



Revised Bye-law on Waste Presentation: Frequently Asked Questions.

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Waste Presentation Bye-Laws - FAQs.

Introduction and Purpose

The purpose of these FAQs is to cover, in an accessible and simplified fashion, many aspects that are explained in the guidance document that accompanies the template for the production of a draft waste presentation bye-law.

Many of the questions found here are derived from queries and comments made when the Template and Guidance were circulated to local authority stakeholders for comment. Accordingly, the contribution these individuals have made to the production of this document is acknowledged.

As is stated in the Guidance, readers are reminded that these FAQs are not a substitute for legal advice and should not be used for that purpose. The only body qualified to give a definitive interpretation of the law is the national courts. Readers wishing to explore the exact nature of the legal background and related requirements also are urged to obtain independent legal advice from a suitably qualified and experienced practitioner.

These FAQs have been prepared by Duncan Laurence Environmental Ltd. Additional contributions from both members of the 3 Regional Waste Management Offices and from the consultees are acknowledged.

Waste Presentation Bye-Laws – Frequently Asked Questions.

General

Why are bye-laws needed?

A: there are two main reasons:

- 1) Policy Action C.2.1 of each of the Regional Waste Management Plans contains the commitment to revise or introduce new bye-laws to maximise the quantity and quality of household waste where it is appropriate to do so;
- 2) There is an urgent need to improve both the capture of recyclate and its quality. National and EU targets for recycling and recovery are stringent and both population growth and increased consumer activity are making attaining these targets increasingly challenging. Better quality recyclate reduces costs and, itself, improves the possibility of environmentally sound recovery.

Does my local authority need to introduce bye-laws?

A: The introduction of bye-laws remains in the hands of each local authority in accordance with the Local Government Act. However, as indicated above, each Waste Management Plan contains a commitment to revisit the waste presentation bye-law issue.

Does my local authority have to stick to what is in the Template? Or can we alter things to suit our circumstances?

A: As the basis of a waste presentation bye-law is the Local Government Act, your local authority has discretion about bye-law content. But, while you may change the wordings if you consider that necessary, it is important that a unified and regional approach to bye-law content be maintained. It is also vital that any changes you make are fully compliant with the Local Government Act, that the resultant bye-laws are internally consistent and that they follow the requirements of the Regional Waste Management Plan.

My local authority already has bye-laws. Why do we need new ones?

A: Many existing bye-laws pre-date the introduction of some elements of the national waste legislation, particularly the most recent provisions on waste collection and/or food waste recovery. So many existing bye-laws are now out of date.

Having said that, a significant number of the elements of the bye-law Template reflect what was contained in earlier waste presentation bye-laws.

Why is the Guidance over 50 pages?

A: There are two main reasons:

- 1) The development of waste presentation bye-laws is significantly constrained by national law and these constraints need to be clearly explained in detail, particularly when users of the Guidance and Template may well not have a legal background. Should these constraints not be understood at the outset, then there is a danger that any bye-laws that are produced are unlawful and unenforceable.
- 2) Users of the Template need to understand in detail how each of the bye-law wordings contained in the Template operates, as well as what each one is intended to do and how different definitions apply. As the wording being proposed is a template, users of the Template need to have a thorough knowledge of all of these aspects of the Template. Otherwise, they may not be able to amend the

Template in a manner that is internally consistent with the existing wordings and which remains enforceable.

Why is it necessary for the Guidance to contain boxes that show the wording of the legislation?

A: The Guidance follows the house style of other material issued to local authorities on different aspects of waste management, including the Environmental Enforcement Network Guidance Manual, Guidance on the Extractive Waste Regulations and on the food waste legislation. The idea of the text boxes is to allow readers to see for themselves exactly what a particular element of national law says.

Why does the making of waste presentation bye-law appear complicated?

A: The development of waste presentation bye-laws is particularly complicated for the reason that any bye-law should not change the focus of, or otherwise impinge upon, existing national law. This is because this legislation has been passed by the Oireachtas and, under the Constitution, the national Parliament retains sovereignty over the content and scope of its legislation. This constraint is particularly challenging in relation to waste presentation bye-law making, given that there is now a very wide-ranging amount of national legislation which affects virtually every aspect of waste management.

Summary of Key Aspects of the Bye-Law Template

This all looks rather complicated. Can you summarise the key items of the Template and show how they fit together?

A: The key item to note is that a good proportion of the bye-laws relate to how “kerbside waste” is to be handled. This means that the bye-laws do not generally impinge on waste that is not “kerbside waste”. From this definition, it will be apparent that the bye-laws exclude:

- a) waste that is removed non-routinely such as via skips, and
- b) most waste prior to it being presented.

The latter exclusion is achieved by the words “presented for collection” in the definition of “kerbside waste”, with the result that activities such as home composting are not affected by the bye-laws - this waste is not being presented for collection.

Having defined kerbside waste, this term is then used in a number of places in the actual text of the bye-laws that follow:

- Bye-law 2 contains an obligation that holders of household kerbside waste participate in a waste collection service or arrange direct delivery to an authorised waste facility. Alternatively, and subject to some safeguards (see elsewhere in these FAQs), Bye-law 2 allows for bin-sharing
- Bye-law 3 sets down requirements relating to the maintenance and management of containers used for kerbside waste management
- Bye-law 4 indicates appropriate container storage arrangements (eg not on the public road, etc).
- Bye-law 5 requires that containers for household kerbside waste are used appropriately on the collection day and not overloaded (etc)
- Bye-law 6 sets down the time window for when containers of both household and commercial waste can be put out for collection
- Bye-law 8(a) is particularly apposite in relation to increasing the level and quality of recycle from householders. It requires householders to segregate kerbside waste into the recyclable and non-recyclable fractions and precludes these being mixed or contaminated

- Bye-law 8(b) extends what is said in Bye-law 8(a) and makes provision for a waste presentation byelaw to extend the scope of compulsory food waste presentation into additional areas which are outside of the requirements of the Household Food Waste Regulations. It does this by requiring that household kerbside waste is segregated into recyclable household kerbside waste and food waste and that these remain segregated. The areas to be effected are to be identified by mapping. (Bye-laws 8(a) and 8(b) are alternatives, and only one of these should be used).
- Bye-law 9 addresses non-participants in waste collection rounds. It requires that segregated household kerbside waste be delivered directly to an authorised waste facility and that documentation confirming this activity is retained. It also makes provision for that documentation to be passed to an authorised local authority officer on his/her request
- Bye-law 10 is aimed at multi-user complexes such as apartments, requiring persons with overall responsibility for such buildings to arrange for the segregation of the different factions of kerbside waste. It also contains provisions to ensure that occupants of these complexes are aware of recycling/waste segregation arrangements, and so on.

Besides these elements which relate directly to “kerbside waste”, there are also Bye-laws 7, 11 and 12. Respectively, these prevent:

- hazardous waste or WEEE entering the kerbside collection system
- refuse crews being obstructed, interference with bin microchips and the unauthorised use of someone else’s bin
- commercial waste being deposited at bring facilities.

Finally, Bye-law 13 responds to a requirement of the Local Government Act that mandates that, where fixed penalty notices are to be deployed, bye-laws mention them and set out the relevant penalties, etc.

Legal Basis of Bye-laws and other Legal Matters

How are waste presentation bye-laws made and approved?

A: They are made under the Local Government Act 2001, with Chapter 2 of the Guidance summarising the process.

Are waste presentation bye-laws made and approved under the Waste Management Act?

A: No. Instead, the system for the approval of such bye-laws is in the Local Government Act and the Local Government Act 2001 (Bye-laws) Regulations 2006. The only provision in the Waste Management Act is Section 35, which sets out what a local authority is entitled to do when devising a bye-law affecting waste presentation.

Section 35 of the Waste Management Act refers to the 1994 Local Government Act, not its replacement, the Local Government Act 2001. Is this a problem?

A: No. Section 209 of the Local Government Act 2001 makes clear that, when Section 35 of the Waste Management Act refers to the earlier Local Government Act 1994, this is in fact referring to the 2001 Local Government Act. The relationship between the Waste Management Act and the successive Local Government Acts is discussed in Appendix 2 to the Guidance.

My local authority already has existing bye-laws on waste presentation. How are these to be replaced?

A: The Local Government Act sets down how a bye-law is to be replaced, indicating that the fact that one is being revoked should appear in the public notice announcing the intention to make a new bye-law. In

addition, once approved, the replacement bye-law must clearly indicate that the earlier bye-law is being revoked. Section 4.2.6 of the Guidance covers this matter.

Some of the waste legislation mentioned in the bye-law Template has been amended. Shouldn't the Template allude to this when the legislation is cited?

A: No, there is no need to do this. This is clearly stated in the Interpretation Act 2005, being explained in more detail in the discussion of that Act in Appendix 2 of the Guidance. Moreover, if you add in all the amendments, uncertainty arises when the legislation is amended again and an existing bye-law doesn't refer to these later changes.

What is the Interpretation Act? I've never heard of it.

A: As its name suggests, the Interpretation Act 2006 sets down a unified set of conventions that apply to all national legislation and also to bye-laws. It means that there is a unified approach to how many standard phrases and other elements that commonly feature in law are to be understood. This both prevents diverging interpretations and, particularly, saves individual items of legislation each having to contain provisions which set out what particularly common elements of law mean.

Additional information on the Interpretation Act is found in two places in the Guidance: in Section 3.4 and in the last couple of pages of Appendix 2. This Act is also a handy source of reference to local authority staff when drafting waste facility permit conditions or statutory notices.

When should particular elements of a bye-law be phased in?

A: Phasing in will only be necessary if you are expecting a significant amount of non-compliance at the start and are envisaging that compliance will be achieved only over a period of months once word gets round and any publicity takes effect. What is highly undesirable is a provision which causes a large proportion of your local authority's population to be non-compliant without due notice being given. Section 3.8 of the Guidance discusses this matter.

Bye-Law Enforcement

Are you envisaging loads of prosecutions?

A: Whether a local authority wishes to initiate legal proceedings in respect of non-compliance with these bye-laws is a matter entirely for the discretion of that local authority. It may well be that publicity about the existence of these bye-laws and, if necessary, a quiet word with problematic householders may well be sufficient. It also needs to be recalled that, besides addressing recycle quality, the bye-laws are intended to act as a deterrent in relation to waste related anti-social behaviour. For example, and as explained elsewhere in these FAQs, they make the unauthorised use of another person's bin an offence.

Who can prosecute for non-compliance with a waste presentation bye-law?

A: Prosecutions can be taken either by a local authority or by an Garda Síochána.

What are the fines for non-compliance?

A: The maximum fine is now €2,500, with this sum being derived from the Fines Act 2010. That Act has increased with maximum fine of €1,500 which is what is specified in the Local Government Act. This interaction is explained in Section 2.3.1 of the Guidance. The maximum daily fine for non-compliance is now €500.

Can my local authority alter the level of the maximum fine?

A: Yes, it can. A local authority can set a lesser amount if it so wishes, with the actual bye-law indicating what the limit is. However, the level of penalties relating to obstruction and a person refusing to give his or her name and address is set by the Local Government Act and cannot be reduced. Section 2.3.1 of the Guidance covers this matter and there is more about this elsewhere in these FAQs.

What about Fixed Payment Notices?

A: The Local Government Act allows a waste presentation bye-law to include a provision on fixed payment notices if a local authority wishes to. The level cannot exceed €75. Bye-law 14 in the Template makes provision for this type of notice, with Section 2.3.2 of the Guidance providing additional information.

Shouldn't the bye-law text set out the actual content of a fixed payment notice?

No. This has already been done by the Local Government Act 2001 (Bye-laws) Regulations 2006 and there is no need to repeat it. This is explained in Section 2.3.2 of the Guidance.

Am I entitled to sign a fixed payment notice?

A: That depends on whether you are an “authorised person” under the Local Government Act. Being authorised under the Waste Management Act is not sufficient in this instance.

What can the Gardai do in relation to bye-law enforcement?

A: Gardai have been granted the power of arrest for those who contravene a waste presentation bye-law. However, in practice, it would be unlikely that such a power would be widely used unless there are circumstances that warrant its deployment.

Do I have the power to ask someone for his or her name and address in relation to the enforcement of a waste presentation bye-law?

A: Yes, you do, with this provision being contained in the Local Government Act. However, to enact this power you need to be an “authorised person” under the Local Government Act; your authorisation under the Waste Management Act will not suffice. Members of the Gardai also can invoke this power and, if necessary, arrest a person who refuses.

I've read through the Guidance and the Template, and it seems that these do not make waste presentation bye-laws particularly easy to enforce. For example, I still have to prove that a person has contravened a bye-law. If a person refuses to answer any of my questions, then what am I supposed to do?

A: Waste presentation bye-laws can only go so far. They are not a substitute for the normal process of waste enforcement. Like any national law, a person is only guilty after definitive proof has been obtained and legal proceedings completed. If a person wishes to remain silent and not speak to you, that is his or her Constitutional right (however, you and, particularly, the Gardai **do** retain the right to ask them for their name and address – see above and also Section 2.3.3 of the Guidance). In circumstances when a suspect won't help you, you need to look for other evidence that would prove bye-law contravention.

Developing your own Wordings from the Bye-law Template

I don't like all this legal stuff; can't I just ignore it and add in whatever I feel necessary to my local authority's bye-laws?

A: Virtually any action or activity by your local authority is governed by national law and is only made permissible by that law. Bye-laws are no different in this respect. Accordingly, you need to understand exactly what you can and cannot do under that law. This is why the Guidance covers the relevant issues in some detail.

Why do I need to be so careful about what my local authority adds into a bye-law?

A: You need to be careful about this because, if a bye-law goes further than the legal limits set by the Constitution, the Local Government Act and/or the Waste Management Act, the bye-law may be challenged as being unlawful.

Have bye-laws ever been subject to legal challenge?

A: Yes, some local authority bye-laws have been challenged but not, as far as is known, bye-laws on waste presentation. Appendix 2 refers to a very useful judgment on this matter in the High Court. In addition, if someone is taken to court for non-compliance with a waste presentation bye-law, it is open to that person to assert that the bye-law is, in fact, unlawful and that a prosecution cannot be sustained for that reason.

You say in the Guidance that I need to be careful to avoid overlaps with existing national waste legislation, which are the key ones I need to be careful about?

A: Most obviously, the Waste Management (Collection Permit) Regulations 2007, which control the activities of authorised waste collectors. The national legislation affecting packaging waste arising from commercial sources should not be impinged upon by bye-laws. Bye-laws should also not overlap or duplicate with the requirements of the Litter Pollution Act 1997. Section 3.2 and, particularly, Appendix 2 of the Guidance expands on this matter.

Can I change the wordings to suit my local authority's needs?

A: Yes, you can, and this is made clear in the Guidance. The Template bye-laws are what they say they are: a template. However, there needs to be consistency between different local authorities' approach to bye-law content, as well as conformity to the Regional Waste Management Plan. You also need to be careful to ensure that any additions and other changes fall within what the Oireachtas allows. Subject to some small exceptions, there cannot be impingement or embellishment of existing national legislation (see Section 3.2 of the Guidance and Appendix 2). Additionally, there is a need for any changes to be internally consistent with the remainder of the Template wordings.

I'd like to give my local authority more flexibility than that found in the bye-law Template so that we can adapt the requirements as necessary and without the need to obtain member approval of revised bye-laws. Can I do this by adding "or as agreed by the local authority" in different places in the bye-law text?

A: As explained in Section 3.3 and Appendix 2 of the Guidance, it is not generally desirable to have this type of phrase within a bye-law. Holders of waste who are subject to bye-laws need to be 100% clear as to what is required of them and they cannot be if clauses such what you are proposing are added in. The extensive use of this type of provision would make the bye-law increasingly uncertain in respect of its legality and, particularly, its enforceability. Section 3.3 of the Guidance covers this issue, with additional information in Appendix 2.

I'd like to amend the Template a bit, as I think my local authority has a particular problem that needs addressing. But I'm finding it difficult to devise a wording that is very precise and that will fit in the circumstances facing many holders of waste in the county. Can't I just require that a waste holder does

something that is “adequate” for this purpose and leave it at that? Or can I require the holder to do the required action “to the satisfaction of” my local authority? Moreover, I’ve seen that some national legislation requires affected persons to “take all reasonable steps” – can’t I use this phrase to cover all that I want to?

A: It is highly undesirable to go down this route. All waste holders subject to a waste presentation bye-law need to know where they stand, what is required of them and, ultimately, whether or not they are compliant with the law. They cannot do this if they do not know what action is “adequate”, what the “satisfaction of” your local authority actually is or what constitutes “all reasonable steps”. There is case law from the High Court confirming this view and this is discussed at the end of Appendix 2 of the Guidance.

While some of the phrases you are proposing do appear in national law, they often relate to serious offences whereby expert witness evidence will be necessary to prove/disprove whether the relevant legislative requirements have been met. By contrast, bye-law non-compliance ultimately will be dealt with at a District Court level and, given the nature of the potential offences, it is inappropriate for such a detailed debate about what these terms mean to take place at such a forum.

Why do you say in the Guidance that it is undesirable for a byelaw to state that, for example, “a person shall not do XXX” or the “holder of waste shall not do YYY” or that “doing ZZZ is an offence”?

A: In relation to the question about using a phrase that says “a person shall not do XXX”, the answer is that it is easier and simpler to say that activity XXX shall not be done - see Section 3.6 of the Guidance. In respect of “holder of waste”, if you include this phrase, all you are doing is making bye-law enforcement more difficult than it needs to be. As section 3.7 of the Guidance explains, you are imposing a doubly-difficult evidential burden upon yourself in legal proceedings.

As the Local Government Act makes clear, the contravention of a bye-law is an offence. Accordingly, there is no need for a byelaw to say the same thing. This is explained in Section 3.5 of the Guidance.

Bye-Laws and Householders

What are the most important provisions that will affect householders?

A: Have a look at the answer in the section of towards the start of these FAQs entitled “Summary of Key Aspects of the Bye-Law Template”.

How do the bye-laws affect householders that do not use wheelie bins or refuse sacks?

A: The first point is that you need to view the bye-laws in their wider context. The Waste Management Act already outlaws unauthorised waste management practices, with Section 32 requiring that waste arising from householders (or other sources) must pass to either a collector or a waste management facility that is duly authorised to receive it. These requirements are unchanged by the wording of the bye-law Template.

What the Template does require is that a householder should retain an authorised waste collector to remove kerbside waste from the premises. Should the householder not wish to do this, then he or she can deliver the waste directly to an “authorised waste facility” or can bin-share with someone else – see Bye-law 2. As set down elsewhere in these FAQs, there are specific additional requirements that must be met where bin-sharing takes place.

How do the bye-laws affect householders that remain serviced by refuse sacks?

A: The use of refuse sacks is increasingly becoming a practice of a minority of individuals, with special provision being made, via the Waste Management (Collection Permit) Regulations, about this practice. Being

a minority practice, the bye-law Template does not go into great detail on how it should be controlled, instead allowing a local authority discretion, should it wish to, to develop its own wording in this respect.

Having said that, the deployment of refuse sacks is consistent with what is said in the Template and is not outlawed by it. For example, the general requirements relating to the segregation of household waste into different fractions, which are contained in Bye-laws 2, 5, 6, 8(a), 8(b), 9 and 11 apply equally to sack collections. Perhaps the most important of these is Bye-law 8, which mandates waste segregation and prohibits contamination.

Why do the bye-laws make provision for bin sharing? Surely, they should outlaw this practice?

A: Bin sharing is a reality in Ireland and, for this reason, the Template accommodates the practice. However, it also sets down additional safeguards that outlaw one person depositing his or her waste in another person's bin without permission, bringing this matter within the scope of waste enforcement for the first time. Unless the recipient of the waste has consented to this practice, Bye-laws 2 and 11 would be contravened. As indicated elsewhere in these FAQs, these provisions are a considerable advance on the sanctions presently available to prevent this practice.

Bye-law 8(a) or 8(b) requires householders to segregate their kerbside waste and to prevent contamination. What is meant here by "contamination" and shouldn't the bye-law be more specific about this?

A: A consistent theme of the Guidance and these FAQs is the need for bye-laws to be readily understood and not be overly technical. This is because those subject to waste presentation bye-laws need to clear as to what is required of them. This is why the concept of contamination is not embellished upon (and, even if it could be, it would be very difficult to come up with a wording).

In essence, this bye-law relies on the reality that, should the level of contamination be so flagrant or blatant, then non-compliance with Bye-law 8 will be obvious to all parties. In other words, one knows contamination when one sees it. For example, the presence of dirty nappies or a cat-lit in a bin designated recyclable household kerbside waste will clearly constitute contamination.

Boundaries between something that is contaminated or uncontaminated are, naturally, difficult to delineate in waste management and the bye-law Template is no exception to this rule. And in this respect, it should be pointed out that, while the European Union (Household Waste and Bio-Waste) Regulations 2015 requires an original food waste producer to keep food waste separate from "other waste and contaminants", they do not elaborate further.

Why don't the bye-laws prohibit the unauthorised burning of waste?

A: A point made repeatedly in these FAQs and in the Guidance is that bye-laws should not overlap or otherwise impinge upon legislation that has been passed by the Oireachtas. Already, unauthorised waste burning activities are outlawed by Section 32 of the Waste Management Act in respect of the management of waste that may result in environmental pollution. Additionally, the Waste Management (Prohibition of Waste Disposal by Burning) Regulations 2009 are intended to address unauthorised burning activities. The Air Pollution Act 1987 also would have application to this issue.

It also should be pointed out that Section 35 of the Waste Management Act empowers a local authority to make bye-laws solely on the presentation of household or commercial waste. Burning waste is a markedly different activity.

Do the proposed bye-laws effect or prohibit home composting?

A: No, home composting is completely outside of the scope of the bye-laws. This is partly because Section 35 of the Waste Management Act allows a bye-law to be made only in respect of presentation waste “for collection” and, rather obviously, home composting does not form part of waste collection.

This exclusion is additionally confirmed by the actual text of the bye-law Template and, particularly, by the pivotal definition of “kerbside waste”. This refers to the fraction of household and commercial waste “presented for collection” and, as indicated, home composting does not entail such a practice.

Do the bye-laws affect skips or other one-off collections?

A: No they don’t. This is because such collections do not entail the management of waste that is within the definition of “kerbside waste”. As they are excluded from that term, they are also excluded from the actual bye-laws.

A householder in my area has told me that she is using a relative’s bin. How do I find out if this is true?

A: As indicated elsewhere in these FAQs, bye-laws cannot be a substitute for the general enforcement process by which a local authority investigates non-compliance with environmental law. Accordingly, should this matter need investigation, then the name of the relative needs to be obtained and then the story needs to be verified. It may well be that, having had this matter investigated and the different parties spoken to, the unauthorised practice that concerns you may cease.

A householder has rung up to complain that a neighbour is using her bin. What do the bye-laws say about this and how can I address this complaint?

A: Two of the bye-laws in the Template outlaw this practice. Firstly, there is compliance with Bye-law 2 only if the recipient of the waste has consented to his or her bin being used. Secondly, Bye-law 11 requires that no waste shall be supplemented prior to collection by another person without the original holder’s consent.

Some waste collectors in my local authority area require brown bins to contain paper liners, why don’t the bye-laws require this?

A: While a bye-law could mandate this practice, you need to think about the issue of flexibility and that any such requirement will affect householders serviced by all waste collectors in your area. So, if a waste collector decides later that liners are a waste of time, then you’ll need to change your bye-laws if they mandate that liners are used. In general, it is not helpful to be over-prescriptive on aspects of waste management which could change in the future. Moreover, the requirement that householders use such liners is really a matter for the waste collector and, as such, so is the enforcement of this practice.

Why is the term “garden waste” used, rather than the Waste Management Act’s term “biowaste”?

A: A theme of the Guidance and these FAQs is that the wording of bye-laws must be readily understood by those subject to them. In this respect, the term “garden waste” is clear in its extent and context. By contrast, “biowaste” means virtually nothing to anyone outside of the waste industry.

Secondly, the term “biowaste” in the Waste Management Act is much wider than just referring to waste from domestic gardens and even includes some industrial waste. There is further explanation in Section 4.2.8 of the Guidance as to why “garden waste” is used instead (see the sub-heading “biowaste”).

Why don’t the bye-laws specify the acceptable and unacceptable types of garden waste?

A: In order to retain a degree of flexibility, it is important that bye-laws are not inordinately specific and detailed. What is acceptable garden waste should be a matter for individual collectors and their customers; there seems no need for bye-laws to impinge on this relationship.

Bye-Laws and Waste Collectors

Why can't a waste presentation bye-law cover activities by waste collectors?

A: As explained earlier, bye-laws of this nature are constrained by the principle that the national Parliament is empowered to make the legislation it wishes to make and that bye-laws should not somehow alter the scope or reach of that legislation. Therefore, it is inappropriate for them to impinge upon the waste collection permit system and the Waste Management (Collection Permit) Regulations 2007.

In addition, Section 35 of the Waste Management Act is clear about its scope and purpose, setting out the allowable content of bye-laws promulgated under its powers. It allows for bye-laws on waste presentation to be made which affect waste prior to its collection. Accordingly, Section 35 does not allow a bye-law to affect how waste is managed after it has been collected.

Accordingly, if your local authority desires a particular action from waste collectors operating in its functional area, this requirement needs to be referred to the National Waste Collection Permit Office. And any such requirement needs to be articulated through the waste collection permit system.

Why can't a bye-law specify waste collection times?

A: Waste collection times are determined by the waste collector and, if need be, constrained by one or more condition of a waste collection permit. For the reasons explained earlier and in the Guidance, a waste presentation bye-law should not impinge upon these requirements. Moreover, households and sources of commercial waste – in other words, those subject to this type of bye-law - have little or no influence on this matter.

Why don't the bye-laws require the microchipping of wheelie bins?

A: Again, this is a matter for each waste collector and for the waste collection permit system.

Why can't a bye-law oblige those presenting waste to a service provider to fulfil any additional requirements that this provider may have?

A: It is not a good idea for a waste presentation bye-law to require householders and/or commercial activities to comply with other requirements of a waste collector when these requirements are not specified in any detail. This is because a bye-law must be clear as to the obligations being imposed on those that are subject to it. Moreover, setting down the exact requirements in too much detail is undesirable, as bye-laws need to retain a degree of flexibility so that, if collection activities or the local waste market changes, the actual bye-laws do not need to be amended. Additionally, more detailed requirements emanating from particular collectors can be left to be imposed by the terms and conditions of any contract between the collector and the customer.

Title of the Bye-law

Can I choose the title of the bye-law?

A: The exact title you use is up to your local authority. However, it must cover the content of the bye-laws in such a manner that those subject to them are clear about its relevance. It must not also extend to items that are not permissible as bye-law content. Section 4.2.1 of the Guidance covers this matter.

Statutory Basis of the Bye-law

Can I just cite the Waste Management Act or do I need to mention the Local Government Act well?

A: A number of elements of the bye-law template may fall outside the scope of Section 35 of the Waste Management Act, with the result that it is better to cite that Section and also the Local Government Act as its statutory basis. If you require additional litter-related provisions, then the Litter Pollution Act 1997 needs to be cited if your amendments stem from that source. Section 4.2.2 of the Guidance discusses this issue.

Why may there be more than one statutory basis for a waste presentation bye-laws?

A: Section 35 of the Waste Management Act is very clear that it relates only to bye-laws affecting two related types of waste presentation activity. By contrast, the Local Government Act's powers are very wide (albeit subject to the limitations explained in these FAQs and in the Guidance). Accordingly, if there is doubt about whether Section 35 envisages some particular element of a bye-law, then the Local Government Act (or, as the case may be, the Litter Pollution Act) may need to be cited.

Citation

Why is this citation sub-section needed, when the title already contains the same information?

A: All existing bye-laws use this convention.

Date of Commencement

Why do I need to include a date of commencement here?

A: Because the Local Government Act requires it - see Section 4.2.4 of the Guidance.

Geographical Area of Application

Does a bye-law have to apply to the entire functional area of my local authority or can it be more specific?

A: It can be more specific and be limited to certain urban centres. Besides this restriction applying "globally" to all elements of a bye-law, you also have the choice of making certain parts of it apply only to certain areas. This matter is covered in Section 4.2.5 of the Guidance.

Revocations

Do I need to include this sub-section when there are no existing waste presentation bye-laws for my local authority?

A: No

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

Why doesn't this section mention waste presentation?

A: Because it doesn't need to. Bye-laws made under Section 35 of the Waste Management Act have to focus on waste presentation and cannot focus on other things. So there is no need to repeat what is said in that Section. And, in any case, the later sections of the bye-law Template make the scope clear.

Interpretation and Definitions

Why aren't refuse sacks included within the definition of "appropriate waste containers"?

A: They are excluded for the reason that refuse sacks are dealt with by the bye-law Template differently. For example, the second arm of Bye-law 5 makes provision for refuse sacks. In other instances, the bye-laws

simply require “kerbside waste” be handled in a specified manner, thereby covering waste in either bins or sacks.

Schedule 1 sets out the nature of “recyclable household kerbside waste”, why doesn’t the Template also contain a similar table that defines “residual household kerbside waste”?

A: There is no need to do this and, if a table specifying the types of “residual household kerbside waste” was produced, there would always be a danger that something was left off that should have been included. Instead, “residual household kerbside waste” is all the household kerbside waste fraction that is left over after recyclable household kerbside waste, food waste and, if such a service is available locally, garden waste has been removed – see the definition given in the Template.

The Template contains some of the definitions that are set out in the Waste Management Act, but others are missing. Why is this?

A: In principle, there is no need to repeat any of the Waste Management Act’s definitions in the Template. Waste presentation bye-laws emanate from the powers contained in Section 35 of the Waste Management Act and, because of this, the terms in the “parent” Act apply. This is explained in Section 3.4 of the Guidance, at the start and end of Section 4.2.8 and in Appendix 2’s coverage of the Interpretation Act 2005.

Having said that and as set down in Section 3.3 of the Guidance, there is also the need for bye-laws to be readily understandable by members of the public and, for this reason, some of the more significant definitions in the Waste Management Act have been included.

In order to avoid any doubt on this matter, the end paragraphs of Bye-law 1 - Interpretation and Definitions - lists other terms whose meaning is set down in the Waste Management Act. It also says that the Interpretation Act shall apply when debates arises about the meaning of any element of the bye-laws.

Bye-law 2. Obligation to Participate in a Waste Collection Service

Doesn’t Bye-law 2’s reference to bin sharing condone this practice or legitimise it?

A: No, it does not. All it does is to set out a process whereby bin sharing is covered by a waste presentation bye-law.

Moreover, the bye-law Template actually gives additional protection to householders in this respect. Bye-Law 2 outlaws the unauthorised use of someone else’s bin, as it lays down the three options on a waste holder, with using someone else’s bin without permission not being one of them. Moreover, Bye-law 11 – Interference of Orderly Waste Collection – additionally makes it an offence to use another person’s bin without that person’s consent.

Accordingly, the existence of these provisions in the Template allows local authority staff or the Gardai to initiate legal action against an alleged offender. By contrast, in the absence of this provision, it may well be up to the luckless householder to initiate civil legal proceedings to stop this happening.

I was talking to a householder who I think was dumping his waste in an unauthorised manner. He says that he was bin sharing with a relative. I don’t believe him; how to do prove that he is committing an offence?

A: As stated earlier, waste presentation bye-laws are not a substitute for the normal enforcement process whereby offences need to be investigated. Like any other element of criminal law, a person is innocent until proved guilty. Accordingly, you need to investigate this matter further and, for example, consider taking a

cautioned statement from the possible offender. If he co-operates and names the relative, then you need also to talk to the relative. If you have obtained a properly signed statement from the suspect, this may well be admissible in legal proceedings. Its existence also makes it difficult for him or her to invent another story for the court. This is not, of course, to suggest that this type of waste enforcement is easy, particularly if the person does not want to cooperate; but bye-laws can only do so much to help you in this respect.

Bye-law 3. Maintenance and Management of Waste Containers

Why doesn't this section also cover refuse sacks?

A: As discussed earlier, the deployment of refuse sacks has been extensively phased out across Ireland, with the result that wheelie bins are to be deployed unless local circumstances preclude their use. Given this context, Bye-law 3 does not set down provisions about how sacks are to be managed.

Our existing bye-laws forbid householders from placing waste such as hot ashes in a container in a way that damages it. Why isn't this included here?

A: Some of the older wordings in existing bye-laws stemmed from a time when local authorities supplied containers to households. The reference to damaging containers has been left out for the reason that this type of issue is a matter primarily for the authorised waste collector to deal with.

Bye-law 4. Location for Container Storage

Why isn't curtilage defined?

A: In most instances, what is or is not the curtilage of a householder's premises will be pretty obvious and thus it will be equally obvious whether this bye-law is being contravened. There are already enough definitions in the Template and it doesn't seem necessary to add to this.

The Roads Act defines items such as "roadway" and "footpath", why aren't these definitions used?

A: Because they don't need to be. In most instances, it will be obvious whether the location for container storage is compliant with this bye-law or is not. Bye-law 4 also additionally refers to "any other public place" in this respect, which is a deliberate catch-all to preclude debates of this nature arising.

Bye-law 5. Use of Waste Containers on Collection Day

Why doesn't this bye-law extend to setting out requirements about refuse sack deployment on the collection day?

A: As explained elsewhere in these FAQs, the deployment of sacks will be an exception rather than a rule and, for this reason, this bye-law does not refer to them. However, there is nothing to stop your local authority developing a wording to cover this issue if it wishes to.

Bye-law 6. Collection Times and Container Removal

Does this apply to sacks?

A: Yes it does, as it says that "kerbside waste" shall be presented in the manner specified.

Bye-law 7. Prohibited Waste Types

Why does this just refer to household waste and not to commercial waste?

A: Because a number of commercial-type sources may produce hazardous waste and have it removed by arrangements that might constitute a "kerbside collection".

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

Why doesn't this bye-law say more about food waste management?

A: Because this matter is covered adequately by the European Union (Household Waste and Bio-waste) Regulations 2015. Repeating these requirements here may well introduce confusion both in respect of offences and about whether legal proceedings have been embarked upon under the correct item of legislation.

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

Do we have to use this bye-law?

A: No. But, as explained in the Guidance, you should use Bye-law 8(a) instead.

Do we need to produce the maps that this bye-law refers to? Can't we just say in the bye-law that any area designated by this local authority is subject to this bye-law?

A: A key precept behind the Template and the Guidance is that each bye-law should be clear and that those subject to them should know exactly what they are required to do in order to comply. The use of mapping seems to be the most obvious way to ensure that all parties know whether a bye-law applies to them. By contrast, a bye-law that allows a local authority to specify the areas in some other way – and which is not set down in the actual bye-law itself – might make the bye-law legally uncertain. It also makes it much more difficult for members of the public to check to ensure they are compliant. This issue is expanded upon in the final section of Appendix 2.

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

Can't we just say that all sources of household waste should use a collection service and dispense with what seems to me to be an "escape clause" set down in Bye-law 9?

A: If you do this, then there is likely to be widespread non-compliance, and ensuring that all your households comply will be an uphill struggle. At the moment, they are entitled to access civic amenity sites and other waste infrastructure operated by many local authorities for recyclate and black bin waste. Some individuals may generate very little waste due to their lifestyle choices and imposing a wheelie bin solution may well cause them prohibitive expense.

This bye-law appears to go further than Section 35 of the Waste Management Act. Is this allowable?

A: Yes, it does go further than Section 35, as it extends to activities that are beyond the scope of how household waste is presented. This is why Section 4.2.17 of the Guidance indicates that the statutory basis of a bye-law of this type must reflect both the Waste Management Act and the Local Government Act.

Is it realistic to expect householders to retain receipts when they deliver waste directly to authorised waste facilities?

A: Until quite recently, householders were required to retain receipts if they wished to avail of a provision in the national taxation system that allowed refuse costs to be set against their annual income tax (this exemption ceased after the tax year of 2011). So there is nothing particularly onerous being changed here.

Secondly, unless some record is kept in accordance with this bye-law, it will be very difficult for local authority staff to ensure compliance with the other requirements set down here.

Are you saying that we should take householders to court if they cannot produce the required receipts?

A: The Guidance does not set down how you should deal with non-compliance with this bye-law or any of the other ones. How enforcement action is to be taken in any of these respects is a matter for your local authority to decide. It may well be that having a quiet word with someone who is claiming that he or she took their waste to a civic amenity site about the need to retain receipts may well encourage them to comply next time.

Some of our civic amenity sites do not issue receipts, so how can householders comply?

A: In the absence of the receipts-based system, it is quite difficult to see how Bye-law 10 can operate effectively. So it may well be necessary for you to consider how your own local authority's waste sites should operate to optimise the internal workings of these bye-laws.

Lots of people won't know of the need to retain receipts, so how will this work?

A: Bye-laws cannot work in a vacuum, and thus it is up to your local authority to support and facilitate their operation. And one of the ways of doing this is via publicity which is aimed at increasing householders' and commercial waste sources' knowledge of the bye-laws and their requirements. For example, it may be desirable for all receipts to be accompanied by a clear explanation about the need for them to be retained and why. This can be printed on the receipt or separately on an information leaflet and/or appear as signage at your authorised waste facilities.

Does Bye-law 9 affect people engaged in bin-sharing?

No, Bye-law 9 does not apply to parties engaged in bin-sharing, including those using someone else's bin in accordance with Bye-laws 2 and 11. Parties to such arrangements are "participating in a household kerbside waste collection service".

Bye-law 10 Provisions affecting Multi-user Buildings, Apartment Blocks, etc

How am I meant to find out who is in charge of an apartment block or shopping centre?

A: A theme of these FAQs is that bye-laws cannot be an answer to all difficulties faced by the enforcing authority. So you are going to have to go about this in the normal way you would investigate any issue to do with non-compliance with the national environmental legislation.

You use the term "adequate" here, but in Guidance and elsewhere in these FAQs you tell me not to use this term. So why is it found in Bye-law 10?

A: It is used here as there seems to be no other way of setting down what is needed in a way which will affect the numerous different circumstances affecting shopping centres, apartment blocks and so on across Ireland. In essence, you'll often know when something is "adequate" and, conversely, when it is inadequate. Clearly, gross shortages of receptacles for food waste or for recyclable waste will suggest that the arrangements are not "adequate". Given that these facilities might be expected to be accessed by a number of members of the public, they may well give you information as to their views about the quality of the arrangements and how other elements of this bye-law are being complied with.

There is no management company for a particularly problematic mixed use development locally, who then is responsible and how do I find out who he or she is?

A: Bye-law 10 refers also to “any other person”, a phrase which applies where no management company exists. As explained in Section 4.2.18 of the Guidance, the legal definition of “a person” is an individual, company, partnership, cooperative or any other similar body. So you need to make enquires to find out how the arrangements are controlled and who is in charge of them. Some of the occupiers of this type of premises should also be able to assist you.

Bye-law 11. Interference with Orderly Waste Collection

Bye-law 12. Additional Provisions for Commercial Waste

The management of commercial waste is a real problem to my local authority. Is Bye-law 12 the only element proposed to control this waste stream - which is, in effect, don't take commercial waste to my local authority's bring sites?

A: No, it is not correct to say that only Bye-law 12 relates to commercial waste. If you go back to the scope of the bye-laws section on the first page of the Template, you'll see that it is clear that they relate to both commercial and household waste “unless the following bye-laws indicate to the contrary”. And, for example, if you look at the definition of “kerbside waste”, you'll see that it covers both household and commercial waste. Accordingly, Bye-law 3 applies to both waste types, as does Bye-law 4 and so on.

How do the bye-laws affect commercial waste presentation? And which of them does this?

A: See the answer to the question above and see Bye-laws 3, 4, 6, 10, 11 and 12.

Why can't these bye-laws cover the segregation, storage, presentation and contamination of commercial packaging waste?

A: Because this is a requirement of national law and, as indicated, bye-laws should not embellish upon that law. Segregation, etc, of commercial packaging waste is regulated by the European Union (Packaging) Regulations 2014. This matter is discussed in Appendix 2 of the Guidance.

Bye-law 13. Enforcement Provisions/Fixed Payment Notices.

What is the maximum level of fine for non-compliance with a bye-law?

A: Unless your bye-laws are to indicate a lesser amount, the maximum penalty is €2,500, rather than the €1,500 stated in the Local Government Act. Section 2.3.1 of the Guidance explains this apparent discrepancy.

You say that the Local Government Act grants my local authority discretion to put in place a lower level of penalty; can I change the penalties for obstruction of authorised officers or which relate to someone refusing to provide their name and address?

A: No, this is not allowed by the Local Government Act – see Section 2.3.1 of the Guidance.

How do I become an authorised person to enforce bye-laws?

A: You need to be appointed as an authorised person under the Local Government Act, with this appointment according to what the Local Government Act requires.