sup>, the penalty is due one month after the date on which the WDA is so notified<sup>6</sup>. If the penalty is not paid in full by the due date, the authority is liable to pay interest on

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<sup>4</sup> Guidance on section 9(2) of the WET Act is available at:  
<http://defraweb/environment/waste/localauth/lats/guidance.htm>

<sup>5</sup> See regulation 22(1) of the LATS Regulations

<sup>6</sup> See regulation 22(2) of the LATS Regulations

any outstanding amount at a rate of 1% above the London Interbank Offered Rate (LIBOR) on a day to day basis beginning on the due date<sup>7</sup>.

### **The Secretary of State's policy in relation to the powers in section 26(1)(c) of the WET Act**

11. Financial penalties have been included in the WET Act by Parliament in order to provide an incentive for WDAs to meet their obligations under the WET Act, including the requirements imposed under section 12. The 3 month period after the end of each quarter of each scheme year is intended to give WDAs sufficient time to submit returns to the monitoring authority and avoid becoming liable to a financial penalty. Timely data returns are required for the monitoring authority to keep track of the biodegradable municipal waste landfilled by each WDA and ensure the UK's compliance with the requirements of the Landfill Directive<sup>8</sup>.
12. With these issues in mind, and in particular not to undermine the efficacy of the penalties provided for in the WET Act, the Secretary of State's policy is to be very selective about the exercise of her powers under section 26(1)(c)(i) to extend the time for paying the whole or part of the penalty (or any interest on it) and under section 26(1)(c)(ii) to relieve the WDA, in whole or in part, from liability to the penalty or any interest on it. The Secretary of State will in general only exercise these powers in exceptional circumstances and each case will be considered on its individual merits.

### **Contact Details**

13. If you have any queries about this guidance, please contact the Local Authority Waste Performance Team at [landfill.policy@defra.gsi.gov.uk](mailto:landfill.policy@defra.gsi.gov.uk)

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<sup>7</sup> See regulation 22(4) of the LATS Regulations

<sup>8</sup> Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste