

SCHEDULE 4

WASTE FRAMEWORK DIRECTIVE

PART 1

GENERAL

Interpretation of Schedule 4

1. In this Schedule—

“the 1997 Act” means the Town and Country Planning (Scotland) Act 1997(1);

“best available techniques” has the same meaning as in Article 2(12) of Directive 2008/1/EC concerning integrated pollution prevention and control(2);

“collection” means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility;

“competent authority” has the meaning given in paragraph 5;

“development”, “development plan” and “planning permission” have the same meanings as in the 1997 Act;

“permit” means—

- (a) a waste management licence;
- (b) a disposal licence;
- (c) an authorisation under Part I of the 1990 Act;
- (d) a permit under the 2000 Regulations;
- (e) a licence under Part II of the Food and Environment Protection Act 1985;
- (f) an authorisation under the 2005 Regulations or the 2011 Regulations; or
- (g) a licence under Part 4 of the Marine (Scotland) Act 2010,

and, in relation to a permit, “grant” includes give, issue or pass, “modify” includes vary, and cognate expressions shall be construed accordingly;

“plan-making provisions” means Parts IA and II of the 1997 Act and the National Waste Management Plan for Scotland Regulations 2007(3);

“planning authority” means the local authority, a person appointed by the local authority for the purposes of section 43A of the 1997 Act, a person appointed under paragraph 1 of Schedule 4 to that Act, and the Scottish Ministers in respect of their functions under that Act;

“pollution control authority” means any competent authority other than a planning authority;

“preparing for re-use” means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any further pre-processing; and “preparation for re-use” shall be construed accordingly;

(1) 1997 c.8, as relevantly amended by the 2003 Act Part 1 Chapter 3 section 24(2); the Planning and Compulsory Purchase Act 2004 (c.5) Schedule 7 paragraph 20(2); the Planning etc. (Scotland) Act 2006 (asp 17) Part 1 section 1, Part 2 section 2 and Part 3 sections 3(1), 17, 19(1) and 22(3); S.S.I. 1999/1 Part II (11) section 47(1); the Transport and Works (Scotland) Act 2007 (asp 8) Part 1 section 15(1); S.S.I. 2003/341 regulations 2 and 5; S.S.I. 2006/243 article 4(5) and (12)(b) and S.S.I. 2007/268 articles 8(2) and 14.

(2) O.J. L 24, 29.1.2008, p.8.

(3) S.S.I. 2007/251.

“re-use” means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived;

“specified action” means any of the following—

- (a) determining—
 - (i) an application for planning permission; or
 - (ii) an appeal made under section 47 of the 1997 Act in respect of such an application;
- (b) deciding whether to take any action under section 92(2)(a) or (b) or (3) of the 1997 Act;
- (c) deciding whether to direct under section 31(5) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997⁽⁴⁾ or section 57(1), (2) or (2A) of the 1997 Act that planning permission shall be granted or deemed to be granted;
- (d) deciding whether—
 - (i) in making or confirming a discontinuance order, to include in the order any grant of planning permission; or
 - (ii) to confirm (with or without modifications) a discontinuance order insofar as it grants planning permission,

and, for the purposes of this sub-paragraph, “discontinuance order” means an order under section 71 of, or paragraph 1 of Schedule 8 to, the 1997 Act (including an order made under that section by virtue of section 73 of, or paragraph 12 of Schedule 8 to that Act);

- (e) discharging functions under Part II of the 1997 Act;

“specified functions” has the meaning given by paragraph 5;

“waste management” means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker, and cognate expressions shall be construed accordingly;

“waste prevention” means measures taken before a substance, material or product becomes waste that reduce—

- (a) the quantity of waste, including through the re-use of products or the extension of the life span of products;
- (b) the adverse impacts of the generated waste on the environment or human health; or
- (c) the content of harmful substances in materials or products.

Duties of the waste regulation authority

2.—(1) The waste regulation authority shall discharge its specified functions, insofar as they relate to waste, with the objectives set out in sub-paragraph (2).

(2) Those objectives are ensuring that—

- (a) the waste hierarchy set out in paragraph 6(2) and (3) is applied to the generation of waste by the holder of a permit (other than a licence under Part II of the Food and Environment Protection Act 1985 or Part 4 of the Marine (Scotland) Act 2010) in the course of any activity authorised by that permit;
- (b) waste generated by such an activity is treated in accordance with that hierarchy;
- (c) waste generated by such an activity is managed in accordance with paragraph 6(1)(a); and
- (d) Article 23(3) of the Directive is complied with.

(4) 1997 c.9, to which there are amendments not relevant to these Regulations.

(3) The duty in sub-paragraph (2)(a) and (b) takes effect in relation to a permit which is in force on 27th March 2011 when that permit is next modified after that date.

Duties of planning authorities

3.—(1) A planning authority shall exercise its specified functions with the objectives of ensuring that—

- (a) the waste hierarchy set out in paragraph 6(2) and (3) is applied;
- (b) waste is managed in accordance with paragraph 6(1)(a); and
- (c) any plan made under the plan-making provisions is implemented.

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

Duties of other competent authorities

4. Other competent authorities shall discharge their specified functions, insofar as they relate to waste, with the relevant objectives as set out in paragraph 6.

Meaning of “competent authority” etc.

5.—(1) For the purposes of this Schedule, “competent authority” means any of the persons listed in column 1 of Table 23 and, in relation to a competent authority, “specified function” means any function of that authority listed in column 2 of that Table opposite the entry for that authority.

Table 23

Competent authorities	Specified functions
Any planning authority.	The taking of any specified action.
The waste regulation authority, the Scottish Ministers or a person appointed under section 114(1)(a) of the 1995 Act.	Their respective functions under Part II of the 1990 Act in relation to waste management licences, and preparing the national waste management plan, or any modification of it, in accordance with the National Waste Management Plan for Scotland Regulations 2007.
The waste regulation authority or the Scottish Ministers	Their respective functions under regulation 30 of and Schedule 5 to these Regulations.
The waste regulation authority	Its functions under Schedule 4 paragraph 12 to these Regulations.
The waste regulation authority	Its functions under the Special Waste Regulations 1996.
The Scottish Ministers	Their functions under Part 4 of the Marine (Scotland) Act 2010.
The waste regulation authority, the Scottish Ministers or a person appointed under section 114(1)(a) of the 1995 Act.	Their respective functions under Part I of the 1990 Act in relation to prescribed processes except when— (a) the process is designated for local control; and

Competent authorities	Specified functions
	(b) it is an exempt activity carried out subject to the conditions and limitations specified in Schedule 1.
<p>The waste regulation authority or the Scottish Ministers.</p> <p>The waste regulation authority, the Scottish Ministers or a person appointed under section 114(1)(a) of the 1995 Act.</p>	<p>Their respective functions under the 2011 Regulations.</p> <p>Their respective functions in relation to permits under the 2000 Regulations except in relation to the carrying out of an exempt activity under such permits.</p>
<p>A local authority</p> <p>A local authority or the Scottish Ministers</p> <p>The Scottish Ministers</p> <p>Scottish Water</p>	<p>Its functions under sections 45, 46, 47, 52, 53 and 56.</p> <p>Their respective functions under sections 57, 58, 63A and 153.</p> <p>Their functions under Part 5 Chapter 5 of the Climate Change (Scotland) Act 2009(5).</p> <p>Its functions in relation to control of discharges of trade effluent into its sewers or sewage treatment works under Part II of the Sewerage (Scotland) Act 1968.</p>

(2) In Table 23, except in the case of the functions of the Scottish Ministers under Part 5 Chapter 5 of the Climate Change (Scotland) Act 2009, references to functions do not include functions of making, revoking, amending, revising or re-enacting orders, regulations or schemes where those functions are required to be discharged by statutory instrument.

Relevant objectives

6.—(1) For the purposes of this Schedule, the following objectives are the relevant objectives in relation to waste management—

- (a) ensuring that waste is managed without endangering human health and without using processes or methods which could harm the environment and in particular without—
 - (i) risk to water, air, soil, plants or animals; or
 - (ii) causing nuisance through noise or odours; or
 - (iii) adversely affecting the countryside or places of special interest;
- (b) where necessary to facilitate or improve recovery and where technically, environmentally and economically practicable, ensuring that different types of waste are collected

(5) 2009 asp 12.

separately and are not mixed with other waste or other material with different properties;
and

(c) implementing any plan made under the plan-making provisions.

(2) Applying the following waste hierarchy in the manner set out in sub-paragraph (3) is a relevant objective in relation to waste prevention, preparation for re-use and management—

- (a) waste prevention;
- (b) preparing for re-use;
- (c) recycling;
- (d) other recovery, including energy recovery;
- (e) disposal.

(3) The hierarchy is to be applied in a way which delivers the best overall environmental outcome. The hierarchy may be departed from for particular types of waste where justified in order to ensure this outcome and by reference to the overall impact of the generation and management of such types of waste.

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

- (a) establishing an integrated and adequate network of waste disposal installations and installations for the recovery of all mixed municipal waste which includes waste collected from private households, taking into account best available techniques;
- (b) ensuring that the network referred to at paragraph (a) enables—
 - (i) the European Community as a whole to become self-sufficient in waste disposal, and in the recovery of the municipal waste referred to in paragraph (a), and the Member States individually to move towards that aim, taking into account geographical circumstances or the need for specialised installations for certain types of waste; and
 - (ii) waste to be disposed of, and the municipal waste referred to in paragraph (a) to be recovered, in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.

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

- (a) encouraging the prevention or reduction of waste production and its harmfulness, in particular by—
 - (i) the development of clean technologies more sparing in their use of natural resources;
 - (ii) reducing the quantity of waste produced through the re-use of products or the extension of their life spans;
 - (iii) the technical development and marketing of products designed so as to make no contribution or to make the smallest possible contribution, by the nature of their manufacture, use or final disposal, to increasing the amount or harmfulness of waste and pollution hazards; and
 - (iv) the development of appropriate techniques for the final disposal of dangerous substances contained in waste destined for recovery; and
- (b) encouraging—
 - (i) the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials; and
 - (ii) the use of waste as a source of energy.

Exceptions to duties

7.—(1) In a case where waste management is or forms part of a prescribed process designated for local control under Part I of the 1990 Act, and either requires a waste management licence or is covered by an exemption conferred by regulation 17(1) of, and Schedule 1 to, these Regulations, nothing in paragraphs 2 to 6 requires a competent authority to discharge its functions under—

- (a) Part I of the 1990 Act in order to control pollution of the environment due to the release of substances into any environmental medium other than the air; or
- (b) Part II of the 1990 Act in order to control pollution of the environment due to the release of substances into the air resulting from the carrying on of the prescribed processes.

(2) In sub-paragraph (1), “prescribed process”, “designated for local control”, “pollution of the environment due to the release of substances into the air” and “pollution of the environment due to the release of substances into any environmental medium other than the air” have the meanings which they have in Part I of the 1990 Act.

(3) In a case where waste management is or forms part of an activity carried out at a Part B installation and requires a waste management licence, nothing in paragraphs 2 to 6 shall require a competent authority to discharge its functions under—

- (a) the 2000 Regulations for any purpose other than preventing or, where that is not practicable, reducing emissions into the air;
- (b) Part II of the 1990 Act for the purpose of preventing or reducing emissions into the air.

(4) In sub-paragraph (3), “Part B installation” has the meaning given by regulation 2(1) of the 2000 Regulations.

Matters to be covered by permits

8. When a pollution control authority grants or modifies a permit, and the activities authorised by the permit include the treatment of waste, the pollution control authority must ensure that the permit covers—

- (a) the types and quantities of waste to be treated;
- (b) for each type of operation permitted, the technical and any other requirements relevant to the site;
- (c) the safety and precautionary measures to be taken;
- (d) the treatment site;
- (e) such monitoring and control operations as may be necessary;
- (f) such closure and after-care provisions as may be necessary;
- (g) the treatment method to be used for each type of operation;
- (h) the relevant operation code from Part II or III of this Schedule, where applicable; and
- (i) for each type of operation permitted, the maximum annual capacity to treat or dispose of waste.

Modification of provisions relating to development plans

9. Sections 3A(3), 7(1)(b) and 15(1)(a) of the 1997 Act have effect as if the spatial strategies referred to in those provisions included strategies in respect of suitable waste recovery and disposal sites or installations.

Modifications of Part I of the 1990 Act

10.—(1) Subject to section 28(1), Part I of the 1990 Act has effect in relation to prescribed processes involving waste management with such modifications as are needed to allow the waste regulation authority to exercise its functions under that Part for the purpose of achieving the objectives set out in paragraph 2(2).

(2) Nothing in sub-paragraph (1) requires the waste regulation authority in granting an authorisation in relation to such a process to take account of those objectives insofar as they relate to the prevention of detriment to the amenities of the locality in which the process is (or is to be) carried on if planning permission, resulting from the decision of a planning authority after 30th April 1994, is or, before the process is carried on, will be in force.

Modifications of Part II of the 1990 Act

11.—(1) Part II of the 1990 Act has effect subject to the following modifications.

(2) In section 33(1)(a) and (5), any reference to the deposit of waste in or on land includes a reference to any operation listed in Part II or III of this Schedule involving such a deposit.

(3) In section 33(1)(b), any reference to the treatment or disposal, or to the treatment, keeping or disposal, of controlled waste includes a reference to submitting controlled waste to any of the operations listed in Part II or III of this Schedule other than an operation mentioned in sub-paragraph (2).

(4) In sections 33(1)(c) and 35, any reference to the treatment or disposal, or to the treatment, keeping or disposal, or to the management, of controlled waste includes a reference to submitting controlled waste to any of the operations listed in Part II or III of this Schedule.

(5) In section 36(3), the reference to planning permission is taken to be a reference to planning permission resulting from the decision of a planning authority after 30th April 1994.

(6) In section 62(1), any reference to the treatment, keeping or disposal of such waste as is referred to in that subsection includes a reference to submitting such waste to any of the operations listed in Part II or III of this Schedule.

(7) In section 62(2), any reference to the treatment, keeping or disposal of special waste includes a reference to submitting special waste to any of the operations listed in Part II or III of this Schedule.

Registration of professional collectors and transporters of waste

12.—(1) It is an offence for an establishment or undertaking falling within sub-paragraph (a), (b), (f), (g), (i) or (j) of regulation 2(1) of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991⁽⁶⁾ to collect or transport waste as a normal and regular part of its activities unless it is registered with the waste regulation authority in accordance with the provisions of this paragraph.

(2) Sub-paragraph (1) does not apply in cases where the establishment or undertaking is carrying on the activities mentioned in those sub-paragraphs pursuant to, and in accordance with the terms and conditions of, a permit.

(3) The waste regulation authority must establish and maintain a register of establishments and undertakings registering with it under the provisions of this paragraph.

(4) The register must contain the following particulars in relation to each such establishment or undertaking—

- (a) the name of the establishment or undertaking;

⁽⁶⁾ S.I. 1991/1624, as relevantly amended by S.I. 1992/588 regulation 10(1); S.I. 1994/1056 regulation 23(2) and (4); S.I. 1998/605 regulation 2(2)(a) and S.S.I. 2005/22 regulation 4.

- (b) the address of its principal place of business; and
 - (c) the address of any place at or from which it carries on business.
- (5) The waste regulation authority must enter the relevant particulars in the register in relation to an establishment or undertaking if it receives notice of them in writing from that establishment or undertaking.
- (6) A person guilty of an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) The waste regulation authority must—
- (a) secure that any register maintained by it under this paragraph is open to inspection by members of the public free of charge at all reasonable hours; and
 - (b) afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register.
- (8) Registers under this paragraph may be kept in any form.
- (9) Where a person is registered as a professional collector or transporter of waste under Schedule 4 paragraph 12 to the 1994 Regulations on 27th March 2011, that registration shall be treated as a registration under this paragraph.

Duty to carry out appropriate periodic inspections

13.—(1) Any establishment or undertaking which—

- (a) carries out the treatment of controlled waste;
- (b) collects or transports controlled waste on a professional basis;
- (c) arranges for the recovery or disposal of controlled waste on behalf of others, or purchases and sells controlled waste (brokers or dealers); or
- (d) produces special waste,

shall be subject to appropriate periodic inspections by the waste regulation authority.

(2) Section 71(2) and (3) (power to obtain information) have effect as if the provisions of this paragraph were provisions of Part II of the 1990 Act.

(3) In a case where an establishment or undertaking is carrying on an exempt activity in reliance upon an exemption conferred by regulation 17(1) and paragraph 45(1) or (2) of Schedule 1, the waste regulation authority must discharge its duty under sub-paragraph (1) in respect of any place where such an activity is so carried on by—

- (a) carrying out an initial inspection of that place within two months of having received in respect of that place the notice, plan and fee referred to in regulation 23(2); and
- (b) thereafter carrying out periodic inspections of that place at intervals not exceeding 12 months.

(4) In the case of an exempt activity referred to in the first column of Table 24, the duty under sub-paragraph (1) shall be discharged by carrying out inspections at the times referred to in the second column of that table in respect of any place where the relevant exempt activity is carried on.

Table 24

<i>Paragraph Number of Exempt activity in Schedule 1</i>	<i>Inspections required</i>
7, 8(2) ⁽¹⁾	An inspection shall be carried out at the time of treatment or, where that is not possible, not later than 4 weeks thereafter.
9, 10, 12(2), 19, 49, 50, 51	An initial inspection shall be carried out at the time when the exempt activity commences. Thereafter, periodic inspections shall be carried out at intervals not exceeding 12 months.

(1) treatment activities only.

(5) In a case where an establishment or undertaking is carrying on or intends to carry on an exempt activity in respect of the treatment of WEEE, the waste regulation authority shall discharge its duty under sub-paragraph (1) in respect of any place where such an activity is carried on or to be carried on, by—

- (a) carrying out an inspection of that place within 21 days of having received in respect of that place the notice, plans and fee referred to in regulation 25(2); and
- (b) thereafter carrying out periodic inspections of that place at intervals not exceeding 12 months,

and such inspections shall verify the type and quantities of waste to be treated, the general technical requirements to be complied with and the safety precautions to be taken.

(6) In the case of any such place as is mentioned in sub-paragraph (4) (second entry in Table 24) or (5), but without prejudice to any duties of the waste regulation authority imposed otherwise than by this paragraph, sub-paragraph (1) does not require (but does permit) the waste regulation authority to carry out the periodic inspections referred to in sub-paragraph (4) or sub-paragraph (5) (b) above at intervals of less than 10 months.

(7) Inspections concerning the collection and transport of controlled waste shall cover the origin, nature, quantity and destination of the waste collected and transported.

Record keeping

14.—(1) An establishment or undertaking which carries out the recovery or disposal of controlled waste, or which produces special waste, collects or transports such waste on a professional basis or acts as a broker of or dealer in such waste must—

- (a) keep a chronological record of the quantity, nature, origin and, where relevant, the destination, frequency of collection, mode of transport and treatment method of the waste; and
- (b) make that information available, on request, to the waste regulation authority or, in the case of special waste, to a previous holder; and for this purpose “holder”, in respect of any such waste, means the producer or the person in possession of it.

(2) Where the waste is special waste, a record required to be kept under sub-paragraph (1) must be retained for at least 12 months from the date on which it was first made by any establishment or undertaking transporting such waste, and for at least three years from that date by any other establishment or undertaking.

(3) Where the waste is special waste, a record required to be kept under sub-paragraph (1) must include a record of the carrying out and supervision of the relevant operation and, in the case of a disposal operation, of the after-care of the disposal site.

(4) It is an offence for an establishment or undertaking to fail to comply with any requirement or obligation placed on it by this paragraph.

(5) Paragraph (2) of regulation 18 of the Special Waste Regulations 1996 (defence in cases of emergency etc.) applies to a person charged with an offence under sub-paragraph (4) as it applies to a person charged with an offence under paragraph (1) of that regulation.

(6) A person who, in purported compliance with a requirement to furnish any information imposed by or under any of the provisions of this paragraph, makes a statement which that person knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, commits an offence.

(7) A person who intentionally makes a false entry in any record required to be kept by virtue of any of the provisions of this paragraph commits an offence.

(8) Paragraphs (5) to (9) of regulation 18 of the Special Waste Regulations 1996 (offence where act or default causes offence by another, offences by bodies corporate and penalties) apply to an offence under this paragraph, as they apply to an offence under that regulation.