



**NOTIFICATION TO ATTEND MEETING OF THE ENVIRONMENT SPC
TO BE HELD IN THE COUNCIL CHAMBER, CITY HALL, DAME STREET, DUBLIN 2.
ON WEDNESDAY 27 JUNE 2018 AT 3.30 PM**

AGENDA

WEDNESDAY 27 JUNE 2018

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	<i>“That the employment of area based Traffic Wardens be seen as an essential tool in effective traffic management, particularly in the suburbs, from the level of non payment. I currently see these positions would almost certainly be self financing. In addition we need are based Litter Wardens to ensure all play their part in keeping the area clean”</i>	
11	A.O.B.	

MINUTES OF THE ENVIRONMENT STRATEGIC POLICY COMMITTEE MEETING HELD ON 25th APRIL 2018

1. Minutes of the meeting held on 29th March 2018 (Copy Attached)

Order: Agreed

2. Matters arising

None

3. Chairperson's Business

Note of thanks to issue to Thornton's recycling for facilitating the Committee's site visit

4. Correspondence

None

5. Segregation of recyclables in Housing flat Complexes – Céline Reilly Executive Manager.

Members made the following comments / observations

On a point of order Mr. McCarthy noted that 4 separate communications issued in relation to Agenda items. This material must be issued one week in advance of the meeting to give the Committee ample time to consider the material (JMcC)

Dick Brady responded we should issue the reports in a timely manner and he will endeavour to ensure this occurs (DB)

Members made the following comments / observations in relation to the report that issued.

- The deadline for receipt of tenders (flat complexes waste collection) is 30th April and there is concern among the current workforce about job security if Greyhound are unsuccessful (MOB)
- There is an obligation on the successful tenderer to take on workers currently assigned to the service put out to tender (MOB)
- Has the issue of private apartment complexes been addressed (CC)
- Why would we not be aiming for 100% recycling of green waste instead of the 20% listed in the report (TMacV)
- Are inspections carried out to ensure waste segregation (CB)

Celine Reilly responded

- The pre-qualification questionnaire is required by 30th April and not the Tender
- It will take time to bring up the recycling rates, by way of example a resident of the 5th Floor with no lift would find it difficult to recycle.

Order: Noted. Relist report for June meeting to include obligation on management companies and residents of apartment complexes to segregate waste.

6. Waste Processing Procedure, James Nolan, Senior Executive Officer

James Nolan advised the Committee

- Depending on the bin type waste has an automatic classification
- Mixed Dry Recyclables will go through a segregation process with the different waste streams being reclassified.
- There is c38% contamination
- Solid refuse fuel is being derived from the contaminants in the green waste which is sought by the cement kilns as an alternative fuel.
- In Ireland there is c1.4m tonnes recyclable and C1.6m tonnes residual material produced annually
- We don't have the capacity nationally to treat all the residual waste produced.
- The Waste to Energy Facility is not licensed to pre-treat the material at the facility but it is inspected to ensure it is compliant with the EWC codes.

Member raised the following questions

- What is the breakdown of the 38% contamination rate, can a situation arise where contamination reaches a certain level that the whole truckload is deemed contaminated. (MOB)
- Are recyclables no longer extracted from black bin waste (MOB)
- Is more recyclable material being processed at DWtE facility because of China's refusal to accept exports (MOB)
- Clarify what is Municipal Waste (RM)
- Is 40 – 45% of material recycled and the target is 60% (RM)
- This is a significant change in the disposition of the wastes that arise, if there are more detailed figures on the wastes that arise they should issue to the Committee (JMCC)
- Are recyclables being incinerated (CC)

James Nolan responded.

- 38% of all recyclable waste collected ends up being classified as contaminated.
- The impact of China has no affect on the DWtE facility, there has been no change in the calorific value of the waste processed, and the facility is not designed to treat high calorific value waste.
- Municipal waste is all the waste arisings (black, green & brown bin material)
- The Eastern and Midland Waste Office will present on waste arisings in June

Order: Report noted. Waste arisings in the region will be included in the Regional Waste Office's report to be given at the June meeting.

7. Ringsend Environmental Health Group. – John Kelly

Members thanks Mr. Kelly for his presentation and raised the following points.

- Monitoring for pm10 and pm2.5 should take place in Ringsend (CB)
- Whenever the Air Quality was measured in Ringsend it was in breach of the standards (JMCC)
- The machine that is measuring Air Quality in the recycling centre on Sean Moore Road is displaying information of an real time; no historic recorded data is available and it only measures for PM10 (JMCC)
- We need proper Air Quality monitoring where the population lives, Dublin 1, 2, 3 & 4. (JMCC)

Order: Presentation Noted

8. Air Quality Response to Motion at March Meeting & report on the air quality monitoring stations in Dublin 1, 2,3 & 4– Céline Reilly Executive Manager

'That this Environment SPC seeks to address the concerns of the residents of The Ringsend Environmental Health Group regarding the lack of effective monitoring of the environmental impact of the activities of existing commercial and industrial operations and potential new developments on the Poolbeg Peninsula on the local area and its community: Further details on their concerns can be found in the attached document, but specifically their questions are:

1. Who is responsible for monitoring the AMBIENT Air quality in our area?
2. What are the proposed (if any) locations for monitoring stations in Ringsend, Irishtown and Sandymount Villages?
3. When will this be done?
4. Will the results of this monitoring (particularly PM_{2.5}) be publicly available?
5. Will Noise, Vibration and Congestion studies be undertaken and will this data be publicly available?

Members raised the following questions / issues in relation to the report that was circulated.

- There is a problem with monitoring in Dublin; I don't accept that we are getting a good record of what is happening particularly in the inner city. (CC)
- In the North Inner City with a population of 72,000 there is one monitoring station, is this sufficient to tell us what we need to know (CC)
- Our monitoring network needs to be increased dramatically (CC)

- Having a monitoring station at the Ordinance Survey Office in the Phoenix Park is meaningless (CC)
- I don't think it is correct to say that an exceedance of PM10 is required before we measure for PM2.5, if there isn't big pms there may small pms(CC)
- I checked the EPA website for the monitoring station in Coleraine Street and data was not available for 2016 / 2017 and to date (CC)
- I have to disagree with almost everything presented by the manager (JMCC)
- The notion that PM10 not being in exceedance is sufficient reason not to measure for PM2.5 is scientifically totally incorrect (JMCC)
- PM2.5 is far more dangerous (than PM10) (JMCC)
- There is no record of 2017 & 2018 data on the EPA website (JMCC)
- We don't have the right monitoring stations in the right places (JMCC)
- The PM10 standard (in Ringsend) was breached during the measurement campaign between 2008 and 2010 (JMCC)
- Will we have a proper EIS air quality study for the SDZ (JMCC)
- The EPA website is not user friendly (CB)
- What are the barriers to having additional monitoring stations (CB)
- Why can't we measure for PM2.5 in the existing stations (CB)

Céline Reilly & Dick Brady responded

- It is a different piece of equipment to measure pm2.5 (CR)
- The EPA decides where the monitors are installed (CR)
- The EPA is the competent Authority, if it is felt that the type and number of monitoring stations is insufficient will be happy to pass the observations on to the EPA (DB)
- In relation to the technical issues raised it is regrettable that our expert was unable to attend today. We will have him at a future meeting to address the issues raised. (DB)

Order: Report Noted. Martin Fitzpatrick, Principal Environmental Health Officer to meet with John Kelly Ringsend Environmental Health Group.

The Chair to write to the EPA in relation to the lack of data available from the monitoring stations

9. Dublin Waste to Energy update report - James Nolan Senior Executive Officer

James Nolan referred to issues that arose at the March meeting

- Tecora System – It was stated that the system is not certified and it was queried how can the data be relied upon. The Tecora system is not utilised for compliance, all the compliance data is from the in stack testing which is the method used to meet the European standard.
- The Tecora system is certified, it has an M certificate for qualitative measurement which is all it is required to do.
- There have been six in stack tests to date which show the facility is compliant
- When the waste characterisation report is complete we will have specific figures on the biomass fraction, this report will be circulated to the Committee.

- There will be a special meeting held to deal with the Performance Demonstration test report and the Pre-commissioning test report. It is likely to be August before the Performance Acceptance test report is available.

Members raised the following questions in relation to the report that was circulated.

- Can we have an update on status of the Commissioning report that was issued to the EPA (JMCC)
- Can we have a commitment that the Waste Characterisation report will issue to the Committee when it is complete. (JMCC)
- The ash being handled by Rialta – is this in compliance with the planning permission (JMCC)
- The EPA accepted (from DWtE) the root cause to the event on 7th June was a lime spill – The Spillage was Flue Gas Treatment Residue. (JMCC)
- The EPA state that the cause was inappropriately fitted door seals but on Page 4 of the EPA report the true cause was is stated “there was an error on the valve controlling the circulation of lime from the bag house; the error resulted in greater volumes of lime being recirculated. The volume of lime in the hoppers was such that it exceeded the level of the access hatches” (JMCC)
- The root cause of the incident was that the plant was being operated incorrectly, it was not properly programmed. (JMCC)
- The software system was reloaded and the recirculation % defaulted to 100, it should have been 80%, it is now set at 60%. (JMCC)
- I have asked the EPA to retract the report and correct it (JMCC)
- What is the status of the Commissioning report that issued to the EPA (JMCC)
- What is the status of the refinancing report (JMCC)

James Nolan responded.

- Rialta is in compliance with the planning permission
- Clarification of the Commissioning report will issue
- The refinancing report will go to the Corporate Policy Group and to the SPC thereafter

Order: Report Noted. See Appendix 1 below a copy of Mr. McCarthy’s email to the EPA

10. Dublin District Heating Systems update report – Victor Coe, Senior Executive Engineer

Member raised the following question in relation to the report that was circulated.

- Will legislation be required to support the business model for DDHS (NOM)

Victor Coe & Dick Brady responded

- It is not clear if new legislation is required, it is being examined by the Law Agent (VC)
- The need for new legislation of regulation change will not stop us moving forward with the project when we find a model that can deliver the project. (DB)

Order: Report Noted, further detailed report to issue at the June meeting of the Committee.

11. Strategic Water Supply – Irish Water. Sean Laffey, Head of Asset Management and Claire Coleman, Project Communications Manager

Members thanked the Irish Water Official for the presentation and raised the following questions

- How many schools in the Dublin region use harvested rain water (COM)
- It can take some time to have leaks repaired (COM)
- People are concerned in relation to houses with lead piping (COM)
- Real time water usage and demand was previously available, can this be reinstated (CC)
- Water usage is tracked by economic growth in the EIS, how can this be squared with the carbon targets we have to meet, if we are to meet the targets water consumption needs to be detached from economic growth. (CC)
- In relation to leakage, in Zurich where 2% of the network is replaced annually, is it harder to replace the network in a high density city like Zurich than a medium density city like Dublin (CC)
- What material is being used in replacement pipes (CC)
- Earlier iterations of the plan provided for a significant reservoir in the Midlands – this has been dropped, in the absence of a reservoir a large amount of water will be extracted from the Shannon in the summer months, are the ESB ok with this (CC)
- The Water Framework directive is cautious about transferring water from one river basin to another, what is Irish Water’s view on this (CC)
- Prior to Irish Water there was a wide disparity between the Local Authorities in relation to unaccounted for water. South Dublin brought leakage levels down to c16% , can more be achieved by additional pipe replacement / repair.(MOB)
- An education programme around rain water harvesting should be introduced. (MOB)
- Are there guidelines in place on the type of pipes developers should use (MOB)
- Could a comparison on domestic, corporate and institutional usage issue to the SPC (TMacV)
- How much water would be expected to be saved through the education programmes (TmacV)
- Can we have the actual cost for Thames replacement (JMCC)
- Clarify the cost ratio at1-7, replacement v fix and find (JMCC)
- Could a full data set behind the graphs issue to the Committee and for the forecast analysis (JMCC)

- Who should produce a cost benefit analysis for rain water harvesting, this SPC can make representations to the appropriate authorities / minister (JMCC)
- Why should the ESB get money for water that the Nation needs – who owns the water (JMCC)
- Can the studies being carried out as part of the Planning Permission be made available to this SPC (JMCC)
- What happened taptips.ie (CC)
- How much will the project cost & and how much will it cost to operate annually (CC)
- Why was the reservoir moved (NOM)
- What is the planning permission process (NOM)
- This SPC will be happy to make representation in relation rain water harvesting but we require the details to do so (NOM)
- Will bills issue to householders to pay for water given the extensive costs (EM)

Sean Laffey and Claire Coleman responded

- We have no figures on rain water harvesting in schools (SL)
- Rain Water harvesting has a huge part to play going forward but Irish Water has no statutory powers to impose conditions to install harvesting systems (SL)
- As part of the lead replacement programme pipes will be dosed with orthophosphate which will line the lead pipes to ensure the lead does not enter the drinking water (SL)
- Lead water main replacement is being rolled out across the country but there is not a huge take up from householders. (SL)
- Real time information for water usage / demand will be examined. (SL)
- In relation to carbon targets we are looking at how our energy for the Shannon Scheme is sourced with a focus on renewables (SL)
- The ESB is required by law to keep the water in the lake at a certain level – The water that Irish Water will be taking will come from the ESB's generation allowance. Irish water will have to pay the ESB for the water extracted (SL)
- The inter catchment water transfer will be dealt with as part of the planning permission (CC)
- The Shannon is a resilient river whereas rivers in the east are vulnerable to Climate Change, this project will relieve the pressure on the Liffey and other rivers (CC)
- The initial assessment was a desk based environmental assessment, detailed on the ground environmental assessments showed that the midlands reservoir was not sustainable (CC)
- As raw water is being extracted there was a risk of transferring invasive species from the Shannon (CC)

- IW communications unit is putting together an Education Programme and rain water harvesting will be included in this (SL)
- South Dublin Co. Co. was one of the lead Authorities in relation to leakage reduction (SL)
- IW requires developers to use HDPE pipes. (SL)
- Best European Cities would have leakage of c10% but these cities generally were re-built after the war (SL)
- Not sure if it is appropriate to give potential statutory stakeholders the planning pack in advance of it being submitted (SL)
- The project cost is €1.3bn with running costs of €30m pa. (SL)
- The current water sources have served Dublin well but with expansion, economic and population a new water source is required. (SL)

Order: Presentation Noted. Follow up items from Irish Water are below

- (I) Report on Water Conservation Awareness Campaign to issue to the Committee**
- (II) Report on water savings where rain water was installed harvesting to issue to the Committee**
- (III) Details on Thames costing figures to issue to the Committee provided they are not commercially sensitive.**
- (IV) Data behind graphs in the presentations to issue to the Committee**
- (V) IW to return to the Committee Q1 2019 to update the Committee on the project's progress**

12. A.O.B.

None.

In attendance

Members

Cllr. Claire Byrne
 Councillor Ciarán Cuffe
 Joe McCarthy
 Cllr. Edel Moran
 Councillor Tina MacVeigh
 Robert Moss
 Councillor Michael Mullooly
 Cllr. Michael O'Brien
 Cllr. Ciaran O'Moore
 Cllr. Naoise O'Muirí (Chairperson)

Apologies

Cllr. Mannix Flynn

Absent

William Brennan (PPN)
Robert Colleran, Dublin Docklands Business Forum
Councillor Declan Flanagan

External organisations

Sean Laffey, Head of Asset Management, Irish Water
Claire Coleman, Project Communications Manager
John Kelly, Ringsend Environmental Health Group. –

Officials

Dick Brady, Assistant Chief Executive
Céline Reilly, Executive Manager
James Nolan, Senior Executive Officer
Victor Coe, Senior Executive Engineer
Simon Brock, Administrative Officer
Fionnghuala Ryan, Executive Scientific Officer
Ciaran McGoldrick, A/Senior Staff Officer
Owen Sweeney, Staff officer

Naoise Ó'Muirí, Chairperson

25th April 2018

Appendix 1

Hello Ciarán,

Please place the attached email on the record of the Environment SPC.

Regards,
Joe

*Joe McCarthy
An Taisce
086 245 6788*

Begin forwarded message:

From: Joe McCarthy <joemcc@me.com>
Subject: EPA Report on the spillage incident of 7th June 2017 in DWTE Poolbeg
Date: 25 April 2018 at 14:22:53 IST
To: Simon Buckley <s.buckley@epa.ie>
Cc: wcu@hsa.ie

Hello Simon,

I have received a copy of the report on the EPA investigation of the spillage incident of 7th June 2017.

The report has no cover page, no author and is undated. The relevant reports and notifications listed in the appendix are ~~not~~ attached.

The contents of this report are surprisingly incomplete and inaccurate.

The report makes a serious error by describing this incident as a *lime spillage* throughout. The spillage was **Flue Gas Treatment residue**. It was not just a lime spill.

My email to the EPA dated 28 June 2017 draws your attention to the nature of the material spilled (see copy below).

The incident was in fact a Loss of Containment of FGT residues as described in the EIS for the plant in Section 13.5.10 and Section 13.7.14.

There is no reference in the report to the compliance by the operators with the procedures for accidents or for spillages as detailed in the Emergency Response Procedure for the plant at:

- Section 3.3 DWTE_ERP_003_ Spills_ Hazardous/Non-Hazardous Material Release
- Section 3.4 DWTE_ERP_004 Injuries and Medical Emergencies

Although there are some references to timings in the EPA report there is no detailed timeline of the incident.

The cause is incorrectly stated as: "*The incident occurred because of inappropriately fitted door seals*".

The actual cause is given in para 5 of page 4 of the report:

*" ... there was an error on the valve controlling the recirculation of lime from the baghouse.
The error resulted in greater volumes of lime being recirculated to the baghouse.
The volume of lime in the hoppers was such that it exceeded the level of the access hatches. ..."*

Note the repeated use of the word *lime* here instead of *FGTR*.

The incinerator operators did not notice that a setting of 100% recirculation was in place for residue recirculation. The build up of FGT residue caused the residue to burst out of the hopper when too much residue had accumulated after four days of test firing of the plant.

The incorrect placement of the door seals had little to do with the incident. They were a consequence of the faulty operation of the plant. The excess FGTR would have burst out anyway.

The basic sequence is evident in the EPA files as follows:

- Software reload of DCS system
- The DCS had a faulty setting of 100% recirculation of residue from hoppers to reactor
- Operation for four days with no FGTR removal from the FGT system
- Volume of retained FGTR rose above the level of the access hatches

- No alarm on excessive levels in the baghouse hoppers
- Access door burst open
- 2 tonnes of FGTR spilled causing a toxic cloud to envelope adjacent contractor staff.

The EPA should reject the cause offered by DWtE.

The EPA should reissue this report to identify:

- the actual sequence of operation,
- the root cause of the accident,
- the failure to follow written procedures for handling major accidents, and
- assess the likely toxic consequences of exposure to FGTR for the workers involved.

In particular the report should not use the words “*lime*” or “*lime spill*” when the incident in fact was about “**FGTR**” and was in fact a “**Loss of Containment of FGTR**”.

I look forward to your response and receiving an updated report suitably signed and dated, with all required attachments.

Regards,
Joe

Joe McCarthy
An Taisce
086 245 6788

Begin forwarded message:

From: Joe McCarthy <joe.mccarthy@me.com>
Subject: Urgent - Poolbeg Incinerator incident - EPA licence W0232
Date: 28 June 2017 at 13:22:25 IST
To: s.buckley@epa.ie
Cc: wcu@hsa.ie

Hello Simon,

I obtained copies on Monday of the reports logged on the EPA LEAP portal in Richview for Licence W0232 - the Dublin Poolbeg incinerator.

From a detailed analysis of these documents and of the logged excel spreadsheets it is clear that 100% of baghouse fly ash residue was being recirculated during each waste firing on Line 1 until after the major incident on 7th June.

This means that the powdered activated carbon (PAC) in the residue was being repeatedly circulated to the semi-dry reactor where it was picking up increasing amounts of dioxin and mercury.

There is no reference in any of the DWtE reports or analyses sent to the EPA to the presence of this carbon containing quantities of toxic substances.

Please query the quantum of PAC involved and obtain an estimate of the quantity of dioxin likely to be in that fly ash which was then released from the baghouse hoppers.

The contractor workers removing scaffolding were exposed not only to lime but also to PAC in the cloud of ash rising up.

It is urgent that these casualties be assessed for exposure to the toxic PAC which contained dioxin and mercury.

I can provide a list of the relevant documents and spreadsheets to assist in your analysis of this major incident.

I will be raising these details in public this afternoon at the DCC Environment Strategic Policy Committee on which I sit as a Member appointed by An Taisce.

This email is also copied to the Workplace Contact Unit of the HSA to be forwarded to their inspector dealing with this incident.

Please acknowledge receipt.

Regards,
Joe

Joe McCarthy
086 245 6788
An Taisce

**MINUTES OF THE SPECIAL ENVIRONMENT STRATEGIC POLICY COMMITTEE
MEETING HELD ON 24th MAY 2018
DUBLIN WASTE TO ENERGY – TESTING AND COMMISSIONING**

1. CDM Smith Presentation

Members raised the following questions / issues in relation to the presentation that was delivered

- In relation to the power output- The graph states that the gross output of the turbine power generator is 55 -58MW, can it be clarified if that is the gross output at the terminals of the turbine, is there separately an assessment of the parasitic power consumption at the plant and a net value that is exported from the plant. (JMCC)
- The gross output of the turbine is according to the graph is 58-59 yet it is stated that the gross output is 70MW, can this be clarified (JMCC)

Bill Crellin (BC), Tony LeRo (TL) and James Nolan (JN) responded.

- At all times there is a measure of the power exported to the grid, a measurement of the total amount of power generated and the difference between the two is the parasitic power value (BC)
- At full load the plant generates 70 MW gross, the plant consume c.6 MW with 64 MW exported. (TL)
- The 59MW on the graph is associated with the pre-commissioning test, 70MW is when the plant is fully operational (JN)
- The loads were not constantly at 100% during pre- commissioning testing (BC)

Members raised the following questions / issues in relation to the presentation and report

- The stoppage that occurred in relation to plastic; are there preventative measures in place to stop this recurring (COM)
- Can it be confirmed that in relation to the residue warranty, will it be continuous testing or is it limited to the testing period (RM)
- Is the CEMS in real-time and why is it not on the Covanta website. (RM)
- The performance demonstration cert was issued on 24th November why was there a delay in getting the reports to the Committee (NOM)
- The first HZI PDT report issued in September 17 and updated in October 17. The CDM PDT report adds little to the HZI PDT report; I restate that the committee is being delayed in getting the materials requested. (JMCC)
- I sought for all the information relating to this meeting be made public, will this information be made public (JMCC)

- A sub-chapter in the PDT report on powdered activated carbon was not included in the presentation (JMCC)
- The required R1 calculation which the EPA required to give a certain level of efficiency has not been mentioned at all (JMCC)

Bill Crellin (BC), Tony LeRo (TL), Ciaran McGoldrick (CMcG) and James Nolan (JN) responded

- The plastic stoppage was owing to the one type of material being fed, the proper procedure would be to spread the material throughout the pit (TL)
- The CEMS data is expressed in real time (BC)
- Why the CEMS data is not on Covanta's website is a matter for Covanta. (BC)
- The residue warranty is specific to the project agreement it deals solely with the combustible content of the residue. (TL)
- Separate testing is being carried out by Covanta on the bottom & fly ash for the purposes of characterising if it is hazardous / non hazardous (TL)
- We have been in discussions with DWtE Ltd and it is expected that the CEMS data will be on the website in the next few weeks (JN)
- Since the performance demonstration certificate issued the data has been collated, put together and reviewed, it took this long to put it in report format (JN)
- Mod.gov can handle 60MB of data and this meetings documentation amounted to c.130mb. We will put the information on the Council's website. (CMcG)
- Powdered Activated Carbon was not included in the presentation as we didn't want to just re-read the report. (BC)
- DCC & CDM Smith have been in discussions with Covanta on carbon usage and the use of gravimetric feeders which will provide a very exact reading on carbon usage. Covanta have agreed to install these feeders in August. (TL)
- The R1 calculation is not a provision of the project agreement, but there is a requirement in the licence to calculate the R1 efficiency (TL)

Order: Noted. All documentation to be place on the City Council website

Order: Noted

2. Pre- Commissioning Detailed Report

No questions

Order: Noted

3. Performance Demonstration Test report

Members raised the following question / issues in relation to the report that was circulated

- The performance acceptance test is due after 4000 hours of operation, it seems that we are now 3 months past this, when can we expect the PAT to be carried and the subsequent report. (JMCC)
- Will the PAT be a full suite (of tests) or just an analysis of the existing data from the system (JMCC)

- The nominal input capacity is stated to be 32 tonnes of waste per line per hour at an average calorific value of 11.5Gjoules per tonne. This is at variance of what is in the EIS. The EIS said it would be 35 tonnes per line per hour at 10.5Gjoules which amounts the same amount of steam per hour. – Where does this line come from (in the report) is it a redefinition at odds with the EIS (JMCC)
- What doe LPN on the diagram stand for (JMCC)
- The Indaver Plant at Duleek could not get 11.5 Gjoules (only 10.5 could be reached) and Indaver were permitted to increase the annual tonnage to 200,000 tonnes. The same recalculation cannot apply the Poolbeg facility as the permission allows for 600,000 tonnes pa. During the 30 day test waste processed was 6% over the permitted level. The plant cannot be allowed to continue at this level. Can this be clarified (JMCC)
- Can we have a copy of the HZI document, Function and Design Specification on the Net Calorific Value (NCV) calculation (JMCC)
- The performance of the plant was of serious contention at the Bord Pleanala hearing. The DCS (Distributive Control System), a piece of software has had significant consequences at the plant thus far. The software has been reloaded on a few occasions. (JMCC)
- The EPA wants to know why the plants weather station data is not being used instead of Dublin’s Weather Station data. It transpires that the meteorological data in the plant was lost by down loading a new version of the DCS software. (JMCC)
- Who wrote the DCS software, how many other installations in the EU are running this software. (JMCC)
- How is the software tested (JMCC)
- Are there redundancy engines whereby the software is running on a principal machine or server and is backed up on another (machine / server) with real-time information exchanged between the two (JMCC)
- Who maintains the software(JMCC)
- There have been circa 48 incidents at the facility with half a dozen being attributed to software(JMCC)
- Where is the loop being closed in relation to managing the injection of carbon, I’d like to see a paper on this (JMCC)
- I would like a report from CDM Smith on the software failings at the plant (JMCC)
- The carbon paper was not authored or dated. (JMCC)
- A statement by Covanta (J.Daly) on 19th September sad that 90 – 100 milligrams of carbon per cubic metre of flue gas will be metered in. The volumetric flow is measured all the time; it is in the DCS data. Is there software which records the adjusting of the PAC feed rate in line with the flow of flue gas or with some other surrogate which is measured in the CEMS to try to get at the right amount to capture the dioxins (JMCC)
- In the table on usage there are 3 measurements. How does DWtE assess the dioxin that occurred when a certain amount of carbon is injected? (JMCC)
- The list of parameters which were measured for mercury and list of parameters and results for dioxins and the corresponding amount of injected carbon are missing from the report (JMCC)
- The graph which shows an average of 18kg of PAC / hr is clearly inadequate. On the face of figures published by CDM the dosage rate should be running 50% higher and not at 18kg (JMCC)
- Can we have a general comment on who is assessing the PAC in Poolbeg (JMCC)

- The re-circulated carbon is not measured and the extent of un-reacted carbon is unknown which is essential for dioxin removal (JMCC)
- The fly ash not being measured is what caused 11 injuries (JMCC)
- Will the recycling carbon levels be measured (JMCC)
- We will get the recirculation figure (JN)
- The data acquisition handling software and CEMS calibration was not quite correct calibration adjustments were loaded into the software 2 weeks after the PDT was completed. In the CR's opinion the data was fine has EPA reviewed and agreed this (JMCC)
- CDM Smith does not draw any conclusions at the end of the report, what are the conclusions (JMCC)
- Are the calibration corrections now in place (RM)
- What is the exact gross power and is it in the gross power that is recorded in the DCS data (JMCC)
- Clarification on the Gross / Nett power of the plant is required. (NOM)

Bill Crellin (BC), Tony LeRo (TL) and James Nolan (JN) responded

- The higher the heat – less waste can be processed, the lower the heat – more waste can be processed. The heat input, the product of the numbers amount to the same (TL)
- Hitachi produced a design diagram, LPN is the same as ABC in the EIS (TL)
- The performance acceptance test has been completed, data is still outstanding and remains to be reviewed and we expect to have report to the City Council within 2 months. (BC)
- The PDT does not give assurances on the software, there were no issues with the software during the 30 day test period (JN)
- Carbon usage is not one of the PDT criteria but we do agree that it is an important parameter (TL)
- The plant uses a volumetric screw feeder to inject carbon into the units. We observed at a specific speed set point, feed rates varied meaning at some point there was an interruption in the amount of carbon in the screw (TL)
- We examined 2 sets of data (Section 4.3 in the report); we looked at the average daily carbon usage and during mercury / dioxin stack testing. Using volumetric screw feeders is not a reliable way to ensure there is a constant carbon feed. It has been agreed that gravimetric feeders will be installed (TL)
- The gravimetric feeders will speed up / slow down the feed rates to ensure the desired feed rates are maintained. (TL)
- The Carbon paper was written by Covanta and not CDM smith (BC)
- Table 9 referenced, does show that carbon usage did vary but for the most part more than 18kgs was injected. (BC)
- The results for carbon use rates for mercury & dioxins were extremely good, they are running of orders of magnitude below the emissions limits (BC)
- CDM Smith is not happy with the varying carbon rates and Covanta will be installing the gravimetric feeders (BC)
- DWtE, in addition to the carbon feed also has recirculated carbon, so there are 2 components to the carbon levels. Not just the fresh carbon shown on table 9 but also the recirculated carbon.(BC)
- The amount of carbon recycled isn't known that is why it has been recommended that the carbon feed is consistent. (TL)
- Subsequent test data (after the PDT) show dioxins below the limits values at carbon rates of 15kgs (TL)

- The CEMS has to pass a qual1 which confirms that the system is complete and installed properly, Qual2 looks at the accuracy of the system and as part of that a calibration function is derived, this essentially corrected the measured value to a more accurate number based on the procedures (TL)
- The calibration functions are displayed in Table 11 of the report. CDM Smith looked at the calibration functions and determined that they still would have passed the PDT test (TL)
- A full Qual2 report issued with the Agenda documentation and the EPA acceptance of the Qual2 also issued.(JN)
- The calibration corrections are now in place (since October) (TL)
- The gross output of the plant 70MW at full load. The in plant use would typically be around 6 MW with the net being 64 MW. Earlier I misspoke I quoted the gross figure which was in fact the net figure (TL)
- There is a megawatt meter at the generator which measures the gross output and there is a megawatt meter on the line going to the grid measuring the net output. (BC)
- I will come back what the cell values are (JN)

Order: Report noted. Clarification on net / gross power output of the plant to issue

4. Incident report to EPA

Order: Noted

5. Motion in the name of Councillor Claire Byrne

'That in light of the very serious amount of litter and waste that was left along the Grand Canal and other parts of the city during the good weather last weekend, this Environment SPC calls on Dublin City Council to explore ways of improving the litter and waste management systems during the good weather, such as increasing the number of large bins available, and investing in an awareness campaign to encourage personal responsibility so people clean up after themselves, bring their waste home, and leave no trace

Order: Agreed

6. A.O.B

The HSA investigation in to the Lime still incident is still ongoing according to correspondence received from the HSA

Order: Noted

In attendance

Members

Joe McCarthy
Cllr. Tina MacVeigh
Robert Moss

Cllr. Michael Mullooly
Cllr. Michael O'Brien
Cllr. Ciaran O'Moore
Cllr. Naoise O'Muirí (Chairperson)

Officials

Dick Brady, Assistant Chief Executive
Céline Reilly, Executive Manager
James Nolan, Senior Executive Officer
Ciaran McGoldrick, A/Senior Staff Officer
Ian Boggans, Assistant Staff Officer

Outside Organisations

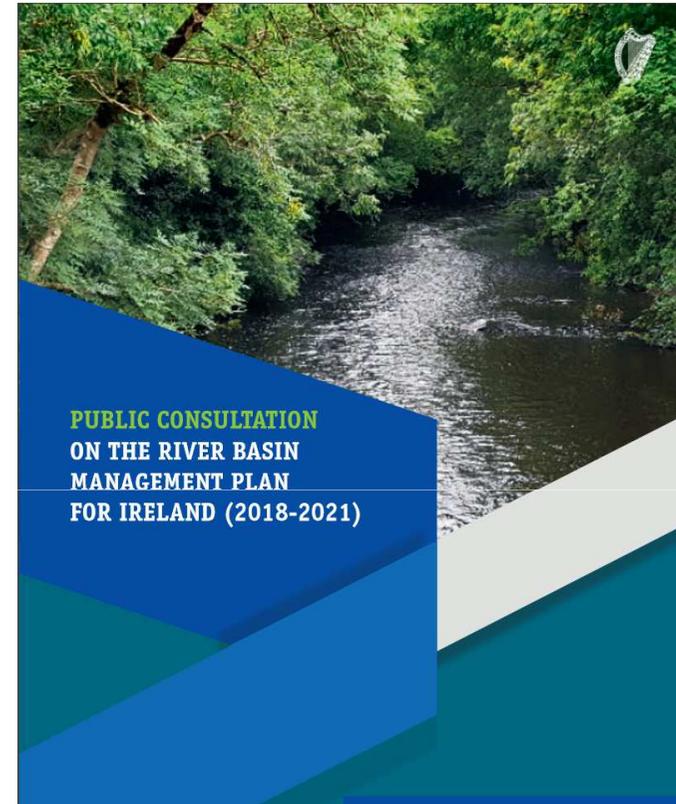
Bill Crellin, CDM Smith
Tony LeRo, CDM Smith
Rúairí O'Carroll, CDM Smith

Naoise Ó'Muirí- Chairperson
25th May 2018

River Basin Management Plan for Ireland (2018-2021)

Presentation to Dublin City Council Environmental SPC 27th June 2018

Page 21



“ RIVER BASIN PLANNING REQUIRES TECHNICAL EXPERTISE AND KNOWLEDGE – BUT PUBLIC ENGAGEMENT AND PARTICIPATION ARE EQUALLY IMPORTANT IF WE ARE TO UNDERSTAND THE VALUE OF WATER AND WORK TOGETHER TO PROTECT AND RESTORE OUR WATER ENVIRONMENT. ”

Gerard O’Connell,
Engineer-in-Charge,
Water Framework Directive Office

Water is essential for life and for our natural environment. It is also critical to our wellbeing and our economy and provides essential services supporting people and communities, agriculture, industry, transport and tourism. However, water is a fragile resource that needs to be protected from the many pressures that are placed on it. It must be managed and used in a sustainable manner.

Water Framework Directive (WFD) 2000

Legal framework to *protect and restore* clean water
and to ensure its long-term, sustainable use.

Three cycles

1st Cycle: 2010-2015 (minimal community engagement)

2nd Cycle: 2016-2021 (2 years behind)

3rd Cycle: 2022-2027

..... “to achieve good ecological status in all waters”.

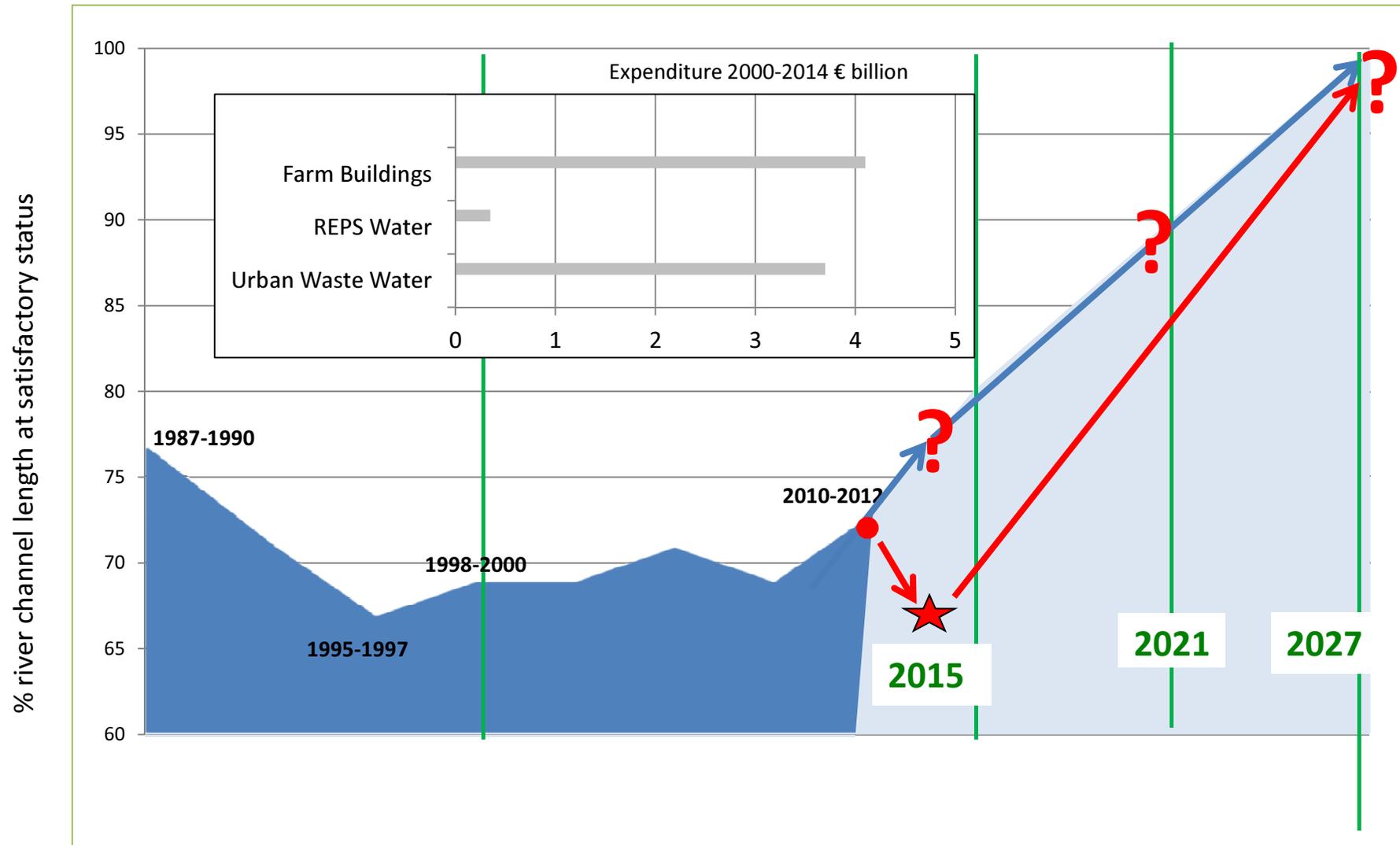
Water Framework Directive (WFD) 2000

- Develop River Basin Management Plans –
 - Identify the pressures on water quality
 - Set out the programme of measures to address these significant pressures.
- Public consultation and engagement

Key Learnings from 1st Cycle Plan

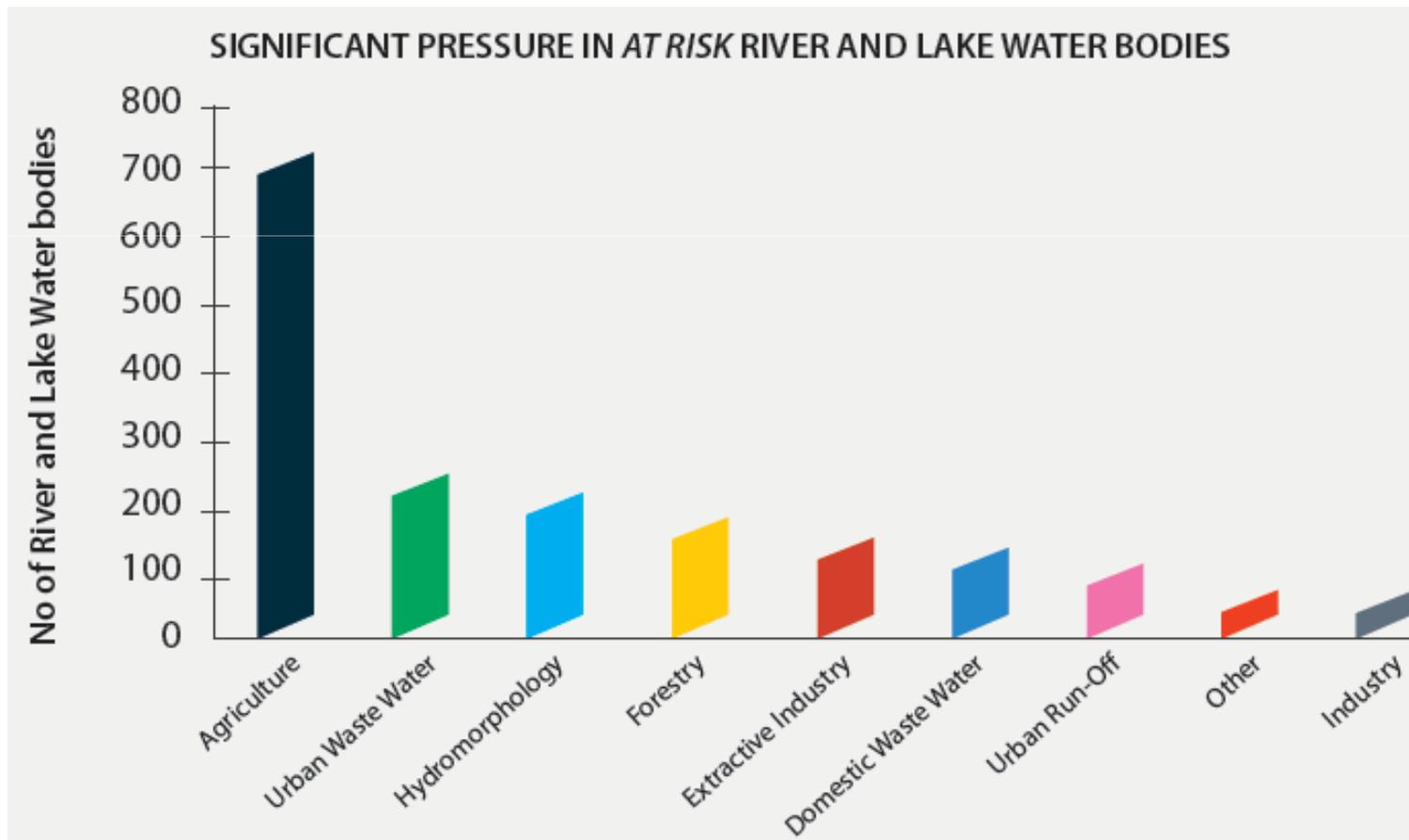
- Need for better evidence base (EPA characterisation work)
- First cycle too ambitious
- ... “fragmented institutional structures”
- ... “no single body having ultimate responsibility”
 - Single RBD with national plan the responsibility of Minister
 - New governance & implementation structures right
 - Local Authorities central to this
- Need for improved communication & public engagement
 - Consultation central to development of draft Plan
 - Specific resource developed through setting up the Local Authority Water and Community Office (LAWCO).

River Water Quality, past, now, future?



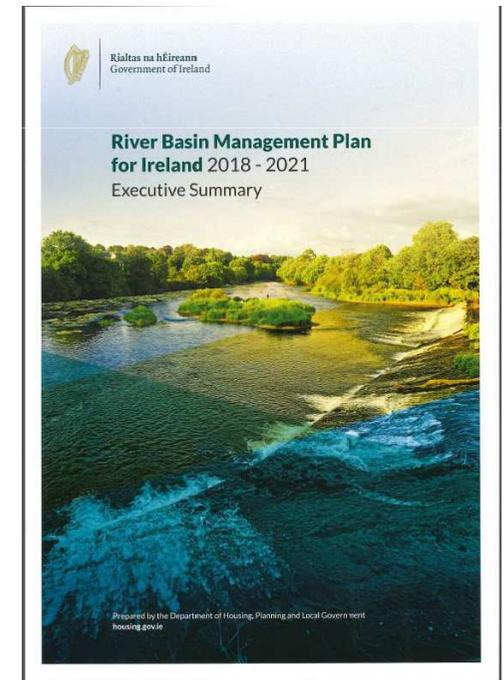
EPA Characterisation

- Detailed assessment of 46 catchments with 4,829 water bodies
- 57% of rivers and 46% of lakes at less than good status



River Basin Management Plan 2018-2021

- RBMP, NIS, SEA and Exec Summary launched by Minister Eoghan Murphy on 17th April 2018.
- Communications through Local Authorities Water & Community Office (LAWCO) Feb – August 2017. 190 priority areas for action.
- Framework for co-ordination between LA's and public agencies to achieve water quality improvements.
- Local Authority Waters Support & Advice Team (LAWSAT), 35 Scientists + 30 Agricultural Advisors + 8 specialist advisors.
- An Foram Uisce to discuss, to raise awareness of water issues.



Objectives & Priorities

- “...Good ecological status for all waters”
- Priorities identified in the Plan:
 - Compliance with existing EU legislation (e.g. UWWTD Euro 1.7bn investment in 250 waste water treatment plants to 2021)
 - Prevent deterioration
 - Meet water objectives for “protected areas”
 - Bathing areas, drinking waters, shellfish, SACs etc
 - Protect high status waters
 - Supporting measures implemented in approximately 600 to 700 prioritised water bodies

Programme of Measures (Ch. 7)

- Agriculture
- Septic tanks
- Urban waste water
- Forestry
- Extractive industry incl. peat harvesting
- Invasive alien species
- Physical modification
- Water abstractions
- Industry
- Waste
- Historically polluted sites
- Water treatment
- Land Use Planning, Flood Risks, Climate Change, Hazardous chemicals, etc.

Implementation Strategy

- Implementation of basic measures
- Supporting measures targeted at priority water bodies
- Regional structure in coordinating resources across agencies and other stakeholders
- Evidence based approach
- **Community engagement and awareness**
 - (Local Authority Waters and Communities Office - (LAWCO))
 - (National Water Forum)
 - (Local Authority Water Support & Advice Team (LAWSAT))
 - (Agricultural Advisors)

“.....the right measures in the right place”

Role of LAWCO



Community Waters Officer Locations



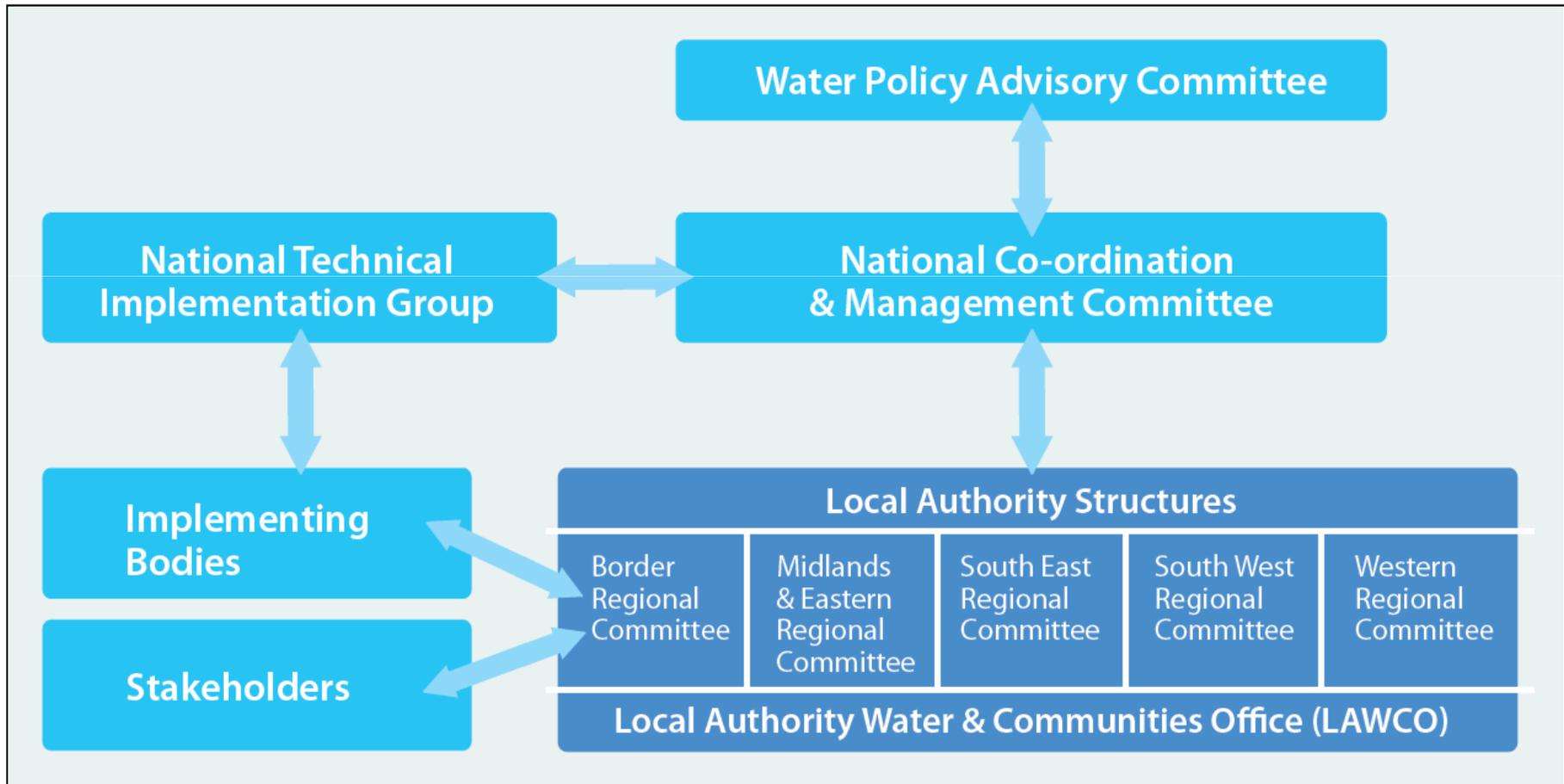
National Water Forum

- Facilitate stakeholder engagement on all water issues.
- Inform public views on the links between
 - Clean water supplies
 - Good water quality
 - Public Health
 - The Value of water as a resource

Local Authority Water Survey and Advice Team

- Surveying under pressure water bodies.
- Locating and reporting on pressures.
- Employing specialists where required.
- Working with local authorities and other agencies.
- Proposing plan for improvement of water bodies.
- Teams based in each of five regions.

Implementation Structure



Role of Local Authorities

- Coordinated delivery of measures at regional and local level
- Tracking progress and effectiveness of measures
- Annual reporting of progress
- Ensuring public and stakeholder engagement in implementation
- Integrated approach across functional areas
- Supporting national policy development and implementation

Communication & Engagement

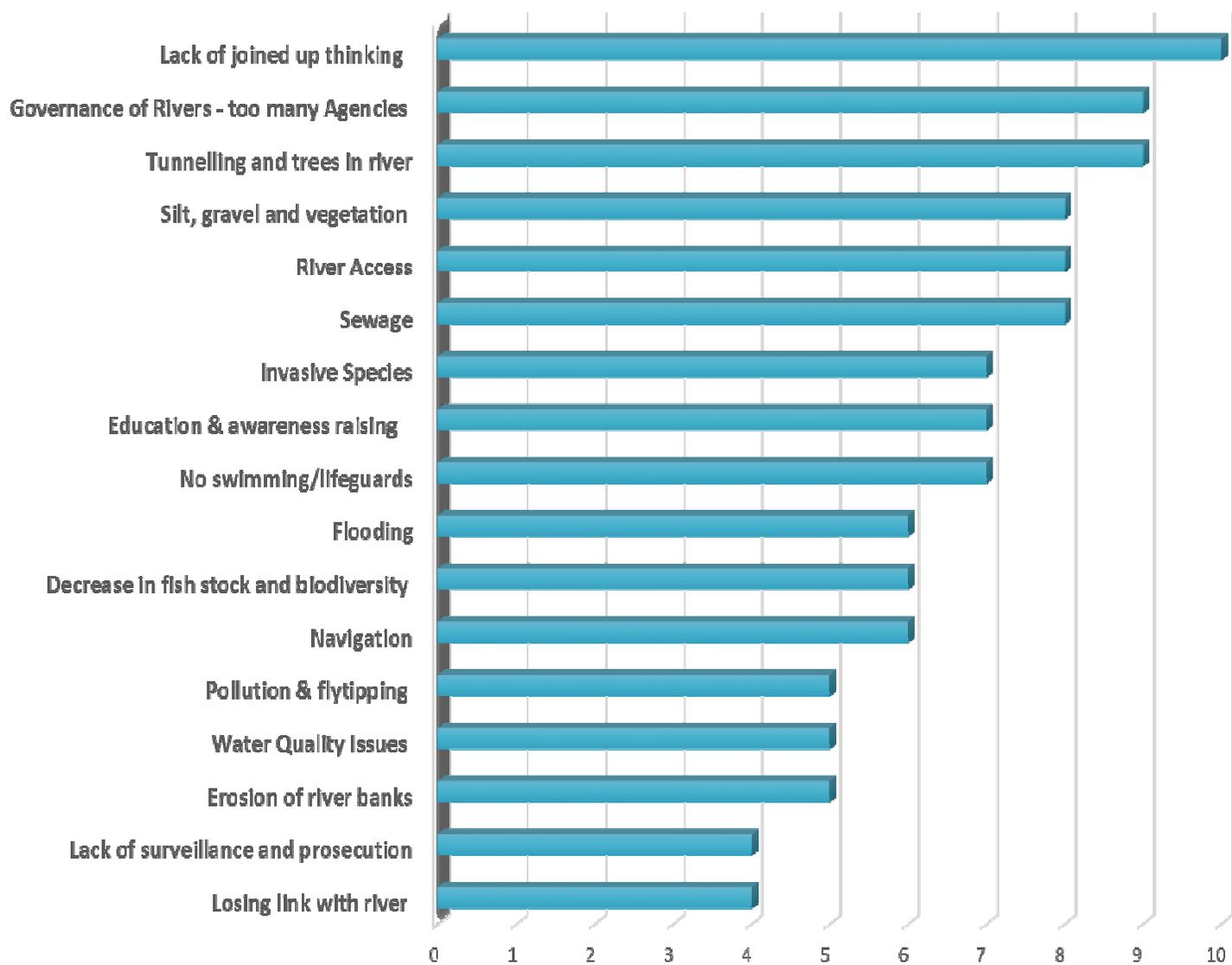
- Previous consultations highlighted need for:
 - (i) Better engagement in water policy at national level
 - (ii) Facilitation of public and stakeholder engagement at local level
- Response to above in draft RBMP
 - (i) **National Water Forum** will feed into WPAC and other structures
 - (ii) Local Authority Waters and Community Office (LAWCO) to drive public participation and consultation
 - (iii) EPA/DHPCLG/LA networking & knowledge sharing
 - (iv) catchments.ie website

Community Engagement (LAWCO)

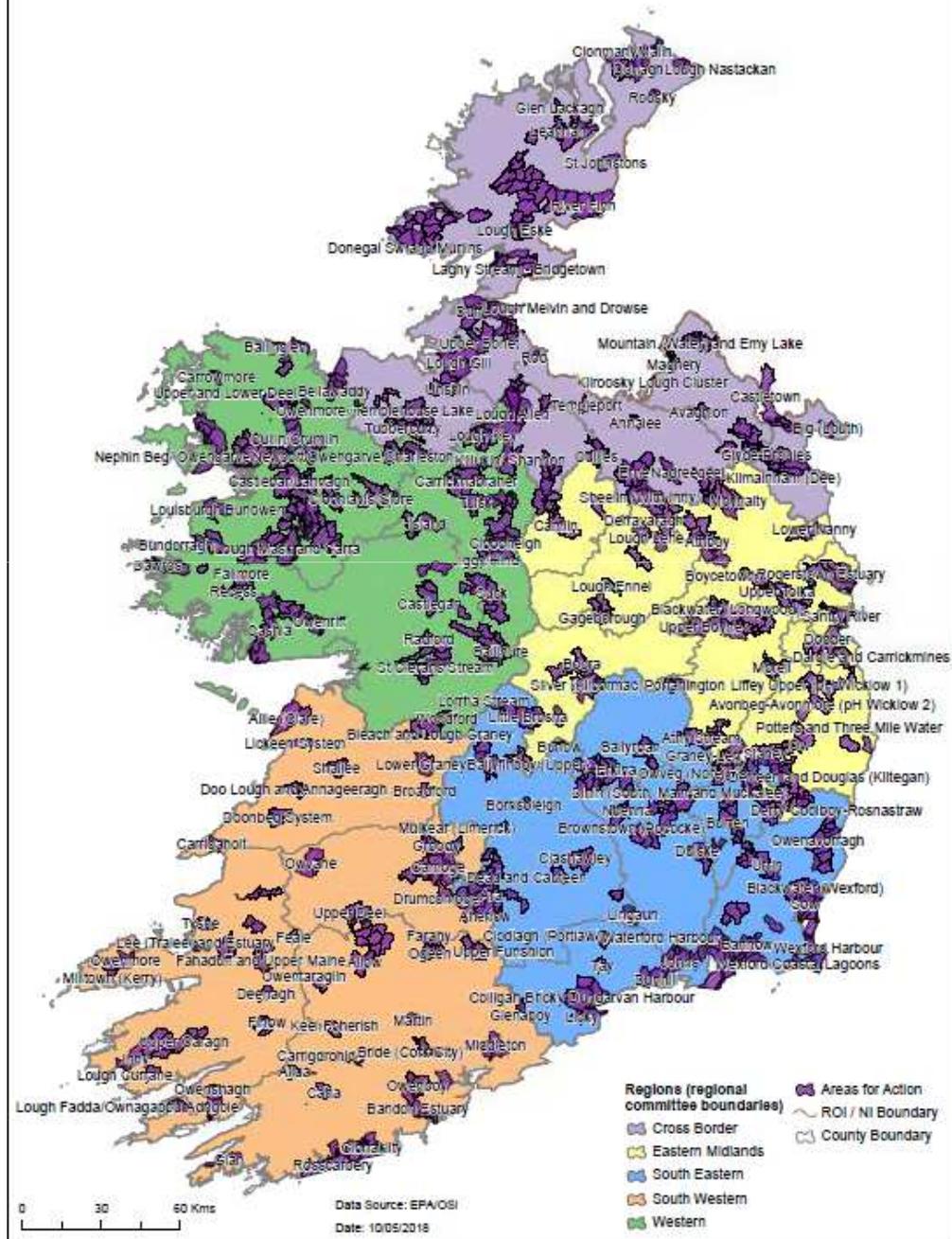
- Public meetings to be held in local areas (c. 100)
- To be completed by end of August 2017
- Include a focus on local issues



Most commonly cited issues raised at River Suir Public Meetings 2016 (n=16)



Areas for Action within regional committee boundaries



Dublin City Council Area

1. Dodder and Santry Rivers are level 1 prioritised.
2. A study is also being carried out on the Camac River.
3. Yearly action plans are developed for the above three rivers which involve desktop, ground and water quality surveys.
4. Consultations with Dun Laoghaire Rathdown, South Dublin and Fingal County Councils are required on each of these three river studies.
5. Merrion and Sandymount beaches are specifically mentioned in the Plan and investigations are ongoing to improve their water quality status with a number of stakeholders.
6. Maintenance of all high priority areas and status of existing waterbodies.

<http://www.housing.gov.ie/>



National Flood Risk Management Plan

AND THE

CFRAM Programme

**Gerard O'Connell, Engineer-in-Charge,
Regional Projects & Flood Advisory Office**

Environmental SPC, 27th June, 2018

HISTORIC & POLICY CONTEXT

- NATIONAL FLOOD POLICY REVIEW: 2004
 - OPW: Lead Agency
 - Proactive, Catchment-based Approach
 - Flood Mapping
 - Flood Risk Management Plans
 - Flood Risk Management, rather than just Flood Protection (Flood Relief Schemes):
 - Prevention
 - Preparedness & Resilience
 - Protection

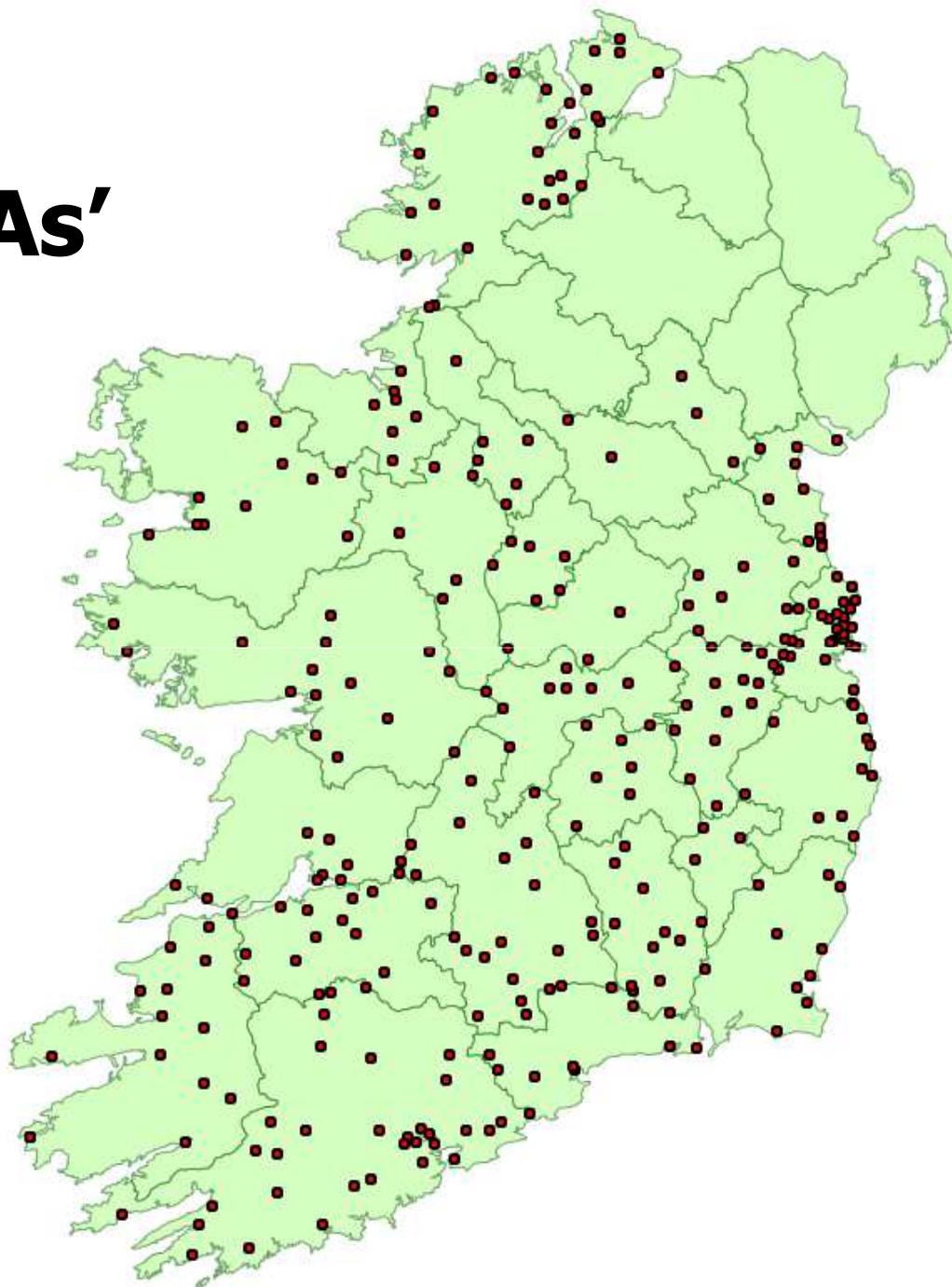
EU 'FLOODS' DIRECTIVE: 2007

- KEY REQUIREMENTS
 - Preliminary Flood Risk Assessment (PFRA)
 - Flood Maps
 - Flood Risk Management Plans
- OTHER PROVISIONS
 - Coordination with WFD Implementation
 - Trans-Boundary Co-operation
 - Public Dissemination / Engagement
- 6-YEAR REVIEW CYCLE

PRELIMINARY FLOOD RISK ASSESSMENT (PFRA)

- **BASED ON:**
 - Historical Records
 - Predictive Hazard Assessment & Risk Analysis
 - Stakeholder Consultation (Local Authorities)
- **PUBLIC CONSULTATION**
- **COMPLETED 2011**
- **300 Areas for further assessment. 'AFAs'**

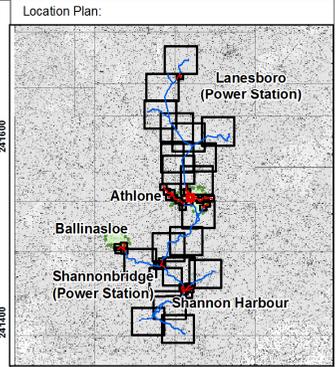
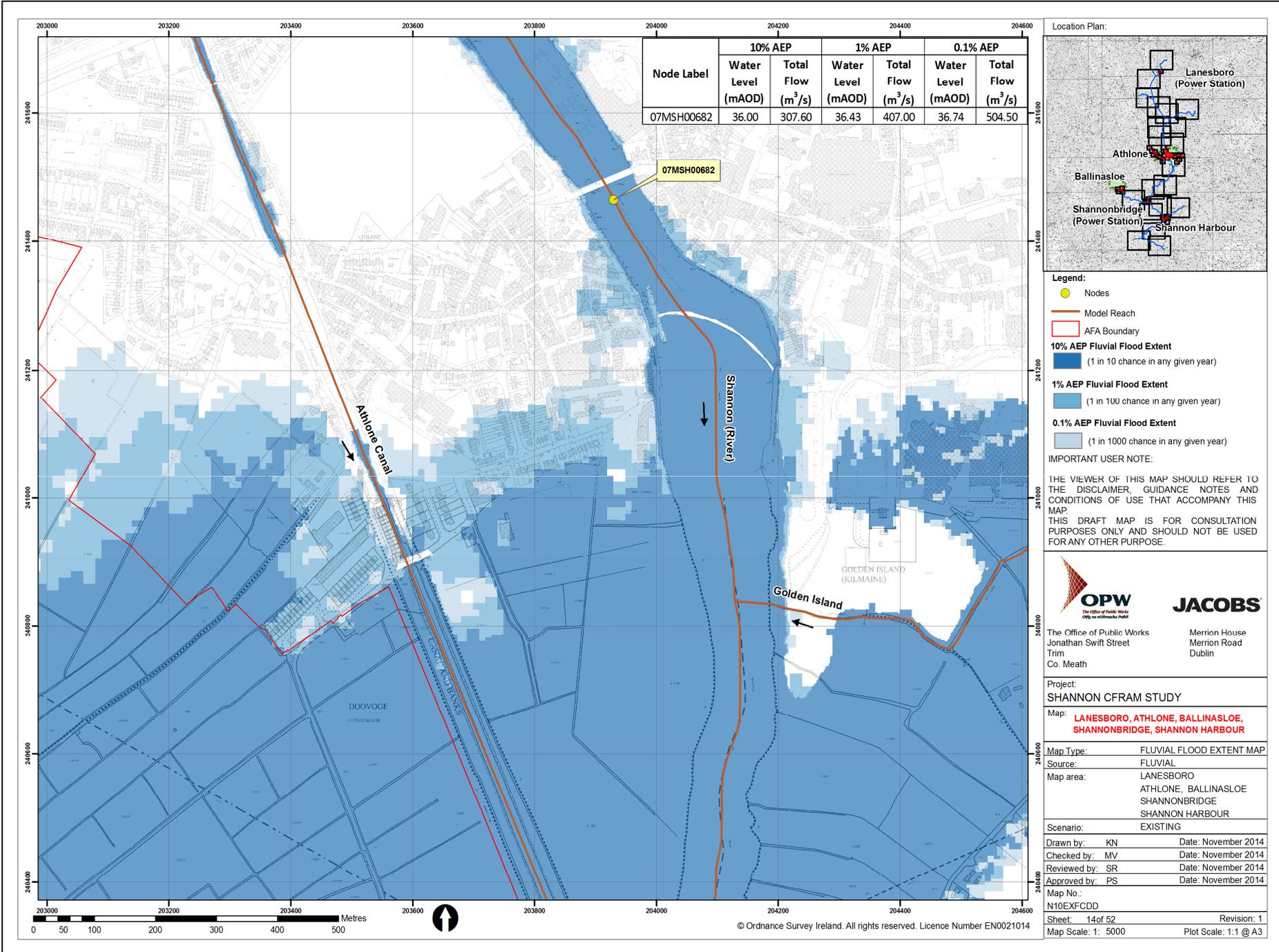
300 'AFAs'



'CFRAM' STUDIES

- 'CFRAM' PROGRAMME
 - Outcome of National Flood Policy Review, 2004
 - Compatible with FD Requirements, 2007
 - Flood Maps
 - Flood Risk Management Plans (FRMPs)
 - Pilot Studies:
 - Lee, Dodder, Fingal – East Meath: 2005-2011
 - National Programme: 2011-2017

- **SCOPE OF WORK**
 - Survey & Data Collection
 - Hydrology (Incl. Use of FSU)
 - Hydraulic Modelling
 - Linkages to Water Framework Directive
 - Flood Mapping
 - Extent, Depth, Velocity, 'Risk-to-Life', Flood Zone & Various Risk Maps



- Legend:**
- Nodes
 - Model Reach
 - AFA Boundary
 - 10% AEP Fluvial Flood Extent (1 in 10 chance in any given year)
 - 1% AEP Fluvial Flood Extent (1 in 100 chance in any given year)
 - 0.1% AEP Fluvial Flood Extent (1 in 1000 chance in any given year)

IMPORTANT USER NOTE:
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The Office of Public Works
OFFICE OF PUBLIC WORKS



JACOBS

The Office of Public Works
 Jonathan Swift Street
 Trim
 Co. Meath

Merrion House
 Merrion Road
 Dublin

Project:
 SHANNON CFRAM STUDY

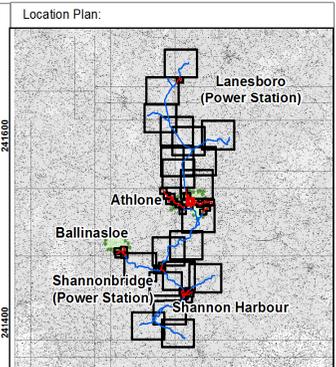
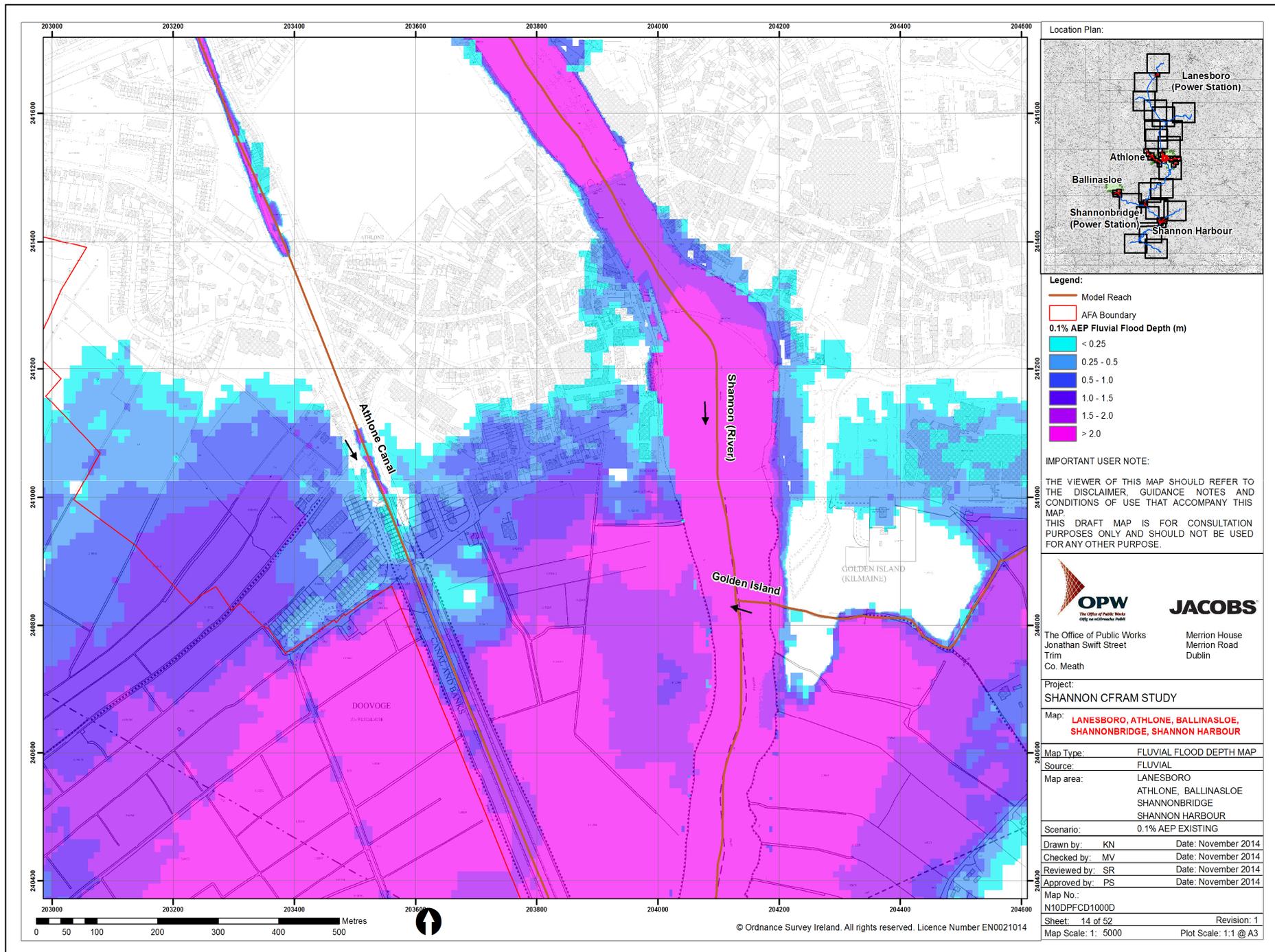
Map: LANESBORO, ATHLONE, BALLINASLOE, SHANNONBRIDGE, SHANNON HARBOUR

Map Type: FLUVIAL FLOOD EXTENT MAP
Source: FLUVIAL
Map area: LANESBORO
 ATHLONE, BALLINASLOE
 SHANNONBRIDGE
 SHANNON HARBOUR

Scenario: EXISTING

Drawn by: KN **Date:** November 2014
Checked by: MV **Date:** November 2014
Reviewed by: SR **Date:** November 2014
Approved by: PS **Date:** November 2014

Map No.: N10EXFCDD
Sheet: 14 of 52 **Revision:** 1
Map Scale: 1: 5000 **Plot Scale:** 1:1 @ A3



- Legend:**
- Model Reach
 - AFA Boundary
 - 0.1% AEP Fluvial Flood Depth (m)**
 - <math>< 0.25</math>
 - 0.25 - 0.5
 - 0.5 - 1.0
 - 1.0 - 1.5
 - 1.5 - 2.0
 - > 2.0

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OPW is an executive body



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 Co. Meath

Merrion House
 Merrion Road
 Dublin

Project:	
SHANNON CFRAM STUDY	
Map: LANESBORO, ATHLONE, BALLINASLOE, SHANNONBRIDGE, SHANNON HARBOUR	
Map Type:	FLUVIAL FLOOD DEPTH MAP
Source:	FLUVIAL
Map area:	LANESBORO ATHLONE, BALLINASLOE SHANNONBRIDGE SHANNON HARBOUR
Scenario:	0.1% AEP EXISTING
Drawn by: KN	Date: November 2014
Checked by: MV	Date: November 2014
Reviewed by: SR	Date: November 2014
Approved by: PS	Date: November 2014
Map No.: N10DPFCD1000D	
Sheet: 14 of 52	Revision: 1
Map Scale: 1: 5000	Plot Scale: 1:1 @ A3

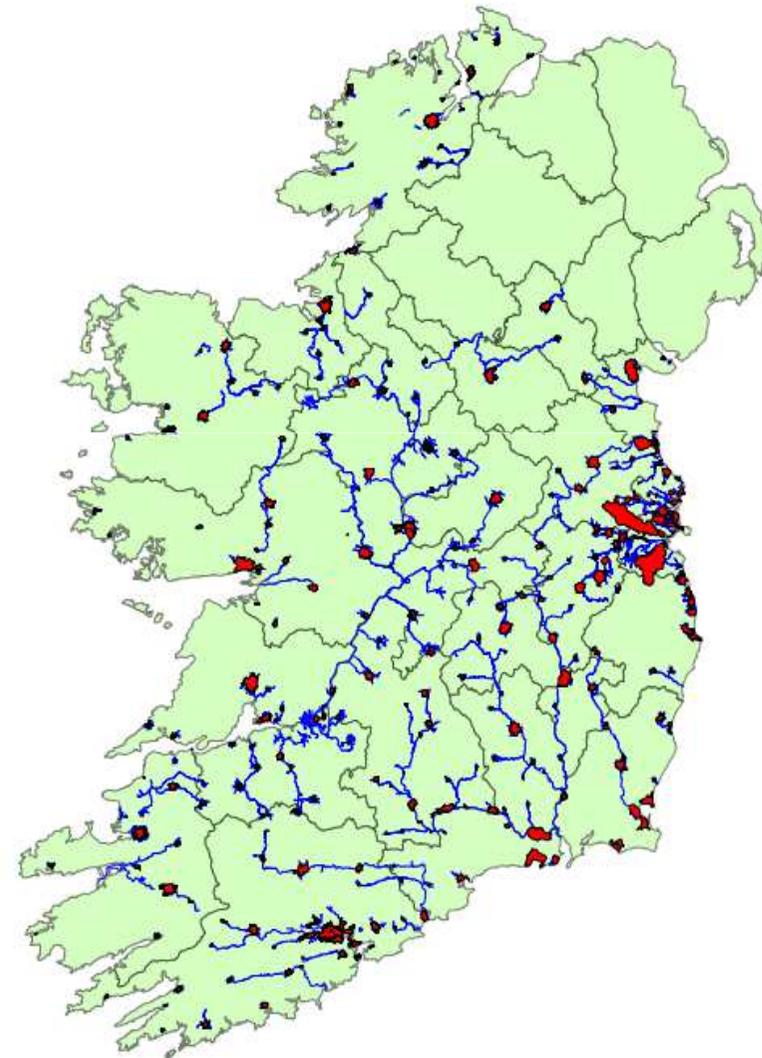
'CFRAM' STUDIES

- FLOOD MAPS ('CFRAM' PROGRAMME)
 - Range of Flood Maps Produced
 - Extent, Depth, Velocity, 'Risk-to-Life', Flood Zone & Various Risk Maps
 - Up to 8 Flood Event Probabilities
 - Future Scenario Mapping
 - 2 Representative Climate Futures
 - 2100 Medium and High future scenario.



FLOOD MAPS

- Detailed Mapping for 300 Communities
 - Appx. 4,000 km River Channel
 - 90 Coastal Communities
 - **Communities with Appx. 3m People (Appx. 2/3rds Population)**
- Less Detailed Mapping for Appx. 2,500 km Other Mapped River
- Inform:
 - Emergency Response Planning,
 - Community Resilience,
 - Sustainable Planning



'CFRAM' STUDIES

- FRMPs – COMMUNITY-LEVEL MEASURES
 - Screening & Option Development
 - 'Line-&-Level'
 - Costed – Unit Cost Database
 - Consideration of Climate Change
 - Appraisal
 - Scoring Options Vs Range of Objectives
 - Weighted 'MCA Benefit Score'
 - Cost-Benefit Analysis
 - Public Consultation: Appx. 150 PCDs

'CFRAM' STUDIES

- FRMPs – COMMUNITY-LEVEL MEASURES
 - CFRAM PROG. – Appx. 18,000 Properties
 - Pilot / Accelerated Schemes: Appx. 6,500 Properties
 - 118 New Schemes in Plans: Appx. 11,500 Properties
 - Euro 940m over 10 years. Euro 70m in 2018.

'CFRAM' STUDIES

- FRMPs – COMMUNITY-LEVEL MEASURES
 - Overall FRS Programme
 - 42 Schemes Completed
 - Appx. 9,500 Properties Protected
 - Appx. €1.9bn NPV Benefits
 - 33 Schemes in Construction, Design, Planning
 - Appx. 5,500 Properties (+6,500 CFRAM)
 - Protection for Appx. 33,000 Properties:
 - Appx. 95% Properties in AFAs
 - Appx. 80% Properties Nationally

'CFRAM' STUDIES

- FRMPs – NATIONWIDE MEASURES

- Prevention:

- Sustainable Planning & Devt. Management
- Sustainable Urban Drainage Systems
- Voluntary Home Relocation Scheme
- Climate Change Adaptation Planning
- Natural Flood Risk Management

'CFRAM' STUDIES

- FRMPs – NATIONWIDE MEASURES

- Protection:

- Maintenance of Existing Flood Relief Schemes, and Completion of Ongoing Schemes
- Maintenance of Arterial Drainage / District Drainage Schemes
- Maintenance of Other Channels
- Minor Works Scheme

'CFRAM' STUDIES

- FRMPs – NATIONWIDE MEASURES
 - Preparedness & Resilience:
 - Flood Forecasting & Warning
 - New National Flood Forecasting Centre
 - Emergency Response Planning
 - Promotion of Individual / Community Resilience
 - Individual Property Protection
 - **Flood Event Data Collection**

- **FLOOD RISK MANAGEMENT PLANS**
 - Set Strategy for Effective, Sustainable Management of Flood Risk in Ireland
 - Prevention, Protection, Preparedness & Resilience
 - Finalisation of Plans, NIS & SEA statement.
 - Approved by Minister – 16th April
 - Launch 3rd May 2018 – www.floodinfo.ie
 - Local Authorities required to note or approve plan by 3rd August 2018

Dublin City Council Area

At Construction

- Dodder Fluvial E35m to date.
- South Campshires E5m to date
- Wad river E5m to date.
- Flood Resilient Cities E5m to date.
- Dollymount E3.5m to date.
- Surfacewater network upgrades. E2m pa.

Dublin City Council Area

At Study/Design/Planning Stage

- Poddle, consultant appointed March 2018.
- Camac, new study required.
- Dodder Phase 3, Clonskeagh-Dartry.
- Clontarf Promenade
- Sandymount, Phases 1 and 2.
- Santry Phases 2 and 3.
- Liffey Lucan to Chapelizod.

DCC – Climate Change

- All new schemes are to look at risk of climate change.
- Sea level rise of 0.5m -1.0m -1.5m by year 2100. Higher waves.
- Increased river flows of 20% - 30% by the year 2100.
- Increased thunderstorms & monster rain.
- Increased groundwater flooding.

Adoption/noting of flood plan

- 2nd July Dublin City Council Meeting.
- E & T recommend adoption of the OPW flood plan Dublin City Council Area.
- Increased Flood Protection of Dublin City rivers and coastline, 2,000 dwellings, 250 businesses and estimated Euro 240m in reduced damages.
- Improved Infrastructure & Roads protection.
- Climate change provisions.

Any Questions?



Revised Waste Presentation Bye-laws

Dublin City Council

Environment SPC - 27th June 2018

Why New Bye-laws?

- EU & national waste targets
- Existing bye-laws out of date
- Requirement of each of the Regional Waste Management Plans – eg:

Eastern-Midlands Region Waste Management Plan 2015-2021	
Policy Action C.2.1	Review/introduce presentation of waste bye-laws across the region, to maximise the quantity and quality of recyclable waste collected and amend/replace/introduce new bye-laws if appropriate.
Targets	Review existing bye-laws.
Expected Timeline	Q4 2018
Indicator	Number of waste bye-laws reviewed or introduced
Responsibility	Lead Authority, Local Authorities, Elected Members

Waste Bye-laws - Why

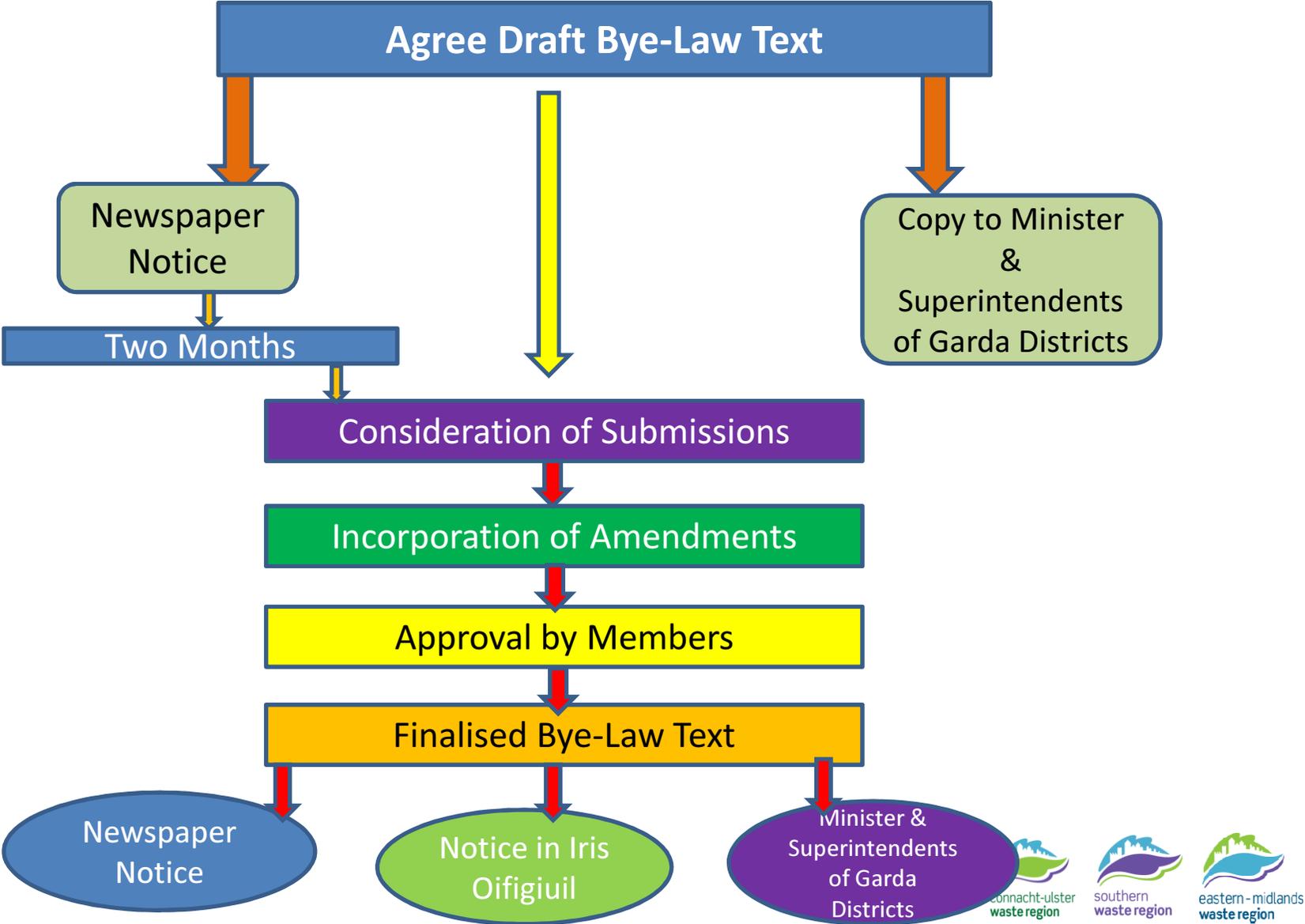


Why New Bye-laws?

Greater Participation in Waste Collection Services



Waste Presentation Bye-law Adoption



Waste Presentation Bye-law Adoption

- Bye-law making powers in Part 19 of the LGA
- Content is determined by powers under:
 - Section 35 of the WMA
 - Section 199 of the LGA
 - Section 21 of the Litter Pollution Act 1997 (if necessary)

See Guidance for additional detail

Waste Presentation Bye-law Template

- ❖ **Bye-law 1. Interpretation and Definitions**
- ❖ **Bye-law 2. Obligation to Participate in a Waste Collection Service**
- ❖ **Bye-law 3. Maintenance and Management of Waste Containers**
- ❖ **Bye-law 4. Location for Container Storage**
- ❖ **Bye-law 5. Use of Waste Containers on Collection Day**
- ❖ **Bye-law 6. Collection Times and Container Removal**
- ❖ **Bye-law 7. Prohibited Waste Types**
- ❖ **Bye-law 8(a). Segregation of Household Waste and Contamination Prevention**
- ❖ **(or Bye-law 8(b). Segregation of Household Waste, Contamination Prevention & Extending Food Waste Collection)**
- ❖ **Bye-law 9. Additional Provisions for Householders not availing of a Kerbside Collection Service**
- ❖ **Bye-law 10. Provisions affecting Multi-user Buildings, Apartment Blocks, etc**
- ❖ **Bye-law 11. Interference with Orderly Waste Collection**
- ❖ **Bye-law 12. Additional Provisions for Commercial Waste**
- ❖ **Bye-law 13. Enforcement Provisions/Fixed Payment Notices.**

Bye-law 2

Obligation to Participate in a Waste Collection Service



Authorised Collector



Bin Sharing with consent



Deliver directly to an authorised site

Bye-law 3.

Maintenance and Management of Waste Containers



Bye-law 4. Location for Container Storage



Bye-law 5. Use of Containers on Collection Day



Bye-law6.

Collection Time & Container Removal



Bye-law 7.

Prohibited Waste Types



Bye-law 8 Segregation

- ❖ Bye-law 8(a). Segregation of Household Waste and Contamination Prevention
- ❖ (or Bye-law 8(a). Segregation of Household Waste, Contamination Prevention & Extending Food Waste Collection)



What Goes in Your Recycling Bin

Your recycling list!

Clean, Dry and Loose

The image displays three groups of recyclable items on a purple background. The first group, labeled 'Paper & Cardboard', includes a yellow cereal box, a newspaper, a green egg carton, a yellow juice carton, and a cardboard roll. The second group, labeled 'Rigid Plastic', includes a clear soda bottle, a white milk jug, a blue shampoo bottle, a yellow butter tub, a blue plastic tray, and a purple yogurt container. The third group, labeled 'Tins & Cans', includes a red soup can, a green bean can, a red soda can, and a blue pet food can.



www.recyclinglistireland.ie



Rialtas na hÉireann
Government of Ireland

Bye-law 9.

Additional Provisions for Householders not availing of a Kerbside Collection Service



Bye-law 10.

Provisions affecting Multi-user Buildings, Apartment Blocks, etc

- Multi-user buildings, apartment blocks etc. Duty of persons with responsibility to provide:
 1. Adequate receptacles
 2. Information to tenants
 3. Retention of documentation proving contract with an authorised waste collector
 4. Adequate access and egress for RCVs.

Bye-law 11

Orderly Collection

No interference with collection workers
No Interference with collection vehicles

Bye-law 12

Additional Provisions for Commercial Waste

No Commercial Waste at Bring Facilities



Waste Presentation Bye-law Enforcement

Key points:

- How enforcement is to be done is for the discretion of each local authority
- Max fine is €2,500. Discretion to vary penalties (downwards).
- FPNs can be used Max €75

Waste Presentation Bye-laws

Some final points:

- Bye-laws cannot circumvent the basic legal principles that govern criminal justice & the waste enforcement process
- There are major constraints caused by so much parallel waste legislation. These greatly limit the scope of WP bye-laws (see esp LGA, s199(2)(b))
- The Template is what it says it is – a template
- What is in the Guidance and Template seems better than what exists already
- There is a need to be positive here, acknowledge the very real constraints that apply and, within that envelope, produce bye-laws that are (a) useful, (b) workable, (c) enforceable and (d) politically acceptable.

Conclusion

- **The proposed Bye-Laws can assist as part of a wider suite of measures including extensive education/awareness initiatives in ensuring lasting behavioural change in how we as citizens manage our waste.**



Revised Waste Presentation Bye-laws



Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

Dublin City Council

WASTE MANAGEMENT (STORAGE, PRESENTATION AND SEGREGATION OF HOUSEHOLD AND COMMERCIAL WASTE) BYE-LAWS 2018

Draft

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1. PRELIMINARY AND GENERAL

Note: the grey shading indicates that a definition applies to a particular term being used.

1.1 Title

Dublin City Council (Segregation, Storage and Presentation of Household and Commercial Waste) Bye-laws, 2018

1.2 Statutory Basis of the Bye-law

Dublin City Council, pursuant to Section 35(1) of the Waste Management Act 1996 and Section 199(1) of the Local Government Act 2001 and in accordance with Part 19 of the Local Government Act 2001, hereby makes the following bye-laws:

1.3 Citation

These bye-laws may be cited as the Dublin City Council (Segregation, Storage and Presentation of Household and Commercial Waste) Bye-laws, 2018

1.4 Date of Commencement

These bye-laws shall enter into force on the XX of XX 2018.

1.5 Geographical area of application

These bye-laws shall apply to the functional area of Dublin City Council.

1.6 Revocations

These bye-laws repeal the Dublin City Council, Storage, Presentation and Collection of Domestic and Commercial Waste Bye-laws 2013.

1.7 Scope of this Bye-law: Waste Types and Controlled Activities

Unless the following bye-laws indicate to the contrary, these bye-laws apply to both household and commercial waste.

1.8 Interpretation and Definitions

In these bye-laws, these words and phrases have the following meanings:

“appropriate waste container” means a waste container suitable for the collection of kerbside waste and which is a receptacle that complies with the standards for mobile waste containers (wheeled bins) which are specified in the CEN standard entitled IS EN 840 (Parts 1-6);

“authorised person” means a person authorised by Dublin City Council in accordance with Section 204 of the Local Government Act 2001 or a member of an Garda Síochána;

“authorised waste collector” means a person authorised in accordance with Section 34 of the Waste Management Act, including any regulations made thereunder, for the collection of the type of waste being collected;

“authorised waste facility” means a waste recovery or disposal facility:

(a) which is authorised under the Waste Management Act, under the Environmental Protection Agency Act, under any regulations stemming from either of these Acts or under regulations made under the European Communities Act 1972 relating to the control of waste management activities; and

(b) where the authorisation of that facility permits the acceptance of the waste being referred to in the particular part of these bye-laws;

“bring facility” means an authorised waste facility comprising one or more purpose-built receptacles in which segregated recyclable household waste may be deposited by the public for the purposes of the recovery of that waste;

“commercial kerbside waste” shall mean commercial waste that is kerbside waste.

“commercial waste” means waste from premises used wholly or mainly for the purposes of a trade or business or for the purposes of sport, recreation, education or entertainment but does not include household, agricultural or industrial waste;

“designated waste collection day” shall mean the day designated by Dublin City Council for the collection of kerbside waste, and different days may be designated in specific areas within and outside of the Central Commercial District for commercial kerbside waste and household kerbside waste;

“designated bag collection area” is an area designated by Dublin City Council in accordance with Article 20 of the Waste Management (Collection Permit) Regulations 2007 where waste can be collected in bags or sacks;

“fixed payment notice” means a notice provided for by these bye-laws and by Section 206 of the Local Government Act 2001 which is issued to a person in respect of a contravention of these bye-laws and which, as an alternative to prosecution, requires that person to pay a specified fixed payment by a specified time;

“food waste” means waste food that is household waste or, as the case may be, commercial waste, and shall have the same meaning as that applying to Regulation 7 of the Waste Management (Food Waste) Regulations 2009 (SI 508 of 2009) or, as the case may be, to Regulation 6 of the European Union (Household Food Waste and Bio-Waste) Regulations 2015 (SI 430 of 2015);

Food Waste Regulations: see “national legislation on food waste”;

“holder” means the waste producer or the person who is in possession of the waste and “holder of commercial waste” and “holder of household waste” shall be interpreted accordingly;

“household kerbside waste” means household waste that is kerbside waste;

“household waste” means waste produced within the curtilage of a building or self-contained part of a building used for the purposes of living accommodation;

“kerbside waste” means that fraction of commercial or household waste presented for collection from a premises and which is to be collected by an authorised waste collector, with the exception of wastewater, construction and demolition waste and

bulky waste more suitable for collection in a skip or other such receptacle (including heavy waste such as waste furniture, carpets and rubble), as well as hazardous waste and other streams of household or commercial waste which are required to be collected in another appropriate manner, such as waste electrical and electronic equipment and waste batteries;

“national legislation on food waste” means the Waste Management (Food Waste) Regulations 2009 (SI 508 of 2009) and the European Union (Household Food Waste and Bio-Waste) Regulations 2015 (SI 430 of 2015);

“occupier” includes, in relation to any premises, the owner, a lessee, any person entitled to occupy the premises and any other person having, for the time being, control of the premises;

“person” shall, for the purposes of these bye-laws, include an individual, company (whether limited, incorporated or not), partnership, co-operative or other similar body within the meaning of the definition contained in the Interpretation Act 2005;

“recyclable household kerbside waste” means the fraction of household kerbside waste that comprises recyclable household waste and which includes the materials set out in Schedule 1¹;

“residual household kerbside waste” means the fraction of household kerbside waste remaining after that waste has been separated from the fractions of:

(a) recyclable household kerbside waste,

(b) food waste where food waste is required to be segregated under the national legislation on food waste or by these bye-laws, and

(c) if subject to separate collection by an authorised waste collector, biodegradable garden waste.

Unless the contrary is indicated, for the avoidance of doubt and in accordance with Section 19 of the Interpretation Act 2005, the definitions in the Waste Management Act 1996 apply to these bye-laws, including to the following terms:

“facility”, “disposal”, “hazardous waste”, “premises”, “recovery”, “recycling”, “separate collection”, “waste”, “waste producer”.

Where it is necessary, the Interpretation Act 2005 shall apply in construing any provision of these bye-laws.

¹ At the end of this appendix

2. SEGREGATION, STORAGE AND PRESENTATION OF HOUSEHOLD AND COMMERCIAL WASTE

2.1 Obligation to Participate in a Waste Collection Service

“(a) Subject to paragraph (b), household kerbside waste that arises from the premises where such waste is produced shall not be presented to any person other than to an authorised waste collector.

(b) Paragraph (a) does not apply where such waste:

(i) is deposited in an appropriate waste container provided under a contract by an authorised waste collector to another person for the management of that waste and where that other person has consented to the receipt of that waste, or

(ii) is delivered directly by the holder to an authorised waste facility.

(c) Documentary evidence, such as receipts, statements or other proof of payment, demonstrating compliance with this bye-law shall be presented to an authorised person within a time specified in a written request from either that person or from another authorised person employed by Dublin City Council.

2.2. Maintenance and Management of Waste Containers

Containers used for the presentation of kerbside waste shall be maintained in such condition and state of repair that the waste placed therein will not be a source of nuisance or litter. Waste shall not be presented in a container where:

(a) the wheels or lid have been removed or damaged to such an extent that it is not able to contain the waste without spillage, is otherwise unfit for the purpose for which it was designed or is not capable of being conveniently emptied.

2.3. Location for container storage

Other than on the day before and the designated waste collection day outside the Central Commercial District and on the designated waste collection day only within the Central Commercial District, containers used for the presentation of kerbside waste shall be held within the curtilage of the premises where the waste is produced. They shall not be stored on a roadway, footway, footpath or any other public place unless the location has been expressly authorised in writing by an authorised person.

2.4. Use of Waste Containers on Collection Day

(a) Subject to paragraph (b), household kerbside waste shall only be presented for collection in an appropriate waste container. The container shall not be over-loaded and the lid shall be securely closed. No waste shall be presented on the top of the lid or adjacent to the waste container.

(b) Paragraph (a) shall not apply where waste is collected in bags or sacks in an area designated by Dublin City Council as a designated bag collection area.

2.5. Presentation Times and Container Removal

(a) Subject to paragraph (b), **kerbside waste** presented for collection shall not be presented for collection earlier than 5.00 pm on the day immediately preceding the **designated waste collection day**;

(b) In the Central Commercial District the prescribed time for **kerbside waste** to be presented shall be not before 5.00 pm on the **designated waste collection day**.

All containers used for the presentation of **kerbside waste** and any uncollected waste shall be removed from any roadway, footway, footpath or any other public place no later than 10:00am on the day following the **designated waste collection day**, unless an alternative arrangement has been approved in accordance with bye-law 2.3

2.6. Prohibited Waste Types

Household waste that comprises hazardous waste or waste electrical and electronic equipment shall not be placed in an **appropriate waste container** for kerbside collection.

2.7. Segregation of Household Waste and Contamination Prevention

(a) **Household kerbside waste** shall be segregated into **residual household kerbside waste** and **recyclable household kerbside waste**, with these fractions being stored separately. Any such separated **recyclable waste** shall not be deposited into a container designated for **residual household kerbside waste** and no such residual waste shall be deposited into a container designated for **recyclable household kerbside waste**.

(b) Neither **recyclable household kerbside waste** nor **food waste** arising from households shall be contaminated with any other type of waste before or after it has been segregated.

Note: while the remainder of this paragraph does not form part of these bye-laws, there are separate legal requirements mandating householders to segregate food waste and to keep it separate. These are contained in the European Union (Household Food Waste and Bio-Waste) Regulations 2015. Food waste also may be subject to home composting or be delivered to an authorised waste facility.

2.8. Additional Provisions for Householders not availing of a Kerbside Collection Service

Where an occupier of a dwelling is not participating in a **household kerbside waste collection service**, that person shall ensure that:

(a) **recyclable household kerbside waste** segregated in compliance with bye-law 2.7 is taken to an **authorised waste facility** and is deposited there in a manner that allows it to be recycled or otherwise recovered,

(b) **residual household kerbside waste** segregated in compliance with bye-law 2.7 is taken to an **authorised waste facility**, and

(c) documentation, including receipts, is obtained and retained for a period of no less than one year to provide proof that any waste removed from the premises has been managed in a manner that conforms to these bye-laws, to the Waste Management Act and, where such legislation is applicable to that person, to the European Union (Household Food Waste and Bio-Waste) Regulations 2015.

Documentation required to be obtained and retained by this bye-law, or copies of it, shall be presented to an authorised person within a time period specified in a written request from either that person or from another authorised person employed by Dublin City Council.

2.9. Provisions affecting Multi-user Buildings, Apartment Blocks, etc

A management company, or an other person if there is no such company, who exercises control and supervision of residential and/or commercial activities in multi-unit developments, mixed-use developments, flats or apartment blocks, combined living/working spaces or other similar complexes shall ensure that:

- (a) separate receptacles of adequate size and number are provided for the proper segregation, storage and collection of recyclable household kerbside waste and residual household kerbside waste
- (b) additional receptacles are provided for the segregation, storage and collection of food waste where this practice is a requirement of the national legislation on food waste,
- (c) the receptacles referred to in paragraphs (a) and (b) are located both within any individual apartment and at the place where waste is stored prior to its collection,
- (d) any place where waste is to be stored prior to collection is secure, accessible at all times by tenants and other occupiers and is not accessible by any other person other than an authorised waste collector,
- (e) written information is provided to each tenant or other occupier about the arrangements for waste separation, segregation, storage and presentation prior to collection,
- (f) an authorised waste collector is engaged to service the receptacles referred to in this section of these bye-laws, with documentary evidence, such as receipts, statements or other proof of payment, demonstrating the existence of this engagement being retained for a period of no less than two years. Such evidence shall be presented to an authorised person within a time specified in a written request from either that person or from another authorised person employed by Dublin City Council,
- (g) receptacles for kerbside waste are presented for collection on the designated waste collection day,
- (h) adequate access and egress onto and from the premises by waste collection vehicles is maintained.

2.10. Interference with Orderly Waste Collection

- (a) Employees of an authorised waste collector or of Dublin City Council involved in the removal of waste shall not be wilfully obstructed, disturbed, interrupted or otherwise interfered with in the course of their engagement in waste collection.
- (b) Unless the following activities have been subject to approval by the authorised waste collector responsible for the container, a microchip attached to an appropriate waste container or any non-time expired identification mark, badge, label, tag, disc or other thing attached to that container or to a refuse bag or to another container shall not be removed, damaged, destroyed, tampered with or otherwise rendered inoperative.
- (c) Waste stored or presented for the purposes of collection shall not be:
 - (i) supplemented by waste added by another person unless that person has been authorised to do so by the person storing or, as the case may be, presenting the container of waste for collection

- (ii) otherwise interfered with by another person.*
- (d) Waste shall not be deposited into a refuse collection vehicle by any person other than by an employee of an authorised waste collector or a local authority*

2.11. Additional Provisions for Commercial Waste

Commercial waste shall not be deposited at any bring facility provided by or on behalf of Dublin City Council.

2.12. Enforcement Provisions/Fixed Payment Notices.

- (a) Subject to paragraph (b), a person found guilty of the contravention of these bye-laws shall be liable to the penalty of no more than €2,500*
- (b) Paragraph (a) shall not apply where a fixed payment notice has been issued in accordance with the Local Government Act 2001 (Bye-Laws) Regulations and where a full payment has been made by the person subject to that notice.*
- (c) Where the contravention of any provision of these bye-laws continues after a person has been subject to the fine referred to in paragraph (a), a person found guilty of an offence relating to this continued contravention shall be liable to a penalty of no more than €500 per day for each day the contravention continues after that conviction.*
- (d) A fixed payment notice may be issued requiring a person found to have contravened or be contravening these bye-laws to make a payment of €75. Payment of this notice shall be made within 21 days of the date of the notice in order to avoid the person subject to this notice being prosecuted for the contravention of these bye-laws.*

SCHEDULE 1. Recyclable Kerbside Waste

Paper	Aluminium Cans	Plastic Bottles (PET 1)
Newspapers	Drink cans	Mineral bottles
Magazines	Soda & beer cans	Water bottles
Junk mail		Mouthwash bottles
Envelopes	Steel cans	Salad dressing bottles
Paper	Pet food cans	
Phone books	Food cans	Plastic Bottles (HDPE2)
Catalogues	Biscuit tins	Milk bottles
Tissue boxes	Soup tins	Juice bottles
Sugar bags		Cosmetic bottles
Calendars	Cardboard	Shampoo bottles
Diaries	Food boxes	Household cleaning bottles
Letters	Cereal boxes	Laundry detergent bottles
Computer paper	Kitchen towel tubes	Window cleaning bottles
Used beverage & juice cartons	Parcel boxes	Bathroom bottles
Milk cartons		
Egg boxes	Plastic Pots, Trays & Tubs	
Holiday brochures	Yogurt pots	
Paper potato bags	Margarine tubs	
	Rigid food trays	
	Liquid soap containers	
	Fruit trays/cartons	

Environment and Transportation Department,
Block 2, Floor 6,
Civic Offices,
Dublin 8.

20th June 2018.

**To Each Member of the
Environment Strategic Policy Committee**

**Draft Dublin City Council Waste (Separation, Storage and Presentation of Household
and Commercial Waste) Bye laws 2018**

Dublin City Council has drafted new Waste Bye Laws to replace the existing Dublin City Council Bye Laws for the Storage, Presentation and Collection of Household and Commercial Waste 2013.

These draft Bye Laws are proposed in the context of a requirement to review existing bye laws due to changes to legislation governing waste generally and the policy action C.2.1 of the Eastern Midland Regional Waste Plan.

“To review/introduce presentation of waste bye-laws across the region, to maximise the quantity and quality of recyclable waste collected and amend/replace/introduce new bye-laws if appropriate”

The key issues that are provided for in the new draft Waste Bye Laws are:

- The obligation to engage with an Authorised Collector or use an Authorised Facility and retain documentation to prove such arrangements are in place for specific amounts of time
- Specific requirements relating to multi user and multi let properties
- Continuation of Designated Collection Days
- Continued designation of the Central Commercial District with specific requirements for householders and business within this area.
- Acknowledgement and facilitation of bin sharing arrangements for householders

Additionally the draft Waste Bye Laws provide for the control of:

- How waste containers are maintained and stored
- Where bags or sacks may be used as waste containers

- Specific times for presentation of waste both within and outside the Central Commercial District
- Segregation and Contamination of Household Waste

The Draft Bye Laws are informed by significant preparatory work undertaken by the Eastern Midland Regional Waste Planning Office including extensive legal opinion obtained in an effort to ensure that a consistent approach to management of the segregation, storage and presentation of household and commercial waste is achieved both regionally and nationally.

In this regard there are three accompanying documents to this report that outline the guidance received, template bye laws for use in formulating bye laws specific to each local authority and a comprehensive Frequently Asked Questions document.

It is recommended that the Environment Strategic Policy Committee refer the draft Bye Laws to the next meeting of the full City Council so that they may approve of the initiation of the statutory public consultation period.

Simon Brock
Administrative Officer
Waste Management Services



Template for Bye-law on Waste Presentation: Guidance & Instruction Manual.

Duncan Laurence Environmental Ltd

Template for Bye-law on Waste Presentation: Guidance & Instruction Manual.

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1. INTRODUCTION: THE PURPOSE OF THIS GUIDANCE NOTE

This guidance note is designed to accompany a generic template for the production of a bye-law on waste presentation for the constituent local authorities of each of the three waste planning regions. As set out later, each local authority has discretion to draw up its own bye-law via powers contained in the Local Government Act (LGA), with these powers being augmented by Section 35 of the Waste Management Act (WMA). **A copy of the template is included here as Appendix 1.**

Both the decision to make a bye-law and its actual content remains a matter exclusively for each individual local authority. However, it is Government policy that a regionalised approach to both waste management planning and regulatory enforcement is adopted. Accordingly, the three Regional Waste Management Offices were established in 2013, with formation of the Waste Enforcement Regional Lead Authorities (WERLAs) following in 2015.

In accordance with each of the three Regional Waste Management Plans 2015-2021, one of the priority tasks is to commence a project to attain a more unified approach to the content and making of waste presentation bye-laws. This initiative accords with each Plan's policy C.2.1, with the full text from the Plans being reproduced in the text box below.

Eastern-Midlands Region Waste Management Plan 2015-2021	
Policy Action C.2.1	Review/introduce presentation of waste bye-laws across the region, to maximise the quantity and quality of recyclable waste collected and amend/replace/introduce new bye-laws if appropriate.
Targets	Review existing bye-laws.
Expected Timeline	Q4 2018
Indicator	Number of waste bye-laws reviewed or introduced
Responsibility	Lead Authority, Local Authorities, Elected Members

This guidance note and the accompanying bye-law template are the main outputs from this initial stage of this work, having been made available in draft form for consultation purposes in the first half of 2017. Some minor amendment has been made in light of comments from a large number of local authorities in all three waste management plan regions and, in 2018, in response to an Opinion from Senior Counsel. It is now intended to make this document "live" and available to local authorities for the development of new or revised waste presentation bye-laws.

Bye-laws on waste presentation already exist in the functional areas of some local authorities. Inevitably, there is some variation between these, including in their written style, content and scope. These existing bye-laws were also finalised at different times and now require bringing up-to-date. Updating is needed, as there have been a number of changes in national law since their adoption, including amendments to legislation affecting the activities of collectors of household waste and on the presentation of food waste by householders. As will be returned to later, it is also normally undesirable that any bye-law inordinately impinges on some of these requirements or, worse, contradicts them.

A key element of this work is both this guidance note and the template of "off-the-shelf" bye-law wordings that are then available for use – and modification – by the constituent local authorities of the each of the waste plan regions. Besides the actual wordings contained in the template, it is vital that the legislative context of bye-law making be explained so that users of this guidance understand it. This is because the national legislation sets very clear limits as to what types of bye-law are allowable and what they are able to achieve. This explanation also is necessary to remind users of this guidance of the need for any bye-law to satisfy certain other criteria, such as being necessary, enforceable, and so on.

As will be seen, the proposed bye-law wordings contained in the template are drafted with a degree of emphasis on the use of plain English and the avoidance of unnecessary legalese. This stylistic convention is intended to facilitate those subject to a waste presentation bye-law being readily able to grasp the relevant meaning. However, the guidance supplements this material by explaining what each element of the bye-law template is intended to achieve, whilst additionally setting out how it interacts with other relevant legislation. This seems particularly necessary given the existence of the national legislation that affects how food waste is presented for collection. In the case of any bye-law affecting the presentation of commercial waste, an additional key interaction will be with national legislation on packaging waste segregation and recovery.

Accordingly, the background explanatory material found later in this guidance has the aim of illustrating how the various key elements of the legislation impinge on individuals and organisations that produce, collect and recover waste, as well as describing the various obligations that fall on local authorities in respect of the regulatory functions that apply to these sectors. Again, like the draft bye-law wordings being proposed, this explanation can also be used by local individual authorities should they wish to publish a non-statutory explanation of actual bye-law content.

Besides this guidance, a document of Frequently Asked Questions has been developed. This has been developed from queries and comments made by local authority consultees that were received after the template and guidance were circulated for comment.

This guidance note has been written to match the housestyle used in other waste management guidance issued to local authorities. It reflects the format of the Environmental Protection Agency's (EPA's) Environmental Enforcement Network Guidance Manual¹, the Agency's guidance to local authorities on extractive waste² and the most recent enforcement guidance on the Food Waste Regulations³.

This housestyle includes the provision of text boxes containing extracts and quotations from the legislation that governs the promulgation of bye-laws. These extracts are intended to be illustrative of key legal wordings, being included to deepen a reader's understanding of this legislation without recourse being necessary to the text of the actual legislation. However, certain words, phrases or paragraphs may have been omitted to make these extracts easier to read.

- **As the extracts from the legislation have been simplified in some instances, it is vital that, prior to a local authority considering embarking on any particular form of enforcement action, readers consult the legislation itself in order to obtain the full picture. Moreover, any interpretation set out below simply constitutes what is intended to be a helpful summary.**

For this and other reasons, readers are reminded that this guidance note is not a substitute for legal advice and should not be used for that purpose. The only body qualified to give a definitive interpretation of the law is the national courts. Readers wishing to explore the exact nature of the legal background and related requirements also are urged to obtain independent legal advice from a suitably qualified and experienced practitioner.

¹See particularly Sections 3.1, 3.2 and 3.4 of the Enforcement Network Guidance Manual

²EPA (2012) Guidance on the Waste Management (Management of Waste from the Extractive Industries) Regulations 2012, available

at <http://www.epa.ie/pubs/advice/waste/extractive/guidanceonthewastemanagementextractivewastereqs2012.html#.VSeQJlJ0yRs>.

³Duncan Laurence Environmental Ltd (2016) Waste Management (Food Waste) Regulations 2009& European Union (Household Food Waste and Bio-waste) Regulations 2015 - An Enforcement Guide. <https://duncansenvironment.wordpress.com/2016/09/12/regulatory-guidance-available-on-the-food-waste-regulations/>.

This guidance document has been prepared by Duncan Laurence Environmental Ltd. Contributions from members of the 3 Regional Waste Management Offices, from all of the consultees and from Colm Ó Hoisín SC are acknowledged.

2. BYE-LAW MAKING: BACKGROUND

2.1. Introduction

A waste presentation bye-law is made via the general statutory powers on bye-law making which are conferred on local authorities by Part 19 of the LGA. These powers are themselves supplemented by Section 35 of the WMA, with this Section being the basis of the content of most – if not all – existing waste presentation bye-laws.

- A recurring theme of this guidance document, which is returned to in the next chapter and enlarged upon in Appendix 2, is that it is vital that the scope of these powers is understood, particularly so that they are not exceeded when a bye-law is being drafted.

2.2. How a Bye-law is Made

2.2.1. The Bye-law Approval Process

Section 200 of the LGA sets down how a bye-law should be made, with this provision being supplemented by the Local Government Act 2001 (Bye-Laws) Regulations 2006⁴. This process is summarised in the flow diagram shown overleaf.

Two months prior to the making of a bye-law, a newspaper notice must be published. That notice is required to set out the general purpose of the bye-law and any financial penalty relating to non-compliance. It must indicate that submissions on the draft bye-law are invited by a specified date and state where a copy of the proposed text of the bye-law will be available for public inspection. It must state that, on request, a copy of this draft text will be provided on payment of an appropriate fee.

Separately, the Bye-Laws Regulations require that a copy of the notice and the draft bye-law be sent to the “appropriate Minister” and to the superintendent of each constituent Garda district where the bye-law is to apply⁵. Since the demise of the Department of the Environment, Community and Local Government, a little more care will be needed in determining to whom a draft waste presentation bye-law should be sent. While the term “appropriate Minister” is defined (rather opaquely) in the LGA⁶, it may be desirable that copies are sent to both the Department of Housing, Planning, Community and Local Government and the Department of Communications, Climate Action and the Environment⁷.

The approval of a bye-law is a so-called reserved function, as is the consideration of submissions⁸. Being a reserved function, these matters are determined by the elected members of each local authority⁹.

The finalisation of a bye-law must be announced by a local authority arranging for notices to be published in the *Iris Oifigiúil* and in at least one newspaper circulating in the area¹⁰. The text of the notice must include the information specified by the LGA. This covers a statement of the general purpose of the bye-law, the date it enters into force and details of when and where a copy of the text can be inspected or purchased¹¹.

⁴ SI 362 of 2006

⁵SI 362 of 2006, Article 4

⁶LGA, Section 198(1): “appropriate Minister”, in relation to any matter, means the Minister of the Government on whom functions stand conferred or who has general responsibility in respect of or connected to the matter in question”

⁷Should a bye-law impinge upon the functional area of another local authority, that authority must also receive a copy of it: SI 362 of 2006, Article 4(c)

⁸LGA, Section 199(5)

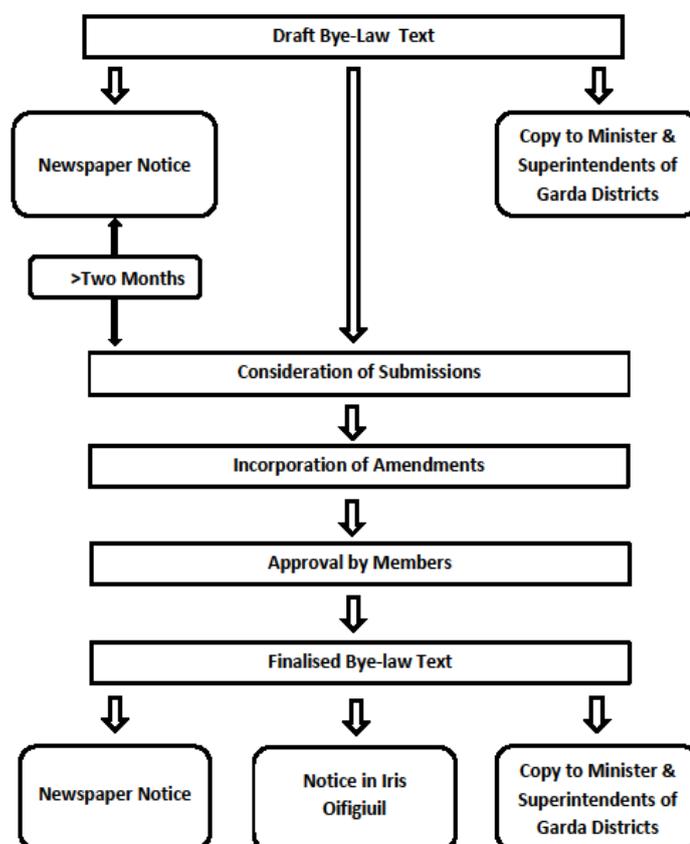
⁹LGA, Section 2 defines “reserved function” as having the meaning in LGA, Sections 131 and 131A (see, in particular, LGA, Section 131(b))

¹⁰LGA, Section 2002

¹¹LGA, Section 202(2)

The Bye-Laws Regulations also require that a copy of both the notice and the new bye-law itself be sent to the “appropriate Minister” and to each Garda superintendent¹².

Summary of the Bye-law Making Process.



Once made, a copy of bye-law must be held at the principal offices of the local authority and be available for public inspection. Copies of the bye-law must be made available on request. Details of the bye-law must also be included in the local authority’s register of bye-laws.

- **The date when a waste presentation bye-law comes into force is the date set by the text of the actual bye-law¹³. This must be no less than 30 days after the bye-law was made.**

While the LGA sets down a detailed procedure for the making and approval of a bye-law, the Act is clear that a failure to either publish a notice of the making/approval of a bye-law or furnish a copy to an enquirer does not invalidate a bye-law¹⁴.

2.2.2. Amending and Revoking a Bye-law

Bye-laws can also be amended and revoked¹⁵, with the procedure to be followed mirroring the approval process for a new bye-law. While the LGA does not set out a specific procedure for the revocation of a bye-law, if one bye-law is replaced by another, then the relevant public notices must make this clear.

¹²SI 362 of 2006, Article 5

¹³LGA, Section 200(5)(a)

¹⁴LGA, Section 202(4)

¹⁵LGA, Section 199(4)

The amendment or revocation of existing bye-laws is also a reserved function¹⁶.

2.2.3. Ministerial Objections

The LGA allows a Ministerial objection to be made to a proposed bye-law¹⁷. Should the offending bye-law not be revoked or appropriately amended, a Ministerial order can be made to make such a change.

2.3. Bye-law Enforcement

2.3.1. Offences and Penalties: Non-compliance with a Bye-Law

Non-compliance with a bye-law is an offence, with a person so accused being tried at the District Court. In accordance with Section 207 of the LGA, prosecutions can be taken by a local authority or by the Gardai.

Key Legal Wording:

LGA, Section 207:

An offence under this Part may be prosecuted by the local authority which made the relevant bye-law, by any other local authority acting on its behalf or by a member of the Garda Síochána.

- Unless a particular bye-law specifies a lesser amount, the LGA states that the maximum fine incurred by a person for breaching a bye-law is €1,500. However, the more recent Fines Act 2010 indicates that the appropriate penalty is now a Class C fine. Being a Class C fine, the maximum penalty is now €2,500¹⁸.

Usefully, the LGA also indicates that the continued contravention of a bye-law after a defendant has been convicted can result in a daily fine of €100 (or less, if that amount is specified in the bye-law). Again, the Fines Act 2010 suggests that this amount is now a Class E fine and, as such, this penalty is up to €500.

While these two maximum penalties are set by the LGA and increased by the Fines Act 2010, local authorities have been granted discretion to reduce these penalties. This entitlement can either affect the penalty for non-compliance with an entire bye-law or a particular part of it. In all instances where a lesser penalty is set, the actual bye-law must specify its level¹⁹.

However, the LGA indicates that a local authority does not have discretion to reduce the maximum penalty relating to non-compliance with some other elements of Part 19. The maximum penalty for the obstruction of an authorised person or a member of the Gardai cannot be reduced²⁰; neither can a bye-law affect penalties for offences due to a person refusing to give his or her name and address. The maximum fine in such instances is always €2,500²¹.

Readers should also be aware of the Fines (Payment and Recovery) Act 2014²², which was commenced at the start of 2016²³. The intention of this Act is to facilitate the payment of fines by such mechanisms as payment by instalment. Also included is a provision to ensure that unpaid fines are paid by attachment of earnings orders, and that community service orders can be substituted for fines in circumstances where payment is beyond the means of the offender. The 2014 Act also

¹⁶LGA, Section 199(5)

¹⁷LGA, Section 199(8)

¹⁸See Fines Act 2010, Sections 3 and 6 (a consolidated version of this Act is available at this link: <http://www.lawreform.ie/revised-acts/alphabetical-list-of-html-and-pdf-post-2006-revised-acts.557.html>).

¹⁹ See LGA, Section 199(3)(i) and its cross-reference to Section 205(1).

²⁰ See LGA, Section 204(3)(c), the wording of which can be contrasted to LGA, Sections 205(1) or 206(1)

²¹ Formerly €1500 under the LGA, but now a Class C fine under the Fines Act 2010

²²<http://www.irishstatutebook.ie/eli/2014/act/7/enacted/en/pdf>.

²³By the Fines (Payment and Recovery) Act 2014 (Commencement) Order 2016 (SI 6 of 2016) <http://www.irishstatutebook.ie/eli/2016/si/6/made/en/pdf>.

makes provision for when defendants fail to turn up at court. While litigation involving a waste presentation bye-law may well be an exception rather than a rule, with fines also being relatively small, it seems important that readers are aware of the new initiatives aimed at ensuring that more offenders are appropriately penalised.

In accordance with Section 208 of the LGA, all fines that are collected for non-compliance with bye-laws are to be paid directly to a local authority. That Act also indicates that, in any legal proceedings, a certified copy of a bye-law should be available, with that copy being admissible as evidence²⁴.

2.3.2. Fixed Payment Notices

The LGA gives a local authority discretion to issue a fixed payment notice to deal with non-compliance with a bye-law²⁵. On receipt of such a notice, a person accused of non-compliance can elect to make the fixed payment and thereby avoid further legal proceedings.

- If provision has been included in a bye-law for fixed payment notices, the bye-law must set out the amount payable and the payment time window. The Local Government Act 2001 (Bye-Laws) Regulations 2006 set the maximum fixed payment sum at €75²⁶, with the exact amount within this ceiling being left to be specified in a bye-law at a local authority's discretion.

While Section 206 of the LGA prescribes the general information to feature in a fixed payment notice, a detailed format is set by the Bye-Laws Regulations. This is reproduced in the box below. While this general format is to be followed, the Regulations add that it can be "subject to such alterations as may be considered appropriate by the relevant local authority in the case of a particular bye-law"²⁷.

²⁴LGA, Section 203

²⁵LGA, Section 206

²⁶SI 362 of 2006, Article 6

²⁷SI 362 of 2006, Article 7

Key Legal Wording:

Wording for Fixed Payment Notices,
Local Government Act, Bye-Laws Regulations 2006, Schedule 1:

NAME OF LOCAL AUTHORITY _____

To: Name _____

Address _____

It is alleged that you have contravened the provisions of a bye-law made under Part 19 of the Local Government Act 2001 entitled by (in general terms specify nature of contravention) at on

During the period of 21 days beginning on the date of this notice, you may pay the sum of euro, producing/attaching this notice, at the offices of the local authority named in this notice located at

A prosecution in respect of the alleged contravention will not be instituted during the said period and if the sum of euro is paid during that period, no prosecution will be instituted at any time.

Signed Date

(Authorised Person)

Important Payment will be accepted at the offices of the local authority specified above and must be accompanied by this notice. Payment may be made by post. Cheques etc. should be made payable to “.....” (name of local authority). A receipt will be issued.

You are entitled to disregard this notice and defend a prosecution of the alleged contravention in court.

In all cases, the fixed payment notice must be signed by an “authorised person”²⁸. To be an authorised person, a local authority officer must be authorised in writing specifically under Section 204 of the LGA. **The more general authorisation that applies to waste enforcement staff under Section 14 of the WMA will not suffice.** The signature on a fixed payment notice by a person not properly authorised under the LGA would invalidate the notice.

The Bye-Laws Regulations set out more detail about how a fixed payment notice is to be paid²⁹. Payment must be made within the time-frame specified in the notice and the payment has to be accompanied by a copy of that notice. A receipt must be issued, with any payment being retained by the local authority. Once a payment is made, it is non-recoverable by the person who made it.

Finally, no prosecution for the contravention of a bye-law can be made before the period of expiry of a fixed payment notice.

2.3.3. Additional Bye-law Enforcement Provisions

The LGA confers a discretionary power on the Gardai to arrest a person who is found to have contravened a bye-law³⁰. No warrant is needed prior to this action taking place.

²⁸SI 362 of 2006, Article 8

²⁹SI 362 of 2006, Article 9

³⁰LGA, Section 204(d)

The LGA also contains a useful power that may assist in the implementation of a waste presentation bye-law. It is also one that goes further than the general enforcement powers conferred on local authorities and the EPA under Section 14 of the WMA. The LGA allows a person suspected of contravening a bye-law to be required to provide his or her name and address³¹. If that demand is refused or if false or misleading details are provided, an offence is committed. While the LGA indicates that the maximum penalty relating to such instances is €1,500, the Fines Act 2010 has increased this to the level of a Category C fine of €2,500.

- **It is important to appreciate that this provision only creates an offence where the local authority officer who is subject to a refusal or who is given a false/misleading name and address is an “authorised person”. To be an “authorised person” that officer must be authorised in writing specifically under Section 204 of the LGA³². Readers are reminded that the more general authorisation under Section 14 of the WMA will not suffice.**

Members of the Gardai are also empowered by this provision to require names and addresses be provided. In this instance, they do not need to be formally appointed as an “authorised person”. Moreover, a suspect who fails to provide his or her name and address or provides false information is open to arrest by the Gardai³³. Again, no warrant is needed for such an arrest to take place.

³¹ See LGA, Section 204(3)(b) and its cross-reference to Section 205

³² See LGA, Section 204(1)

³³ LGA, Section 204(d)

3. LEGAL AND STYLISTIC PRINCIPLES IN DRAFTING A WASTE PRESENTATION BYE-LAW

3.1. Introduction

Readers wishing to make a new bye-law or amend an existing one need to be aware of a number of important issues and these will be summarised in this chapter. A key point being made here is that there is a need to understand the scope and, particularly, the constraints of the bye-law making powers that are contained in the LGA and WMA. Should these constraints not be followed, then a bye-law may be unlawful and thus open to legal challenge.

It must be appreciated that the material being presented in this chapter is very much a summary. Its purpose is to inform the reader of certain general key issues that need to be understood prior to any consideration of any draft wordings of the different elements of a waste presentation bye-law. A more detailed explanation of the material covered in this chapter can be found in Appendix 2. Readers are urged to visit this material once they have become familiar with the more general principles of bye-law making which are set out below.

As will be seen, certain conventions are also recommended below in order to ensure that a waste presentation bye-law does not contain provisions that duplicate what is said in the LGA and in other legislation. Readers are also advised about certain other stylistic issues which, if they are not followed, will make any bye-law significantly more difficult to enforce.

3.2. Legal Limitations affecting Bye-law Content and Validity

As explained in more detail in Appendix 2, while the LGA's bye-law making powers appear quite wide³⁴, they are subject to a very important limitation. **This is that the Constitution emphasises the supremacy of the Oireachtas in the making of national law³⁵**. It follows, therefore, that all a waste presentation bye-law can do is to supplement the content of the WMA or other national waste legislation; what a bye-law cannot do is to change existing legislation or otherwise over-ride it. Accordingly, any bye-law issued under the LGA must fit squarely within these constraints. For a bye-law affecting waste presentation, the only exception to this general rule relates some specific instances set down in the legislation affecting food waste.

It is also important to understand that, when the content of a bye-law has Section 35 of the WMA as its basis, its subject matter and scope is quite limited. This is because Section 35 only allows a bye-law to be made to affect the presentation of household and commercial waste **prior to its collection**. This means that Section 35 cannot be used to make a bye-law to affect how waste is managed **after** it is collected.

Accordingly, this element of the WMA means that a bye-law cannot, for example, require a waste collector to undertake particular activities. That is not what Section 35 of the WMA envisages. Moreover, given the existence of the Waste Management (Collection Permit) Regulations 2007 and the collection permit system, any bye-law affecting waste collection activities would not accord with the principle that, under the Constitution, the body with the final say on the form of national legislation is the Oireachtas. **It follows, therefore, that the activities of waste collectors are to be controlled through individual waste collection permits and not by a waste presentation bye-law**, with this conclusion being confirmed by Senior Counsel.

These limitations set by national law mean that readers involved in the production of waste presentation bye-laws must be particularly careful that any resultant wordings do not impinge upon the requirements of the following legislation:

³⁴ See LGA, Sections 199(1) and (3) – reproduced as text boxes in Appendix 2

³⁵ See Article 15.2.1: "The sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State". As set out in Appendix 2, there is also case law on this matter from both the High Court and Supreme Court

- The WMA, particularly Section 32, which already outlaws unauthorised waste management activities
- The Waste Management (Collection Permit) Regulations, the waste collection permit system and the activities of organisations that collect waste
- The packaging, WEEE and batteries legislation
- The national legislation controlling litter under the Litter Pollution Act 1997.

All of these constraints are explained in more detail in Appendix 2 to this guidance. Also found within that material is an analysis of how a waste presentation bye-law may interact with the legislation on food waste. As alluded to earlier, certain elements of this legislation are slightly less rigid about when a bye-law can overlap, thereby allowing additional measures to be specified for the management of food waste.

3.3. Bye-laws must be Clearly Worded

In any legal proceedings relating to the contravention of a bye-law, a Court will carefully scrutinise the wording being used to ensure that the nature of the offence is clear and can be proven. Should there be ambiguity, then a local authority will face an uphill struggle to demonstrate that there has been non-compliance. This is because of the legal principle of a person being innocent until guilt has been established, which means that ambiguity will always assist the defendant and hamper the prosecution.

It is vital, therefore, that the requirements of any bye-law are not only worded in plain English but also set out exactly what is required of any affected waste holder. As shown towards the end of Appendix 2, there is case law from the High Court that indicates that a Court should not convict a defendant when the requirements specified in a statutory document are imprecise about what is exactly required. In essence, any person who is subject to a waste presentation bye-law is being mandated, on pain of criminal penalty, to comply with it. Accordingly, he or she has a right to know exactly what is required and what compliance or non-compliance entails. Moreover, as the presentation of waste is a common-place activity, no person subject to a bye-law should be expected to have to ask a lawyer or other expert for advice about what is needed.

- The principles explained in the last paragraph also constitute the reason why terms or phrases such as requiring some action to apply “where appropriate” are likely to be unenforceable, particularly when a bye-law does not indicate what action is appropriate or what is needed to ensure compliance. A similar view should be taken about the use of vague terms such as something being “suitable”, that an action be taken “where possible” or where “reasonable steps” are required to be taken.

Finally, a phrase in a bye-law which requires a person to comply “to the satisfaction of a local authority” also should be avoided. Again, any member of the public should be clear as to what is needed to comply, with “the satisfaction” of a local authority (or of an authorised person) not being something that will be obvious or known to that person.

In some instances, a bye-law may require some action to take place that is “adequate”. While this type of term also is to be avoided, it is sometimes necessary and, for this reason, it does feature in the bye-law template shown in Chapter 4 and Appendix 1. But it should only be used when it will be obvious that whatever is taking place at a site subject to a bye-law is either adequate or totally inadequate.

An example might relate to a bye-law mandating an “adequate” supply of bins be both provided and used for the storage of commercial waste prior to its collection. In such circumstances, it is not possible to construct a highly specific or prescriptive wording that would apply across all of the markedly different waste storage arrangements used by the retail sector of an entire county. Moreover, in these circumstances, non-compliance will be immediately apparent: where there are very few bins, with commercial waste being left all over the place, then the arrangements are clearly

not “adequate”. Having said that, if there is an alternative way of phrasing this type of requirement, then that route should be taken: non-specific phrases such as “adequate” should only be used as a last resort.

- Similarly, a bye-law requiring some practice to be allowable when it is separately authorised by a local authority or by an authorised person is also generally undesirable. This is particularly the case where there is no publicly known, publicised or publicly available system and procedure to govern this form of authorisation.

3.4. The Interpretation Act 2005: Definitions

Where it is necessary, key words and phrases will need to feature in a section on Interpretation in any bye-law. However, to avoid bye-laws become overly legalistic and hard to understand, it is desirable that the interpretation section be as short as possible.

Readers need to appreciate that the Interpretation Act 2005 is a considerable help to them in (a) locating definitions of appropriate terms and phrases and (b) causing many common and widely used terms not to need repeating within the text of the actual bye-law.

For example, time periods – such as day or week – are both understood by the general public and are defined precisely in the 2005 Act. Rather than repeating these commonly used definitions, a bye-law can simply say that the Interpretation Act 2005 applies to words and phrases used.

This convention means that there is, for example, no need to explain in the Interpretation Section of a bye-law that, where a bye-law refers to something in the singular, it also means the plural. Nor does it need to be explained that, where a bye-law refers to a person in the masculine, it also refers to women, how distance is to be measured, the meaning of periods of time, and so on³⁶. The text box at the bottom of this sub-section lists a number of potentially useful terms and related matters which are defined in the Interpretation Act and which may not need to be explained in an actual bye-law.

- It is suggested that there should be one main exception to this general rule about not needing to repeat in a bye-law a definition that already features in the Interpretation Act. While the Act contains a definition of “a person”, confirming that it covers companies, partnerships and so on³⁷, it is suggested that this definition is reproduced in the text of a bye-law. This prevents the less informed reader deciding that a particular bye-law does not apply to their commercial activities.

A copy of the Interpretation Act can be found on the Irish Statute book website³⁸. A number of other relevant aspects of this Act are covered in the section on the Act in Appendix 2

³⁶ Interpretation Act, Section 18

³⁷ “Person” shall be read as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual, and the subsequent use of any pronoun in place of a further use of “person” shall be read accordingly”.

³⁸ <http://www.irishstatutebook.ie/eli/2005/act/23/enacted/en/pdf>

Interpretation Act 2005, Useful Terms & Conventions	
<p><i>Definitions</i>³⁹:</p> <p>“land”</p> <p>“midnight”</p> <p>“month”</p> <p>“ordnance map”</p> <p>“week”</p> <p>“week-day”</p> <p>“writing”</p> <p>“year”</p> <p>“public holiday”</p> <p>“working day”</p>	<p><i>Useful conventions, including construing:</i></p> <p><i>Ambiguities in drafting</i>⁴⁰</p> <p><i>Examples & lists</i>⁴¹</p> <p><i>Allowable deviations to a statutory form</i>⁴²</p> <p><i>Time of commencement of a bye-law</i>⁴³</p> <p><i>Singular & plural, gender, distance, periods of time, offences by corporations</i>⁴⁴</p> <p><i>Service of notices (etc) by post</i>⁴⁵</p> <p><i>Repeals of bye-laws</i>⁴⁶</p>

3.5. Offences and Addressing Non-compliance

In general, **the text of a bye-law does not need to state that the contravention of any provision is an offence**. It is unnecessary to do this. As set out in an earlier chapter of this guidance, Section 205(1) of the LGA indicates that a person who contravenes a bye-law commits an offence.

Consequently, any element of a bye-law that, itself, states that non-compliance is an offence is simply duplicating what the LGA says. Moreover, if some sections of a bye-law state that non-compliance is an offence and others do not, then it could be argued in legal proceedings that the other sections are not actually legally binding.

For example, the following wording is undesirable:

It is an offence to place waste in a container in a manner that damages the container.

Instead, this provision might be drafted rather more simply:

Waste shall not be placed in a container in a manner that damages the container.

For essentially similar reasons, **there is no need for a bye-law to state explicitly that some action “is prohibited”**. The context should be obvious that this is the case.

3.6. “A person shall/shall not”, “shall” or “will”, etc.

There is no need to start different sections of a bye-law with the requirement that “a person shall not do actions XX and YY”. Instead, this can be said more simply, in the form of requiring that actions XX and YY are to be done. This is because the whole sense of any bye-law makes it obvious that any part of it is requiring someone to do something or refrain from doing something. Otherwise, there is usually little point in having such a requirement in a bye-law at all. In other words, it should be obvious from the sense and intent of each element of a bye-law that it is referring to a practice that is either required by the bye-law or forbidden by it.

For example, rather than:

A person presenting waste on the collection day in a wheeled bin shall ensure that the container is not overloaded and the lid is closed,

it is more straightforward to simply say:

³⁹ Interpretation Act, Section 21 & Schedule

⁴⁰ Interpretation Act, Section 5(2)

⁴¹ Interpretation Act, Section 11

⁴² Interpretation Act, Section 12

⁴³ Interpretation Act, Section 16(3) & (4): note that, under the 2005 Act, “statutory instrument” includes a bye-law

⁴⁴ Interpretation Act, Section 18

⁴⁵ Interpretation Act, Section 25

⁴⁶ Interpretation Act, Section 26 & 27

Waste presented on a collection day shall be presented in a container which is not overloaded and where the lid is closed.

Finally, and perhaps rather obviously, if a bye-law states that some act “will” be required to be done, then it is essentially unenforceable. The use of the future tense gives no indication of when this is required. Accordingly, the correct form of the verb in such instances is “shall” (and not “must”). Similarly, a bye-law indicating that something “may” happen places no specific obligation on anybody for it to actually happen.

3.7. “Holder of Waste”

The use of the term “holder of waste” in a waste presentation bye-law may create difficulties in its enforcement and, for this reason, this phrase should be avoided where that is possible. Problems will arise if this phrase is used extensively, and none of the consequences assist a local authority in bye-law enforcement. And, as will be seen, often there is a simpler approach that avoids these difficulties.

Adapting the example wording used in the previous section, it is preferable and more straightforward to simply say:

Waste presented on a collection day shall be presented in a container which is not overloaded and where the lid is closed.

Rather than:

A holder of waste presenting waste on the collection day in a wheeled bin shall ensure that the container is not overloaded and the lid is closed,

Having a bye-law worded to explicitly require a “holder of waste” to do some action (or refrain from doing it) may create the following enforcement issue. It means that there is a need for a local authority to prove to a Court that a person accused of bye-law contravention is, in fact, the holder of waste. One such definition is to be found in the WMA – “waste holder” means the waste producer or the person who is in possession of the waste⁴⁷ – but this definition may invite legal argument on behalf of a defendant, particularly due to the two separate and alternative options that surround the word “or”. It also leads to uncertainty about who is actually a holder of waste when waste is generated at a commercial premises and at an apartment block. There may be, for example, more than one holder of waste, when the waste passes from an apartment to an area where commercial bins are held.

It therefore follows that, if the phrase “holder of waste” is used in a bye-law, a local authority is inflicting an unnecessary twofold evidential burden upon itself. It will need to prove in court (a) that the defendant does, in fact, fall within its definition of “a holder of waste” and (b) then go on to prove that the bye-law was contravened by that person’s activities. Indeed, it is conceivable that a Court may be convinced that the person accused did, in fact, breach some specified element of a bye-law but that he or she did not actually fall within the term “holder of waste”.

By contrast, if there is no caveat relating to a holder of waste in a bye-law, the evidential burden is reduced, with all that needs to be proven is that the person accused breached the bye-law. It is then left to the defendant to assert to the Court’s satisfaction that the alleged offence was nothing to do with him or her.

While this discussion suggests that the term should not be used, this is not an absolute prohibition. This is because it may be sometimes necessary to resort to using “holder” where there is no alternative option that conveys the sense of what is being required. This is the reason why the phrase does feature in the template for the drafting of a waste presentation bye-law on one occasion. This relates to where a “holder” delivers his or her household kerbside waste directly to an authorised waste facility (see Bye-law 2 in the next chapter and in Appendix 1).

⁴⁷WMA, Section 5 (as amended by SI 126 of 2011), which also deleted the clunky term of “holder” from the Act.

3.8. Phasing-in of a Bye-law

As non-compliance with a waste presentation bye-law is a criminal offence, it is important that citizens are not immediately breaking the law when little or no notice has been given about the existence of a bye-law prior to it entering into force.

Moreover, some elements of a bye-law that, at least initially, are expected to be subject to very widespread breaches are undesirable unless adequate advanced notice of what is proposed can be given, with this notice being effectively publicised. An example might be a condition that required all waste holders to either be in possession of a written contract with a waste service provider or have notified the local authority that they are making their own arrangements.

Unless the local authority has endeavoured to encourage, publicise and generally facilitate this notification system, it is likely that there will be widespread non-compliance. This reality may cause a prosecution to be defended on the basis that there are thousands of other people in the same boat. While this type of assertion is not a defence in law (otherwise no one would ever be fined for speeding), the reality is that a court may be unwilling to convict – or fine – a defendant in these circumstances.

4. THE WASTE PRESENTATION BY-LAW TEMPLATE

4.1. Introduction

This chapter of this guidance note contains a series of template wordings that are intended to cover the various elements that might comprise a waste presentation bye-law. While all of these wordings are discretionary, as is the choice about whether a particular provision is to feature in any bye-law, there is a need for regional consistency and a unified approach to bye-law content.

As the following proposals on bye-law content need to be adopted by each individual local authority, it is vital that readers understand the thinking behind the different provisions. Accordingly, each element of the proposed bye-law template is explained separately.

For ease of reference, the actual wordings proposed in this chapter for the template also have been extracted from their surrounding text and are reproduced on their own in Appendix 1. While this allows the bye-law as a whole to be easier to read, readers are urged to consider these wordings in the context of the explanation given in this chapter.

4.2. Proposed Wordings for a Waste Presentation Bye-law

The following sub-sections will describe a succession of different elements that can be used to develop a waste presentation bye-law, setting out both a suggested legal wording and an explanation for it.

The wordings set out below are structured around separate topic headings which individually address different aspects of either the internal workings of the bye-law or the aspects of waste presentation that are to be addressed. Ordering follows the intended format that they will appear in the bye-law itself; however, in certain instances, not all of the headings or elements of the bye-law will be needed. For example, if the bye-law is a new one and does not supersede an existing waste presentation bye-law, there is no need for the section entitled “Revocations”.

In summary, the following format and ordering of a waste presentation bye-law is proposed:

- Title of the Bye-law
- Statutory Basis of the Bye-law
- Citation
- Date of Commencement
- Geographical Area of Application
- Revocations
- Scope of this Bye-law: Waste Types and Controlled Activities
- Bye-law 1. Interpretation and Definitions
- Bye-law 2. Obligation to Participate in a Waste Collection Service
- Bye-law 3. Maintenance and Management of Waste Containers
- Bye-law 4. Location for Container Storage
- Bye-law 5. Use of Waste Containers on Collection Day
- Bye-law 6. Collection Times and Container Removal
- Bye-law 7. Prohibited Waste Types
- Bye-law 8(a). Segregation of Household Waste and Contamination Prevention
- Bye-law 8(b). Segregation of Household Waste, Contamination Prevention and Extending Food Waste Collection [alternative wording to Bye-law 8(a)]
- Bye-law 9. Additional Provisions for Householders not availing of a Kerbside Collection Service
- Bye-law 10. Provisions affecting Multi-user Buildings, Apartment Blocks, etc
- Bye-law 11. Interference with Orderly Waste Collection
- Bye-law 12. Additional Provisions for Commercial Waste
- Bye-law 13. Enforcement Provisions/Fixed Payment Notices.

4.2.1. Title of the Bye-law

There is no single convention for setting out the title of a waste presentation bye-law, but it should not extend beyond the scope of the bye-law itself. For example, as a bye-law cannot extend to affect waste collection activities, it is undesirable that the word “collection” features in its title.

Accordingly, a title might read:

County of XXXX (Segregation, Storage and Presentation of Household and Commercial Waste) Bye-laws, 20XX [year].

Alternatively, some local authorities have elected to use a simpler title. An example is:

Sligo County Council, Waste Management Bye-Laws 2013.

4.2.2. Preamble: the Statutory Basis of the Bye-law

Traditionally, waste presentation bye-laws have just cited Section 35 of the WMA as being their legal basis, going on to indicate that the bye-law is made “in accordance with” Part 19 of the LGA.

However, as discussed in more detail in Appendix 2, the powers affecting bye-law content under the LGA are rather wider than those in the WMA. As some of the elements of this proposed waste presentation bye-law template may be outside the scope of Section 35 of the WMA, it is desirable that the LGA is also cited as being the basis of these bye-laws.

Accordingly, the wording proposed for the preamble of a waste presentation bye-law is as follows:

XXX County Council, pursuant to Section 35(1) of the Waste Management Act 1996 and Section 199(1) of the Local Government Act 2001 and in accordance with Part 19 of the Local Government Act 2001, hereby makes the following bye-laws:

If it is desired to have prominent litter-related provisions in a waste presentation bye-law, then reference may also be needed to the Litter Pollution Act 1997 and its powers to make bye-laws relating to litter.

4.2.3. Citation

Bye-laws usually commence with the citation of their title. As with statutory instruments, the word “may” is used here rather than “shall”:

These bye-laws may be cited as the County of XXXX (Segregation, Storage and Presentation of Household and Commercial Waste) Bye-laws, 20XX [year]

4.2.4. Date of Commencement

It is essential that a bye-law is clear as to its date of commencement, as this is a requirement of the LGA⁴⁸. This date must also be at least 30 days after the date the bye-law was subject to final approval:

These bye-laws shall enter into force on the XX of XX 20XX.

If desired, different elements of the bye-law can be phased in, with this being set down in the commencement section:

These bye-laws shall enter into force on the XX, of XX 20XX, with the exception of bye-laws XXX and XXX which shall commence on XX of XX 20XX and bye-law XX which shall commence on the XX of XX 20XX.

In general, complex bye-laws may need to be phased-in, as should those where it is expected that there may be widespread non-compliance to start with.

⁴⁸ LGA, Section 200(5)(a)

4.2.5. Geographical Area of Application

The LGA allows for a bye-law to have a county-wide application or for it to be more restricted in its geographical scope⁴⁹.

The simplest formulation is:

These bye-laws shall apply to the functional area of XX County Council.

However, it may be desired to restrict a bye-law to applying to just the larger towns in the functional area of a local authority. In this respect, care needs to be taken on how these towns to be are defined. Given a key objective of this guidance is to produce a waste presentation bye-law that is readily understandable by the lay public, the inclusion of detailed and involved mathematical formulae – such as a census-based population threshold above which the bye-law applies – is undesirable. Instead, a map-based approach may be preferable⁵⁰, with the maps themselves being contained in a Schedule to the bye-laws:

These bye-laws shall apply to the population centres⁵¹ within the functional area of XX County Council that are listed in Schedule YY and whose boundaries are shown on the maps in Schedule XX.

It also should be noted that, while some elements of a waste presentation bye-law are to apply county-wide, certain specific provisions may be intended to apply only to particular towns or city areas. If this is the case, then those towns can be identified later in the particular sections of the bye-law, with the more general heading shown earlier being used at the start of the bye-law.

Since the abolition of Town Councils in June 2014 by the Local Government Reform Act 2014, there seems no need to identify these at the start of a waste presentation bye-law.

4.2.6. Revocations

The text of a waste presentation bye-law needs to be clear that any earlier version of it is superseded. It is also important that the full and correct title of any bye-law that is to be revoked be stated:

These bye-laws repeal the XXX [full and correct title] bye-laws dated 20XX.

4.2.7. Scope of Bye-law: Waste Types and Controlled Activities

It is suggested that, at the start of a bye-law, a section may need to be included which sets out their scope in terms of the applicable waste types they are to address. This provision also means that the body text of the bye-laws can simply refer to “waste”, rather than repeatedly use the term “household and commercial waste”. However, where it is necessary to single out one waste type rather than both, then they will need to be identified individually in later sections.

A further advantage of this convention is that readers do not need to get far into the text of a bye-law to see that it applies to both household and commercial waste:

Unless the following bye-laws indicate to the contrary, these bye-laws apply to both household and commercial waste.

Care should be exercised to ensure that any elements of a bye-law apply only to particular forms of waste presentation prior to collection and do not have uncontrolled or otherwise undesirable effects on one-off or intermittent collection events.

⁴⁹ LGA, Section 199(3)(b)

⁵⁰ This map-based approach features in, for example, the waste presentation bye-laws of Sligo County Council; see http://www.sligococo.ie/media/CouncilDownloads/Environment/WasteByeLaws2013/WasteManagementByeLaws201_FINAL.pdf.

⁵¹ The word “towns” is also to be avoided in this context as, historically, this has had a statutory meaning (eg “town council”) and not all population centres intended to be caught by a particular bye-law may constitute a “town”

It must be borne in mind that householders and occupiers of commercial premises may order skips, mini-skips and so-called “big bags” from time-to-time. The material contained in them may well fall within the WMA’s definitions of “household” or “commercial waste”. For example, bricks, rubble, old furniture, carpets, etc, arising from a domestic dwelling are defined by the Act⁵² as household waste⁵³. Similarly, if the source of construction and demolition is a commercial-type building, then this material will be defined as commercial waste⁵⁴. Therefore, a bye-law requiring all commercial and/or household waste to be presented in a wheeled bin would rule out its legitimate collection in skips and similar containers. This reality may be pointed out in legal proceedings as a way of undermining a local authority’s prosecution for bye-law non-compliance.

Similarly, thought must be had about ensuring that any bye-law is worded in a manner that does not inadvertently impinge upon charity door-to-door waste collection activities. For example, some charities hand out bags for the collection of waste clothing. Therefore, a bye-law that required all household waste to be presented in a wheeled bin would make this practice unauthorised⁵⁵.

The need to facilitate the continued provision of skips and similar one-off collection events can be addressed by excluding skip-type waste collection activities from a waste presentation bye-law completely or by ensuring that the various elements make provision for these intermittent waste management activities. For example, the Preamble Section to a bye-law might indicate:

These bye-laws do not apply to household or commercial waste that comprises construction and demolition waste which is presented separately for collection in skips, big-bags and other similar purpose-built containers.

However, instead of the wording just given above, it is proposed below that this matter is handled in a slightly different way, via a key definition. This is the term “kerbside waste”, which is defined in a manner that ensures that one-off or other non-routine waste collection events are not embraced by this definition. The use of this phrase throughout the different elements of the bye-law template therefore also ensures these activities are all excluded. The meaning given to “kerbside waste” is elaborated upon below.

4.2.8. 1. Interpretation and Definitions

As noted in an earlier section of this guidance, there is no need to include in the Interpretation Section of a bye-law definitions of very common terms that the public will readily understand and where these are also found in the Interpretation Act 2005. An example would be the term “week”, with other similar common words and phrases being listed in an earlier text box. Instead, the end of the Interpretation Section of a bye-law can contain the following paragraph:

Where it is necessary, the Interpretation Act 2005 shall apply in construing any provision of these bye-laws.

Persons drafting a waste presentation bye-law are reminded to be careful about the use of words and phrases that are also used in the WMA. As explained in more detail in Appendix 2, this is because the Interpretation Act indicates that such terms have the same meaning as in the “parent” statute⁵⁶. This meaning may not necessarily equate with the sense being intended in the draft bye-

⁵²WMA, Section 5(1): “‘household waste’ means waste produced within the curtilage of a building or self-contained part of a building used for the purposes of living accommodation”

⁵³ Note that, for waste planning purposes and – particularly – in relation to EU reporting to Eurostat, a convention is applied that construction and demolition waste is not to be included in statistics on household waste generation

⁵⁴WMA, Section 5(1): “‘commercial waste’ means waste from premises used wholly or mainly for the purposes of a trade or business or for the purposes of sport, recreation, education or entertainment but does not include household, agricultural or industrial waste”

⁵⁵ While some argue that this is not a waste management practice – as it is viewed as entailing reuse – and thus is outside the bounds of the WMA, this is a matter that has yet to be legally clarified. Interestingly, guidance issued in Scotland suggests that bulk donations of mixed clothing involve a waste management activity in certain circumstances, particularly where a significant proportion of the material is to be processed and not used for its original purpose (see SEPA (2017) *Reuse Activities and Waste Regulation*, <http://www.sepa.org.uk/media/219772/wst-g-051-reuse-activities-and-waste-regulation.pdf>).

⁵⁶Interpretation Act 2005, Section 19

law, particularly where the WMA defines a term slightly differently from its normal, ordinary, meaning. For example, the word “disposal” is held by the Act to be quite distinct from the term “recovery” and, as such, means something different than throwing away or getting rid of something (which could be either to disposal or recovery).

Often the definition section of a bye-law starts by stating that the definitions that follow apply to the bye-law “unless the context requires otherwise”. It is doubtful that this rather legalistic phrase is needed, despite it acting as a safeguard. In essence, the wording of the different elements of the bye-law should be kept as simple as it can be.

Readers are also reminded that, as the Interpretation Act indicates that a reference to an Act or statutory instrument implies a reference to both the original Act or original statutory instrument and any subsequent amendments⁵⁷, there is no need to add “as amended” or to specify the amendments when a bye-law cites an item of legislation.

Besides these general principles, the following definitions are suggested, with these marrying with the wordings of the different elements of the waste presentation bye-law that follow later in this chapter. Where these relate to another definition or, later, where the template cross-refers to a definition, they are highlighted by grey shading:

“In these bye-laws, these words and phrases have the following meanings:”

Appropriate Waste Container. For the purposes of this bye-law template, the term “appropriate waste container” means a wheeled bin. The context where the phrase is used in the main body of the bye-law template makes clear that refuse sacks are not being outlawed by this phrase, just that they do not constitute “an appropriate waste container”:

“appropriate waste container” means a waste container suitable for the collection of kerbside waste and which is a receptacle that complies with the standards for mobile waste containers (wheeled bins) which are specified in the CEN standard entitled IS EN 840 (Parts 1-6).

Authorised Person. While some bye-laws use the term “appointed persons”, the term “authorised person” is that used in Part 19 of the LGA. Accordingly, the following definition is proposed:

“authorised person” means a person authorised by XX County Council in accordance with Section 204 of the Local Government Act 2001 or a member of an Garda Síochána

Authorised Waste Collector. The definition of the term “authorised waste collector” that is proposed here refers to both Section 34 of the WMA and to the Collection Permit Regulations. This definition is deliberately wider than it would be if it solely referred to a collection permit holder. This is to ensure that collectors who are exempt from needing a collection permit⁵⁸ can be “authorised waste collectors” under this bye-law. In addition, the final words in the definition – “authorised ... for the collection of the type of waste being collected” – makes this definition more specific, in order to rule out collectors who, while holding a permit, are not authorised to handle particular waste types:

“authorised waste collector means a person authorised in accordance with Section 34 of the Waste Management Act, including any regulations made thereunder, for the collection of the type of waste being collected.

Authorised Waste Facility. This term is used to ensure that, when a bye-law refers to waste being transferred for disposal or recovery, compliance only occurs when an “authorised waste facility” is involved:

*“authorised waste facility” means a waste recovery or disposal facility:
(a) which is authorised under the Waste Management Act, under the Environmental Protection Agency Act, under any regulations stemming from either of these Acts or under*

⁵⁷ Interpretation Act 2005, Section 14(2)

⁵⁸ Exemptions arise due to the wording of Section 34(1)(b) of the WMA, from Article 30 of the Collection Permit Regulations, from Article 41 of the WEEE Regulations, from Article 43 of the Batteries Regulations, from Article 7(2) of the Commercial Food Waste Regulations and so on

regulations made under the European Communities Act 1972 relating to the control of waste management activities; and
(b) where the authorisation of that facility permits the acceptance of the waste being referred to in the particular part of these bye-laws.

The need to refer to the EPA Act arises from many waste facilities now being subject to Industrial Emissions Directive licensing. The reference to the European Communities Act is reflecting the recent trend for statutory instruments affecting waste management to be made under that Act and not under the WMA. It is included to ensure that any waste facility authorised under new legislation made under the European Communities Act remains caught by this definition.

Bio-waste. While the term “bio-waste” features in both the WMA and in the legislation on food waste, it is not used in the template for a waste presentation bye-law. Instead, the term “garden waste” is used. This is partly because this alternative is jargon-free and thus readily understandable by members of the public. The second reason that “bio-waste” is not used is that its statutory meaning is a very wide and covers potentially compostable waste from not only householders but also from retail, commercial and industrial sources⁵⁹. Accordingly, “garden waste” is an accessible alternative which is directly relevant to its intended function in the waste presentation bye-law template.

Bring Facility. Different definitions of bring facility are to be found in the Collection Permit Regulations⁶⁰ and in the Planning and Development Regulations⁶¹. Subject to some amendment, these provide the basis of the following proposed definition:

“bring facility” means an authorised waste facility comprising one or more purpose-built receptacles in which segregated recyclable household waste may be deposited by the public for the purposes of the recovery of that waste.

A key phrase here is “segregated recyclable household waste”. It is considered that it is not necessary to define this term, but to rely on its ordinary English meaning. Of note is that it says “segregated recyclable household waste”, rather than “segregated dry recyclable household waste”. This is so that, if suitable containers are provided, household food waste can be deposited at bring facilities such as at pay-to-use compactors (PTUs).

It may be desired to differentiate between bring facilities that are located at supermarkets and other similar locations and other bring facilities situated at civic waste sites. This could be done by using the thresholds for when planning permission is needed for this type of development and which are set down in Class 42 of Part 1 of the Second Schedule to the Planning and Development Regulations.

Commercial Kerbside Waste. The following definition is used as it is necessary to clarify the conjunction of the two definitions of “commercial waste” and “kerbside waste”. This definition integrates with the definition of “designated waste collection day”:

“commercial kerbside waste” shall mean commercial waste that is kerbside waste.

Commercial Waste. The meaning of commercial waste is that set down in the WMA⁶². As the definition excludes household waste, any form of waste from buildings used for the purposes of living accommodation will be household waste and not commercial waste. This matter is of

⁵⁹ WMA, Section 5(1): “‘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”

⁶⁰ Waste Management (Collection Permit) Regulations 2007 (SI 820 of 2007), Article 4(2): “‘bring facility’ means a facility at which segregated wastes may be deposited by the public in appropriate purpose-built receptacles for the purposes of recovery”

⁶¹ Planning and Development Regulations 2001 to 2015, Article 3(3): “‘bring facility’ means a facility of purpose-built receptacles in which segregated domestic wastes may be deposited by the public, provided in an area to which the public have access”

⁶² WMA, Section 5(1)

relevance, as it needs to be appreciated by readers wishing to draw-up their own bye-laws to manage waste from commercial activities

“commercial waste” means waste from premises used wholly or mainly for the purposes of a trade or business or for the purposes of sport, recreation, education or entertainment but does not include household, agricultural or industrial waste.

Designated Waste Collection Day. This definition is needed to clarify the elements of the bye-law template that affects collection days and times when waste can be presented prior to collection. The reference to “kerbside waste” ensures that one-off collection events are outside this term:

“designated waste collection day” shall mean the day designated by an authorised waste collector for the collection of kerbside waste, and different days may be designated for commercial kerbside waste and household kerbside waste.

Designated Bag Collection Area. This definition is needed where a local authority has permitted the continuation of waste presentation in bags or refuse sacks. This form of designation is achieved under Article 20 of the Waste Management (Collection Permit) Regulations 2007. While it is preferable that the area so designated is shown in a map or drawing attached to the bye-law, it may be that this approach is not sufficiently flexible for day-to-day changes in waste collection arrangements. However, in order that persons who are required to comply with this element of a bye-law are aware of these locations, there is need for a readily accessible map to be present on a local authority’s website. The following wording is proposed:

“designated bag collection area” is an area designated by XXX County Council in accordance with Article 20⁶³ of the Waste Management (Collection Permit) Regulations 2007 where waste can be collected in bags or sacks.

Fixed Payment Notice. This definition is only necessary when a local authority elects to make provision for the issuing of such notices in a waste presentation bye-law. If necessary, the relevant amount to be paid and the time period can be added into this definition, but this is already said in the text of the bye-law template relating to the actual notice (see later):

“fixed payment notice” means a notice provided for by these bye-laws and by Section 206 of the Local Government Act 2001 which is issued to a person in respect of a contravention of these bye-laws and which, as an alternative to prosecution, requires that person to pay a specified fixed payment by a specified time.

Food Waste. The general rule of this guidance is that all definitions used are free-standing and do not cross-refer to other legislation. This ensures that they are understandable to any non-technical law reader of a bye-law. However, the definition of “food waste” is an exception to this rule, due to the need to align the content of a waste presentation bye-law precisely with the Food Waste Regulations. This is also desirable so that the section of a bye-law on food waste does not cause any inadvertent overlap with the separate EU-based system for the control of animal by-products, with this requirement being the reason why references to Regulations 6 and 7 of the Food Waste Regulations are included:

“food waste” means waste food that is household waste or, as the case may be, commercial waste, and shall have the same meaning as that applying to Regulation 7 of the Waste Management (Food Waste) Regulations 2009 (SI 508 of 2009) or, as the case may be, to Regulation 6 of the European Union (Household Food Waste and Bio-Waste) Regulations 2015 (SI 430 of 2015).

Food Waste Regulations. See “national legislation on food waste”.

Holder. As noted in an earlier section of this guidance note, the term “holder of waste” should be avoided. However, in the absence of an alternative, it may necessary in some instances (see later).

⁶³ The relevant sub-article of the Collection Permit Regulations is Article 20(2)(g)(iv); however, the sense is retained by the more simple reference to Article 20, which also leaves room for any subsequent amendments and renumbering of Article 20 of the Collection Permit Regulations

Accordingly, the definition used in the WMA is used⁶⁴, with this being supplemented by the additional sub-clause at the end.

“holder” means the waste producer or the person who is in possession of the waste and “holder of commercial waste” and “holder of household waste” shall be interpreted accordingly.

Household Kerbside Waste. The following definition is used as it is necessary to clarify the conjunction of the two definitions of “household waste” and “kerbside waste”. This is used in the definition of “designated waste collection day”:

“household kerbside waste” means household waste that is kerbside waste.

Household Waste. Household waste is defined in the WMA⁶⁵ and this definition is what is used here:

“household waste” means waste produced within the curtilage of a building or self-contained part of a building used for the purposes of living accommodation

As noted elsewhere in this guidance, household waste is not only that which is collected weekly or fortnightly. It is any waste arising from a building used for living accommodation. Therefore, it covers construction and demolition waste, waste from student residences and other residential institutions and so on. This matter needs to be borne in mind by those drafting a bye-law.

Kerbside Waste. The term “kerbside waste” is proposed here as the main way of differentiating between regular weekly waste collections and one-off collections. The definition is based upon the term “household kerbside waste”, which in 2015 was added into the Collection Permit Regulations⁶⁶.

Rather than use the term “household kerbside waste” used by the Collection Permit Regulations, “kerbside waste” is used so that it can apply to not only household waste but also to commercial waste:

“kerbside waste” means that fraction of commercial or household waste presented for collection from a premises and which is to be collected by an authorised waste collector, with the exception of wastewater, construction and demolition waste and bulky waste more suitable for collection in a skip or other such receptacle (including heavy waste such as waste furniture, carpets and rubble), as well as hazardous waste and other streams of household or commercial waste which are required to be collected in another appropriate manner, such as waste electrical and electronic equipment and waste batteries.

National Legislation on Food Waste. The following definition is used so that the obligations arising from a bye-law relating to food waste are easier for a lay-person to understand:

“national legislation on food waste” means the Waste Management (Food Waste) Regulations 2009 (SI 508 of 2009) and the European Union (Household Food Waste and Bio-Waste) Regulations 2015 (SI 430 of 2015).

Occupier. “Occupier” is defined in the WMA⁶⁷, with this definition featuring in other waste presentation bye-laws:

“occupier” includes, in relation to any premises, the owner, a lessee, any person entitled to occupy the premises and any other person having, for the time being, control of the premises.

Person. In a small number of instances, the bye-law template includes provisions placing obligations on “a person”. The following definition is proposed to make it immediately clear to a lay reader that this term is very wide and covers a range of organisations as well as individuals. What is listed at the start of this definition are just examples (expressed in commonly used language), with

⁶⁴ WMA, Section 5(1): “waste holder” means the waste producer or the person who is in possession of the waste”

⁶⁵ WMA, Section 5(1)

⁶⁶ By the Waste Management (Collection Permit)(Amendment) Regulations 2015 (SI 197 of 2015), Article 2

⁶⁷ WMA, Section 5(1)

the end of the definition culminating on what the term means in law and in accordance to the Interpretation Act 2005⁶⁸.

“person” shall, for the purposes of these bye-laws, include an individual, company (whether limited, incorporated or not), partnership, co-operative or other similar body within the meaning of the definition contained in the Interpretation Act 2005.

Recyclable Household Kerbside Waste. In 2016, a definition of recyclable household kerbside waste was added into the Collection Permit Regulations⁶⁹. In conjunction with the list of dry recyclable wastes set out in the Seventh Schedule to those Regulations, it covers a wide range of different materials. The following wording is proposed, with the reference to “kerbside waste” preventing this term applying when a householder does a direct delivery of waste to a civic waste facility:

“recyclable household kerbside waste” means the fraction of household kerbside waste that comprises recyclable household waste and which includes the materials set out in Schedule 1.

⁶⁸ See Interpretation Act 2005, Section 18(c): ““Person” shall be read as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual, and the subsequent use of any pronoun in place of a further use of “person” shall be read accordingly.”

⁶⁹ By the Waste Management (Collection Permit) (Amendment) Regulations 2016 (SI 24 of 2016), Article 2(a)

SCHEDULE 1. Recyclable Kerbside Waste		
Paper	Aluminium cans	Plastic Bottles (PET 1)
Newspapers	Drink cans	Mineral bottles
Magazines	Soda & beer cans	Water bottles
Junk mail		Mouthwash bottles
Envelopes	Steel cans	Salad dressing bottles
Paper	Pet food cans	
Phone books	Food cans	Plastic Bottles (HDPE2)
Catalogues	Biscuit tins	Milk bottles
Tissue boxes	Soup tins	Juice bottles
Sugar bags		Cosmetic bottles
Calendars	Cardboard	Shampoo bottles
Diaries	Food boxes	Household cleaning bottles
Letters	Cereal boxes	Laundry detergent bottles
Computer paper	Kitchen towel tubes	Window Cleaning bottles
Used beverage & juice cartons	Parcel boxes	Bathroom bottles
Milk cartons		
Egg boxes	Plastic Pots, Trays & Tubs	
Holiday brochures	Yogurt pots	
Paper potato bags	Margarine tubs	
	Rigid food trays	
	Liquid soap containers	
	Fruit trays/cartons	

Residual Household Kerbside Waste. A definition of residual household kerbside waste was added into the Collection Permit Regulations in 2016⁷⁰. The following definition is based on this wording, with the reference to biodegradable garden waste being necessary so that the collection of this material is not restricted by any later element of the bye-law. The phrase “or by these bye-laws” is needed when a bye-law is used to extend the catchment of a food waste collection service (see below):

“residual household kerbside waste” means the fraction of household kerbside waste remaining after that waste has been separated from the fractions of:

(a) recyclable household kerbside waste,

(b) food waste where food waste is required to be segregated under the national legislation on food waste or by these bye-laws, and

(c) if subject to separate collection by an authorised waste collector, biodegradable garden waste;

Waste Electrical and Electronic Equipment. Whether Waste Electrical and Electronic Equipment (WEEE) needs to be defined is left to readers to decide. The term is only used a couple of times in the template below, where WEEE is forbidden from being placed with household waste. The ordinary English sense conveyed by the term may well be sufficient without any legal meaning being necessary – it is generally understood what electrical goods comprise. However, if a definition is

⁷⁰ By the Waste Management (Collection Permit) (Amendment) Regulations 2016 (SI 24 of 2016), Article 2(a)

needed, then that contained in the European Union (Waste Electrical and Electronic Equipment) Regulations 2014 could be used⁷¹.

Miscellaneous Definitions. In order to keep the list of definitions to a minimum, it is suggested that more technical definitions that would not normally be subject to dispute are listed in the following manner:

Unless the contrary is indicated, for the avoidance of doubt and in accordance with Section 19 of the Interpretation Act 2005, the definitions in the Waste Management Act 1996 apply to these by-laws, including to the following terms:

“facility”, “disposal”, “hazardous waste”, “premises”, “recovery”, “recycling”, “separate collection”, “waste”, “waste producer”

In the definition above, the reference to Section 19 of the Interpretation Act is included to ensure that the meaning of this provision is absolutely clear, which is that a word in this bye-law⁷² has the same meaning as in the WMA, which is the “parent” of a waste presentation bye-law made under Section 35 of that Act.

4.2.9. 2. Obligation to Participate in a Waste Collection Service

The following text restricts householders to one of only three options for the management of their household kerbside waste. Such waste can be:

- Presented to an authorised waste collector; or
- Placed in someone else’s waste receptacle under a bin-sharing arrangement – but only with the consent of the person who has control of that receptacle; or
- Delivered directly by the householder to an authorised waste facility such as a civic amenity site.

Accordingly, a person who, for example, dumps householder kerbside waste or burns it would not be compliant with this element of a waste presentation bye-law.

The final part of this bye-law requires records be retained by the householder of the transactions undertaken. These records are essential to the effective working of this bye-law, as enforcement would be very difficult in the absence of a provision requiring them to kept.

(a) Subject to paragraph (b), household kerbside waste that arises from the premises where such waste is produced shall not be presented to any person other than to an authorised waste collector.

(b) Paragraph (a) does not apply where such waste:

(i) is deposited in an appropriate waste container provided under a contract by an authorised waste collector to another person for the management of that waste and where that other person has consented to the receipt of that waste, or

(ii) is delivered directly by the holder to an authorised waste facility.

(c) Documentary evidence, such as receipts, statements or other proof of payment, demonstrating compliance with this bye-law shall be presented to an authorised person within a time specified in a written request from either that person or from another authorised person employed by XX County Council.

4.2.10. 3. Maintenance and Management of Waste Containers

Often bye-laws require wheelie bins and other receptacles be adequately maintained. The following wording is suggested, with this applying to both commercial and household waste (covered by the term “kerbside waste”) that is regularly collected:

⁷¹ See SI 149 of 2014, Regulation 3

⁷² Section 19 of the Interpretation Act refers to “statutory instruments” in this context, with this term being defined in Section 2(1) as including a bye-law

Containers used for the presentation of kerbside waste shall be maintained in such condition and state of repair that the waste placed therein will not be a source of nuisance or litter. Waste shall not be presented in a container where:

- (a) the wheels or lid have been removed or damaged, or*
- (b) the container is damaged to such an extent that it is not able to contain the waste without spillage, is otherwise unfit for the purpose for which it was designed or is not capable of being conveniently emptied.*

Traditionally, waste presentation bye-laws have also forbidden holders from placing waste in a container in a way that damages it. It is considered that this requirement is an anachronism since the withdrawal of local authorities from supplying waste collection services. Instead, the correct use of containers can now be regarded as a matter between the waste producer and the service provider. Similarly, there seems no need for a bye-law to require that stolen containers be replaced, as the collector should not generally handle waste presented in sacks or other containers. Again, this is a matter for the service provider.

4.2.11. 4. Location for Container Storage

One of the key purposes of many waste presentation bye-laws is to ensure that waste containers do not obstruct the public highway, particularly on non-collection days. Again, this applies to both household and commercial waste:

Other than on the day before and the designated waste collection day, containers used for the presentation of kerbside waste shall be held within the curtilage of the premises where the waste is produced. They shall not be stored on a roadway, footway, footpath or any other public place unless the location has been expressly authorised in writing by an authorised person.

While the Roads Act gives definitions of “footpath”, “footway” or “roadway”⁷³, it is considered that the context of what is said in the above draft bye-law – particularly the use of the inclusive phrase “or any other public place” – is sufficient for these terms not to need to be defined.

Whether there is a need for the final words “unless the location has been expressly authorised in writing by an appointed person” is dependent on whether this additional flexibility is really necessary.

4.2.12. 5. Use of Containers on Collection Day

Most waste presentation bye-laws dictate how waste containers are to be deployed immediately before and after the allotted time for collection. The wording below is suggested to cover the presentation of household waste in wheelie bins. Paragraph (b) allows for instances where a mixture of wheelie bins and refuse sacks are still being used, with the term “designated bag collection area” referring to any area designated by a local authority under Article 20 of the Collection Permit Regulations:

- (a) Subject to paragraph (b), household kerbside waste shall only be presented for collection in an appropriate waste container. The container shall not be over-loaded and the lid shall be securely closed. No waste shall be presented on the top of the lid or adjacent to the waste container.*
- (b) Paragraph (a) shall not apply where waste is collected in bags or sacks in an area designated by XXX County Council as a designated bag collection area.*

4.2.13. 6. Collection Times and Container Removal

Times when containers can be put out for collection are often specified in bye-laws⁷⁴. The following wording covers, via the term “kerbside waste”, both commercial and household waste:

⁷³ Roads Act, Section 2(1)

⁷⁴ The amended Waste Management (Collection Permit) Regulations 2007 specify collection times that should feature in waste collection permits authorising the collection of household kerbside waste, albeit that these can varied with the

Kerbside waste presented for collection shall not be presented for collection earlier than XX.00pm on the day immediately preceding the designated waste collection day.

Alternatively:

(a) Subject to paragraph (b), kerbside waste presented for collection shall not be presented for collection earlier than XX.00 pm on the day immediately preceding the designated waste collection day;

(b) In XX [eg a designated city or town centre area], the prescribed time for kerbside waste to be presented shall be not before XX.00 pm on the day immediately preceding the designated waste collection day.

Times when containers can be removed typically feature in most bye-laws, with the following wording being suggested:

All containers used for the presentation of kerbside waste and any uncollected waste shall be removed from any roadway, footway, footpath or any other public place no later than XX:00am on the day following the designated waste collection day, unless an alternative arrangement has been approved in accordance with bye-law XX [see above].

It should be noted that the wording above refers to “containers” and not to “appropriate waste containers”. This is in order to ensure that all containers, including those that are not “appropriate waste containers” are removed. For example, some producers of commercial waste may use the old-style paladins – which do not fall within the definition of “appropriate waste container” – and these also need to be subject to this bye-law.

Care is needed about being overly-specific in a bye-law on how commercial waste is to be handled, as not all of it will be placed in a container or refuse sack. An example is segregated cardboard, which is generally bundled and tied up with string or tape.

4.2.14. 7. Prohibited Waste Types

While a separate wording below covers the segregation of waste, it may be desirable for certain waste types to be prohibited from being placed out for collection:

Household waste⁷⁵ that comprises hazardous waste or waste electrical and electronic equipment shall not be placed in an appropriate waste container.

However, care should be taken to ensure that a provision of this nature does not overly restrict the collection of some common waste types that may be defined by the statute as being hazardous waste. For example, infectious waste derived from a nursing home may fall into the WMA's definition of household⁷⁶ or commercial waste⁷⁷.

Some bye-laws have also banned the placing of glass bottles and jars into an appropriate waste container. Whether this is necessary or desirable is a matter for individual local authorities, as a glass collection service is offered by some collectors.

4.2.15. 8(a). Segregation of Household Waste and Contamination Prevention.

Bye-laws 8(a) and 8(b) are presented here as alternatives, **with the result that only one of these wordings should be used**. Bye-law 8(b) builds on what is said in Bye-law 8(a), containing additional provisions relating to the desired geographical extent of a food waste collection service.

consent of the enforcement authority (see amended Article 20(2)(g)(i)X(vi) and (vii), as inserted by the Waste Management (Collection Permit)(Amendment)Regulations 2016 (SI 24 of 2016))

⁷⁵ The restriction of this bye-law to household waste recognises that commercial waste such as glass arising from pubs and restaurants may be collected in wheelie bins and so on

⁷⁶ WMA, Section 5(1): “‘household waste’ means waste produced within the curtilage of a building or self-contained part of a building used for the purposes of living accommodation”

⁷⁷ WMA, Section 5(1): “‘commercial waste’ means waste from premises used wholly or mainly for the purposes of a trade or business or for the purposes of sport, recreation, education or entertainment but does not include household, agricultural or industrial waste”

The first part of both Bye-laws 8(a) and 8(b) is intended to ensure the on-going segregation of separate waste streams in order to increase recycle quality, with the second paragraph deterring contamination. These elements do not extend to commercial waste in order to avoid potentially unlawful overlaps with the European Union (Packaging) Regulations 2014⁷⁸.

It is generally desirable that household waste is segregated into the three fractions of residual waste, dry recyclable waste and food waste. However, the point has been made above that national legislation applies to household food waste. As this already includes obligations about separation and segregation, this bye-law does not duplicate these requirements.

Accordingly, it is suggested that a bye-law be made to require the segregation of dry recyclable waste from residual waste, with this wording being supplemented by an advisory note – which does not form part of the bye-law – to the effect that the Household Food Waste Regulations also apply. The inclusion of this note clarifies this matter and avoids any confusion about the status of any food waste collection service within the bye-law.

The second paragraph in Bye-laws 8(a) and 8(b) addresses the problematic issue of contamination. It applies to both recyclable kerbside household waste and also to food waste. Its extension to cover the contamination of food waste is included due to the wording of Article 6 of the Household Food Waste Regulations (the issue of allowable overlaps between bye-laws and the Food Waste Regulations is discussed further in Appendix 2):

(a) Household kerbside waste shall be segregated into residual household kerbside waste and recyclable household kerbside waste, with these fractions being stored separately. Any such separated recyclable waste shall not be deposited into a container designated for residual household kerbside waste and no such residual waste shall be deposited into a container designated for recyclable household kerbside waste.

(b) Neither recyclable household kerbside waste nor food waste arising from households shall be contaminated with any other type of waste before or after it has been segregated.

Note: while the remainder of this paragraph does not form part of these bye-laws, there are separate legal requirements mandating householders to segregate food waste and keep it separate. These are contained in the European Union (Household Food Waste and Bio-Waste) Regulations 2015. Food waste also may be subject to home composting or be delivered by a householder to an authorised waste facility.

As it is likely that a number of households will not avail of a waste collection service, the wording above does not require segregated waste storage “prior to collection”. It is therefore applicable to both householders serviced by authorised waste collectors and those that wish to make their own arrangements. This degree of potential flexibility should be borne in mind by readers who wish to develop their own wording.

While it is undesirable that a bye-law of this type duplicates what is said in the Household Food Waste Regulations, it can extend their scope. How that is to be done is set out in the next section, which also builds upon the wording presented above.

4.2.16. 8(b). Segregation of Household Waste, Contamination Prevention and Extending Food Waste Collection.

This Bye-law contains identical provisions to Bye-law 8(a) in relation to waste segregation and contamination prevention. However, the contents is embellished by additional requirements that extend the geographical extent of the Household Food Waste Regulations. The provisions on segregation and contamination are explained above in relation to Bye-law 8(a). As indicated at the start of that discussion, Bye-laws 8(a) and 8(b) are presented here as alternatives.

⁷⁸ See SI 282 of 2014, Regulation 5

As mentioned in an earlier chapter of this guidance and explained more fully in Appendix 2, local authorities are entitled to supplement specified elements of the Household Food Waste Regulations with provisions contained in a bye-law. For example, it might be considered desirable to increase the geographical spread of food waste collection to settlements below the agglomeration threshold in the Regulations of 500 persons. Alternatively, it may be appropriate to increase the take-up of a food waste collection service to properties that are embraced by a collection round serving an agglomeration of more than 500 persons but are not actually situated within that agglomeration. Moreover, using a bye-law to supplement the requirements of the Household Food Waste Regulations may be a useful way of clarifying exactly what the term “agglomeration” means in those Regulations.

Rather than use a population figure to clarify the geographical scope of any additional obligations that may apply to those not currently caught by the Household Food Waste Regulations, it is preferable that this is addressed by mapping⁷⁹. This approach ensures that all parties are clear as to the exact boundaries of where the food waste collection is mandatory. Accordingly, the wording used above in the previous section to this guidance can be modified and extended as follows:

(a) Subject to paragraph (c), household kerbside waste shall be segregated into residual household kerbside waste and recyclable household kerbside waste, with these fractions being stored separately. Any such separated recyclable waste shall not be deposited into a container designated for residual household kerbside waste and no such residual waste shall be deposited into a container designated for recyclable household kerbside waste.

(b) Neither recyclable household kerbside waste nor food waste arising from households shall be contaminated with any other type of waste before or after it has been segregated.

(c) where a dwelling is situated within one of the areas referred to in Schedule XX and delineated by the boundaries on the maps shown in Schedule XX, household kerbside waste shall be segregated into residual household kerbside waste, recyclable household kerbside waste and food waste, with these fractions being stored separately. Such separated recyclable waste shall not be deposited into a container designated for residual household kerbside waste or for food waste; separated food waste shall not be deposited into a container designated for residual household kerbside waste or recyclable household kerbside waste.

In respect of the above wording, it should be noted that paragraph (c) does not preclude the use of home composting for food waste, nor does it prevent a householder delivering food waste to an authorised waste facility directly. Again, readers wishing to modify the wording proposed here will need to ensure that the wording they develop does not preclude these practices.

4.2.17.9. Additional Provisions for Householders not availing of a Kerbside Collection Service

As it is likely that a number of households will not avail of a regular collection service, a bye-law may be needed to strengthen the requirements on waste presentation. However, readers need to bear in mind certain relevant matters in this respect.

Firstly, there is the reality that the WMA already contains provisions that have the objective of ensuring that authorised waste collectors and waste facilities are used for the management of household waste. For example, as explained in Appendix 2, when waste is to be moved off-site, Section 32 of the WMA requires householders to either use an authorised waste collector or deliver their waste directly to appropriately authorised disposal or recovery infrastructure.

⁷⁹ An example of the use of mapping can be found in the waste presentation bye-laws of Sligo County Council: http://www.sligococo.ie/media/CouncilDownloads/Environment/WasteByeLaws2013/WasteManagementByeLaws2013_AL.pdf.

Secondly, Section 35 of the WMA is clear that it only allows bye-laws to be made in relation to waste presentation. That Section does not mandate bye-laws being made to affect activities that take place later in a waste life-cycle. Consequently, if a bye-law is to extend in this direction, it will need to be made additionally under the LGA, with this being made clear in its preamble. **Accordingly, it is essential that, should the wording being proposed in the next paragraph be used, the preamble to the bye-law additionally makes clear that the bye-law is made via powers contained in the LGA and Section 35 of the WMA.**

The following wording is suggested as a way of clarifying the obligations of non-participants to a regular waste collection service. No reference is made here to the Household Food Waste Regulations for the reason that they contain their own self-standing obligations. While readers may wish to include provisions on residual waste here, it is difficult to produce a wording that neither overlaps nor duplicates what is said in Section 32 of the WMA. Similarly, those desiring a provision that precludes the placing of residual waste into litter bins should be aware that this practice is already forbidden by the Litter Pollution Act⁸⁰.

Where an occupier of a dwelling is not participating in a household kerbside waste collection service, that person shall ensure that:

- (a) recyclable household kerbside waste segregated in compliance with bye-law XX is taken to an authorised waste facility and is deposited there in a manner that allows it to be recycled or otherwise recovered,*
- (b) residual household kerbside waste segregated in compliance with bye-law XX is taken to an authorised waste facility, and*
- (c) documentation, including receipts, is obtained and retained for a period of no less than one year to provide proof that any waste removed from the premises has been managed in a manner that conforms to these bye-laws, to the Waste Management Act and, where such legislation is applicable to that person, to the European Union (Household Food Waste and Bio-Waste) Regulations 2015.*

Documentation required to be obtained and retained by this bye-law, or copies of it, shall be presented to an authorised person within a time period specified in a written request from either that person or from another authorised person employed by XX County Council.

4.2.18. 10. Provisions affecting Multi-user Buildings, Apartment Blocks etc

A bye-law can be a useful mechanism to ensure that there is adequate waste segregation infrastructure available to residents of apartment blocks and/or to occupants of commercial units in shopping centres. It can assist by clarifying where the responsibility lies for the provision of suitable receptacles for segregated waste and for the engagement of service providers. Provision in this respect is most readily made where a premises is under the control of a management company, as this is a definable legal body which can be allocated responsibility; however, in other cases, a landlord or other entity with control over the building may need to be singled out.

The draft bye-law below sets out a number of provisions that relate to these aspects of commercial waste management. Readers are again warned about the limitations of Section 35 of the LGA and that, where additional provisions are required to have a rather wider focus than just waste presentation, these will need to be made via powers contained in the LGA:

A management company, or an other person⁸¹ if there is no such company, who exercises control and supervision of residential and/or commercial activities in multi-unit developments, mixed-use developments, flats or apartment blocks, combined living/working spaces or other similar complexes shall ensure that:

⁸⁰ Litter Pollution Act, Section 3(3)

⁸¹ Some existing bye-laws use the phrase “where a management company exists”. This seems unnecessary for the reason that, if no such company exists, then the requirements that follow do not apply in any case. This is why the words “or another person” have been added here to catch instances where no management company as such exists but where some other arrangement for bin supervision is taking place (“a person” can be a company, partnership, individual and so on: see the Interpretation Act 2005).

- (a) separate receptacles of adequate⁸² size and number are provided for the proper segregation, storage and collection of **recyclable household kerbside waste** and **residual household kerbside waste**
- (b) additional receptacles are provided for the segregation, storage and collection of food waste where this practice is a requirement of the **national legislation on food waste**,
- (c) the receptacles referred to in paragraphs (a) and (b) are located both within any individual apartment and at the place where waste is stored prior to its collection,
- (d) any place where waste is to be stored prior to collection is secure, accessible at all times by tenants and other occupiers and is not accessible by any other person other than an **authorised waste collector**,
- (e) written information is provided to each tenant or other **occupier** about the arrangements for waste separation, segregation, storage and presentation prior to collection,
- (f) an authorised **waste collector** is engaged to service the receptacles referred to in this section of these bye-laws, with documentary evidence, such as receipts, statements or other proof of payment, demonstrating the existence of this engagement being retained for a period of no less than two years. Such evidence shall be presented to an **authorised person** within a time specified in a written request from either that person or from another **authorised person** employed by XX County Council,
- (g) receptacles for **kerbside waste** are presented for collection on the **designated waste collection day**,
- (h) adequate⁸³ access and egress onto and from the premises by waste collection vehicles is maintained.

It should be noted that the wording proposed above does not use the term “authorised waste container”, as this draft bye-law applies as much to receptacles within apartments to those situated in common areas. Moreover, not all of these types of buildings will be supplied with wheelie bins that meet the requirements of that definition. As mentioned previously, old-style paladins may still be in use.

While the Multi-Unit Developments Act 2011 contains some potentially useful definitions – including “commercial unit”, “mixed use multi-development”, “multi-unit development” and “residential unit” – it is considered adequate for the purposes of this bye-law to leave these terms undefined, and thus rely on their ordinary English meaning. It is clear from the context of these and other words at the start of the wording proposed above that the items listed are simply examples of buildings caught by this provision, which is also confirmed by the use of the phrase “or other similar complexes”.

4.2.19. 11. Interference with Orderly Waste Collection

It may be desirable that a waste presentation bye-law mandates that neither containers nor the general refuse collection service is disrupted or interfered with by third parties. Problems of this nature may arise on an individual basis or from more organised and widespread protest-type activities.

A bye-law addressing these matters appears particularly useful for the reason that, as noted in an earlier chapter, it can be enforced not only by local authority staff but also by the Gardai, with the power of arrest being conferred on the Gardai where non-compliance continues.

The following wording is aimed at addressing interference with both a waste collector’s and a local authority’s staff, with the latter being included to address local authority clean-ups and similar activities:

⁸² This wording would seem to be an instance where it is difficult to avoid the use of the rather imprecise term “adequate”

⁸³ Again, the use of the word “adequate” seems unavoidable here

Employees of an authorised waste collector or of XX County Council involved in the removal of waste shall not be wilfully obstructed, disturbed, interrupted or otherwise interfered with in the course of their engagement in waste collection.

Similarly, tampering with waste containers can be addressed:

Unless the following activities have been subject to approval by the authorised waste collector responsible for the container⁸⁴, a microchip attached to an appropriate waste container or any non-time expired identification mark, badge, label, tag, disc or other thing attached to that container or to a refuse bag or to another container shall not be removed, damaged, destroyed, tampered with or otherwise rendered inoperative.

In addition, a bye-law can also outlaw two other practices. The first concerns so-called free-loading, whereby by a neighbour adds waste to someone else's container without permission; the second relates to third parties throwing waste directly into a collection vehicle. In this instance, the subject of this prohibition relates to "waste", not "kerbside waste", thereby forbidding the interference with wheelie bins, skips and so on:

Waste stored or presented for the purposes of collection shall not be:

- (a) supplemented by waste added by another person unless that person has been authorised to do so by the person storing or, as the case may be, presenting the container of waste for collection*
- (b) otherwise interfered with by another person.*

Waste shall not be deposited into a refuse collection vehicle by any person other than by an employee of an authorised waste collector or a XX County Council.

4.2.20. 12. Additional provisions for Commercial Waste

Those drafting a bye-law may wish to make some separate provision for the presentation of commercial waste. However, it should be noted that the section above which covers multi-user developments already addresses some aspects of commercial waste presentation. Moreover, where the individual wordings of this bye-law template uses the word "waste" on its own, the requirements specified apply to both household and commercial waste.

One aspect of commercial waste management that a local authority may wish to influence by a bye-law is to forbid such waste being deposited in bring-banks. However, this matter seems to one that is rather different from the subject matter of Section 35 of the WMA and how waste is being presented prior to collection. **This means that the separate bye-law making powers under the LGA will have to be deployed to enact a provision of this nature**, with the preamble to the bye-law being clear that its content emanates from both Acts, not just from the WMA.

Subject to what is said above, the following wording is suggested:

Commercial waste shall not be deposited at any bring facility provided by or on behalf of XX County Council.

Care is needed to ensure that the above wording is appropriate in all cases. For example, commercial waste may be accepted at bring-banks located at civic amenity facilities, should that practice be allowed. In this instance, it is suggested that the actual definition of "bring facility" be adjusted to exclude those located at civic waste sites (see earlier). Moreover, some supermarkets may operate bring facilities which are not "provided by" the local authority. Therefore readers may wish to amend the wording proposed above if such local circumstances are applicable.

Finally, it is also important readers recognise that a waste presentation bye-law affecting commercial waste should not overlap with the European Union (Packaging) Regulations 2014 and the Commercial Food Waste Regulations. However, if a section must be included on commercial

⁸⁴ The phrase "responsible for the container" is included to outlaw other collectors tampering with containers that are not their property

waste, then it may be appropriate to flag the existence of the Packing and Commercial Food Waste Regulations, but only as an advisory note:

While the remainder of this paragraph does not form part of these bye-laws, in accordance with the European Union (Packaging) Regulations 2014 (SI 282 of 2014), commercial waste shall be segregated into single streams of aluminium, fibreboard, glass, paper, plastic sheeting/film, steel and wood. The Waste Management (Food Waste) Regulations (SI 508 of 2009) require that food waste from specified commercial sources, such as shops, canteens, restaurants and so on, be segregated and kept separate prior to its collection in order to facilitate its recycling and recovery.

4.2.21. 13. Enforcement Provisions/Fixed Payment Notices

It has been noted earlier that there is no need for an actual bye-law to state that non-compliance is an offence: a breach of a bye-law is already an offence under the LGA. Nor is it necessary to repeat virtually all of the other powers conferred by the LGA on an authorised person of a local authority which relate to the enforcement of a bye-law. So there is no need for a bye-law to indicate that the obstruction of an authorised person is an offence, that a person's name and address can be demanded, and so on. If it is considered desirable that readers of a bye-law are made aware of these, enforcement-related, elements of the LGA, then the place for this explanation is in an explanatory note that does not form part of the text of the bye-law itself.

There are, however, some exceptions to this general rule:

- While the maximum fine for non-compliance with a bye-law is set by the LGA and has been increased by the Fines Act 2010 to €2500⁸⁵, a local authority is given discretion to set a lesser penalty. This penalty can relate to either non-compliance with all parts of a bye-law or to particular elements of it. When such a lesser penalty is to be set, then the actual bye-law is required to indicate what it comprises⁸⁶.
- The continued contravention of a bye-law by a person after his or her conviction can result in a daily fine. Again, the maximum fine is set by the LGA – being subsequently increased by the Fines Act to no more than €500⁸⁷ – but a local authority is allowed to set a smaller penalty if it so wishes. Should a lesser penalty is to be imposed, the bye-law must state the amount.
- Where a local authority has elected to deploy the option of a fixed payment notice to address bye-law contravention, the LGA requires that this must be indicated in a bye-law⁸⁸. The amount of the fixed payment must be specified, which must be no more than €75⁸⁹. The bye-law is also required to state the period within which the notice must be paid to avoid prosecution. The specified start date of this time period should be the date of the notice – not the date it was served on the person – as this is what is specified in the format of the notice prescribed by the Local Government (Bye-laws) Regulations (see Chapter 2).

Should a local authority be minded to include discretionary provisions setting allowable maximum fines and making provision for fixed payment notices, the following model wording is proposed:

- Subject to paragraph (b), a person found guilty of the contravention of these bye-laws shall be liable to the penalty of no more than €XXX [penalty cannot exceed €2,500].*
- Paragraph (a) shall not apply where a fixed payment notice has been issued in accordance with the Local Government Act 2001 (Bye-Laws) Regulations and where a full payment has been made by the person subject to that notice.*
- Where the contravention of any provision of these bye-laws continues after a person has been subject to the fine referred to in paragraph (a), a person found guilty of an offence relating to this continued contravention shall be liable to a penalty of no more*

⁸⁵ Formerly, the amount prescribed by the LGA was €1500, which is a now so-called Class C fine in accordance with the Fines Act 2010

⁸⁶ See LGA, Section 199(3)(i) and its cross-reference to Section 205(1).

⁸⁷ Formerly the amount was €100, which constitutes a Class E fine under the Fines Act 2010

⁸⁸ LGA, Section 206(1)

⁸⁹ Local Government Act 2001 (Bye-Laws) Regulations 2006 (SI 362 of 2006), Article 6

than €XX [penalty cannot exceed €500]per day for each day the contravention continues after that conviction.

- (d) A fixed payment notice may be issued requiring a person found to have contravened or be contravening these bye-laws to make a payment of €XX [penalty cannot exceed €75]. Payment of this notice shall be made within XX days of the date of the notice in order to avoid the person subject to this notice being prosecuted for the contravention of these bye-laws.*

It also should be noted that the fine for the obstruction of an authorised officer or a member of the Gardai is set by the LGA and, due to the wording the LGA uses, cannot be reduced by a bye-law⁹⁰. This rule also applies to any other offences committed in respect of Section 204 of the LGA, such as a person refusing to give his or her name and address. Accordingly, the maximum fine in such instances is always €2,500⁹¹. This information is specified in the LGA and does not need to feature in a bye-law.

⁹⁰ See LGA, Section 204(3)(c), the wording of which can be contrasted to LGA, Sections 205(1) or 206(1)

⁹¹ Formerly €1500 under the LGA, but now a Class C fine under the Fines Act 2010

APPENDIX 1 – DRAFT WASTE PRESENTATION BYE-LAW TEMPLATE

For ease of reading, the various elements of the template which have been described in Chapter 4 are reproduced below without the surrounding explanatory material. However, readers should refer to that chapter in order to understand the reasoning behind the different elements and, where alternative wordings are proposed, the circumstances where one might be more applicable than the other.

As explained earlier, all of the following wordings are discretionary, with the **grey shading** indicating that a definition applies to a particular term being used. While paragraph numbering is included below, the exact numbering will be dependent on whether all sections are used by individual local authorities.

Title

County of XXXX (Segregation, Storage and Presentation of Household and Commercial Waste) Bye-laws, 20XX [year]

Statutory Basis of the Bye-law

XXX County Council, pursuant to Section 35(1) of the Waste Management Act 1996 and Section 199(1) of the Local Government Act 2001 and in accordance with Part 19 of the Local Government Act 2001, hereby makes the following bye-laws:

Citation

These bye-laws may be cited as the County of XXXX (Segregation, Storage and Presentation of Household and Commercial Waste) Bye-laws, 20XX [year]

Date of Commencement

These bye-laws shall enter into force on the XX of XX 20XX.

Or:

These bye-laws shall enter into force on the XX, of XX 20XX, with the exception of bye-laws XXX and XXX which shall commence on XX of XX 20XX and bye-law XX which shall commence on the XX of XX 20XX.

Geographical area of application

These bye-laws shall apply to the functional area of XX County Council.

Or:

These bye-laws shall apply to the population centres within the functional area of XX County Council that are listed in Schedule YY and whose boundaries are shown on the maps in Schedule XX.

Revocations

These bye-laws repeal the XXX[full and correct title]bye-laws dated 20XX.

Scope of this Bye-law: Waste Types and Controlled Activities

*Unless the following bye-laws indicate to the contrary, these bye-laws apply to both **household** and **commercial waste**.*

1. Interpretation and Definitions

In these bye-laws, these words and phrases have the following meanings:

*“appropriate waste container” means a waste container suitable for the collection of **kerbside waste** and which is a receptacle that complies with the standards for mobile waste containers (wheeled bins) which are specified in the CEN standard entitled IS EN 840 (Parts 1-6;*

“authorised person” means a person authorised by XX County Council in accordance with Section 204 of the Local Government Act 2001 or a member of an Garda Síochána;

“authorised waste collector means a person authorised in accordance with Section 34 of the Waste Management Act, including any regulations made thereunder, for the collection of the type of waste being collected;

“authorised waste facility” means a waste recovery or disposal facility:

(a) which is authorised under the Waste Management Act, under the Environmental Protection Agency Act, under any regulations stemming from either of these Acts or under regulations made under the European Communities Act 1972 relating to the control of waste management activities; and

(b) where the authorisation of that facility permits the acceptance of the waste being referred to in the particular part of these bye-laws;

“bring facility” means an authorised waste facility comprising one or more purpose-built receptacles in which segregated recyclable household waste may be deposited by the public for the purposes of the recovery of that waste;

“commercial kerbside waste” shall mean commercial waste that is kerbside waste.

“commercial waste” means waste from premises used wholly or mainly for the purposes of a trade or business or for the purposes of sport, recreation, education or entertainment but does not include household, agricultural or industrial waste;

“designated waste collection day” shall mean the day designated by an authorised waste collector for the collection of kerbside waste, and different days may be designated for commercial kerbside waste and household kerbside waste;

“designated bag collection area” is an area designated by XXX County Council in accordance with Article 20 of the Waste Management (Collection Permit) Regulations 2007 where waste can be collected in bags or sacks;

“fixed payment notice” means a notice provided for by these bye-laws and by Section 206 of the Local Government Act 2001 which is issued to a person in respect of a contravention of these bye-laws and which, as an alternative to prosecution, requires that person to pay a specified fixed payment by a specified time;

“food waste” means waste food that is household waste or, as the case may be, commercial waste, and shall have the same meaning as that applying to Regulation 7 of the Waste Management (Food Waste) Regulations 2009 (SI 508 of 2009) or, as the case may be, to Regulation 6 of the European Union (Household Food Waste and Bio-Waste) Regulations 2015 (SI 430 of 2015);

Food Waste Regulations: see “national legislation on food waste”;

“holder” means the waste producer or the person who is in possession of the waste and “holder of commercial waste” and “holder of household waste” shall be interpreted accordingly;

“household kerbside waste” means household waste that is kerbside waste;

“household waste” means waste produced within the curtilage of a building or self-contained part of a building used for the purposes of living accommodation;

“kerbside waste” means that fraction of commercial or household waste presented for collection from a premises and which is to be collected by an authorised waste collector, with the exception of wastewater, construction and demolition waste and bulky waste more suitable for collection in a skip or other such receptacle (including heavy waste such as waste furniture, carpets and rubble), as well as hazardous waste and other streams of household or commercial waste which are required to be collected in another appropriate manner, such as waste electrical and electronic equipment and waste batteries;

“national legislation on food waste” means the Waste Management (Food Waste) Regulations 2009 (SI 508 of 2009) and the European Union (Household Food Waste and Bio-Waste) Regulations 2015 (SI 430 of 2015);

“occupier” includes, in relation to any premises, the owner, a lessee, any person entitled to occupy the premises and any other person having, for the time being, control of the premises;

“person” shall, for the purposes of these bye-laws, include an individual, company (whether limited, incorporated or not), partnership, co-operative or other similar body within the meaning of the definition contained in the Interpretation Act 2005;

“recyclable household kerbside waste” means the fraction of household kerbside waste that comprises recyclable household waste and which includes the materials set out in Schedule 1⁹²;

“residual household kerbside waste” means the fraction of household kerbside waste remaining after that waste has been separated from the fractions of:

- (a) recyclable household kerbside waste,
- (b) food waste where food waste is required to be segregated under the national legislation on food waste or by these bye-laws, and
- (c) if subject to separate collection by an authorised waste collector, biodegradable garden waste.

Unless the contrary is indicated, for the avoidance of doubt and in accordance with Section 19 of the Interpretation Act 2005, the definitions in the Waste Management Act 1996 apply to these by-laws, including to the following terms:

“facility”, “disposal”, “hazardous waste”, “premises”, “recovery”, “recycling”, “separate collection”, “waste”, “waste producer”.

Where it is necessary, the Interpretation Act 2005 shall apply in construing any provision of these bye-laws.

2. Obligation to Participate in a Waste Collection Service

“(a) Subject to paragraph (b), household kerbside waste that arises from the premises where such waste is produced shall not be presented to any person other than to an authorised waste collector.

(b) Paragraph (a) does not apply where such waste:

- (i) is deposited in an appropriate waste container provided under a contract by an authorised waste collector to another person for the management of that waste and where that other person has consented to the receipt of that waste, or
- (ii) is delivered directly by the holder to an authorised waste facility.

(c) Documentary evidence, such as receipts, statements or other proof of payment, demonstrating compliance with this bye-law shall be presented to an authorised person within a time specified in a written request from either that person or from another authorised person employed by XX County Council.

3. Maintenance and Management of Waste Containers

Containers used for the presentation of kerbside waste shall be maintained in such condition and state of repair that the waste placed therein will not be a source of nuisance or litter. Waste shall not be presented in a container where:

- (a) the wheels or lid have been removed or damaged to such an extent that it is not able to contain the waste without spillage, is otherwise unfit for the purpose for which it was designed or is not capable of being conveniently emptied.

4. Location for container storage

Other than on the day before and the designated waste collection day, containers used for the presentation of kerbside waste shall be held within the curtilage of the premises where the waste is produced. They shall not be stored on a roadway, footway, footpath or any other public place unless the location has been expressly authorised in writing by an authorised person.

⁹² At the end of this appendix

5. Use of Waste Containers on Collection Day

(a) Subject to paragraph (b), household kerbside waste shall only be presented for collection in an appropriate waste container. The container shall not be over-loaded and the lid shall be securely closed. No waste shall be presented on the top of the lid or adjacent to the waste container.

(b) Paragraph (a) shall not apply where waste is collected in bags or sacks in an area designated by XXX County Council as a designated bag collection area.

6. Collection Times and Container Removal

Kerbside waste presented for collection shall not be presented for collection earlier than XX.00 pm on the day immediately preceding the designated waste collection day.

Or:

(a) Subject to paragraph (b), kerbside waste presented for collection shall not be presented for collection earlier than XX.00 pm on the day immediately preceding the designated waste collection day;

(b) In XX [eg a designated city or town centre area], the prescribed time for kerbside waste to be presented shall be not before XX.00 pm on the day immediately preceding the designated waste collection day.

All containers used for the presentation of kerbside waste and any uncollected waste shall be removed from any roadway, footway, footpath or any other public place no later than XX:00am on the day following the designated waste collection day, unless an alternative arrangement has been approved in accordance with bye-law XX [see above].

7. Prohibited Waste Types

Household waste that comprises hazardous waste or waste electrical and electronic equipment shall not be placed in an appropriate waste container for kerbside collection.

8(a). Segregation of Household Waste and Contamination Prevention

(a) Household kerbside waste shall be segregated into residual household kerbside waste and recyclable household kerbside waste, with these fractions being stored separately. Any such separated recyclable waste shall not be deposited into a container designated for residual household kerbside waste and no such residual waste shall be deposited into a container designated for recyclable household kerbside waste.

(b) Neither recyclable household kerbside waste nor food waste arising from households shall be contaminated with any other type of waste before or after it has been segregated.

Note: while the remainder of this paragraph does not form part of these bye-laws, there are separate legal requirements mandating householders to segregate food waste and to keep it separate. These are contained in the European Union (Household Food Waste and Bio-Waste) Regulations 2015. Food waste also may be subject to home composting or be delivered to an authorised waste facility.

8(a). Segregation of Household Waste, Contamination Prevention and Extending Food Waste Collection [alternative wording to Bye-law 8(a)]

(a) Subject to paragraph (c), household kerbside waste shall be segregated into residual household kerbside waste and recyclable household kerbside waste, with these fractions being stored separately. Any such separated recyclable waste shall not be deposited into a container designated for residual household kerbside waste and no such residual waste shall be deposited into a container designated for recyclable household kerbside waste.

(b) Neither recyclable household kerbside waste nor food waste arising from households shall be contaminated with any other type of waste before or after it has been segregated.

(c) where a dwelling is situated within one of the areas referred to in Schedule XX and delineated by the boundaries on the maps shown in Schedule XX, household kerbside waste shall be segregated into residual household kerbside waste, recyclable household kerbside waste and food waste, with these fractions being stored separately. Such separated recyclable waste shall not be deposited into a container designated for residual household kerbside waste or for food waste; separated food waste shall not be deposited into a container designated for residual household kerbside waste or recyclable household kerbside waste.

9. Additional Provisions for Householders not availing of a Kerbside Collection Service

Where an occupier of a dwelling is not participating in a household kerbside waste collection service, that person shall ensure that:

- (a) recyclable household kerbside waste segregated in compliance with bye-law XX is taken to an authorised waste facility and is deposited there in a manner that allows it to be recycled or otherwise recovered,
- (b) residual household kerbside waste segregated in compliance with bye-law XX is taken to an authorised waste facility, and
- (c) documentation, including receipts, is obtained and retained for a period of no less than one year to provide proof that any waste removed from the premises has been managed in a manner that conforms to these bye-laws, to the Waste Management Act and, where such legislation is applicable to that person, to the European Union (Household Food Waste and Bio-Waste) Regulations 2015.

Documentation required to be obtained and retained by this bye-law, or copies of it, shall be presented to an authorised person within a time period specified in a written request from either that person or from another authorised person employed by XX County Council.

10. Provisions affecting Multi-user Buildings, Apartment Blocks, etc

A management company, or an other person if there is no such company, who exercises control and supervision of residential and/or commercial activities in multi-unit developments, mixed-use developments, flats or apartment blocks, combined living/working spaces or other similar complexes shall ensure that:

- (a) separate receptacles of adequate size and number are provided for the proper segregation, storage and collection of recyclable household kerbside waste and residual household kerbside waste
- (b) additional receptacles are provided for the segregation, storage and collection of food waste where this practice is a requirement of the national legislation on food waste,
- (c) the receptacles referred to in paragraphs (a) and (b) are located both within any individual apartment and at the place where waste is stored prior to its collection,
- (d) any place where waste is to be stored prior to collection is secure, accessible at all times by tenants and other occupiers and is not accessible by any other person other than an authorised waste collector,
- (e) written information is provided to each tenant or other occupier about the arrangements for waste separation, segregation, storage and presentation prior to collection,
- (f) an authorised waste collector is engaged to service the receptacles referred to in this section of these bye-laws, with documentary evidence, such as receipts, statements or other proof of payment, demonstrating the existence of this engagement being retained for a period of no less than two years. Such evidence shall be presented to an authorised person within a time specified in a written request from either that person or from another authorised person employed by XX County Council,
- (g) receptacles for kerbside waste are presented for collection on the designated waste collection day,
- (h) adequate access and egress onto and from the premises by waste collection vehicles is maintained.

11. Interference with Orderly Waste Collection

- (a) *Employees of an authorised waste collector or of XX County Council involved in the removal of waste shall not be wilfully obstructed, disturbed, interrupted or otherwise interfered with in the course of their engagement in waste collection.*
- (b) *Unless the following activities have been subject to approval by the authorised waste collector responsible for the container, a microchip attached to an appropriate waste container or any non-time expired identification mark, badge, label, tag, disc or other thing attached to that container or to a refuse bag or to another container shall not be removed, damaged, destroyed, tampered with or otherwise rendered inoperative.*
- (c) *Waste stored or presented for the purposes of collection shall not be:*
- (i) *supplemented by waste added by another person unless that person has been authorised to do so by the person storing or, as the case may be, presenting the container of waste for collection*
 - (ii) *otherwise interfered with by another person.*
- (d) *Waste shall not be deposited into a refuse collection vehicle by any person other than by an employee of an authorised waste collector or a local authority*

12. Additional Provisions for Commercial Waste

Commercial waste shall not be deposited at any bring facility provided by or on behalf of XX County Council.

13. Enforcement Provisions/Fixed Payment Notices.

- (a) *Subject to paragraph (b), a person found guilty of the contravention of these bye-laws shall be liable to the penalty of no more than €XXX [penalty cannot exceed €2,500].*
- (b) *Paragraph (a) shall not apply where a fixed payment notice has been issued in accordance with the Local Government Act 2001 (Bye-Laws) Regulations and where a full payment has been made by the person subject to that notice.*
- (c) *Where the contravention of any provision of these bye-laws continues after a person has been subject to the fine referred to in paragraph (a), a person found guilty of an offence relating to this continued contravention shall be liable to a penalty of no more than €XX [penalty cannot exceed €500] per day for each day the contravention continues after that conviction.*
- (d) *A fixed payment notice may be issued requiring a person found to have contravened or be contravening these bye-laws to make a payment of €XX [penalty cannot exceed €75]. Payment of this notice shall be made within XX days of the date of the notice in order to avoid the person subject to this notice being prosecuted for the contravention of these bye-laws.*

SCHEDULE1. Recyclable Kerbside Waste		
Paper	Aluminium Cans	Plastic Bottles (PET 1)
Newspapers	Drink cans	Mineral bottles
Magazines	Soda & beer cans	Water bottles
Junk mail		Mouthwash bottles
Envelopes	Steel cans	Salad dressing bottles
Paper	Pet food cans	
Phone books	Food cans	Plastic Bottles (HDPE2)
Catalogues	Biscuit tins	Milk bottles
Tissue boxes	Soup tins	Juice bottles
Sugar bags		Cosmetic bottles
Calendars	Cardboard	Shampoo bottles
Diaries	Food boxes	Household cleaning bottles
Letters	Cereal boxes	Laundry detergent bottles
Computer paper	Kitchen towel tubes	Window cleaning bottles
Used beverage & juice cartons	Parcel boxes	Bathroom bottles
Milk cartons		
Egg boxes	Plastic Pots, Trays & Tubs	
Holiday brochures	Yogurt pots	
Paper potato bags	Margarine tubs	
	Rigid food trays	
	Liquid soap containers	
	Fruit trays/cartons	

APPENDIX 2 – DISCUSSION OF BYE-LAW MAKING POWERS, KEY LIMITATIONS AND RELATED MATTERS

Introduction

The purpose of this Appendix is to explain in more detail the legal context under which a waste presentation bye-law is to be made. As alluded to earlier, this discussion is necessary so that those involved in writing or approving a draft waste presentation bye-law do not overstep the mark by including elements that exceed what the legislation allows. While, as will be shown, a local authority's bye-law making powers are wide, they are very significantly capped by the need to recognise the Oireachtas as having primary responsibility for national legislation. This reality is now more important than ever given that, in recent years, those drafting waste legislation have turned their attention more towards the front end of a waste lifecycle, which includes prescribing requirements relating waste segregation and presentation prior to its collection. So there is now a need for additional caution about what now can lawfully feature in any waste presentation bye-law.

The content of this Appendix is structured in the following way. It starts by considering the LGA and its provisions which dictate bye-law content. This is then followed by a discussion of Section 35 of the WMA, where specific provision has been included for the making of a waste presentation bye-law. As the content of any waste bye-law is significantly constrained by the existence of other waste management legislation, the discussion of the LGA and WMA is followed by a summary account of what those limitations are and where overlaps should be avoided.

Having covered what is and is not now allowable in a waste presentation bye-law, the later sections of this Appendix contain additional material about the Interpretation Act 2005 and further guidance about waste presentation bye-law wording and enforceability.

Part 19 of the Local Government Act (1) – Bye-law making Powers

As explained in Chapter 2, the key provision that allows a waste presentation bye-law to be made is the LGA. While that Act itself is very lengthy, the bye-law making provisions are contained in a self-contained section, Part 19. At the time of writing, this part has not been amended, but it is desirable that the most up-to-date version of the LGA is consulted so that the reader is alerted to any relevant changes. Fortunately, the LGA is one of a number of national Acts that is regularly updated by the Law Reform Commission, with a full version being found on the Commission's website⁹³.

While the bye-law making powers contained in Part 19 of the LGA are wide-ranging, it is important that their content – and, particularly, their inherent limitations – is well-understood. If they are not, then either the bye-law as a whole or a part of it may be challengeable in legal proceedings as being *ultra vires*.

In essence, the *ultra vires* rule outlaws any elements of a bye-law that are outside the scope of the legislation that governs its production and, as such, are unlawful. Naturally, being unlawful, any such bye-law is open to challenge in legal proceedings and cannot be enforced. Accordingly, it is vital that the limitations to bye-law making powers are fully appreciated by all readers.

Purpose of Bye-laws under the LGA.

The general scope of a bye-law made by a local authority is set down in Section 199 of the LGA. The relevant text is shown in text box below. As will be apparent, these powers are quite wide.

It also should be noted that both Section 199(1) and (2) contain bye-law making powers. It would seem that, if the subject of a bye-law does not fit exactly into Section 199(1), then resort can be made to the powers contained in Section 199(2). Advice obtained from Senior Counsel in 2018

⁹³<http://www.lawreform.ie/revised-acts/alphabetical-list-of-html-and-pdf-post-2006-revised-acts.557.html#L>

suggests that, where what is proposed in the waste presentation bye-law template contained in Appendix 1 is outside the scope of the bye-law making powers in Section 35 of the WMA, then Section 199(1) provides an appropriate legal basis.

Key Legal Wording:

LGA, Section 199:

(1) ...⁹⁴, a local authority may make a bye-law for or in relation to the use, operation, protection, regulation or management of any land, services, or any other matter provided by or under the control or management of the local authority, whether within or without its functional area or in relation to any connected matter.

(2) (a) Subject to this subsection ... , a local authority may make a bye-law where in its opinion it is desirable in the interests of the common good of the local community—

(i) that any activity or other matter should be regulated or controlled by byelaw, or

(ii) that any nuisance should be controlled or suppressed by bye-law.

(b) ...

Section 199 of the LGA also indicates that the power to make any bye-law extends to the foreshore and to coastal waters – in other words, to areas that would be otherwise regarded as beyond the functional area of a local authority⁹⁵.

Key Restrictions on the Making of a Bye-law

While the general powers to make bye-laws are wide, they are subject to certain key limitations and it is important that these are understood.

The main restriction is that bye-laws cannot somehow re-write national legislation. The Constitution makes clear that the Oireachtas is the supreme law-making body, with Article 15.2.1 stating:

“The sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State.”

However, law-making powers can be delegated, with this being done in relation to local authority bye-laws by Part 19 of the LGA and also by Section 35 of the WMA. Nevertheless, local authorities need to understand that there are clear limits to those delegated powers. Most obviously, as the will of the Oireachtas is clearly being expressed in any law that it makes, a local authority cannot override that legislation via some element of a bye-law.

In other words, it is the national Government’s role to both determine what legislation should apply to the activities of the citizens of the State and to make that legislation. As readers will know, that legislation takes the form of Acts of the Oireachtas and secondary legislation in the form of statutory instruments. The WMA is an example of the so-called primary legislation that has been passed by the Oireachtas. The Waste Management (Food Waste) Regulations 2009 is an example of a statutory instrument that has been made via powers granted to the Minister by the WMA to make subsidiary legislation.

Given the supremacy of the Oireachtas to make this legislation, it is not surprising that the bye-law making provisions in the LGA are subject to implicit limitations restricting potential overlaps with national law. The result is that, for example, given the combination of what is said in Section 34 of the WMA and the highly detailed Waste Management (Collection Permit) Regulations 2007, it is inappropriate for a bye-law to contain requirements that directly affect organisations that collect waste.

⁹⁴Text omitted as no relevant legislation forbids the making of waste presentation bye-laws (see the cross reference to LGA, Section 199(7))

⁹⁵LGA, Section 199(6)

Having said that, in respect of food waste presentation, the national legislation relating to food waste from commercial and domestic premises does explicitly reduce this Constitutional restriction. The nature of this legislation and this particular matter are returned to later.

The subordinate relationship between bye-laws and national law has been considered in a number of legal cases, with the Supreme Court's judgment of Island Ferries Teoranta v Minister of Communications, Marine and Natural Resources being particularly useful⁹⁶. Mr Justice Charleton refers⁹⁷ to the Constitution and that the sole and exclusive power for making laws for the State is the Oireachtas. He then explains the relevant parameters affecting this principle via a quotation from an earlier judgment⁹⁸:

The delegates of statutory power cannot be allowed to exceed the limits of the statute or, as here, the secondary legislation conferring the power. The rationale for this is simple and clear. The Oireachtas may, by law, while respecting the constitutional limits, delegate power to be exercised for stated purposes. Any excessive exercise of the delegated discretion will defeat the legislative intent and may tend to undermine the democratic principle and ultimately the rule of law itself. Secondly, the courts have the function of review of the exercise of powers. They are bound to ensure respect for the laws passed by the Oireachtas. A delegatee of power which pursues, though in good faith, a purpose not permitted by the legislation by, for example, combining it with other permitted purposes is enlarging by stealth the range of its own powers.

Readers who are charged with drawing up a waste presentation bye-law should particularly note to the final sentence in the above extract.

Besides the need to avoid devising bye-laws that somehow impinge upon or otherwise over-ride national law, there are other relevant restrictions that should be understood. These apply even when a bye-law may fit precisely within the statutory powers vested upon a local authority and even when the result does not, in the manner discussed above, unduly impinge on national legislation. While there are a number of criteria that may apply in this type of instance, perhaps the most significant relate to whether the content of a bye-law is proportionate, reasonable, justifiable, necessary and does not impose an undue burden on anyone subject to it⁹⁹.

For example, it may well be considered both desirable and within the terms of the LGA for a waste presentation bye-law to require all householders in a local authority's functional area to be serviced by authorised waste collectors and be provided with two or more wheelie bins. However, such a requirement may well be disproportionate. Some households are small and produce little waste, a civic amenity network is available to service their needs, this requirement may place an undue cost burden on those with limited income and some forms of housing stock do not have suitable bin storage areas. And this is why Bye-Law 2 in the template gives a householder two other alternative options besides requiring him or her to access the services of an authorised waste collector.

⁹⁶ [2015] IESC 95; available at <http://www.courts.ie/Judgments.nsf/0/9F0B4700257BC53C80257F1C0051FE54>. See also the earlier case of Clarke v South Dublin County Council (Unreported) [2008] IEHC 84; available at <http://www.bailii.org/ie/cases/IEHC/2008/H84.html>.

⁹⁷ Para 14 of the judgment

⁹⁸ Kennedy v Law Society of Ireland, [2002] 2 IR 458

⁹⁹ There is a significant amount of case law on this point, with Mr Justice Cooke summing up the relevant criteria in the earlier judgement of High Court of Island Ferries Teoranta v Minister of Communications, Marine and Natural Resources [2011] IEHC 388 at para 49:

"It is, of course, also clear that even when such a power is apparently exercised in accordance with the correct scope of the statutory empowerment, it may nevertheless be invalid as ultra vires if the discretion accorded to the public authority as to the choices of terms, conditions and the circumstances of its exercise is so misused as to render it vitiated by bad faith, arbitrariness, improper purpose or because the manner in which it is exercised is so clearly unreasonable (including disproportionate), unjust or oppressive as to result in the conclusion that the Oireachtas could not have intended the power to be exercised in that manner".

- It is vital that all persons with responsibility for the drafting of a waste presentation bye-law, checking others' work or otherwise approving different elements of it are aware of the limitations discussed above.

Bye-law Content under the LGA

Within the boundaries set by the constraints discussed in the last section, Section 199(3) of the LGA allows bye-law content to be potentially wide. The relevant wording is reproduced below. It should also be noted that the listed items (a) to (j) are expressed in non-exhaustive terms¹⁰⁰. In other words, they are just examples of items that may feature in bye-laws.

Key Legal Wording:
<p>LGA, Section 199(3):</p> <p><i>Any bye-law may include such provisions as the local authority considers appropriate for its effective application, operation and enforcement and generally to achieve the purposes for which it is made, including—</i></p> <ul style="list-style-type: none"> <i>(a) its application at all times or at specified times;</i> <i>(b) its application throughout the functional area of the local authority or in any specified part of that functional area;</i> <i>(c) the prohibition of any activity, matter or thing;</i> <i>(d) the prescription of specified standards or requirements for, or in relation to, specified activities, matters or things;</i> <i>(e) the exception of classes of persons or things from the bye-law either subject to or without compliance with specified conditions;</i> <i>(f) the conduct of persons at specified places or in specified circumstances;</i> <i>(g) the issue of licences or other authorisations by the local authority subject to or without condition and to have effect permanently or for a specified period;</i> <i>(h) the payment of a fee or charge at a specified time by any person in respect of any specified matter governed by a bye-law;</i> <i>(i) the specification of a fine for a contravention of a specified provision of a bye-law as provided by section 205;</i> <i>(j) the specification of a fixed payment as an alternative to a prosecution for a contravention of a specified provision of a bye-law as provided for by section 206.</i>

While most of the elements shown in this box are self-explanatory, it should be noted that a bye-law does not necessarily have to have a county-wide jurisdiction, but can be limited to certain areas. For example, what might be appropriate in relation to waste presentation in towns over a certain size may not be necessary for rural one-off housing.

As can be seen, sub-paragraphs (i) and (j) refer to fines, fixed payment notices and contraventions of Sections 205 and 206 of the LGA. These elements have been discussed towards the end of Chapter 2 of this guidance.

While the powers conferred on local authorities under Section 199(3) of the LGA may seem wide, readers are reminded that they are capped in accordance with the principles set down earlier in this Appendix.

Waste Presentation Bye-laws under WMA, Section 35

Section 35 of the WMA makes explicit provision for a local authority to make a bye-law in respect of waste management. Those made must fall within the purposes specified in that section. The full wording of Section 35 of the WMA is shown in the text box below.

¹⁰⁰See the word "including" in the third line of LGA, Section 199(3)

Key Legal Wording:

WMA, Section 35(1):

Whenever a local authority considers that, for the purpose of the proper management of waste or the prevention or control of environmental pollution, it is necessary so to do, it may, ..., make bye-laws—

- (a) requiring a holder of household waste to present such waste for collection by a person collecting waste in accordance with this Part,*
- (b) requiring a holder of household or commercial waste who presents such waste for collection as aforesaid (whether pursuant to a requirement of bye-laws under paragraph (a) or not) to so present the waste in a manner specified in the bye-laws.*

From the above text box, it will be apparent that, firstly, any waste presentation bye-law made in respect of Section 35 of the WMA must relate directly either to the “proper management of waste” or to the prevention or control of environmental pollution.

Secondly, any such bye-law is also restricted to relate to either:

- “requiring” a holder of household waste to present it for collection¹⁰¹, or
- “requiring” a holder of household or commercial waste to present that waste in a specified manner.

However, the wording of the objectives shown in these two bullet-points makes clear that second one is not inextricably linked to the first. The second objective refers to both household and commercial waste; by contrast, the first objective only refers to household waste.

As noted, one of the purposes of a bye-law issued under Section 35 relates to the prevention or control of environmental pollution. The term “environmental pollution” is defined in the WMA and is a wide one. As can be seen from the text box below, it embraces odours, nuisance and litter.

Key Legal Wording:

WMA, Section 5(1):

“environmental pollution” means, in relation to waste, the holding, transport, recovery or disposal of waste in a manner which would¹⁰² endanger human health or harm the environment, and in particular—

- (a) create a risk to waters, the atmosphere, land, soil, plants or animals,*
- (b) create a nuisance through noise, odours or litter, or*
- (c) adversely affect the countryside or places of special interest.*

The uncontrolled burning of waste is also embraced by the references in the definition of “environmental pollution” to the endangerment of human health or harm to the environment, as well as creating a risk to the atmosphere. Likewise, creating a nuisance might embrace the emission of smoke. However, it is important to read the definition of environmental pollution within the context of Section 35 of the WMA as a whole. This makes clear that Section 35 is solely focussed on how household and commercial waste is to be presented prior to collection. As the regulation of waste burning activities do not fall within this purpose, then this matter is not one that can be addressed by bye-laws made under Section 35¹⁰³.

¹⁰¹ WMA, Section 35(1)(a) ends with the phrase “for collection by a person collecting waste in accordance with this Part”. The reference to “this Part” is referring to Part IV of the Act, which includes Sections 32 to 36. As its headnote indicates, these Sections relate to the “Holding, Collection and Movement of Waste” and include provisions that establish the waste collection permit system

¹⁰²The words “to a significant extent” were deleted from the Act in 2008 (by SI 113 of 2008)

¹⁰³ Moreover, the burning of waste is addressed by other elements of the WMA and by the Waste Management (Prohibition of Waste Disposal by Burning) Regulations 2009 (SI 286 of 2009, as amended)

Section 35(3) of the WMA lists nine general topic areas that may be addressed in a waste presentation bye-law. As can be seen from the text box below, the final one – item (h) – is a catch-all provision.

Key Legal Wording:

WMA, Section 35(3):

Bye-laws under subsection (1) may, without prejudice to the generality of that subsection or of section 37(4) of the Local Government Act, 1994¹⁰⁴, include provisions specifying—

- (a) that waste shall only be placed for collection in receptacles of a particular kind and that different waste shall be placed in different receptacles,*
- (b) the quantity of waste which may or may not be placed in any receptacle,*
- (c) the waste, or the mixtures of waste, which may or may not be placed in a receptacle,*
- (d) the measures or precautions to be taken where particular waste, or mixtures thereof, is or are placed in a receptacle,*
- (e) the size, colour, construction or maintenance of receptacles,*
- (f) the location at which the waste is to be made available for collection,*
- (g) times during which the waste is to be made available for collection,*
- (gg) that waste placed for collection shall bear evidence, in such a manner or form as is provided in the bye-laws, of the payment of any charge that has been made under section 75 in respect of the collection of the waste¹⁰⁵,*
- (h) any matters consequential on, or incidental to, the foregoing.*

As shown in this text box, Section 35 of the WMA starts by indicating that what is listed here is without prejudice to the Local Government Act 1994. This cross-reference indicates that this section of the WMA does not narrow or otherwise over-ride the more general list of items that can feature in any bye-law made under the LGA. Indeed, given what is said in the LGA, some readers may wonder why Section 35 is needed at all; however, its inclusion in the WMA does firmly indicate that the Oireachtas envisaged a bye-law to be an option in relation to waste presentation. This is a key point that will be returned to.

While the reference in Section 35(3) of the WMA is to the LGA 1994 – not to the LGA 2001 – Section 209(2) of the LGA 2001 clarifies that this reference is to be construed to be a reference to Section 199(3) of the 2001 Act (Section 199 in the LGA has been discussed above).

Finally, Section 35(2) of the WMA confirms that any waste presentation bye-law promulgated via these powers is to be both made and interpreted in accordance with Part 19 of the LGA¹⁰⁶.

Bye-laws in the Context of other Waste Regulatory Provisions.

Bye-laws and the WMA

For the reasons discussed earlier, care must be taken to ensure that a waste presentation bye-law does not impinge unduly upon the contents of the WMA. While it is not the purpose of this guidance to cover the requirements of what is now a very lengthy Act, readers' attention is drawn to certain important matters.

A significant feature of the WMA is Section 32. Besides outlawing dumping and the management of waste in a manner that causes environmental pollution, a key sub-section additionally mandates that, when waste is passed between different holders, it is transferred only to "an appropriate

¹⁰⁴This reference is to be construed as a reference to LGA 2001, Sections 199(1) and (2): see LGA 2001, Section 209(1)

¹⁰⁵Inserted by the Protection of the Environment Act 2003, Section 32

¹⁰⁶Again, Section 35(2) of the WMA contains an outdated cross-reference to Part VII of the LGA 1994. The LGA 2001 indicates that this reference is to be construed as a reference to Part 19 of that Act (see LGA 2001, Section 209(1))

person”¹⁰⁷. In this context, an appropriate person is a local authority or someone who holds a waste collection permit, waste facility permit, registration certificate, EPA licence or is formally exempted from such a requirement¹⁰⁸.

A further element of the WMA that is relevant to waste presentation activities is its requirements on waste storage prior to removal. Storage is allowable where it occurs on the premises where the waste is produced, but only for a time period not exceeding six months¹⁰⁹. Should this period be exceeded, then Section 39 of the Act is being contravened, with such a contravention only being precluded when a waste holder is appropriately authorised by a registration certificate, waste facility permit or other such authorisation.

In this respect, it should also be noted that Section 35(1)(a) and (b) of the WMA only refer to bye-laws on waste presentation that are directly linked to waste collection. These sub-sections do not directly refer to what might be termed pre-collection activities, such as waste storage or sorting. However, Section 35(3)(h) allows bye-laws to extend to matters consequential or incidental to a waste presentation activity. So, it may well be that such storage and sorting activities are to be viewed as inextricably linked with the waste presentation activity that follows. However, when there is doubt about the closeness of this inter-linkage, then it is generally better to play safe and indicate in the preamble to a waste bye-law that it is being enacted not only via Section 35 of the WMA but also under the more general powers to make bye-laws that are contained in the LGA.

Finally, Section 29 of the WMA allows the Minister to make regulations affecting a wide variety of activities from which waste is generated. In the past, this section has formed the basis of, for example, the now-repealed Waste Management (Packaging) Regulations 2007¹¹⁰. The potential relationship between bye-laws and the current Packaging Regulations will be discussed in a separate section below.

Bye-laws and the Waste Collection Permit Regulations

Section 34 of the Act and the Waste Management (Collection Permit) Regulations 2007¹¹¹ set down a highly detailed set of requirements that affect virtually all organisations involved in waste collection. As alluded to earlier, it is clear that the Oireachtas envisaged the resultant collection permit system to be the principal way that the activities of this part of the waste management industry are to be controlled. Those drafting the legislation also included very wide and detailed compulsory and discretionary elements that are to feature in any waste collection permit¹¹².

Moreover, since the establishment of the National Waste Collection Permit Office (NWCPO), the discretion about permit content is vested with that body, but with extensive consultation and feedback provisions between that Office and individual local authorities. Finally, in the last few years, the national requirements affecting the collection of household waste have become more prescriptive, with amendments to the 2007 legislation, the publication of a number of Government circulars, and so on.

Given the existence of these detailed and separate arrangements, **it is clear that the control of activities of waste collectors is a matter for the collection permit system and is not to be achieved by a bye-law**¹¹³. Should a local authority require additional provisions to feature in a

¹⁰⁷WMA, Section 32(2)

¹⁰⁸WMA, Section 32(5)

¹⁰⁹ WMA, Section 5(3) – a fuller explanation of how the WMA considers waste storage can be found in the separate guidance note on the Food Waste Regulations that was issued to a local authorities in 2016 (see pages 48-49). A copy can be found at this link: <https://duncansenvironment.wordpress.com/2016/09/12/regulatory-guidance-available-on-the-food-waste-regulations/>.

¹¹⁰ SI 798 of 2007

¹¹¹SI 820 of 2007 (as amended)

¹¹²See Article 18 to 20 of the Collection Permit Regulations (as amended)

¹¹³ The only instances when the Collection Permit Regulations refer to bye-laws is in respect of the parking of skips and bye-laws made under the Roads Act (see Article 19) and in relation to permit conditions about customer penalties and the need for these to feature in a customer charter (see Article 20(2)(g)(ii)(I)). In respect of the latter, this provision only

waste collection permit, then they should look to the NWCPO and the consultation mechanisms contained in the Collection Permit Regulations to have affected collection permits amended.

Bye-laws and the Food Waste Regulations.

What is termed in this guidance “the Food Waste Regulations” comprises the Waste Management (Food Waste) Regulations 2009¹¹⁴ and the European Union (Household Food Waste and Bio-waste) Regulations 2015¹¹⁵. Where it is necessary to differentiate these, they will be termed “the Commercial Food Waste Regulations” and “the Household Food Waste Regulations”. As will be seen, these provisions themselves have a significant effect on how food waste is presented by commercial sources and householders.

The Food Waste Regulations both contain a provision that is aimed at facilitating some overlap with a waste presentation bye-law. The relevant wordings are contained in the text boxes that follow later in this sub-section. However, what needs to be appreciated is that, due to the way the two sets of Food Waste Regulations are drafted, the possible scope of a bye-law to overlap with them is a little different, being more constrained in relation to household-sourced food waste.

The Food Waste Regulations indicate, in different places, that certain specified requirements are “without prejudice” to the ability of a local authority to enact a waste presentation bye-law. This provision allows a bye-law (and also a waste plan or waste collection permit) to require something more onerous from that set down in those Regulations. To put it another way, whatever is said in the particular sub-article of those Regulations which contains the “without prejudice” phrase is not to be seen as over-riding or lessening any requirement of a bye-law.

In addition, the drafting of the Food Waste Regulations also suggests that a bye-law can go further than what is said in those Regulations; but, and conversely, a bye-law cannot reduce the requirements of either of these Regulations. This is because the Food Waste Regulations indicates that bye-laws can “apply more onerous conditions”: see for example the extract from the Household Food Waste Regulations in the text box below

What also needs to be understood is that the provisions to supplement the Food Waste Regulations by a bye-law only relate to specific instances in those Regulations where the “without prejudice” phrase features. It by no means affects all of these Regulations but is, instead, selective in the manner discussed here. Accordingly, care is needed to ensure that a waste presentation bye-law does not create inordinate overlaps with other elements of that legislation that do not contain the caveat that allows a bye-law to affect their requirements.

Key Legal Wording:

Household Food Waste Regulations, Regulation 6(1)

... without prejudice to the power of any local authority to provide for additional policy objectives under a relevant waste management plan or to apply more onerous conditions under a waste collection permit or under a waste presentation bye-law, an original producer of food waste arising as part of household waste shall ensure, as a minimum, that—

- (a) food waste arising on the producer’s premises is source segregated and kept separate from non-biodegradable materials, other waste and contaminants; and*
- (b) source segregated food waste arising on the producer’s premises is collected by an authorised waste collector.*

In the Household Food Waste Regulations, the key provision on waste segregation is Regulation 6(1) (see text box above). It contains the phrase that indicates the requirements are “without

appeared in the Collection Permit Regulations in 2016 and, a trifle oddly, it refers to “bye-laws ... adopted for the collection of household waste”, not to the presentation of such waste, which is the subject of Section 35 of the WMA

¹¹⁴SI 508 of 2009, as amended by the Waste Management (Food Waste)(Amendment) Regulations 2015, SI 190 of 2015

¹¹⁵SI 430 of 2015

prejudice” to a bye-law, thereby indicating that something more onerous from what is set down in Regulation 6(1) can apply. This means that a bye-law can supplement the requirements affecting how a householder is to source-segregate food waste and keep that waste separate from other waste.

However, for the reasons discussed earlier in relation to waste collection permits, it is doubtful that a bye-law can affect the activities of food waste collectors, despite the reference to them in Regulation 6(1)(b) of the Food Waste Regulations (see box above). This is because provisions affecting waste collectors have been made separately in Section 34 of the Act and the Collection Permit Regulations. Therefore, this suggests that bye-laws can only impinge upon what is said in Regulation 6(1)(a) of the Household Food Waste Regulations and not on Regulation 6(1)(b).

Moreover, the caveat that the Household Food Waste Regulations are “without prejudice” to a bye-law is restricted to Regulation 6(1). Accordingly, bye-laws cannot over-ride any of the other requirements of those Regulations. Nor, as said, can they lessen the requirements of Regulation 6(1)(a) – the bye-law must be “more onerous” rather than less. It therefore follows that a bye-law that goes against these general rules may not be lawful under the LGA.

In comparison to the equivalent provisions of Regulation 6 of the Household Food Waste Regulations, any bye-law affecting commercial food waste producers can have a slightly wider scope. This is due to subtle contrasts in the drafting between the two sets of Food Waste Regulations. Besides influencing food waste segregation and separation practices¹¹⁶, a bye-law can not only apply to how a food waste producer presents commercial food waste for collection by third parties, but also to how that person presents this waste when the option of the direct delivery to an authorised facility is being used. This is due to the wider scope of Regulation 7(1) of the Commercial Food Waste Regulations. The relevant text is contained in the box below.

Key Legal Wording:

Commercial Food Waste Regulations, Regulation 7(1)

Subject to paragraphs (3) and (4) and without prejudice to the power of any local authority to provide for additional policy objectives under a relevant waste management plan or to apply more onerous conditions under a waste collection permit or under a waste presentation bye-law, a producer shall ensure, as a minimum, that—

- (a) food waste arising on the producer’s premises is source segregated and kept separate from non-biodegradable materials, other waste and contaminants, and*
- (b) source segregated food waste arising on the producer’s premises is—*
 - (i) collected by an authorised waste collector and transferred for an authorised treatment process, or*
 - (ii) subjected to an authorised treatment process on the premises where the food waste was produced, or*
 - (iii) transferred directly by the producer for the purposes of an authorised treatment process, subject to the producer being able to produce satisfactory documentary evidence, in the reasonable opinion of the local authority, of the treatment of the food waste at an authorised facility.*

However, while Regulation 7(1)(b)(ii) of the Commercial Food Waste Regulations might indicate that a bye-law can set a more onerous condition on how food waste is presented to an on-site composting process that is situated on the producer’s premises, this option appears ruled out by the conclusions of the earlier discussion in this Appendix. This is because on-site composting and similar activities are already subject to the separate control regime established by the Waste Management (Facility Permit and Registration) Regulations 2007¹¹⁷. In other words, the Oireachtas has already set down a regulatory structure to govern this practice.

¹¹⁶ Ie Commercial Food Waste Regulations, Regulation 7(1)(a)

¹¹⁷ SI 821 of 2007 (as amended).

A waste presentation bye-law also can affect how commercial food waste is handled on off-shore islands. This allowable due to Regulation 3(3) of the Commercial Food Waste Regulations – see text box below. Accordingly, a local authority could make the practice of commercial food waste segregation and presentation mandatory at any such locations if it wishes to.

Key Legal Wording:

Commercial Food Waste Regulations, Regulation 3(5):

Without prejudice to the power of any local authority to provide for relevant policy objectives under a waste management plan or to apply conditions under a waste collection permit or under a waste presentation bye-law, these Regulations shall not apply to off-shore islands.

What also needs to be appreciated is that, while some of the requirements of Regulation 7 of the Commercial Food Waste Regulations can be varied by a bye-law, the requirements of Regulations 8 and 9 cannot be. There is no deployment of the “with prejudice to any bye-law” phrase in these provisions. Accordingly, the requirements of the legislation that commercial food waste cannot be mixed with other waste or materials, or be disposed of or deposited by the producer in the residual waste collection, are unable to be changed directly by this means. This is a clear instance of when the national legislation attains primacy¹¹⁸, with the result that a local authority does not appear able to make bye-laws substantiate these other requirements of the Commercial Food Waste Regulations.

Bye-Laws and the Packaging, WEEE and Batteries Regulations

Again, it is not the purpose of this guidance note to summarise the Packaging, WEEE and Batteries Regulations in any detail. However, a few key points will be made about areas where there may be possible overlap between a waste presentation bye-law and the requirements of this legislation.

Perhaps the area where most care is needed concerns the Packaging Regulations¹¹⁹. In accordance with Part II of these Regulations, all producers¹²⁰ – regardless of size – are required to ensure that packaging waste is separated at source and transferred to an authorised waste collector for recovery purposes¹²¹. This applies to both what the Regulations terms “specified packing waste” and “other packaging waste”. Specified packaging waste must be segregated or separated into the fractions of aluminium, fibreboard, glass, paper, plastic sheeting, steel and wood. While these requirements do not apply to contaminated packaging, a person who deliberately contaminates this material commits an offence.

All the provisions in the Packaging Regulations that have just been described appear to be a clear instance where national law is determining the applicable arrangements for the presentation of packaging waste prior to collection. Therefore, there seems to be little or no role for a bye-law to take this matter any further.

Moreover, Article 5(6) of the Packaging Regulations allows a local authority to issue a written direction to any packaging producer in relation to the separation at source or contamination of packaging waste: see box below. Any recipient of such a direction is required by law to comply with it. Additionally, as part of their enforcement functions, local authorities are entitled to obtain information such as a “packaging report” from any producer. Again, the existence of these provisions limits the scope of a waste presentation bye-law to address packaging waste separation or contamination.

¹¹⁸ In other words, if this provision of national law was intended to be developed further by a bye-law, the legislation would have said so

¹¹⁹ The European Union (Packaging) Regulations 2014 (SI 282 of 2014, as amended by SI 542 of 2016)

¹²⁰ SI 282 of 2014: “‘producer’ is hereby specified, under and in accordance with section 27 of the Act, to mean a person who, for the purpose of trade or otherwise in the course of business, sells or otherwise supplies to other persons packaging material, packaging or packaged products ...”

¹²¹ SI 282 of 2014, Article 5(1)

Key Legal Wording:

European Union (Packaging) Regulations 2014, Regulation 5(6):

... a local authority may give a direction in writing to a producer in relation to the separation at source of packaging waste, for the purpose of avoiding contamination or to facilitate the recovery or disposal of that waste, and a producer shall comply with such a direction..

The European Union (Waste Electrical and Electronic Equipment) Regulations 2014¹²² embraces the commercial sector that retails electrical items to the public, with the European Union (Batteries and Accumulators) Regulations having an essentially similar effect on sellers of batteries¹²³. They mandate that these retailers be registered, must offer WEEE or battery take-back¹²⁴ and ensure that WEEE and batteries are appropriately collected¹²⁵.

While it is possible to envisage problems caused by overlaps between the Packaging Regulations and waste presentation bye-laws, similar difficulties relating to WEEE and Batteries Regulations are considered to be less likely. However, readers need to be aware of this legislation and ensure that bye-laws do not impinge on it.

Finally, readers should note that the Packaging, WEEE and Batteries Regulations no longer emanate from powers to make these so-called producer responsibility initiatives under Section 29 of the WMA. Instead, their statutory basis is the European Communities Act 1972. Accordingly, while some earlier waste presentation bye-laws cross-referred to this sub-section, this reference is obsolete in the context of the revisions to these Regulations that took place in 2014.

Bye-laws and Waste Tyres

In general, waste tyres are generated by commercial-type activities and thus fall into the definition of commercial waste¹²⁶. As such, a bye-law could, within the purposes set down in Section 35 of the WMA, make provision for how tyres are to be presented prior to collection. However, there must not be overlap or other impingement on the Waste Management (Tyres and Waste Tyres) Regulations 2017¹²⁷.

In this instance, it should be noted that, unlike the revised Packaging Regulations, the main power used to enact the Tyres Regulations was the WMA, and not the European Communities Act.

Bye-laws and the Litter Pollution Act 1997

The Litter Pollution Act 1997 is the main tool for local authorities to address littering¹²⁸, with Section 3 prohibiting a variety of different aspects. This Section contains an explicit provision in relation to litter caused by waste collection activities in the form of Section 3(2)(b): see the text box below.

¹²² SI 149 of 2014

¹²³ SI 283 of 2014 (as amended)

¹²⁴ SI 149 of 2014, Regulation 14; SI 283 of 2014, Regulation 21

¹²⁵ SI 149 of 2014, Regulation 15; SI 283 of 2014, Regulation 22

¹²⁶ WMA, Section 5(1): "commercial waste" means waste from premises used wholly or mainly for the purposes of a trade or business or for the purposes of sport, recreation, education or entertainment but does not include household, agricultural or industrial waste"

¹²⁷ SI 400 of 2017

¹²⁸"Litter" is defined in the 1997 Act as meaning "a substance or object, whether or not intended as waste (other than waste within the meaning of the Waste Management Act, 1996, which is properly consigned for disposal) that, when deposited in a place other than a litter receptacle or other place lawfully designated for the deposit, is or is likely to become unsightly, deleterious, nauseous or unsanitary, whether by itself or with any other such substance or object, and regardless of its size or volume or the extent of the deposit"

Key Legal Wording:

Litter Pollution Act 1997, Section 3:

- (1) *No person shall deposit any substance or object so as to create litter in a public place or in any place that is visible to any extent from a public place.*
- (2) *No person shall—*
 - (a) *deposit any thing that is commercial, household, industrial or municipal waste in any place for collection by or on behalf of a local authority or by another person, or*
 - (b) *load, transport, unload or otherwise handle or process any thing or carry on a business, trade or activity*

in such circumstances as to create litter or lead to litter in any public place or any place that is visible to any extent from a public place.
- (3) *No person shall place municipal waste into or near a litter receptacle.*
- (4) *No person shall move or interfere with a litter receptacle that has been provided by a local authority or other person unless the movement or interference is authorised by the local authority or other person.*
- (5) *For the purposes of subsection (3), “municipal waste” has the meaning assigned by section 5 of the Waste Management Act, 1996.*
- (6) *A person who contravenes any provision of this section shall be guilty of an offence.*

Section 5 also makes provision for when waste is collected, ensuring that the general prohibition that applies in Section 3 does not impede this activity. Accordingly, it is allowable to deposit waste in suitable receptacles prior to collection, but only when “reasonable care is taken to prevent the creation of litter”.

Key Legal Wording:

Litter Pollution Act 1997, Section 5:

Nothing in section 3 shall be construed as prohibiting—

- (a) *the deposit of waste in a receptacle or place provided for the purpose of such waste,*
- (b) *the deposit in any place of a receptacle containing any commercial, household, municipal or industrial waste for collection by or on behalf of a local authority or by another authorised waste collector within the meaning of the Waste Management Act, 1996, or*
- (c) *the deposit of waste at a civic waste facility, within the meaning of section 38 of the Waste Management Act, 1996,*

provided that reasonable care is taken to prevent the creation of litter.

Sections 3 and 5 are supplemented by Section 6, which sets out the duty of occupiers of land to ensure that littering does not take place and that litter does not accumulate. A copy of Section 6 of the 1997 Act is shown in the text box below.

Key Legal Wording:

Litter Pollution Act 1997, Section 6:

- (1) *The occupier of a public place (not being a public road or a building or other structure) shall keep the place free of litter.*
- (2) *The occupier of any land (other than land consisting of a building or other structure) that is not a public place shall keep the land free of litter that is to any extent visible from a public place.*
- (3) *The owner of any land appurtenant to a residence that is let in two or more dwelling units (not being separate hereditaments) shall, notwithstanding the obligation of an occupier under subsection (2) in relation to land, keep the land free of litter that is to any extent visible from a public place.*
- (4) *Every occupier of land adjoining a public road in respect of which a built-up area speed limit or special speed limit has been established in the functional area of a local authority shall keep free from litter—*
 - (a) *Any footway adjoining the land and forming, or forming part of, a public road, and*
 - (b) *any area of land forming part of a public road between any such footway and the roadway.*
- (5) *No person shall, in carrying out the obligation under subsection (4), deposit any substance or object so as to create litter on a roadway or in any other place.*
- (6) *A person who contravenes any provision of this section shall be guilty of an offence.*

Also of significance is Section 21 of the Litter Pollution Act¹²⁹, which confers powers on local authorities to make a bye-law to prevent the creation of litter or otherwise control it. Finally, those who create litter can also be subject to fixed payment notices.

While it is not the purpose of this guidance note to cover the workings of the Litter Pollution Act in any further depth, there is one key reason why the various sections have been referred to in detail above. This is to show that it was the intention of the Oireachtas to provide national legislation on litter abatement that comprehensively addresses the litter issue. Of particular note in this respect are the provisions that are directly aimed as instances when litter arises when waste is presented for collection.

The existence of these elements of the Litter Pollution Act suggests that this is another instance where the national legislation retains its primacy over bye-laws. Accordingly, it may be inappropriate for a bye-law on waste presentation issued under Section 35 of the WMA to impinge upon the nationally established litter control framework.

However, as Section 21 of the Litter Pollution Act allows a bye-law to be made to supplement that Act, this route would, in principle, allow for additional litter abatement provisions to be made mandatory in a bye-law affecting waste being presented for collection. But, if this route is to be followed, the preamble to any bye-law must state that it is being made under not only under the LGA and the WMA but also under the Litter Pollution Act.

Summary of Interactions and Over-lapping Areas

As has been explained above, a waste presentation bye-law should not impinge upon any items of national legislation that mandates particular arrangements for waste presentation prior to collection, including:

- The WMA
- The Collection Permit Regulations
- The Food Waste Regulations, except where they state to the contrary
- The Packaging, WEEE and Batteries Regulations
- The Litter Pollution Act, albeit that jointly made bye-laws are possible.

¹²⁹As substituted by Protection of the Environment Act, Section 57

However, that does not mean that waste presentation bye-laws are no longer appropriate at all. That they can be deployed is clearly stated in Section 35 of the WMA. Indeed, when the discussion about the legislation in the above list is viewed in light of the width of powers conferred on local authorities to make bye-laws under the LGA and the constraint of that Act about bye-laws not overlapping with the national legislation, a key purpose of Section 35 of the WMA becomes clear. This is that Section 35 removes any doubt that bye-laws on waste presentation are, in fact, still allowable. Contrastingly, in the absence of this Section, it might well be argued that, given both the breath and complexity of the national waste legislation and that it increasingly impinges on the presentation of certain waste types, there is little or no room for additional local authority-authored initiatives.

A Note about the Interpretation Act 2005

A copy of the Interpretation Act can be found on the Irish Statute book website¹³⁰. The Act states that it covers all “enactments”, with the definition of “enactment” embracing “statutory instruments”. In turn, the definition of a “statutory instrument” is stated by the Act to include a bye-law. This sequence is shown in the text box below.

Key Legal Wording:
<p>Interpretation Act 2005, Section 4(1)</p> <p><i>A provision of this Act applies to an enactment except in so far as the contrary intention appears in this Act, in the enactment itself or, where relevant, in the Act under which the enactment is made.</i></p> <p>Interpretation Act 2005, Section 2(1)</p> <p><i>“enactment” means an Act or a statutory instrument or any portion of an Act or statutory instrument;</i></p> <p><i>“statutory instrument” means an order, regulation, rule, <u>bye-law</u>, warrant, licence, certificate, direction, notice, guideline or other like document made, issued, granted or otherwise created by or under an Act and references, in relation to a statutory instrument, to “made” or to “made under” include references to made, issued, granted or otherwise created by or under such instrument....</i></p>

While it has already been mentioned in Chapter 3 that the Interpretation Act is a useful source of definitions, it has some other functions that may assist those drafting a waste presentation bye-law.

A further important function of the Interpretation Act is found in Section 19, which indicates that a word or phrase used in a bye-law has the same meaning in the “parent” Act¹³¹. While this may imply that there is no need to repeat many of the definitions used in the WMA in a bye-law, it is considered that this is desirable in order for the bye-laws to be clear to readers. Additionally, Section 19 may well be a useful fall-back position, should a particular definition be inadvertently omitted. Having said that, care is also needed when a term is used in a bye-law whose meaning is intended to differ from the parent legislation. If this is intended, a specifically-worded definition must be included in the Interpretation Section of the bye-law.

Secondly, readers should be aware that, in accordance with the Interpretation Act, marginal notes and headings that explain the subject of a particular section are not to be used to interpret any enactment, including any bye-law¹³². Accordingly, it is essential that each paragraph of a bye-law is self-contained, internally clear and that its sense is not dependent on any heading associated with it.

Finally, the Interpretation Act 2005 also indicates that, where a title of an Act or statutory instrument is cited, this reference is not only to the original Act or original statutory instrument but also to any

¹³⁰ <http://www.irishstatutebook.ie/eli/2005/act/23/enacted/en/pdf>

¹³¹ As noted above, the Interpretation Act refers to statutory instruments in this context, with the definition of such an instrument including a bye-law

¹³² Interpretation Act, Section 18(g)

subsequent amendments¹³³. Accordingly, there is no need to write, for example, “the Waste Management Act (as amended)” or the “European Union (Household Food Waste and Bio-Waste) Regulations 2015 (SI 430 of 2015) (including any amendment or replacement thereto)”. All that is needed is the correct original title. This particular element of the 2005 Act is reproduced in the text box below.

Key Legal Wording:

Interpretation Act 2005, Section 14(2)

A citation of or a reference to an enactment¹³⁴ shall be read as a citation of or reference to the enactment as amended (including as amended by way of extension, application, adaptation or other modification of the enactment), whether the amendment is made before, on or after the date on which the provision containing the citation or reference came into operation.

Enforcement, Bye-law Wording and the need for Clarity

As the LGA causes someone convicted of the contravention of a bye-law to end up with a criminal record, the Courts will regard this matter as one that is quite serious. In contested legal proceedings, a Court may be asked to look very carefully at the wording of the relevant elements of a bye-law to ensure that they are sufficiently precise and that the nature of the contravention is clear. Only if the offence is clear can it be proven. Accordingly, ambiguously worded elements of a bye-law will cause difficulties, as will provisions that are otherwise unclear as to how exactly compliance or non-compliance is to be achieved.

The particularly useful and relevant legal judgment about this principle is the High Court’s decision in Dundalk Town Council v Lawlor¹³⁵. In this instance, an enforcement notice under the Planning and Development Act was served on the owner of a derelict site, a Mr Lawlor. The site involved a derelict and overgrown former shipyard, where extensive vegetation/debris removal and top-soil stripping had taken place without planning permission. The enforcement notice required the cessation of all site works, stipulating also that the recipient must “return site to its previous condition”. It also mandated that remedial works start “immediately” but did not give any further timeframe.

The notice was annulled by the High Court for the reason that it was not sufficiently specific about what exactly was being required. The Court clearly felt that, as non-compliance with a planning enforcement notice is an offence, potential offenders must know exactly what they need to do to avoid such a prosecution. This principle was explained in these terms¹³⁶:

The first thing that has to be borne in mind here is that a failure to comply with an Enforcement Notice is a criminal offence. It is well settled that criminal offences must be defined with clarity and precision so that a person can know whether his conduct is or is not a commission of an offence (see King v Attorney General [1981] IR 233¹³⁷).

Accordingly, the vagueness in the drafting of the enforcement notice was sufficient to have it annulled. The kernel of the Court’s reasoning behind this decision is as follows:

[I]t [is] ...¹³⁸ imperative that the precise steps required by the council be set out with precision and clarity because in the absence of that being done it becomes difficult to the point of impossible for a person served with the notice to know how far they must go in order to

¹³³ Interpretation Act 2005, Section 14(2)

¹³⁴ The term “enactment” includes statutory instruments: Interpretation Act 2005, Section 2(1),

¹³⁵ [2005] IEHC 73]: a copy can be found at this link:

<http://www.courts.ie/Judgments.nsf/0/9DBF02CF28641E7B802570C9004E612E>. Advice about the implications of this judgment also features in the EPA’s Environmental Enforcement Network Guidance Manual: see Section 3.4, page 10

¹³⁶ See also Flynn Machine & Crane Hire Ltd v Wicklow County Council [2009] IEHC 285, para 49; available at <http://www.courts.ie/Judgments.nsf/0/E178A9E2135777FA8025761000513390>.

¹³⁷ Available at www.supremecourt.ie/supremecourt/sclibrary3.nsf/.../King%20v%20AG_1980.rtf.

¹³⁸ Words omitted as per the judgment of Cork County Council v Health Safety Authority [2008] IEHC 304; available at <http://www.bailii.org/ie/cases/IEHC/2008/H304.html>.

ensure compliance with an enforcement notice and hence the avoidance of criminal liability. If the steps required are not set out with precision and clarity, a person served with a notice may find themselves having to guess or speculate as to what they must do to achieve compliance. ...

Prior to the carrying out of development there was a considerable amount of debris strewn about this site. Does the notice require that that debris be brought back on site and placed where it was before the development or is this not required? The notice does not provide any answer to that obvious question. Also the unauthorized development complained of was the removal of top soil and the stripping off of sod. Does the notice require that top soil be restored, and that the sod be restored or merely that the top soil be reseeded? Again the notice does not specify which of these alternate steps is required for there to be compliance with the notice.

Since that judgment was made in 2005, it has been upheld in a number of other contexts outside of the enforcement notice procedure of the Planning and Development Act¹³⁹. The result is that its principles are generally applicable to a wide variety of statutory documents, including waste collection permits, waste facility permits and bye-laws. Because someone subject to these provisions is mandated, on pain of criminal penalty, to comply with them, he or she needs to know exactly what compliance and non-compliance entails¹⁴⁰.

Consequently, bye-laws should be worded in such a manner that they are absolutely clear as to what compliance and non-compliance entails. This means that both ambiguity and vague language must be avoided.

This is why Chapter 3 suggests that, for example, a bye-law that is worded to the effect that some action applies “where appropriate” is likely to be unenforceable. The person required to comply is given no help as to what is or is not appropriate, and therefore he or she is unable to determine whether there is compliance. A similar comment would relate to any requirement that something is “suitable”, is done “where possible” and so on. As the High Court observed in the Lawlor case:

It is well settled that criminal offences must be defined with clarity and precision so that a person can know whether his conduct is or is not a commission of an offence.

¹³⁹ See, for example, Cork County Council v Health & Safety Authority [2008] IEHC 304 (available at <http://www.bailii.org/ie/cases/IEHC/2008/H304.html>) and English v Health Service Executive [2008] IEHC 398 (available at <http://www.courts.ie/Judgments.nsf/0/6E7FB387FA564A61802576CD003FE9EE>).

¹⁴⁰ A similar conclusion to Lawlor was reached in the UK High Court in the Sevenoaks District Council v Pedham Place Golf Centre Ltd [2004] EWHC 771, para 39: “Since a planning permission is a public document and breach of a condition may ultimately have criminal consequences if a breach of condition notice and/or an enforcement notice is served/issued and not complied with, it is essential that any obligation by way of a condition is clearly and expressly imposed”, available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2004/771.html>.



Revised Bye-law on Waste Presentation: Frequently Asked Questions.

Duncan Laurence Environmental Ltd

Bye-law on Waste Presentation: Frequently Asked Questions.

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Waste Presentation Bye-Laws - FAQs.

Introduction and Purpose

The purpose of these FAQs is to cover, in an accessible and simplified fashion, many aspects that are explained in the guidance document that accompanies the template for the production of a draft waste presentation bye-law.

Many of the questions found here are derived from queries and comments made when the Template and Guidance were circulated to local authority stakeholders for comment. Accordingly, the contribution these individuals have made to the production of this document is acknowledged.

As is stated in the Guidance, readers are reminded that these FAQs are not a substitute for legal advice and should not be used for that purpose. The only body qualified to give a definitive interpretation of the law is the national courts. Readers wishing to explore the exact nature of the legal background and related requirements also are urged to obtain independent legal advice from a suitably qualified and experienced practitioner.

These FAQs have been prepared by Duncan Laurence Environmental Ltd. Additional contributions from both members of the 3 Regional Waste Management Offices and from the consultees are acknowledged.

Waste Presentation Bye-Laws – Frequently Asked Questions.

General

Why are bye-laws needed?

A: there are two main reasons:

- 1) Policy Action C.2.1 of each of the Regional Waste Management Plans contains the commitment to revise or introduce new bye-laws to maximise the quantity and quality of household waste where it is appropriate to do so;
- 2) There is an urgent need to improve both the capture of recyclate and its quality. National and EU targets for recycling and recovery are stringent and both population growth and increased consumer activity are making attaining these targets increasingly challenging. Better quality recyclate reduces costs and, itself, improves the possibility of environmentally sound recovery.

Does my local authority need to introduce bye-laws?

A: The introduction of bye-laws remains in the hands of each local authority in accordance with the Local Government Act. However, as indicated above, each Waste Management Plan contains a commitment to revisit the waste presentation bye-law issue.

Does my local authority have to stick to what is in the Template? Or can we alter things to suit our circumstances?

A: As the basis of a waste presentation bye-law is the Local Government Act, your local authority has discretion about bye-law content. But, while you may change the wordings if you consider that necessary, it is important that a unified and regional approach to bye-law content be maintained. It is also vital that any changes you make are fully compliant with the Local Government Act, that the resultant bye-laws are internally consistent and that they follow the requirements of the Regional Waste Management Plan.

My local authority already has bye-laws. Why do we need new ones?

A: Many existing bye-laws pre-date the introduction of some elements of the national waste legislation, particularly the most recent provisions on waste collection and/or food waste recovery. So many existing bye-laws are now out of date.

Having said that, a significant number of the elements of the bye-law Template reflect what was contained in earlier waste presentation bye-laws.

Why is the Guidance over 50 pages?

A: There are two main reasons:

- 1) The development of waste presentation bye-laws is significantly constrained by national law and these constraints need to be clearly explained in detail, particularly when users of the Guidance and Template may well not have a legal background. Should these constraints not be understood at the outset, then there is a danger that any bye-laws that are produced are unlawful and unenforceable.
- 2) Users of the Template need to understand in detail how each of the bye-law wordings contained in the Template operates, as well as what each one is intended to do and how different definitions apply. As the wording being proposed is a template, users of the Template need to have a thorough knowledge of all of these aspects of the Template. Otherwise, they may not be able to amend the

Template in a manner that is internally consistent with the existing wordings and which remains enforceable.

Why is it necessary for the Guidance to contain boxes that show the wording of the legislation?

A: The Guidance follows the house style of other material issued to local authorities on different aspects of waste management, including the Environmental Enforcement Network Guidance Manual, Guidance on the Extractive Waste Regulations and on the food waste legislation. The idea of the text boxes is to allow readers to see for themselves exactly what a particular element of national law says.

Why does the making of waste presentation bye-law appear complicated?

A: The development of waste presentation bye-laws is particularly complicated for the reason that any bye-law should not change the focus of, or otherwise impinge upon, existing national law. This is because this legislation has been passed by the Oireachtas and, under the Constitution, the national Parliament retains sovereignty over the content and scope of its legislation. This constraint is particularly challenging in relation to waste presentation bye-law making, given that there is now a very wide-ranging amount of national legislation which affects virtually every aspect of waste management.

Summary of Key Aspects of the Bye-Law Template

This all looks rather complicated. Can you summarise the key items of the Template and show how they fit together?

A: The key item to note is that a good proportion of the bye-laws relate to how “kerbside waste” is to be handled. This means that the bye-laws do not generally impinge on waste that is not “kerbside waste”. From this definition, it will be apparent that the bye-laws exclude:

- a) waste that is removed non-routinely such as via skips, and
- b) most waste prior to it being presented.

The latter exclusion is achieved by the words “presented for collection” in the definition of “kerbside waste”, with the result that activities such as home composting are not affected by the bye-laws - this waste is not being presented for collection.

Having defined kerbside waste, this term is then used in a number of places in the actual text of the bye-laws that follow:

- Bye-law 2 contains an obligation that holders of household kerbside waste participate in a waste collection service or arrange direct delivery to an authorised waste facility. Alternatively, and subject to some safeguards (see elsewhere in these FAQs), Bye-law 2 allows for bin-sharing
- Bye-law 3 sets down requirements relating to the maintenance and management of containers used for kerbside waste management
- Bye-law 4 indicates appropriate container storage arrangements (eg not on the public road, etc).
- Bye-law 5 requires that containers for household kerbside waste are used appropriately on the collection day and not overloaded (etc)
- Bye-law 6 sets down the time window for when containers of both household and commercial waste can be put out for collection
- Bye-law 8(a) is particularly apposite in relation to increasing the level and quality of recycle from householders. It requires householders to segregate kerbside waste into the recyclable and non-recyclable fractions and precludes these being mixed or contaminated

- Bye-law 8(b) extends what is said in Bye-law 8(a) and makes provision for a waste presentation byelaw to extend the scope of compulsory food waste presentation into additional areas which are outside of the requirements of the Household Food Waste Regulations. It does this by requiring that household kerbside waste is segregated into recyclable household kerbside waste and food waste and that these remain segregated. The areas to be effected are to be identified by mapping. (Bye-laws 8(a) and 8(b) are alternatives, and only one of these should be used).
- Bye-law 9 addresses non-participants in waste collection rounds. It requires that segregated household kerbside waste be delivered directly to an authorised waste facility and that documentation confirming this activity is retained. It also makes provision for that documentation to be passed to an authorised local authority officer on his/her request
- Bye-law 10 is aimed at multi-user complexes such as apartments, requiring persons with overall responsibility for such buildings to arrange for the segregation of the different factions of kerbside waste. It also contains provisions to ensure that occupants of these complexes are aware of recycling/waste segregation arrangements, and so on.

Besides these elements which relate directly to “kerbside waste”, there are also Bye-laws 7, 11 and 12. Respectively, these prevent:

- hazardous waste or WEEE entering the kerbside collection system
- refuse crews being obstructed, interference with bin microchips and the unauthorised use of someone else’s bin
- commercial waste being deposited at bring facilities.

Finally, Bye-law 13 responds to a requirement of the Local Government Act that mandates that, where fixed penalty notices are to be deployed, bye-laws mention them and set out the relevant penalties, etc.

Legal Basis of Bye-laws and other Legal Matters

How are waste presentation bye-laws made and approved?

A: They are made under the Local Government Act 2001, with Chapter 2 of the Guidance summarising the process.

Are waste presentation bye-laws made and approved under the Waste Management Act?

A: No. Instead, the system for the approval of such bye-laws is in the Local Government Act and the Local Government Act 2001 (Bye-laws) Regulations 2006. The only provision in the Waste Management Act is Section 35, which sets out what a local authority is entitled to do when devising a bye-law affecting waste presentation.

Section 35 of the Waste Management Act refers to the 1994 Local Government Act, not its replacement, the Local Government Act 2001. Is this a problem?

A: No. Section 209 of the Local Government Act 2001 makes clear that, when Section 35 of the Waste Management Act refers to the earlier Local Government Act 1994, this is in fact referring to the 2001 Local Government Act. The relationship between the Waste Management Act and the successive Local Government Acts is discussed in Appendix 2 to the Guidance.

My local authority already has existing bye-laws on waste presentation. How are these to be replaced?

A: The Local Government Act sets down how a bye-law is to be replaced, indicating that the fact that one is being revoked should appear in the public notice announcing the intention to make a new bye-law. In

addition, once approved, the replacement bye-law must clearly indicate that the earlier bye-law is being revoked. Section 4.2.6 of the Guidance covers this matter.

Some of the waste legislation mentioned in the bye-law Template has been amended. Shouldn't the Template allude to this when the legislation is cited?

A: No, there is no need to do this. This is clearly stated in the Interpretation Act 2005, being explained in more detail in the discussion of that Act in Appendix 2 of the Guidance. Moreover, if you add in all the amendments, uncertainty arises when the legislation is amended again and an existing bye-law doesn't refer to these later changes.

What is the Interpretation Act? I've never heard of it.

A: As its name suggests, the Interpretation Act 2006 sets down a unified set of conventions that apply to all national legislation and also to bye-laws. It means that there is a unified approach to how many standard phrases and other elements that commonly feature in law are to be understood. This both prevents diverging interpretations and, particularly, saves individual items of legislation each having to contain provisions which set out what particularly common elements of law mean.

Additional information on the Interpretation Act is found in two places in the Guidance: in Section 3.4 and in the last couple of pages of Appendix 2. This Act is also a handy source of reference to local authority staff when drafting waste facility permit conditions or statutory notices.

When should particular elements of a bye-law be phased in?

A: Phasing in will only be necessary if you are expecting a significant amount of non-compliance at the start and are envisaging that compliance will be achieved only over a period of months once word gets round and any publicity takes effect. What is highly undesirable is a provision which causes a large proportion of your local authority's population to be non-compliant without due notice being given. Section 3.8 of the Guidance discusses this matter.

Bye-Law Enforcement

Are you envisaging loads of prosecutions?

A: Whether a local authority wishes to initiate legal proceedings in respect of non-compliance with these bye-laws is a matter entirely for the discretion of that local authority. It may well be that publicity about the existence of these bye-laws and, if necessary, a quiet word with problematic householders may well be sufficient. It also needs to be recalled that, besides addressing recycle quality, the bye-laws are intended to act as a deterrent in relation to waste related anti-social behaviour. For example, and as explained elsewhere in these FAQs, they make the unauthorised use of another person's bin an offence.

Who can prosecute for non-compliance with a waste presentation bye-law?

A: Prosecutions can be taken either by a local authority or by an Garda Síochána.

What are the fines for non-compliance?

A: The maximum fine is now €2,500, with this sum being derived from the Fines Act 2010. That Act has increased with maximum fine of €1,500 which is what is specified in the Local Government Act. This interaction is explained in Section 2.3.1 of the Guidance. The maximum daily fine for non-compliance is now €500.

Can my local authority alter the level of the maximum fine?

A: Yes, it can. A local authority can set a lesser amount if it so wishes, with the actual bye-law indicating what the limit is. However, the level of penalties relating to obstruction and a person refusing to give his or her name and address is set by the Local Government Act and cannot be reduced. Section 2.3.1 of the Guidance covers this matter and there is more about this elsewhere in these FAQs.

What about Fixed Payment Notices?

A: The Local Government Act allows a waste presentation bye-law to include a provision on fixed payment notices if a local authority wishes to. The level cannot exceed €75. Bye-law 14 in the Template makes provision for this type of notice, with Section 2.3.2 of the Guidance providing additional information.

Shouldn't the bye-law text set out the actual content of a fixed payment notice?

No. This has already been done by the Local Government Act 2001 (Bye-laws) Regulations 2006 and there is no need to repeat it. This is explained in Section 2.3.2 of the Guidance.

Am I entitled to sign a fixed payment notice?

A: That depends on whether you are an “authorised person” under the Local Government Act. Being authorised under the Waste Management Act is not sufficient in this instance.

What can the Gardai do in relation to bye-law enforcement?

A: Gardai have been granted the power of arrest for those who contravene a waste presentation bye-law. However, in practice, it would be unlikely that such a power would be widely used unless there are circumstances that warrant its deployment.

Do I have the power to ask someone for his or her name and address in relation to the enforcement of a waste presentation bye-law?

A: Yes, you do, with this provision being contained in the Local Government Act. However, to enact this power you need to be an “authorised person” under the Local Government Act; your authorisation under the Waste Management Act will not suffice. Members of the Gardai also can invoke this power and, if necessary, arrest a person who refuses.

I've read through the Guidance and the Template, and it seems that these do not make waste presentation bye-laws particularly easy to enforce. For example, I still have to prove that a person has contravened a bye-law. If a person refuses to answer any of my questions, then what am I supposed to do?

A: Waste presentation bye-laws can only go so far. They are not a substitute for the normal process of waste enforcement. Like any national law, a person is only guilty after definitive proof has been obtained and legal proceedings completed. If a person wishes to remain silent and not speak to you, that is his or her Constitutional right (however, you and, particularly, the Gardai **do** retain the right to ask them for their name and address – see above and also Section 2.3.3 of the Guidance). In circumstances when a suspect won't help you, you need to look for other evidence that would prove bye-law contravention.

Developing your own Wordings from the Bye-law Template

I don't like all this legal stuff; can't I just ignore it and add in whatever I feel necessary to my local authority's bye-laws?

A: Virtually any action or activity by your local authority is governed by national law and is only made permissible by that law. Bye-laws are no different in this respect. Accordingly, you need to understand exactly what you can and cannot do under that law. This is why the Guidance covers the relevant issues in some detail.

Why do I need to be so careful about what my local authority adds into a bye-law?

A: You need to be careful about this because, if a bye-law goes further than the legal limits set by the Constitution, the Local Government Act and/or the Waste Management Act, the bye-law may be challenged as being unlawful.

Have bye-laws ever been subject to legal challenge?

A: Yes, some local authority bye-laws have been challenged but not, as far as is known, bye-laws on waste presentation. Appendix 2 refers to a very useful judgment on this matter in the High Court. In addition, if someone is taken to court for non-compliance with a waste presentation bye-law, it is open to that person to assert that the bye-law is, in fact, unlawful and that a prosecution cannot be sustained for that reason.

You say in the Guidance that I need to be careful to avoid overlaps with existing national waste legislation, which are the key ones I need to be careful about?

A: Most obviously, the Waste Management (Collection Permit) Regulations 2007, which control the activities of authorised waste collectors. The national legislation affecting packaging waste arising from commercial sources should not be impinged upon by bye-laws. Bye-laws should also not overlap or duplicate with the requirements of the Litter Pollution Act 1997. Section 3.2 and, particularly, Appendix 2 of the Guidance expands on this matter.

Can I change the wordings to suit my local authority's needs?

A: Yes, you can, and this is made clear in the Guidance. The Template bye-laws are what they say they are: a template. However, there needs to be consistency between different local authorities' approach to bye-law content, as well as conformity to the Regional Waste Management Plan. You also need to be careful to ensure that any additions and other changes fall within what the Oireachtas allows. Subject to some small exceptions, there cannot be impingement or embellishment of existing national legislation (see Section 3.2 of the Guidance and Appendix 2). Additionally, there is a need for any changes to be internally consistent with the remainder of the Template wordings.

I'd like to give my local authority more flexibility than that found in the bye-law Template so that we can adapt the requirements as necessary and without the need to obtain member approval of revised bye-laws. Can I do this by adding "or as agreed by the local authority" in different places in the bye-law text?

A: As explained in Section 3.3 and Appendix 2 of the Guidance, it is not generally desirable to have this type of phrase within a bye-law. Holders of waste who are subject to bye-laws need to be 100% clear as to what is required of them and they cannot be if clauses such what you are proposing are added in. The extensive use of this type of provision would make the bye-law increasingly uncertain in respect of its legality and, particularly, its enforceability. Section 3.3 of the Guidance covers this issue, with additional information in Appendix 2.

I'd like to amend the Template a bit, as I think my local authority has a particular problem that needs addressing. But I'm finding it difficult to devise a wording that is very precise and that will fit in the circumstances facing many holders of waste in the county. Can't I just require that a waste holder does

something that is “adequate” for this purpose and leave it at that? Or can I require the holder to do the required action “to the satisfaction of” my local authority? Moreover, I’ve seen that some national legislation requires affected persons to “take all reasonable steps” – can’t I use this phrase to cover all that I want to?

A: It is highly undesirable to go down this route. All waste holders subject to a waste presentation bye-law need to know where they stand, what is required of them and, ultimately, whether or not they are compliant with the law. They cannot do this if they do not know what action is “adequate”, what the “satisfaction of” your local authority actually is or what constitutes “all reasonable steps”. There is case law from the High Court confirming this view and this is discussed at the end of Appendix 2 of the Guidance.

While some of the phrases you are proposing do appear in national law, they often relate to serious offences whereby expert witness evidence will be necessary to prove/disprove whether the relevant legislative requirements have been met. By contrast, bye-law non-compliance ultimately will be dealt with at a District Court level and, given the nature of the potential offences, it is inappropriate for such a detailed debate about what these terms mean to take place at such a forum.

Why do you say in the Guidance that it is undesirable for a byelaw to state that, for example, “a person shall not do XXX” or the “holder of waste shall not do YYY” or that “doing ZZZ is an offence”?

A: In relation to the question about using a phrase that says “a person shall not do XXX”, the answer is that it is easier and simpler to say that activity XXX shall not be done - see Section 3.6 of the Guidance. In respect of “holder of waste”, if you include this phrase, all you are doing is making bye-law enforcement more difficult than it needs to be. As section 3.7 of the Guidance explains, you are imposing a doubly-difficult evidential burden upon yourself in legal proceedings.

As the Local Government Act makes clear, the contravention of a bye-law is an offence. Accordingly, there is no need for a byelaw to say the same thing. This is explained in Section 3.5 of the Guidance.

Bye-Laws and Householders

What are the most important provisions that will affect householders?

A: Have a look at the answer in the section of towards the start of these FAQs entitled “Summary of Key Aspects of the Bye-Law Template”.

How do the bye-laws affect householders that do not use wheelie bins or refuse sacks?

A: The first point is that you need to view the bye-laws in their wider context. The Waste Management Act already outlaws unauthorised waste management practices, with Section 32 requiring that waste arising from householders (or other sources) must pass to either a collector or a waste management facility that is duly authorised to receive it. These requirements are unchanged by the wording of the bye-law Template.

What the Template does require is that a householder should retain an authorised waste collector to remove kerbside waste from the premises. Should the householder not wish to do this, then he or she can deliver the waste directly to an “authorised waste facility” or can bin-share with someone else – see Bye-law 2. As set down elsewhere in these FAQs, there are specific additional requirements that must be met where bin-sharing takes place.

How do the bye-laws affect householders that remain serviced by refuse sacks?

A: The use of refuse sacks is increasingly becoming a practice of a minority of individuals, with special provision being made, via the Waste Management (Collection Permit) Regulations, about this practice. Being

a minority practice, the bye-law Template does not go into great detail on how it should be controlled, instead allowing a local authority discretion, should it wish to, to develop its own wording in this respect.

Having said that, the deployment of refuse sacks is consistent with what is said in the Template and is not outlawed by it. For example, the general requirements relating to the segregation of household waste into different fractions, which are contained in Bye-laws 2, 5, 6, 8(a), 8(b), 9 and 11 apply equally to sack collections. Perhaps the most important of these is Bye-law 8, which mandates waste segregation and prohibits contamination.

Why do the bye-laws make provision for bin sharing? Surely, they should outlaw this practice?

A: Bin sharing is a reality in Ireland and, for this reason, the Template accommodates the practice. However, it also sets down additional safeguards that outlaw one person depositing his or her waste in another person's bin without permission, bringing this matter within the scope of waste enforcement for the first time. Unless the recipient of the waste has consented to this practice, Bye-laws 2 and 11 would be contravened. As indicated elsewhere in these FAQs, these provisions are a considerable advance on the sanctions presently available to prevent this practice.

Bye-law 8(a) or 8(b) requires householders to segregate their kerbside waste and to prevent contamination. What is meant here by "contamination" and shouldn't the bye-law be more specific about this?

A: A consistent theme of the Guidance and these FAQs is the need for bye-laws to be readily understood and not be overly technical. This is because those subject to waste presentation bye-laws need to clear as to what is required of them. This is why the concept of contamination is not embellished upon (and, even if it could be, it would be very difficult to come up with a wording).

In essence, this bye-law relies on the reality that, should the level of contamination be so flagrant or blatant, then non-compliance with Bye-law 8 will be obvious to all parties. In other words, one knows contamination when one sees it. For example, the presence of dirty nappies or a cat-lit in a bin designated recyclable household kerbside waste will clearly constitute contamination.

Boundaries between something that is contaminated or uncontaminated are, naturally, difficult to delineate in waste management and the bye-law Template is no exception to this rule. And in this respect, it should be pointed out that, while the European Union (Household Waste and Bio-Waste) Regulations 2015 requires an original food waste producer to keep food waste separate from "other waste and contaminants", they do not elaborate further.

Why don't the bye-laws prohibit the unauthorised burning of waste?

A: A point made repeatedly in these FAQs and in the Guidance is that bye-laws should not overlap or otherwise impinge upon legislation that has been passed by the Oireachtas. Already, unauthorised waste burning activities are outlawed by Section 32 of the Waste Management Act in respect of the management of waste that may result in environmental pollution. Additionally, the Waste Management (Prohibition of Waste Disposal by Burning) Regulations 2009 are intended to address unauthorised burning activities. The Air Pollution Act 1987 also would have application to this issue.

It also should be pointed out that Section 35 of the Waste Management Act empowers a local authority to make bye-laws solely on the presentation of household or commercial waste. Burning waste is a markedly different activity.

Do the proposed bye-laws effect or prohibit home composting?

A: No, home composting is completely outside of the scope of the bye-laws. This is partly because Section 35 of the Waste Management Act allows a bye-law to be made only in respect of presentation waste “for collection” and, rather obviously, home composting does not form part of waste collection.

This exclusion is additionally confirmed by the actual text of the bye-law Template and, particularly, by the pivotal definition of “kerbside waste”. This refers to the fraction of household and commercial waste “presented for collection” and, as indicated, home composting does not entail such a practice.

Do the bye-laws affect skips or other one-off collections?

A: No they don’t. This is because such collections do not entail the management of waste that is within the definition of “kerbside waste”. As they are excluded from that term, they are also excluded from the actual bye-laws.

A householder in my area has told me that she is using a relative’s bin. How do I find out if this is true?

A: As indicated elsewhere in these FAQs, bye-laws cannot be a substitute for the general enforcement process by which a local authority investigates non-compliance with environmental law. Accordingly, should this matter need investigation, then the name of the relative needs to be obtained and then the story needs to be verified. It may well be that, having had this matter investigated and the different parties spoken to, the unauthorised practice that concerns you may cease.

A householder has rung up to complain that a neighbour is using her bin. What do the bye-laws say about this and how can I address this complaint?

A: Two of the bye-laws in the Template outlaw this practice. Firstly, there is compliance with Bye-law 2 only if the recipient of the waste has consented to his or her bin being used. Secondly, Bye-law 11 requires that no waste shall be supplemented prior to collection by another person without the original holder’s consent.

Some waste collectors in my local authority area require brown bins to contain paper liners, why don’t the bye-laws require this?

A: While a bye-law could mandate this practice, you need to think about the issue of flexibility and that any such requirement will affect householders serviced by all waste collectors in your area. So, if a waste collector decides later that liners are a waste of time, then you’ll need to change your bye-laws if they mandate that liners are used. In general, it is not helpful to be over-prescriptive on aspects of waste management which could change in the future. Moreover, the requirement that householders use such liners is really a matter for the waste collector and, as such, so is the enforcement of this practice.

Why is the term “garden waste” used, rather than the Waste Management Act’s term “biowaste”?

A: A theme of the Guidance and these FAQs is that the wording of bye-laws must be readily understood by those subject to them. In this respect, the term “garden waste” is clear in its extent and context. By contrast, “biowaste” means virtually nothing to anyone outside of the waste industry.

Secondly, the term “biowaste” in the Waste Management Act is much wider than just referring to waste from domestic gardens and even includes some industrial waste. There is further explanation in Section 4.2.8 of the Guidance as to why “garden waste” is used instead (see the sub-heading “biowaste”).

Why don’t the bye-laws specify the acceptable and unacceptable types of garden waste?

A: In order to retain a degree of flexibility, it is important that bye-laws are not inordinately specific and detailed. What is acceptable garden waste should be a matter for individual collectors and their customers; there seems no need for bye-laws to impinge on this relationship.

Bye-Laws and Waste Collectors

Why can't a waste presentation bye-law cover activities by waste collectors?

A: As explained earlier, bye-laws of this nature are constrained by the principle that the national Parliament is empowered to make the legislation it wishes to make and that bye-laws should not somehow alter the scope or reach of that legislation. Therefore, it is inappropriate for them to impinge upon the waste collection permit system and the Waste Management (Collection Permit) Regulations 2007.

In addition, Section 35 of the Waste Management Act is clear about its scope and purpose, setting out the allowable content of bye-laws promulgated under its powers. It allows for bye-laws on waste presentation to be made which affect waste prior to its collection. Accordingly, Section 35 does not allow a bye-law to affect how waste is managed after it has been collected.

Accordingly, if your local authority desires a particular action from waste collectors operating in its functional area, this requirement needs to be referred to the National Waste Collection Permit Office. And any such requirement needs to be articulated through the waste collection permit system.

Why can't a bye-law specify waste collection times?

A: Waste collection times are determined by the waste collector and, if need be, constrained by one or more condition of a waste collection permit. For the reasons explained earlier and in the Guidance, a waste presentation bye-law should not impinge upon these requirements. Moreover, households and sources of commercial waste – in other words, those subject to this type of bye-law - have little or no influence on this matter.

Why don't the bye-laws require the microchipping of wheelie bins?

A: Again, this is a matter for each waste collector and for the waste collection permit system.

Why can't a bye-law oblige those presenting waste to a service provider to fulfil any additional requirements that this provider may have?

A: It is not a good idea for a waste presentation bye-law to require householders and/or commercial activities to comply with other requirements of a waste collector when these requirements are not specified in any detail. This is because a bye-law must be clear as to the obligations being imposed on those that are subject to it. Moreover, setting down the exact requirements in too much detail is undesirable, as bye-laws need to retain a degree of flexibility so that, if collection activities or the local waste market changes, the actual bye-laws do not need to be amended. Additionally, more detailed requirements emanating from particular collectors can be left to be imposed by the terms and conditions of any contract between the collector and the customer.

Title of the Bye-law

Can I choose the title of the bye-law?

A: The exact title you use is up to your local authority. However, it must cover the content of the bye-laws in such a manner that those subject to them are clear about its relevance. It must not also extend to items that are not permissible as bye-law content. Section 4.2.1 of the Guidance covers this matter.

Statutory Basis of the Bye-law

Can I just cite the Waste Management Act or do I need to mention the Local Government Act well?

A: A number of elements of the bye-law template may fall outside the scope of Section 35 of the Waste Management Act, with the result that it is better to cite that Section and also the Local Government Act as its statutory basis. If you require additional litter-related provisions, then the Litter Pollution Act 1997 needs to be cited if your amendments stem from that source. Section 4.2.2 of the Guidance discusses this issue.

Why may there be more than one statutory basis for a waste presentation bye-laws?

A: Section 35 of the Waste Management Act is very clear that it relates only to bye-laws affecting two related types of waste presentation activity. By contrast, the Local Government Act's powers are very wide (albeit subject to the limitations explained in these FAQs and in the Guidance). Accordingly, if there is doubt about whether Section 35 envisages some particular element of a bye-law, then the Local Government Act (or, as the case may be, the Litter Pollution Act) may need to be cited.

Citation

Why is this citation sub-section needed, when the title already contains the same information?

A: All existing bye-laws use this convention.

Date of Commencement

Why do I need to include a date of commencement here?

A: Because the Local Government Act requires it - see Section 4.2.4 of the Guidance.

Geographical Area of Application

Does a bye-law have to apply to the entire functional area of my local authority or can it be more specific?

A: It can be more specific and be limited to certain urban centres. Besides this restriction applying "globally" to all elements of a bye-law, you also have the choice of making certain parts of it apply only to certain areas. This matter is covered in Section 4.2.5 of the Guidance.

Revocations

Do I need to include this sub-section when there are no existing waste presentation bye-laws for my local authority?

A: No

Scope of this Bye-law: Waste Types and Controlled Activities

Why doesn't this section mention waste presentation?

A: Because it doesn't need to. Bye-laws made under Section 35 of the Waste Management Act have to focus on waste presentation and cannot focus on other things. So there is no need to repeat what is said in that Section. And, in any case, the later sections of the bye-law Template make the scope clear.

Interpretation and Definitions

Why aren't refuse sacks included within the definition of "appropriate waste containers"?

A: They are excluded for the reason that refuse sacks are dealt with by the bye-law Template differently. For example, the second arm of Bye-law 5 makes provision for refuse sacks. In other instances, the bye-laws

simply require “kerbside waste” be handled in a specified manner, thereby covering waste in either bins or sacks.

Schedule 1 sets out the nature of “recyclable household kerbside waste”, why doesn’t the Template also contain a similar table that defines “residual household kerbside waste”?

A: There is no need to do this and, if a table specifying the types of “residual household kerbside waste” was produced, there would always be a danger that something was left off that should have been included. Instead, “residual household kerbside waste” is all the household kerbside waste fraction that is left over after recyclable household kerbside waste, food waste and, if such a service is available locally, garden waste has been removed – see the definition given in the Template.

The Template contains some of the definitions that are set out in the Waste Management Act, but others are missing. Why is this?

A: In principle, there is no need to repeat any of the Waste Management Act’s definitions in the Template. Waste presentation bye-laws emanate from the powers contained in Section 35 of the Waste Management Act and, because of this, the terms in the “parent” Act apply. This is explained in Section 3.4 of the Guidance, at the start and end of Section 4.2.8 and in Appendix 2’s coverage of the Interpretation Act 2005.

Having said that and as set down in Section 3.3 of the Guidance, there is also the need for bye-laws to be readily understandable by members of the public and, for this reason, some of the more significant definitions in the Waste Management Act have been included.

In order to avoid any doubt on this matter, the end paragraphs of Bye-law 1 - Interpretation and Definitions - lists other terms whose meaning is set down in the Waste Management Act. It also says that the Interpretation Act shall apply when debates arises about the meaning of any element of the bye-laws.

Bye-law 2. Obligation to Participate in a Waste Collection Service

Doesn’t Bye-law 2’s reference to bin sharing condone this practice or legitimise it?

A: No, it does not. All it does is to set out a process whereby bin sharing is covered by a waste presentation bye-law.

Moreover, the bye-law Template actually gives additional protection to householders in this respect. Bye-Law 2 outlaws the unauthorised use of someone else’s bin, as it lays down the three options on a waste holder, with using someone else’s bin without permission not being one of them. Moreover, Bye-law 11 – Interference of Orderly Waste Collection – additionally makes it an offence to use another person’s bin without that person’s consent.

Accordingly, the existence of these provisions in the Template allows local authority staff or the Gardai to initiate legal action against an alleged offender. By contrast, in the absence of this provision, it may well be up to the luckless householder to initiate civil legal proceedings to stop this happening.

I was talking to a householder who I think was dumping his waste in an unauthorised manner. He says that he was bin sharing with a relative. I don’t believe him; how to do prove that he is committing an offence?

A: As stated earlier, waste presentation bye-laws are not a substitute for the normal enforcement process whereby offences need to be investigated. Like any other element of criminal law, a person is innocent until proved guilty. Accordingly, you need to investigate this matter further and, for example, consider taking a

cautioned statement from the possible offender. If he co-operates and names the relative, then you need also to talk to the relative. If you have obtained a properly signed statement from the suspect, this may well be admissible in legal proceedings. Its existence also makes it difficult for him or her to invent another story for the court. This is not, of course, to suggest that this type of waste enforcement is easy, particularly if the person does not want to cooperate; but bye-laws can only do so much to help you in this respect.

Bye-law 3. Maintenance and Management of Waste Containers

Why doesn't this section also cover refuse sacks?

A: As discussed earlier, the deployment of refuse sacks has been extensively phased out across Ireland, with the result that wheelie bins are to be deployed unless local circumstances preclude their use. Given this context, Bye-law 3 does not set down provisions about how sacks are to be managed.

Our existing bye-laws forbid householders from placing waste such as hot ashes in a container in a way that damages it. Why isn't this included here?

A: Some of the older wordings in existing bye-laws stemmed from a time when local authorities supplied containers to households. The reference to damaging containers has been left out for the reason that this type of issue is a matter primarily for the authorised waste collector to deal with.

Bye-law 4. Location for Container Storage

Why isn't curtilage defined?

A: In most instances, what is or is not the curtilage of a householder's premises will be pretty obvious and thus it will be equally obvious whether this bye-law is being contravened. There are already enough definitions in the Template and it doesn't seem necessary to add to this.

The Roads Act defines items such as "roadway" and "footpath", why aren't these definitions used?

A: Because they don't need to be. In most instances, it will be obvious whether the location for container storage is compliant with this bye-law or is not. Bye-law 4 also additionally refers to "any other public place" in this respect, which is a deliberate catch-all to preclude debates of this nature arising.

Bye-law 5. Use of Waste Containers on Collection Day

Why doesn't this bye-law extend to setting out requirements about refuse sack deployment on the collection day?

A: As explained elsewhere in these FAQs, the deployment of sacks will be an exception rather than a rule and, for this reason, this bye-law does not refer to them. However, there is nothing to stop your local authority developing a wording to cover this issue if it wishes to.

Bye-law 6. Collection Times and Container Removal

Does this apply to sacks?

A: Yes it does, as it says that "kerbside waste" shall be presented in the manner specified.

Bye-law 7. Prohibited Waste Types

Why does this just refer to household waste and not to commercial waste?

A: Because a number of commercial-type sources may produce hazardous waste and have it removed by arrangements that might constitute a "kerbside collection".

Bye-law 8(a). Segregation of Household Waste and Contamination Prevention

Why doesn't this bye-law say more about food waste management?

A: Because this matter is covered adequately by the European Union (Household Waste and Bio-waste) Regulations 2015. Repeating these requirements here may well introduce confusion both in respect of offences and about whether legal proceedings have been embarked upon under the correct item of legislation.

Bye-law 8(b). Segregation of Household Waste, Contamination Prevention and Extending Food Waste Collection

Do we have to use this bye-law?

A: No. But, as explained in the Guidance, you should use Bye-law 8(a) instead.

Do we need to produce the maps that this bye-law refers to? Can't we just say in the bye-law that any area designated by this local authority is subject to this bye-law?

A: A key precept behind the Template and the Guidance is that each bye-law should be clear and that those subject to them should know exactly what they are required to do in order to comply. The use of mapping seems to be the most obvious way to ensure that all parties know whether a bye-law applies to them. By contrast, a bye-law that allows a local authority to specify the areas in some other way – and which is not set down in the actual bye-law itself – might make the bye-law legally uncertain. It also makes it much more difficult for members of the public to check to ensure they are compliant. This issue is expanded upon in the final section of Appendix 2.

Bye-law 9. Additional Provisions for Householders not availing of a Kerbside Collection Service

Can't we just say that all sources of household waste should use a collection service and dispense with what seems to me to be an "escape clause" set down in Bye-law 9?

A: If you do this, then there is likely to be widespread non-compliance, and ensuring that all your households comply will be an uphill struggle. At the moment, they are entitled to access civic amenity sites and other waste infrastructure operated by many local authorities for recycle and black bin waste. Some individuals may generate very little waste due to their lifestyle choices and imposing a wheelie bin solution may well cause them prohibitive expense.

This bye-law appears to go further than Section 35 of the Waste Management Act. Is this allowable?

A: Yes, it does go further than Section 35, as it extends to activities that are beyond the scope of how household waste is presented. This is why Section 4.2.17 of the Guidance indicates that the statutory basis of a bye-law of this type must reflect both the Waste Management Act and the Local Government Act.

Is it realistic to expect householders to retain receipts when they deliver waste directly to authorised waste facilities?

A: Until quite recently, householders were required to retain receipts if they wished to avail of a provision in the national taxation system that allowed refuse costs to be set against their annual income tax (this exemption ceased after the tax year of 2011). So there is nothing particularly onerous being changed here.

Secondly, unless some record is kept in accordance with this bye-law, it will be very difficult for local authority staff to ensure compliance with the other requirements set down here.

Are you saying that we should take householders to court if they cannot produce the required receipts?

A: The Guidance does not set down how you should deal with non-compliance with this bye-law or any of the other ones. How enforcement action is to be taken in any of these respects is a matter for your local authority to decide. It may well be that having a quiet word with someone who is claiming that he or she took their waste to a civic amenity site about the need to retain receipts may well encourage them to comply next time.

Some of our civic amenity sites do not issue receipts, so how can householders comply?

A: In the absence of the receipts-based system, it is quite difficult to see how Bye-law 10 can operate effectively. So it may well be necessary for you to consider how your own local authority's waste sites should operate to optimise the internal workings of these bye-laws.

Lots of people won't know of the need to retain receipts, so how will this work?

A: Bye-laws cannot work in a vacuum, and thus it is up to your local authority to support and facilitate their operation. And one of the ways of doing this is via publicity which is aimed at increasing householders' and commercial waste sources' knowledge of the bye-laws and their requirements. For example, it may be desirable for all receipts to be accompanied by a clear explanation about the need for them to be retained and why. This can be printed on the receipt or separately on an information leaflet and/or appear as signage at your authorised waste facilities.

Does Bye-law 9 affect people engaged in bin-sharing?

No, Bye-law 9 does not apply to parties engaged in bin-sharing, including those using someone else's bin in accordance with Bye-laws 2 and 11. Parties to such arrangements are "participating in a household kerbside waste collection service".

Bye-law 10 Provisions affecting Multi-user Buildings, Apartment Blocks, etc

How am I meant to find out who is in charge of an apartment block or shopping centre?

A: A theme of these FAQs is that bye-laws cannot be an answer to all difficulties faced by the enforcing authority. So you are going to have to go about this in the normal way you would investigate any issue to do with non-compliance with the national environmental legislation.

You use the term "adequate" here, but in Guidance and elsewhere in these FAQs you tell me not to use this term. So why is it found in Bye-law 10?

A: It is used here as there seems to be no other way of setting down what is needed in a way which will affect the numerous different circumstances affecting shopping centres, apartment blocks and so on across Ireland. In essence, you'll often know when something is "adequate" and, conversely, when it is inadequate. Clearly, gross shortages of receptacles for food waste or for recyclable waste will suggest that the arrangements are not "adequate". Given that these facilities might be expected to be accessed by a number of members of the public, they may well give you information as to their views about the quality of the arrangements and how other elements of this bye-law are being complied with.

There is no management company for a particularly problematic mixed use development locally, who then is responsible and how do I find out who he or she is?

A: Bye-law 10 refers also to “any other person”, a phrase which applies where no management company exists. As explained in Section 4.2.18 of the Guidance, the legal definition of “a person” is an individual, company, partnership, cooperative or any other similar body. So you need to make enquires to find out how the arrangements are controlled and who is in charge of them. Some of the occupiers of this type of premises should also be able to assist you.

Bye-law 11. Interference with Orderly Waste Collection

Bye-law 12. Additional Provisions for Commercial Waste

The management of commercial waste is a real problem to my local authority. Is Bye-law 12 the only element proposed to control this waste stream - which is, in effect, don't take commercial waste to my local authority's bring sites?

A: No, it is not correct to say that only Bye-law 12 relates to commercial waste. If you go back to the scope of the bye-laws section on the first page of the Template, you'll see that it is clear that they relate to both commercial and household waste “unless the following bye-laws indicate to the contrary”. And, for example, if you look at the definition of “kerbside waste”, you'll see that it covers both household and commercial waste. Accordingly, Bye-law 3 applies to both waste types, as does Bye-law 4 and so on.

How do the bye-laws affect commercial waste presentation? And which of them does this?

A: See the answer to the question above and see Bye-laws 3, 4, 6, 10, 11 and 12.

Why can't these bye-laws cover the segregation, storage, presentation and contamination of commercial packaging waste?

A: Because this is a requirement of national law and, as indicated, bye-laws should not embellish upon that law. Segregation, etc, of commercial packaging waste is regulated by the European Union (Packaging) Regulations 2014. This matter is discussed in Appendix 2 of the Guidance.

Bye-law 13. Enforcement Provisions/Fixed Payment Notices.

What is the maximum level of fine for non-compliance with a bye-law?

A: Unless your bye-laws are to indicate a lesser amount, the maximum penalty is €2,500, rather than the €1,500 stated in the Local Government Act. Section 2.3.1 of the Guidance explains this apparent discrepancy.

You say that the Local Government Act grants my local authority discretion to put in place a lower level of penalty; can I change the penalties for obstruction of authorised officers or which relate to someone refusing to provide their name and address?

A: No, this is not allowed by the Local Government Act – see Section 2.3.1 of the Guidance.

How do I become an authorised person to enforce bye-laws?

A: You need to be appointed as an authorised person under the Local Government Act, with this appointment according to what the Local Government Act requires.

**Environment and Transportation Department,
Block 2, Floor 6,
Civic Offices,
Dublin 8.**

20th June 2018.

**To Each Member of the
Environment Strategic Policy Committee**

EU Circular Economy Package/Plastic Strategy/Single Use Plastics Proposals

The **EU Circular Economy Package (CEP)** has set ambitious targets for member states in respect of plastics. The target for plastic packaging recycling has been set at 50% by 2025 and 55% by 2030. The current rate of plastic recycling in Ireland is 34%.

In addition to the specific recycling targets the EU has also launched a **Plastic Strategy** as part of the CEP. The main elements can be summarised as follows:

- Plastic waste generation is decoupled from growth. Citizens are aware of the need to avoid waste and make choices accordingly. Consumers, as key players are incentivised and made aware of key benefits thus, enabled to contribute actively to the transition. Better design, new business models and innovative products emerge that offer more sustainable consumption patterns.
- By 2030:
 - All plastics packaging placed on the EU market is either reusable or can be recycled in a cost-effective manner.
 - More than half of plastics waste generated in Europe is recycled. Separate collection of plastics waste reaches very high levels.
 - Sorting and recycling capacity in Europe has increased fourfold since 2015.
- Export of poorly sorted plastics waste outside Europe has been phased out.

- The plastics value chain is far more integrated, and the chemical industry works closely with plastics recyclers to help them find wider and higher value applications for their output.
- The market for recycled and innovative plastics is successfully established with clear growth perspectives as more products incorporate some recycled content.
- More plastic recycling helps reduce Europe's dependence on imported fossil fuel and cut CO₂ emissions in line with commitments under the Paris Agreement.
- Many entrepreneurs see the need for more resolute action on plastics waste prevention as a business opportunity. Increasingly, new companies emerge that provide circular solutions; such as reverse logistics for packaging or alternatives to disposable plastics along with benefits from the development of digitisation.
- The leakage of plastics into the environment decreases drastically, effective waste collection systems combined with a drop in waste generation in conjunction with an increased consumer awareness campaign will help to avoid litter and ensure that waste is handled appropriately.

Finally the EU is also considering proposals to address the issue of single use plastics. Some of the measures proposed include:

- **Restrictions** on sale of plastic items where alternatives available. **Ban** on plastic cotton bud sticks, disposable cutlery and plates, straws, drinks stirrers and balloon sticks.
- **Consumption reduction targets** focused on food containers and drinks cups using measures such as; national reduction targets, making alternative products available or ensuring that single use plastic products cannot be provided free of charge.
- **Extended Producer Responsibility** schemes to include; take-away food containers, crisp and sweet packets and wrappers, drinks containers and cups, tobacco products with filters, wet wipes, balloons, and lightweight plastic bags. Producers will be required to fund the collection and treatment of waste along with placing focus on marine litter clean-ups as well as education campaigns.
- **Labelling** sanitary towels, wet wipes and balloons with information about plastic content and the impact of littering.
- Obliging member states to **collect 90% of single-use plastic bottles** by 2025.

- **Extended Producer Responsibility Schemes** to be established for **fishing gear**.

Over the next 2 years the Department of Communication Climate Action & Environment (DCCA) will co-ordinate the national response as follows:

- **Circular Economy** – Drafting of National CEP Action Plan plus transposition of relevant directives
- Promote **Plastics Strategy** and participate in negotiations on the **Single Use Proposals**
- Development of **National Strategy on Plastics**
- Encourage **Innovation and Research** – EPA, H2020 and Life programme.

A summary of CEP & associated timelines as well as an EU Plastic Factsheet is also attached.

Current Regional/Local Authority Initiatives

The Regional Waste Management Plans 2015-2021 are centred around the move to a more circular economy with a strategic approach designed to place a stronger emphasis on preventing wastes, increasing material reuse activities and increasing the quantity and quality of recyclates.

Some of the key current/planned initiatives for 2018 relating to plastics include:

- Recycling List Ireland National Awareness Campaign
- Short Educational Video – Irelands current role in Global Plastics Recycling Industry
- Pop Up Minimal Waste Shops to encourage shopping with less packaging and support local produce
- Conscious Cup Campaign to promote reusable coffee cups
- Local Authority Initiatives to eliminate single use plastics from offices
- Campaign to encourage reusable water bottles
- Funding of Third Level Eco-Design Programmes (focus on plastics)

Hugh Coughlan
Regional Co-Ordinator
Eastern-Midlands Regional Waste Management Office



European Commission



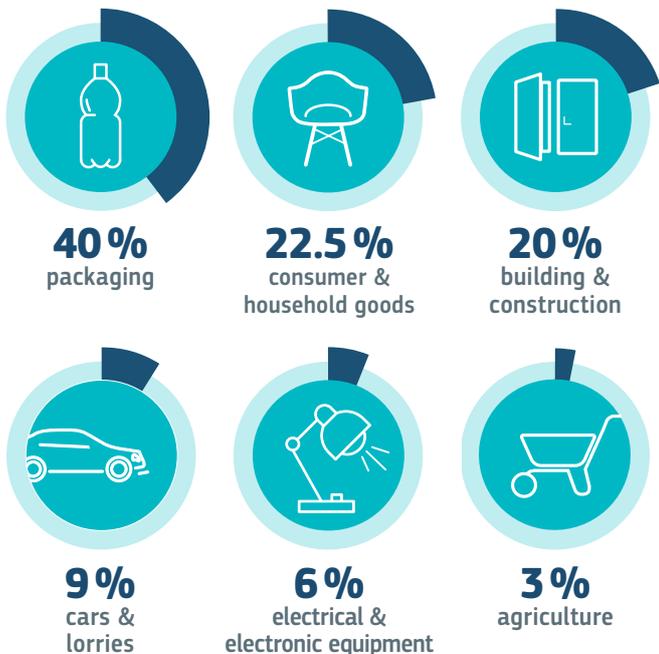
Changing the way we use plastics

It's light, it's cheap, it's everywhere and we can't live without it. Plastic is fantastic, but it has serious downsides as well. It's time to rethink plastic, and ask some tricky questions:

- How can we get away from single-use plastics?
- Can we make recycling it easier?
- And how can we stop plastic from ending up where it doesn't belong?

EUROPE PRODUCES A HUGE AMOUNT OF PLASTIC: **58 MILLION TONNES** EVERY YEAR

EUROPE PRODUCES **25 MILLION TONNES** OF PLASTIC WASTE



Source: PlasticsEurope, 2014

EU initiatives like higher recycling targets and more effective legislation for drinking water (cutting the need for bottled water) are improving the situation, but stronger action is needed.

Most of the raw material is fossil fuel based. Thus, if the current production trends continue, **by 2050** plastics could account for 20% of oil consumption, 15% of greenhouse gas emissions, and **there could be more plastics than fish in the sea.**

More than 60% of plastic waste still comes from packaging, but only 40% of that packaging is recycled.

Sources: PlasticsEurope and Eurostat

Source: PlasticsEurope

Plastic leakage

Plastics are very durable, so they accumulate in nature, damaging ecosystems we rely on. In the oceans they break down into tiny fragments, which enter the food chain. The microplastics are eaten by plankton, which are eaten by fish, which are eaten by... us.



Many of these items are packaging for food and drink and most were designed to be used only once (“single-use plastics”). That’s a waste of valuable resources.

It’s time to rethink plastics

It’s time to change the way we design, produce, use and dispose of them. Let’s reinvent plastics!

The EU has a new strategy to address the whole life-cycle of plastics. The aim is to make them:



We also need to stop using plastic where there are better alternatives available, and ensure that the plastics we use keep their economic value for as long as possible, and don’t end up in landfills.

By 2030, all plastic packaging placed on the EU market should be reusable or recyclable. As well as cutting the industry’s carbon footprint, this will reduce plastic waste and marine litter, and slow the proliferation of microplastics.





EU average

THE EU GENERATED 15.88 MILLION TONNES OF PLASTIC PACKAGING WASTE IN 2015

Source: Eurobarometer



31 kg/person of plastic packaging waste was generated (2014)



40% of plastic packaging waste was recycled (2015)

What are you doing about plastic waste?



65%

separate waste for recycling



34%

avoid single-use goods like cutlery & cups



24%

avoid buying over-packaged products



70%

use fewer single-use plastic bags



EU average

Source: Eurobarometer

How would you tackle the plastic challenge?

Most Europeans back measures to cut plastic waste.

With 87% of Europeans worried about the environmental impact of plastic, and 74% worried about its impact on their health, people have the drive to tackle the plastic challenge, but what do they think should be done?

Source: Eurobarometer



#PlasticsStrategy

#CircularEconomy

 https://twitter.com/EU_ENV

 <https://www.facebook.com/EUEnvironment>

 <http://ec.europa.eu/environment/circular-economy/>

 http://ec.europa.eu/environment/waste/plastic_waste.htm



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Brussels, 16.1.2018
COM(2018) 28 final

ANNEXES 1 to 3

ANNEXES

to the

**Communication from the Commission to the European Parliament, the Council, the
European Economic and Social Committee and the Committee of the Regions**

A European Strategy for Plastics in a Circular Economy

{SWD(2018) 16 final}

ANNEX I

List of future EU measures to implement the Strategy

Measures	Timeline
Improving the economics and quality of plastics recycling	
Actions to improve product design: <ul style="list-style-type: none"> - Preparatory work for future revision of the Packaging and Packaging Waste Directive: Commission to initiate work on new harmonised rules to ensure that by 2030 all plastics packaging placed on the EU market can be reused or recycled in a cost-effective manner. - follow-up to COM (2018) 32 "<i>Communication on the implementation of the circular economy package: options to address the interface between chemical, product and waste legislation</i>": improve the traceability of chemicals and address the issue of legacy substances in recycled streams - new eco-design measures: consider requirements to support the recyclability of plastics 	<p>Q1 2018 onwards</p> <p>Q1 2018 onwards</p> <p>ongoing</p>
Actions to boost recycled content: <ul style="list-style-type: none"> - launching an EU-wide pledging campaign targeting industry and public authorities - assessment of regulatory or economic incentives for the uptake of recycled content, in particular in the context of the: <ul style="list-style-type: none"> - Revision of the Packaging and Packaging Waste Directive (see above) - Evaluation/review of the Construction Products Regulation - Evaluation/review of End-of-life Vehicles Directive - as regards food-contact materials: swift finalisation of pending authorisation procedures for plastics recycling processes, better characterisation of contaminants and introduction of monitoring system - development of quality standards for sorted plastics waste and recycled plastics in cooperation with the European Standardisation Committee - Ecolabel and Green Public Procurement: Further incentivise the use of recycled plastics, including by developing adequate verification means 	<p>Q1-Q3 2018</p> <p>Q1 2018 onwards</p> <p>ongoing</p> <p>2018</p> <p>2018 onwards</p>
Actions to improve separate collection of plastic waste: <ul style="list-style-type: none"> - issue new guidelines on separate collection and sorting of waste - ensure better implementation of existing obligations on separate collection, including through ongoing review of waste legislation 	<p>2019</p> <p>ongoing</p>
Curbing plastic waste and littering	
Actions to reduce single-use plastics: <ul style="list-style-type: none"> - analytical work, including the launch of a public consultation, to determine the scope of a legislative initiative on single-use plastics 	<p>ongoing</p>
Actions to tackle sea-based sources of marine litter: <ul style="list-style-type: none"> - adoption of a legislative proposal on port reception facilities for the delivery of waste from ships - development of measures to reduce loss or abandonment at sea of fishing gear (<i>e.g. including recycling targets, EPR schemes, recycling funds or deposit schemes</i>) - development of measures to limit plastic loss from aquaculture (<i>e.g. possible Best Available Techniques Reference Document</i>) 	<p>Q1 2018</p> <p>2018 onwards</p>
Actions to monitor and curb marine litter more effectively: <ul style="list-style-type: none"> - improved monitoring and mapping of marine litter, including microplastics, on the basis of EU harmonised methods - support to Member States on the implementation of their programmes of measures on marine litter under the Marine Strategy Framework Directive, including the link with their waste/litter management plans under the Waste Framework Directive 	<p>2018 onwards</p>
Actions on compostable and biodegradable plastics: <ul style="list-style-type: none"> - start work to develop harmonised rules on defining and labelling compostable and biodegradable plastics - conduct a lifecycle assessment to identify conditions where their use is beneficial, and criteria for such application - start the process to restrict the use of oxo-plastics via REACH 	<p>Q1 2018 onwards</p> <p>Q1 2018 onwards</p> <p>ongoing</p>

<p>Actions to curb microplastics pollution:</p> <ul style="list-style-type: none"> - start the process to restrict the intentional addition of microplastics to products via REACH - examination of policy options for reducing unintentional release of microplastics from tyres, textiles and paint (e.g. <i>including minimum requirements for tyre design (tyre abrasion and durability if appropriate) and/or information requirement (including labelling if appropriate), methods to assess microplastic losses from textiles and tyres, combined with information (including possibly labelling)/minimum requirements, targeted research and development funding</i>) - development of measures to reduce plastic pellet spillage (e.g. <i>certification scheme along the plastic supply chain and/or Best Available Techniques reference document under the Industrial Emissions Directive</i>) - evaluation of the Urban Waste Water Treatment Directive: assessing effectiveness as regards microplastics capture and removal 	<p>ongoing</p> <p>ongoing</p> <p>Q1 2018 onwards</p> <p>ongoing</p>
Driving investment and innovation towards circular solutions	
<p>Actions to promote investment and innovation in the value chain:</p> <ul style="list-style-type: none"> - Commission guidance on the eco-modulation of EPR fees - Recommendations by the recently launched ‘<i>Circular Economy Finance Support Platform</i>’ - examine the feasibility of a private-led investment fund to finance investments in innovative solutions and new technologies aimed at reducing the environmental impacts of primary plastic production - direct financial support for infrastructure and innovation through the European Fund for Strategic Investment and other EU funding instruments (e.g. structural funds and smart specialisation strategies, Horizon 2020) - pursue work on life-cycle impacts of alternative feedstocks for plastics production - development of a Strategic Research Innovation Agenda on plastics to guide future funding decisions 	<p>2019 in mid-2018</p> <p>By mid-2019</p> <p>ongoing</p> <p>2018 onwards</p> <p>Q2 2018</p>
Harnessing global action	
<p>Actions focusing on key regions:</p> <ul style="list-style-type: none"> - project to reduce plastic waste and marine litter in East and South-East Asia to support sustainable consumption and production, the promotion of the waste hierarchy and extended producer responsibility, and improve recovery of fishing gear - examining options for specific action to reduce plastic pollution in the Mediterranean, in support of the implementation of the Barcelona Convention - cooperation on plastic waste prevention in major world river basins 	<p>2018 onwards</p>
<p>Actions in support of multilateral initiatives on plastic:</p> <ul style="list-style-type: none"> - renewed engagement on plastics and marine litter in fora such as the UN, G7, G20, the MARPOL convention and regional sea conventions, including the development of practical tools and specific action on fishing and aquaculture. - support to action under the Basel Convention, particularly for the implementation of the toolkit on environmentally sound waste management 	<p>2018 onwards</p>
<p>Actions relating to bilateral cooperation with non-EU countries:</p> <ul style="list-style-type: none"> - promote a circular plastics economy in non-EU countries through policy dialogues on trade, industry and environment, as well as economic diplomacy - use bilateral, regional and thematic funding in EU development, neighbourhood and enlargement policies to support the plastics strategy by preventing and appropriately managing waste and supporting the circular economy; through programmes and instruments including ‘Switch to Green’ and the External Investment Plan 	<p>2018 onwards</p>
<p>Actions relating to international trade:</p> <ul style="list-style-type: none"> - support the development of international industry standards on sorted plastic waste and recycled plastics - ensure that exported plastic waste is dealt with appropriately in line with the EU Waste Shipment Regulation - support the development of a certification scheme for recycling plants in the EU and in third countries 	<p>2018 onwards</p>

ANNEX II

List of measures recommended to national authorities and industry

Key measures to improve the economics and quality of plastics recycling
<p>National and regional authorities are encouraged to:</p> <ul style="list-style-type: none"> ➤ favour reusable and recycled plastics in public procurement; ➤ make better use of taxation and other economic instruments to: <ul style="list-style-type: none"> – reward the uptake of recycled plastics and favour reuse and recycling over landfilling and incineration – step up separate collection of plastics waste and improve the way in which this is done ➤ put in place well-designed EPR schemes and/or deposit systems, in consultation with the relevant sectors ➤ make voluntary commitments in support of the strategy’s objectives, in particular as regards the uptake of recycled plastics
<p>Industry is encouraged to:</p> <ul style="list-style-type: none"> ➤ take concrete steps to improve dialogue and cooperation across the value chain, in particular on material and product design aspects ➤ make voluntary commitments in support of the strategy’s objectives, in particular as regards the uptake of recycled plastic
Key measures to curb plastic waste and littering
<p>National and regional authorities are encouraged to:</p> <ul style="list-style-type: none"> ➤ raise awareness of littering and consider fines, where they do not exist already; promote beach clean-up activities ➤ step up waste collection, particularly near the coasts, and improve coordination between the authorities responsible for waste management, water and the marine environment ➤ step up efforts to eradicate illegal and non-compliant landfills ➤ develop national monitoring of marine litter on the basis of harmonised EU methods ➤ engage in regional seas conventions, in particular to develop regional plans against marine litter ➤ consider introducing EPR, in particular to provide incentives for collecting discarded fishing gear and recycling agricultural plastics ➤ consider introducing deposit refund schemes, in particular for beverage containers
<p>Industry is encouraged to:</p> <ul style="list-style-type: none"> ➤ promote existing alternatives to single-use plastic items (e.g. in catering and take-aways), where these are more environmentally beneficial ➤ pursue and implement cross-industry agreements to reduce the release of microplastics in the environment ➤ put in place measures to avoid spillage of plastic pellets
Key measures to drive investments and innovation towards circular solutions
<p>National, regional and local authorities are encouraged to:</p> <ul style="list-style-type: none"> ➤ make better use of economic instruments, especially to raise the cost of landfilling and incineration and promote plastic waste recycling and prevention ➤ make greater use of public procurement and funding to support plastic waste prevention and recycling of plastics
<p>Industry is encouraged to:</p> <ul style="list-style-type: none"> ➤ increase infrastructure and R&D investment in areas of direct relevance to achieving the strategy’s objectives ➤ contribute to work on setting up a private investment fund to offset the environmental externalities of plastic production
Key measures to harness global action
<p>National and regional authorities, including in non-EU countries, are encouraged to:</p> <ul style="list-style-type: none"> ➤ engage in international fora to develop a global response to the increase in marine litter ➤ take domestic action to reduce the leakage of plastics in the environment, prevent plastic waste and increase recycling
<p>Industry is encouraged to:</p> <ul style="list-style-type: none"> ➤ Play an active part in supporting an integrated, cross-border circular plastics economy, including through the development of a global protocol for plastics

ANNEX III

Pledging Campaign

1. The European Commission calls on stakeholders to come forward with voluntary pledges to boost the uptake of recycled plastics. The objective is to ensure that by 2025 ten million tonnes of recycled plastics find their way into new products on the EU market.
2. Interested companies and/or industry associations have until 30 June 2018 to submit their pledges to the following email address: *GROW-ENV-RPLASTICS-PLEDGE@ec.europa.eu*
3. When sending in their pledges, stakeholders are asked to provide the European Commission with data illustrating how their pledge contributes to achieving the quantitative objective set in paragraph 1. Such data will be treated confidentially and will be used exclusively for the purpose of monitoring overall progress towards the quantitative objective. Pledges will be put under quality check, and assessed against their reliability and ability to meet declared deadlines.
4. When sending in their pledges on recycled content, stakeholders are welcome to make pledges covering other aspects which are relevant to the strategy, such as design for recyclability.
5. The pledges received will be made public through a dedicated webpage.
6. By 31 October 2018, the Commission will present an assessment of the pledges received and their overall contribution to the quantitative objective set in paragraph 1. Should the contribution be deemed insufficient, the Commission will start work on possible next steps, including regulatory action.

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20th June 2018.

**To Each Member of the
Environment Strategic Policy Committee**

The waste industry in Ireland is privately operated and governed under European and Irish waste legislation and Regulations. Dublin City Council, as the nominated national competent authority for the export and import of waste from and to Ireland, established the National Transfrontier Shipment Office (NTFSO) in 2007 to comply with the requirements of the Waste Management (Shipment of Waste) Regulations 2007 and Regulation (EC) No. 1013/2006, also known as the Waste Shipment Regulations (WSR).

During 2017, the Chinese government announced pending restrictions for the importation of green listed (clean single stream) plastic waste, which were subsequently brought into effect in January 2018. The export of waste from Ireland is governed by the NTFSO. Export figures (in metric tonnes) and the destination countries for shipments of green listed plastic waste reported to the NTFSO for the years 2015 to 2017 are summarised in the following table:

Country	2015	% of total Exported	2016	% of total Exported	2017	% of total Exported
U.K.	23,319	38%	17,671	31%	41,002	55%
Netherlands	12,520	20%	16,127	28%	10,066	14%
Rest of Europe	8,968	15%	8,846	15%	9,575	13%
China	7,492	12%	6,420	11%	3,124	4%
Rest of World	9,302	15%	8,301	15%	10,839	14%
Total Tonnage Exported	61,601	100%	57,365	100%	74,606	100%

The WSR stipulate that EU countries must demonstrate that all waste for export is destined for an authorised waste facility where it can be recovered in an environmentally sound manner. Once the waste is accepted at an authorised licensed facility within the country of destination, it is then owned by that licensed facility and approvals for further treatment, disposal, use or onward export becomes the responsibility of that country's competent authority.

Green listed plastic waste exported from Ireland to other European countries is generally amalgamated with similar shipments received from other countries and may go through further processing before being sold on, recycled or reused. The sale of the waste may involve further export within the EU, or to countries of destination outside of Europe. Low value plastic may at this stage go to an authorised landfill or waste to energy plant in the country of destination. Once waste plastic shipments are combined with other plastics at authorised facilities in the destination country there is no way of identifying a specific shipment by country of origin.

Exports of green listed plastic to Europe accounted for between 73% and 82% of the total green listed plastic waste exported from Ireland, between the years 2015 and 2017. Although total figures are available for the amount of recyclable material exported from Europe, there is no way of definitively tracking where Ireland's green listed plastic waste ultimately ends up.

The restrictions in China, which came into effect this year, pose a worldwide problem to waste companies trying to manage and recycle this material and are being addressed at both national and European level. In response, the Department of Communications, Climate Action and Environment (DCCA) formed a group comprised of the NTFSO, EPA, REPAK and representatives from the Waste Management Industry to monitor the situation. At present industry has been able to source alternative markets for green listed plastic waste. The group chaired by the DCCA will continue to meet to discuss and monitor the situation.

The NTFSO is also working to bring in minimum acceptable contamination levels in waste for export. The NTFSO with the backing of the DCCA has engaged with the waste industry on this matter.

Brian White

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Dublin 8.

27 June 2018.

**To Each Member of the
Environment Strategic Policy Committee**

Dublin Waste to Energy (DWtE) Project

1 Construction Status

- Construction works for the Facility are now substantially complete, with the construction contractor continuing to work towards achieving the Facility's completion by the end of August.

2 Environmental Impact

The continuous emissions monitoring data for the facility's commissioning and testing on both boiler line 1 & 2 between 04/06/2018 and 10/06/2018 are set out below:

Boiler 1

Measured Emission	Total Dust	TOC	HCL	SO2	CO	NOx
Limit	10	10	10	50	50	200
Unit	mg/Nm3	mg/Nm3	mg/Nm3	mg/Nm3	mg/Nm3	mg/Nm3
4 June, 2018	0.30	0.09	0.05	0.15	4.66	114.61
5 June, 2018	0.31	0.09	0.04	0.25	5.33	118.15
6 June, 2018	0.31	0.08	0.04	0.03	5.19	116.12
7 June, 2018	0.43	0.19	0.07	0.00	8.17	112.34
8 June, 2018	0.30	0.09	0.04	0.02	4.21	119.57
9 June, 2018	0.30	0.09	0.04	0.00	4.16	114.30
10 June, 2018	0.29	0.08	0.04	0.00	3.74	119.96

Boiler 2

Measured Emission	Total Dust	TOC	HCL	SO2	CO	NOx
Limit	10	10	10	50	50	200
Unit	mg/Nm3	mg/Nm3	mg/Nm3	mg/Nm3	mg/Nm3	mg/Nm3
4 June, 2018	0.31	0.13	0.09	0.05	2.23	115.94
5 June, 2018	0.34	0.14	0.11	0.02	2.61	115.99
6 June, 2018	0.41	0.13	0.09	0.01	2.77	114.01
7 June, 2018	0.34	0.22	0.07	0.00	12.01	115.16
8 June, 2018	0.28	0.17	0.10	0.00	6.40	115.53
9 June, 2018	0.29	0.11	0.09	0.02	2.59	106.62
10 June, 2018	0.27	0.15	0.09	0.05	3.45	114.46

It is noted that the tables shows the daily averages from the continuous emissions monitoring system for total dust, gaseous and vaporous organic substances expressed as Total Organic Carbon, Hydrogen Chloride, Carbon Monoxide, Sulphur Dioxide and Oxides of Nitrogen emitted from each stack. The measured values and emission limit values are described in mg/Nm3. These values have been standardized to the following conditions in accordance with the Industrial Emission license issued by the EPA: temperature of 273 K, pressure of 101.3 kPa, dry gas and 11% oxygen.

Additional information in respect of the EPA site visits and monitoring is available at <http://www.epa.ie/terminalfour/ippc/ippc-view.jsp?regno=W0232-01> .

3 Community Liaison

3.1 Update from the DWtE Community Gain Liaison Committee Grant Applications 2016:

Regarding the Dublin Waste to Energy Community Gain Projects Grant Scheme 2016, 24 of the 32 approved projects have been completed with €2.06m of the allocated €4.8 million drawn down to date.

3.2 Update from the DWtE Community Gain liaison Committee Grant Applications 2017:

With reference to the Dublin Waste to Energy Community Gain Projects Grant Scheme 2017, 7 of the 35 approved projects have been completed with €238k of the allocated €4.25 million drawn down to date.

4 Compliance with statutory consents

As of the 20th of June there have been 46 incidents reported to the EPA in respect of the facility's performance during commissioning and the EPA has issued a total of 24 non-compliance notices.

There have been no incidents reported to the EPA or non-compliance notices issued by the EPA in respect of the facility's operation since the meeting of the Environment SPC on the 25th of April.

Dick Brady
Assistant Chief Executive.

