



**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 Manual<sup>1</sup>, the Agency's guidance to local authorities on extractive waste<sup>2</sup> and the most recent enforcement guidance on the Food Waste Regulations<sup>3</sup>.

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.

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<sup>1</sup>See particularly Sections 3.1, 3.2 and 3.4 of the Enforcement Network Guidance Manual

<sup>2</sup>EPA (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>.

<sup>3</sup>Duncan 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.

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## 2. BYE-LAW MAKING: BACKGROUND

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### 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 2006<sup>4</sup>. 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 apply<sup>5</sup>. 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 LGA<sup>6</sup>, 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 Environment<sup>7</sup>.

The approval of a bye-law is a so-called reserved function, as is the consideration of submissions<sup>8</sup>. Being a reserved function, these matters are determined by the elected members of each local authority<sup>9</sup>.

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 area<sup>10</sup>. 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 purchased<sup>11</sup>.

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<sup>4</sup> SI 362 of 2006

<sup>5</sup>SI 362 of 2006, Article 4

<sup>6</sup>LGA, 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”

<sup>7</sup>Should 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)

<sup>8</sup>LGA, Section 199(5)

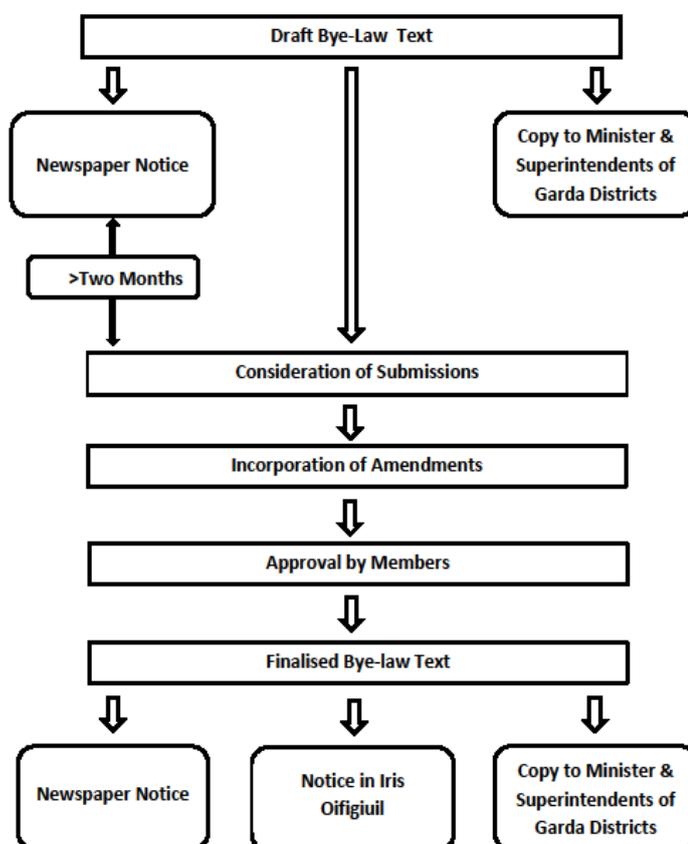
<sup>9</sup>LGA, Section 2 defines “reserved function” as having the meaning in LGA, Sections 131 and 131A (see, in particular, LGA, Section 131(b))

<sup>10</sup>LGA, Section 2002

<sup>11</sup>LGA, 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 superintendent<sup>12</sup>.

### 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-law<sup>13</sup>. 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-law<sup>14</sup>.

#### 2.2.2. Amending and Revoking a Bye-law

Bye-laws can also be amended and revoked<sup>15</sup>, 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.

<sup>12</sup>SI 362 of 2006, Article 5

<sup>13</sup>LGA, Section 200(5)(a)

<sup>14</sup>LGA, Section 202(4)

<sup>15</sup>LGA, Section 199(4)

The amendment or revocation of existing bye-laws is also a reserved function<sup>16</sup>.

### **2.2.3. Ministerial Objections**

The LGA allows a Ministerial objection to be made to a proposed bye-law<sup>17</sup>. 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 €2,500<sup>18</sup>.

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 level<sup>19</sup>.

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 reduced<sup>20</sup>; 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 €2,500<sup>21</sup>.

Readers should also be aware of the Fines (Payment and Recovery) Act 2014<sup>22</sup>, which was commenced at the start of 2016<sup>23</sup>. 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

<sup>16</sup>LGA, Section 199(5)

<sup>17</sup>LGA, Section 199(8)

<sup>18</sup>See 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>).

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

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

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

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

<sup>23</sup>By 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 evidence<sup>24</sup>.

### **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-law<sup>25</sup>. 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 €75<sup>26</sup>, 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"<sup>27</sup>.

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<sup>24</sup>LGA, Section 203

<sup>25</sup>LGA, Section 206

<sup>26</sup>SI 362 of 2006, Article 6

<sup>27</sup>SI 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”<sup>28</sup>. 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 paid<sup>29</sup>. 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-law<sup>30</sup>. No warrant is needed prior to this action taking place.

<sup>28</sup>SI 362 of 2006, Article 8

<sup>29</sup>SI 362 of 2006, Article 9

<sup>30</sup>LGA, 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 address<sup>31</sup>. 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 LGA<sup>32</sup>. 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 Gardai<sup>33</sup>. Again, no warrant is needed for such an arrest to take place.

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

<sup>32</sup>See LGA, Section 204(1)

<sup>33</sup>LGA, Section 204(d)

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

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#### 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 wide<sup>34</sup>, they are subject to a very important limitation. **This is that the Constitution emphasises the supremacy of the Oireachtas in the making of national law<sup>35</sup>**. 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:

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

<sup>35</sup> 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 on<sup>36</sup>. 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 on<sup>37</sup>, 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 website<sup>38</sup>. A number of other relevant aspects of this Act are covered in the section on the Act in Appendix 2

<sup>36</sup> Interpretation Act, Section 18

<sup>37</sup> “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”.

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

Interpretation Act 2005, Useful Terms & Conventions	
<p>Definitions<sup>39</sup>:</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>Useful conventions, including construing:</p> <p>Ambiguities in drafting<sup>40</sup></p> <p>Examples &amp; lists<sup>41</sup></p> <p>Allowable deviations to a statutory form<sup>42</sup></p> <p>Time of commencement of a bye-law<sup>43</sup></p> <p>Singular &amp; plural, gender, distance, periods of time, offences by corporations<sup>44</sup></p> <p>Service of notices (etc) by post<sup>45</sup></p> <p>Repeals of bye-laws<sup>46</sup></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:

<sup>39</sup>Interpretation Act, Section 21 & Schedule

<sup>40</sup>Interpretation Act, Section 5(2)

<sup>41</sup>Interpretation Act, Section 11

<sup>42</sup>Interpretation Act, Section 12

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

<sup>44</sup>Interpretation Act, Section 18

<sup>45</sup>Interpretation Act, Section 25

<sup>46</sup>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 waste<sup>47</sup> – 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).

<sup>47</sup>WMA, 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.

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## 4. THE WASTE PRESENTATION BY-LAW TEMPLATE

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### 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 LGA<sup>48</sup>. 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.

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<sup>48</sup> 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 scope<sup>49</sup>.

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 preferable<sup>50</sup>, with the maps themselves being contained in a Schedule to the bye-laws:

*These bye-laws shall apply to the population centres<sup>51</sup> 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.

<sup>49</sup> LGA, Section 199(3)(b)

<sup>50</sup> 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](http://www.sligococo.ie/media/CouncilDownloads/Environment/WasteByeLaws2013/WasteManagementByeLaws201_FINAL.pdf).

<sup>51</sup> 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 Act<sup>52</sup> as household waste<sup>53</sup>. Similarly, if the source of construction and demolition is a commercial-type building, then this material will be defined as commercial waste<sup>54</sup>. 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 unauthorised<sup>55</sup>.

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” statute<sup>56</sup>. This meaning may not necessarily equate with the sense being intended in the draft bye-

<sup>52</sup>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”

<sup>53</sup> 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

<sup>54</sup>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”

<sup>55</sup> 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>).

<sup>56</sup>Interpretation 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 amendments<sup>57</sup>, 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 permit<sup>58</sup> 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*

<sup>57</sup> Interpretation Act 2005, Section 14(2)

<sup>58</sup> 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 sources<sup>59</sup>. 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 Regulations<sup>60</sup> and in the Planning and Development Regulations<sup>61</sup>. 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 WMA<sup>62</sup>. 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

<sup>59</sup> 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”

<sup>60</sup> 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”

<sup>61</sup> 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”

<sup>62</sup>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 20<sup>63</sup> 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).

<sup>63</sup> 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 used<sup>64</sup>, 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 WMA<sup>65</sup> 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 Regulations<sup>66</sup>.

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 WMA<sup>67</sup>, 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

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

<sup>65</sup> WMA, Section 5(1)

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

<sup>67</sup> WMA, Section 5(1)

the end of the definition culminating on what the term means in law and in accordance to the Interpretation Act 2005<sup>68</sup>.

*“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 Regulations<sup>69</sup>. 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.*

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<sup>68</sup> 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.”

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

<b>SCHEDULE 1. Recyclable Kerbside Waste</b>		
<b>Paper</b>	<b>Aluminium cans</b>	<b>Plastic Bottles (PET 1)</b>
Newspapers	Drink cans	Mineral bottles
Magazines	Soda & beer cans	Water bottles
Junk mail		Mouthwash bottles
Envelopes	<b>Steel cans</b>	Salad dressing bottles
Paper	Pet food cans	
Phone books	Food cans	<b>Plastic Bottles (HDPE2)</b>
Catalogues	Biscuit tins	Milk bottles
Tissue boxes	Soup tins	Juice bottles
Sugar bags		Cosmetic bottles
Calendars	<b>Cardboard</b>	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	<b>Plastic Pots, Trays &amp; Tubs</b>	
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 2016<sup>70</sup>. 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

<sup>70</sup> 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 used<sup>71</sup>.

**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-law<sup>72</sup> 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 be 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:

<sup>71</sup> See SI 149 of 2014, Regulation 3

<sup>72</sup> 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”<sup>73</sup>, 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-laws<sup>74</sup>. The following wording covers, via the term “kerbside waste”, both commercial and household waste:

<sup>73</sup> Roads Act, Section 2(1)

<sup>74</sup> 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 waste<sup>75</sup> 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 household<sup>76</sup> or commercial waste<sup>77</sup>.

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.

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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))

<sup>75</sup> 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

<sup>76</sup> 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”

<sup>77</sup> 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 recyclate 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 2014<sup>78</sup>.

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.

<sup>78</sup> 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 mapping<sup>79</sup>. 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.

<sup>79</sup> 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\\_FIN\\_AL.pdf](http://www.sligococo.ie/media/CouncilDownloads/Environment/WasteByeLaws2013/WasteManagementByeLaws2013_FIN_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 Act<sup>80</sup>.

*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 person<sup>81</sup> 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:*

<sup>80</sup> Litter Pollution Act, Section 3(3)

<sup>81</sup> 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 adequate<sup>82</sup> 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<sup>83</sup> 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:

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

<sup>83</sup> 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 container<sup>84</sup>, 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

<sup>84</sup> 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 €2500<sup>85</sup>, 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 comprises<sup>86</sup>.
- 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 €500<sup>87</sup> – 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-law<sup>88</sup>. The amount of the fixed payment must be specified, which must be no more than €75<sup>89</sup>. 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*

<sup>85</sup> 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

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

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

<sup>88</sup> LGA, Section 206(1)

<sup>89</sup> 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-law<sup>90</sup>. 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 €2,500<sup>91</sup>. This information is specified in the LGA and does not need to feature in a bye-law.

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

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

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## APPENDIX 1 – DRAFT WASTE PRESENTATION BYE-LAW TEMPLATE

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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 1<sup>92</sup>;

“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.

<sup>92</sup> 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.*

<b>SCHEDULE1. Recyclable Kerbside Waste</b>		
<b>Paper</b>	<b>Aluminium Cans</b>	<b>Plastic Bottles (PET 1)</b>
Newspapers	Drink cans	Mineral bottles
Magazines	Soda & beer cans	Water bottles
Junk mail		Mouthwash bottles
Envelopes	<b>Steel cans</b>	Salad dressing bottles
Paper	Pet food cans	
Phone books	Food cans	<b>Plastic Bottles (HDPE2)</b>
Catalogues	Biscuit tins	Milk bottles
Tissue boxes	Soup tins	Juice bottles
Sugar bags		Cosmetic bottles
Calendars	<b>Cardboard</b>	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	<b>Plastic Pots, Trays &amp; Tubs</b>	
Holiday brochures	Yogurt pots	
Paper potato bags	Margarine tubs	
	Rigid food trays	
	Liquid soap containers	
	Fruit trays/cartons	

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

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### 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 website<sup>93</sup>.

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

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<sup>93</sup><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) ...<sup>94</sup>, 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 authority<sup>95</sup>.

### **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.

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

<sup>95</sup>LGA, 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 useful<sup>96</sup>. Mr Justice Charleton refers<sup>97</sup> 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 judgment<sup>98</sup>:

*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 it<sup>99</sup>.

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.

<sup>96</sup> [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>.

<sup>97</sup> Para 14 of the judgment

<sup>98</sup> Kennedy v Law Society of Ireland, [2002] 2 IR 458

<sup>99</sup> 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 terms<sup>100</sup>. In other words, they are just examples of items that may feature in bye-laws.

<b>Key Legal Wording:</b>
<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"> <li><i>(a) its application at all times or at specified times;</i></li> <li><i>(b) its application throughout the functional area of the local authority or in any specified part of that functional area;</i></li> <li><i>(c) the prohibition of any activity, matter or thing;</i></li> <li><i>(d) the prescription of specified standards or requirements for, or in relation to, specified activities, matters or things;</i></li> <li><i>(e) the exception of classes of persons or things from the bye-law either subject to or without compliance with specified conditions;</i></li> <li><i>(f) the conduct of persons at specified places or in specified circumstances;</i></li> <li><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></li> <li><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></li> <li><i>(i) the specification of a fine for a contravention of a specified provision of a bye-law as provided by section 205;</i></li> <li><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></li> </ul>

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.

<sup>100</sup>See 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 collection<sup>101</sup>, 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 would<sup>102</sup> 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 35<sup>103</sup>.

<sup>101</sup> 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

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

<sup>103</sup> 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, 1994<sup>104</sup>, 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 waste<sup>105</sup>,*
- (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 LGA<sup>106</sup>.

## **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

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

<sup>105</sup>Inserted by the Protection of the Environment Act 2003, Section 32

<sup>106</sup>Again, 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”<sup>107</sup>. 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 requirement<sup>108</sup>.

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 months<sup>109</sup>. 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 2007<sup>110</sup>. 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 2007<sup>111</sup> 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 permit<sup>112</sup>.

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**<sup>113</sup>. Should a local authority require additional provisions to feature in a

<sup>107</sup>WMA, Section 32(2)

<sup>108</sup>WMA, Section 32(5)

<sup>109</sup> 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/>.

<sup>110</sup> SI 798 of 2007

<sup>111</sup>SI 820 of 2007 (as amended)

<sup>112</sup>See Article 18 to 20 of the Collection Permit Regulations (as amended)

<sup>113</sup> 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 2009<sup>114</sup> and the European Union (Household Food Waste and Bio-waste) Regulations 2015<sup>115</sup>. 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

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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

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

<sup>115</sup>SI 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 practices<sup>116</sup>, 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 2007<sup>117</sup>. In other words, the Oireachtas has already set down a regulatory structure to govern this practice.

<sup>116</sup> I.e Commercial Food Waste Regulations, Regulation 7(1)(a)

<sup>117</sup> 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 primacy<sup>118</sup>, 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 Regulations<sup>119</sup>. In accordance with Part II of these Regulations, all producers<sup>120</sup> – regardless of size – are required to ensure that packaging waste is separated at source and transferred to an authorised waste collector for recovery purposes<sup>121</sup>. 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.

<sup>118</sup> 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

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

<sup>120</sup> 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 ...”

<sup>121</sup> 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 2014<sup>122</sup> 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 batteries<sup>123</sup>. They mandate that these retailers be registered, must offer WEEE or battery take-back<sup>124</sup> and ensure that WEEE and batteries are appropriately collected<sup>125</sup>.

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 waste<sup>126</sup>. 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 2017<sup>127</sup>.

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 littering<sup>128</sup>, 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.

<sup>122</sup> SI 149 of 2014

<sup>123</sup> SI 283 of 2014 (as amended)

<sup>124</sup> SI 149 of 2014, Regulation 14; SI 283 of 2014, Regulation 21

<sup>125</sup> SI 149 of 2014, Regulation 15; SI 283 of 2014, Regulation 22

<sup>126</sup> 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"

<sup>127</sup> SI 400 of 2017

<sup>128</sup>"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 Act<sup>129</sup>, 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.

<sup>129</sup>As 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 website<sup>130</sup>. 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.

<b>Key Legal Wording:</b>
<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” Act<sup>131</sup>. 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-law<sup>132</sup>. 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

<sup>130</sup> <http://www.irishstatutebook.ie/eli/2005/act/23/enacted/en/pdf>

<sup>131</sup> As noted above, the Interpretation Act refers to statutory instruments in this context, with the definition of such an instrument including a bye-law

<sup>132</sup> Interpretation Act, Section 18(g)

subsequent amendments<sup>133</sup>. 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 enactment<sup>134</sup> 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 Lawlor<sup>135</sup>. 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 terms<sup>136</sup>:

*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 233<sup>137</sup>).*

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] ...<sup>138</sup> 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*

<sup>133</sup> Interpretation Act 2005, Section 14(2)

<sup>134</sup> The term “enactment” includes statutory instruments: Interpretation Act 2005, Section 2(1),

<sup>135</sup> [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

<sup>136</sup> 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>.

<sup>137</sup> Available at [www.supremecourt.ie/supremecourt/sclibrary3.nsf/.../King%20v%20AG\\_1980.rtf](http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/.../King%20v%20AG_1980.rtf).

<sup>138</sup> 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 Act<sup>139</sup>. 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 entails<sup>140</sup>.

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.*

<sup>139</sup> 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>).

<sup>140</sup> 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>.