

THE LANDFILL ALLOWANCE TRADING SCHEME (LATS)

The penalty system

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1. What is the penalty for Waste Disposal Authorities that fail to hold sufficient allowances for the amount of BMW they send to landfill?

The penalty is £150 per tonne of biodegradable municipal waste sent to landfill in excess of that permitted by allowances held. To date no authority has exceeded its holding so no fines have been issued since the scheme began.

2. Why was the financial penalty reduced from £200 per tonne?

The financial penalty was reduced as part of a package of measures designed to ensure that local authorities have the flexibility to meet challenging targets for the diversion of biodegradable municipal waste from landfill without increasing pressure on council tax. This was announced by Environment Minister Elliot Morley on 9 December 2004.

3. What was the evidence base for doing this?

For a trading scheme to operate effectively, the penalty needs to be the most expensive option. The LATS Consultation Document proposed that the penalty be equal to twice the cost per tonne of the most expensive established method of diversion from landfill. Following the Consultation the Government decided to fix the penalty at £200/tonne, which equated to roughly twice the cost of the most expensive form of diversion at that time.

In the following months the cost of sending certain types of waste to landfill increased and it is

generally accepted that as alternative disposal methods become more established and landfill tax rises, the marginal cost of diversion will reduce. Therefore, it was considered appropriate to amend the cost of the penalty to reflect these changing costs.

4. Is the penalty now fixed at £150/tonne or could it be changed

again?

An amendment to the Landfill Allowance and Trading Scheme (England) Regulations 2004 was made to set the penalty at £150/tonne, for the duration of the Scheme. However, all the operational elements of the Scheme, including the financial penalty, will be subject to regular reviews throughout the life of the scheme.

5. How are local authorities supposed to have confidence in the scheme, if the Government continually makes changes to it?

The Government has not proposed to continually change the scheme – one of the key principles, reflected in the decision to allocate allowances for the duration of the scheme, is to provide waste disposal authorities with certainty about what is required of them. The decision to reduce the penalty in advance of the launch of the scheme was intended to assist local authorities in making best use of the funds available to them and to avoid additional council tax pressures.

6 . A reduction in the financial penalty won't help authorities – they just need more resources.

The decision to reduce the financial penalty was taken following consultation with the Local Government Association and is intended to reduce council tax pressures for local authorities.

The Government recognises that local authority waste management costs will rise significantly if England is to meet its Landfill Directive targets. These additional costs were factored into the Spending Review 2004, which injected an additional £1.2 billion into core local authority funding for waste management by 2007/08, as well as an additional £275m in PFI credits.

In addition to this, the Government has also announced a three-year targeted Waste Performance and Efficiency Grant of £260m to support new and more efficient ways of working to deliver waste reduction, increased recycling and diversion from landfill.

7. Why are there supplementary penalties for breaching allowances in target years?

In target years even if only a few authorities breach their allowances, the UK is likely to exceed its target under the Landfill Directive and may be liable to fines from the European Court of Justice. Waste Disposal Authorities must be given a strong incentive to meet their allowances and to maintain the previous target year's BMW landfill requirement in scheme years. Also, it would not be fair on those WDAs that had done what was required to suffer (e.g. by a reduction in the overall rate support grant) because of the inaction of others.

8. Won't forcing a WDA to pay a financial penalty make the situation worse?

Without financial penalties, there would be no incentive for authorities to landfill in line with their allowances and the trading mechanism would not operate effectively. Experience with other trading schemes, for example the UK Emissions Trading Scheme, has shown that without penalties there is no incentive for participants to meet their required reductions.

The flexibilities included in the scheme, including the Secretary of State's power to waive or suspend penalties in given circumstances and the reconciliation period at the end of each scheme year, means that no authority should face penalties unless it takes the conscious decision to do so. In that case, a penalty should be paid, but should be set at a level that makes it the most expensive option.