

## SCHEDULE 4

### WASTE FRAMEWORK DIRECTIVE etc.

## PART I

## GENERAL

### Interpretation of Schedule 4

1. In this Schedule, unless the context otherwise requires—
  - “competent authority” has the meaning given by paragraph 3;
  - “development”, “development plan”, “government department” and “planning permission” have the same meaning as in the Town and Country Planning Act 1990<sup>(1)</sup> or, in Scotland, as in the Town and Country Planning (Scotland) Act 1972<sup>(2)</sup>;
  - “licensing authority” and “the Ministers” have the meaning given by section 24(1) of the Food and Environment Protection Act 1985<sup>(3)</sup>;
  - “local planning authority” and “the planning Acts” have the same meaning as in the Town and Country Planning Act 1990<sup>(1)</sup>;
  - “permit” means a waste management licence, a disposal licence, an authorisation under Part I of the 1990 Act, a resolution under section 54 of the 1990 Act, a licence under Part II of the Food and Environment Protection Act 1985 or a consent under Chapter II of Part III of the Water Resources Act 1991<sup>(4)</sup> or under Part II of the Control of Pollution Act 1974 (and, in relation to a permit, “grant” includes give, issue or pass, “modify” includes vary, and cognate expressions shall be construed accordingly);
  - “plan-making provisions” means paragraph 5 below, section 50 of the 1990 Act and Part II of the Town and Country Planning Act 1990 or, in Scotland, Part II of the Town and Country Planning (Scotland) Act 1972;
  - “planning authority” means the local planning authority, the person appointed under paragraph 1 of Schedule 6 to the Town and Country Planning Act 1990 or, as the case may be, the government department responsible for discharging a function under the planning Acts or, in Scotland, the planning authority (as defined in section 172 of the Local Government (Scotland) Act 1973)<sup>(5)</sup>, the person appointed under paragraph 1 of Schedule 7 to the Town and Country Planning (Scotland) Act 1972, or, as the case may be, the government department responsible for discharging a function under the Town and Country Planning (Scotland) Act 1972<sup>(6)</sup>, and the Secretary of State shall be treated as a planning authority in respect of his functions under the planning Acts or, in Scotland, the Town and Country Planning (Scotland) Act 1972;
  - “pollution control authority” means any competent authority other than a planning authority;

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(1) 1990 c. 8; see section 336(1).

(2) 1972 c. 52; see section 275(1).

(3) 1985 c. 48.

(1) 1990 c. 8; see section 336(1).

(4) 1991 c. 57.

(5) 1973 c. 65; section 172(3) is amended by paragraph 22 of Schedule 3 to the Local Government and Planning (Scotland) Act 1982 (c. 43).

(6) 1972 c. 52.

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“river purification authority” has the meaning given by section 17 of the Rivers (Prevention of Pollution) (Scotland) Act 1951(7);

“specified action” means any of the following—

- (a) determining—
  - (i) an application for planning permission; or
  - (ii) an appeal made under section 78 of the Town and Country Planning Act 1990(8) or, in Scotland, under section 33 of the Town and Country Planning (Scotland) Act 1972(9), in respect of such an application;
- (b) deciding whether to take any action under section 141(2) or (3) or 177(1)(a) or (b)(10) of the Town and Country Planning Act 1990, or under section 196(5) of that Act(11) as originally enacted, or under section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990(12) or, in Scotland, under section 85(5)(a), (b) or (c)(13), 91(3) (as enacted prior to its repeal)(14) or 172(2) or (3) of, or paragraph 2(6) of Schedule 17 to, the Town and Country Planning (Scotland) Act 1972;
- (c) deciding whether to direct under section 90(1), (2) or (2A) of the Town and Country Planning Act 1990(15) or, in Scotland, section 37(1) of the Town and Country Planning (Scotland) Act 1972(16) or paragraph 7(1) of Schedule 8 to the Electricity Act 1989(17), that planning permission shall be deemed to be granted;
- (d) 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 section 102 of the Town and Country Planning Act 1990(18) (including an order made under that section by virtue of section 104 of that Act), or under paragraph 1 of Schedule 9 to that Act(19) (including an order made under that paragraph by virtue of paragraph 11 of that Schedule), or, in Scotland, an order under section 49 of the Town and Country

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- (7) 1951 c. 66; section 17 is amended by paragraph 5 of Schedule 16 to the Local Government (Scotland) Act 1973 (c. 65), paragraph 13 of Schedule 3 to the Control of Pollution Act 1974 (c. 40) and paragraph 1 of Schedule 10 to the Natural Heritage (Scotland) Act 1991 (c. 28).
  - (8) 1990 c. 8; section 78 is amended by section 17(2) of the Planning and Compensation Act 1991 (c. 34).
  - (9) Section 33 is amended by section 172(2) of the Local Government (Scotland) Act 1973 (c. 65), by paragraph 11 of Schedule 2 to the Local Government and Planning (Scotland) Act 1982 (c. 43), by paragraphs 55 and 56 of Schedule 11 to the Housing and Planning Act 1986 (c. 63) and by paragraph 11 of Schedule 13 to the Planning and Compensation Act 1991 (c. 34).
  - (10) Section 177(1)(a) is substituted by paragraph 24(1)(a) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34).
  - (11) Section 196(5) is repealed by paragraph 33(e) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34), but that repeal does not apply to appeals arising out of applications made under section 192(1) (as originally enacted) before 27th July 1992.
  - (12) 1990 c. 9.
  - (13) Section 85(5) is amended by paragraph 20(c) of Schedule 2 to the Local Government and Planning (Scotland) Act 1982 (c. 43); extended by section 3(9) of the Town and Country Planning Act 1984 (c. 10); and amended by paragraph 20(c) of Schedule 13, and Part IV of Schedule 19, to the Planning and Compensation Act 1991 (c. 34).
  - (14) Section 91(3) is amended by section 172(2) of the Local Government (Scotland) Act 1973 (c. 65) and by Schedule 4 to the Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23); section 91(3) is repealed by paragraph 26 of Schedule 13, and Part IV of Schedule 19, to the Planning and Compensation Act 1991 (c. 34), but that repeal does not apply to appeals arising out of applications made under section 90(2) before 25th September 1992.
  - (15) Section 90(2A) is inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).
  - (16) Section 37(1) is amended by Part I of Schedule 4 to the Local Government and Planning (Scotland) Act 1982 (c. 43) and extended by paragraph 2(1)(xxv) of Schedule 7 to the Gas Act 1986 (c. 44).
  - (17) 1989 c. 29; paragraph 7 of Schedule 8 is repealed in England and Wales by Part II of Schedule 1 to the Planning (Consequential Provisions) Act 1990 (c. 11), and repealed (in part) in Scotland by Part III of that Schedule.
  - (18) Section 102 is amended by paragraph 6 of Schedule 1, and paragraph 21 of Schedule 7, to the Planning and Compensation Act 1991 (c. 34).
  - (19) Paragraph 1 of Schedule 9 is amended by paragraph 15 of Schedule 1 to the Planning and Compensation Act 1991 (c. 34).

Planning (Scotland) Act 1972(20) (including an order made under that section by virtue of section 260 of that Act(21));

- (e) discharging functions under Part II of the Town and Country Planning Act 1990 or, in Scotland, Part II of the Town and Country Planning (Scotland) Act 1972.

### **Duties of competent authorities**

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

(2) Nothing in sub-paragraph (1) above requires a planning authority to deal with any matter which the relevant pollution control authority has power to deal with.

(3) In a case where the recovery or disposal of waste is or forms part of a prescribed process designated for local control under Part I of the 1990 Act, and either requires a waste management licence or is covered by an exemption conferred by regulation 17(1) of, and Schedule 3 to, these Regulations, nothing in sub-paragraph (1) above shall require a competent authority to discharge its functions under—

- (a) Part I of the 1990 Act in order 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 1990 Act 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.

(4) In sub-paragraph (3) above, “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 meaning which they have in Part I of the 1990 Act(22).

### **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 5 below and, subject to sub-paragraph (2) below, 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 5**

Competent authorities (1)	Specified functions (2)
Any planning authority.	The taking of any specified action.
A waste regulation authority, the Secretary of State or a person appointed under section 43(2)(b) of the 1990 Act.	Their respective functions under Part II of the 1990 Act in relation to waste management licences, including preparing plans or modifications of them under section 50 of the 1990 Act.

(20) Section 49 is amended by section 172(2) of the Local Government (Scotland) Act 1973 (c. 65), section 26 of the Town and Country Planning (Minerals) Act 1981 (c. 36), and paragraph 5 of Schedule 8, and paragraph 16 of Schedule 13, to the Planning and Compensation Act 1991 (c. 34).

(21) Section 260 is amended by section 172(2) of, paragraph 31 of Schedule 23, paragraph 48 of Schedule 25 and Schedule 29 to the Local Government (Scotland) Act 1973 (c. 65), by Schedule 4 of the Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23), by paragraph 10 of Schedule 2 to the Town and Country Planning (Minerals) Act 1981 (c. 36) and by paragraph 51 of Schedule 11 to the Housing and Planning Act 1986 (c. 63).

(22) See section 2(4) for the meaning of “designated for local control”, and section 1 for the meaning of the other phrases.

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Competent authorities (1)	Specified functions (2)
A disposal authority or the Secretary of State.	Their respective functions under Part I of the Control of Pollution Act 1974 in relation to disposal licences and resolutions under section 11 of that Act.
A licensing authority or the Ministers.	Their respective functions under Part II of the Food and Environment Protection Act 1985, or under paragraph 5 below.
An enforcing authority, the Secretary of State or a person appointed under section 15(3)(b) of the 1990 Act.	Their respective functions under Part I of the 1990 Act in relation to prescribed processes except when— (a) the process is designated for local control; and (b) it is an exempt activity carried out subject to the conditions and limitations specified in Schedule 3.
The National Rivers Authority or the Secretary of State.	Their respective functions in relation to the giving of consents under Chapter II of Part III of the Water Resources Act 1991 (offences in relation to pollution of water resources) for any discharge of waste in liquid form other than waste waters.
In Scotland, a river purification authority or the Secretary of State.	Their respective functions in relation to the giving of consents under Part II of the Control of Pollution Act 1974 (pollution of water) for any discharge of waste in liquid form other than waste waters.

(2) In Table 5 above, 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 statutory instrument.

### Relevant objectives

4.—(1) For the purposes of this Schedule, the following objectives are relevant objectives in relation to the disposal or recovery of waste—

- (a) ensuring that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and in particular without—
  - (i) risk to water, air, soil, plants or animals; or
  - (ii) causing nuisance through noise or odours; or
  - (iii) adversely affecting the countryside or places of special interest;
- (b) implementing, so far as material, any plan made under the plan-making provisions.

(2) The following additional objectives are relevant objectives in relation to the disposal of waste—

- (a) establishing an integrated and adequate network of waste disposal installations, taking account of the best available technology not involving excessive costs; and
- (b) ensuring that the network referred to at paragraph (a) above enables—
  - (i) the European Community as a whole to become self-sufficient in waste disposal, and the Member States individually to move towards that aim, taking into account

geographical circumstances or the need for specialized installations for certain types of waste; and

- (ii) waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.

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

- (a) encouraging 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) encouraging—
  - (i) the recovery of waste by means of recycling, reuse 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) below, it shall be the duty of a licensing authority to prepare a statement (“the plan”) containing the authority’s policies in relation to the recovery or disposal of waste for attaining the relevant objectives in those parts of United Kingdom waters and United Kingdom controlled waters for which the authority is the licensing authority.

(2) Two or more licensing authorities may join together to prepare a single statement covering the several parts of United Kingdom waters and United Kingdom controlled waters for which they are the licensing authorities.

(3) 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.

(4) The licensing authority shall make copies of the plan available to the public on payment of reasonable charges.

(5) In this paragraph, “United Kingdom waters” and “United Kingdom controlled waters” have the meaning given by section 24(1) of the Food and Environment Protection Act 1985(23).

### **Matters to be covered by permits**

6. When a pollution control authority grants or modifies a permit, and the activities authorised by the permit include the disposal of waste, the pollution control authority shall ensure that the permit covers—

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(23) 1985 c. 48; the definition of “United Kingdom controlled waters” is inserted by section 146(7) of the 1990 Act.34

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- (a) the types and quantities of waste,
- (b) the technical requirements,
- (c) the security precautions to be taken,
- (d) the disposal site, and
- (e) the treatment method.

### **Modifications of provisions relating to development plans**

7.—(1) Subject to sub-paragraph (2) below, sections 12(3A), 31(3) and 36(3) of the Town and Country Planning Act 1990(24) or, in Scotland, sections 5(3)(a) and 9(3)(a) of the Town and Country Planning (Scotland) Act 1972(25), shall have effect as if the policies referred to in those sections also included policies in respect of suitable waste disposal sites or installations.

(2) In the case of the policies referred to in section 36(3) of the Town and Country Planning Act 1990, sub-paragraph (1) above shall have effect subject to the provisions of section 36(5) of that Act(26).

(3) Section 38(1) of the Town and Country Planning Act 1990(27) shall have effect as if the definition of waste policies included detailed policies in respect of suitable disposal sites or installations for the carrying on of such development as is referred to in that definition.

### **Modifications of Part I of the Environmental Protection Act 1990**

8.—(1) Subject to section 28(1) of the 1990 Act, Part I of the 1990 Act 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 Part for the purpose of achieving the relevant objectives.

(2) Nothing in sub-paragraph (1) above requires an enforcing authority 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 a planning authority after 30th April 1994, is or, before the process is carried on, will be in force.

### **Modifications of Part II of the Environmental Protection Act 1990**

9.—(1) Part II of the 1990 Act shall have effect subject to the following modifications.

(2) Any reference to waste shall include a reference to Directive waste.

(3) In sections 33(1)(a) and (5), 54(1)(a), (2), (3) and (4)(d) and 69(2), any reference to the deposit of waste in or on land shall include a reference to any operation listed in Part III or IV of this Schedule involving such a deposit.

(4) In sections 33(1)(b), 54(1)(b), (2), (3) and (4)(d) and 69(2), any reference to the treatment or disposal, or to the treatment, keeping or disposal, of controlled waste shall be taken to be a reference to submitting controlled waste to any of the operations listed in Part III or IV of this Schedule other than an operation mentioned in sub-paragraph (3) above.

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(24) 1990 c. 8; sections 12(3A), 31(3) and 36(3) are substituted by paragraphs 2(1), 16 and 17 respectively of Schedule 4 to the Planning and Compensation Act 1991 (c. 34).

(25) 1972 c. 52; sections 5(3)(a) and 9(3)(a) are amended by paragraphs 3 and 4 of Schedule 13 to the Planning and Compensation Act 1991 (c. 34).

(26) Section 36(5) is inserted by paragraph 17 of Schedule 4 to the Planning and Compensation Act 1991 (c. 34).

(27) Section 38 is inserted by paragraph 17 of Schedule 4 to the Planning and Compensation Act 1991 (c. 34).

(5) In sections 33(1)(c) and 35, any reference to the treatment or disposal, or to the treatment, keeping or disposal, of controlled waste shall include a reference to submitting controlled waste to any of the operations listed in Part III or Part IV of this Schedule.

(6) Section 33(2) shall not apply to the treatment, keeping or disposal of household waste by an establishment or undertaking.

(7) In section 36(3), the reference to planning permission shall be taken to be a reference to planning permission resulting from the taking of a specified action by a planning authority after 30th April 1994.

(8) In section 50(3), any reference to the disposal of waste shall include a reference to the recovery of waste.

### **Modifications of Part I of the Control of Pollution Act 1974**

**10.**—(1) Part I of the Control of Pollution Act 1974 shall have effect, in a case where the planning permission referred to in section 5(3) of that Act does not result from the taking of a specified action by a planning authority after 30th April 1994, as if the duty imposed upon the disposal authority by that subsection was a duty not to reject the application unless the authority is satisfied that its rejection is necessary for the purpose of preventing—

- (a) pollution of the environment;
- (b) danger to public health; or
- (c) serious detriment to the amenities of the locality.

(2) In sub-paragraph (1) above, “pollution of the environment” has the same meaning as in Part II of the 1990 Act<sup>(28)</sup>.

(3) Part I of the Control of Pollution Act 1974 shall have effect as if any reference in that Part to waste included a reference to Directive waste.

### **References to “waste” in Planning and Water legislation**

**11.** In the Town and Country Planning Act 1990, the Town and Country Planning (Scotland) Act 1972, Part II of the Control of Pollution Act 1974 and Chapter II of Part III of the Water Resources Act 1991, 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) below, it shall be an offence for an establishment or undertaking falling within sub-paragraph (a), (c), (f) or (g) of regulation 2(1) of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991<sup>(29)</sup> after 31st December 1994 to collect or transport waste on a professional basis unless it is registered in accordance with the provisions of this paragraph.

(2) Subject to sub-paragraph (3) below, it shall be an offence for an establishment or undertaking falling within sub-paragraph (a), (b) or (c) of regulation 20(4) after 31st December 1994 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) above 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.

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<sup>(28)</sup> See section 29.

<sup>(29)</sup> [S.I.1991/1624](#); regulation 2(1)(c) is amended by regulation 24(2) of these Regulations.

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(4) An establishment or undertaking shall register with the waste regulation authority in whose area its principal place of business in Great Britain is located or, where it has no place of business in Great Britain, with any waste regulation authority.

(5) Each waste regulation authority 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 waste regulation authority shall enter the relevant particulars in the register in relation to an establishment or undertaking if it receives notice of them in writing or otherwise becomes aware of those particulars.

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

(9) Each waste regulation authority shall secure that any register maintained by it under this paragraph is open to inspection at its principal office by members of the public free of charge at all reasonable hours and 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, “registered carrier” and “controlled waste” have the same meaning as they have in the Control of Pollution (Amendment) Act 1989<sup>(30)</sup>, “registered broker” has the same meaning as in regulation 20 and Schedule 5, and “collect” and “transport” have the same meaning as they have in Article 12 of the Directive.

### **Duty to carry out appropriate periodic inspections**

**13.**—(1) Any establishment or undertaking which carries out the recovery or disposal of controlled waste, or which collects or transports controlled waste on a professional basis, or which arranges for the recovery or disposal of controlled waste on behalf of others (dealers or brokers), shall be subject to appropriate periodic inspections by the competent authorities.

(2) Sections 68(3) to (5), 69 and 71(2) and (3) of the 1990 Act (power to appoint inspectors, powers of entry and power to obtain information) shall have effect as if the provisions of this paragraph were provisions of Part II of that Act and as if, in those sections, references to a waste regulation authority were references to a competent authority.

### **Record keeping**

**14.**—(1) Subject to sub-paragraph (2) below, an establishment or undertaking which carries out the disposal or recovery of controlled waste shall—

- (a) keep a 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.

(2) Sub-paragraph (1) above does not apply where the disposal or recovery of the waste is covered by an exemption conferred by—

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(30) 1989 c. 14.



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- (a) regulation 17(1) of, and Schedule 3 to, these Regulations; or
- (b) article 3 of the Deposits in the Sea (Exemptions) Order 1985**(31)**.