

2011 No. 127

ENVIRONMENTAL PROTECTION

The Waste Regulations (Northern Ireland) 2011

Made - - - - *16th March 2011*

Coming into operation - *8th April 2011*

The Department of the Environment having been designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to the prevention, reduction and elimination of pollution caused by waste and in relation to the environment.

The Department of the Environment acting in exercise of the powers conferred upon it by that section and by Articles 3(3)(a), 4(3), 5(7), 38(3)(a), 39(1), 39(3), 40(3), 48 and 77 of the Waste and Contaminated Land (Northern Ireland) Order 1997^(c), hereby makes the following Regulations.

PART 1

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Waste Regulations (Northern Ireland) 2011 and except as provided in paragraphs (2), (3) and (4) shall come into operation on 8th April 2011.

(2) Regulation 17 shall come into operation on 8th October 2011.

(3) Regulation 18 shall come into operation on 1st January 2015.

(4) Regulation 28 shall come into operation on 1st January 2014.

(5) The Interpretation Act (Northern Ireland) 1954^(d) shall apply to these Regulations as it applies to an Act of the Assembly.

PART 2

Amendment of primary legislation

Amendment of the Environment (Northern Ireland) Order 2002

2.—(1) The Environment (Northern Ireland) Order 2002 shall be amended as follows.

(2) For paragraph 20(2)(b) of Part I of Schedule 1 substitute—

(a) S.I. 1992/2870 and S.I. 2008/301
(b) 1972 c.68
(c) S.I.1997/2778 (N.I. 19)
(d) 1954 c.33 (NI)

“(b) Directive 2008/98/EC of the European Parliament and of the Council on waste;”.

Amendment of the Waste and Contaminated Land (Northern Ireland) Order 1997

3.—(1) The Waste and Contaminated Land (Northern Ireland) Order 1997 shall be amended in accordance with regulations 3(2) to 8.

(2) In Article 2 (general interpretation)—

(a) in paragraph (2) insert the following definitions in the appropriate alphabetical order—

““broker” means any person arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;

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

“the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste;

“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;”

(b) in paragraph (2) substitute the following definition—

“waste” means any substance or object which the holder discards or intends or is required to discard; and for the purposes of this definition—

“holder” means the producer of the waste or the person who is in possession of it; and

“producer” means any person whose activities produce waste or any person who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;

(c) in paragraph (2) omit the following definition—

“the Waste Directive” means Directive 2006/12/EC of the European Parliament and of the Council dated 5 April 2006, on waste;

(d) omit paragraph (6).

4.—(1) In Article 5 (duty of care, etc., as respects waste)—

(a) in paragraph (1) after “produces,” insert “collects,” and after “broker” insert “or dealer”;

(b) paragraph (1)(c)(i) delete “and”;

(c) after (1)(c)(ii) insert “and”; and

(d) after paragraph (1)(c)(ii) insert—

“(iii) that any waste oils are separately collected where technically feasible.”

(2) Omit paragraph (14).

5.—(1) In Article 19 (waste management strategy)—

(a) for paragraph (2) substitute—

“(2) The Department—

(a) shall review the waste management strategy at least every sixth year;

(b) may from time to time modify the waste management strategy;

but this paragraph shall not apply to so much of a waste management strategy as relates to the matters mentioned in paragraphs 7(b), (c), (d) and 8 of Part 2 of Schedule 3.”;

(b) for paragraph (4) substitute—

“(4) The waste management strategy:-

- (a) shall include a statement of the Department’s policies for attaining the objectives set out in Part 1 Schedule 3;
 - (b) shall include the matters set out in Part 2 of that Schedule; and
 - (c) may include the matters set out in Part 3 of that Schedule.”;
- (c) after paragraph (4) insert—
- “(4A) Steps taken before the coming into operation of this paragraph in relation to the waste management strategy may be steps for the purposes of Articles 19, 19A, 19B and 19C.”;
- (d) after paragraph (7) insert—
- “(8) The Department shall ensure that the waste management strategy conforms to the strategy for the reduction of biodegradable waste going to landfill required by section 20(1) of the Waste and Emissions Trading Act 2003.”
- 6.—(1) In Article 30 (special provision with respect to certain dangerous or intractable waste)—
- (a) in sub-paragraph (2)(e) after “broker” insert “or dealer”; and
 - (b) paragraph (4) is repealed.
7. Schedule 1 is repealed.
8. For Schedule 3 substitute —

“SCHEDULE 3

Article 19(4)

THE WASTE MANAGEMENT STRATEGY

Part 1

Objectives

Overall objective

1. 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.

Application of the waste hierarchy

2.—(1) To apply the following waste hierarchy as a priority order in waste prevention and management policy—

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

(2) In applying the waste hierarchy in sub-paragraph (1) the Department shall ensure that it—

- (a) encourages the options that deliver the best overall environmental outcome, which 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;
- (b) takes into account—

- (i) the general environmental protection principles of precaution and sustainability;
- (ii) technical feasibility and economic viability;
- (iii) protection of resources; and
- (iv) the overall environmental, human health, economic and social impacts.

3. To 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.

4.—(1) 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.

(2) The network must be designed so as to enable the European Union as a whole to become self-sufficient in waste disposal as well as in the recovery of mixed municipal waste collected from private households, and to enable the United Kingdom 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 must enable waste to be disposed of or mixed municipal waste collected from private households for recovery, to be recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, so as to ensure a high level of protection for the environment and human health.

(4) This paragraph does not require that the full range of final recovery facilities is located in Northern Ireland.

Part 2

Matters which must be included in the waste management strategy

5. The waste management strategy must include—

- (a) a statement of the Department's policies for attaining the objectives specified in Part 1 of this Schedule; and
- (b) an analysis of the current waste management strategy, an analysis of the measures to be taken to improve environmentally sound preparation for re-use, recycling, recovery and disposal of waste and an evaluation of how the waste management strategy will support the implementation of the objectives and provisions of the Waste Framework Directive.

6. The waste management strategy must include such matters as the Department considers appropriate, taking into account the geographical level and geographical area to which the waste management strategy relates and including at least the following—

- (a) the type, quantity and source of waste generated within Northern Ireland;
- (b) the waste likely to be shipped from or to Northern Ireland;
- (c) an evaluation of the development of waste streams in the future;
- (d) 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 European Union legislation;

- (e) an assessment of the need for new collection schemes, the closure of existing waste installations, additional waste installation infrastructure, and, if necessary the related investments;
- (f) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary; and
- (g) general waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems.

7. The waste management strategy must include policies in relation to packaging waste, separate collection of waste, bio-waste and re-use and including—

- (a) a chapter on the management of packaging and packaging waste, including measures taken pursuant to Articles 4 and 5 of the Packaging Waste Directive;
- (b) measures to promote high quality recycling including the setting up of separate collections of waste where technically, environmentally and economically practicable;
- (c) measures to encourage the separate collection of bio-waste with a view to the composting and digestion of bio-waste;
- (d) measures to be taken to promote the re-use of products and preparation for re-use activities, in particular—
 - (i) measures to encourage the establishment and support of re-use and repair networks;
 - (ii) the use of economic instruments;
 - (iii) the use of procurement criteria; and
 - (iv) the setting of quantitative objectives.

8. The waste management strategy must include policies in relation to preparing for re-use, recovery and recycling targets including—

- (a) measures to be taken to ensure that by 2020, at least 50% by weight of waste from households is prepared for re-use or recycled;
- (b) measures to be taken to ensure that by 2020, at least 70% by weight of construction and demolition waste excluding—
 - (i) hazardous waste; and
 - (ii) naturally occurring material falling within code 17 05 04 in the Schedule to the List of Wastes Regulations (Northern Ireland) 2005,
 is subjected to material recovery.

Part 3

Matters which may be included in the waste management strategy

9. The Department may include the following in the waste management strategy, taking into account the geographical area to which the strategy relates—

- (a) organisational aspects related to waste management including a description of the allocation of responsibilities between public and private operators carrying out waste management;
- (b) an evaluation of the usefulness and suitability of the use of economic and other means of tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;
- (c) awareness campaigns and information provision directed at the general public or at a specific set of consumers; and

(d) measures for the remediation of historical contaminated waste disposal sites.”.

PART 3

Waste

Interpretation of Part 3

9.—(1) In this Part the following definitions apply:-

“best available techniques” means best available techniques as defined in Article 2(12) of Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control;

“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 undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;

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

“co-mingled collection” means the collection of waste streams intended for recycling together with each other but separately from other waste;

“dealer” means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste;

“disposal” means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy (and Annex I to the Waste Framework Directive sets out a non-exhaustive list of disposal operations);

“hazardous waste” has the same meaning as given in regulation 6 of the Hazardous Waste Regulations (Northern Ireland) 2005 (waste which displays one or more of the hazardous properties listed in Annex III of the Waste Framework Directive);

“holder” means the producer of the waste or the natural or legal person who is in possession of it;

“household waste” means waste generated by households;

“material recovery” means any recovery operation, excluding energy recovery and the reprocessing into materials which are used as fuel;

“municipal waste” means household waste and similar waste;

“pollution of the environment” means pollution of the environment due to the release or escape (into any environmental medium) from—

- (a) the land on which waste is treated;
- (b) the land on which waste is kept;
- (c) the land in or on which waste is deposited;
- (d) fixed plant by means of which waste is treated, kept or disposed of,

of substances or articles constituting or resulting from the waste and capable (by reason of the quantity or concentrations involved) of causing harm to humans or to any other living organisms supported by the environment; and this definition applies in relation to mobile plant by means of which waste is treated or disposed of as it applies to fixed plant on land by means of which waste is treated or disposed of;

“preparing for re-use” means checking, cleaning 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;

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

- (e) the quantity of waste, including through the re-use of products or the extension of the life span of products;
- (f) the adverse impacts of the generated waste on the environment and human health; or
- (g) the content of harmful substances in materials and products;

“producer” means any person whose activities produce waste (original waste producer) or any person who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;

“public consultees” means the persons to whose attention proposals for the waste prevention programme are brought by the Department pursuant to regulation 15(1)(b);

“recovery” 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. Annex II to the Waste Framework Directive sets out a non-exhaustive list of recovery operations;

“recycling” means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and 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;

“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;

“the Industrial Pollution Control Order” means the Industrial Pollution Control (Northern Ireland) Order 1997;

“the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste;

“the Waste Hierarchy” means the priority order which shall apply to the prevention and management of waste as follows—

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

“treatment” means recovery or disposal operations, including preparation prior to recovery or disposal;

“waste” means any substance or object which the holder discards or intends or is required to discard;

“waste management” means the collection, transport, recovery and disposal of waste, including the supervision of such operations, the after-care of disposal sites, and actions taken as a dealer or broker;

“waste prevention programme” means one or more programmes of waste prevention measures established in accordance with regulation 10;

“waste producer” means any person whose activities produce waste (original waste producer) or any person who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste.

(2) Subject to regulation 25, these regulations do not apply in relation to waste which is excluded from the scope of the waste framework directive by Articles 2(1), (2) or (3) of that Directive.

Establishment of waste prevention programmes

10.—(1) The Department shall, not later than 12th December 2013—

- (a) evaluate the usefulness of the waste prevention measures set out as examples in Annex IV of the Waste Framework Directive and such other waste prevention measures as the Department thinks fit; and
- (b) establish one or more waste prevention programmes.

(2) A programme established before the coming into operation of this provision may be considered a waste prevention programme for the purposes of this provision.

Purposes, etc. of waste prevention programmes

11.—(1) The Department shall ensure that a waste prevention programme—

- (a) is established in accordance with Articles 1 and 4 of the Waste Framework Directive;
- (b) has as its purpose a contribution towards breaking the link between economic growth and the environmental impacts associated with the generation of waste;
- (c) is expressed in writing and sets out the objectives of the waste prevention programme and a description of existing waste prevention measures; and
- (d) if it is integrated into the waste management strategy or other programme, is clearly identified as a waste prevention programme.

Monitoring and evaluation of waste prevention programmes

12.—(1) The Department shall—

- (a) establish qualitative or quantitative benchmarks and may establish qualitative or quantitative targets and indicators, against which to assess the value of waste prevention programmes; and
- (b) publish the benchmarks and any targets or indicators it establishes.

Review and modification of waste prevention programmes

13.—(1) The Department shall—

- (a) shall review each waste prevention programme at least every sixth year; and
- (b) may from time to time modify the waste prevention programmes in accordance with Article 30 of the Waste Framework Directive.

Public participation in waste prevention programmes

14.—(1) Regulations 15 and 16 apply to the modification of a waste prevention programme as they apply to the preparation of such a programme.

(2) Regulations 15 and 16 do not apply to a waste prevention programme—

- (a) designed for the sole purpose of serving national defence or taken in case of civil emergencies;
- (b) for which a public participation procedure is carried out under the Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004(a);

(a) S.R. 2004 No. 280

- (c) containing only provision relating to separation collection of waste, bio-waste, re-use, preparing for re-use, recovery and recycling targets;

(3) Steps taken before the coming into operation of these Regulations in relation to a waste prevention programme may be steps for the purposes of regulations 15 and 16.

Public participation procedures

15.—(1) As soon as reasonably practicable after preparing proposals for a waste prevention programme or for the modification of such a waste prevention programme, the Department shall—

- (a) send a copy of the proposals to the consultation bodies;
- (b) take such steps as it considers appropriate to bring the proposals to the attention of the persons who in the Department's opinion—
 - (i) are, or are likely to be affected by the waste prevention programme; or
 - (ii) have an interest in the waste prevention programme;
- (c) inform the public consultees of the address (which may include a website)—
 - (i) at which a copy of the proposals may be viewed; and
 - (ii) from which a copy of the proposals may be obtained;
- (d) invite the consultation bodies and public consultees to express their opinion on the proposals, specifying the address to which, and the period within which opinions must be sent.

(2) The period referred to in paragraph (1)(d) must be of such length as will ensure that the consultation bodies and the public consultees are given an early and effective opportunity to express their opinion on the proposals.

(3) The Department shall keep a copy of the proposals for inspection by the public at all reasonable times free of charge.

(4) Nothing in paragraph (1)(c) requires the Department to provide copies of the proposals free of charge, but where a charge is made, it shall be a reasonable amount.

Procedures following public participation

16.—(1) Before decisions on a waste management programme are made, the Department shall take account of any opinions expressed by a consultation body or public consultees.

(2) As soon as reasonably practicable after making decisions on a waste prevention programme the Department shall—

- (a) inform the consultation bodies and the public consultees of the matters in paragraph (3);
- (b) take such steps as it considers appropriate to bring the matters in paragraph (3) to the attention of the public; and
- (c) if it has adopted the waste prevention programme, place a copy of the programme on the Department's website and make a copy of the programme available for inspection by the public at all reasonable times and free of charge.

(3) The matters are—

- (a) the decisions made by the Department on the waste prevention programme;
- (b) the reasons and considerations on which those decisions are based; and
- (c) information about the public participation procedure.

(4) Nothing in paragraph (2)(c) requires the Department to provide copies free of charge, but where a charge is made, it shall be a reasonable amount.

Duty in relation to the waste hierarchy (coming into operation 8 October 2011)

17.—(1) It shall be the duty of any person who imports, produces, collects, carries, keeps, treats or disposes of waste, or as a broker or dealer has control of controlled waste, on the transfer of such waste to take all such measures available to that person as are reasonable in the circumstances to apply the waste hierarchy priority order in accordance with Article 4 of the Waste Framework Directive.

(2) An establishment or undertaking may depart from the waste hierarchy priority order so as to achieve the best overall environmental outcome where this is justified by life-cycle thinking on the overall impacts of the generation and management of the waste;

(3) When considering the overall impacts mentioned in paragraph (2), the following considerations shall be taken into account—

- (a) the general environmental protection principles of precaution and sustainability;
- (b) technical feasibility and economic viability;
- (c) protection of resources;
- (d) the overall environmental, human health, economic and social impacts.

(4) The duty in paragraph (1) shall not apply to an occupier of domestic property as respects the household waste produced on the property.

(5) The Department may give guidance on the discharge of the duty in paragraph (1).

(6) A person discharging the duty in paragraph (1) shall, in doing so, have regard to any guidance given under paragraph (5).

Duties in relation to collection of waste

18.—(1) A district council, when collecting waste paper, metal, plastic or glass shall, from 1st January 2015, take all such measures to ensure separate collection of that waste as are available to it and are—

- (a) technically, environmentally and economically practicable;
- (b) appropriate to meet the necessary quality standards for the relevant recycling sectors.

(2) A district council, when making arrangements for the collection of waste paper, metal, plastic or glass, shall, from 1st January 2015, take measures to ensure that those arrangements are by way of separate collection.

(3) The duties under paragraphs (1) and (2) shall apply only where keeping waste separate facilitates or improves recovery.

Duty in relation to collected waste

19.—(1) A district council which collects, transports or receives waste paper, metal, plastic or glass shall, from 1st January 2015, take measures to ensure that where that waste has been separately collected it is not mixed with other waste or other material with different properties.

(2) The duty under paragraph (1) shall apply only where keeping waste separate facilitates or improves recovery.

Duty in relation to collected waste by private operators

20. The duties under regulations 18 and 19 shall apply equally to a person required to be registered as a carrier of controlled waste for the purposes of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999(a) as they apply to district councils.

(a) S.R. 1999 No. 362

Co-mingled waste

21. Co-mingled collection is a form of separate collection for the purposes of regulations 18, 19 and 20.

Enforcement notices

22.—(1) If the Department considers that a person required to be registered as a carrier of controlled waste for the purposes of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999 or the Waste Management Licensing Regulations (Northern Ireland) Regulations 2003(a) has contravened regulations 18, or 19 it shall serve a compliance notice, restoration notice or suspension notice, as applicable, on that person.

(2) Paragraph 1 shall not apply to a district council.

(3) For the purposes of this regulation, a “compliance notice” is a notice in writing requiring a person to take specified steps within a specified period to secure that a contravention of regulation 18 or 19 does not continue or recur.

(4) A compliance notice shall—

- (a) specify the contravention;
- (b) specify the steps which shall be taken to secure that the contravention does not continue or recur;
- (c) specify the period within which those steps shall be taken; and
- (d) give information as to the rights of appeal (including the period within which an appeal shall be brought).

(5) For the purposes of this regulation, a “restoration notice” is a notice requiring a person, to take specified steps within a specified period to secure that the position is, so far as possible, restored to what it would have been if a contravention of regulations 18 or 19 had not occurred.

(6) A restoration notice shall—

- (a) specify the contravention;
- (b) specify the steps which shall be taken to secure restoration;
- (c) specify the period within which those steps shall be taken; and
- (d) give information as to the rights of appeal (including the period within which an appeal shall be brought).

(7) For the purposes of this regulation, a “suspension notice” is a notice in writing prohibiting a person from carrying on a specified activity until such time as specified steps have been taken.

(8) A suspension notice shall—

- (a) specify the contravention;
- (b) specify the activity to be suspended and the period of the suspension;
- (c) specify the steps which shall be taken to remedy the contravention;
- (d) specify the period within which those steps shall be taken; and
- (e) give information as to the rights of appeal (including the period within which an appeal shall be brought).

Appeals

23.—(1) A person on whom a compliance notice, a restoration notice or a suspension notice is served may appeal to the Planning Appeals Commission on the grounds that the compliance notice, restoration notice or suspension notice or any part thereof is—

- (a) defective; or

(a) S.R. 2003 No. 493

(b) unreasonable.

(2) A person who wishes to appeal to the Planning Appeals Commission under this regulation shall give to the Commission written notice of the appeal together with a written statement of the grounds of appeal and the Commission shall as soon as is reasonably practicable send to the Department a copy of the notice of the appeal together with a copy of the statement of the grounds of appeal.

(3) Notice of appeal in accordance with paragraph (2) shall be given before the expiry of the period of 28 days beginning with the date of the service of a notice under regulation 22.

(4) Notice of appeal in accordance with paragraph (2) shall be accompanied by such fee as specified in regulation 17(1) of the Planning (Fees) Regulations (Northern Ireland) 1995 as would be payable if the notice of appeal were a notice of appeal in accordance with Article 32(1) of the Planning (Northern Ireland) Order 1991.

(5) An appellant may withdraw an appeal by notifying the Planning Appeals Commission in writing and the Commission shall as soon as is reasonably practicable notify the Department.

(6) A notice, under regulation 22 shall not be suspended pending the outcome of an appeal.

(7) The Planning Appeals Commission shall determine the appeal and paragraphs (1), (3) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991(a) shall apply in relation to the determination of the appeal as it applies to the determination of an appeal under that Order.

(8) On an appeal, the Planning Appeals Commission may determine that a notice served by the Department under regulation 22 shall cease to have effect or may vary the notice.

(9) The Planning Appeals Commission shall notify the appellant of its determination of the appeal and reasons for it, and shall at the same time send a copy of its determination to the Department.

Offence

24.—(1) A person who fails to comply with regulation 17 or a notice served under regulation 22 shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to a fine.

Radioactive waste

25.—(1) This regulation applies to radioactive waste where it is—

- (a) exempt from the requirement for authorisation by virtue of an order which was made or has effect as if made under section 15(2) of the Radioactive Substances Act 1993(b); and
- (b) subject to an activity falling within Schedule 2, paragraph 38(a) of the Waste Management Licensing Regulations (Northern Ireland) 2003 and regulation 15 of the Hazardous Waste Regulations (Northern Ireland) 2005(c).

(2) Radioactive waste to which this regulation applies shall be treated as waste for the purposes of these regulations.

(3) Articles 4 and 5 of the Waste and Contaminated Land (Northern Ireland) Order 1997(d) shall apply to radioactive waste to which this regulation applies as it applies to controlled waste within the meaning of Article 2(2) of that Order.

(a) S.I. 1991/1220 (N.I. 11)

(b) 1993 c. 12

(c) S.R. 2005 No. 300

(d) S.I. 1997/2778 (N.I. 19)

PART 4

Amendment of Subordinate Legislation

Amendment of the Deposits in the Sea (Exemptions) Order (Northern Ireland) 1995

26. The Deposits in the Sea (Exemptions) Order (Northern Ireland) 1995(a) shall be amended as follows—

“Provisions relating to exemptions involving waste

1. Article 4 (1)(c) shall be revoked.”

Amendment to the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999

27.—(1) The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999(b) shall be amended as follows.

(2) In Schedule 1—

- (a) for paragraph 9 substitute the following—

“9. Waste disposal installations for the incineration, chemical treatment (as defined in Annex I to Directive 2008/98/EC or landfill of hazardous waste (as defined in regulation 6 of the Hazardous Waste Regulations (Northern Ireland) 2005.”.

- (b) in paragraph 10 for “Annex IIA to Directive 75/442/EEC” substitute “Annex I to Directive 2008/98/EC”.

Amendment of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999

28.—(1) The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999(c) shall be amended in accordance with regulations 28(2) to 31.

(2) In regulation 1(2) insert the following definition in the appropriate alphabetical place—

“specified” person means

- (a) a Government Department;
- (b) a district council;
- (c) a producer of the controlled waste in question except where it is construction or demolition waste (“construction” includes improvement, repair and alteration);
- (d) any wholly owned subsidiary of the Northern Ireland Railways Company Limited which has applied in accordance with these Regulations for registration as a carrier of waste but only—
 - (i) if it is registered under paragraph 12 of Part 1 of Schedule 3 to the 2003 Regulations; and
 - (ii) whilst its application is pending;
- (e) a charity within the meaning of Part 1 of the Charities Act (Northern Ireland) 2008(d);

(a) S.R. 1995 No.234 as amended by S.R. 2003 No.493

(b) S.R.1999 No.73

(c) S.R. 1999 No.362 as amended by S.R.2003 No.46, S.R.2003 No.493, S.R.2005 No.300 and S.R.2006 No. 280

(d) 2008 c. 12

- (f) a voluntary body within the meaning of section 148 of the Local Government Act (Northern Ireland) 1972(a);
 - (g) a person who transports only—
 - (i) animal by products;
 - (ii) waste from a mine or quarry; or
 - (iii) agricultural waste.”.
- (3) For regulation 2(1) substitute—
- “(1) The following persons shall not be required for the purposes of Article 38 of the 1997 Order to be registered as a carrier of controlled waste—
- (a) a person who does not normally or regularly transport controlled waste; or
 - (b) the operator of a vessel, aircraft, hovercraft, floating container or vehicle, in relation to its use, after it has been loaded with waste in circumstances in which a marine licence is required or would be required but for a marine exemption order for transporting the waste in order to carry out a specified marine operation.”.
- (4) After regulation 2(1) insert—
- “(1A) The following persons shall be required for the purposes of Article 38 of the 1997 Order to be a registered carrier of controlled waste by 31st December 2013—
- (a) a person who, prior to 8 April 2011, was not required to be registered as a carrier of controlled waste for the purposes of these regulations or paragraph 12(1) of Schedule 3 to the 2003 Regulations; or
 - (b) a person who, had they been a carrier of waste prior to 8th April 2011 would not have been required to be registered for the purposes of these regulations or paragraph 12(1) of Schedule 3 to the 2003 Regulations.”.
- (5) In regulation 2(2) insert the following definitions in the appropriate alphabetical order—
- ““marine exemption order” means an order under—
- (a) section 7 of the Food and Environment Protection Act 1985(b) (exemptions); or
 - (b) section 74 of the Marine and Coastal Access Act 2009(c) (exemptions specified by order);
- “marine licence” means—
- (a) a licence under Part 2 of the Food and Environment Protection Act 1985; or
 - (b) a marine licence under Part 4 of the Marine and Coastal Access Act 2009;
- “specified marine operation” means an operation mentioned in—
- (a) section 5 or 6 of the Food and Environment Protection Act 1985; or
 - (b) an item numbered 1 to 6 or 11 to 13 in section 66(1) of the Marine and Coastal Access Act 2009;”.
- 29.** After regulation 3(2) insert—
- “(3) A register of carriers held prior to 8th April 2011 for the purposes of the 2003 Regulations is a register for the purposes of these Regulations.”.
- 30.** For regulation 4(8) substitute—
- “(8)(1) The Department shall charge an applicant, in respect of its consideration of their application—

(a) 1972 c. 70
 (b) 1985 c. 48
 (c) 2009 c. 23

- (a) subject to paragraph (c), in the case of either an application for registration as a carrier of controlled waste or a combined application for registration as both a carrier and broker of controlled waste, £126
- (b) in the case of either an application for the renewal of registration as a carrier of controlled waste or a combined application for renewal of registration as both a carrier and a broker of controlled waste, £63;
- (c) in the case of an application by a registered broker of controlled waste for registration as a carrier of controlled waste, £30;

and the applicant shall pay the charge when they make the application.

(2) Paragraph (1) shall not apply to a specified person.”.

31. For regulation 11(2) substitute—

“(2) Subject to paragraphs (4) to (8) —

- (a) registration as a carrier of controlled waste, unless revoked, in accordance with regulation 10, shall be indefinite in the case of a specified person;
- (b) in all other cases, registration as a carrier of controlled waste unless revoked in accordance with regulation 10 shall cease to have effect on the expiry of the period of 3 years beginning with and including the date of the registration or, if it has been renewed, beginning with and including the date on which it was renewed or as the case may be last renewed.”.

Amendment to the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) Regulations (Northern Ireland) 2000

32.—(1) The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) Regulations (Northern Ireland) 2000(a) shall be amended as follows.

(2) In regulation 2(1)—

- (a) in the definition of “disposal”, for “Annex IIA of Directive 75/442/EEC , as amended,” substitute “Annex I of Directive 2008/98/EC”;
- (b) in the definition of “used PCBs”, for “Directive 75/442/EEC”, substitute “Directive 2008/98/EC”.

(3) In the title to Schedule I, for “Annex IIA of Directive 75/442/EEC on waste, as amended”, substitute “Annex I of Directive 2008/98/EC on waste”.

Amendment of the Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002

33.—(1) The Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002(b) shall be amended as follows.

(2) In regulation 2(2)(b) after “transferee” insert “and be signed by them”.

(3) In regulation 2(2)(c) after “producer” omit “or” and insert “,” and after “importer” insert “or transporter”.

(4) In regulation 2(2)(d) at the end of the paragraph delete “and”.

(5) In regulation 2(2)(e) at the end of the paragraph delete “.” and insert “and”.

(6) After regulation 2(2)(e) insert—

“(f) confirm that the transferor and the transferee have fulfilled the duty in regulation 20(1) of Part 3 of these regulations (duty to apply the waste hierarchy).”.

(a) S.R.2000 No.232

(b) S.R. 2002 No.271 as amended by S.R.2003 No.404

Amendment to the Pollution Prevention and Control Regulations (Northern Ireland) 2003

34.—(1) The Pollution Prevention and Control Regulations (Northern Ireland) 2003(a) shall be amended as follows.

(2) In regulation 11(3)(a) for “Council Directive 75/442/EEC on waste” substitute “Directive 2008/98/EC(b)”.

(3) After regulation 12B insert the following—

“Conditions of permits: waste oils

12C.—(1) A permit which on or after 8th April 2011 authorises any activity relating to waste oils shall contain conditions ensuring that, so far as technically feasible and economically viable—

- (a) waste oils having different characteristics are not mixed; and
- (b) waste oils are not mixed with other kinds of waste or substances, if such mixing would impede their treatment.

(2) In this regulation, “waste oils” and “treatment” have the same meanings as in the Waste Framework Directive.

Conditions of permits: incineration or co-incineration with energy recovery

12D.—(1) A permit which on or after 8th April 2011 authorises the incineration or co-incineration of waste with energy recovery shall contain conditions ensuring that the recovery of energy shall take place with a high level of energy efficiency.

(2) In this regulation—

“co-incineration” has the same meaning as in Section 5.1 Part I Schedule I;

“incineration” means the thermal treatment of wastes.”

(4) In Schedule 1 Part I Section I.I, in the paragraph on Interpretation of Section 1.1, in the definition of “waste oil” after “mineral based” insert “or synthetic”.

(5) In Schedule 1 Part 1 Section 5.1`, in the paragraph on Interpretation of section 5.1—

(a) for the definition of “hazardous waste” substitute —

“hazardous waste” means any solid or liquid waste which is hazardous waste as defined in Articles 3(2) and 7 of Directive 2008/98/EC except for—

(a) combustible liquid wastes including waste oils as defined in Article 3(3) of Directive 2008/98/EC provided that they meet the following criteria—

- (i) the mass content of polychlorinated aromatic hydrocarbons, e.g. polychlorinated biphenyls (PCB) or pentachlorinated phenol (PCP) amounts to concentrations no higher than those set out in the relevant Community legislation;
- (ii) these wastes are not rendered hazardous by virtue of displaying properties set out in Annex III to Directive 2008/98/EC;
- (iii) the net calorific value amounts to at least 30 MJ per kilogramme: and

(b) any combustible liquid wastes which cannot cause, in the flue gas directly resulting from their combustion, emissions other than those from gas oil as defined in Article 2(2) of Council Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels, as amended by Directive 2005/33/EC or a higher

(a) S.R.2003 No.46 as amended by S.R.2003 No.390, S.R. No.496, S.I. 2003/3311. S.R. 2004 No.36, S.R.2004 No.507, S.R.2005 No.285, S.R. 2005 No.300, S.R. 2005 No.454, S.R.2006 No.98, S.R. 2006 No.280, S.R. 2007 No.245, S.I.2007/2325, S.R. 2009 No.159, S.R.2009 No.403 and S.R.2010 No.165

(b) O.J.L.312.22.11.2008.p.3.

concentration of emissions than those resulting from the combustion of gas oil as so defined;” and

(b) for the definition of “waste” substitute—

“waste means any solid or liquid waste which is waste within the meaning of waste as defined in Article 3(1) of Directive 2008/98/EC.”

(6) In Schedule 1 Part 1 Section 5.3 Part A—

(a) in paragraph (b), after “disposal” insert “or recycling”;

(b) in paragraph (c)(i), for “Annex IIA to Council Directive 75/442/EEC” substitute “Annex I to Directive 2008/98/EC”;

(c) in paragraph (c)(ii), for “Annex IIA to Council Directive 75/442/EEC” substitute “Annex I to Directive 2008/98/EC”;

(d) in the provisions on Interpretation of Part A, in paragraph 1—

(i) in the definition of “disposal” for “Annex IIA to Council Directive 75/442/EEC on waste” substitute “Annex I to Directive 2008/98/EC”

(ii) in the definition of “hazardous waste” for Article 1(4) of Council Directive 91/689/EEC” substitute “Article 3(2) of Directive 2008/98/EC” and

(e) in the provisions on Interpretation of Part A, in paragraph 2 for “Article I of Council Directive 75/439/EEC” substitute “Article 3 of Directive 2008/98/EC”.

(7) In Schedule 1 Part I Section 5.4 Part A, in the provisions on Interpretation of Part A, in paragraph 3, for “Annex IIIB to Council Directive 75/442/EEC on waste” substitute “Annex II to Directive 2008/98/EC”.

Amendment of the Waste Management Licensing Regulations (Northern Ireland) 2003

35. The Waste Management Licensing Regulations (Northern Ireland) 2003(a) shall be amended in accordance with regulations 36 to 42.

Amendment of regulation 1: Citation, commencement and interpretation

36. In regulation 1(3) —

(a) insert the following definitions in the appropriate alphabetical order—

““broker” means any undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;

“controlled waste” means household, industrial and commercial waste or any such waste;

“dealer” means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste;”;

(b) for the definition of “the Directive” substitute—

““the Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste;”;

(c) for the definition of “Directive waste” substitute—

““Directive waste” means anything that, subject to paragraph 38(a) of Schedule 2, is waste within the meaning of Article 3(1) of the Directive, as read with Articles 5 and 6, and which is not excluded from the scope of the Directive by Article 2(1),(2) or (3);”;

(d) for the definition of “disposal” substitute—

(a) S.R. 2003 No.493 as amended by S.R. 2003 No.496. S.R. 2005 No. 300, S.R. 2006 No. 280, S.R. 2006 No. 489, S.R. 2006 No 519, S.R. 2007 No.258, S.R. 2008 No. 18, S.R.2009 No.159, S.R. 2009 No.178 and S.R 2010 No.84.

“disposal” means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy (Annex I to the Directive(a) sets out a non-exhaustive list of disposal operations);”;

(e) for the definition of “end of life vehicle” substitute—

“end of life vehicle” means any vehicle designated as category M1 or N1 defined in Annex IIA to Directive 70/156/EEC, and three wheel motor vehicles as defined in Directive 92/61/EEC but excluding motor tricycles, which is waste within the meaning of the Directive;”;

(f) for the definition of “European Waste Catalogue” substitute—

“European Waste Catalogue” means the list of wastes set out in Commission Decision 2000/532/EC establishing a list of wastes; and “EWC Code” means any six-digit code set out in the Annex to Commission Decision 2000/532/EC which is used to describe a type of waste;”;

(g) for the definition of “recovery” substitute—

“recovery”—

- (a) in relation to WEEE has the meaning given by Article 3(f) of the WEEE Directive;
- (b) in relation to any other waste, 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. Annex II to the Directive sets out a non-exhaustive list of recovery operations;”;

(h) for the definition of “recycling” substitute—

“recycling”—

- (a) in relation to WEEE, has the meaning given by Article 3(e) of the WEEE Directive;
- (b) in relation to waste batteries or accumulators, means the reprocessing in a production process of waste materials for their original purpose or for other purposes, but excluding energy recovery;
- (c) in relation to any other waste, means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;”;

(i) for the definition of “treatment” substitute—

“treatment”—

- (a) in relation to WEEE, has the meaning given by Article 3(h) of the WEEE Directive;
- (b) in relation to waste batteries or accumulators, means any activity carried out on waste batteries and accumulators after they have been handed over to a facility for sorting, preparation for recycling or preparation for disposal;
- (c) in relation to any other waste, means recovery or disposal operations, including preparation prior to recovery or disposal;”;

(j) for the definition of “waste” substitute—

“waste” means—

- (a) Directive waste;
- (b) radioactive waste where it is—

(a) OJ No L 312, 22.11.2008, p3

- (i) exempt from the requirement for authorisation by virtue of an order which was made, or has effect as if made, under section 15(2) of the Radioactive Substances Act 1993(a); and
 - (ii) subject to an activity falling within Schedule 2 of these Regulations and regulation 15 of the Hazardous Waste Regulations (Northern Ireland) 2005(b);;
- (k) for the definition of “waste battery or accumulator” substitute—
 ““waste battery or accumulator” means any battery or accumulator which is waste within the meaning of the Directive;”;
- (l) for the definition of “waste oil” substitute—
 ““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;”.

Amendment of regulation 2: Offences

- 37.—(1) In regulation 2(1) at the end of paragraph (s) delete “or”.
- (2) At the end of paragraph (t) delete “.” and insert “;”.
- (3) At the end of paragraph (u) delete “.” and insert—
 “; or
 (v) section 85(1) of the Marine and Coastal Access Act 2009(c).”.

Amendment of regulation 16: Exclusion of activities under other control regimes from waste management licensing

- 38.—(1) In regulation 16—
- (a) in paragraph (1)(f) at the end of sub-paragraph (ii) delete “.” and insert—
 “; or
 (iii) the subject of a licence under Part 4 of the Marine and Coastal Access Act 2009;” and
 - (b) after paragraph (2) insert—
 “(2A) Paragraph (1)(f)(iii) does not apply to a working dry dock area within a port regulated by a harbour order under the Harbours Act (Northern Ireland) 1970(d).”.

Amendment of regulation 22: Registration of brokers

- 39.—(1) In regulation 22—
- (a) for paragraph (1) substitute—
 “(1) Subject to paragraphs (2) to (4), it shall be an offence for an establishment or undertaking to arrange as a broker or dealer for the disposal or recovery of controlled waste on behalf of another person unless it is a registered broker of or dealer in controlled waste.”
 ;
 - (b) for paragraph (2)(a) substitute—
 “(2)(a) it is authorised to carry out the disposal or recovery of the waste by a waste management licence under Article 6 of the 1997 Order, a disposal licence, a resolution, an

(a) 1993, c. 12
 (b) S.R. 2005 No 300 as amended by S.R.2006 No.280 and S.R. 2009 No.159
 (c) 2009 c.23
 (d) 1970, Chapter 1

authorisation under Articles 6 to 12 of the Industrial Pollution Control Order, a permit under the 2003 Regulations, a discharge consent under Article 9 of the Water Order, a licence under Part II of the Food and Environment Protection Act 1985 or a marine licence under section 65 of the Marine and Coastal Access Act 2009; or”;

(c) for paragraph (5) substitute—

“(5) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale;” and

(d) in paragraph (7) after “brokers” insert “or dealers”.

40. For Schedule 3 substitute

“SCHEDULE 3 Regulations 1(3) and 21

WASTE FRAMEWORK DIRECTIVE

PART I

General

Interpretation of Schedule 3

1. In this Schedule, unless the context otherwise requires—

“best available techniques” means best available techniques as defined in Article 2(12) of Directive 2008/1/EC(a); of the European Parliament and of the Council concerning integrated pollution prevention and control;

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

“competent authority” has the meaning given by paragraph 3;

“development” and “development plan” has the same meaning as in the Planning (Development Plans) Regulations (Northern Ireland) 1991(b);

“modify” includes vary, and cognate expressions shall be construed accordingly;

“municipal waste” means household waste and similar waste;

“permit” means a waste management licence under Article 6 of the 1997 Order, a disposal licence, an authorisation under the Industrial Pollution Control Order, a permit under the 2003 Regulations, a resolution, a licence under Part II of the Food and Environment Protection Act 1985, a licence under Part 4 of the Marine and Coastal Access Act 2009 or a consent under the Water Order;

“plan-making provisions” means paragraph 5 below, Articles 19 and 23 of the 1997 Order and Parts II and III of the Planning (Northern Ireland) Order 1991(c);

“planning permission” has the same meaning as in Part I of the Planning (Northern Ireland) Order 1991;

“preparing for re-use” means checking, cleaning 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; and “preparation for re-use” shall be construed accordingly;

(a) OJ L 24/11, 29.1.2008

(b) S.R. 1991 No.119 relevant amendments are S.R. 2004 No.438 and S.R. 2006 No. 382

(c) S.I. 1991/1220 (N.I. 11)

“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 life span 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;

“recycling” means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;

“relevant objectives” has the same meaning given in paragraph 4;

“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;

“regional development strategy” means the regional development strategy referred to in Article 3 of the Strategic Planning (Northern Ireland) Order 1999(a);

“specified action” means any of the following—

- (a) determining—
 - (i) an application for planning permission; or
 - (ii) an appeal made under Article 32 of the Planning (Northern Ireland) Order 1991 in respect of such an application;
- (b) deciding whether to take any action under Article 71(1)(a) or (b) of the Planning (Northern Ireland) Order 1991;
- (c) deciding whether—
 - (i) in making or confirming a discontinuance order, to include in the order any grant of planning permission; or
 - (ii) to confirm (with or without modifications) a discontinuance order insofar as it grants planning permission,

and, for the purposes of this sub-paragraph, “discontinuance order” means an order under Article 39 of the Planning (Northern Ireland) Order 1991;

(d) discharging functions under Part III of the Planning (Northern Ireland) Order 1991;

“the Waste Hierarchy” means the priority order which shall apply to the prevention and management of waste as follows—

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

“waste management” means the collection, transport, recovery and disposal of waste, including the supervision of such operation and the after-care of disposal sites, and including actions taken as a broker or dealer;

“Waste Management Groups” means arc21, SWaMP 2008 and the North West Region Waste Management Group.

(a) S.I. 1999/660 (N.I.4)

Duties of competent authorities

2.—(1) Subject to the following provisions of this paragraph, a competent authority shall discharge their specified functions, in so far as they relate to the recovery or disposal of waste, with the relevant objectives.

(2) Where the recovery or disposal of waste is or forms part of a prescribed process designated for local control under the Industrial Pollution Control Order, and requires either a waste management licence or is covered by an exemption conferred by regulation 17 and Part I of Schedule 2 to, these Regulations, nothing in sub-paragraph (1) shall require a competent authority to discharge its functions under—

- (a) the Industrial Pollution Control Order so as to control pollution of the environment due to the release of substances into any environmental medium other than the air; or
- (b) Part II of the 1997 Order in order to control pollution of the environment due to the release of substances into the air resulting from the carrying on of the prescribed process.

(3) In sub-paragraph (2), “prescribed process”, “designated for local control”, “pollution of the environment due to the release of substances into the air” and “pollution of the environment due to the release of substances into any environmental medium other than the air” have the meanings which they have in Article 2 of the Industrial Pollution Control Order.

(4) In a case where the recovery or disposal of waste is or forms part of an activity carried out at a Part B or a Part C installation and requires a waste management licence, nothing in sub-paragraph (1) shall require a competent authority to discharge its functions under—

- (a) the 2003 Regulations for any purpose other than preventing or, where that is not practicable, reducing emissions into the air;
- (b) Part II of the 1997 Order for the purpose of preventing or reducing emissions into the air.

(5) In sub-paragraph (4), “Part B installation” and “Part C installation” have the meaning given by regulation 2(1) of the 2003 Regulations.

Meaning of “competent authority” etc.

3.—(1) For the purposes of this Schedule, “competent authority” means any of the persons or bodies listed in column (1) of Table 13 and, subject to sub-paragraph (2), in relation to a competent authority “specified function” means any function of that authority listed in column (2) of that Table opposite the entry for that authority.

Table 13

<i>Column 1</i>	<i>Column 2</i>
<i>Competent authorities</i>	<i>Specified functions</i>
The Department	The taking of any specified action. Its functions under Part II of the 1997 Order in relation to waste management licences, including preparing the waste management strategy or any modification of that strategy under Article 19 of that Order and preparation of a waste prevention programme, or any modification of these, under Part 3 of the Waste Regulations (Northern Ireland) 2011. Its functions under Part II of the Food and Environment Protection Act 1985, or under

	<p>paragraph 5 of this Schedule.</p> <p>Its functions under Part 4 of the Marine and Coastal Access Act 2009.</p> <p>Its function in relation to—</p> <p>(a) consents under the Water Order (offences in relation to pollution of water resources) for any discharge of waste in liquid form other than waste waters;</p> <p>(b) authorisations under regulation 22 (19) of the Groundwater Regulations (Northern Ireland) 2009 (discharge of a hazardous substance or non-hazardous pollutant);</p> <p>(c) notices under regulation 25 of the Groundwater Regulations (Northern Ireland) 2009 (prevent or control the input of hazardous substance or non-hazardous pollutant);</p> <p>(d) its functions under regulation 22 and Schedule 4 to these Regulations;</p> <p>(e) its functions under this Schedule and paragraph 13 to these Regulations; and</p> <p>(f) its functions under The Hazardous Waste Regulations (NI) 2005.</p>
A district council	The preparation or modification of a plan under Article 23 of the 1997 Order.
An enforcing authority (within the meaning of regulation 2(2) of the 2003 Regulations)	Its functions in relation to permits under the 2003 Regulations except in relation to the carrying out of an exempt activity.
The Planning Appeals Commission	Its functions in relation to appeals under the 1997 Order and the 2003 Regulations.

(2) In Table 13, references to functions do not include functions of making, revoking, amending, revising or re-enacting orders, regulations or schemes where those functions are required to be discharged by regulations.

Relevant objectives in relation to waste management

4.—(1) The following objectives are the relevant objectives in relation to waste management—

- (a) to ensure that waste is managed without endangering human health, without harming the environment, and in particular—
 - (i) without risk to water, air, soil, plants or animals;
 - (ii) without causing a nuisance through noise or odours; and
 - (iii) without adversely affecting the countryside or places of special interest;
- (b) to ensure that different types of waste are collected separately and are not mixed with other waste or other material with different properties where this is necessary to facilitate or improve recovery and where it is technically, environmentally and economically practicable, and
- (c) to implement, so far as practicable, any plan made under the plan-making provisions.

(2) To apply the waste hierarchy in the following priority order Article 4 of the Directive in the manner set out in paragraph (3) is a relevant objective in relation to waste prevention, preparation for re-use and management—

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

(3) To apply the waste hierarchy in a way which delivers the best overall environmental outcome. The waste hierarchy may be departed from where this is justified by life-cycle thinking on the overall impact of the generation and management of such waste.

(4) The following are relevant objectives in relation to the recovery and disposal of waste—

- (a) 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) to ensure that the network referred to at paragraph (a) enables—
 - (i) the European Union as a whole to become self-sufficient in waste disposal, and in the recovery of mixed municipal waste collected from households, and the United Kingdom individually to move towards that aim, taking into account geographical circumstances or the need for specialised installations for certain types of waste; and
 - (ii) waste to be disposed of, and the mixed municipal waste collected from private households 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 human health.

(5) The following further objectives are relevant objectives in relation to functions under the plan-making provisions—

- (a) to encourage firstly the prevention or reduction of waste production and its harmfulness, in particular by—
 - (i) the development of clean technologies more sparing in their use of natural resources;
 - (ii) the technical development and marketing of products designed so as to make no contribution or to make the smallest possible contribution, by the nature of their manufacture, use or final disposal, to increasing the amount or harmfulness of waste and pollution hazards; and
 - (iii) the development of appropriate techniques for the final disposal of dangerous substances contained in waste destined for recovery; and
- (b) to encourage secondly—
 - (i) the recovery of waste by means of preparing for re-use, recycling, or reclamation or any other process with a view to extracting secondary raw materials; and
 - (ii) the use of waste as a source of energy.

Preparation of offshore waste management plan

5.—(1) Subject to sub-paragraph (2), it shall be the duty of the Department to prepare a statement (“the plan”) containing its policies in relation to the recovery or disposal of waste for the purposes of attaining the relevant objectives in those parts of United Kingdom waters and United Kingdom controlled waters for which the Department is the licensing authority.

(2) The plan shall relate in particular to—

- (a) the type, quantity and origin of waste to be recovered or disposed of;

- (b) general technical requirements;
 - (c) any special arrangements for particular wastes; and
 - (d) suitable disposal sites or installations.
- (3) In exercising its offshore licensing functions the Department shall ensure—
- (a) the waste hierarchy is applied to the generation of waste;
 - (b) waste generated by the disposal or recovery of waste is treated in accordance with Article 4 of the Directive;
 - (c) compliance with Article 13 of the Directive;
 - (d) compliance with the second paragraph of Article 23(1) of the Directive; and
 - (e) compliance with the following Articles of the Directive—
 - (i) Article 18 (2)(b) and (c);
 - (ii) Article 23(3) and (4); and
 - (iii) Article 35(1).
- (4) The Department shall make copies of the plan available to the public on payment of reasonable charges.
- (5) In this paragraph—
- (a) “offshore licensing functions” means functions under Part 2 of the Food and Environment Protection Act 1985(a) and functions under Part 4 of the Marine and Coastal Access Act 2009(b); and
 - (b) “United Kingdom controlled waters” has the meaning given by section 24(1) of the Food and Environment Protection Act 1985.

Matters to be covered by permits

6. When the Department or a district council grants or modifies a permit, and the activities authorised by the permit include the treatment of waste, it shall ensure that the permit covers—

- (a) the types and quantities of waste to be treated;
- (b) for each type of operation permitted, the technical and any other requirements relevant to the site concerned;
- (c) the safety and precautionary measures to be taken;
- (d) the treatment site;
- (e) such monitoring and control operations as may be necessary;
- (f) such closure and after-care provisions as may be necessary; and
- (g) the treatment method to be used for each type of operation.

Modifications of provisions relating to development plans and regional development strategy

7. The Department for Regional Development shall have regard to Articles 4, 13 and 16 of the Directive in formulating a regional development strategy under Article 3 of the Strategic Planning (Northern Ireland) Order 1999(c).

(a) 1985 c.48
 (b) 2009 c.23
 (c) S.I. 1999/660 (N.I.4)

Modifications of the Industrial Pollution Control (Northern Ireland) Order 1997

8.—(1) Subject to Article 28(1) of the Industrial Pollution Control Order, that Order shall have effect in relation to prescribed processes involving the disposal or recovery of waste with such modifications as are needed to allow an enforcing authority to exercise its functions under that Order for the purpose of achieving the relevant objectives.

(2) Nothing in sub-paragraph (1) requires an enforcing authority in granting an authorisation in relation to such a process to take account of the relevant objectives insofar as they relate to the prevention of detriment to the amenities of the locality in which the process is (or is to be) carried on if planning permission, resulting from the taking of a specified action by an enforcing authority after 18th December 2003, is or, before the process is carried on, will be in force.

Modifications of Part II of the Waste and Contaminated Land (Northern Ireland) Order 1997

9.—(1) Part II of the 1997 Order shall have effect subject to the following modifications.

(2) In Articles 4(1) and 6 any reference to the deposit, treatment, keeping or disposal of controlled waste shall include a reference to any operation listed in Part II or III of this Schedule.

(3) Article 4(2) shall be amended as follows—

- (a) for “Paragraph (1)” there shall be substituted “Paragraph (1)(a) or (b)”; and
- (b) at the end there shall be inserted the words “except in the case of the treatment, keeping or disposal of household waste by an establishment or undertaking”.

(4) In Article 8(4), the reference to planning permission shall be taken to be a reference to planning permission resulting from the taking of a specified action by the Department.

(5) In Article 30(1), any reference to the treatment, keeping or disposal of such waste as is referred to in that paragraph shall include a reference to submitting such waste to any of the operations listed in Part II or III of this Schedule.

(6) In Article 30(2) any reference to the treatment, keeping or disposal of hazardous waste shall include a reference to submitting hazardous waste to any of the operations listed in Part II or III of this Schedule.

Modifications of Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978

10. Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978(a) shall have effect as if any reference in that Part to waste included a reference to “waste” as defined in the Waste and Contaminated Land (NI) Order 1997(b).

References to “waste” in planning and water legislation

11. In the Planning (Northern Ireland) Order 1991(c) and the Water Order, any reference to “waste” shall include a reference to Directive waste.

Registration by professional collectors and transporters of waste, and by dealers and brokers

12.—(1) Subject to sub-paragraph (3), it shall be an offence for an establishment or undertaking falling within regulation 2 of the Controlled Waste (Registration of Carriers

(a) S.I. 1978/1049 (N.I. 19)
(b) S.I. 1997/2778 (N.I. 19)
(c) S.I. 1991/1220 (N.I. 11)

and Seizure of Vehicles) Regulations (Northern Ireland) 1999^(a); to collect or transport waste unless it is registered with the Department in accordance with the provisions of this paragraph.

(2) Subject to sub-paragraph (3), it shall be an offence for an establishment or undertaking falling within sub-paragraph (a), (b) or (c)(i)-(v) of regulation 22(4) to arrange for the recovery or disposal of waste on behalf of another person unless it is registered in accordance with the provisions of this paragraph.

(3) Sub-paragraphs (1) and (2) do not apply in cases where the establishment or undertaking is carrying on the activities therein mentioned pursuant to, and in accordance with the terms and conditions of, a permit.

(4) An establishment or undertaking that operates within Northern Ireland shall register with the Department whether or not it has its place of business in Northern Ireland.

(5) The Department shall establish and maintain a register of establishments and undertakings registering with it under the provisions of this paragraph.

(6) The register shall contain the following particulars in relation to each such establishment or undertaking—

- (a) the name of the establishment or undertaking;
- (b) the address of its principal place of business; and
- (c) the address of any place at or from which it carries on its business.

(7) The Department shall enter the relevant particulars in the register in relation to an establishment or undertaking if it receives notice of them in writing from that establishment or undertaking.

(8) A person guilty of an offence under sub-paragraph (1) or (2) shall be liable on summary conviction to a fine not exceeding the statutory maximum.

(9) The Department shall—

- (a) secure that any register maintained by it under this paragraph is open to inspection by members of the public free of charge at all reasonable hours; and
- (b) shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register.

(10) Registers under this paragraph may be kept in any form.

(11) In this paragraph, “collect” and “transport” have the same meaning as they have in Article 26 of the Directive.

Duty to carry out appropriate periodic inspections

13.—(1) Subject to sub-paragraphs (4) and (5), any establishment or undertaking

- (a) which carries out the recovery or disposal of controlled waste; or
- (b) which collects or transports controlled waste; or
- (c) which arranges for the recovery or disposal of controlled waste on behalf of others (dealers or brokers), and
- (d) producers of hazardous waste;

shall be subject to appropriate periodic inspections by the competent authorities.

(2) In the case of establishments or undertakings handling end of life vehicles (whether or not such vehicles have been depolluted) periodic inspections in accordance with sub-paragraph (1) shall meet the requirements laid down in Article 6(2) of the End of Life Vehicles Directive.

(a) S.R. 1999 No. 362

(3) Article 44(1) and (2) of the 1997 Order (power to obtain information) shall have effect as if the provisions of this paragraph were provisions of Part II of that Order and as if, in those Articles, references to the Department or a district council were references to a competent authority.

(4) Subject to sub-paragraph (4A) and (5), in the case of the exempt activities referred to in the first column of Table 14, the duty under sub-paragraph (1) shall be discharged by carrying out inspections set out in the second column of that table in respect of any place where the relevant exempted activity is carried on.

(4A) In respect of establishments and undertakings carrying out exempt activities set out in paragraphs 49, 50 and 51, periodic inspections in accordance with sub-paragraph (1) shall verify the type and quantities of waste to be treated, the general technical requirements to be complied with and the safety precautions to be taken.

Table 14

<i>Relevant exempt activity⁽¹⁾</i>	<i>Inspections required</i>
9, 10	An inspection shall be carried out at the time of treatment or, where that is not possible, not later than 4 weeks thereafter.
11, 13, 19, 45, 46	An initial inspection shall be carried out at the time when the exempt activity commences. Thereafter, periodic inspections shall be carried out at intervals not exceeding 12 months.
47, 49, 50 and 51	An initial inspection shall be carried out within two months of the receipt by the Department of the notification under Regulation 18(7). Thereafter, periodic inspections shall be carried out at intervals not exceeding 12 months.

⁽¹⁾ numbered by reference to the corresponding paragraph of Part I of Schedule 2

Record keeping

14.—(1) Subject to any requirements to keep records under regulation 19 and sub-paragraph (2), an establishment or undertaking which carries out the disposal or recovery of controlled waste shall—

- (a) keep a chronological record of the quantity, nature, origin and, where relevant, the destination, frequency of collection, mode of transport and treatment method of any waste which is disposed of or recovered; and
- (b) make that information available, on request, to the competent authorities or, in the case of hazardous waste, to a previous holder; and for this purpose “holder”, in respect of any such waste, means the producer or the person in possession of it.

(2) Where hazardous waste is recovered or disposed of by an establishment or undertaking, it shall keep a record of the carrying out and supervision of the relevant operation and, in the case of a disposal operation, of the after-care of the disposal site.

(3) Subject to sub-paragraph (4), sub-paragraph (1) does not apply where the disposal or recovery of the waste is covered by an exemption, conferred by—

- (a) regulation 17(1) and Part I of Schedule 2;

- (b) Article 3 of the Deposits in the Sea (Exemptions) Order (Northern Ireland) 1995(a); or
- (c) an exemption for a licence under Part 4 of the Marine and Coastal Access Act 2009(b).

(4) Sub-paragraph (1) does apply to an activity subject to an exemption conferred by regulation 17(1) and paragraphs 9, 10, 11, 13, 19, 45, 46 or 47A of Part I of Schedule 2.

(5) Subject to sub-paragraph (6), it shall be an offence for an establishment or undertaking to fail to comply with any of the foregoing provisions of this paragraph insofar as that provision imposes any requirement or obligation upon it.

(6) Paragraph (2) of regulation 43 of the Hazardous Waste Regulations (Northern Ireland) 2005(c) (defence in cases of emergency, etc.) shall apply to a person charged with an offence under sub-paragraph (5) as it applies to a person charged with an offence under paragraph (1) of that regulation.

(7) A person who, in purported compliance with a requirement to furnish any information imposed by or under any of the provisions of this paragraph, makes a statement which that person knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, commits an offence.

(8) A person who intentionally makes a false entry in any record required to be kept by virtue of any of the provisions of this paragraph commits an offence.

(9) Regulation 43(6) of the Hazardous Waste Regulations (Northern Ireland) 2005 (Offence where act or default causes offence by another) shall apply to an offence under this paragraph as it applies to an offence under that regulation

(10) Subject to sub-paragraph (11), a person guilty of an offence under this paragraph shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction or indictment to a fine or to imprisonment for a term not exceeding two years or both.

(11) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale if that offence is related to exempt activities conferred by regulation 17(1) and paragraphs 9, 10, 11, 13, 19, 46, or 47A of Part I of Schedule 2.

PART II

WASTE DISPOSAL OPERATIONS

N.B. This Part of this Schedule is intended to list disposal operations such as they occur in practice. In accordance with Article 13 of the Directive waste must be disposed of without endangering human health and without harming the environment.

<i>*Operation Code</i>	<i>Description</i>
D1	Deposit into or onto land (e.g. landfill etc.).
D2	Land treatment (e.g. biodegradation of liquid or sludge discards in soils, etc.).
D3	Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.).
D4	Surface impoundment (e.g. placement of liquid or sludgy discards into pits, ponds or lagoons, etc.).

-
- (a) S.I. 1995/234 (N.I.12)
 - (b) 2009 c. 23
 - (c) S.R. 2005 No. 300

D5	Specially engineered landfill (e.g. placement into lined discrete cells which are capped and isolated from one another and the environment, etc.).
D6	Release into a water body except seas/oceans.
D7	Release to seas/oceans including sea-bed insertion.
D8	Biological treatment not specified elsewhere in this Part of this Schedule which results in final compounds or mixtures which are discarded by means of any of the operations numbered D1 to D12.
D9	Physico-chemical treatment not specified elsewhere in this Part of this Schedule which results in final compounds or mixtures which are discarded by means of any of the operations numbered D1 to D12 (e.g. evaporation, drying, calcination, etc.).
D10	Incineration on land.
D11	Incineration at sea.* *This operation is prohibited by EU legislation and international conventions.
D12	Permanent storage (e.g. emplacement of containers in a mine, etc.).
D13	Blending or mixing prior to submission to any of the operations numbered D1 to D12 * *If there is no other D code appropriate, this can include preliminary operations prior to disposal, including pre-processing such as sorting, crushing, compacting, pelletising, drying, shredding, conditioning or separating prior to submission to any of the operations numbered D1 to D12.
D14	Repackaging prior to submission to any of the operations numbered D1 to D13.
D15	Storage pending any of the operations numbered D1 to D14, (excluding temporary storage, pending collection, on the site where the waste is produced.* * Temporary storage means preliminary storage according to point (10) of Article 3

PART III

WASTE RECOVERY OPERATIONS

NB. This part of this Schedule is intended to list recovery operations as they occur in practice. In accordance with Articles 4 and 13 of the Directive waste must be recovered without endangering human health and without harming the environment.

<i>*Operation Code</i>	<i>Description</i>
R1	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 greater than (i) 0.60 for installations in operation and permitted in accordance with applicable Community legislation before 1st January 2009; or

	(ii) 0.65 for other installations. Energy efficiency is calculated according to the formula contained in Annex II of the Waste Framework Directive.
R2	Solvent reclamation/regeneration.
R3	Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes).* * This includes gasification and pyrolysis using the components as chemicals.
R4	Recycling/reclamation of metals and metal compounds.
R5	Recycling/reclamation of other inorganic materials.* * This includes soil cleaning resulting in recovery of the soil and recycling of inorganic construction materials.
R6	Regeneration of acids or bases.
R7	Recovery of components used for pollution abatement.
R8	Recovery of components from catalysts.
R9	Oil re-refining or other reuses of oil.
R10	Land treatment resulting in benefit to agriculture or ecological improvement.
R11	Use of waste obtained from any of the operations numbered R1 to R10.
R12	Exchange of wastes for submission to any of the operations numbered R1 to R11* If there is no other R code appropriate, this can include preliminary operations prior to recovery including pre-processing such as 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.
R13	Storage of waste pending any of the operations numbered R1 to R12 (excluding temporary storage, pending collection, on the site where the waste is produced).* *Temporary storage means preliminary storage according to point (10) of Article 3.

PART IV

Duties of planning authorities

Interpretation of this Part

1. In this Part—

“the 1991 Order” means the Planning (Northern Ireland) Order 1991(a);

(a) S.I.1991/1220 (N.I. 11) as amended by S.I. 2006/1252 (N.I. 7)

“the 2006 Order” means the Planning (Inquiry Procedures) Rules (Northern Ireland) Order 2006^(a);

“planning permission” has the meaning given in Article 2 of the 1991 Order^(b).

Meaning of planning authority

2. In this Part, “planning authority” means—

- (a) the Department;
- (b) the Department for Regional Development, in relation to the Strategic Planning (Northern Ireland) Order 1999^(c);
- (c) the Planning Appeals Commission, in respect of its functions under the 1991 Order and the 2006 Order.

Meaning of planning functions

3.—(1) In this Part, “planning functions” means any of the following functions other than a function which must be discharged by statutory instrument—

- (a) determining—
 - (i) an application for planning permission under Article 25 of the 1991 Order; or
 - (ii) an appeal made under Article 32 of the 1991 Order in relation to the determination of such an application^(d);
 - (iii) an appeal made under Article 33 of the 1991 Order in relation to an appeal in default of planning decision;
- (b) deciding whether to take action under Article 71(1)(a) or (b) or Article 95 of the 1991 Order;
- (c) deciding whether—
 - (i) in making or confirming a discontinuance order, to include in the order any grant of planning permission; or
 - (ii) to confirm (with or without modifications) a discontinuance order insofar as it grants planning permission;
- (d) discharging functions under Part 3 of the 1991 Order, or the Strategic Planning (Northern Ireland) Order 1999;

(2) In paragraph (1)(c), “discontinuance order” means an order under section 39 of the 1991 Order.

Exercise of planning functions

4. The planning authority shall have regard to the following provisions of the Waste Framework Directive when exercising its planning functions to the extent that those functions relate to waste management—

- (a) Article 13;
- (b) the first paragraph of Article 16(1) ignoring the words “in cooperation with other Member States where this is necessary or advisable” and “taking into account best available techniques”;
- (c) Article 16(2) and (3).

(a) S.R. 2006 No.213

(b) the definition of “planning permission” in Article 2 of the 1991 Order was amended by the Planning (Amendment) (Northern Ireland) Order 2003

(c) S.I. 1999/660 (N.I. 4)

(d) Article 32 was amended by the Planning Reform (Northern Ireland) Order 2006 (S.I.2006/1252 (N.I. 7) Article 11 and Schedule 5)

Further duties in relation to planning permission

5.—(1) The Department or the Planning Appeals Commission shall not grant planning permission for a landfill unless it has taken into consideration the requirements of paragraph 1.1 of Annex 1 to Council Directive 1999/31/EC on the landfill of waste (a).

(2) The Department shall not grant planning permission for a mining waste facility to which Article 7 of Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries^(b) applies unless it is satisfied that—

- (a) the operator of that facility shall meet the requirements of Article 11(2)(a) of that Directive; and
- (b) the management of waste at that facility shall not conflict directly or otherwise interfere with the implementation of the plan referred to in Article 7(3)(b) of that Directive.

(3) In this regulation—

“landfill” has the meaning given in Article 2(g) of Directive 1999/31/EC, but does not include any operation excluded from the scope of that Directive by Article 3(2);

“mining waste facility” means a “waste facility” as defined in Article 3(15) of Directive 2006/21/EC, but does not include those facilities mentioned in Article 24(2) or in the first paragraph of Article 24(4).”.

41. For Schedule 4 substitute—

“SCHEDULE 4

Regulation 22(7)

REGISTRATION OF BROKERS AND DEALERS OF CONTROLLED WASTE

Interpretation of Schedule 4

1.—(1) In this Schedule—

“applicant” means a person who is applying for registration or for renewal of registration as a registered broker or dealer and “application” shall have like meaning;

“broker” means any undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;

“carrier” means a person registered as a carrier of controlled waste under Regulation 6 the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999(c);

“date of expiry”, in relation to a broker’s or dealer’s registration—

- (a) in a case to which sub-paragraph (2) or (3) of paragraph 7 applies, has the meaning given by that sub-paragraph; and
- (b) in any other case means the date on which the period of three years mentioned in paragraph 7(1) expires;

“dealer” means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste;

“notice” means notice in writing;

(a) OJ No L 182, 16.7.1999, pl, as last amended by Directive 2008/98/EC (OJ No L 312 22,11,2008, p3)

(b) OJ No L 102,11.4.2006, p15, as amended by Regulation (EC)No596/2009(OJ No L188,18.7.2009, p14)

(c) S.R. 1999 No.362

“register” means the register of registered brokers or dealers to be maintained by the Department under paragraph 2;

“registered broker” means a person registered as a broker under regulation 22 and this Schedule;

“registered dealer” means a person registered as a dealer under regulation 22 and this schedule;

“relevant offence” means an offence under any of the enactments listed in regulation 2;

“relevant period” means two months or, except in the case of an application for the renewal of that registration by a person who is already registered, such longer period as may be agreed between the applicant and the Department;

“relevant person” means—

- (a) any person who has been convicted of a relevant offence committed by that person in the course of that person’s employment by the applicant or registered broker or dealer or in the course of the carrying on of any business by a partnership one of the members of which was the applicant or registered broker or dealer;
- (b) a body corporate which has been convicted of a relevant offence committed at a time when the applicant or registered broker or dealer was a director, manager, secretary or other similar officer of that body corporate; or
- (c) where the applicant or registered broker or dealer is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate and who—
 - (i) has been convicted of a relevant offence; or
 - (ii) was a director, manager, secretary or other similar officer of another body corporate at a time when the relevant offence for which that body corporate has been convicted was committed.

(2) For the purposes of this Schedule, an application for registration or for the renewal of a registration as a broker or dealer in controlled waste shall be treated as pending—

- (a) whilst it is being considered by the Department; or
- (b) if it has been refused or the relevant period from the making of the application has expired without the applicant having been registered, whilst either—
 - (i) the period for appealing in relation to that application has not expired; or
 - (ii) the application is the subject of an appeal which has not been disposed of.

(3) For the purposes of this Schedule, an appeal is disposed of when any of the following occurs—

- (a) the appeal is withdrawn; or
- (b) a determination is issued to the Department by the Planning Appeals Commission in respect of the appeal.

Registers

2.—(1) It shall be the duty of the Department to establish and maintain a register of brokers and dealers and—

- (a) to secure that the register is open for inspection by members of the public free of charge at all reasonable hours; and
- (b) to afford to members of the public reasonable facilities for obtaining copies of entries in the register on payment of reasonable charges.

(2) The register may be kept in any form.

Applications for registration

3.—(1) An application for registration as a broker of or dealer shall be made to the Department.

(2) Subject to sub-paragraphs (3) to (5), a person shall not make an application for registration or for the renewal of a registration whilst—

- (a) a previous application made by that person is pending; or
- (b) that person is registered.

(3) Sub-paragraph (2) shall not prevent a person from applying for the renewal of a registration where that person's application is made within the period of six months specified in paragraph 7(5).

(4) An application for registration or for the renewal of a registration in respect of a business which is or is to be carried on by a partnership shall be made by all of the partners or prospective partners.

(5) A prospective partner in a business carried on by a partnership whose members are already registered with the Department may make an application to the Department for registration as a partner in that business.

(6) An application for registration or for the renewal of a registration shall be made to the Department on a form provided by it for that purpose, and shall be accompanied by such information as the Department reasonably requires.

(7) Where an applicant wishes to apply to be registered both as a carrier and as a broker of or dealer in controlled waste, they may make a combined application on a form provided by the Department for that purpose.

(8) Where an applicant who wishes to apply both for the renewal of their registration as a carrier of controlled waste and for the renewal of their registration as a broker of or dealer in controlled waste, they may make a combined application on a form provided by the Department for that purpose.

(9) The Department shall provide a copy of the appropriate application form free of charge to any person requesting one.

(10) The Department shall charge an applicant in respect of its consideration of his application—

- (a) subject to sub-paragraph (c), in the case of either an application for registration as a broker or dealer or a combined application for registration as both a carrier and broker or dealer, £126;
- (b) in the case of either an application for the renewal of a registration as a broker or dealer or a combined application for renewal of registration both as a carrier and as a broker or dealer, £63;
- (c) in the case of an application by a registered carrier for registration as a broker or dealer, £30,

and the applicant shall pay the charge upon making the application.

(11) The Department shall, on receipt of an application for registration or for the renewal of a registration, ensure that the register contains a copy of the application.

(12) The Department may refuse an application for registration or for the renewal of registration if—

- (a) there has, in relation to that application, been a contravention of any of the requirements of the preceding provisions of this paragraph; or
- (b) the applicant or another relevant person has been convicted of a relevant offence and, in the opinion of the Department, it is undesirable for the applicant to be authorised to arrange for the disposal or recovery of controlled waste on behalf of other persons, or to purchase and sell controlled waste registered as a broker or dealer; or

- (c) in the opinion of the Department it is otherwise undesirable for the applicant to be registered as a broker or dealer.

(13) Where the Department decides to refuse an application for registration or for the renewal of a registration, it shall inform the applicant in writing that the application is refused and shall give the applicant the reasons for its decision.

(14) If an appeal is made under and in accordance with paragraph 6, the Department shall, as soon as reasonably practicable, make appropriate entries in the register indicating when the appeal was made and the result of the appeal.

(15) If no such appeal is made, the Department shall, as soon as reasonably practicable, make an appropriate entry in the register indicating that the application has been refused and that no appeal has been made.

(16) The Department may remove from the register—

- (a) a copy of an application entered on the register under sub-paragraph (11); or
- (b) an entry made under sub-paragraph (14) or (15),

at any time more than six years after the entry in question was put on the register.

(17) On deciding to register an applicant or on the issue to the Department of a determination by the Planning Appeals Commission under paragraph 6(9) that an appeal should be allowed, the Department shall—

- (a) issue to the applicant a certificate of registration free of charge; and
- (b) provide the applicant free of charge with a copy of the entry in the register.

Registration as a broker or dealer and amendment of entries

4.—(1) On deciding to register an applicant or on the issue to the Department of a determination by the Planning Appeals Commission under paragraph 6(9) that an appeal should be allowed, the Department shall make an entry in its register—

- (a) showing that person as a registered broker or dealer in controlled waste and allocating that person a registration number (which may include any letter);
- (b) specifying the date on which the registration takes effect and its date of expiry;
- (c) stating any business name of the applicant and the address of the applicant's principal place of business (together with any telephone, telex or fax number and email address of the applicant) and, in the case of an individual, the applicant's date of birth;
- (d) in the case of a body corporate, listing the names of each director, manager, secretary or other similar officer of that body and their respective dates of birth;
- (e) in the case of a company registered under the Companies Orders, specifying its registered number and, in the case of a company incorporated outside Northern Ireland, the country in which it was incorporated and its registration number there (if any);
- (f) in a case where the person who is registered or another relevant person has been convicted of a relevant offence, giving the person's name, details of the offence, the date of conviction, the penalty imposed, the name of the Court and, in the case of an individual, the person's date of birth; and
- (g) in a case where the person who is registered, or any company in the same group of companies as that person, is the holder of a waste management licence, stating the name of the holder of the licence.

(2) In the case of a business which is being, or is to be carried on by a partnership, all the partners shall be registered under one entry and only one registration number shall be allocated to the partnership.

(3) On making an entry in its register under sub-paragraph (1) the Department shall provide the registered person or partnership free of charge with a copy of the entry in the register.

(4) On deciding to renew any registration or on the issue to the Department by the Planning Appeals Commission of any determination under paragraph 6(9) in respect of such an application, the Department shall amend the relevant entry in the register—

- (a) to show the date on which the renewal takes effect and the revised date of expiry of the registration;
- (b) to record any other change required as a result of the application or the appeal; and
- (c) to note in the register the date on which the amendments are made.

(5) The Department shall, at the same time as amending the register under sub-paragraph (4), provide the registered person or partnership free of charge with a copy of the amended entry in the register.

(6) A person who is registered shall notify the Department of any change of circumstances affecting information in the register relating to that person.

(7) On—

- (a) being notified of any change of circumstances in accordance with sub-paragraph (6);
- (b) deciding to register a new partner in a registered partnership on an application by such person for registration in the entry in the register relating to that partnership; or
- (c) the issue by the Planning Appeals Commission of a determination under paragraph 6(9) allowing an appeal for the registration of such new partner,

the Department shall—

- (i) amend the relevant entry to reflect the change of circumstances or the registration of the new partner;
- (ii) note in the register the date on which the amendment is made;
- (iii) provide the registered person or partnership free of charge with a copy of the amended entry in the register.

(8) In this paragraph—

“Companies Orders” has the meaning given by Article 2 of the Companies (Northern Ireland) Order 1986(a);

“business name” means a name under which a person carries on business and by virtue of which Article 2(3) of the Business Names (Northern Ireland) Order 1986(b) applies; and

“group” has the meaning given by Article 55(1) of the Companies (Northern Ireland) Order 1990(c).

Revocation of registration

5.—(1) The Department may revoke a person’s registration as a broker of or dealer in controlled waste if,—

- (a) that person or another relevant person has been convicted of a relevant offence; and
- (b) in the opinion of the Department, it is otherwise undesirable for the registered broker or dealer to continue to be a registered broker or dealer; or

(a) S.I. 1986/1032 (N.I. 6)
(b) S.I. 1986/1033 (N.I. 7)
(c) S.I. 1990/593 (N.I. 5)

- (c) in the opinion of the Department it is otherwise undesirable for the registered broker or dealer to continue to be a registered broker or dealer.

(2) Where the Department decides to revoke a person's registration as a broker of or dealer in controlled waste, it shall give written notice to the broker or dealer informing that person of the revocation and the reasons for its decision.

Appeals

6.—(1) Where a person has applied to the Department to be registered as a broker of or dealer in controlled waste in accordance with paragraph 3, that person may appeal to the Planning Appeals Commission if—

- (a) the application is refused; or
- (b) the relevant period from the making of the application has expired without the applicant having been registered.

(2) A person whose registration as a broker of or dealer in controlled waste has been revoked may appeal against the revocation to the Planning Appeals Commission.

(3) Notice of an appeal to the Planning Appeals Commission under sub-paragraph (1) or (2) shall be given by the appellant to the Planning Appeals Commission within the period specified in sub-paragraph (7).

(4) If either party to the appeal so requests, the Planning Appeals Commission shall afford to each of them an opportunity of appearing before and being heard by the Commission.

(5) The notice of appeal shall be accompanied by the following—

- (a) a statement of the grounds of appeal;
- (b) in the case of an appeal under sub-paragraph (1), a copy of the relevant application;
- (c) in the case of an appeal under sub-paragraph (2), a copy of the appellant's entry in the register;
- (d) a copy of any relevant correspondence between the appellant and the Department;
- (e) a copy of any notice given to the appellant under paragraph 3(14) or 5(2);
- (f) a statement indicating whether the appellant requests the opportunity of appearing before and being heard by the Planning Appeals Commission.

(6) The appellant shall at the same time as giving notice of appeal to the Planning Appeals Commission serve on the Department a copy of the notice and a copy of the documents referred to in sub-paragraph (5)(a) to(f).

(7) Notice of appeal shall be given before the expiry of the period of 28 days beginning with—

- (a) in the case of an appeal under sub-paragraph (1)(a), the date on which the Department serves written notice on the applicant that their application has been refused;
- (b) in the case of an appeal under sub-paragraph (1)(b), the date on which the relevant period from the making of the application expired without the applicant having been registered; or
- (c) in the case of an appeal under sub-paragraph (2), the date on which the Department serves written notice on the registered broker of or dealer in controlled waste that the registration as a broker of or dealer in has been revoked,

or before such later date as the Planning Appeals Commission may at any time allow.

(8) The Planning Appeals Commission shall determine the appeal and Article 111 of the Planning (Northern Ireland) Order 1991(a) shall apply in relation to the determination of the appeal as it applies in relation to the determination of an appeal under that Order.

(9) The Planning Appeals Commission shall notify the appellant of its determination of the appeal and reasons for it, and shall at the same time send a copy of its determination to the Department.

Duration of registration

7.—(1) Subject to the following provisions of this paragraph, a person's registration as a broker of or dealer in controlled waste shall cease to have effect on the expiry of the period of three years beginning with the date of the registration or the date of any renewal.

(2) Where—

- (a) a registered carrier of controlled waste is registered as a broker of or dealer in controlled waste otherwise than by way of renewal of an existing registration as a broker or dealer; and
- (b) that person's registration as a carrier will expire within three years of the date of their registration as a broker or dealer,

if at the time of making the application for registration as a broker or dealer that person so requests, their registration as a broker or dealer shall expire on the same date as the date of expiry of their registration as a carrier.

(3) Where—

- (a) a registered broker of or dealer in controlled waste is registered as a carrier of controlled waste otherwise than by way of renewal of an existing registration as a carrier; and
- (b) that person's registration as a broker or dealer will expire within three years of the date of their registration as a carrier,

if on the next application for renewal of their registration as a broker or dealer that person so requests, their renewed registration as a broker or dealer shall expire on the same date as the date of expiry of their registration as a carrier.

(4) Registration as a registered broker or dealer shall cease to have effect if the registered broker or dealer gives written notice to the Department requiring the removal of their name from the register.

(5) The Department shall, no later than six months before the date of expiry of a broker's or dealer's registration, serve on a registered broker or dealer—

- (a) a notice informing that person of the date of expiry and of the effect of subparagraph (6); and
- (b) an application form for the renewal of that person's registration and a copy of that person's current entry in the register.

(6) Where an application for the renewal of a registration is made within the last six months prior to its date of expiry, the registration shall, notwithstanding the passing of the expiry date, continue in force—

- (a) until the application is withdrawn or accepted; or
- (b) if the Department refuses the application or the relevant period from the making of the application has expired without the applicant having been registered, until—
 - (i) the expiry of the period for appealing; or

(a) S.I.1991/1220 (N.I. 11)

- (ii) where the applicant gives to the Department written notice within that period that they do not intend to make or continue with an appeal, the date on which such notice is served on the Department.

(7) Where the Department revokes a broker's or dealer's registration, the registration shall, notwithstanding the revocation, continue in force until—

- (a) the expiry of the period for appealing against the revocation; or
- (b) where that person gives to the Department written notice within that period that that person does not intend to make or continue with an appeal, the date on which such notice is served on the Department.

(8) Where an appeal is made under and in accordance with the provisions of paragraph 6—

- (a) by a person whose appeal is in respect of such an application for the renewal of their registration as was made, in accordance with paragraph 3, at a time when that person was already registered; or
- (b) by a person whose registration has been revoked,

that registration shall continue in force after its date of expiry or, as the case may be, notwithstanding the revocation, until the appeal is disposed of.

(9) A registration in respect of a business which is carried on by a partnership shall cease to have effect if any of the partners ceases to be registered or if any person who is not registered becomes a partner.

(10) The duration of a registration in respect of a business which is carried on by a partnership shall not be affected if a person ceases to be a partner or if a new partner is registered under paragraph 4(7) in relation to the partnership.

(11) Where an application for renewal is made in advance of the expiry date and the Department decides to renew such registration, the renewal shall for the purposes of this Schedule take effect from the expiry date.

Cessation of registration

- 8. Where a registration ceases to have effect by virtue of paragraph 7, the Department—
 - (a) shall record this fact in the appropriate entry in its register and the date on which it occurred; and
 - (b) may remove the appropriate entry from its register at any time more than six years after the registration ceases to have effect.”.

42. In Schedule 5 Part 1—

- (1) in paragraph 1(a) for “Article 4” substitute “Article 13”.
- (2) in paragraph 2(a) for “Article 4” substitute “Article 13”.

Amendment to the Landfill Regulations (Northern Ireland) 2003

43.—(1) The Landfill Regulations (Northern Ireland) 2003(a) shall be amended as follows—

(2) In regulation 2(2) substitute the following definitions—

- (a) for the definition of “waste” substitute—

““waste” means anything that is waste within the meaning of Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on Waste;”

- (b) for the definition of “waste battery or accumulator” substitute—

(a) S.R. 2003 No.496 as amended by S.R. 2004 No.297, S.R. 2005 No. 300, S./R. 2006 No. 280, S.R. 2007 No.179 and S.R. 2007 No.258

“waste battery or accumulator” means any battery or accumulator which is waste within the meaning of Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on Waste;”;

(3) In regulation 7(2) for the definition of “Hazardous Waste” substitute—

“Hazardous waste means any waste which is hazardous waste within the meaning of Articles 3(2) and 7 of Directive 2008/98/EC of the European Parliament and of the Council on Waste.”.

Amendment to the Landfill Allowances Scheme Regulations (Northern Ireland) 2004

44.—(1) The Landfill Allowances Scheme Regulations (Northern Ireland) 2004(a) shall be amended as follows.

(2) In regulation 2 substitute the following definitions—

(a) for the definition of “disposal” substitute—

“disposal” has the same meaning as in Directive 2008/98/EC of the European Parliament and of the Council on Waste;”

(b) for the definition of “European Waste Catalogue” substitute—

“European Waste Catalogue means the list of wastes set out in Commission Decision 2000/532/EC establishing a list of wastes; and “EWC Code” means any six-digit code set out in the Annex to Commission Decision 2000/532/EC which is used to describe a type of waste;” and

(c) for the definition of “recovery” substitute—

“recovery” has the same meaning as in Directive 2008/98/EC of the European Parliament and of the Council on Waste.”.

Amendments to the Hazardous Waste Regulations (Northern Ireland) 2005

45.—(1) The Hazardous Waste Regulations (Northern Ireland) 2005(b) shall be amended in accordance with regulations 45(2) to 63.

(2) In regulation 2(1)—

(a) insert the following definitions in the appropriate alphabetical order—

“broker” means any undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;

“dealer” means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste;

“domestic waste” means waste produced by a household;

“management” means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as dealer or broker; and

“waste oil” means any mineral or synthetic lubrication or industrial oil which has become unfit for the use for which it was originally intended, such as used combustion engine oils and gearbox oils, lubricating oils, oils for turbines and hydraulic oils;”;

(b) substitute the following definitions—

(i) for the definition of “collection” substitute—

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

(a) S.R.2004 No.416

(b) S.R.2005 No.300

(ii) for the definition of “consignment note” substitute—

““consignment note”, in relation to a consignment of hazardous waste, means the identification document, as set out in Schedule 4, which is required to accompany the hazardous waste when it is transferred pursuant to Article 19(2) of the Waste Directive;”

(iii) for the definition of “disposal” substitute—

““disposal” means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy, (Annex I of the Waste Directive sets out a non-exhaustive list of disposal operations);”

(iv) for the definition of “holder” substitute—

““holder” means the producer of the waste or the person who is in possession of it;”

(v) for the definition of “producer” substitute—

““producer” means anyone whose activities produce waste (original waste producer) or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of the waste;”

(vi) for the definition of “recovery” substitute—

““recovery” 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; (Annex II of the Waste Directive sets out a non-exhaustive list of recovery operations);”

(vii) for the definition of “waste battery or accumulator” substitute—

““waste battery or accumulator” means any battery or accumulator which is waste within the meaning of Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste”;

(c) omit the definition of “the Hazardous Waste Directive”;

(3) omit paragraph (2);

(4) in paragraph (3) omit “or the Hazardous Waste Directive” and “or the Hazardous Waste Directive, as the case may be”

46. For regulation 3 substitute—

“3.—(1) For the purposes of these Regulations—

(a) “the Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste;

(b) “waste” means anything that—

(i) is waste within the meaning of Article 3(1) of the Waste Directive as read with Article 5(1); and

(ii) subject to regulation 15, is not excluded from the scope of that Directive by Article 2(1), (2) or (3).

(2) In these Regulations, a reference to the Waste Directive conditions is a reference to the conditions set out in Article 13 of that Directive, that is to say, to 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.”.

47. For regulation 4 substitute—

“Annex III to the Waste Directive

4. A reference in these Regulations to—

- (a) Annex III is a reference to Annex III (properties of waste which render it hazardous) to the Waste Directive, as that Annex is set out in Schedule 3;
- (b) hazardous properties is a reference to the properties in Annex III.”.

48.—(1) In regulation 5(a), after the words “a list of wastes” omit “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) In regulation 5(c), in the definition of “List of Wastes” omit “, being the list referred to in the first indent of Article 1(4) of the Hazardous Waste Directive drawn up on the basis of Annexes I and II, having one or more of the properties listed in Annex III, taking account of the origin and composition of the waste and, where necessary, limit values of concentration”.

49. In regulation 8(1) for “Annexes I, II and III” substitute “Annex III”.

50. In regulation 9(1) for “Annexes I, II and III” substitute “Annex III”.

51.—(1) In regulation 10(1)—

- (a) for “Annexes I, II and III” substitute “Annex III”;
- (b) omit “to the Hazardous Waste Directive”;

(2) after paragraph (1), insert—

“(1A) The Department shall not treat waste as non-hazardous under paragraph (1) if it has been diluted or mixed with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous.”.

52. In regulation 18—

(1) After the words “it has been” insert “diluted or has been”.

(2) After paragraph (a), insert—

“(aa) in the case of hazardous waste comprising waste oil, waste oil of different characteristics;”

53. In regulation 19 —

(1) In paragraph (1) for “(2) to (4)”, substitute “(2) to (5)”.

(2) After paragraph (4), insert—

“(5) Paragraph (1) applies to the mixing of waste oil—

- (a) only to the extent that the prohibition in that paragraph is technically feasible and economically viable; and
- (b) only where such mixing would impede the treatment of the waste oil.

(6) Any mixing of hazardous waste in accordance with paragraphs (2), (3), (4) or (5)—

- (a) shall comply with Article 13 of the Waste Directive, and ensure that any adverse impact of the waste management on human health and the environment is not increased; and
- (b) shall conform to best available techniques.”.

54. In regulation 24(2)(c) for “Annex IIA to Council Directive 75/442/EEC, or storage of waste consisting of materials intended for submission to any operation listed in Annex IIB to that Directive,” substitute “Annex I of Directive 2008/98/EC of the European Parliament and of the Council, or storage of waste consisting materials intended for submission to any operation listed in Annex II of that Directive,”.

55. In regulation 37—

(1) In paragraph (2) after “made” insert “chronologically”;

(2) After paragraph (3) insert—

“(3A) Carriers, dealers and brokers of hazardous waste shall keep for three years a chronological record of the quantity, nature, origin and, where relevant, the destination, frequency of collection, mode of transport and treatment method of the waste in a register at their principal place of business.”;

(3) In paragraph (4) after “a register” insert “under paragraph 3,”;

(4) In paragraph (6) for “Annex IIA or Annex IIB” substitute “Annex I or II”; and

(5) In paragraph (8) after “holder” insert “dealer, broker”.

56. In regulation 38—

(1) In paragraph (1) for “consignor of hazardous waste” substitute “consignor or broker of, or dealer in hazardous waste”;

(2) For paragraph (3) substitute —

“(3) Any person required to keep a record by paragraph (1) must preserve it—

(a) while the person is a holder of the waste or (if not a holder) has control of the waste; and

(b) for 3 years after the date on which the waste is transferred to another person.”.

(3) In paragraph (4)—

“(a) after “shall be recorded”, insert “chronologically”; and

(b) for “producer or holder”, substitute “producer, holder, dealer or broker”;

(4) After paragraph (4) insert—

“(4A) The register required to be kept and retained under paragraph (4) by a consignor, other than the producer or holder, shall be kept at his principal place of business.”.

57. In regulation 40(3)(c)—

“(1) Insert “disposal or” before “recovery”; and

(2) For “Annex IIIB of the Waste Directive” substitute “Annex I or II of the Waste Directive (as the case may be)””.

58. In regulation 42—

“(1) In paragraph (2)—

(a) for “Article 13” substitute “Article 34”; and

(b) for “the origin and destination” substitute “origin, nature, quantity and destination”;

(2) In paragraph (3)—

(a) for “Article 13” substitute “Article 34”; and

(b) omit “and Article 5(2) of the Hazardous Waste Directive”.

59. In regulation 47(2)—

“(1) For “Article 7” substitute “Article 28”; and

(2) Omit “and Article 6(1) of the Hazardous Waste Directive”.

60. After regulation 48(6) insert-

“(7) Until the end of the period of 6 months beginning with the day on which the Waste Regulations (Northern Ireland) 2011 are made, the forms set out in these Regulations as originally enacted, or forms requiring the same information in substantially the same format, may be used instead of those substituted by the Waste Regulations (Northern Ireland) 2011.”

61. Omit Schedules 1 and 2.

“SCHEDULE 3

Regulation 4

Annex III to the Waste Directive

Properties of waste which render it hazardous

H1	“Explosive”: substances and preparations which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene.
H2	“Oxidizing”: substances and preparations which exhibit highly exothermic reactions when in contact with other substances, particularly flammable substances.
H3-A	“Highly flammable”: liquid substances and preparations having a flash point below 21°C (including extremely flammable liquids), or substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any application of energy, or solid substances and preparations which may readily catch fire after brief contact with a source of ignition and which continue to burn or be consumed after removal of the source of ignition, or 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.
H3-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.
H4	“Irritant”: non-corrosive substances and preparations which, through immediate, prolonged or repeated contact with the skin or mucous membrane, can cause inflammation.
H5	“Harmful”: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may involve limited health risks.
H6	“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.
H7	“Carcinogenic”: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce cancer or increase its incidence.
H8	“Corrosive”: substances and preparations which may destroy living tissue on contact.
H9	“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.
H10	“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.
H11	“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.
H12	Waste which releases toxic or very toxic gases in contact with water, air or an acid.

H13(*) (* As far as testing methods are available.	“Sensitizing”: 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.
H14	“Ecotoxic”: waste which presents or may present immediate or delayed risks for one or more sectors of the environment.
H15	Waste capable by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics above.

Notes

1. Attribution of the hazardous properties “toxic” (and “very toxic”), “harmful”, “corrosive”, “irritant”, “carcinogenic”, “toxic to reproduction”; “mutagenic” and “ecotoxic” is made on the basis of the criteria laid down by Annex VI, to Council Directive 67/548/EEC of 27 June 1967 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 1999 concerning the approximation of laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations shall apply.

Test methods

The methods to be used are described in Annex V to Directive 67/548/EEC and in other relevant CEN-notes.”

63. For Schedule 4 substitute—

“SCHEDULE 4

Regulation 23(1)

FORM OF CONSIGNMENT NOTE

Hazardous Waste Regulations (Northern Ireland) 2005

Consignment Note No. _____

No. of pre-notice (if different)

Sheet _____ of _____

A. CONSIGNMENT DETAILS

PLEASE TICK IF YOU ARE A TRANSFER STATION

1. The waste described below is to be removed from _____ (name, address and postcode)
2. The waste will be taken to _____ (address and postcode)
3. The consignment(s) will be: one single a succession carrier's round other
4. Expected removal date of first consignment: _____ last consignment: _____
5. I certify that the information in A and B is correct and I confirm that I have fulfilled my duty to apply the waste hierarchy as required by Article 5(2B) of the Waste and Contaminated Land (Northern Ireland) Order 1997
6. Name: _____ On behalf of _____ (company)

Signature _____ Date _____

7. Telephone _____

8. If different from 1, the waste producer was _____ (name, address and postcode)

B. DESCRIPTION OF THE WASTE

No. of additional sheets(s)

1. The process giving rise to waste is:
2. SIC for the process giving rise to the waste:

WASTE DETAILS (where more than one waste type is collected all of the information given below must be completed for each EWC identified).

The waste is:

List of Wastes (EWC) (6 digits):	Quantity (kg/lt/tonnes)	The chemical/biological components of the waste and their concentrations are:	Physical (gas, liquid, solid, powder)	Hazard code(s)	Container type, no & size
----------------------------------	-------------------------	---	---------------------------------------	----------------	---------------------------

Component	Concentration (% or mg/kg)
-----------	----------------------------

C. CARRIER'S CERTIFICATE
if more than one carrier is used attach Schedule for subsequent carriers. If carrier schedule is attached tick box

I certify that I today collected the consignment and that the details in A1, A2 and B1 above are correct and I have been advised of any specific handling requirements. The quantity collected in the load is:

Name _____ On behalf of _____ (company)
_____ (name address and post code) Telephone No: _____

Signature _____ Date _____ at _____ hrs.

1. Carrier registration No./reason for exemption
2. Vehicle registration No. (or mode of transport, if not road)

D. CONSIGNOR'S CERTIFICATE

I certify that the information in A, B and C above is correct, that the carrier is registered or exempt and was advised of the appropriate precautionary measures. All of the waste is packaged and labelled correctly and the carrier has been advised of any special handling requirements.

Name _____ On behalf of _____ (company)
_____ (name address and post code)

Telephone No: _____

Signature _____ Date _____ at _____ hrs

E. CONSIGNEE'S CERTIFICATE where more that one waste type is collected all of the information given below must be completed for each EWC

Individual EWC code(s) received	Quantity of each EWC code received (kg)	Waste Management operation (R or D code)
---------------------------------	---	--

1. I received this waste at the address given in A2 on at hrs. _____

2. Vehicle registration no. _____

I certify that waste management licence/permit/authorised exemption No. authorises the management of the waste described in B at the address given in A2.

Name _____ On behalf of _____ (company)

_____ (name address and post code) Telephone No: _____

Signature _____ Date _____ at _____ hrs.

*The European Waste Catalogue (EWC) sets out a list of wastes as set out in Commission Decision 2000/532/EC (O.J. No. L194, 25.7.1975, p. 39), as amended

”

Amendment to the List of Wastes Regulations (Northern Ireland) 2005

64.—(1) The List of Wastes Regulations (Northern Ireland) 2005(a) shall be amended in accordance with regulation 64(2) to 65.

(2) In regulation 2—

(a) in paragraph (a) for the definition of “the Waste Directive” substitute—

“the Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste”.

(b) omit paragraph (c);

(c) in paragraph (d) for the definition of “the List of Waste Decision” substitute—

“the List of Waste Decision” means Commission Decision 2000/532/EC of 3rd May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive EEC/75/442 on waste as replaced by Article 7 of Directive 2008/98/EC of the European Parliament and of the Council on waste”.

(d) in paragraph (e) for the definition of “the List of Wastes” substitute—

“(e) the List of Wastes” means the “List of Wastes pursuant to Article 7 of Directive 2008/98/EC of the European Parliament and of the Council on waste,” set out in the Annex to the List of Wastes Decision. The list of waste shall include hazardous waste and—

(i) in relation to hazardous waste, in accordance with the regulatory procedure laid down in Article 7 of Directive 2008/98/EC on the basis of—

(aa) Annex III (properties of waste which render it hazardous) to that Directive,

and a reference to the List of Wastes includes a reference to the Introduction thereto (“the Introduction to the List”).”.

(3) In regulation 4 for paragraph (a) substitute—

“(a) one of more of the properties listed in Annex III to Directive 2008/98/EC of the European Parliament and of the Council on waste.”.

65. In the Schedule—

(1) In paragraph 1, for “Article 18 of Directive 75/442/EEC” substitute “Article 39 of Directive 2008/98/EC” and for “Article 1(a) of Directive 75/442/EEC” substitute “Article 3(1) of Directive 2008/98/EC.”.

(2) For paragraph 2, substitute “Wastes included in the list are subject to the provisions of Directive 2008/98/EC except where Article 2(1) and (2) applies.”.

(3) For paragraph 4, substitute “Any waste marked with an asterisk (*) is considered as hazardous waste pursuant to Directive 2008/98/EC on waste, and subject to the provisions of that Directive unless Article 20 of that Directive applies.”.

(4) In paragraph 6, for “Council Directive 91/89/EEC” substitute “Council Directive 2008/98/EC”.

Amendment of the Feeding Stuffs Regulations (Northern Ireland) 2005

66. The Feeding Stuffs Regulations (Northern Ireland) 2005(b) shall be amended as follows.

(1) In regulation 15(2), for “Article 1 of Council Directive 75/442”, substitute “Article 3(1) of Directive 2008/98/EC”.

(a) S.R. 2005 No.301

(b) S.R.2005 No.545

Amendment of the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007

67.—(1) The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007(a) shall be amended as follows.

(2) In Regulation 2—

(a) in paragraph (1) for the definition of “the Waste Directive” substitute:—

“the Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste;”

(b) in paragraph (2) for the definition of “recovery” substitute —.

“recovery” means any of the applicable operations provided for in Annex II to the Waste Directive and for the purposes of these Regulations incineration at waste incineration plants with energy recovery shall be treated as if it is recovery; and “recover” and “recovery operations” shall be construed accordingly;

(3) In Schedule 7—

(a) at paragraph 2 in sub-paragraph (b), for “Annex IIB” substitute “Annex II” and in sub-paragraph (c), for “Annex IIA or IIB” substitute “Annex I or II”.

Amendment of the Renewables Obligation Order (Northern Ireland) 2009

68.—(1) The Renewables Obligation Order (Northern Ireland) 2009(b) shall be amended as follows.

(2) Amendment of Article 2(1)—

(a) for the definition of “hazardous waste”, substitute—

“hazardous waste” means any waste which is hazardous waste as defined by Article 3(2) of Directive 2008/98/EC of the European Parliament and of the Council on waste;”
;

(b) omit the following definition—

“Hazardous Waste Directive” means Council Directive 91/689/EEC on hazardous waste, as amended by Council Directive 94/31/EC;”.

Amendment of the Waste Batteries and Accumulators (Treatment and Disposal) Regulations (Northern Ireland) 2009

69.—(1) The Waste Batteries and Accumulators (Treatment and Disposal) Regulations (Northern Ireland) 2009(c) shall be amended as follows.

(2) Amendment of regulation 2(1)—

(a) for the definition of “disposal”, substitute—

“disposal” mean any of the applicable operations provided for in Annex I to Directive 2008/98/EC of the European Parliament and of the Council on Waste”;

(b) for the definition of “waste battery or accumulator”, substitute—

“waste battery or accumulator” means any battery or accumulator which is waste within the meaning of Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on Waste.”.

(a) S.R.2007 No.198
(b) S.R.2009 No.154
(c) S.R. 2009 No.159

Amendment of the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009

70.—(1) The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland 2009(a)) shall be amended as follows.

(2) Amendment of Schedule 2—

(a) In paragraph 2(1) for the words from “Directive 2006/12/EC” to the end, substitute “Directive 2008/98/EC of the European Parliament and of the Council on waste.”

(3) Amendment of Schedule 3—

(a) In paragraph 2(1) for the words from “Directive 2006/12/EC” to the end, substitute “Directive 2008/98/EC of the European Parliament and of the Council on waste.”

(b) In paragraph 2(2) for the words from “Directive 2006/12/EC” to the end, substitute “Directive 2008/98/EC of the European Parliament and of the Council on waste.”

Amendment of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010

71.—(1) The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010(b) shall be amended as follows.

(2) In regulation 2(2) for the definition of “waste” substitute “waste” means anything that is waste for the purposes of Directive 2008/98/EC of the European Parliament and of the Council on waste.

Sealed with the Official Seal of the Department of the Environment on 16th March 2011.



Denis McMahon

A senior officer of the Department of the Environment

(a) S.R. 2009 No.252

(b) S.R. 2010 No. 64

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose for Northern Ireland, Directive 2008/98/EC (the revised Waste Framework Directive) of the European Parliament and of the Council on waste (OJ No L 312, 22.11.2008, p3).

Their overall aim is to ensure that the Directive's overall objectives, viz, the protection of the environment and human health; to reduce waste and encourage it to be used as a substitute for other non-renewable resources (substitution principle); to ensure that the EU becomes a recycling society by applying the self-sufficiency, polluter pays and proximity principles at both Member State and EU level.

Part 2 provides the amendments required to the Environment (Northern Ireland) Order 2002 and the Waste and Contaminated Land (Northern Ireland) Order 1997 by including provisions as follows:-

Regulation 3 amends and introduces the definitions as reflected in Article 3 of the Directive.

Regulations 4 and 6 extend the duty of care requirements to dealers of waste.

Regulation 5 and regulation 8, which substitutes the existing Schedule 3 to the 1997 Order, update the requirements for the Waste Management Strategy. The schedule in particular introduces measures for ensuring compliance with the waste hierarchy as a priority order. It also sets out in detail matters which must and matters which may be included in the Waste Management Strategy.

Part 3 introduces a new set of Regulations in which:-

Regulations 10 to 16 establish the requirements to produce waste prevention programmes. They also make supplementary provision in relation to waste prevention programmes and include provision for public participation in their preparation and revision.

Regulation 17 introduces a duty on waste operators to comply with the waste hierarchy.

Regulations 18 to 20 require that, from 1st January 2015, where it is environmentally, economically and technically feasible to do so, at least waste paper, metal, plastic and glass should be collected separately and the mixing of those wastes once separately collected is prohibited.

Regulation 22 provides that failure to comply with regulations 18 and 19 may result in the Department issuing compliance, restoration or suspension notices as applicable.

Regulation 23 provides a right of appeal against such a notice to the Planning Appeals Commission.

Regulation 24 provides for offences where the requirements to comply with the waste hierarchy and to separately collect waste and ensure that such wastes are not subsequently are breached.

Regulation 25 includes radioactive waste within the waste management regime under certain circumstances.

Part 4 makes consequential amendments to various other pieces of subordinate legislation to reflect the revised Directive and its requirements. These include:-

Regulation 28 revokes, with effect from 1st January 2014, exemption from registering as a carrier of waste under the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999 for those who were previously exempt from registration but who 'normally and regularly' carry waste.

Regulation 33 places additional requirements under the Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002 on those who transport waste or who act as brokers or dealers of wastes.

Regulation 34 encourages the separate collection of waste oils and also provides that incineration facilities dedicated to the processing of municipal solid waste only where their energy efficiency is equal to or greater than (i) 0.60 for installations in operation and permitted in accordance with applicable Community legislation before 1st January 2009; or (ii) 0.65 for other installations may now be classified as recovery operations.

Regulations 35 to 42 extensively amend the Waste Management Licensing Regulations (Northern Ireland) 2003 to include provisions that establish statutory 'preparing for reuse' and 'recycling' targets for waste from households and 'preparing for reuse', 'recycling' and 'recovery' targets for construction and demolition waste; encourage the separate collection of bio-waste; place a requirement on waste dealers to register with the Department; and impose duties on those responsible for regulating waste management activities and on those responsible for exercising certain functions including under the Planning Acts.

Regulations 45 to 63 amend the hazardous waste regime to ensure compliance with the revised Directive which repealed 75/439/EEC (Waste Oils Directive) and 91/689/EEC (the Hazardous Waste Directive) and brought hazardous waste requirements under its control.

Other legislation amended by way of these Regulations are:-

The Deposits in the Sea (Exemptions) (Northern Ireland) Order 1995

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999

The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) Regulations (Northern Ireland) 2000

The Landfill Regulations (Northern Ireland) 2003

The Landfill Allowances Scheme Regulations (Northern Ireland) 2004

The List of Wastes Regulations (Northern Ireland) 2005

The Feeding Stuffs Regulations (Northern Ireland) 2005

The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007

The Renewables Obligation (Northern Ireland) Order 2009

The Waste Batteries and Accumulators (Treatment and Disposal) Regulations (Northern Ireland) 2009

The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009

The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010

An Impact Assessment in relation to these Regulations has been placed in the library of the Northern Ireland Assembly and copies can be obtained from Environmental Policy Division, Goodwood House, 44-58 May Street, Belfast, BT1 4NN.

© Crown Copyright 2011

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print the Acts of the Northern Ireland Assembly.

