

SCHEDULE 3

WASTE FRAMEWORK DIRECTIVE etc.

PART I

GENERAL

Interpretation of Schedule 3

1. In this Schedule, unless the context otherwise requires –
 - “competent authority” has the meaning given by paragraph 3;
 - “development plan” has the meaning given by the Planning (Development Plans) Regulations (Northern Ireland) 1991(1);
 - “permit” means a waste management licence, 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 or a consent under the Water Order, (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, Articles 19 and 23 of the 1997 Order and Parts II and III of the Planning (Northern Ireland) Order 1991(2);
 - “planning permission” has the same meaning as in Part I of the Planning (Northern Ireland) Order 1991;
 - “regional development strategy” means the regional development strategy referred to in Article 3 of the Strategic Planning (Northern Ireland) Order 1999(3);
 - “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 or 112 of the Planning (Northern Ireland) Order 1991;
 - (d) discharging functions under Part III of the Planning (Northern Ireland) Order 1991.

(1) S.R. 1991 No. 119

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

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

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Duties of competent authorities

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

(2) In a case 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 either requires a waste management licence or is covered by an exemption conferred by regulation 17(1) and Part I of Schedule 2, nothing in sub-paragraph (1) shall require a competent authority to discharge its functions under –

- (a) the Industrial Pollution Control Order 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 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 meaning 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

Column (1) <i>Competent authorities</i>	Column (2) <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 strategy, or any modification of it, under Article 19 of that Order. Its functions under Part II of the Food and Environment Protection Act 1985, or under paragraph 5. Its function in relation to –

Column (1) <i>Competent authorities</i>	Column (2) <i>Specified functions</i>
	<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 17 of the Groundwater Regulations (Northern Ireland) 1998 (disposal or tipping of substances in list I or II); and</p> <p>(c) notices under regulation 18 of the Groundwater Regulations (Northern Ireland) 1998 (prohibition or authorisation of activities which may result in indirect discharges of substances in list I or II).</p>
A district council	<p>Its functions in relation to appeals under the Industrial Pollution Control (Northern Ireland) Order 1997, the 1978 Order and the Waste Collection and Disposal Regulations (Northern Ireland) 1992.</p> <p>Its functions under Part II of the 1978 Order in relation to disposal licences.</p> <p>The preparation of plans or modifications of them under Article 23 of the 1997 Order</p>
An enforcing authority (within the meaning of Article 2(8) of the Industrial Pollution Control Order)	Its functions in relation to authorisations under the Industrial Pollution Control Order except in relation to the carrying out of an exempt activity under such authorisations.
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 under such permits.
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

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;

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- (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 sub-paragraph (a) 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 specialised 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 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) encouraging secondly –
 - (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), 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 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) The Department shall make copies of the plan available to the public on payment of reasonable charges.
- (4) 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(4).

(4) 1985 c. 45; the definition of “United Kingdom controlled waters” is inserted by section 146(7) of the Environmental Protection Act 1990 c. 43

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 disposal of waste, it shall ensure that the permit covers –

- (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 and regional development strategy

7. Article 4 of the Planning (Northern Ireland) Order 1991 shall have effect as if the proposals referred to in that Article for development plans also included proposals in respect of suitable waste disposal sites or installations and Article 3 of the Strategic Planning (Northern Ireland) Order 1999 shall have effect as if the regional development strategy for the long term development of Northern Ireland included proposals in respect of suitable waste disposal sites or installations.

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.

(3) For the purposes of this paragraph “enforcing authority” has the meaning given by Article 2(8) of the Industrial Pollution Control Order.

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 Article 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 after 18th December 2003.

(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.

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(6) In Article 30(2) any reference to the treatment, keeping or disposal of special waste shall include a reference to submitting special 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 1978 Order shall have effect as if any reference in that Part to waste included a reference to waste as defined in the 1997 Order.

References to “waste” in planning and water legislation

11. In the Planning (Northern Ireland) Order 1991 and the Water Order, any reference to “waste” shall include a reference to waste as defined in the 1997 Order.

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 sub-paragraph (a), (b), (d), (g) or (h) of regulation 2(1) of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999⁽⁵⁾ after 19th August 2004 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), it shall be an offence for an establishment or undertaking falling within sub-paragraph (a), (b) or (c) of regulation 22(4) after 19th August 2004 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 level 2 on the standard scale.

(9) The Department shall 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 shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register.

(5) S.R. 1999 No. 362; regulation 2(1)(d) is amended by regulation 25(3) of these Regulations

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(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 12 of the Directive.

Duty to carry out appropriate periodic inspections

13.—(1) Subject to sub-paragraphs (4) and (5), 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), and producers of special 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.

(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 (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 exempt activity is carried on.

(5) Where the notice, plan and fee referred to in regulation 18(3) are received by the Department before 19th June 2004, in respect of exempt activities set out in paragraphs 11, 13, 19, 45 and 46 the Department shall carry out an initial inspection within 9 months of their receipt.

Table 14

<i>Relevant exempt activity*</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	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.

* 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 –

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- (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 or, in the case of special 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 special waste is recovered or disposed of by an establishment or undertaking, it shall keep a record of the carrying out and supervision of the 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; or
 - (b) Article 3 of the Deposits in the Sea (Exemptions) Order (Northern Ireland) 1995(6).
- (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 and 46 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 17 of the Special Waste Regulations (Northern Ireland) 1998 (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 he 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) Paragraphs (5) and (6) of regulation 17 of the Special Waste Regulations (Northern Ireland) 1998 (offence where act or default causes offence by another and penalties) shall apply to an offence under this paragraph as they apply to an offence under that regulation.