

S.I. No. 126/2011 — European Communities (Waste Directive) Regulations 2011.

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S.I. No. 126 of 2011

EUROPEAN COMMUNITIES (WASTE DIRECTIVE) REGULATIONS 2011

Notice of the making of this Statutory Instrument was published in

“Iris Oifigiúil” of 5th April, 2011.

I, PHIL HOGAN, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008¹ on waste and repealing certain Directives, hereby make the following regulations:

PART 1 PRELIMINARY PROVISIONS

Citation

1. These Regulations may be cited as the European Communities (Waste Directive) Regulations 2011.

Interpretation — general

2. (1) In these Regulations—

“Act of 1992” means the Environmental Protection Agency Act 1992 (No. 7 of 1992);

“Act of 1996” means the Waste Management Act 1996 (No. 10 of 1996);

“Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.

PART 2 AMENDMENTS TO ACT OF 1996

Amendment of section 2 of Act of 1996

3. Section 2 of the Act of 1996 is amended, in the Table to that section—

(a) by deleting “Council Directive 75/439/EEC of 16 June, 1975 on the disposal of waste oils”,

(b) by deleting “Council Directive 75/442/EEC of 15 July, 1975 on waste”,

(c) by deleting “Council Directive 91/689/EEC of 12 December, 1991 on hazardous waste”,

(d) by deleting “Council Directive 87/101/EEC of 22 December, 1986 amending Directive 75/439/EEC on the disposal of waste oils”,

(e) by deleting “Council Directive 91/156/EEC of 18 March, 1991 amending Directive 75/442/EEC on waste”,

(f) by deleting “Council Directive 96/61/EC of 24 September, 1996 concerning integrated pollution prevention and control”, and

(g) by substituting the following for “Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste”:

“Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006² on the management of waste from extractive industries

Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008³ concerning integrated pollution prevention and control

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives”.

Substitution of sections 3 and 4 of Act of 1996

4. The Act of 1996 is amended by substituting the following sections for sections 3 and 4:

“Non-application of this Act.

3. (1) This Act shall not apply to—

(a) gaseous effluents emitted into the atmosphere and carbon dioxide captured and transported for the purposes of geological storage and geologically stored in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009⁴ on the geological storage of carbon dioxide or excluded from the scope of that Directive pursuant to Article 2(2) of that Directive,

(b) land (in situ) including unexcavated contaminated soil and buildings permanently connected with land,

(c) uncontaminated soil and other naturally occurring material excavated in the course of construction activities where it is certain that the material will be used for the purposes of construction in its natural state on the site from which it was excavated,

(d) the dumping (within the meaning of the Dumping at Sea Act 1981 (No. 8 of 1981)) of waste at sea,

(e) radioactive waste,

(f) decommissioned explosives, or

(g) faecal matter, if not covered by subsection (2)(b), straw and other natural non-hazardous agricultural or forestry material used in farming, forestry or for the production of energy from such biomass through processes or methods which do not harm the environment or endanger human health.

(2) This Act shall not apply to the following to the extent that they are covered by other

Community acts:

(a) waste waters;

(b) animal by-products, including processed products covered by Regulation (EC) No. 1069/2009 of the European Parliament and of the Council of 21 October 2009⁵ laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Animal by-products Regulation);

(c) carcasses of animals that have died other than by being slaughtered, including animals killed to eradicate epizootic diseases, and that are disposed of in accordance with Regulation (EC) No. 1069/2009;

(d) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries covered by Directive 2006/21/EC.

(3) Without prejudice to obligations under other relevant Community acts, this Act shall not apply to sediments relocated inside surface waters for the purpose of managing waters and waterways or of preventing floods or mitigating the effects of floods and droughts or land reclamation if it is proved that the sediments are non-hazardous.

Definitions of 'activity', 'disposal', 'hazardous waste', 'recovery' and 'waste'.

4. (1) In this Act—

'activity' includes operation;

'disposal'—

(a) means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy, and

(b) without prejudice to the generality of paragraph (a), includes the disposal operations listed in the Third Schedule,

and 'waste disposal activity' shall be construed accordingly;

'hazardous waste' means waste which displays one or more of the hazardous properties listed in the Second Schedule;

'recovery'—

(a) means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy, and

(b) without prejudice to the generality of paragraph (a), includes the recovery operations listed in the Fourth Schedule,

and 'waste recovery activity' shall be construed accordingly;

'waste' means any substance or object which the holder discards or intends or is required to discard.

(2) A reference in this Act to waste shall be construed as including a reference to hazardous waste.”.

Amendment of section 5 of Act of 1996

5. Section 5 of the Act of 1996 is amended—

(a) in subsection (1)—

(i) by substituting the following definitions for the definitions of “broker” and “collection”:

“ ‘best available techniques’ means best available techniques as defined in Article 2(12) of Directive 2008/1/EC;

‘bio-waste’ means biodegradable garden and park waste, food and kitchen waste from households, restaurants, caterers and retail premises and comparable waste from food processing plants;

‘broker’ means any person arranging the recovery or disposal of waste on behalf of others,

including any such person that does not take physical possession of the waste;

‘collection’ means the gathering of waste, including the preliminary sorting and storage of waste for the purposes of transport to a waste treatment facility;”,

(ii) by substituting the following definition for the definition of “dealer”:

“ ‘dealer’ means any person who acts in the role of principal to purchase and subsequently sell waste, including any such person who does not take physical possession of the waste;”,

(iii) by deleting the definition of “holder”,

(iv) by substituting the following definition for the definition of “the Minister”:

“ ‘Minister’ means the Minister for the Environment, Heritage and Local Government;”,

(v) by deleting the definition of “the polluter pays principle”,

(vi) by inserting the following definition after the definition of “premises”:

“ ‘preparing for re-use’ means checking, clearing or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing;”,

(vii) by substituting the following definition for the definition of “producer”:

“ ‘prevention’ means measures, taken before a substance, material or product has become waste, that reduce—

(a) the quantity of waste, including through the re-use of products or the extension of the lifespan of products,

(b) the adverse impacts of the generated waste on the environment and human health, or

(c) the content of harmful substances in materials and products;”,

(viii) by substituting the following definitions for the definition of “recycling”:

“ ‘recycling’—

(a) subject to paragraph (b), means any recovery operation by which waste materials are reprocessed into products, materials or substances, whether for the original or other purposes, including the reprocessing of organic material,

(b) does not include—

(i) energy recovery, and

(ii) the reprocessing into materials that are to be used as fuels or for backfilling operations;

‘regeneration of waste oils’ means any recycling operation whereby base oils can be produced by refining waste oils, in particular by removing the contaminants, the oxidation products and the additives contained in such oils;

‘the Regulations of 2011’ means the European Communities (Waste Directive) Regulations 2011 (S.I. No. 126 of 2011);”,

(ix) by inserting the following definitions after the definition of “reserved function”:

“ ‘re-use’ means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived;

‘separate collection’ means the collection where a waste stream is kept separately by type and nature so as to facilitate a specific treatment;”,

(x) by substituting the following definitions for the definition of “treatment”:

“ ‘TFS Regulation’ means Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14 June 2006⁶ on shipments of waste;

‘treatment’ means recovery or disposal operations, including preparation prior to recovery or disposal;”, and

(xi) by inserting the following definitions after the definition of “waste collection permit”:

“ ‘Waste Directive’ means Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives;

‘waste holder’ means the waste producer or the person who is in possession of the waste;
‘waste management’ means the collection, transport, recovery and disposal of waste, including—

- (a) the supervision of such operations,
- (b) the after-care of disposal sites, and
- (c) actions taken as a dealer or broker;

‘waste oils’ means any mineral or synthetic lubrication or industrial oils which have become unfit for the use for which they were originally intended, such as used combustion engine oils and gearbox oils, lubricating oils, oils for turbines and hydraulic oils;

‘waste producer’ means anyone—

- (a) whose activities produce waste (in this Act referred to as the ‘original waste producer’), or
- (b) who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of such waste;

‘waste prevention and management legislation and policy’ means—

- (a) this Act and regulations made under this Act,
- (b) policy issued by the Minister,
- (c) waste management plans made by a local authority, or
- (d) waste prevention programmes guidance or policy issued by the Agency;”

and

(b) by inserting the following subsection after subsection (3):

“(3A) References in this Act to Dublin City Council are references to Dublin City Council in its designation as the competent authority under Article 53 of the TFS Regulation as provided for in Regulation 4 of the Waste Management (Shipments of Waste) Regulations 2007 (S.I. No. 419 of 2007).”.

Amendment of section 15 of Act of 1996

6. Section 15 of the Act of 1996 is amended—

(a) in subsection (1), by substituting the following paragraph for paragraph (b):

“(b)(i) Establishments or undertakings which carry out waste treatment operations, establishments or undertakings which collect or transport waste on a professional basis, brokers and dealers, and establishments or undertakings which produce hazardous waste, shall be subject to appropriate periodic inspections by the local authorities, the Agency and Dublin City Council, as appropriate.

(ii) Inspections concerning collection and transport operations shall cover the origin, nature, quantity and destination of the waste collected and transported.

(iii) The authorities referred to in subparagraph (i) may take account of registrations obtained under the Community Eco-Management and Audit Scheme (in this Act referred to as ‘EMAS’), in particular regarding the frequency and intensity of inspections.”.

and

(b) by substituting the following subsection for subsection (2):

“(2)(a) The persons referred to in section 39(1), the producers of hazardous waste and the establishments and undertakings which collect or transport hazardous waste on a professional basis, or act as dealers and brokers of hazardous waste, shall keep a chronological record of the quantity, nature and origin of the waste, and, where relevant, the destination, frequency of collection, mode of transport and treatment method foreseen in respect of the waste, and shall make that information available, on request, to the local authorities, the Agency or Dublin City Council, as appropriate.

(b) For hazardous waste, the records shall be preserved for at least 3 years (except in the

case of establishments and undertakings transporting hazardous waste which shall keep such records for at least 12 months).

(c) Documentary evidence that the management operations have been carried out shall be supplied by the establishment or undertaking concerned at the request of the local authorities, the Agency or Dublin City Council, or of a previous holder, as appropriate.”

Insertion of section 21A into Act of 1996

7. The Act of 1996 is amended by inserting the following section after section 21:

“Waste hierarchy.

21A.(1) The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:

- (a) prevention;
- (b) preparing for re-use;
- (c) recycling;
- (d) other recovery (including energy recovery); and
- (e) disposal.

(2)(a) When applying the waste hierarchy referred to in subsection (1), the Minister, the Agency and the local authorities, in carrying out their respective functions under this Act, shall take measures to encourage the options that deliver the best overall environmental outcome.

(b) Such measures may require specific waste streams departing from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

(3) The Minister shall ensure that the development of waste legislation and policy is a fully transparent process, observing existing national rules about the consultation and involvement of citizens and stakeholders.

(4) In carrying out their respective functions under this Act and related waste management legislation and policy, the Minister, the Agency and the local authorities shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts, in accordance with Article 1 of the Waste Directive and section 32(1).”

Amendment of section 22 of Act of 1996

8. Section 22 of the Act of 1996 is amended—

(a) in subsection (1)—

(i) by inserting the following definition after the definition of “relevant period”:

“ ‘revise’, in relation to a waste management plan, includes a review of the plan;”

and

(ii) in the definition of “relevant period”—

(I) by substituting “last evaluation” for “last review”, and

(II) by substituting “an evaluation” for “a review”,

(b) by substituting the following subsections for subsections (2), (3) and (4):

“(2)(a) Subject to subsection (3) and section 24, in order that plans in combination cover the entire geographical territory of the State, each local authority shall make a waste management plan for non-hazardous waste in relation to its functional area.

(b) The Agency, shall, in accordance with section 26, establish such a plan for the State in respect of hazardous waste.

(c) The plans shall—

(i) lay down measures to protect the environment and human health by preventing or

reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use,

(ii) be in accordance with the waste hierarchy set out in section 21A,

(iii) meet the protection of human health and the environment obligations set out in section 32(1), and

(iv) meet the principles of self-sufficiency and proximity set out in section 37A.

(d) Waste management plans and the hazardous waste management plan in existence at the commencement of the Regulations of 2011 shall be evaluated by 31 December 2012 and, consequent on any such evaluation, where appropriate, be revised to be brought into line with the requirements of the Waste Directive.

(3) Two or more local authorities may, in lieu of each of them making a waste management plan, jointly make a plan (in this Act also referred to as a 'waste management plan') as respects their functional areas with regard to the matters specified in subsection (2).

(4) A local authority or, in the case of a waste management plan under subsection (3), the 2 or more local authorities concerned, shall ensure that a waste management plan made by it or them from time to time as occasion may require is evaluated at least once in each period of 6 years after the date of making of the plan and may, consequent on such an evaluation, where appropriate, make, in accordance with Article 9 of the Waste Directive, Regulation 31 of the Regulations of 2011 and section 23, any revisions to the plan or replace it with a new waste management plan as it or they thinks or think fit.”,

(c) in subsection (5), by substituting “revision” for “variation”,

(d) by substituting the following subsection for subsection (6):

“(6)(a) A waste management plan shall—

(i) set out an analysis of the current waste management situation in the geographical entity concerned (if regional, for example, for the region),

(ii) set out the measures to be taken to improve environmentally sound preparing for re-use, recycling, recovery and disposal of waste, and

(iii)(I) set out an evaluation of how the plan will support the implementation of the objectives and provisions of the Waste Directive,

(II) set out such measures or arrangements as are to be taken or entered into by the local authority or local authorities, with a view to securing the objectives of the plan, and

(III) with regard to hazardous waste, cover the matters specified in subsection (8) in so far as they relate to its functional area.

(b) A waste management plan shall contain, as appropriate, and taking into account the geographical level and coverage of the planning area, at least the following:

(i)(I) the type, quantity and source of waste generated within the territory, the waste likely to be shipped from or to the national territory, and an evaluation of the development of waste streams in the future; and

(II) a requirement that, in order to fulfil this obligation, liaison shall be undertaken, as appropriate, with the Minister, the Agency, Dublin City Council and other relevant local authorities;

(ii) existing waste collection schemes and major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste or waste streams addressed by specific Community acts;

(iii) an assessment in accordance with section 37A of the need for new collection schemes, the closure of existing waste installations, additional waste installation infrastructure and, if necessary, the investments related thereto;

(iv) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary;

(v) general waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems;

(vi) information as respects the integration and implementation of measures consequential on, or incidental to, the requirements of section 27A in relation to waste prevention programmes;

(vii) the measures taken by the Minister to give effect to Article 22 of the Waste Directive in relation to bio-waste.

(c) A waste management plan may contain, taking into account the geographical level and coverage of the planning area, the following:

(i) organisational aspects related to waste management including a description of the allocation of responsibilities between public and private actors carrying out the waste management;

(ii) an evaluation of the usefulness and suitability of the use of economic and other instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;

(iii) the use of awareness campaigns and information provision directed at the general public or at a specific set of consumers.

(d) Waste management plans shall conform to the waste planning requirements laid down in Article 14 of European Parliament and Council Directive 94/62/EC of 20 December 1994⁷ on packaging and packaging waste, and the strategy for the implementation of the reduction of biodegradable waste going to landfills, referred to in Article 5 of Council Directive 1999/31/EC of 26 April 1999⁸ on the landfill of waste as well as national legislation and policy on biodegradable waste.”,

(e) in subsection (7), by deleting paragraphs (c) and (d),

(f) by deleting subsection (8)(bis),

(g) in subsection (10)(d), by substituting “the evaluation, revision” for “the review, variation”,

(h) in subsection (11), by substituting “evaluating” for “reviewing”, and

(i) by deleting subsection (14).

Amendment of section 23 of Act of 1996

9. Section 23 of the Act of 1996 is amended—

(a) in subsection (1)—

(i) by substituting “or to revise” for “or to vary”,

(ii) by substituting “make, revise” for “make, vary”, and

(iii) by substituting “revision” for “variation”,

(b) in subsection (2)—

(i) in paragraph (a)—

(I) by substituting “the proposed revision” for “the proposed variation”,

(II) in subparagraph (i), by substituting “revision is deposited for inspection (and the proposed plan or revision)” for “variation is deposited for inspection (and the proposed plan or variation”, and

(III) in subparagraph (ii), by substituting “revision” for “variation”,

(ii) in paragraph (b)—

(I) by substituting “proposed revision” for “proposed variation”, and

(II) by substituting “the revision” for “the variation”,

and

(c) in subsection (3), by substituting “revise” for “vary”.

Amendment of section 24 of Act of 1996

10. Section 24(c) of the Act of 1996 is amended by substituting “revise” for “vary”.

Amendment of section 25 of Act of 1996

11. Section 25 of the Act of 1996 is amended—
- (a) by substituting “revised” for “varied”, and
 - (b) by substituting “revision” for “variation”.

Amendment of section 26 of Act of 1996

12. Section 26 of the Act of 1996 is amended—
- (a) by substituting the following subsection for subsection (3):

“(3) The Agency shall from time to time as it thinks appropriate, and at least once in each period of 6 years after the date of making of the hazardous waste management plan, evaluate the plan and make such revisions to it, in accordance with Article 9 of the Waste Directive and Regulation 31 of the Regulations of 2011, as it thinks fit and references in this Part to such a plan shall, unless the context otherwise requires, be construed as including references to such a plan as so revised.”,
 - (b) in subsection (4)(b)—
 - (i) in subparagraph (i), by substituting “revision” for “variation”, and
 - (ii) in subparagraph (ii), by substituting “revising” for “varying”,
 - (c) in subsection (7), by substituting “evaluation” for “review”, and
 - (d) by inserting the following subsection after subsection (9):

“(10) In this section, ‘revise’, in relation to the national hazardous waste management plan, includes a review of the plan.”.

Insertion of section 27A into Act of 1996

13. The Act of 1996 is amended by inserting the following section after section 27:
- “Waste prevention programmes.*
- 27A.(1) The Agency shall establish waste prevention programmes not later than 12 December 2013 in accordance with—
- (a) Article 1 of the Waste Directive (to lay down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use), and
 - (b) the waste hierarchy set out in section 21A.
- (2)(a) The programmes referred to in subsection (1) shall be integrated into the waste management plans provided for in section 22 or into other environmental policy programmes, as appropriate, or shall function as separate programmes.
- (b) Where such programmes are integrated into a waste management plan or into other programmes, the waste prevention measures shall be clearly identified.
- (3)(a) The programmes provided for in subsection (1) shall set out waste prevention objectives.
- (b) The Agency shall describe the existing prevention measures and evaluate the usefulness of the examples of measures indicated in the First Schedule or other appropriate measures.
 - (c) The aim of such objectives and measures shall be to break the link between economic growth and the environmental impacts associated with the generation of waste.
- (4) The Agency—
- (a) shall determine appropriate specific qualitative or quantitative benchmarks for waste prevention measures adopted in order to monitor and assess the progress of the measures, and
 - (b) may determine specific qualitative or quantitative targets and indicators, other than those referred to in subsection (5), for the same purpose.

(5) Indicators adopted in accordance with the procedure referred to in Article 39(3) of the Waste Directive shall have effect.

(6) The Agency shall from time to time as it thinks appropriate, and at least once in each period of 6 years after the date of making of a waste prevention programme, evaluate the plan and make such revisions to it, in accordance with Article 9 of the Waste Directive and Regulation 31 of the Regulations of 2011, as it thinks fit and references in Part II and this Part to such a plan shall, unless the context otherwise requires, be construed as including references to such a plan as so revised.

(7) Upon the establishment of a waste prevention programme or programmes or of any revisions thereto, the Agency shall—

(a) cause to be published in at least one national newspaper a notice of that fact and of the means by which a copy of the plan, as made or revised, may be obtained by members of the public at a cost not exceeding the reasonable cost of making a copy, and

(b) furnish a copy of the plan, as made or revised, to the Minister and each local authority, and any other public authority which in the opinion of the Agency has an interest in the programme or programmes.

(8) In this section, ‘revise’, in relation to a waste prevention programme, includes a review of the programme.”.

Amendment of section 29 of Act of 1996

14. Section 29 of the Act of 1996 is amended—

(a) by substituting the following subsection for subsection (1):

“(1) A reference in this section to the implementation and operation of a source separation programme for waste shall be construed as a reference to the taking of steps in a systematic manner for the purposes of—

(a) separating specified waste from other waste and the holding of such waste so separated prior to its collection, recovery or disposal, and

(b) giving effect to the requirements of Article 22 of the Waste Directive in relation to bio-waste.”, and

(b) by inserting the following subsections after subsection (2):

“(2A)(a) It shall be the duty of waste producers and holders to ensure that waste undergoes recovery operations in accordance with sections 21A and 32(1).

(b) A person who contravenes paragraph (a) shall be guilty of an offence.

(c) The Agency and the local authorities, in carrying out their functions under this Act and related waste management legislation and policy, shall take the necessary measures to ensure that waste undergoes recovery operations in accordance with this section and sections 21A and 32(1).

(2B) Where necessary to comply with subsection (2A) and to facilitate or improve recovery, waste shall be collected separately if technically, environmentally and economically practicable and shall not be mixed with other waste or other material with different properties.”.

Insertion of section 31A into Act of 1996

15. The Act of 1996 is amended by inserting the following section after section 31 but in Part III:

“Costs.

31A. In accordance with the polluter pays principle, the costs of waste management shall be borne by the original waste producer or by the current or previous waste holders.”.

Amendment of section 32 of Act of 1996

16. Section 32 of the Act of 1996 is amended—

(a) by substituting the following subsections for subsection (1):

“(1) A person shall not—

(a) cause or facilitate the abandonment, dumping or unauthorised management or treatment of waste, or

(b) hold, transport, recover or dispose of waste, or treat waste, in a manner that causes or is likely to cause environmental pollution.

(1A)(a) It shall be the responsibility of the original waste producer or other waste holder to carry out the treatment of waste himself or herself or have the treatment handled by a dealer or an establishment or undertaking which carries out waste treatment operations or arranged by a private or public waste collector in accordance with section 21A and subsection (1).

(b) The Agency, the local authorities and Dublin City Council shall take the necessary measures to ensure that, within their territory or area of responsibility, the establishments or undertakings which collect or transport waste on a professional basis deliver the waste collected and transported to appropriate treatment installations in accordance with subsection (1).”,

(b) by inserting the following subsections after subsection (2):

“(2A)(a) When the waste is transferred from the original waste producer or waste holder to an appropriate person for preliminary treatment, the responsibility for carrying out a complete recovery or disposal operation shall not be discharged as a general rule.

(b) Without prejudice to the TFS Regulation, the Agency and Dublin City Council, as the case may be, may specify the conditions of responsibility and decide in which cases the original producer is to retain responsibility for the whole treatment chain or in which cases the responsibility of the producer and the holder can be shared or delegated among the actors of the treatment chain.

(2B) The Minister or any Minister of the Government concerned may, in carrying out their functions under this Act, decide, by measures taken to give effect to Article 8 of the Waste Directive, that the responsibility for arranging waste management is to be borne partly or wholly by the producer of the product from which the waste came and that distributors of such product may share this responsibility.”,

(c) in subsection (5), by inserting “(including a dealer)” after “Act of 1992”,

(d) in subsection (6)(a), by substituting “(1), (1A)(a), (2)” for “(1), (2)”, and

(e) by deleting subsection (7).

Insertion of new section 37A into Act of 1996

17. The Act of 1996 is amended by inserting the following section after section 37:

“Principles of self-sufficiency and proximity.

37A.(1)(a) In carrying out their respective functions under this Act and related waste prevention and management legislation and policy, the Minister (in cooperation with other Member States where this is necessary or advisable), the Agency, An Bord Pleanála and the local authorities shall take appropriate measures to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including where such collection also covers such waste from other producers, taking into account best available techniques.

(b)(i) By way of derogation from the TFS Regulation, Dublin City Council may, following consultation with the Agency and any local authority concerned, in carrying out their respective functions under this Act in order to protect the national network, limit incoming shipments of waste destined to incinerators that are classified as recovery, where it has been established that such shipments would result in national waste having to be disposed of or waste having to be treated in a way that is not consistent with waste management plans.

(ii) Dublin City Council shall notify the Commission of any such decision.

(iii) Dublin City Council may also limit outgoing shipments of waste on environmental

grounds as set out in the TFS Regulation.

(2) The network shall be designed to enable the Community as a whole to become self-sufficient in waste disposal as well as in the recovery of waste referred to in subsection (1), and to enable the State to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

(3) The network shall enable waste to be disposed of or waste referred to in subsection (1) to be recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health.

(4) The principles of proximity and self-sufficiency shall not mean that the State has to possess the full range of final recovery facilities within the State.”.

Amendment of section 38 of Act of 1996

18. Section 38 of the Act of 1996 is amended by inserting the following subsection after subsection (5):

“(5A)(a) It shall be the duty of waste producers and holders to ensure that, where recovery in accordance with section 29(2A)(a) is not undertaken, waste undergoes safe disposal operations which meet the requirements of section 32(1) on the protection of human health and the environment.

(b) A person who contravenes paragraph (a) shall be guilty of an offence.

(c) The Agency and the local authorities shall, in carrying out their functions under this Act, take the necessary measures to ensure that waste undergoes recovery operations in accordance with this section.”.

Amendment of section 39 of Act of 1996

19. Section 39 of the Act of 1996 is amended—

(a) in subsection (1), by inserting “(including the treatment of waste)” after “recovery of waste”,

(b) by inserting the following subsection after subsection (5):

“(5A) Without prejudice to the generality of subsection (4), regulations under that subsection providing for an exemption from waste licensing requirements, in relation to the disposal of non-hazardous waste at the place of production or in relation to the recovery of waste, through a process of certification shall ensure compliance with—

(a) general rules—

(i) ensuring that environmental pollution is not caused by the disposal or recovery activity,

(ii) specifying the types and quantities of waste covered by an exemption in relation to the carrying out of each type of such recovery or disposal activity,

(iii) specifying the method of treatment to be used,

(iv) ensuring that disposal operations should consider best available techniques,

and

(b) specific conditions for exemptions relating to hazardous waste specifying—

(i) the types of activity,

(ii) any other necessary requirements for carrying out the different forms of recovery,

(iii) where relevant, the limit values for the content of hazardous substances in the waste as well as emission limit values”,

and

(c) in subsection (7)—

(i) by substituting “Subsection (1)” for “In addition to the exemption from its terms

provided for by section 51, subsection (1)”,

(ii) in paragraph (e), by inserting “and” after “Act of 1992”, and

(iii) by deleting paragraph (f).

Amendment of section 40 of Act of 1996

20. Section 40(4) of the Act of 1996 is amended—

(a) in paragraph (i), by substituting “satisfactory state,” for “satisfactory state.”, and

(b) by inserting the following paragraph after paragraph (i):

“(j) the intended method of treatment is acceptable from the point of view of environmental protection, in particular when the method is not in accordance with section 32(1).”.

Amendment of section 41 of Act of 1996

21. Section 41(2) of the Act of 1996 is amended—

(a) in paragraph (a)—

(i) by substituting “shall, as a minimum” for “shall, as appropriate”,

(ii) in subparagraphs (i) and (ii), by substituting “, disposed of or treated” for “or disposed of”,

(iii) by inserting the following subparagraphs after subparagraph (ii):

“(iia) for each type of operation permitted, the technical and any other requirements relevant to the site concerned,

(iib) the safety and precautionary measures to be taken,”,

(iv) in subparagraph (iii), by inserting “each type of operation involved in” after “with respect to ”,

(v) in subparagraph (vi), by inserting “as may be necessary” after “and control”,

(vi) in subparagraph (viii), by inserting “in accordance with section 15(2)” after “to be kept”, and

(vii) by inserting the following subparagraphs after subparagraph (x):

“(xi) specify requirements as may be necessary for the closure, restoration and remediation of, or the carrying out of aftercare in relation to, the facility concerned,

(xii) require that it shall be a condition of any waste licence covering incineration or co-incineration with energy recovery that the recovery of energy take place with a high level of energy efficiency.”,

and

(b) in paragraph (b), by deleting subparagraph (xv).

Amendment of section 42B of Act of 1996

22. Section 42B(1) of the Act of 1996 is amended—

(a) in paragraph (b), by substituting “condition,” for “condition, or”, and

(b) by inserting the following paragraph after paragraph (b):

“(bb) facilitating compliance by the holder of a licence with technical requirements that may be established, or amended, arising from the introduction of new Community acts or amendments to existing Community acts, or”.

Amendment of section 51 of Act of 1996

23. Section 51(2) of the Act of 1996 is amended by substituting the following paragraph for paragraph (a):

“(a) subject to paragraph (b), a waste licence under section 39 shall not be required for the recovery of sludge for use in agriculture.”.

Substitution of First to Fourth Schedules

24. The Act of 1996 is amended by substituting the following Schedules for the First to Fourth Schedules:

“FIRST SCHEDULE

EXAMPLES OF WASTE PREVENTION MEASURES REFERRED TO IN ARTICLE 29 OF WASTE DIRECTIVE

Section 27A(3)

Measures that can affect the framework conditions related to the generation of waste

1. The use of planning measures, or other economic instruments promoting the efficient use of resources.
2. The promotion of research and development into the area of achieving cleaner and less wasteful products and technologies and the dissemination and use of the results of such research and development.
3. The development of effective and meaningful indicators of the environmental pressures associated with the generation of waste aimed at contributing to the prevention of waste generation at all levels, from product comparisons at Community level through action by local authorities to national measures.

Measures that can affect the design and production and distribution phase

4. The promotion of eco-design (the systematic integration of environmental aspects into product design with the aim to improve the environmental performance of the product throughout its whole life cycle).
5. The provision of information on waste prevention techniques with a view to facilitating the implementation of best available techniques by industry.
6. Organise training of competent authorities as regards the insertion of waste prevention requirements in permits under the Waste Directive and Directive 2008/1/EC.
7. The inclusion of measures to prevent waste production at installations not falling under Directive 2008/1/EC. Where appropriate, such measures could include waste prevention assessments or plans.
8. The use of awareness campaigns or the provision of financial, decision making or other support to businesses. Such measures are likely to be particularly effective where they are aimed at, and adapted to, small and medium sized enterprises and work through established business networks.
9. The use of voluntary agreements, consumer/producer panels or sectoral negotiations in order that the relevant businesses or industrial sectors set their own waste prevention plans or objectives or correct wasteful products or packaging.
10. The promotion of creditable environmental management systems, including EMAS and ISO 14001.

Measures that can affect the consumption and use phase

11. Economic instruments such as incentives for clean purchases or the institution of an obligatory payment by consumers for a given article or element of packaging that would otherwise be provided free of charge.
12. The use of awareness campaigns and information provision directed at the general public or a specific set of consumers.
13. The promotion of creditable eco-labels.
14. Agreements with industry, such as the use of product panels such as those being carried out within the framework of Integrated Product Policies or with retailers on the availability of

waste prevention information and products with a lower environmental impact.

15. In the context of public and corporate procurement, the integration of environmental and waste prevention criteria into calls for tenders and contracts, in line with the Handbook on environmental public procurement published by the European Commission on 29 October 2004.

16. The promotion of the reuse and/or repair of appropriate discarded products or of their components, notably through the use of educational, economic, logistic or other measures such as support to or establishment of accredited repair and reuse-centres and networks especially in densely populated regions.

SECOND SCHEDULE

PROPERTIES OF WASTE WHICH RENDER IT HAZARDOUS

Section 4(1)

H 1 'Explosive': substances and preparations which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene.

H 2 'Oxidizing': substances and preparations which exhibit highly exothermic reactions when in contact with other substances, particularly flammable substances.

H 3-A 'Highly flammable'

— liquid substances and preparations having a flash point below 21°C (including extremely flammable liquids),

— substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any application of energy,

— solid substances and preparations which may readily catch fire after brief contact with a source of ignition and which continue to burn or to be consumed after removal of the source of ignition,

— gaseous substances and preparations which are flammable in air at normal pressure, or

— substances and preparations which, in contact with water or damp air, evolve highly flammable gases in dangerous quantities.

H 3-B 'Flammable': liquid substances and preparations having a flash point equal to or greater than 21°C and less than or equal to 55°C.

H 4 'Irritant': non-corrosive substances and preparations which, through immediate, prolonged or repeated contact with the skin or mucous membrane, can cause inflammation.

H 5 'Harmful': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may involve limited health risks.

H 6 'Toxic': substances and preparations (including very toxic substances and preparations) which, if they are inhaled or ingested or if they penetrate the skin, may involve serious, acute or chronic health risks and even death.

H 7 'Carcinogenic': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce cancer or increase its incidence.

H 8 'Corrosive': substances and preparations which may destroy living tissue on contact.

H 9 'Infectious': substances and preparations containing viable micro-organisms or their toxins which are known or reliably believed to cause disease in man or other living organisms.

H 10 'Toxic for reproduction': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce non-hereditary congenital malformations or increase their incidence.

H 11 ‘Mutagenic’: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce hereditary genetic defects or increase their incidence.

H 12 Waste which releases toxic or very toxic gases in contact with water, air or an acid.

H 13 ‘Sensitizing’: (as far as testing methods are available) substances and preparations which, if they are inhaled or if they penetrate the skin, are capable of eliciting a reaction of hypersensitization such that on further exposure to the substance or preparation, characteristic adverse effects are produced.

H 14 ‘Ecotoxic’: waste which presents or may present immediate or delayed risks for one or more sectors of the environment.

H 15 Waste capable by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics listed above.

Notes

1. Attribution of the hazardous properties ‘toxic’ (and ‘very toxic’), ‘harmful’, ‘corrosive’, ‘irritant’, ‘carcinogenic’, ‘toxic to reproduction’, ‘mutagenic’ and ‘eco-toxic’ is made on the basis of the criteria laid down by Annex VI, to Council Directive 67/548/EEC of 27 June 1967⁹ on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances.

2. Where relevant the limit values listed in Annex II and III to Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999¹⁰ concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labeling of dangerous preparations shall apply.

Test methods

The methods to be used are described in Annex V to the Directive referred to in Note 1 in this Schedule and in other relevant CEN-notes.

THIRD SCHEDULE

DISPOSAL OPERATIONS

Section 4(1)

D 1 Deposit into or on to land (e.g. landfill, etc.)

D 2 Land treatment (e.g. biodegradation of liquid or sludgy discards in soils, etc.)

D 3 Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)

D 4 Surface impoundment (e.g. placement of liquid or sludgy discards into pits, ponds or lagoons, etc.)

D 5 Specially engineered landfill (e.g. placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)

D 6 Release into a water body except seas/oceans

D 7 Release to seas/oceans including sea-bed insertion

D 8 Biological treatment not specified elsewhere in this Schedule which results in final compounds or mixtures which are discarded by means of any of the operations numbered D 1 to D 12

D 9 Physico-chemical treatment not specified elsewhere in this Schedule which results in final

compounds or mixtures which are discarded by means of any of the operations numbered D 1 to D 12 (e.g. evaporation, drying, calcination, etc.)

D 10 Incineration on land

D 11 Incineration at sea (this operation is prohibited by EU legislation and international conventions)

D 12 Permanent storage (e.g. emplacement of containers in a mine, etc.)

D 13 Blending or mixing prior to submission to any of the operations numbered from D 1 to 12 (if there is no other D code appropriate, this can include preliminary operations prior to disposal including pre-processing such as, amongst others, sorting, crushing, compacting, pelletising, drying, shredding, conditioning or separating prior to submission to any of the operations numbered D1 to D12)

D 14 Repackaging prior to submission to any of the operations numbered D 1 to D 13

D 15 Storage pending any of the operations numbered D 1 to D 14 (excluding temporary storage (being preliminary storage according to the definition of 'collection' in section 5(1)), pending collection, on the site where the waste is produced).

FOURTH SCHEDULE

RECOVERY OPERATIONS

Section 4(1)

R 1 Use principally as a fuel or other means to generate energy: This includes incineration facilities dedicated to the processing of municipal solid waste only where their energy efficiency is equal to or above:

— 0.60 for installations in operation and permitted in accordance with applicable Community acts before 1 January 2009,

— 0.65 for installations permitted after 31 December 2008,

using the following formula, applied in accordance with the reference document on Best Available Techniques for Waste Incineration:

$$\text{Energy efficiency} = (E_p - (E_f + E_i)) / (0.97 \times (E_w + E_f))$$

where—

'E_p' means annual energy produced as heat or electricity and is calculated with energy in the form of electricity being multiplied by 2.6 and heat produced for commercial use multiplied by 1.1(GJ/year),

'E_f' means annual energy input to the system from fuels contributing to the production of steam (GJ/year),

'E_w' means annual energy contained in the treated waste calculated using the net calorific value of the waste (GJ/year),

'E_i' means annual energy imported excluding E_w and B_f(GJ/year),

'0.97' is a factor accounting for energy losses due to bottom ash and radiation.

R 2 Solvent reclamation/regeneration

R 3 Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes), which includes gasification and pyrolysis using the components as chemicals

R 4 Recycling/reclamation of metals and metal compounds

R 5 Recycling/reclamation of other inorganic materials, which includes soil cleaning resulting

in recovery of the soil and recycling of inorganic construction materials

R 6 Regeneration of acids or bases

R 7 Recovery of components used for pollution abatement

R 8 Recovery of components from catalysts

R 9 Oil re-refining or other reuses of oil

R 10 Land treatment resulting in benefit to agriculture or ecological improvement

R 11 Use of waste obtained from any of the operations numbered R 1 to R 10

R 12 Exchange of waste for submission to any of the operations numbered R 1 to R 11 (if there is no other R code appropriate, this can include preliminary operations prior to recovery including pre-processing such as, amongst others, dismantling, sorting, crushing, compacting, pelletising, drying, shredding, conditioning, repackaging, separating, blending or mixing prior to submission to any of the operations numbered R1 to R11)

R 13 Storage of waste pending any of the operations numbered R 1 to R 12 (excluding temporary storage (being preliminary storage according to the definition of ‘collection’ in section 5(1)), pending collection, on the site where the waste is produced”).

PART 3 REGULATIONS TO GIVE EFFECT TO WASTE DIRECTIVE

Interpretation — Part 3

25. (1) In this Part, “list of waste” means the list of waste set out in Commission Decision 2000/532/EC of 3 May 2000¹¹ replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste.

(2) Sections 4 and 5 of the Act of 1996 shall apply to the interpretation of this Part as they apply to the interpretation of that Act.

Non-application of Part 3

26. (1) This Part shall not apply to—

(a) gaseous effluents emitted into the atmosphere and carbon dioxide captured and transported for the purposes of geological storage and geologically stored in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide or excluded from the scope of that Directive pursuant to Article 2(2) of that Directive,

(b) land (in situ) including unexcavated contaminated soil and buildings permanently connected with land,

(c) uncontaminated soil and other naturally occurring material excavated in the course of construction activities where it is certain that the material will be used for the purposes of construction in its natural state on the site from which it was excavated,

(d) radioactive waste,

(e) decommissioned explosives,

(f) faecal matter, if not covered by subparagraph (2)(b), straw and other natural non-hazardous agricultural or forestry material used in farming, forestry or for the production of energy from such bio-mass through processes or methods which do not harm the environment or endanger human health.

(2) This Part shall not apply to the following to the extent that they are covered by other Community acts:

(a) waste waters;

(b) animal by-products, including processed products covered by Regulation (EC) No. 1069/2009, except those which are destined for incineration, landfilling or use in a biogas or composting plant;

(c) carcasses of animals that have died other than by being slaughtered, including animals killed to eradicate epizootic diseases, and that are disposed of in accordance with Regulation (EC) No. 1069/2009;

(d) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries covered by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries.

(3) Without prejudice to obligations under other relevant Community acts, this Part shall not apply to sediments relocated inside surface waters for the purpose of managing waters and waterways or of preventing floods or mitigating the effects of floods and droughts or land reclamation if it is proved that the sediments are non-hazardous.

By-products

27. (1) A substance or object, resulting from a production process, the primary aim of which is not the production of that item, may be regarded as not being waste but as being a by-product only if the following conditions are met:

(a) further use of the substance or object is certain;

(b) the substance or object can be used directly without any further processing other than normal industrial practice;

(c) the substance or object is produced as an integral part of a production process; and

(d) further use is lawful in that the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

(2)(a) Where an economic operator makes a decision in accordance with paragraph (1) that a substance or object is to be regarded as a by-product, he or she shall notify the Agency of the decision and the grounds for the decision.

(b) Where there is no notice given to the Agency under subparagraph (a) in respect of a substance or object and the substance or object, as the case may be, is discarded or otherwise dealt with as if it were waste, the substance or object, as the case may be, shall be presumed to be waste until the contrary is proved.

(3) The Agency—

(a) may determine, in consultation with the relevant local authority and the economic operator concerned, whether a substance or object notified to it as a by-product in accordance with paragraph (2)(a) should be considered as waste, and

(b) shall notify the local authority and the economic operator concerned in circumstances where a determination is made that a substance or object should be considered as waste and not as a by-product.

(4) Nothing in this Regulation shall relieve an economic operator from his or her responsibilities under the Act of 1992 or the Act of 1996.

(5) The Agency shall establish and maintain a register of by-products to record substances or objects notified to it as by-products under paragraph (2)(a).

(6) Where the Agency makes a determination in accordance with paragraph (3) that a substance or object should be considered as waste and not as a by-product, the determination shall be final.

End-of-waste status

28. (1)(a) Certain specified waste shall cease to be waste when it has undergone a recovery, including recycling, operation and complies with specific criteria to be developed in accordance with the following conditions:

(i) the substance or object is commonly used for specific purposes;

(ii) a market or demand exists for such a substance or object;

(iii) the substance or object fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products; and

(iv) the use of the substance or object will not lead to overall adverse environmental or human health impacts.

(b) The criteria referred to in subparagraph (a) shall—

(i) include limit values for pollutants where necessary, and

(ii) take into account any possible adverse environmental effects of the substance or object.

(2) Waste which ceases to be waste in accordance with subparagraph (1) shall by virtue of that cesser also cease to be waste for the purpose of the recovery and recycling targets set out in—

(a) Directive 94/62/EC, Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000¹² on end-of-life vehicles, Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003¹³ on waste electrical and electronic equipment (WEEE) and Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006¹⁴ on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC, and

(b) other relevant Community acts when the recycling or recovery requirements of those acts are satisfied.

(3)(a) Where criteria have not been set at Community level as referred to in paragraphs 1 and 2 of Article 6 of the Waste Directive, the Agency may decide case by case whether certain waste has ceased to be waste in accordance with the criteria set out in paragraph (1) taking into account the applicable case law.

(b) The Agency shall notify the Minister and the standardisation bodies referred to in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998¹⁵ laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, of any such decision where so required by that Directive, who shall notify the Commission.

List of waste

29. (1)(a) The list of waste shall include hazardous waste and shall take into account the origin and composition of the waste and, where necessary, the limit values of concentration of hazardous substances.

(b) The inclusion of a substance or object in the list of waste shall not mean that it is waste in all circumstances.

(c) A substance or object shall be considered to be waste only where the definition of “waste” in section 4 of the Act of 1996 is met.

(2)(a) The Agency may consider waste as hazardous waste where, even though it does not appear as such on the list of waste, it displays one or more of the properties listed in the Second Schedule to the Act of 1996.

(b) The Agency shall notify the Minister who shall notify the Commission of any such cases without delay.

(3) Where the Agency has evidence to show that specific waste that appears on the list as hazardous waste does not display any of the properties listed in the Second Schedule to the Act of 1996, the Agency may consider that waste as non-hazardous waste and shall notify the Minister with the appropriate documentation, who shall notify the Commission of any such cases without delay and shall provide the Commission with the necessary evidence.

(4) The reclassification of hazardous waste as non-hazardous waste shall not be achieved by diluting or mixing the waste with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous.

(5) The Agency may consider waste as non-hazardous waste in accordance with the list of waste.

(6)(a) The list of waste shall be binding in the State as regards determination of the waste which is to be considered as hazardous waste.

(b) Where revision of the list of waste is made through Community acts, the revised list of waste shall have legal effect pursuant to this Part, and the Agency shall—

(i) organise and promote, or assist in organising and promoting, conferences, seminars, lectures, demonstrations, training courses or publications for persons involved in the management of hazardous waste, and

(ii) take the necessary measures, in accordance with its functions under the Act of 1996, to ensure that the list is implemented under this Part.

(7) Where a waste producer has evidence that—

(a) any waste displays one or more of the properties listed in the Second Schedule to the Act of 1996 and ought to be considered as a hazardous waste under paragraph (2), or

(b) any waste, while appearing on the list as hazardous waste, does not display any of the properties listed in the Second Schedule to the Act of 1996 and ought to be considered as a non-hazardous waste under paragraph (3),

the producer shall provide the Agency with the evidence and request it to make a determination regarding the nature of the waste as hazardous or non-hazardous.

(8) Where the Agency receives a request under paragraph (7), it shall make the determination sought by the request and notify the appellant in writing, within 15 working days of the receipt of the request, of the determination.

(9) Where the Agency makes a determination in accordance with paragraphs (7) and (8), the determination shall be final.

Extended producer responsibility

30. (1)(a) In order to strengthen the re-use and the prevention, recycling and other recovery of waste, the Minister or any Minister of the Government concerned may take non-legislative measures to ensure that any person who professionally develops, manufactures, processes, treats, sells or imports products (in this Part referred to as the “producer of the product”) has extended producer responsibility.

(b) Such measures may include an acceptance of returned products and of the waste that remains after those products have been used, as well as the subsequent management of the waste and financial responsibility for such activities.

(c) These measures may include the obligation to provide publicly available information as to the extent to which the product is re-usable and recyclable.

(2)(a) The Minister or any Minister of the Government concerned may take appropriate measures to encourage the design of products in order to reduce their environmental impacts and the generation of waste in the course of the production and subsequent use of products, and in order to ensure that the recovery and disposal of products that have become waste take place in accordance with sections 21A and 32(1) of the Act of 1996 and Regulation 32.

(b) Such measures may encourage, amongst others, the development, production and marketing of products that are suitable for multiple use, that are technically durable and that are, after having become waste, suitable for proper and safe recovery and environmentally compatible disposal.

(3) When applying extended producer responsibility, the Minister or any Minister of the Government concerned shall take into account the technical feasibility and economic viability and the overall environmental, human health and social impacts, respecting the need to ensure the proper functioning of the internal market of the European Union.

(4) Any extended producer responsibility advanced under the measures referred to in paragraph (1) shall be applied without prejudice to the responsibility for waste management as provided for in section 32(1A) of the Act of 1996 and without prejudice to existing waste stream specific and product specific legislation.

Re-use and recycling

31. (1)(a) The Minister or any Minister of the Government concerned shall take measures, as

appropriate, to promote the re-use of products and preparing for re-use activities, notably by encouraging—

- (i) the establishment and support of re-use and repair networks,
- (ii) the use of economic instruments, procurement criteria, quantitative objectives, or
- (iii) other measures.

(b) The Minister or any Minister of the Government concerned, the Agency or the local authorities shall, in carrying out their respective functions under the Act of 1996, take measures to promote high quality recycling and, to this end, shall set up separate collections of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors.

(c) Subject to section 29(2B) of the Act of 1996, by 2015 separate collection shall be set up for at least the following waste:

- (i) paper;
- (ii) metal;
- (iii) plastic; and
- (iv) glass.

(2) In order to comply with the objectives of the Waste Directive, and move towards a European recycling society with a high level of resource efficiency, and without prejudice to any other targets or obligations which may apply as a result of waste prevention and management legislation and policy, the Minister, the Agency and the local authorities shall, in carrying out their respective functions under the Act of 1996, take the necessary measures designed to achieve the following targets:

(a) by 2020, the preparing for re-use and the recycling of waste materials such as, at least, paper, metal, plastic and glass from households and possibly from other origins as far as these waste streams are similar to waste from households, shall be increased to a minimum of overall 50% by weight;

(b) by 2020, the preparing for re-use, recycling and other material recovery, including backfilling operations using waste to substitute other materials, of non-hazardous construction and demolition waste excluding naturally occurring material defined in category 17 05 04 in the list of waste shall be increased to a minimum of 70% by weight.

(3) The Agency shall comply with rules established by the Commission as referred to in Article 11 of the Waste Directive on the application and the calculation methods for verifying compliance with the targets set out in paragraph (2).

(4)(a) Every 3 years, in accordance with the reporting format set by the Commission, the Minister, in consultation with the Agency, shall report to the Commission on the State's record with regard to meeting the targets.

(b) If targets are not met, this report shall include the reasons for failure and the actions that the State intends to take to meet those targets.

Protection of human health and environment

32. (1) A person holding, treating or otherwise in control of waste shall ensure that waste management is carried out without endangering human health, without harming the environment and, in particular—

- (a) without risk to water, air, soil, plants or animals,
- (b) without causing a nuisance through noise or odours, and
- (c) without adversely affecting the countryside or places of special interest.

(2) A person who contravenes paragraph (1) shall be guilty of an offence.

(3) The Agency and the local authorities shall, in carrying out their respective functions under the Act of 1996, take the necessary enforcement measures to ensure that waste management is carried out in accordance with paragraph (1).

Control of hazardous waste

33. (1) It shall be the duty of waste producers and waste holders to ensure that the production, collection and transportation of hazardous waste, as well as its storage and treatment, are carried out in conditions providing protection for the environment and human health in order to meet the requirements of section 32(1) of the Act of 1996 and Regulation 32, including action to ensure traceability from production to final destination and control of hazardous waste in order to meet the requirements of section 15(2) of the Act of 1996 and Regulations 45 and 50.

(2) A person who contravenes paragraph (1) shall be guilty of an offence.

(3) The Minister and any Minister of the Government concerned, the Agency, the local authorities and Dublin City Council, in carrying out their respective functions under the Act of 1996, shall take the necessary action to ensure that the requirements of this Regulation are met.

Ban on the mixing of hazardous waste

34. (1)(a) It shall be the duty of waste producers and waste holders to ensure that hazardous waste is not mixed, either with other categories of hazardous waste or with other waste, substances or materials.

(b) Mixing shall include the dilution of hazardous substances.

(c) A person who contravenes subparagraph (a) shall be guilty of an offence.

(2)(a) The Agency and the local authorities shall, in carrying out their respective functions under the Act of 1996, take the necessary measures to ensure that the requirements of paragraph (1) are met unless a derogation has been granted by the Agency under paragraph (3).

(b) An application for a derogation under this paragraph shall be submitted in such form as may be specified by the Agency.

(3) By way of derogation from paragraph (1), the Agency may allow mixing provided that—

(a) the mixing operation is carried out by an establishment or undertaking which has obtained authorisation in accordance with section 39(1) of the Act of 1996,

(b) the requirements of section 32(1) of the Act of 1996 and Regulation 32 are complied with and the adverse impact of the waste management on human health and the environment is not increased, and

(c) the mixing operation conforms to best available techniques.

(4) Subject to technical and economic feasibility criteria, where hazardous waste has been mixed in a manner contrary to paragraph (1), separation shall be carried out where possible and necessary in order to comply with section 32(1) of the Act of 1996 and Regulation 32.

Labelling of hazardous waste

35. (1)(a) It shall be the duty of waste producers and waste holders to take the necessary measures to ensure that, in the course of the collection, transport and temporary storage of hazardous waste, such waste is packaged and labelled in accordance with the international and Community standards in force.

(b) A person who contravenes subparagraph (a) shall be guilty of an offence.

(2)(a) Whenever hazardous waste is physically transferred within the State by a person, it shall be accompanied by an identification document, which shall be in electronic format, containing the appropriate data specified in Annex IB to the TFS Regulation.

(b) A person who contravenes subparagraph (a) shall be guilty of an offence.

(3) The Agency, the local authorities and Dublin City Council, in carrying out their respective functions under the Act of 1996, shall take the necessary measures to ensure that the requirements of paragraphs (1) and (2) are met.

(4) Nothing in this Regulation shall conflict with the requirements of any enactment in respect of chemicals and the movement of dangerous goods.

Hazardous waste produced by households

36. (1) Section 15(2) of the Act of 1996 and Regulations 33, 34, 35 and 45 shall not apply to mixed

waste produced by households.

(2) Section 15(2) of the Act of 1996 and Regulations 35 and 45 shall not apply to separate fractions of hazardous waste produced by households until they are accepted for collection, disposal or recovery by an establishment or an undertaking which has obtained a waste licence or has been registered in accordance with section 39(1) of the Act of 1996 or Regulation 39.

Waste oils

37. Without prejudice to the obligations related to the management of hazardous waste laid down in Regulations 34 and 35, the Agency and the local authorities and Dublin City Council shall, in carrying out their respective functions under the Act of 1996, take the necessary measures to ensure that—

- (a) waste oils are collected separately, where this is technically feasible,
- (b) waste oils are treated in accordance with sections 21A and 32(1) of the Act of 1996 and Regulation 32, and
- (c) where this is technically feasible and economically viable, waste oils of different characteristics are not mixed and waste oils are not mixed with other kinds of waste or substances, if such mixing impedes their treatment.

Bio-waste

38. The Minister shall take measures, as appropriate, and in accordance with sections 21A and 32(1) of the Act of 1996 and Regulation 32, to encourage—

- (a) the separate collection of bio-waste with a view to the composting and digestion of bio-waste,
- (b) the treatment of bio-waste in a way that fulfils a high level of environmental protection, and
- (c) the use of environmentally safe materials produced from bio-waste.

Registration

39. (1)(a) Where the following are exempted from specific waste licensing requirements and are subject to a process of certification, the Agency, the relevant local authorities or Dublin City Council, as may be appropriate to their functions, shall keep a register of—

- (i) establishments or undertakings which collect or transport waste on a professional basis,
- (ii) dealers or brokers, and
- (iii) establishments or undertakings which are subject to exemptions from the licence requirements pursuant to section 39(4) of the Act of 1996.

(b) Where possible, existing records held by the authorities referred to in subparagraph (a) shall be used to obtain the relevant information for this registration process in order to reduce the administrative burden.

(2) The entries referred to in the registers referred to in paragraph (1) shall comply with—

- (a) article 41 of the Waste Management (Facility Permit and Registration) Regulations 2007 (S.I. No. 821 of 2007),
- (b) article 34 of the Waste Management (Collection Permit) Regulations 2007 (S.I. No. 820 of 2007),
- (c) articles 4 and 5 of the Waste Management (Registration of Brokers and Dealers) Regulations 2008 (S.I. No. 113 of 2008), and
- (d) article 48(2) of the Waste Management (Licensing) Regulations 2004 (S.I. No. 395 of 2004).

Minimum standards

40. Where technical minimum standards for treatment activities which require a waste authorisation pursuant to section 39(1) of the Act of 1996 are set by Community acts, the standards shall have legal effect pursuant to this Part and the Agency and the local authorities shall take the necessary measures to ensure that they are implemented when carrying out their respective functions under the

Act of 1996 and related waste prevention and management legislation and policy.

Public participation

41. (1) The local authorities and the Agency shall ensure that relevant stakeholders and authorities and the general public have the opportunity to participate in the elaboration of the waste management plans and waste prevention programmes, and have access to them once elaborated, in accordance with Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003¹⁶ providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 2008/1/EC or, if relevant, Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001¹⁷ on the assessment of the effects of certain plans and programmes on the environment.

(2) The local authorities and the Agency shall place the plans and programmes on a publicly available website.

(3) The procedures set out in sections 22(5), 23(1) and 26(4) of the Act of 1996 shall apply, as appropriate, to meet the requirements of this Regulation.

Cooperation

42. The Agency and the local authorities concerned shall cooperate as appropriate with the other Member States concerned and the Commission to draw up the waste management plans and the waste prevention programmes in accordance with sections 22 and 27A of the Act of 1996.

Information to be submitted to the Commission

43. (1) The Minister shall inform the Commission of the waste management plans and waste prevention programmes referred to in sections 22 and 27A of the Act of 1996, once adopted, and of any substantial revisions to the plans and programmes.

(2) Where the format for notifying the information on the adoption and substantial revisions of those plans and programmes is prescribed through Community acts, the Agency, or the local authorities, as appropriate, shall take the necessary measures to ensure that the prescribed format is used when copies of the national hazardous waste management plan, waste prevention programmes or waste management plans are required to be forwarded to the Minister.

Inspections

44. (1) Establishments or undertakings which carry out waste treatment operations, establishments or undertakings which collect or transport waste on a professional basis, brokers and dealers, and establishments or undertakings which produce hazardous waste shall be subject to appropriate periodic inspections by the local authorities, the Agency and Dublin City Council, as appropriate.

(2) Inspections concerning collection and transport operations shall cover the origin, nature, quantity and destination of the waste collected and transported.

(3) The authorities referred to in paragraph (1) may take account of registrations obtained under the Community Eco-Management and Audit Scheme (in this Part referred to as “EMAS”), in particular regarding the frequency and intensity of inspections.

Record keeping

45. (1) The establishments or undertakings referred to in section 39(1) of the Act of 1996, the producers of hazardous waste and the establishments and undertakings which collect or transport hazardous waste on a professional basis, or act as dealers and brokers of hazardous waste, shall keep a chronological record of the quantity, nature and origin of the waste, and, where relevant, the destination, frequency of collection, mode of transport and treatment method foreseen in respect of the waste, and shall make that information available, on request, to the local authorities, the Agency or Dublin City Council, as appropriate.

(2)(a) For hazardous waste, the records shall be preserved for at least 3 years (except in the case of establishments and undertakings transporting hazardous waste which shall keep such records for at least 12 months).

(b) Documentary evidence that the management operations have been carried out shall be supplied by the establishment or undertaking concerned at the request of the local authorities, the

Agency or Dublin City Council or of a previous holder.

(3) The local authorities, the Agency or Dublin City Council, as appropriate, may require the producers of non-hazardous waste to comply with paragraphs (1) and (2) in such form, and at such frequency, as may be specified for the purposes of reporting under Regulation 52.

(4) A person who contravenes paragraph (1) or (2) shall be guilty of an offence.

Powers of authorised person

46. (1) An authorised person may, for any purpose connected with this Part—

(a) at all reasonable times, or at any time if he or she has reasonable grounds for believing that there may be a risk of environmental pollution arising from the carrying on of an activity at the premises or that such pollution is occurring, enter any premises and bring thereon such other persons (including members of the Garda Síochána) or equipment as he or she may consider necessary for the purpose, and

(b) at any time halt (if necessary) and board any vehicle and have it taken, or require the driver of the vehicle to take it, to a place designated by the authorised person, and such a vehicle may be detained at that place by the authorised person, for such period as he or she may consider necessary for the purpose.

(2) Subject to paragraph (7), an authorised person shall not, other than with the consent of the occupier, enter into a private dwelling under this Regulation unless he or she has given to the occupier of the dwelling not less than 24 hours notice in writing of his or her intended entry.

(3) Every authorised person when exercising any power conferred on him or her by or under this Part, shall, if requested by any person affected, produce the certificate furnished to him or her under section 14(3) of the Act of 1996.

(4) Whenever an authorised person enters any premises or boards any vehicle, pursuant to this Regulation, the authorised person may therein, as appropriate—

(a) make such plans, take such photographs, record such information on data loggers, make such tape, electrical, video or other recordings and carry out such inspections,

(b) make such copies of documents and records (including records in electronic form) found therein and take such samples,

(c) carry out such surveys, take such levels, make such excavations and carry out such examinations of depth and nature of subsoil,

(d) require that the premises or vehicle or any part of the premises or anything in the premises or vehicle shall be left undisturbed for such period,

(e) require from an occupier of the premises or any occupant of the vehicle or any person employed on the premises or any other person on the premises, such information,

(f) require the production of and inspect such records and documents, (including records held in electronic form) and take copies of or extracts from, or take away if considered necessary for the purposes of inspection or examination, any such records or documents,

as the authorised person, having regard to all the circumstances, considers necessary for the purposes of exercising any power conferred on him or her by or under this Part.

(5)(a) An authorised person who, having entered any premises or boarded any vehicle, pursuant to this Regulation, considers that waste thereon or therein is such, or is being handled or transported in such manner, as to constitute a risk of environmental pollution, may direct the holder of such waste to take such measures as are considered by that authorised person to be necessary to remove that risk, including, the disposal of the waste, in such manner and place and within such period as the authorised person may specify.

(b) If a holder of waste fails to comply with a direction of an authorised person under this paragraph, the authorised person may do all things as are necessary to ensure that the direction is carried out and the costs incurred by him or her in doing any such thing shall be recoverable from the holder of the waste by him or her, or the person by whom he or she was appointed, as a simple contract debt in any court of competent jurisdiction.

(6) Any person who—

(a) refuses to allow an authorised person to enter any premises or board any vehicle or to take any person or equipment with him or her in the exercise of his or her powers under this Regulation,

(b) obstructs or impedes an authorised person in the exercise of any of his or her powers under this Regulation,

(c) gives either to an authorised person, a relevant local authority or the Agency, information which to his or her knowledge is false or misleading in a material respect, or

(d) fails or refuses to comply with any requirement of this Regulation or of an authorised person,

shall be guilty of an offence.

(7)(a) Where an authorised person in the exercise of his or her powers under this Regulation is prevented from entering any premises or if an authorised person has reason to believe that evidence related to a suspected offence under this Part may be present in any premises and that the evidence may be removed therefrom or destroyed, the authorised person or the person by whom he or she was appointed may apply to a judge of the District Court for a warrant under this paragraph authorising the entry by the authorised person into the premises.

(b) If on application being made to him or her under this paragraph, a judge of the District Court is satisfied, on the sworn information of the applicant, that the authorised person concerned has been prevented from entering a premises as aforesaid or that the authorised person has reasonable grounds for believing the other matters aforesaid, the judge may issue a warrant under his or her hand authorising that person, accompanied, if the judge deems it appropriate so to provide, by such number of members of the Garda Síochána as may be specified in the warrant, at any time or times within one month from the date of the issue of the warrant, on production if so requested of the warrant, to enter, if need be by force, the premises concerned and exercise the powers referred to in paragraph (4) or (5).

(8) An authorised person may, in the exercise of any power conferred on him or her by this Part involving the bringing of any vehicle to any place, or where he or she anticipates any obstruction in the exercise of any other power conferred on him or her by or under this Part, request a member of the Garda Síochána to assist him or her in the exercise of such a power and any member of the Garda Síochána of whom he or she makes such a request shall comply therewith.

(9) An authorised person may enter on land for the purpose of assessing the suitability of the land for waste disposal; such an entry shall be subject to the relevant provisions of section 252 (other than subsection (7)) of the Planning and Development Act 2000 (No. 30 of 2000) as if it were an entry made under that section.

Monitoring

47. (1) Each local authority and the Agency shall carry out, or cause to be carried out, such monitoring of the nature, extent and effects of emissions to the environment arising from the holding, recovery or disposal of waste as it considers to be necessary for the performance of its functions under this Part.

(2) Each local authority and the Agency shall keep and maintain or cause to be kept and maintained, such records of any monitoring carried out by it under paragraph (1) as it considers reasonable and necessary.

(3)(a) Where it appears necessary so to do for any purpose of this Part, a local authority or the Agency may require any person who holds or is in control of the recovery or disposal of any waste to carry out or arrange to have carried out such monitoring in relation to the activity concerned as the local authority or the Agency may specify and to keep and to supply to the local authority or the Agency such records of the said monitoring as the local authority or the Agency may specify.

(b) A person who fails to comply with a requirement under this paragraph shall be guilty of an offence.

(4) Each local authority and the Agency shall, if so requested by the Minister, supply to the Minister or to any person specified by the Minister, at such intervals and in such manner as the Minister may require, records of any monitoring carried out under this Regulation that are in its possession or control.

(5) Each local authority and the Agency shall carry out or take or cause to be carried out or taken such monitoring or other measures as it considers necessary to verify that any monitoring or records of such monitoring required by it under paragraph (3) to be carried out or kept are being carried out or kept.

Service of notices

48. (1) Any notice required to be served or given by or under this Part shall be addressed to the person concerned and served or given in one of the following ways—

- (a) by addressing it to the person by name and delivering it to him or her,
- (b) by leaving it at the address at which the person ordinarily resides,
- (c) by sending it by post in a prepaid registered letter addressed to the person at the address at which he or she ordinarily resides,
- (d) if an address for the service of notices has been furnished by the person, by leaving it at, or sending it by prepaid registered post addressed to him or her to, that address, or
- (e) where the address at which the person ordinarily resides cannot be ascertained by reasonable inquiry and notice is required to be served on, or given to, him or her in respect of any premises, by delivering it to a person over the age of 16 years of age resident in or employed on the premises, or by affixing it in a conspicuous position on or near the premises.

(2) Where the name of the person concerned cannot be ascertained by reasonable inquiry, a notice under this Part may be addressed to “the occupier”, “the owner” or “the person in charge”, as the case may be.

(3) For the purposes of this Regulation, a company registered under the Companies Acts shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) A person shall not at any time during the period of 3 months after a notice is affixed under paragraph (1)(e) remove, damage or deface the notice without lawful authority.

(5) A person who contravenes paragraph (4) shall be guilty of an offence.

Information

49. (1) The Minister, a local authority or the Agency may, for any purpose relating to his or her or its functions under this Part, by the service of a notice in writing on the person, require—

- (a) any waste holder,
- (b) any person, engaged in the importation, exportation, production, collection, recovery or disposal of waste, or any related or ancillary activity,
- (c) any person acting as a waste broker or dealer, or
- (d) the occupier or person in charge of any waste facility,

to maintain such records and to furnish in writing to the Minister, local authority or Agency, as the case may be, within such period (being not less than 14 days after the date of the service of the notice) and, if appropriate, thereafter at such frequency as may be specified in the notice, such particulars, as to—

- (i) any activity or process as aforesaid or any facility concerned,
- (ii) provision proposed to be made or made or measures taken for the importation, exportation, collection, recovery or disposal of any waste concerned,
- (iii) the origin, type, quantity, nature, composition and properties of waste concerned, or
- (iv) any other related or ancillary matter,

as may be so specified.

(2) A person who fails to comply with a notice under this Regulation or who furnishes any information in reply to such a notice which he or she knows to be false or misleading in a material respect shall be guilty of an offence.

(3) Information obtained under this Regulation by a local authority, or any summary or compilation of, or any report based on, such information may, and shall if the Minister or the Agency so requests, be furnished to the Minister or the Agency, as the case may be.

(4) Each local authority and the Agency shall compile or otherwise obtain, and furnish to the Minister, such statistics or other information relating to any aspect of waste production and management, at such frequency, as may be specified in writing by the Minister.

(5) Where the Agency or a local authority brings proceedings against a person in respect of an offence under this Part, and the person is convicted of that offence, the Agency or the local authority, as the case may be, shall, as soon as may be after the conviction of the person, inform each local authority or, as the case may be, each other local authority and the Agency of the fact that the person has been so convicted, giving such details, as it thinks appropriate, of the nature of the offence.

Enforcement and penalties

50. (1) Each legal authority, the Agency or Dublin City Council, as appropriate, shall take the necessary enforcement measures to prohibit the abandonment, dumping or uncontrolled management of waste.

(2) A prosecution for a summary offence under this Part may be taken by the local authority, the Agency or Dublin City Council.

(3) A person guilty of an offence under these Regulations is liable—

(a) on summary conviction, to a class B fine or imprisonment for a term not exceeding 3 months or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years or both.

Offences by bodies corporate

51. (1) Where an offence under this Part has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

Reporting

52. (1)(a) Every 3 years, the Minister shall, on request from the Commission, inform the Commission of the implementation of the Waste Directive by submitting a sectoral report in an electronic form.

(b) This report shall also contain information on the management of waste oil and on the progress achieved in the implementation of the waste prevention programmes and, as appropriate, information on measures as foreseen by Regulation 30 on extended producer responsibility.

(2) The report shall be submitted to the Commission within 9 months of the end of the 3 year period covered by it.

(3) Where the format for notifying the information referred to in paragraph (1) is decided through Community acts, the Agency shall take the necessary measures to ensure that the prescribed format is used when furnishing a copy of the sectoral report to the Minister.

(4) Local authorities and Dublin City Council shall provide such information to the Agency in writing, or other form of notification, including electronic means, as may be specified by the Agency

for the purposes of compliance with this Regulation.

(5) Waste producers that are required to maintain records by local authorities, the Agency or Dublin City Council under Regulation 45(3) shall provide such information to the Agency in writing, or other form of notification, including electronic means, as may be specified by the Agency for the purposes of compliance with this Regulation.

Interpretation and adaptation to technical progress

53. The Minister, any Minister of the Government, the Agency and the local authorities shall have regard to any guidelines developed by the Commission for the interpretation of the definitions of “disposal” and “recovery” in section 4(1) of the Act of 1996 in the implementation of waste prevention and management legislation and policy.

PART 4 CONSEQUENTIAL AMENDMENTS

Amendment of Waste Management (Planning) Regulations 1997

54. The Waste Management (Planning) Regulations 1997 (S.I. No 137 of 1997) are amended—

(a) by substituting the following article for article 2:

“2. The purposes for which these Regulations are made include the purpose of giving effect to provisions of—

(a) Council Directive 96/59/EC of 16 September 1996¹⁸ on the disposal of polychlorinated biphenyls and polychlorinated terphenyls,

(b) Council Directive 80/68/EEC of 17 December 1979¹⁹ on the protection of groundwater against pollution caused by certain dangerous substances,

(c) Council Directive 85/337/EEC of 27 June 1985²⁰ on the assessment of the effects of certain public and private projects on the environment,

(d) Council Directive 86/278/EEC of 12 June 1986²¹ on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture,

(e) Council Directive 87/217/EEC of 19 March 1987²² on the prevention and reduction of environmental pollution by asbestos,

(f) Council Directive 91/271/EEC of 21 May 1991²³ concerning urban waste water treatment,

(g) TFS Regulation,

(h) European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste,

(i) Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control,

(j) Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles,

(k) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000²⁴ establishing a framework for Community action in the field of water policy,

(l) Directive 2000/76/EC of the European Parliament and of the Council of 4 December, 2000²⁵ on the incineration of waste,

(m) Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003²⁶ on the restriction of the use of certain hazardous substances in electrical and electronic equipment,

(n) Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003²⁷ on waste electrical and electronic equipment (WEEE),

(o) Directive 2003/108/EC of the European Parliament and of the Council of 8 December 2003²⁸ amending Directive 2002/96/EC on waste electrical and electronic equipment (WEEE),

(p) Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006²⁹ on batteries and accumulators and waste batteries and accumulators and repealing

Directive 91/157/EEC,

(q) Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006³⁰ on the protection of groundwater against pollution and deterioration,

(r) the Waste Directive, and

(s) Regulation (EC) No 850/2004 of the European Parliament and the Council of 29 April 2004³¹ on persistent organic pollutants and amending Directive 79/117/EEC, as amended by Council Regulation (EC) No. 1195/2006 and Council Regulation (EC) No. 172/2007.”,

(b) in article 4 (1), by substituting “section 22(6) and (7)(a)” for “section 22(7)(a)”,

(c) in the Schedule—

(i) in Part 1—

(I) in paragraph (d), by inserting “and” after “infrastructure.”,

(II) by substituting the following for paragraphs (e) and (f):

“(g) a description of how sections 21A and 31A of the Act and Regulation 33 of the Regulations of 2011 will be met.”,

(ii) in Part 2, at 2.3, by inserting the following after “activities.”:

“A plan shall describe how waste prevention programmes established by the Agency under section 27A of the Act will be integrated into the plan.”, and

(iii) in Part 4, at 4.1 and 4.2, by substituting “section 22(6) and (7)(a)” for “section 22(7)(a)”.

Amendment of Waste Management (Hazardous Waste) Regulations 1998

55. The Waste Management (Hazardous Waste) Regulations 1998 (S.I. No. 163 of 1998) are amended—

(a) in article 3, by deleting paragraphs (a) and (d), and

(b) by deleting Part V and articles 21 and 22.

Amendment of Waste Management (Miscellaneous Provisions) Regulations 1998

56. The Waste Management (Miscellaneous Provisions) Regulations 1998 (S.I. No. 164 of 1998) are amended by deleting articles 1(2), 2, 7 and 9.

Amendment of Waste Management (Licensing) Regulations 2004

57. The Waste Management (Licensing) Regulations 2004 (S.I. No. 395 of 2004) are amended—

(a) in article 3—

(i) by deleting paragraphs (a), (b) and (f),

(ii) in paragraph (h), by deleting “and”,

(iii) in paragraph (i), by substituting “waste, and” for “waste.”, and

(iv) by inserting the following paragraphs after paragraph (i)—

“(j) the Waste Directive,

(k) Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste,

(l) Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006³² on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community,

(m) Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration,

(n) Council Directive 91/676/EEC of 12 December 1991³³ concerning the protection of waters against pollution caused by nitrates from agricultural sources,

(o) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy,

(p) Directive 2000/53/EC of the European Parliament and of the Council of 18

September 2000 on end-of-life vehicles as amended by Council Decision 2005/673/EC of 20 September 2005,

(q) Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE), as amended by Directive 2003/108/EC of the European Parliament and of the Council of 8 December 2003,

(r) Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC,

(s) Council Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC,

(t) Regulation (EC) No. 2150/2002 of the European Parliament and of the Council of 25 November 2002³⁴ on waste statistics, and

(u) Regulation (EC) No. 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC, as amended by Council Regulation (EC) No. 1195/2006 and Council Regulation (EC) No. 172/2007.”,

(b) in article 4(3)—

(i) in the definition of “waste licence”, by substituting “Act.” for “Act;”, and

(ii) by deleting the definition of “waste oils”,

(c) in article 12(1)—

(i) in paragraph (u), by substituting “sub-article,” for “sub-article.”,

and

(ii) by adding the following paragraph after paragraph (u):

“(v) describe how the waste hierarchy in section 21A of the Act is applied.”,

(d) by deleting Article 37, and

(e) in the Third Schedule, by substituting the following for the fourth row of that Schedule:

“Articles 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 27, 28, 29, 31, 34, 35 and 36	Waste Directive ”.
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Amendment of Waste Management (Collection Permit) Regulations 2007

58. The Waste Management (Collection Permit) Regulations 2007 (S.I. No. 820 of 2007) are amended—

(a) in article 3—

(i) by deleting paragraphs (a), (b) and (g),

(ii) in paragraph (s), by substituting “EEC,” for “EEC, and”,

(iii) in paragraph (t), by substituting “deterioration, and” for “deterioration.”, and

(iv) by inserting the following paragraph after paragraph (t):

“(u) the Waste Directive.”,

(b) in article 4(2), by deleting the definitions of “biowaste” and “Directive 2006/12/EC”,

(c) in article 21, by inserting the following paragraph after paragraph (o):

“(p) an offence under Part 3 of the Regulations of 2011.”,

(d) in article 29(1), by substituting the following paragraph for paragraph (c):

“(c) the activity is, or may be, in contravention of the Waste Management (Facility Permit and Registration) Regulations 2007 (S.I. No. 821 of 2007), the Waste Management (Shipments of Waste) Regulations 2007 (S.I. No. 419 of 2007), the Waste Management (Food Waste) Regulations 2009 (S.I. No. 508 of 2009) or the Regulations of 2011.”,

and

(e) in the Fourth Schedule—

- (i) by deleting rows 1, 3 and 5, and
- (ii) by inserting “Waste Directive” after the last row.

Amendment of Waste Management (Facility Permit and Registration) Regulations 2007

59. The Waste Management (Facility Permit and Registration) Regulations 2007 (S.I. No. 821 of 2007) are amended—

- (a) in article 3, by inserting the following sub-articles after sub-article (4):

“(4A) Where an application for a waste facility permit is made in respect of a facility for which a waste licence was granted under section 39(1) of the Act and such facility is eligible for a waste facility permit in accordance with these Regulations, the waste licence shall remain valid until such time as a decision is taken to grant or to refuse a waste facility permit under article 18.

(4B) Where an application for a certificate of registration is made in respect of a facility for which a waste facility permit was granted under article 18 and such facility is eligible for a certificate of registration in accordance with these Regulations, the waste facility permit shall remain valid until such time as a decision is taken to grant or to refuse a certificate of registration under article 37.”,

- (b) in article 4—

- (i) by deleting paragraphs (a), (b) and (h),
- (ii) by inserting the following paragraph after paragraph (x):

“(y) the Waste Directive.”,

- (c) in article 5(1), by deleting the definitions of “biowaste” and “Directive 2006/12/EC”, and

(d) in article 6(2)(c)(ii)(B), by substituting “requirements of articles 1, 4 and 13 of the Waste Directive” for “general requirements laid down in article 4 of Directive 2006/12/EC”,

- (e) in article 19, by substituting the following sub-article for sub-article (2):

“(2) For the purposes of the attachment by a local authority of conditions to a waste facility permit that may be granted by it in respect of an activity which involves the holding of waste oils, the authority shall take such steps as are necessary for the purposes of compliance with Article 21 of the Waste Directive.”,

- (f) in article 22, by substituting the following paragraphs for paragraph (o):

“(o) the contravention of Regulations 6, 7, 8, 9, 10, 11 or 12 of the Waste Management (Food Waste) Regulations 2009 (S.I. No. 508 of 2009),

(p) an offence under Part 3 of the Regulations of 2011,

(q) an offence under article 43,”,

- (g) by deleting article 23,

- (h) in article 36(1)—

(i) in paragraph (a), by inserting “and having regard to any offence committed by the permit holder, or other relevant person, which, under article 22, is an offence for the purposes of this article” after “reasonable opinion”,

- (ii) by substituting the following paragraph for paragraph (c):

“(c) the activity is, or may be, in contravention of the Waste Management (Facility Permit and Registration) Regulations 2007 (S.I. No. 821 of 2007), the Waste Management (Movement of Hazardous Waste) Regulations 1998 (S.I. No. 147 of 1998), the Waste Management (Shipment of Waste) Regulations 2007 (S.I. No. 419 of 2007), the Waste Management (Food Waste) Regulations 2009 (S.I. No. 508 of 2009) or the Regulations of 2011, or”,

- (i) in article 38(7)—

(i) in paragraph (a), by inserting “and having regard to any offence committed by the permit holder, or other relevant person, which, under article 22, is an offence for the purposes

of this article” after “reasonable opinion”,

(ii) by substituting the following paragraph for paragraph (c):

“(c) the activity is, or may be, in contravention of the Waste Management (Collection Permit) Regulations 2007 (S.I. No. 820 of 2007), the Waste Management (Movement of Hazardous Waste) Regulations 1998 (S.I. No. 147 of 1998), the Waste Management (Shipment of Waste) Regulations 2007 (S.I. No. 419 of 2007), the Waste Management (Food Waste) Regulations 2009 (S.I. No. 508 of 2009), the European Communities (Transmissible Spongiform Encephalopathies and Animal By-Products) Regulations 2008 (S.I. No. 252 of 2008), or Part 3 of the Regulations of 2011, or”,

(j) in article 40(2), by substituting the following paragraph for paragraph (a):

“(a) the general requirements of Articles 13 and 36(1) of the Waste Directive, and”, and (k) in the Second Schedule—

(i) by deleting rows 1, 2 and 8, and

(ii) by inserting “Waste Directive” after the last row.

Amendment of section 3A of Environmental Protection Agency Act 1992

60. Section 3A (inserted by section 5 of the Protection of the Environment Act 2003 (No. 27 of 2003)) of the Environmental Protection Agency Act 1992 (No. 7 of 1992) is amended by deleting “Council Directive 96/61/EC of 24 September 1996” and substituting “Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008.”.



GIVEN under my Official Seal,

31 March 2011.

PHIL HOGAN,

Minister for the Environment, Heritage and Local Government.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations provide for measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use and transpose Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain directives, referred to in these Regulations as the waste directive. The vast bulk of the waste directive is already transposed by the Waste Management Act 1996 and various regulations made thereunder and where required the Regulations amend the 1996 Waste Management Act, provide for stand alone aspects not amenable for direct inclusion into the Act by way of specific amendments and also other consequential amendments to regulations affected by the transposition.

The following table indicates how the Directive is transposed-aspects the responsibility of the Commission in certain articles are not transposed.

Article of Directive 2008/98/EC	Transposed by Regulation
1 Subject matter and scope	Transposition not required
2 Exclusions from the scope	4 Substitution of sections 3 and 4 of Act of 1996 and 26 Non-application of Part 3
3 Definitions	4 Substitution of sections 3 and 4 of Act of 1996 and 5 Amendment of section 5 of the Act of 1996
4 Waste hierarchy	7 Insertion of section 21A into Act of

	1996
5 By-products	27 By-products
6 End-of-waste status	28 End-of-waste status
7 List of waste	29 List of waste
8 Extended producer responsibility	30 Extended producer responsibility
9 Prevention of waste	Transposition not required
10 Recovery	14 Amendment of section 29 of Act of 1996
11 Reuse-and recycling	31 Reuse-and recycling
12 Disposal	18 Amendment of section 38 of Act of 1996
13 Protection of human health and the environment	32 Protection of human health and the environment and 16 Amendment of section 32 of Act of 1996
14 Costs	15 Insertion of section 31A into Act of 1996
15 Responsibility for waste management	16 Amendment of section 32 of Act of 1996
16 Principles of self-sufficiency and proximity	17 Insertion of new section 37A into Act of 1996
17 Control of hazardous waste	33 Control of hazardous waste
18 Ban on the mixing of hazardous waste	34 Ban on the mixing of hazardous waste
19 Labelling of hazardous waste	35 Labelling of hazardous waste
20 Hazardous waste produced by households	36 Hazardous waste produced by households
21 Waste Oils	37 Waste Oils
22 Bio-waste	38 Biowaste and 14 Amendment of section 29 of Act of 1996
23 Issue of permits	21 Amendment of section 41 of Act of 1996, (section 39 of the Act of 1996), 20 Amendment of section 40 of Act of 1996, section 46 of the Act of 1996
24 Exemptions from permit requirements	19 Amendment of section 39 of Act of 1996
25 Conditions for exemptions	19 Amendment of section 39 of Act of 1996
26 Registration	39 Registration
27 Minimum standards	40 Minimum standards
28 Waste management plans	8 Amendment of section 22 of Act of 1996
29 Waste prevention programmes	13 Insertion of section 27A into Act of 1996
30 Evaluation and review	8 Amendment of section 22 of Act of

of plans and programmes	1996, 13 insertion of section 27A into Act of 1996
31 Public participation	41 Public participation
32 Cooperation	42 Cooperation
33 Information to be submitted to the Commission	43 Information to be submitted to the Commission
34 Inspections	44 Inspections and 6-amendment of section 15 of Act of 1996
35 Record keeping	45 Record keeping and 6-amendment of section 15 of Act of 1996
36 Enforcement and penalties	50 Enforcement and penalties, 16 Amendment of section 32 of Act of 1996 and section 10 of the Act of 1996
37 Reporting and reviewing	52 Reporting
38 Interpretation and adaptation to technical progress	53 Interpretation and adaptation to technical progress
39 Committee procedure	Does not need transposition-matter for the Commission
40 Transposition	Does not need transposition
41 Repeal and transitional provisions	Does not need transposition
42 Entry into force	Does not need transposition
43 Addresses	Does not need transposition
Annexes	Regulation 24-substitution of First to Fourth Schedules

1 OJ No. L312, 22.11.2008, p.3

2 OJ No. L102, 11.04.2006, p.15

3 OJ No. L24, 29.01.2008, p.8

4 OJ No. L140, 05.06.2009, p.114

5 OJ No. L300, 14.11.2009, p.1

6 OJ No. L 190, 12.7.2006, p.1

7 OJ No. L 365, 31.12.1994, p.10

8 OJ No. L 182, 16.07.1999, p.1.

9 OJ No. L196, 16.8.1967, p.1

- 10 OJ No. L200, 30.7.1999, p.1
- 11 OJ No. L226, 6.09.2000, p.3
- 12 OJ No. L269, 21.10.2000, p.34
- 13 OJ No. L37, 13.02.2003, p.24
- 14 OJ No. L266, 26.09.2006, p.1
- 15 OJ No. L24, 21.07.1998, p.37
- 16 OJ No. L156, 25.06.2003, p.17
- 17 OJ No. L197, 21.07.2001, p.30
- 18 OJ No. L 243, 24.09.1996, p. 31
- 19 OJ No. L20, 26.01.1980, p. 43
- 20 OJ No. L175, 05.07.1985, p.40
- 21 OJ No. L181, 04.07.1986, p.6
- 22 OJ No. L85, 28.03.1987, p.40
- 23 OJ No. L135, 30.05.1991, p.40
- 24 OJ No. L327, 22.12.2000, p.1
- 25 OJ No. L332, 28.12.2000, p.91
- 26 OJ No. L137, 13.02.2003, p.19
- 27 OJ No. L37, 13.02.2003, p.24
- 28 OJ No. L345, 31.12.2003, p.106
- 29 OJ No. L266, 26.09.2006, p.1
- 30 OJ No. L372, 27.12.2006, p.19
- 31 OJ No. L158, 30.04.2004, p.7
- 32 OJ No. L64, 04.03.2006, p.52
- 33 OJ No. L375, 31.12.1991, p.1
- 34 OJ No. L332, 9.12.2002, p.1