Circular 11/94
(Department of the Environment)
Circular 26/94
(Welsh Office)
Circular 10/94
(Scottish Office Environment Department)

Joint Circular from the
Department of the Environment
2 Marsham Street, London SW1P 3EB

Welsh Office
Cathays Park, Cardiff CF1 3NQ

Scottish Office Environment Department
27 Perth Street, Edinburgh EH3 5LB

19 April 1994

Environmental Protection Act 1990: Part II
Waste Management Licensing
The Framework Directive on Waste

1. We are directed by the Secretary of State for the Environment, the Secretary of State for Wales and the Secretary of State for Scotland to draw your attention to:-

(a) The Environmental Protection Act 1990 (Commencement No.15) Order 1994; and

(b) The Waste Management Licensing Regulations 1994 (S.I. 1994 No. 1056).

Commencement Order No.15

2. Commencement Order No.15 brings into force on 1 May 1994 (with certain transitional exceptions, notably for scrap metal - see paragraphs 4.76-4.79 of Annex 4 to this Circular) in Great Britain the waste management licensing system and other related provisions of Part II of the Environmental Protection Act 1990 (the 1990 Act). Section 33 of the 1990 Act prohibits the unlicensed management or deposit of waste. Sections 35 to 44 establish the new waste management licensing system; and section 54 makes special provision for land occupied by waste disposal authorities in Scotland. Sections 57 and 58 provide powers for the Secretary of State to require waste to be accepted, managed or delivered; and section 59 provides powers for authorities to require removal of waste unlawfully deposited. Section 60 extends protection against

unauthorised interference to all waste sites and receptacles. Section 64 places a duty on authorities to maintain registers of information on the discharge of their licensing and certain other functions. Sections 65 and 66 provide for exclusions from the registers on grounds of national security and commercial confidentiality respectively. Section 67 places a duty on waste regulation authorities (WRAs) to publish annual reports on their discharge of their functions. Section 73(6) to (9) relates to civil liability in connection with the deposit of waste. Section 74 covers determinations of whether or not a person is a fit and proper person to hold a licence.

3. The Commencement Order also repeals (with certain transitional exceptions) sections of the Control of Pollution Act 1974 (the 1974 Act) which deal with waste disposal licensing.

The Waste Management Licensing Regulations 1994

4. The aims of The Waste Management Licensing Regulations 1994 (the Regulations) are as follows:-

(a) to prescribe under section 33(3) of the 1990 Act cases where a waste management licence is not required;

(b) to prescribe the form and content of applications in respect of waste management licences;

(c) to prescribe the offences that are relevant for the purposes of section 74(3)(a) and the qualifications and experience required of a person for the purposes of section 74(3)(b) (fit and proper persons);

(d) to make provision as to the period within which, and the manner in which, appeals under section 43 are to be brought, and the manner in which they are to be considered;

(e) to prescribe the particulars that are to be entered into the registers to be kept by WRAs and waste collection authorities under section 64;

(f) to prescribe under section 29(10) the descriptions of plant that are to be treated as being, or as not being, mobile plant;

(g) to make provision under section 35(6) as to the conditions which are, or are not, to be included in a licence;

(h) to implement under section 2(2) of the European Communities Act 1972 certain provisions of the Framework Directive on waste (see paragraphs 5-8 below);

(i) to prescribe under section 2(2) of the European Communities Act 1972 what constitutes "Directive waste" and to apply relevant provisions of Part II of the 1990 Act to Directive waste; and

(j) to amend under section 75(8) of the 1990 Act, the Controlled Waste Regulations 1992; and under sections 1(3) and 8(2) of the Control of Pollution (Amendment) Act 1989, the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991; so as to exclude animal by-products from certain waste controls.

The Framework Directive On Waste

5. All provisions relating to the recovery or disposal of waste must comply with relevant EC legislation and this requirement is fulfilled in the Regulations.

The principal Directive in this context is Council Directive 75/442/EEC on waste which came into force in 1977 and established a set of rules on the disposal and recovery of waste. Those rules have now been substantially amended to take account of the experience gained by Member States in their implementation; and the amendments which have been made are set out in Council Directive 91/156/EEC. Directive 75/442/EEC as amended by Directive 91/156/EEC is commonly referred to as the Framework Directive on waste and is referred to in the Regulations and subsequently in this Circular as "the Directive".

6. In order to implement the Directive properly, it is necessary to ensure that any UK laws relating to the recovery or disposal of waste are in line with the Directive; and that appropriate additional provision is made where existing legislative provisions are inadequate to implement the Directive.

7. The principal control regime for regulating the recovery and disposal of waste is the waste management licensing system set up under Part II of the 1990 Act; and it is necessary to modify the way in which this system operates to ensure that it complies with the Directive. This is reflected generally throughout the Regulations. However, although waste management licensing is the principal control regime for waste, it is by no means the only one. Waste is also regulated under the outstanding provisions of Part I of the 1974 Act, Part I of the 1990 Act, the Food and Environment Protection Act 1985, the Control of Pollution (Amendment) Act 1989, the Water Resources Act 1991 and in Scotland Part II of the 1974 Act, and the Town and Country Planning Acts. All of these control regimes must be modified as necessary to comply with the requirements of the Directive. Modifications to these other control regimes, and to the way the authorities responsible for implementing these regimes exercise their powers, are contained in the main body of the Regulations, and more specifically in Schedule 4 to the Regulations.

8. A guide to the Directive, and the provisions in the Regulations that implement it, is contained in Annex 1 to this Circular, with further more detailed guidance on specific provisions in later Annexes (see paragraph 18 below).

Waste Management Policy And Proportionality

9. The Government's policy is that:-

(a) subject to the best practicable environmental option (BPEO) in each case, waste management should be based on a hierarchy in which the order of preference is:-

(i) ***Reduction*** - by using technology which requires less material in products and produces less waste in manufacture, and by producing longer-lasting products with lower pollution potential;

(ii) ***Re-use*** - for example, returnable bottles and reusable transit packaging;

(iii) ***Recovery*** - finding beneficial uses for waste including:-

(a) **recycling** it to produce a useable product;

(b) **composting** it to create products such as soil conditioners and growing media for plants;

(c) **recovering energy** from it either by burning it or by using landfill gas; and

(iv) ***Disposal*** - by incineration or landfill without energy recovery; and

(b) each of these options should be managed, and where necessary regulated, to prevent pollution of the environment or harm to human health.

10. It is also the Government's more general policy that where regulation is necessary:-

(a) it should be proportionate to the risks involved and the benefits to be obtained;

(b) it should be goal based. That is to say, it should have an objective and a means of ensuring the fulfilment of that objective;

(c) it **should not** serve as an end itself;

(d) it **should not** be over-prescriptive; and

(e) it **should not** impose an unjustifiable or disproportionate burden on those regulated - especially small businesses.

11. These are the principles to which the Secretary of State[1] has had regard in formulating the Regulations; the Charging Scheme which he has made under section 41 of the 1990 Act; and in his fulfilment of the objectives of the Directive. For example, in the use of his powers under section 33(3) of the 1990 Act to provide exemptions from licensing; in the provisions relating to the registration of exemptions from licensing; and the transitional arrangements for small businesses in the Charging Scheme.

12. The minimum inspection and monitoring frequencies recommended by the Departments[2] in the revised edition of Waste Management Paper No.4 "Licensing of Waste Management Facilities" also reflect the potential which different types of waste management facilities have to cause pollution of the environment or harm to human health. For example, the minimum recommended inspection frequency for a co-disposal landfill site accepting special waste is 8 per month; and the minimum recommended for a scrap metal yard is 1 per month. The guidance provided in Waste Management Paper No.4 also recognises that the quality and success of the operational management of individual sites are important considerations; and a reduction in the recommended inspection frequencies may be justified on the basis of a high and sustained quality of site management.

13. The minimum standards of inspection and monitoring recommended in Waste Management Paper No.4 have been used as the basis of the assessment of the subsistence charges prescribed in the Charging Scheme. The fees and charges have also been set in bands of quantities and types of waste; and distinguish between the treatment or keeping of waste for the purpose of recycling and its treatment or keeping for other purposes.

[1] This and subsequent references to "the Secretary of State" should be read as references to the Secretary of State for the Environment, the Secretary of State for Wales and the Secretary of State for Scotland.

[2] The Department of the Environment, the Welsh Office and the Scottish Office Environment Department.

14. **Waste regulation authorities should similarly have regard to the principles set out in paragraphs 9-10 above in:-**

(a) **their development of the policies necessary to fulfil their duties and responsibilities under the Regulations and Part II of the 1990 Act; and**

(b) **the practical application of those policies in individual cases.**

15. ***The development of policies*** The waste disposal plans which WRAs are required to prepare under section 50 of the 1990 Act will provide the framework within which authorities determine their policies in relation to the reduction, re-use, recovery and disposal of waste in both the private and public sectors. Among other matters, section 50(1) of the 1990 Act requires WRAs:-

(a) to carry out an investigation with a view to deciding what arrangements are needed for the purpose of treating or disposing of controlled waste in their area so as to prevent or minimise pollution of the environment or harm to human health. (Section 29(6) of the 1990 Act provides that waste is "treated" when it is subjected to any process, including making it re-usable or reclaiming substances from it.);

(b) to decide what arrangements are needed for that purpose and the discharge of their functions in relation to licences; and

(c) in considering those arrangements to have regard both to the likely cost of the arrangements and their likely beneficial effects on the environment.

16. Section 50(3) as modified[3] requires authorities to include in their plan information on the respective priorities for the methods by which waste should be disposed of, recovered or treated; and section 50(4) requires authorities to have regard to the desirability, where reasonably practicable, of giving priority to recycling waste. The effect of **paragraphs 2(1) and 3(1)** of Schedule 4 to the Regulations is to require authorities to discharge their functions under section 50 of the 1990 Act in order to attain certain "relevant objectives" in relation to the recovery or disposal of waste (see paragraphs 1.23-1.40 and 1.46-1.49 of Annex 1 to this Circular). These relevant objectives are specified in **paragraph 4** of Schedule 4 to the Regulations and include encouraging:-

(a) the prevention or reduction of waste production and its harmfulness;

(b) 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

(c) the use of waste as a source of energy.

17. ***The practical application of policies*** Part II of the 1990 Act imposes certain duties on WRAs. For example, section 42(1) requires authorities to take the steps needed to ensure that the activities authorised by waste management licences do not cause pollution of the environment, harm to human health or serious detriment to the amenities of the locality; and to ensure that the conditions of the licence are complied with. WRAs, therefore, should act firmly and promptly where there is a threat to the environment or to human health;

[3] **Paragraph 9(8)** of Schedule 4 to the Regulations modifies section 50(3) to provide that any reference to the disposal of waste includes a reference to the recovery of waste.

where action is necessary, should take action which is proportionate to the threat posed to the environment or to human health; and should act in an even-handed manner which ensures that both private and public sector waste facilities meet the objectives of the licensing system. However, WRAs should not take action or impose standards which are disproportionately rigorous in relation to the potential threat posed to the environment or to human health by individual waste management facilities. The Secretary of State considers that in the practical application of their policies to individual waste management facilities and businesses, WRAs should take particular account of the principles set out in paragraph 10 above and in doing so:-

(a) should have regard to the fact that waste management facilities are a source of benefit to the environment and sustainable development. This is a consideration which is particularly important in relation to facilities carrying out the recovery of waste;

(b) should strike an appropriate balance between advice and encouragement and regulation and legal enforcement. Again this is a consideration which is particularly important in relation to facilities carrying out the recovery of waste; and

(c) should distinguish between and act proportionately in relation to "technical" breaches of the Regulations or Part II of the 1990 Act where there is no threat of pollution to the environment or harm to human health; and breaches which do give rise to such a threat. In the former case authorities' main aim should be to ensure that the person responsible is made aware of his legal responsibilities and that steps are taken by the authority or the person concerned to prevent the commission of any further "technical" offences.

Guidance

18. Detailed guidance on waste management licensing, the Regulations, the Directive and related matters is provided in Annexes to the Circular. These are as follows:-

(a) **Annex 1** The EC Framework Directive On Waste;

(b) **Annex 2** The Definition Of Waste;

(c) **Annex 3** The Food And Environment Protection Act 1985;

(d) **Annex 4** The Waste Management Licensing System;

(e) **Annex 5** Exemptions From Licensing;

(f) **Annex 6** The Registration Of Exemptions;

(g) **Annex 7** Protection Of Groundwater;

(h) **Annex 8** The Registration Of Waste Brokers;

(i) **Annex 9** Environmental Information: Public Registers And Annual Reports;

(j) **Annex 10** Waste Management Licensing And Commercial Confidentiality Appeals; and

(k) **Annex 11** Other Provisions Related To Waste Management Licensing.

Statutory Guidance

19. Sections 35(8) and 74(5) of the 1990 Act place new duties on WRAs to have regard to any guidance issued to them by the Secretary of State with respect to the discharge of their functions in relation to licences and in making determinations of whether or not a person is a fit and proper person respectively. The Secretary of State has issued guidance under sections 35(8) and 74(5) in the form of Waste Management Paper No.4 on Waste Management Licensing; and under section 35(8) in the form of Waste Management Paper No.26A on Surrender of Site Licences. Further, those parts of this Circular that guide WRAs in the discharge of these functions are also issued by the Secretary of State under sections 35(8) and 74(5).

Related Guidance

20. Further guidance on the operation of the Town and Country Planning Act system in relation to the recovery and disposal of waste will be provided in the forthcoming Planning Policy Guidance Note on Planning and Pollution Control (PPG 23) for England and Wales, and in the forthcoming National Planning Policy Guideline on Land for Waste Disposal for Scotland.

Charging Scheme For Waste Management Licensing

21. Section 41 of the 1990 Act provides that the Secretary of State may, with the approval of the Treasury, make a scheme prescribing:-

(a) fees for applications made under section 36(1) of the 1990 Act for waste management licences;

(b) fees for applications made by licence holders under section 37(1)(b) for the modification of the conditions of their licences;

(c) fees for applications made by licence holders under section 39(3) to surrender their licences;

(d) fees for applications made under sections 40(2) and (3) for the transfer of licences; and

(e) charges for the subsistence of licences[4].

22. A copy of the Charging Scheme which the Secretary of State has made under section 41, and its related guidance, was laid before each House of Parliament on 24 March 1994; and has been issued to WRAs and others. The Charging Scheme applies to Great Britain and comes into force on 1 May 1994.

Waste Carrier Registration

23. As indicated in paragraph 4(j) above, the Regulations amend the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 (S.I. 1991 No.1624). **Regulation 23(2)** removes the present exemption from registration provided in regulation 2(1)(c) of the 1991 Regulations for the British Railways Board in relation to the carriage of waste by rail. The carriage of waste by rail by the Board is, therefore, now subject to the requirements of the 1991 Regulations in the same way as carriage by road. The exemption is

[4] Section 42 imposes a duty on waste regulation authorities to supervise licensed activities.

replaced with an exemption from the 1991 Regulations for any wholly owned subsidiary of the British Railways Board which has applied for registration as a carrier of controlled waste. This exemption applies only where the subsidiary of the British Railways Board is registered under the provisions **paragraph 12** of Schedule 4 to the Regulations, and for the period whilst its application for registration under the 1991 Regulations is pending (see also paragraphs 1.70-1.84 of Annex 1).

24. **Regulation 23(3)** of the Regulations introduces an exemption to the 1991 Regulations for holders of a knacker's yard licence or a licence under article 5(2)(c) or 6(2)(d) of the Animal By-Products Order 1992 (S.I. 1992 No.3303). The effect of this exemption is explained in paragraph 4.93 of Annex 4.

Agricultural Waste And Mines And Quarries Waste

25. Waste from any mine or quarry, and waste from premises used for agriculture[5], are excluded from the definition of controlled waste by virtue of section 75(7) of the 1990 Act. This exclusion will continue to apply despite the change to the definition of waste provided by **paragraph 9** of Schedule 4 to the Regulations. Waste from mines and quarries, and waste from agricultural premises, will not therefore be subject to the new waste management licensing system when it comes into force on 1 May 1994.

26. Nevertheless, Article 2 of the Directive sets clear limits on the extent to which these wastes may be excluded from the provisions of the Directive. Among other matters, Article 2 excludes from the scope of the Directive:-

> "..where they are already covered by other legislation:-
>
> > ..waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries;
> >
> > animal carcases and the following agricultural waste: faecal matter and other natural, non-dangerous substances used in farming;.."

27. As indicated, where an exclusion from the scope of the Directive is permitted under Article 2 it is conditional on the waste in question being "already covered by other legislation". In the Departments' view, this may include national as well as EC legislation (see paragraphs 1.14-1.17 of Annex 1 to the Circular for a fuller explanation of this term).

28. It is clear from this that some categories of mines and quarries waste, and agricultural waste, cannot be excluded from the requirements of the Directive. Among the categories which cannot be excluded are non-natural agricultural waste, and non-mineral mining and quarrying waste. The Departments will be issuing a consultation paper about their proposals to extend waste management controls to these and any other categories of mines and quarries waste and agricultural waste which are not excluded under Article 2 of the Directive. These proposals will consider the scope for exemption from waste management licensing under the terms of Article 11 of the Directive where appropriate. It is envisaged that a further set of Regulations will be laid later this year to implement these remaining provisions.

[5] Within the meaning of the Agriculture Act 1947, or in Scotland, the Agriculture (Scotland) Act 1948.

Financial And Manpower Implications

29. Section 41 of the 1990 Act enables the Secretary of State to make a scheme prescribing fees for applications for waste management licences; fees for applications for the modification, transfer or surrender of licences; and charges for the subsistence of licences. The fees and charges prescribed in the Charging Scheme which the Secretary of State has made under section 41 (see paragraphs 21-22 above) are intended to meet WRAs' relevant costs on the consideration of applications and the monitoring and inspection of licensed sites[6].

30. The Charging Scheme represents a significant saving to WRAs in that it provides them with an income in respect of activities which for the most part they already carry out under the 1974 Act. The 1990 Act does involve increases in the administration involved in licensing, such as the more formal scheme of applications for transfer and surrender of licences, but the fees prescribed in the Charging Scheme are intended to meet relevant costs incurred by authorities in the consideration of applications.

31. The 1990 Act also imposes new burdens for which there is no charging provision. These are increased responsibilities for registers of publicly available information and annual reports. In the Departments' view, however, the recurrent income from the Charging Scheme will amount to considerably more than the costs of the new burdens for which there is no specific financial provision.

32. All WRAs will have in place arrangements for the maintenance of a public register of waste disposal licences under section 6(4) of the 1974 Act. The only new duties are the furnishing of relevant extracts from the register to the waste collection authorities in their areas; and the placing on the register of an increased range of information. Any additional costs incurred by these authorities will therefore be minimal. Each waste collection authority under a duty to maintain registers of information furnished to it by the WRA for its area will incur a minor one-off cost to set up a system as well as the limited cost of maintaining the register. It is expected that authorities will recover any costs incurred in providing facilities for the public to obtain copies of any entry in the register through the levy of a reasonable charge. In the Departments' view, the duty to produce an annual report need not impose a significant burden on WRAs in terms of either staff or costs. The preparation of the report is a matter of drawing together from a variety of sources information which authorities should already have available.

33. The additional requirements imposed by the Directive should not involve WRAs in any significant extra costs since these mostly affect the way authorities carry out their 1990 Act functions. The cost of setting up a new register of waste brokers should be covered by the income from the registration charge.

[6] Enforcement and other costs not related directly to the consideration of applications or the subsistence of licensed activities are not covered. Further details are provided in paragraphs 1.4-1.9 of the guidance to the Charging Scheme itself.

Compliance Cost Assessment

34. In accordance with Government policy, a Compliance Cost Assessment (CCA) has been produced for waste management licensing. Copies are available from the Department of the Environment, Waste Management Division, Room A2.22, Romney House, 43 Marsham Street, London SW1P 3PY.

MRS L A C SIMCOCK, *Assistant Secretary*
I C FREEMAN, *Assistant Secretary*
A H H JONES, *Assistant Secretary*

The Chief Executive
- County Councils } in England and Wales
- District Councils }
- Regional, District and Islands Councils in Scotland
- London Borough Councils
- Council of the Isles of Scilly

The Town Clerk, City of London
The Clerk
- The London Waste Regulation Authority
- The Greater Manchester Waste Regulation Authority
- The Merseyside Waste Regulation Authority
- The National Park Joint Planning Boards
- The Broads Authority
- Urban Development Corporations

[DOE LEQ/2/29/06]
[SOEnD WRQ/14/3]
[WO WEP/138/113/13]

THE EC FRAMEWORK DIRECTIVE ON WASTE

Introduction

1.1 This Annex provides guidance on the effect of Council Directive 75/442/EEC on Waste, as amended by Council Directives 91/156/EEC and 91/692/EEC, and the provisions in the Regulations for its implementation. This Directive, which is commonly known as the Framework Directive on Waste, is referred to in this Annex as "the Directive".

1.2 The Directive can be divided into five discrete types of provision. The preamble sets out the aims of the Directive, Articles 1 and 2 are concerned with definitions and scope, Articles 3 to 5 set out the key objectives of the Directive, Articles 6 to 15 contain provisions for implementing those objectives, and finally Articles 16 to 21 contain various miscellaneous provisions relating to implementation of the Directive as a whole.

1.3 In considering the Directive and the way it should be interpreted, it is important to have regard to the recitals in the preamble, which set out the aims of the Directive. When interpreting EC legislation, greater regard is generally had to its aim or purpose than would be had when interpreting UK legislation. This is considered further in relation to Article 4 in paragraphs 1.25 to 1.28 below.

1.4 In order to ensure that the Directive is properly implemented, the relevant UK legislation has been modified where necessary, so as to implement the particular provision in the Directive precisely as it is written. This verbatim transposition avoids the need to interpret the Directive in the Regulations. However, it also makes it even more important to have clear guidance on the meaning of these provisions so that they are interpreted consistently by WRAs and other regulatory authorities, and there is a common understanding of their effect.

1.5 This Annex accordingly provides a guide to the Directive, its implementation, and the Departments' view on its interpretation. Further guidance on specific aspects of the Directive is also contained in other parts of this Circular.

Definitions

1.6 Article 1 defines the various terms used in the Directive. The most important of these is the definition of waste, which is incorporated in the Regulations as the definition of "Directive waste" by virtue of **regulation 1(3)**. **Regulation 24(8)** (with consequential amendments in **regulation 24(2)(a)** and **(b)**, and **24(3)-(6)**) then amends the definition of controlled waste for the purposes of Part II of the Act, by amending the Controlled Waste Regulations 1992 (S.I. 1992 No.588 as amended by S.I. 1993 No.566) to provide that for the purposes of Part II of the Act, waste which is not Directive waste shall not be treated as household waste, industrial waste, or commercial waste. **Paragraph 9(2)** of Schedule 4 then ensures that the definition of waste in

Part II of the Act incorporates Directive waste by providing that any reference to waste shall include a reference to Directive waste. Further detailed guidance on the interpretation and effect of this new definition of waste is given in Annex 2.

1.7 It is also necessary to ensure that references to waste in other legislation which regulates the recovery and disposal of waste, include waste as defined in the Directive. Such legislation falls into 2 categories:-

(a) outstanding provisions of the 1974 Act, and regulations thereunder;

(b) legislation relating to other control regimes.

1.8 Amendments to the definition of controlled waste in Part I of the 1974 Act are provided by **regulation 22** which amends the Collection and Disposal of Waste Regulations 1988 (S.I 1988 No.819 as amended by S.I. 1989 No.1968). **Paragraph 10(3)** of Schedule 4 then provides that any reference to waste in Part I of the 1974 Act shall include a reference to Directive waste. These amendments bring the definition of controlled waste in Part I of the 1974 Act into line with the new definition in Part II of the 1990 Act.

1.9 **Paragraph 11** of Schedule 4 deals with definition of waste in other control regimes by providing that any reference to waste in the Town and Country Planning Act 1990, the Town and Country Planning (Scotland) Act 1972, Part II of the 1974 Act, and Chapter II of Part III of the Water Resources Act 1991, shall include a reference to Directive waste. Other regulatory regimes such as Part I of the 1990 Act, and the Food and Environment Protection Act 1985 do not refer specifically to waste, and so do not need amending.

1.10 Two other definitions in Article 1 are critical in determining the scope of the Directive, and are reflected in the Regulations. These are the definitions of "disposal" and "recovery" which are defined in the Directive as any of the operations listed in Annexes IIA and IIB respectively. These definitions are transposed into the Regulations by virtue of **regulation 1(3)**, and the lists of disposal and recovery operations are set out in Parts III and IV of Schedule 4.

1.11 In order to be sure that these operations are included within the scope of activities regulated under Part II of the Act, **paragraph 9(3)-(5)** of Schedule 4 extends the meaning of deposit, treatment, keeping and disposal of waste to include a reference to any of the operations listed in Parts III and IV of Schedule 4. For the purposes of waste management licensing, keeping, treatment and disposal, is also limited to the operations in Parts III and IV of Schedule 4 - this is considered in more detail in paragraphs 4.7 to 4.8 of Annex 4 to this Circular.

Exclusions

1.12 Article 2 sets out the categories of waste that are excluded from the scope of the Directive. This has been transposed into the Regulations through the definition of Directive waste in **regulation 1(3)** which does not include "anything excluded from the scope of the Directive by Article 2". Paragraphs 1.13-1.18 below provide guidance on the types of waste that are excluded by Article 2, and are hence outside the scope of the definition of "Directive waste".

1.13 Article 2(1)(a) excludes from the Directive - without condition - "gaseous effluents emitted into the atmosphere". This exclusion only applies insofar as gases emitted incidentally from non-waste processes might themselves be considered to be waste. It does not however exclude gases emitted from waste disposal or recovery operations, since the Directive - and Article 4 in particular - is concerned with preventing such operations from causing harm to the environment, including harm to air. Gaseous emissions from waste disposal and recovery operations therefore remain within the scope of the Directive, because the operations themselves are within its scope. [Paragraphs 4.95 to 4.103 of Annex 4 to the Circular reflects the Departments' view that the deliberate release to atmosphere of ozone depleting substances does in certain circumstances come within the scope of waste law.]

1.14 Article 2(1)(b) sets out five categories of waste which are excluded from the scope of the Directive "where they are already covered by other legislation". This condition was not placed on the previous (and otherwise broadly similar) exclusions under Article 2 of the original Directive (75/442/EEC). The interpretation of this condition raises three issues: the meaning of "already", the meaning of "covered", and the meaning of "other legislation".

1.15 In the Departments' view, "other legislation" includes not only EC legislation, but national legislation as well. In order to qualify, such legislation would need "already" to be in force - ie to predate the amending Directive which was adopted on 18 March 1991. However, consolidating or amending legislation which comes into force after this date, but which consolidates or amends a legal framework which was in existence before the amended Directive (such as the Water Resources Act 1991), would also qualify as relevant legislation for the purposes of Article 2(1)(b), provided the consolidating legislation does not involve any reduction in the level of environmental protection.

1.16 That leaves the meaning of "covered". It clearly cannot be necessary for the coverage of other legislation to amount to implementation of the Directive since that would make Article 2(1)(b) superfluous. In the Departments' view therefore, wastes defined in Article 2(1)(b) are "covered" by EC or national legislation, if the legislation provides an effective means of pursuing the aims of the Directive - whether or not the provisions concerned are identical to the Directive - and provided that any differences reflect the objective characteristics of the waste in question and, in particular, those characteristics which had previously led to their exclusion from the scope of the original Directive (75/442/EEC). Put another way, this means that if there is already a legislative regime in place which provides effective protection against such threats to the environment as are posed by the excluded waste in question, then it is possible to rely upon that regime rather than implementing the rules of the Directive in relation to that type of waste.

1.17 Each of the five categories of waste in Article 2(1)(b) is considered against these criteria, below:-

(a) **Radioactive waste**

In the Departments' view, radioactive waste is already covered by Council Directive 80/836/Euratom on the basic safety standards for the health protection of the general public and workers against the dangers of ionising radiation; and the Radioactive Substances Act

1993 which consolidates earlier provisions in the Radioactive Substances Act 1960 as amended. Radioactive waste is therefore excluded from the scope of the Directive, and the definition of Directive waste.

(b) **Waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries**

Control over the disposal and recovery of mineral waste is provided under Town and Country Planning legislation and the Mines and Quarries (Tips) Act 1969, and in the Departments' view, these wastes are therefore excluded from the scope of the Directive, and the definition of Directive waste. However, the exclusion defined under Article 2(1)(b)(ii) (set out above) only applies to mineral waste. Other non-mineral waste from mines and quarries such as canteen and office waste, used tyres, machinery, waste oils etc remain within the scope of the Directive.

It should nevertheless be noted that whether or not waste from mines and quarries is within the definition of Directive waste, all such waste is outside the definition of controlled waste by virtue of section 75(7) of the Act. Paragraphs 25-28 of the main Circular explain the proposed arrangements for making the necessary changes to the definition of controlled waste to bring it into line with the Directive.

(c) **Animal carcases and the following agricultural waste: faecal matter and other natural, non-dangerous substances used in farming**

The disposal and recovery of animal carcases is already covered by the Animal Waste Directive (90/667/EEC) and the Animal By-Products Order 1992, and so any such waste is in the Departments' view, excluded from the scope of the Directive, and the definition of Directive waste. This applies whether or not the waste is from agricultural premises.

Although it is possible that some of the natural agricultural wastes referred to in the above definition may in some circumstances be covered by other legislation, in no circumstances can waste which is either not natural (such as oil, tyres, machinery etc) or which is dangerous (such as concentrated pesticides, solvents etc) be excluded from the scope of the Directive and the definition of Directive waste, since these are outside the scope of this category as described above.

It should nevertheless be noted that whether or not agricultural waste is within the definition of Directive waste, all waste from premises used for agriculture (as defined in the Agriculture Act 1947 or the Agriculture (Scotland) Act 1948) is outside the definition of controlled waste by virtue of section 75(7) of the Act. Paragraphs 25-28 of the main Circular explain the proposed arrangements for making the necessary changes to the definition of controlled waste to bring it into line with the Directive.

(d) **Waste waters, with the exception of waste in liquid form**

The disposal of certain waste waters into both inland waters and the sea is already covered by the Dangerous Substances Directive (76/464/EEC), and the discharge of any liquid into controlled waters[7]

[7] As defined by section 104 of the Water Resources Act 1991.

is covered by the provisions of the Water Resources Act 1991 (which consolidates the earlier provisions under the Water Act 1989) or in Scotland by Part II of the 1974 Act. It is therefore the Departments' view that all waste waters discharged into the sea, or into controlled waters are outside the scope of the Directivem, and the definition of Directive waste.

The defintion of waste excluded from the Directive by Article 2(1)(b)(iv) does not cover waste in liquid form. The Directive gives no definition of this term, or how it is distinguishable from waste water. However, some help can be obtained from the Urban Waste Water Treatment (UWWT) Directive (91/271/EEC) which may be considered to be such a Directive as is referred to in Article 2(2), and which sets down specific rules for particular instances to the total or partial exclusion of the Waste Framework Directive (see paragraph 1.18 below). The effect of this is to exclude from the Directive all liquid waste which is covered by the UWWT Directive - that is:

(i) waste water from residential settlements and services which originates predominantly from the human metabolism and from household activities;

(ii) waste water from premises used for carrying on any trade or industry;

which is discharged into the sewers, fresh waters, estuaries and coastal waters covered by the UWWT Directive.

This leaves still within the scope of the Directive, any liquid waste which does not fall into the above categories, and which is not otherwise waste water which is being discharged into the sea or controlled waters. This would include liquid waste going to landfill, which would fall to be covered by the waste management licensing system. Where liquid waste which falls within the scope of the Directive is discharged under the provisions of a consent under Chapter II of Part III of the Water Resources Act 1991, or in Scotland, under Part II of the 1974 Act, then the discharge is exempted from the need for a waste management licence under the provisions of **regulation 16(1)(c)**. However, in these circumstances, the National Rivers Authority or, in Scotland, the river purification authority, must meet the requirements of the Directive, by virtue of being a competent authority under **paragraph 3** of Schedule 4 (see pargraph 1.21(e) below).

(e) **Decommissioned explosives**

Controls over the handling and use of decommissioned explosives, including their disposal or recovery are already covered by the Explosives Act 1875, the Control of Explosives Regulations 1991 (S.I. 1991 No.1531), and the Road Traffic (Carriage of Explosives) Regulations 1989 (S.I. 1989 No.615), as well various regulations under the Health and Safety at Work etc Act 1974. In the Departments' view therefore, decommissioned explosives are outside the scope of the Directive, and the definition of Directive waste. The Department understands the term "decommissioned" in this context to cover all waste explosives. This exclusion is in line with the exclusion of waste explosives from the definition of waste under section 75(2) of the Act.

1.18 Article 2(2) also provides for specific rules to be laid down by means of individual Directives, for particular instances or supplementing those of the Framework Directive on Waste, on the management of particular categories of waste. Such Directives must post-date the amended Framework Directive on Waste, and fall into two categories. Those which supplement the Directive apply as an addition rather than as a substitute - the Hazardous Waste Directive (91/689/EEC) would fall into this category. The second category consists of Directives which provide specific rules for particular instances - eg by setting down alternative rules for particular categories of waste, which apply to the total or partial exclusion of the Directive. An example of such a Directive is the Urban Waste Water Treatment Directive (91/271/EEC) - see the guidance on waste water and liquid waste in paragraph 1.17(d) above.

Competent Authorities

1.19 The majority of waste disposal and recovery operations are controlled through the Waste Management Licensing system under the Regulations. However, this is by no means the only control regime which regulates the disposal and recovery of waste, nor can the waste management licensing system on its own meet all the requirements and objectives of the Directive.

1.20 In some cases, alternative control systems operate to the exclusion of waste management licensing, such as processes designated for central control under Part I of the Act which are exempted from the need for a waste management licence by virtue of **regulation 16(1)(a)**. In contrast, the Town and Country Planning legislation operates in parallel with waste management licensing and the other pollution control regimes in that both types of permit are normally required before a waste disposal or recovery facility can commence operation, and both may be needed to implement different parts of the Directive. This is considered further in paragraphs 1.50-1.56 below.

1.21 Article 6 requires Member States to designate the competent authorities to be responsible for the implementation of the Directive, and **paragraph 3** of Schedule 4 accordingly defines all the competent authorities which are responsible for implementing the system of permits required by Articles 9 and 10 and the plan making provisions of Article 7, and designates the relevant functions under which they will implement the Directive. These are:-

(a) **planning authorities** (defined in **paragraph 1** of Schedule 4[8]) - responsible for development control and development planning under the Town and Country Planning legislation: their relevant functions, referred to as "specified actions", are defined under **paragraph 1** of schedule 4 (these are either actions which can result in planning permission being obtained after consideration of an individual development proposal, or provisions relating to the drawing up of development plans);

(b) **waste regulation authorities** - responsible for waste management licensing under Part II of the Act, and (as disposal authorities) for the

[8] In England and Wales, defined as the local planning authority, a person appointed under paragraph 1 of Schedule 6 to the Town and Country Planning Act 1990 or, as the case may be, the government department responsible for discharging a function under the planning Acts. In Scotland, defined as the planning authority, a person appointed under paragraph 1 of Schedule 7 to the Town and Country Planning (Scotland) Act 1972, or as the case may be, the government department responsible for discharging a function under that Act.

outstanding provisions of the old waste disposal licensing system under Part I of the 1974 Act;

(c) **licensing authorities or the Ministers** - responsible for the control of deposits of articles and substances (including wastes) at sea under the Food and Environment Protection Act 1985 (see Annex 3);

(d) **enforcing authorities** - responsible for authorising processes under Part I of the Act, except where the process is designated for local control and the activity is exempted under Schedule 3 of the Regulations; and

(e) **the National Rivers Authority, or in Scotland, river purification authorities** - responsible for discharge consents under Chapter II of Part III of the Water Resources Act 1991 or, in Scotland, Part II of the Control of Pollution Act 1974, but only in relation to the discharge of waste in liquid form other than waste waters (this reflects the exclusion of waste water from the scope of the Directive under Article 2).

1.22 In addition to these, the Secretary of State (or a person appointed by him under sections 15(3)(b) or 43(2)(b) of the Act) is also designated as a competent authority, either specifically or, in the case of planning functions, through the definition of a planning authority in **paragraph 1** of Schedule 4. This is to ensure that he too implements the Directive when determining appeals or otherwise discharging his relevant functions.

Objectives Of The Directive

1.23 Articles 3, 4, and 5 of the Directive set out a number of objectives which must be implemented either through a system of permits for the disposal and recovery of waste under Articles 9 and 10, and/or through the waste management plans required under Article 7. In addition, the system of permits under Articles 9 and 10 must implement the Article 7 plans themselves. All these are defined for the purposes of the Regulations as "relevant objectives" in **paragraph 4** of Schedule 4.

1.24 In order to ensure proper implementation of the Directive, it is necessary to ensure that all the control regimes which regulate the disposal and recovery of waste (which are specified in the list of competent authorities and functions in **paragraph 3** of Schedule 4 - see paragraph 1.21 above) are adapted as appropriate so as to implement the relevant objectives. However, not all of the objectives of the Directive have to be implemented through all the control regimes. The following table sets out how each objective must be achieved.

Directive objective	Relevant objective in Paragraph 4 of Schedule 4	Implementing Control regime
Article 3	**Paragraph 4(3)**	Plans
Article 4	**Paragraph 4(1)(a)**	Disposal permits Recovery permits Plans
Article 5	**Paragraph 4(2)**	Disposal permits Plans
Article 7	**Paragraph 4(1)(b)**	Disposal permits Recovery permits

Article 4

1.25 The key objective which underlies the whole Directive is Article 4, and this has been transposed into the Regulations as **paragraph 4(1)(a)** of Schedule 4. This makes it a relevant objective to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and in particular without:-

(a) risk to water, air, soil, plants or animals; or

(b) causing nuisance through noise or odours; or

(c) adversely affecting the countryside or places of special interest.

1.26 WRAs and other authorities responsible for controlling the disposal and recovery of waste would have difficulty in permitting any operations if they had to be sure that there would be no risk to air, soil, plants or animals. On the other hand, the preamble to the Directive makes it clear that one of its objectives is to make provision for the safe disposal and recovery of waste, and Article 5 actually encourages the provision of facilities to establish an integrated network.

1.27 The European Court of Justice has recently ruled on the interpretation of Article 4 of the original Directive (75/442/EEC) in an Italian case - the Lombardia case[9]. The judgement states that Article 4 "indicates a programme to be followed and sets out the objectives which Member States must observe in their performance of the more specific obligations imposed on them by Articles 5-11 of the [unamended 1975] Directive concerning planning, supervision and monitoring of waste disposal operations."

1.28 There is no reason why this judgement should not apply equally well to Article 4 of the amended Directive (ie 75/442/EEC as amended by 91/156/EEC). **Paragraph 2(1)** of Schedule 4 to the Regulations accordingly requires the competent authorities to discharge their specified functions with the objectives set out in Article 4, as well as with the other objectives of the Directive (see paragraphs 1.46-1.49 below).

Article 5

1.29 Article 5 of the Directive has been transposed into the Regulations as the relevant objectives contained in **paragraph 4(2)** of Schedule 4, and these apply only to the disposal of waste. The objectives are:-

(a) establishing an integrated and adequate network of waste disposal installations, taking account of the best available technology not involving excessive costs; and

(b) ensuring that the network referred to at subparagraph (a) above enables:-

(i) the European Community as a whole to become self-sufficient in waste disposal, and the Member States individually to move towards that aim, taking into account geographical circumstances or the need for specialized installations for certain types of waste; and

[9] Comitato di Coordinamento per la Difesa della Cava v Regione Lombardia (Case C-236/92).

(ii) waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.

1.30 These objectives are clearly concerned with the need for waste disposal facilities and their location. In the case of new developments after the commencement of the Regulations on 1 May 1994, they will normally be for the planning authority to implement, both through their development plans, and directly in determining planning applications (and taking the other "specified actions" as defined in **paragraph 1** of Schedule 4).

1.31 As with Article 4, these are objectives, not absolute requirements. There is no definition of what constitutes an "integrated and adequate network of disposal installations", and authorities will need to consider in each case whether there are already adequate facilities within a reasonable distance. In this context, what is a reasonable distance will depend on the type of waste concerned, the quantity arising in the area, and the particular geographical circumstances. Although these issues need to be considered in determining applications for individual developments, this will be considerably simplified if the issues have already been addressed in the development plan.

Article 3

1.32 Article 3 of the Directive is transposed into the Regulations as the relevant objectives in **paragraph 4(3)** of Schedule 4, and these are required to be implemented only through the plan-making provisions (see paragraphs 1.35-1.38 below). They do not therefore have to be taken into account directly in considering permits under Articles 9 or 10 of the Directive, although to the extent that these objectives are reflected in the various waste plans drawn up to implement Article 7, they will be taken into account in implementing those plans.

1.33 The relevant objectives are:-

(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) the technical development and marketing of products designed so as to make no contribution or to make the smallest possible contribution, by the nature of their manufacture, use or final disposal, to increasing the amount or harmfulness of waste and pollution hazards; and

(iii) the development of appropriate techniques for the final disposal of dangerous substances contained in waste destined for recovery; and

(b) encouraging:-

(i) the recovery of waste by means of recycling, reuse or reclamation or any other process with a view to extracting secondary raw materials; and

(ii) the use of waste as a source of energy.

1.34 It will normally be for WRAs to implement these provisions through their waste management plans under section 50 of the Act (though planning authorities should ensure that their development plans are at least not inconsistent with these objectives). The underlying principle of the objectives is already contained in the existing requirement on WRAs under section 50(4) of the Act to "have regard to the desirability, where reasonably practicable, of giving priority to recycling waste" and in section 50(7) to consider "what arrangements can reasonably be expected to be made for recycling waste". The objectives in Article 3 go further and require WRAs in drawing up their plans to encourage a wider range of waste management options with the ultimate aim of minimising the amount of waste going to final disposal. This reflects the hierarchy of waste management options defined in the Government's Sustainable Development Strategy[10].

Plan-making provisions - Article 7

1.35 Article 7 of the Directive requires the relevant competent authorities to draw up as soon as possible, one or more waste management plans. These plans must relate in particular to:-

(a) the type, quantity and origin of waste to be recovered or disposed of;

(b) general technical requirements;

(c) any special arrangements for particular waste; and

(d) suitable disposal sites or installations.

1.36 These requirements will be implemented jointly through the waste management plans which WRAs are already required to draw up under section 50 of the Act, and the development plans which planning authorities are required to draw up under Part II of the Town and Country Planning Act 1990 or Part II of the Town and Country Planning (Scotland) Act 1972. In addition, **paragraph 5** of Schedule 4 makes provision for the Minister for Agriculture, Fisheries and Food, and the Secretaries of State for Scotland and Wales to draw up an offshore waste management plan (considered further in Annex 3). All these are defined together under **paragraph 1** of Schedule 4 as "plan-making provisions".

1.37 The requirements of section 50 of the Act - in particular, section 50(3)(a)-(e) - implement the requirements of Article 7 set out in **paragraph 1.35(a)-(c)** above, except that in some cases they refer only to the disposal of waste. Accordingly, **paragraph 9(8)** of Schedule 4 modifies section 50(3) of the Act to provide that any reference to the disposal of waste shall include a reference to the recovery of waste. No other provisions are necessary to implement the requirements of Article 7 set out in paragraph 1.35(a)-(c) above.

1.38 Section 50(3)(f) of the Act also partially implements the final requirement in paragraph 1.35(d) above, in that it requires WRAs to identify existing disposal sites and those which they expect to be provided. Section 50 plans do not however consider sites or criteria for new facilities, because that is the role of the planning authority. This element of Article 7 must therefore be

[10] Sustainable Development - the UK Strategy (Cm 2426).

implemented through the development plans. In order to make this a clear requirement, **paragraph 7** of Schedule 4 provides that development plans shall include policies in respect of suitable waste disposal sites or installations.

1.39 As well as the specific requirement of Article 7 as to the content of waste management plans, the plans must also implement all the relevant objectives in **paragraphs 4(1)(a), (2),** and **(3)** of Schedule 4. More detailed guidance as to the implications of these provisions on the way that waste management plans under section 50 of the Act are drawn up will be contained in revised Waste Management Paper 2/3 which is expected to be issued soon. Guidance on the implications of the Directive for development plans in England and Wales will be contained in the forthcoming Planning Policy Guidance (PPG) 23 on Planning and Pollution Control, and in Scotland through a forthcoming National Planning Policy Guideline on Land for Waste Disposal.

1.40 Finally, implementing, so far as material, any plan made under the plan-making provisions is itself a relevant objective by virtue of **paragraph 4(1)(b)** of Schedule 4. This means that competent authorities must discharge their functions with the objective of implementing the plans so far as they are material. In this context, the relevant provisions in section 50 plans will normally be material to pollution control authorities, and the relevant provision sin development plans material to planning authorities. In addition, any relevant provisions in a section 50 plan will normally be material to the preparation of a development plan - this is consistent with the existing provisions in regulation 9 of the Town and Country Planning (Development Plan) Regulations 1991 (S.I. No. 2794) which require planning authorities, in drawing up their development plans to have regard to the section 50 plans drawn up by WRAs.

Disposal And Recovery Permits

1.41 Articles 9 and 10 of the Directive require any establishment or undertaking which carries out a waste disposal or recovery operation, to obtain a permit from the competent authority. The system of permits is to implement Articles 4, 5, and 7 of the Directive in the case of disposal permits, and Article 4 in the case of recovery permits. However, given that Article 7 plans must cover both the disposal and recovery of waste, recovery permits need to implement the plans in any event. The table in paragraph 1.24 above sets out the implementing requirements in more detail.

1.42 It is important to note that although the various pollution control systems, and development control provisions apply to persons, the requirement for a permit under Articles 9 and 10 of the Directive applies only to establishments or undertakings. This includes any organisation, whether a company, partnership, authority, society, trust, club, charity or other organisation, but not private individuals. Accordingly, the Regulations provide for the requirements of Articles 9 and 10 (including the requirement for permits for waste disposal or recovery to implement Articles 4, 5 and 7 of the Directive) to be met only where competent authorities grant permits for the recovery or disposal of waste to establishments or undertakings. It should be emphasised however, that this does not in any way affect the scope of the various regulatory regimes themselves in relation to private individuals - it simply limits the applicability of the Directive.

1.43 It also follows that the exemption from the waste licensing requirements provided by section 33(2) of the Act for household waste from a domestic property which is treated, kept or disposed of within the curtilage of the dwelling, cannot apply under the terms of the Directive, if the activity is carried out by an establishment or undertaking. **Paragraph 9(6)** of Schedule 4 accordingly removes this exemption where the treatment, keeping or disposal of household waste is carried out by an establishment or undertaking.

1.44 Article 9 also requires all disposal permits to cover:-

(a) the types and quantities of waste;
(b) the technical requirements;
(c) the security precautions to be taken;
(d) the disposal site; and
(e) the treatment method.

1.45 Accordingly, **Paragraph 6** of Schedule 4 provides that where a pollution control authority grants or modifies a permit for the disposal of waste, the authority shall ensure that the permit covers the items listed in paragraph 1.44 above. It should be noted that these requirements do not apply to permits for the recovery of waste. In the case of waste management licences, more detailed guidance on these requirements is contained in Waste Management Paper No. 4.

Implementing The Relevant Objectives

1.46 The requirement to implement the objectives of the Directive through the system of permits, and the plan-making provisions is provided for in the Regulations by means of **paragraph 2** of Schedule 4. **Paragraph 2(1)** places a general duty on the competent authorities to discharge their specified functions (as defined in **paragraph 3** of Schedule 4), insofar as they relate to the recovery or disposal of waste, with the relevant objectives. This general duty is subject to the more specific provisions in the rest of **paragraph 2** - guidance on these qualifying provisions is given in paragraphs 1.50-1.56 below.

1.47 The general duty in **paragraph 2(1)** means that in exercising their specified functions, authorities must always consider the objectives of the Directive and aim to determine decisions and permit conditions in line with them. However, this applies only in relation to their specified functions in relation to the recovery and disposal of waste. This provision does not in itself extend those functions or require authorities to implement objectives if to do so would be outside their powers or functions as specified in **paragraph 3** of Schedule 4. Separate and specific provision is made in the Regulations to extend the powers of competent authorities where this is necessary to implement the relevant objectives. Guidance on these is given in paragraphs 1.57-1.63 below.

1.48 The duty imposed by **paragraph 2(1)** of Schedule 4 does not remove authorities' discretion in exercising their functions. The objectives are not framed in sufficiently precise terms for that. Account should also be taken of the decision of the European Court of Justice in the Lombardia case (see paragraph 1.27 above) which has determined that Article 4 should be considered as an objective rather than an absolute requirement.

1.49 In these circumstances, it is important that authorities exercise "proportionality" in the implementation of the relevant objectives. Most of them are likely in any case to be achieved through the exercise of regulatory powers under existing national legislation. For instance, the requirement on WRAs in section 36(3) of the Act not to reject a licence application unless it is satisfied that its rejection is necessary for the purpose of preventing pollution of the environment, or harm to human health is very similar to the requirement in Article 4 of the Directive to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment.

Planning And Pollution Control Authorities

1.50 **Paragraphs 2(2)** to **(4)** of Schedule 4 deal with the need to determine who will implement the Directive where competent authorities have overlapping functions. This ensures that the minimum burden is placed on competent authorities as well as those carrying out the recovery and disposal of waste, which is consistent with the implementation of the Directive.

1.51 **Paragraph 1** of Schedule 4 divides the list of competent authorities into two types which are defined as "planning authorities" (see footnote 8), and "pollution control authorities" (defined by **paragraph 1** of Schedule 4 as meaning any competent authority other than a planning authority). These two types of authority are complementary since, in most cases, a waste facility will need both a planning permission and a pollution control permit, such as a waste management licence, before it can commence operation. In most cases it is likely that the relevant objectives will be achieved through a combination of these (though see paragraphs 1.57 to 1.63 below for cases where planning permission has already been granted, or is not required).

1.52 Although the planning and pollution control authorities have different functions and powers, these can on occasions overlap. The forthcoming planning Policy Guidance (PPG) 23 on Planning and Pollution Control gives advice for England and Wales on the extent to which it is appropriate and relevant for a planning authority to consider pollution control issues in determining planning applications, and in drawing up their development plans. Corresponding advice for Scotland will be included in a forthcoming National Planning Policy Guideline on Land for Waste Disposal. These build on the long established policy that planning controls should not duplicate other statutory controls, or be used to secure objectives achievable under other legislation.

1.53 In line with this policy, **paragraph 2(2)** of Schedule 4 provides that nothing in **paragraph 2(1)** requires a planning authority to deal with any matter which the relevant pollution control authority has power to deal with. This does not in any way affect the powers of either planning or pollution control authorities, it simply means that the pollution control authority must discharge its functions with the relevant objectives in so far as it is able under its powers. The planning authority is only required to discharge its functions with the relevant objectives where the pollution control authority does not have power to do so.

1.54 It is of course for planning authorities to determine to what extent they are required to discharge their functions with the relevant objectives. If they are in any doubt about whether any of the relevant objectives will be discharged by the appropriate pollution control authority, they should consult that authority. However, in the Departments' view planning authorities should normally expect, when taking a "specified action" (as defined in **paragraph 1** of Schedule 4) on or after 1 May 1994, in relation to a development which will involve the recovery or disposal of waste requiring either a waste management licence or authorisation under Part I of the Act, to do so with the following relevant objectives:-

(a) **paragraph 4(1)(a)(ii)**(part) and **(iii)** - ensuring that waste is recovered or disposed of without using processes or methods which could harm the environment and in particular without causing nuisance through noise, or adversely affecting the countryside or places of special interest;

(b) **paragraph 4(1)(b)** - implementing, so far as material, any development plan; and

(c) **paragraph 4(2)** - in relation to the disposal of waste, establishing an integrated and adequate network of disposal installations, enabling the Community as a whole to become more self sufficient in waste disposal, and enabling waste to be disposed of at one of the nearest appropriate installations.

1.55 Where no planning permission is required, or where planning permission has already been granted before 1 May 1994, then the powers of pollution control authorities are wider. Guidance on the implications for pollution control authorities in these cases is given in paragraphs 1.57-1.63 below.

1.56 Where planning permission is required for a development involving the recovery or disposal of waste above the mean low water mark, which requires a licence under the Food and Environment Protection Act 1985, or is exempt from the requirement for such a licence under the Deposits in the Sea (Exemptions) Order 1985 (S.I. 1985 No. 1699), then no duty is imposed on the planning authority to discharge its functions with the relevant objectives, because all the objectives can be discharged through the 1985 Act licence (see also Annex 3).

Functions Exercised Before 1 May 1994

1.57 Provision is also necessary to ensure that waste recovery or disposal operations which already have a permit (ie where a permit was granted before the commencement of the Regulations on 1 May 1994), also meet the objectives of the Directive. Competent authorities will not have explicitly taken account of the objectives of the Directive when granting such permits or setting conditions (even though in many cases competent authorities may in practice have taken them into account). This does not cause any problem for pollution control authorities since their permits may be reviewed at any time, and conditions changed, or in extreme circumstances the permit may be revoked. Whenever such reviews are carried out - for whatever reason - pollution control authorities must discharge their functions with the relevant objectives. There should not be any need to carry out a special review in this context, unless the authority

consider it likely that the objectives of the Directive are not being met. In such a case, the authority would normally have been expected to carry out a review in any case.

1.58 Although planning permissions are in principle reviewable, this is done only in exceptional circumstances, and may incur liability for compensation. It would not therefore be appropriate to reconsider these in order to ensure that the relevant objectives have been met. Provision has therefore been made in the Regulations to extend the powers of pollution control authorities to enable them to meet all the relevant objectives where planning permission for a waste recovery or disposal development was granted before 1 May 1994, or where no planning permission is required. In doing so, powers have been extended by the minimum necessary to meet the requirements of the Directive.

Amendments To Part I Of The Act

1.59 **Paragraph 8(1)** of Schedule 4 accordingly amends Part I of the Act so that it shall have effect in relation to prescribed processes involving the disposal or recovery of waste with such modifications as are needed to allow an enforcing authority to exercise its functions under that Part for the purpose of achieving the relevant objectives. **Paragraph 8(2)** of Schedule 4 then qualifies this to provide that nothing in **paragraph 8(1)** will require an enforcing authority to take account of the relevant objectives insofar as they relate to the prevention of detriment to the amenities of the locality if the prescribed process will be operated under a planning permission granted on or after 1 May 1994 as a result of the taking of a specified action (as defined in **paragraph 1** of Schedule 4).

1.60 HMIP and HMIPI already take account of the relevant objectives in **Paragraph 4(1)(a)** of Schedule 4 relating to harm to the environment through risk to water, air, soil or animals, as well as nuisance from odours and the effect of the process on the countryside and places of special interest, resulting from the operation of the process. In this context, visual amenity issues arising from the building or structure itself do not arise because these are not concerned with the operation of the process. The principal effect of **Paragraph 8** is therefore to extend the functions of HMIP and HMIPI to require them to consider nuisance from noise when considering IPC authorisations - but only where planning permission has been granted before 1 May 1994, or where no planning permission is required (eg where a certificate of lawful use is in force).

1.61 In considering the impact of noise in such cases, HMIP and HMIPI would be able to consult local planning authorities, and where appropriate conditions are already included in an existing planning permission which meet the objectives of the Directive it is unlikely to be necessary to impose further conditions in this respect. Where noise conditions are not included in the planning permission, or there is no planning permission, and it seems appropriate that such conditions should be applied to the process in order to meet the objectives of the Directive, then the advice of the planning authority, and the district council if appropriate, could be sought, although the final determination will be for the HMIP or HMIPI as enforcing authority.

Amendments To Part II Of The 1990 Act And Part I Of The 1974 Act

1.62 Under section 36(3) of the Act, WRAs are already able to consider serious detriment to the amenities of the locality when determining a waste management licence where no planning permission is in force in relation to the use to which the land will be put under the licence. These powers are sufficient to enable WRAs to have regard to all the relevant objectives in these circumstances. However, in order to achieve all the relevant objectives in cases where planning permission has been granted before 1 May 1994, it is necessary in such cases to extend the power of WRAs to consider serious detriment to the amenities of the locality. Accordingly, **paragraph 9(7)** of Schedule 4 amends section 36(3) of the Act to provide that a reference to planning permission shall be taken as a reference to planning permission resulting from the taking of a specified action (defined in **paragraph 1** of Schedule 4) by a planning authority after 30 April 1994.

1.63 In order to ensure that corresponding provision is made for any outstanding functions under Part I of the 1974 Act, **paragraph 10(1)** and **(2)** amends that Part so that where planning permission does not result from the taking of a specified action after 30 April 1994, the duty under section 5(3) of the 1974 Act is amended so that it is in line with the duty on WRAs in relation to waste management licences under section 36(3) of the 1990 Act.

Relationship Between Part I And Part II Of The 1990 Act

1.64 **Paragraphs 2(3)** and **(4)** of Schedule 4 deal with the possible overlap between the powers of WRAs under Part II of the Act and local enforcing authorities under Part I. **Paragraph 2(3)** provides that where the recovery or disposal of waste forms part of a prescribed process designated for local control under Part I of the Act, and requires a waste management licence (or is exempt from requiring a waste management licence under **regulation 17(1)** and Schedule 3), then nothing in **paragraph 2(1)** of Schedule 4 shall require the local enforcing authority to discharge its functions in order to control pollution of the environment due to the release of substances into any environmental medium other than the air; and nothing shall require the WRA to discharge its functions in order to control pollution of the environment due to the release of substances into the air from the carrying on of the prescribed process.

1.65 The effect of this provision is to ensure that local enforcing authorities exercising their functions under Part I of the Act only have to consider releases to the air and, conversely, that WRAs do not have to consider releases to the air. In the latter case, this restriction only applies to air emissions from the prescribed process itself, and WRAs must continue to consider the impact of air emissions from ancillary operations such as the storage and handling of waste, and implement the Directive in this respect.

Article 11 Exemptions

1.66 Article 11 of the Directive enables Member States to provide exemptions from the requirement for a permit under Articles 9 and 10 in the following cases:-

(a) establishments or undertakings carrying out their own waste disposal at the place of production; and

(b) establishments or undertakings that carry out waste recovery.

1.67 These exemptions may only be provided if:-

(a) the competent authority has adopted general rules for each type of activity laying down the types and quantities of waste and the conditions under which the activity in question may be exempted from the permit requirements; and

(b) the types and quantities of waste and methods of disposal or recovery are such that the conditions imposed in Article 4 are complied with.

1.68 The exempt establishments and undertakings must also be registered with the competent authorities.

1.69 A range of exemptions is provided under the provisions of **regulation 17** and Schedule 3 to the Regulations which meet the requirements of Article 11. These include general rules and conditions for each exemption, and a requirement in **regulation 17(4)** for the activities to meet the objectives in **paragraph 4(1)(a)** of Schedule 4 (which transposes Article 4). A system of registration of exempt activities is provided by **regulation 18.** Detailed guidance on the exemptions is contained in Annex 5, and on the registration of exempt activities, in Annex 6 to this Circular.

Registration Of Professional Collectors, Transporters And Brokers Of Waste

1.70 Article 12 of the Directive requires establishments or undertakings which collect or transport waste on a professional basis or which arrange for the disposal or recovery of waste on behalf of others (dealers or brokers), where not subject to authorisation, to be registered with the competent authorities. This requirement is largely fulfilled by the provisions requiring the registration of waste carriers under the Control of Pollution (Amendment) Act 1989 and the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 (S.I. 1991 No.1624), and by the provisions requiring the registration of brokers in **regulation 20** and Schedule 5 of the Waste Management Licensing Regulations 1994 (guidance on these latter provisions is contained in Annex 8 of this Circular).

1.71 However, the carrier and broker provisions referred to above do not fully meet the requirements of Article 12 because they provide exemptions for certain categories of carrier or broker which are not permitted under the terms of Article 12. **Paragraph 12** of Schedule 4 to the Regulations accordingly places a simple registration requirement on certain establishments or undertakings which are exempt from the requirement to register as carriers or brokers of controlled waste.

1.72 The exempt categories of carrier and broker covered by this requirement are:-

(a) waste collection authorities, waste disposal authorities, and WRAs;

(b) charities; and

(c) voluntary organisations (within the meaning of section 48(11) of the Local Government Act 1985 or section 83(2D) of the Local Government (Scotland) Act 1973).

1.73 In addition, any wholly owned subsidiary of the British Railways Board which has an application pending for full carrier registration, must register under the provisions of **paragraph 12** of Schedule 4 until its application is determined. This reflects the provision in **regulation 23(2)** which amends regulation 2(1)(c) of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991. Further guidance on this amendment is given in paragraph 23 of the main Circular.

1.74 The simplified system of registration is similar to that required by **regulation 18** for exempt activities under Schedule 3. It is designed to place the minimum burden consistent with the implementation of the Directive on both the organisations concerned and on WRAs. It applies only to those in the categories above who are exempt from the full carrier and broker registration schemes, who in addition:-

(a) are establishments or undertakings - this may be taken to include any organisation, whether a company, partnership, authority, society, trust, club, charity or other organisation, but not private individuals;

(b) are not otherwise "authorised" - this excludes anyone who is carrying on the activities in accordance with the terms and conditions of a permit (see paragraph 1.79 below)

(c) in the case of carrier exemptions, those who collect or transport waste on a professional basis - this would exclude organisations for whom the transport of waste is solely incidental to their main business, and is not a significant part of their business.

1.75 In applying the provisions of **paragraph 12** of Schedule 4 to these categories of collectors, transporters and brokers, and weighing these against competing priorities, WRAs and operators should have regard to the aims both of the Directive and of the main carrier and broker registration schemes. These aims centre on the prevention and minimisation of pollution and harm to the environment. Where organisations such as voluntary bodies undertake the transport of waste, or arrange for its disposal and recovery, and this is carried on properly within all the other requirements of the Directive and these Regulations, this aim will be achieved. A failure to register under the provisions of **paragraph 12** of Schedule 4, where this is the only breach of the Regulations, does not in itself threaten pollution or harm to the environment. Authorities should not expect to take enforcement action for such technical breaches, until and unless the establishment or undertaking concerned fails to cooperate with the reasonable actions open to the authority to secure a registration.

1.76 When, in the course of discharging their other functions, authorities become aware that an establishment or undertaking is collecting or transporting controlled waste, or acting as a broker, they will wish to establish whether the organisation concerned is exempt from the main carrier and broker schemes. If so, then providing the authority have the information required by **paragraph 12(6)** of Schedule 4, **paragraph 12(7)** of Schedule 4 immediately comes into effect, requiring the authority to register the establishment or undertaking. At this time, any contravention of **paragraph 12(1)** or **(2)** ceases, and it will be unnecessary to take any enforcement action. In cases where the activity proves to be not within the terms of an exemption, the provisions of **paragraph 12(1)** or **(2)** do not arise, but more serious charges would be

possible under section 1 of the Control of Pollution (Amendment) Act 1989, or **regulation 20**.

1.77 It should be noted that waste collection, waste disposal authorities and WRAs are exempt from the requirement to register as carriers of controlled waste, or as brokers (insofar as by using private contractors, they arrange for the disposal or recovery of waste on behalf of others). This is because in some cases the WRA is the same authority as the waste collection authority, and it would be inappropriate for an authority to make a judgement about itself in determining whether it should be registered. Collection authorities also have a statutory responsibility to arrange for the collection of waste, and if registration were refused or revoked, they would not be able to fulfil this duty. However, the simplified registration arrangements in **paragraph 12** of Schedule 4 do not require such a judgement to be made since registration cannot be refused. The difficulties which the full carrier and broker schemes present, do not therefore arise, and WRAs should include their own authority - if appropriate - as well as waste collection and disposal authorities in their area, on the register set up under **paragraph 12** of Schedule 4.

1.78 **Paragraphs 12(1)** and **(2)** of Schedule 4 create new offences in support of the requirement to register. The offence in **paragraph 12(1)** is for an establishment or undertaking which is exempt from the requirement to register as a carrier of controlled waste by virtue of regulation 2(1)(a), (c), (f), or (g) of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991, to collect or transport waste on a professional basis without being registered in accordance with the provisions of **paragraph 12**. The offence in **paragraph 12(2)** is for an establishment or undertaking which is exempt from the requirement to register as a broker of controlled waste by virtue of **regulation 20(4)(a)**, **(b)**, and **(c)** of the Regulations, to arrange for the recovery or disposal of waste on behalf of another person unless it is registered in accordance with the provisions of **paragraph 12**. These offences come into effect after 31 December 1994, allowing a transitional period of 8 months during which establishments and undertakings may register.

1.79 **Paragraph 12(3)** excludes from the requirement to register under the simplified scheme, anyone who is carrying out the activity in accordance with the terms and conditions of a permit. This is defined in **paragraph 1** of Schedule 4 as a waste management licence, a disposal licence, an authorisation under Part I of the Act, a resolution under section 54 of the Act, a licence under Part II of the 1985 Act, or a discharge consent under the Water Resources Act 1991 or Part II of the 1974 Act.

1.80 **Paragraph 12(4)** of Schedule 4 requires establishments or undertakings to register with the WRA in whose area its principal place of business in Great Britain is located, or where it has no place of business in Great Britain, with any WRA. This single registration covers all the relevant activities under these provisions which an establishment or undertaking carries out anywhere in Great Britain.

1.81 **Paragraph 12(5)** of Schedule 4 imposes a duty on WRAs to establish and maintain a register of establishments or undertakings under these provisions. **Paragraph 12(6)** requires the register to contain the following information:-

(a) the name of the establishment or undertaking;

(b) the address of its principal place of business; and

(c) the address of any place at or from which it carries on its business.

1.82 **Paragraph 12(7)** requires the WRA to enter the relevant particulars in the register. There are no grounds for refusing registration to establishments or undertakings notifying an authority, and registration, once effected, remains valid indefinitely. The authority must do this:-

(a) if the information is furnished by the establishment or undertaking giving notice in writing; or

(b) if the authority become aware in any other way that the establishment or undertaking is carrying on the relevant activity.

1.83 **Paragraph 12(9)** of Schedule 4 provides for the operation of the register. These provisions are in line with those on registers maintained under section 64 of the Act. Each authority must keep the register open for public inspection at its principal offices at all reasonable hours. The public must also be permitted reasonable facilities for obtaining copies of entries. No charge may be made for inspection, but a reasonable charge may be made for copies of entries.

1.84 **Paragraph 12(10)** provides that these registers may be kept in any form. Provided that it contains the necessary information, the register may simply consist of the originals of any notices received from an establishment or undertaking together with added details of other cases that have come to the authority's notice. Alternatively WRAs may find it convenient to keep the registers together with, or as part of, any other public registers of environmental information that they may already keep. Whatever method is chosen, the register should be kept in whatever way imposes least burden on establishments and undertakings, and the WRA.

Duty To Carry Out Appropriate Periodic Inspections

1.85 Article 13 of the Directive places a requirement on competent authorities to carry out appropriate periodic inspections of establishments or undertakings which carry out any of the operations referred to in Articles 9 to 12 of the Directive. Accordingly, **paragraph 13(1)** of Schedule 4 to the Regulations provides that establishments or undertakings which carry out the disposal or recovery of waste, or which collect or transport controlled waste, or which arrange for the recovery or disposal of controlled waste on behalf of others shall be subject to appropriate periodic inspection by the competent authorities.

1.86 In order to ensure that the competent authorities are able to carry out this obligation, **paragraph 13(2)** applies the provisions of sections 68(3) to (5), 69, and 71(2) and (3) of the Act (power to appoint inspectors, powers of entry and power to obtain information) to competent authorities in the exercise of their functions under **paragraph 13** of Schedule 4. However, competent authorities will not normally need to rely on these provisions to carry out inspections, since such inspections would normally be carried out in exercising their functions under the appropriate control regime. In these circumstances authorities should use the appropriate powers available to them under that regime for the appointment of inspectors, power of entry and power to obtain information.

Only where such powers do not exist - as with the new brokers registration scheme - is it likely to be appropriate to rely on the powers provided by **paragraph 13(2)** of Schedule 4.

1.87 Authorities should note that the duty is to carry out appropriate periodic inspections. In practice, this should not require them to do any more than they would otherwise have expected to do in the proper exercise of their functions in relation to the various control regimes. The frequency and extent of inspections should in general be related to the potential for causing pollution of the environment and harm to human health, and inspections should not be carried out for the sake of it, where the authority do not consider there would be any benefit. Guidance on the inspection of sites and facilities which are licensed under Part II of the Act is provided in Waste Management Paper 4.

Record Keeping

1.88 Article 14 of the Directive requires establishments or undertakings which carry out the disposal or recovery of waste to keep a record of the "quantity, nature, origin and, where relevant, the destination, frequency of collection, mode of transport and treatment method", and to make those records available on request to the competent authorities. These requirements are reflected in **paragraph 14(1)** of Schedule 4 to the Regulations. **Paragraph 14(2)** provides that these requirements do not apply where the disposal or recovery is covered by an exemption under Schedule 3 of the Regulations or article 3 of the Deposits in the Sea (Exemptions) Order 1985 (S.I. 1985 No.1699)

1.89 Information about the quantity, nature and origin of waste, as well as the frequency of collection and mode of transport, where this is appropriate, should be included on the transfer note which must be provided under the duty of care requirements of section 34 of the Act where waste is transferred. Establishments or undertakings which carry out the disposal and recovery of waste will need to ensure that these have been properly completed to enable them to fulfil their record keeping requirements under **paragraph 14** of Schedule 4. They will also need to record the method of treatment, and where it is sent on for further recovery or disposal, the destination must also be recorded.

1.90 In order to ensure compliance with these provisions, pollution control authorities must include appropriate conditions in any licence or authorisation for the disposal or recovery of waste. In the case of waste management licences, these requirements are reflected in the statutory guidance in Waste Management Paper No.4.

THE DEFINITION OF WASTE

CONTENTS

INTRODUCTION

2.1 Council Directive 75/442/EEC established a set of rules on waste disposal within the European Community. Those rules have now been amended to take account of the experience gained by Member States in their implementation. The amendments which have been made are set out in Council Directive 91/156/EEC[11] and Council Directive 91/692/EEC and take as a base a high level of environmental protection. Subsequent references in this Annex to "the Directive" should be read as references to Directive 75/442/EEC as amended by Directives 91/156/EEC and 91/692/EEC.

2.2 Article 1 of Directive 75/442/EEC provided that "'waste' means any substance or object which the holder disposes[12] of or is required to dispose of pursuant to the provisions of national law in force." This provision was given effect in Great Britain by the inclusive definition of waste in section 30(1) of the Control of Pollution Act 1974 (the 1974 Act) and its re-enactment in section 75(2) [and (3)] of the Environmental Protection Act 1990 (the 1990 Act). These provisions did not define authoritatively what is and is not waste. What they did was to ensure that certain substances were undoubtedly included within the ordinary meaning of the word waste. Other Member States adopted their own national definition of waste.

THE DEFINTION OF WASTE

2.3 The experience gained by Member States in their implementation of Directive 75/442/EEC confirmed that a common definition of waste was needed in order to improve the efficiency of waste management in the European Community. It is with this aim in view that Article 1 of Directive 91/156/EEC amends the definition of waste.

2.4 It was stated in DOE Circular 14/92[13] that the Government were considering how the amended definition of waste in Article 1 of Directive 91/156/EEC would be given effect in national legislation; and that an announcement on this would be made in due course. The Government have considered whether the existing definition of waste in section 30(1) of the 1974 Act and section 75(2) of the 1990 Act should be amended to take account of the definition of waste in Article 1 of Directive 91/156/EEC; and the manner in which those definitions should operate. The purpose of the amendment made in Article 1 of Directive 91/156/EEC is to apply a common definition of waste throughout the European Community. It is also the Government's view that the application of a single definition of waste would best serve the interests of environmental protection, efficient waste management and British industry. The Government

[11] Articles 1 to 12 of Directive 75/442/EEC are replaced by new Articles 1 to 18 set out in Article 1 of Directive 91/156/EEC; Articles 13, 14 and 15 of Directive 75/442/EEC are re-numbered as Articles 19, 20 and 21; and Annex I, Annex IIA and Annex IIB are added to Directive 75/442/EEC by Article 3 of Directive 91/156/EEC. The new Article 16 is replaced by the provision set out in Article 5 of Directive 91/692/EEC.

[12] "Disposal" was defined as meaning:
- the collection, sorting, transport and treatment of waste as well as its storage and tipping above or under ground,
- the transformation operations necessary for its re-use, recovery or recycling.

[13] Welsh Office Circular 30/92 and Scottish Office Environment Department Circular 24/92. Paragraph 9.

have decided, therefore, that the existing definition of waste in section 30(1) of the 1974 Act and section 75(2) of the 1990 Act should be replaced with the Directive's definition of waste.

2.5 Primary legislation will be necessary to repeal the existing definition of waste in section 75(2) of the 1990 Act[14]. Pending the introduction of such legislation, the Government have decided that only those substances or objects which are waste as defined in the Directive should be subject to the controls which apply to the collection, transport, storage, recovery and disposal of waste. This has been done by modifications made to Part I of the 1974 Act and to Part II of the 1990 Act by the Regulations. Among other matters, the Regulations provide that:-

(a) any reference to "waste" in Part I of the 1974 Act or in Part II of the 1990 Act includes a reference to "Directive waste" (Schedule 4 **paragraphs 9(2) and 10(3)**);

(b) "'Directive waste' means any substance or object in the categories set out in Part II of Schedule 4 [to the Regulations] which the producer or the person in possession of it discards or intends or is required to discard but with the exception of anything excluded from the scope of the Directive by Article 2 of the Directive...." (**regulation 1(3)**);

(c) in the Regulations "waste" means Directive waste (**regulation 1(3)**);

(d) "....'discard' has the same meaning as in the Directive...." (**regulation 1(3)**);

(e) "....'producer' means anyone whose activities produce Directive waste or who carries out preprocessing, mixing or other operations resulting in a change in its nature or composition." (**regulation 1(3)**);

(f) "For the purposes of Part II of the [1990] Act, waste which is not Directive waste shall not be treated as household, industrial or commercial waste" (**regulation 24(8)**[15]);

(g) "disposal" means any of the operations listed in Part III of Schedule 4 [to the Regulations]" (**regulation 1(3)**); and

(h) "recovery" means any of the operations listed in Part IV of Schedule 4 [to the Regulations]" (**regulation 1(3)**).

2.6 Pending the introduction of primary legislation to repeal the existing definition of waste in section 75(2) of the 1990 Act[16], the practical effect of these modifications is to transpose into national legislation the Directive's definition of waste; and to ensure that only "Directive waste" is subject to control as household, industrial or commercial waste (ie as "controlled waste").

2.7 Unless the context indicates otherwise, subsequent references in this Annex to "waste" should be read as references to "Directive waste"; and references to "the holder" should be read as references to "the producer or the person in possession of" a substance or object. Parts II, III and IV of Schedule 4

[14] Provision for the repeal of section 30 of the 1974 Act has been made in section 162 and Part II of Schedule 16 to the 1990 Act.

[15] **Regulation 22(4)** makes a similar provision in relation to Part I of the 1974 Act.

[16] Provision for the repeal of section 30 of the 1974 Act has been made in section 162 and Part II of Schedule 16 to the 1990 Act.

to the Regulations respectively transpose into national legislation Annexes I, IIA and IIB to the Directive.

2.8 The guidance provided in the remainder of this Annex supersedes that provided in DOE Circular 13/88[17] on the definition of waste in section 30(1) of the 1974 Act; and that provided in DOE Circular 14/92[18] on section 75(2) of the 1990 Act. As explained in paragraph 2.6 above, only "Directive waste" is subject to control; and the English Court cases referred to in DOE Circulars 13/88 and 14/92 do not necessarily determine what is waste for the purposes of the Directive. For these reasons, no reference is made to them in this Annex. The European Court of Justice case mentioned in paragraphs 5-6 of DOE Circular 14/92 is referred to in paragraphs 2.43-2.44 below.

INTERPRETATION OF THE DEFINITION OF WASTE

Structure Of Guidance And Caution

2.9 The purpose of this Annex is to provide guidance on the interpretation of the definition of waste. The guidance is provided under the following subject headings:-

2.10 As these subject headings make clear, there are a number of issues to be considered before a view is taken on whether or not a particular substance or object is waste; or when a substance or object which is waste may cease to be waste. Paragraphs 2.53-2.59 below are intended to provide a helpful summary of the guidance and to draw attention to some of the main questions which should be addressed. However, the Departments caution against reaching a view on any particular substance or object until all of the relevant issues have been considered.

[17] Welsh Office Circular 19/88. Paragraphs 2.3-2.9.
[18] Welsh Office Circular 30/92 and Scottish Office Environment Department Circular 24/92. Paragraphs 4-18.

2.11 Whether or not a substance or object is waste within the meaning of section 75 of the 1990 Act (as modified[19]) depends on the facts of each case. As indicated in paragraphs 2.51-2.52 below, it is the responsibility of the holder[20] to decide whether the substance or object in his possession is waste. However, WRAs also have duties and responsibilities under Part II of the 1990 Act which may require them to take a view on whether a particular substance or object is waste. In taking any such view, authorities should consider not only the terms of section 75 of the 1990 Act (as modified) but also the Directive to which it gives effect.

2.12 Paragraphs 2.13-2.17 below reflect the Departments' understanding of the Directive and its purpose. It is emphasised, however, that the interpretation of the law is a matter for the Courts. In the event of a case on the Directive being heard by the European Court of Justice, that Court would interpret the Directive and the concepts used in it in a way which furthered what the Court considered to be the purpose and aims of the Directive.

2.13 In this context, the following statements in the preambles to Directive 75/442/EEC and Directive 91/156/EEC may be significant in relation to the interpretation of the definition of waste:-

(a) "Whereas the essential objective of all provisions relating to waste disposal must be the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste."

(b) "Whereas the amendments [made in Directive 91/156/EEC] take as a base a high level of environmental protection."

(c) "Whereas common terminology and a definition of waste are needed in order to improve the efficiency of waste management in the Community." [Article 1(d) provides that for the purposes of the Directive, "'management' shall mean the collection, transport, recovery and disposal of waste, including the supervision of such operations and after-care of disposal sites."]

2.14 Waste appears to be perceived in the Directive as posing a threat to human health or the environment which is different from the threat posed by substances or objects which are not waste. This threat arises from the particular propensity of waste to be disposed of or recovered in ways which are potentially harmful to human health or the environment and from the fact that the producers of the substances or objects concerned will normally no longer have the self interest necessary to ensure the provision of appropriate safeguards. It leads the Departments to the view that the purpose of the Directive is to treat as waste, and accordingly to supervise the collection, transport, storage[21], recovery and disposal of, **those substances or objects which fall out of the commercial cycle or out of the chain of utility**.

[19] See paragraphs 2.5-2.6.

[20] See paragraph 2.7.

[21] See **paragraph 15** (D15) of Part III and **paragraph 13** (R13) of Part IV of Schedule 4 to the Regulations.

2.15 However, the purpose of the Directive is to supervise the collection, transport, storage, recovery and disposal of waste; and these are activities which themselves may be of a commercial nature. A distinction must be drawn, therefore, between the normal commercial cycle and the commercial cycle which exists for the purpose of collecting, transporting, storing, recovering and disposing of waste. The term "the normal commercial cycle" is subsequently used in this Annex to make this necessary distinction.

2.16 The chain of utility is an important consideration because the issues which need to be addressed will not always arise in a commercial context.

2.17 A central feature of the definition of waste is the concept of discarding, intending to discard or being required to discard substances or objects. In this respect, it is noted that the French language texts of Directive 75/442/EEC and Directive 91/156/EEC both use the term "*se défait*"; that this term may be translated as "gets rid of"; and that Directive 75/442/EEC used the term "disposes of"[22]. It is likely that in reaching a judgment on the meaning of "discard" the determinant consideration would be the interpretation which in the opinion of the European Court of Justice best furthered the purpose of the Directive (see paragraph 2.12 above). This leads to the view that the concept of discarding should be interpreted as meaning also "disposing of" or "getting rid of".

The Definition Of Waste : Basic Principles

2.18 In order for a substance or object to be waste it must:-

(a) fall into one of the categories set out in Part II of Schedule 4 to the Regulations **and**:-

(i) be discarded, disposed of or got rid of by the holder; or

(ii) be intended to be discarded, disposed of or got rid of by the holder; or

(iii) be required to be discarded, disposed of or got rid of by the holder.

2.19 The inclusion of a substance or object in one of the categories set out in Part II of Schedule 4 to the Regulations does not in itself mean that it is waste. The substance or object concerned must also be discarded under the terms of paragraph 2.18(a)(i)-(iii) above. It is clear that the substances or objects in some of the categories in Part II of Schedule 4 are incapable of further use in their present form. For example, "6. Unusable parts (e.g. reject batteries, exhausted catalysts, etc.) (Q6)." In other cases, however, further use of the substance or object in its present form is not excluded. For example, "3. Products whose date for appropriate use has expired (Q3)." In practice, a product of this kind may continue to be used by the holder for a further period before being discarded and becoming waste.

2.20 As indicated in paragraph 2.14 above, it is the Departments' view that the purpose of the Directive is to treat as waste, and accordingly to supervise the

[22] See paragraph 2.2 and footnote 12.

collection, transport, storage[23], recovery and disposal of, those substances or objects which fall out of the commercial cycle or out of the chain of utility. The Departments suggest, therefore, that to determine whether a substance or object has been discarded the following question may be asked:-

- Has the substance or object been discarded[24] so that it is no longer part of the normal commercial cycle or chain of utility?

2.21 An answer of "no" to this question should provide a reasonable indication that the substance or object concerned is not waste. For example, some glass bottles are subject to a deposit which is refunded when they are returned by their holder. Such bottles continue to be used in their present form; they are not discarded by their holder when they are returned by the consumer to the retailer or by the retailer to the supplier; and they remain part of the normal commercial cycle or chain of utility. In these circumstances, the answer to the question in paragraph 2.20 above is "no" and the bottles are not waste. However, many other glass bottles are collected in containers with the intention that they should be recycled; and have been consigned by their holder to the processes of waste collection and recovery which the Directive requires Member States to take measures to control. In these circumstances, the answer to the question in paragraph 2.20 above is "yes"; the bottles are waste; and should be regarded as waste until they have been recovered (see paragraph 2.47 below).

2.22 The normal commercial cycle and chain of utility are terms which arise from the Departments' understanding of the purpose of the Directive (see paragraph 2.14 above). Paragraphs 2.23-2.42 below discuss the issue of substances or objects being "discarded" within the context of, and by reference to, the normal commercial cycle or chain of utility.

2.23 ***Disposal operations*** Annex IIA to the Directive is intended to set out a list of disposal operations as they occur in practice; and establishments or undertakings carrying out those operations are subject to control under Article 9 of the Directive. Any substance or object which falls into one of the categories set out in Part II of Schedule 4 to the Regulations and which is consigned to a disposal operation listed in Part III of Schedule 4 should be considered to have been discarded and, therefore, to be waste.

2.24 It should be noted, however, that Article 4 of the Directive requires Member States to take the measures necessary to prohibit the abandonment or dumping of waste. This means that any substance or object listed in Part II of Schedule 4 to the Regulations which is abandoned or dumped should be treated as having been discarded and, therefore, to be waste even though it has not been consigned to a disposal operation listed in Part III of Schedule 4 to the Regulations. (Section 33(1)(a) of the 1990 Act (as modified[25]) controls the deposit of waste in or on land and consequently covers the abandonment or dumping of waste.)

[23] See **paragraph 15** (D15) of Part III and **paragraph 13** (R13) of Part IV of Schedule 4 to the Regulations.

[24] This and subsequent references to "discarded" should be read as references also to "disposed of" or "got rid of".

[25] See **paragraph 9(3)** of Schedule 4 to the Regulations.

2.25 ***Specialised recovery operations*** Annex IIB to the Directive is intended to set out a list of operations as they are carried out in practice which may lead to the recovery of waste; and establishments or undertakings carrying out those operations are subject to control under Article 10 of the Directive. However, some of the recovery operations listed in Part IV of Schedule 4 to the Regulations are not sufficiently distinguishable from operations within the normal commercial cycle or chain of utility. For example, "9. Use principally as a fuel....(R9)" and "10. Spreading on land resulting in benefit to agriculture....(R10)" are operations also carried out within the normal commercial cycle or chain of utility.

2.26 It should be noted also that Annex IIB sets out a list of operations which may lead to the recovery of waste; and a substance or object must be waste before subjecting it to one of the operations listed in Part IV of Schedule 4 to the Regulations will amount to recovery for the purposes of the Directive. For example, a substance or object which is waste for the reasons set out in paragraphs 2.18-2.21 above may be used as a fuel. However, the fact that a substance or object is used as fuel does not mean that it is waste. As indicated in the example given in paragraph 2.40 below, slurry or manure produced on a farm and used as fertiliser or soil conditioner should not be regarded as waste where they are used to meet the requirements of agricultural land (ie the use is beneficial to the land).

2.27 It would be inappropriate to conclude, therefore, that a substance or object[26] is waste simply because it has been consigned to a recovery operation listed in Part IV of Schedule 4 to the Regulations. That is to say, it would be inappropriate to conclude that a substance or object has been discarded solely on the grounds that it has been consigned to a recovery operation listed in Part IV of Schedule 4.

2.28 In the light of these considerations the Departments suggest that to help determine whether a substance or object has been discarded the following questions may be asked:-

(a) Can the substance or object be used in its present form (albeit after repair) or in the same way as any other raw material without being subjected to *a specialised recovery operation* and is it likely to be so used; or

(b) Can the substance or object be used only after it has been subjected to *a specialised recovery operation*?

2.29 An answer of "yes" to question (a) may provide a reasonable indication that the substance or object concerned has not been discarded and, therefore, is not waste. However, an answer of "yes" to question (b) should provide a reasonable indication that the substance or object concerned has been discarded and is, therefore, waste.

2.30 The term "*specialised recovery operation*" does not appear in the Directive and, for this reason, it is not defined in the Regulations. The Departments' reference to it is intended to help distinguish between operations

[26] This should be read as meaning a substance or object which falls into one of the categories set out in Part II of Schedule 4 to the Regulations.

which might appear to be covered by a category listed in Annex IIB to the Directive (see paragraph 2.25 above) but which do not in all cases comprise recovery operations and may fall within the normal commercial cycle (eg using a substance as a fuel); and operations which are of their nature recovery operations since they wholly or partly derive their justification from the recovery of waste (eg the recycling of bottles deposited in bottle banks or the reclamation of contaminated solvents). A *specialised recovery operation* falls into the latter category.

2.31 As indicated in paragraph 2.14 above, waste appears to be perceived in the Directive as posing a threat to human health or the environment which is different from the threat posed by substances or objects which are not waste. This threat arises from the particular propensity of waste to be disposed of or recovered in ways which are potentially harmful to human health or the environment and from the fact that the producers of the substances or objects concerned no longer have the self interest necessary to ensure the provision of appropriate safeguards. The term *specialised recovery operation* is intended to describe an operation listed in Part IV of Schedule 4 to the Regulations which either re-uses substances or objects which are waste because they have fallen out of the normal commercial cycle or chain of utility; or recycles them in a way which eliminates or diminishes sufficiently the threat posed by their original production as waste and produces a raw material which can be used in the same way as raw material of non-waste origin. For example, operations which undertake the "Reclamation or regeneration of solvents"; or the "Recycling or reclamation of metals and metal compounds" (see also paragraph 2.33(c) below and footnote 33).

2.32 ***Products and by-products*** The fact that a substance or object exchanges hands for value does not preclude its being discarded within the terms of the definition of waste. For example, the operator of an establishment or undertaking specialising in waste recovery may pay to obtain substances or objects such as contaminated solvents or scrap metal. Nevertheless, these substances or objects have been discarded and should be regarded as waste until they have been recovered. On the other hand, substances or objects such as useful by-products which exchange hands for value remain part of the normal commercial cycle or chain of utility and should not be regarded as being discarded simply because the holder no longer wants them but wishes, for example, to sell them or to pass them on to another user.

2.33 In the light of these considerations, four broad categories of potential waste may be identified. The Departments suggest that the following guidelines should be applied in determining whether substances or objects falling into those categories are in fact waste:-

(a) **Worn but functioning substances or objects which are still usable (albeit after repair) for the purpose for which they were made.**

(i) The sale or giving away of such substances or objects as usable products (eg an old car or machine tool) will generally not constitute a discard as a result of which the substance or object is waste; and is to be distinguished from the discarding of such substances or objects as waste (eg the sale of an old car for scrap value or its abandonment).

(b) Substances or objects which can be put to immediate use otherwise than by a *specialised waste recovery establishment or undertaking*.

(i) Where such substances or objects (eg useful by-products) are sold for normal commercial use, or are given away in circumstances where they can be expected to be put to normal use, they should not be regarded as being discarded. Such transactions are outside the scope of the Directive and in these circumstances the substances or objects should not be regarded as waste. For example, by-products from the food and drink processing industries transferred (ie sold or given away) for further processing into food or drink products or for use as animal feed; animal by-products from abattoirs transferred for use by the rendering industry[27]; or ash from power stations transferred for use as a raw material in the manufacture of building blocks.

(ii) Substances or objects which are discarded as waste are of course waste (see paragraph 2.52 below). For example, power station ash is waste if it cannot be sold as a raw material and is consigned for disposal in, say, a landfill site. Attention is also drawn to paragraph 2.33(d) below which discusses circumstances in which payment is made by the producer of substances or objects; and paragraphs 2.34-2.38 below which discuss the question of intent.

(c) Degenerated substances or objects which can be put to use only by *establishments or undertakings specialising in waste recovery*.

(i) The transfer of such substances or objects to establishments or undertakings for recovery, even if for value, does not prevent those substances or objects being defined as waste. For example, contaminated solvents and scrap metal. As indicated in paragraphs 2.12-2.15 above, one of the purposes of the Directive is to ensure that measures are in place to supervise operations which derive their justification from the recovery of waste. Substances or objects such as contaminated solvents or scrap metal which are consigned by their holder to *specialised recovery operations* are no longer part of the normal commercial cycle or chain of utility[28]. They have been discarded by their holder; they are waste; and they should be regarded as waste until they have been recovered (see paragraph 2.47 below).

(d) Substances or objects which the holder does not want and which he has to pay to have taken away.

(i) Where the holder is paying someone to provide him with a service, and that service is the collection [and taking away] of a substance or object which the holder does not want and wishes to get rid of (see paragraphs 2.17-2.18 above), the substance or object has been consigned to the process of waste collection which the Directive requires Member States to take measures to

[27] These materials are controlled under The Animal By-Products Order 1992 (S.I. 1992 No.3303).

[28] See **paragraph 1** "Reclamation or regeneration of solvents (R1)." and **paragraph 3** "Recycling or reclamation of metals and metal compounds (R3)" of Part IV of Schedule 4 to the Regulations.

control. In these circumstances the substance or object should be regarded as waste.

(ii) As indicated in paragraphs 2.34-2.36 below, however, a substance or object may not be waste where it is fit for use in its present form (albeit after repair) and the holder intends his possession of it to determine its continued use by another identified person. In these circumstances, the fact that a payment is made by the producer may be evidential in relation to intent but it is not necessarily crucial. An example where the substance would not necessarily be waste is that of animal by-products from abattoirs transferred for use by the rendering industry[29]. The market conditions relating to the transfer of these substances fluctuate. However, as indicated in paragraph 2.33(b)(i) above, where substances can be put to immediate use otherwise than by *a specialised recovery operation* they should not normally be regarded as being discarded.

2.34 ***Intent and common interest*** In some cases the status of a substance or object as waste will depend on the holder's intent; and questions of intent can be addressed only case by case. The purpose of the guidance provided in paragraphs 2.35-2.38 below is to set out some of the issues which the Departments believe it appropriate to consider when addressing the question of intent.

2.35 The holder of a substance or object does not discard it when he transfers it to another person knowing and intending that the person to whom he transfers it intends to use[30] it:-

(a) in the form in which it was transferred (ie its present form); or

(b) in the same way as any other raw material without its being subjected to *a specialised recovery operation.*

2.36 Where a substance or object is fit for use in its present form (albeit after repair) and the holder intends his possession of it to determine its continued use by another identified person, the substance or object should not be considered to be waste because it has neither fallen out of the normal commercial cycle or chain of utility nor has it been consigned to the processes of waste recovery and disposal, or collection and transport relating to such recovery and disposal, which the Directive requires Member States to take measures to control. An example would be the transfer of old clothes to an identified charity or other organisation or person. In these circumstances the holder is doing no more than exercising his rights as owner to determine the destination and continued use of his possessions; and it would be artificial and unnecessary to treat as a disposal or recovery operation a recipient who intends to ensure the continued use of the substances or objects in their present form.

2.37 However, there may be circumstances where the intent of transferring a substance or object is purported to be its [beneficial] use by another person but the intent of that other person appears to be to subject the substance or object to

[29] These materials are controlled under The Animal By-Products Order 1992 (S.I. 1992 No.3303).

[30] It is assumed that the person to whom the substance or object is transferred intends to use it rather than dispose of it.

a recovery operation or to dispose of it. An example would be where person A claims to be transferring a by-product to person B for use as a fuel or to be spread on land for the benefit of agriculture, but person B appears to be treating the by-product as waste. That is to say, the by-product appears to be surplus to the requirements of person B and, if this is so, its use would amount to the recovery or disposal of waste. In a case such as this example, any use of the substance as fuel, or beneficial effect on agricultural land, would appear to be incidental. In such circumstances reference to the following questions may be helpful:-

(a) is the purpose of the [beneficial] use wholly or mainly to relieve the holder or user of the substance or object of the burden of otherwise disposing of it; and

(b) would the user be likely to seek a substitute for the substance or object if it ceased to become available to him as, say, a by-product?

2.38 If the answer to question (a) is "yes" and the answer to question (b) is "no" then it may be reasonably concluded that the essential nature of the use is recovery or disposal. This leads to the conclusion that the substance or object concerned is waste in these circumstances. Paragraph 2.33(b) above discusses the circumstances in which useful by-products are not waste; and paragraph 2.33(d)(i) and (ii) above discusses the payment of a price by the holder.

2.39 ***The use of substances or objects by their producer*** Article 8 of the Directive requires Member States to take the measures necessary to ensure that any holder of waste who recovers or disposes of it himself, does so in accordance with the provisions of the Directive. In view of this requirement, and the purpose of the Directive (see paragraphs 2.12-2.17 above), it would be inappropriate to exclude an intention to discard where no transfer occurs and a substance or object is subjected to a recovery or disposal operation by its producer.

2.40 Where a producer puts a substance or object (eg a by-product, residue or surplus) to beneficial use he should not be regarded as producing waste because the substance or object has not fallen out of the normal commercial cycle or chain of utility; and in these circumstances there is no intention to discard. For example, a horse riding stable is operated in association with a market garden. The operator may use the horses' manure either to produce compost for his market garden or to sell as fertiliser to customers of his businesses. In these circumstances, neither the use of the horses' manure as compost nor its sale for use as fertiliser is in itself disposal or recovery within the terms of the Directive. There is no intent on the part of the holder other than that the horses' manure should be put to beneficial use; and in neither case has it fallen out of the normal commercial cycle or chain of utility. In the same way, slurry or manure produced on a farm and used on that farm as a fertiliser or soil conditioner are not waste where they are used to meet the requirements of agricultural land (ie the use is beneficial to the land). (Reference should be made to the guidance in paragraphs 2.32-2.38 above where slurry or manure are transferred for use by someone other than the producer.)

2.41 However, there may be circumstances where the beneficial use to which the substance or object is put by the producer appears to be incidental. In such circumstances it may be helpful to ask the following questions:-

(a) is the purpose of the [beneficial] use wholly or mainly to relieve the producer of the burden of otherwise disposing of the substance or object; and

(b) would the producer be likely to seek a substitute for the substance or object if it ceased to become available to him as, say, a by-product?

2.42 If the answer to question (a) is "yes" and the answer to question (b) is "no" then it may be reasonably concluded that the essential nature of the use is *specialised recovery* or disposal. This leads to the conclusion that the substance or object concerned is waste in these circumstances. For example, where slurry and manure are used on a farm in quantities which exceed the requirements of agricultural land (ie the use is no longer beneficial to the land). A producer should also be regarded as producing waste if the substance or object concerned can be put to use only by an operation *specialising in waste recovery* (see paragraphs 2.28(b) and 2.31 above). A producer should not be regarded as producing waste solely on the grounds of an answer of "no" to question (b).

2.43 ***European Court of Justice*** On 28 March 1990 the European Court of Justice gave judgment in Joined Cases C-206/88 and C-207/88 (Vessoso and Zanetti [1990] 2 LMELR 133). These cases had been referred to the Court for a preliminary ruling by the Pretura [Magistrate's Court], Asti, Italy on whether Article 1 of Directive 75/442/EEC and Directive 78/319/EEC on toxic and dangerous waste:-

> "must be interpreted as meaning that the legal concept of waste must also cover things which the holder has disposed of which are capable of economic re-use and whether the said articles must be interpreted as meaning that the term `waste' presupposes the establishment of animus derelinquendi[31] on the part of the holder of the substance or object."

2.44 The Court's ruling was that:-

> "The concept of waste, within the meaning of Article 1 of Directive 75/442/EEC and Article 1 of Directive 78/319/EEC, is not to be understood as excluding substances and objects which are capable of economic re-utilization. The concept does not presume that the holder disposing of a substance or an object intends to exclude all economic re-utilization of the substance or object by others."

2.45 The Court's judgment in this case supports the conclusion that substances such as contaminated solvents which are destined for a specialised recovery operation are to be characterised as waste (see paragraphs 2.30-2.31 above).

2.46 ***How may waste cease to be waste?*** The Directive does not address the question of when a substance or object which is waste may cease to be waste. However, it is likely that in reaching a judgment on the Directive's definition of waste the determinant consideration would be the interpretation which in the opinion of the European Court of Justice best furthered the purpose of the Directive (see paragraphs 2.12-2.17 above). It would defeat the purpose of the Directive if either:-

(a) the transfer of waste for collection, transport, storage, *specialised recovery* or disposal; or

[31] The intention to abandon.

meant that the substance or object concerned was not waste at all. This means that a substance or object which meets the criteria for definition as waste at the point of its original production should be regarded as waste until it is recovered or disposed of[32] within the meaning of the Directive. A substance or object which is waste **does not** cease to be waste as soon as it is transferred for collection, transport, storage, *specialised recovery* or disposal; or as soon as it reaches a *specialised recovery* establishment or undertaking.

2.47 These conclusions lead to the question of when a substance or object which is waste, **and is not fit for use in its present form or in the same way as any other raw material**, may cease to be waste because it has been recovered within the meaning of the Directive. As indicated in paragraph 2.14 above, waste appears to be perceived as posing a threat to human health or the environment which is different from the threat posed by substances or objects which are not waste; and the Departments' view is that the purpose of the Directive is to treat as waste and accordingly to supervise, inter alia, the recovery of those substances or objects which fall out of the normal commercial cycle or out of the chain of utility. **It follows that the recovery of waste occurs when its processing produces a material of sufficient beneficial use to eliminate or diminish sufficiently the threat posed by the original production of the waste. This will generally take place when the recovered material can be used as a raw material in the same way as raw materials of non-waste origin by a person other than *a specialised recovery establishment or undertaking*.**

2.48 The purpose of recovery in this sense is to return the materials to the normal commercial cycle or chain of utility by eliminating or sufficiently diminishing the threat posed to human health or the environment by their original production as waste; and so to ensure that their holder has the self interest necessary to provide appropriate safeguards on their use.

2.49 In practice, a substance or object will usually be recovered at a site which is the subject of a waste management licence granted under section 35 of the 1990 Act; or which is registered as benefitting from an exemption from licensing provided under section 33(3) of the 1990 Act. For example, scrap metal which has been fragmentised or compacted at a site licensed under section 35 of the 1990 Act may cease to be waste. This will be so if the materials produced as a result of fragmentation or compaction can be sold for use as raw materials in the same way as raw materials of a non-waste origin and require no further processing at *a specialised recovery establishment or undertaking*. Simply sorting items of scrap metal with a view to putting some of those items to continued use would not amount to recovery within the terms of the Directive. However, sorting scrap metal with a view to putting items to continued use may result in a renunciation of the intention to discard which may have the effect of their ceasing to be waste (see paragraph 2.50 below).

2.50 There are likely to be few cases in which a change of intention by the person to whom waste has been transferred is sufficient in itself to result in the

[32] As indicated in paragraph 2.13(c) above, "management" includes the after-care of disposal sites.

substance or object concerned ceasing to be waste. Any such cases are likely to occur only where it transpires that the substance or object which has been transferred as waste is in fact fit for use in its present form (albeit after repair) or in the same way as any other raw material without being subjected to *a specialised recovery operation.*

2.51 ***Holders' responsibilities and the burden of proof*** It is the responsibility of the holder to decide whether the substance or object in his possession is waste and, if it is, to take the necessary action in relation to that waste. For example, to fulfil his duty of care under section 34 of the 1990 Act; to obtain registration as a carrier of controlled waste; to obtain a waste management licence; or to register an exemption from waste management licensing. WRAs are responsible for the enforcement of these requirements. The Departments recommend, therefore, that in any case in which the holder is in doubt about the status of a substance or object as waste he should either consult the WRA for the area concerned or obtain his own legal advice.

2.52 Section 75(3) of the 1990 Act is an evidential provision. Its effect is to provide that where any substance or object is discarded or otherwise dealt with as if it were waste then that substance or object is presumed to be waste unless the contrary is proved. This means that the burden of proof in such circumstances is placed on the holder and, in the event of a prosecution, it will rest with the holder to satisfy the Court that the substance or object concerned is not waste. However, the presumption that a substance or object is waste cannot be rebutted where it is established on the facts of the case that it has been discarded within the meaning of section 75 of the 1990 Act (as modified). Paragraphs 2.23-2.39 above discuss the issue of substances or objects being "discarded".

Summary

What Is Waste?

2.53 The following paragraphs are intended to provide a helpful summary of the Departments' guidance on the definition of waste; and to draw attention to some of the main questions which should be addressed in reaching a view on whether a particular substance or object is waste. However, the Departments caution against reaching a view on whether any particular substance or object is waste until all of the relevant issues have been considered. The main questions are:-

(a) does the substance or object fall into one of the categories set out in Part II of Schedule 4 to the Regulations; **and**

(b) if so, has it been discarded by its holder, does he have any intention of discarding it or is he required to discard it (**paragraphs 2.18 and 2.19**)?

When Is A Substance Or Object Discarded?

2.54 Waste appears to be perceived in the Directive as posing a threat to human health or the environment which is different from the threat posed by substances or objects which are not waste. This threat arises from the particular propensity of waste to be disposed of or recovered in ways which are potentially

harmful to human health or the environment and from the fact that the producers of the substances or objects concerned may no longer have the self interest necessary to ensure the provision of appropriate safeguards. The purpose of the Directive, therefore, is to treat as waste those substances or objects which fall out of the normal commercial cycle or out of the chain of utility (**paragraph 2.14**). To determine whether a substance or object has been discarded the following question should be asked:-

- has the substance or object been discarded so that it is no longer part of the normal commercial cycle or chain of utility?

2.55 An answer of "no" to this question should provide a reasonable indication that the substance or object concerned is not waste (**paragraphs 2.20 and 2.21**). A substance or object should **not** be regarded as waste:-

(a) solely on the grounds that it falls into one of the categories listed in Part II of Schedule 4 to the Regulations (**paragraph 2.19**);

(b) solely on the grounds that it has been consigned to a recovery operation listed in Part IV of Schedule 4 to the Regulations (**paragraphs 2.25 and 2.26**);

(c) if it is sold or given away and can be used in its present form (albeit after repair) or in the same way as any other raw material without being subjected to *a specialised recovery operation* (**paragraphs 2.28(a), 2.30-2.31, 2.32, 2.33(a), 2.33(b)(i), 2.35 and 2.36**);

(d) if its producer puts it to beneficial use (**paragraph 2.40**); or

(e) solely on the grounds that its producer would be unlikely to seek a substitute for it if it ceased to become available to him as, say, a by-product (**paragraph 2.42**).

2.56 A substance or object **should be** regarded as waste if it falls into one of the categories listed in Part II of Schedule 4 to the Regulations and:-

(a) it is consigned to a disposal operation listed in Part III of Schedule 4 to the Regulations (**paragraph 2.23**);

(b) it can be used only after it has been consigned to *a specialised recovery operation* (**paragraphs 2.28(b), 2.30-2.31 and 2.33(c)**);

(c) the holder pays someone to provide him with a service and that service is the collection [and taking away] of a substance or object which the holder does not want and wishes to get rid of (**paragraph 2.33(d)**);

(d) the purpose of any [beneficial] use is wholly or mainly to relieve the holder of the burden of disposing of it and the user would be unlikely to seek a substitute for it if it ceased to become available to him as, say, a by-product (**paragraphs 2.37, 2.38, 2.41 and 2.42**);

(e) it is discarded or otherwise dealt with as if it were waste (**paragraphs 2.33(b)(ii) and 2.52**); or

(f) it is abandoned or dumped (**paragraph 2.24**).

Can Waste Cease To Be Waste?

2.57 A substance or object which is waste **does not** cease to be waste as soon as it is transferred for collection, transport, storage, *specialised recovery* or

disposal; or as soon as it reaches a *specialised recovery establishment or undertaking*. A substance or object which is waste, and is not fit for use in its present form or in the same way as any other raw material, may cease to be waste when it has been recovered within the meaning of the Directive **(paragraphs 2.46-2.49)**.

2.58 The recovery of waste occurs when its processing produces a material of sufficient beneficial use to eliminate or sufficiently diminish the threat posed by the original production of the waste. This will generally take place when the recovered material can be used as a raw material in the same way as raw materials of non-waste origin by a natural or legal person other than *a specialised recovery establishment or undertaking* **(paragraphs 2.47-2.49)**.

2.59 In a few cases, a change of intention by the person to whom waste has been transferred may be sufficient to result in the substance or object concerned ceasing to be waste. This is likely to occur only where it transpires that the substance or object which has been transferred as waste is in fact fit for use in its present form (albeit after repair) or in the same way as any other raw material without being subjected to *a specialised recovery operation* **(paragraph 2.50)**.

THE FOOD AND ENVIRONMENT PROTECTION ACT 1985

Background

3.1 Current provision for the deposit of waste at sea is contained in Part II of the Food and Environment Protection Act 1985 (the 1985 Act). This involves a licensing system for which the licensing authority is the Minister for Agriculture Fisheries and Food in England and Wales, and the Secretary of State for Scotland in Scotland.

3.2 A licence is required under section 5 of the 1985 Act for the deposit of substances or articles either in the sea or under the sea-bed from a vehicle, vessel, aircraft, hovercraft, marine structure, floating container, or a structure on land constructed or adapted wholly or mainly for the purpose of depositing solids at sea. Section 6 also requires a licence for the incineration of substances or articles at sea although the Government no longer issues such licences. "Sea" in these contexts includes "any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river". A licence is also required for the loading of a vehicle, vessel, aircraft, hovercraft, marine structure or floating container with substances or articles for deposit in the sea or under the sea-bed, or for incineration at sea.

Interaction With Waste Management Licensing

3.3 Part II of the 1990 Act regulates the deposit of waste on land which is defined by section 29(8) as including "land covered by waters where the land is above the low water mark for ordinary spring tides". There is therefore an overlap between the two control systems on the foreshore, between the high and low water marks. Although the 1985 Act licensing system also extends above the high water mark where loading for deposit at sea takes place, this in itself is unlikely to be a licensable activity under the 1990 Act, so no overlap is likely to occur in these circumstances.

3.4 In order to prevent any duplication of control, **regulation 16(1)(d)** provides an exemption from section 33(1) of the 1990 Act - ie from the need for a waste management licence - where the recovery or disposal of waste forms part of, an operation which is the subject of a licence under the 1985 Act, or is currently exempted from requiring such a licence. The current 1985 Act exemptions are contained in the Deposits in the Sea (Exemptions) Order 1985 (S.I. 1985 No.1699).

3.5 The effect of these provisions is to take out of waste management licensing, all disposal and recovery operations which take place below the high water mark (as defined in paragraph 3.2 above). The main activities currently carried out on the foreshore which may be affected, are the disposal of minestone waste and the use of dredged spoil materials beneficially in coastal defence schemes, beach and mudflat nourishment, or the creation of marine and intertidal habitats. These all require to be licensed under the 1985 Act. Where unauthorised disposal takes place on the foreshore which is not subject to a

1985 Act licence, then it will be for MAFF or the Scottish Office as appropriate, to take any necessary enforcement action under the 1985 Act.

3.6 It is possible (though unlikely) that a waste disposal or recovery operation may straddle the high water mark, and therefore require both a 1985 Act licence, and a waste management licence. In considering or reviewing a licence application in these circumstances, WRAs should always consult MAFF or the Scottish Office, as the appropriate 1985 Act licensing authority before coming to a decision on the application, and ensure that any conditions which they may impose if the licence is granted, are consistent with those of any 1985 Act licence. MAFF and the Scottish Office will likewise consult WRAs in considering a 1985 Act licence in similar circumstances.

Application Of The Waste Framework Directive

3.7 The Directive applies not just to waste disposal and recovery operations on land, but also extends to such operations carried out at sea within the territorial waters of the UK. It is therefore necessary to make provision for the implementation of the Directive where waste is recovered or disposed of at sea. Schedule 4 of the Regulations accordingly provides for the 1985 Act licensing provisions, and the Deposits in the Sea (Exemptions) Order 1985 (S.I. 1985 No.1699) to be exercised in accordance with the Directive; as well as making new provision for off-shore waste management plans.

3.8 **Paragraph 3** of Schedule 4 to the Regulations provides for the licensing authority or the Ministers to be competent authorities for the discharge of their functions under Part II of the 1985 Act and **paragraph 5** of Schedule 4. **Paragraph 2** of Schedule 4 then requires competent authorities to discharge these functions insofar as they relate to the recovery and disposal of waste with the relevant objectives. These objectives are set out in **paragraph 4** of Schedule 4, and for this purpose consist of Article 4 of the Directive (ensuring that waste is recovered or disposed of without endangering human health or harming the environment); Article 5 in relation to disposal operations only (establishing an integrated network of disposal installations, and enabling the Community and Member States to become self sufficient and waste to be disposed of at the nearest appropriate installation); and implementing the appropriate plan, so far as material (see paragraphs 3.13 to 3.16 below).

3.9 The Directive is thus applied to the 1985 Act licensing provisions in exactly the same way as it is to waste management licensing, and the same guidance provided in paragraphs 1.23 to 1.49 of Annex 1 to this Circular, on the interpretation of the requirements of these provisions of the Directive apply equally to the exercise of the licensing functions under 1985 Act.

3.10 Where disposal or recovery takes place at sea below the low water mark, then there is no question of interaction with other control regimes such as the planning system. However, where an activity involving the disposal or recovery of waste takes place between the high and low water marks which constitutes development, then planning permission may also be required. In these circumstances, the Regulations provide for the pollution control authority - in this case the 1985 Act licensing authority - to discharge the requirements of the Directive insofar as its powers permit. In this case, the powers of the 1985 Act

licensing authorities are reasonably wide, and there is no reason why they should not discharge all the relevant objectives under **paragraph 4** of Schedule 4 - as they would for a disposal or recovery operation at sea below the low water mark. However, this does not in any way restrict the power of the planning authority in determining a planning application, to take into account material considerations (including those of the Directive) insofar as they are relevant, and in accordance with their powers and any guidance from the Secretary of State.

Exemptions

3.11 A number of sea deposits are exempted from the requirement for a 1985 Act licence under the Deposits in the Sea (Exemptions) Order 1985 (SI 1985 No.1699). Where the exemptions relate to waste, as defined under the Directive, it will be necessary to ensure that the requirements of Article 11 are met. Accordingly, **regulation 21** amends the Deposits in the Sea (Exemptions) Order to provide that where any of the exempt activities involve the recovery or disposal of waste by an establishment or undertaking, the exemption only applies where the establishment or undertaking is carrying out its own waste disposal at the place of production or carries out waste recovery; the activity is consistent with the need to attain the objectives of Article 4; and the establishment or undertaking is registered with the appropriate 1985 Act licensing authority. This latter requirement to register only comes into operation after 31 December 1994 to allow adequate time for registration to take place.

3.12 MAFF and the Scottish Office will set up registration schemes as necessary, for the appropriate exempt waste activities, but these will be minimal schemes similar to those required for persons exempted from waste management licensing (see Annex 6 of this Circular). Those registering exempt activities will only be required to provide their name and address, the type of exempt activity, and the place where it is to be carried out. The licensing authorities may not refuse registration, and must enter on their register any relevant exempt activity of which they become aware. The aim is to place the minimum burden on those carrying out exempt activities. (MAFF and the Scottish Office will issue further details of their registration schemes, and the establishments or undertakings that will be required to register.)

Offshore Plans

3.13 **Paragraph 5** of Schedule 4 to the Regulations places a duty on the 1985 Act licensing authorities to draw up one or more offshore waste management plans. This is needed in order to ensure that the requirements of Article 7 of the Directive are met within UK territorial waters (on land this function is discharged through development plans and plans drawn up under section 50 of the Environmental Protection Act). As required by Article 7, the Regulations provide for the offshore plan to relate in particular to the type, quantity and origin of waste to be recovered or disposed of, general technical requirements, any special arrangements for particular wastes, and suitable disposal sites or installations.

3.14 It is envisaged that a single offshore plan will be drawn up jointly by MAFF and the Scottish Office, and provision for such a joint plan is made by

paragraph 5(2) of Schedule 4. The plan will cover the area within UK territorial waters for which 1985 Act licensing authorities are responsible, up to the high water mark (as defined in paragraph 3.2 above). To this extent it will overlap with the section 50 plans, and development plans which extend down to the low water mark. The 1985 Act licensing authorities will have regard to these land based plans in drawing up the offshore plan, insofar as they are relevant in this context.

3.15 The offshore plan will of course be concerned partly with the disposal of waste generated on land (and likewise, section 50 plans and development plans may be concerned with the disposal of waste generated at sea). It is therefore important that in drawing up their land based plans, WRAs and planning authorities have regard to the offshore plan when it has been drawn up, particularly when it comes to assessing the need for disposal and recovery facilities in their area. An example of where this interaction will be important is in the disposal of sewage sludge, some of which is currently disposed of at sea under 1985 Act licences. Whilst such disposal must cease by 1998, WRAs will need to ensure that their assumptions about the availability of sea dumping as a disposal route in the interim, reflect the policies set out in the offshore plan. In order to ensure that the WRAs and planning authorities concerned have the opportunity to contribute towards, and comment on the offshore plan, MAFF and the Scottish Office propose consulting all relevant local authorities - not just those in coastal areas - in drawing up the plan.

3.16 When it is completed, the 1985 Act licensing authorities will be required under **paragraph 5(4)** of Schedule 4 to the Regulations, to make copies of the offshore plan available to the public on payment of reasonable charges.

THE WASTE MANAGEMENT LICENSING SYSTEM

4.1 The purpose of this Annex is to set out the main provisions of the 1990 Act and associated Regulations on licensing. Specific aspects of licensing are dealt with in separate Annexes.

4.2 Sections 33 and 35 to 44 of the 1990 Act introduce an enhanced system of licensing control on the management of waste. This contains a number of additional features to the previous system of waste disposal licensing under the 1974 Act. Section 54 provides for resolutions by WRAs for Scotland, where district and island councils continue to be waste disposal authorities and WRAs. The system of licensing in Part II of the 1990 Act is modified in a number of ways to take account of the Directive (see Annex 1).

Sections 33 and 35: The Requirement for Licensing

Section 33

4.3 Section 33(1) provides that, except in cases prescribed by the Secretary of State under section 33(3), it is an offence for any person:-

(a) to deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence; or

(b) to treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of in or on any land, or by means of any mobile plant, except under and in accordance with a waste management licence; or

(c) to treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

4.4 "Controlled waste" is defined in section 75 of the 1990 Act as meaning household, industrial and commercial waste or any such waste. These definitions are refined and extended in the Controlled Waste Regulations 1992 (S.I. 1992 No.588). By virtue of section 75(7), waste from any mine or quarry, and waste from premises used for agriculture, are not controlled waste.

4.5 **Regulations 1(3) and 24(8)** and **paragraph 9** of Schedule 4 to the Regulations modify the effect of the definition of controlled waste in line with the definition of waste in the Framework Directive. The effect of these provisions is to confine the scope of controlled waste to waste under the Directive ("Directive waste") (see Annex 2).

4.6 The activities relating to controlled waste which are covered under section 33(1) (deposit, treating, keeping, or disposing) go considerably wider than the corresponding provision in the 1974 Act. Section 3 of that Act covered only the deposit of waste and the use of plant or equipment for the purpose of disposing of, or of dealing in a prescribed manner with, controlled waste. For

the purposes of the 1990 Act, section 29(6) provides that waste is "treated" when it is subjected to any process, including making it re-usable or reclaiming substances from it. The "keeping" of waste covers a range of situations where, whether or not it can be argued that the waste has been deposited, it nonetheless is retained in the hands of the holder. This in itself represents a considerable widening of the scope of the offence in section 33(1) when compared with the provisions of section 3(2) of the 1974 Act.

4.7 The scope of licensing is further modified by the definitions of "disposal" and "recovery" in **regulation 1(3)**, and the provisions of **paragraph 9** of Schedule 4 to the Regulations, reflecting the terms of the Directive. "Disposal" is defined as meaning any of the operations listed in Part III of Schedule 4 (these are the disposal operations listed in the Directive); and "recovery" as meaning any of the operations listed in Part IV of Schedule 4 (these are the recovery operations listed in the Directive). **Paragraph 9(3)** provides that in sections 33(1)(a) and (5), 54(1)(a),(2),(3) and (4)(d) and 69(2) of the 1990 Act any reference to the deposit of controlled waste includes a reference to any disposal or recovery operation in Parts III or IV of Schedule 4 which involves such a deposit. **Paragraph 9(4)** provides that in sections 33(1)(b), 54(1)(b),(2),(3) and (4)(d) and 69(2), any reference to the treatment, keeping or disposal of controlled waste shall be taken to be a reference to submitting it to any of the recovery or disposal operations in Part III or IV of Schedule 4, except for those involving deposit. **Paragraph 9(5)** provides that in section 33(1)(c) and 35 of the 1990 Act any reference to the treatment, keeping or disposal of waste includes a reference to submitting controlled waste to any of the recovery or disposal operations listed in Part III or IV of Schedule 4."

4.8 Taken together, these provisions leave section 33(1) applying waste management licensing as follows:-

(a) section 33(1)(a) applies to any deposit of Directive waste, whether temporary or permanent and is not limited to Directive disposal and recovery operations;

(b) section 33(1)(b) applies only to Directive disposal and recovery operations.

That is, the scope of licensing is limited to the deposit, Directive disposal or Directive recovery of Directive waste.

4.9 A substantial range of activities constituting the deposit, recovery or disposal of waste are further exempted by regulations under section 33(3) of the 1990 Act (see Annex 5). Where this is not so, however, a licence will be required if an offence is not to be committed.

4.10 The 1990 Act introduces the licensing of mobile plant for the treatment or disposal of controlled waste. This is intended as a forward-looking provision to allow for novel developments in mobile plant. The advantage of making separate provision would be that the operator of such plant would only need one licence, as opposed to having to secure a new site licence (or modification of existing site licence) for every location where the plant operated. Section 29(10) makes provisions for regulations to prescribe descriptions of plant which are to be treated as being, or as not being, mobile plant. It is intended to use this provision progressively as new kinds of mobile plant come into use. At

This is subject to the proviso that if the waste disposal authority carries out the deposit, treating, keeping or disposing, in doing so it must comply with conditions specified in a resolution by the WRA; or if another person carries out the deposit, treating, keeping or disposing, that person must do so with the consent of the waste disposal authority and in accordance with any conditions to which that consent is subject.

4.19 It is the duty of the WRA to ensure that land is used and mobile plant operated in accordance with conditions which are:-

(a) calculated to prevent that activity from causing pollution of the environment or harm to human health or serious detriment to the amenities of the locality in which the land is situated or the mobile plant may be operated; and

(b) specified in a resolution passed by the waste regulation authority.

4.20 The decision to retain in Scotland the structure of local authority run waste disposal facilities was made in the light of responses to consultations in March and April 1989. The proposal to separate waste regulation from waste disposal by the creation of arm's length local authority waste disposal companies was not supported by most respondents. The point was made that, because of the small and dispersed population of many district councils in rural areas, the likelihood of a satisfactory competitive situation being created was remote. In consequence the 1990 Act provides for retention of local authority run waste disposal facilities in Scotland. However, the Secretary of State requires the regulation and disposal operations of authorities to be completely separated and has taken steps to ensure that this is achieved. He also wishes to make it clear that he sees no distinctions between licences and resolutions as regards standards and rigour of operations; and he expects WRAs to have regard to the guidance in Waste Management Papers 4 (see paragraph 4.31 below) and 26A (see paragraph 4.50) in framing conditions for the operation of waste management activities in accordance with resolutions.

4.21 The provisions for licensing under sections 35-40 are dealt with in detail in paragraphs 4.22-4.63 below. Resolution provisions are described in paragraphs 4.81-4.90 below.

Section 35

4.22 Section 35 contains general provisions relating to waste management licences, which are licences granted by WRAs authorising the keeping, treatment or disposal of any specified description of controlled waste.

4.23 Section 35(2) provides that a licence is to be granted, in the case of a licence relating to the treatment, keeping or disposal of waste in or on land (a "site licence") to the person who is in occupation of the land; and where relating to the treatment or disposal of waste by means of mobile plant (a "mobile plant licence"), to the person who operates the plant.

4.24 Section 35(3) provides that a licence shall be granted on such terms and subject to such conditions as appear to the WRA to be appropriate: and that, in addition to relating to the activities which the licence authorises, conditions

may impose requirements which are to be complied with before these activities begin or after they have ceased.

4.25 Section 35(4) provides that licence conditions may require the holder of the licence to do things that he is not entitled to do, and that any person whose consent would be required shall grant the licence holder such rights in relation to the land as will enable him to comply with the relevant conditions of the licence. It is envisaged that the main need for this power will arise where it becomes necessary to modify an existing licence to require additional sampling and monitoring points outside the boundary of land owned by the licensee; and under those circumstances, the owner of the adjacent land will be obliged to grant permission for the necessary facilities to be installed and for access to supervise their operation. It is not desirable to rely on this power more often than is strictly necessary; and, in particular, WRAs and applicants for licences should make every effort to avoid the need for such conditions in new licences.

4.26 Section 35(5) provides that conditions may relate to the treatment, keeping or disposal of waste other than controlled waste. This allows the proper control through licence conditions of the management of waste which, while not itself controlled waste, is dealt with incidentally along with controlled waste. It can apply to any category of waste other than controlled waste at the discretion of the WRA, and does not rely for its effect on any regulations that may be made under section 63(1) (waste other than controlled waste). This provision does not apply to radioactive waste; no provisions of Part II of the 1990 Act do so unless regulations are made under section 78 of the Act to that effect. No such regulations have been made.

4.27 Section 35(6) provides that regulations may be made prescribing conditions that are, or are not, to be included in a licence. Regulations may make different provisions for different circumstances. It is intended to use this power to implement specific requirements of EC or other international obligations; and to clarify demarcations between waste management licences and other regulatory regimes.

4.28 Accordingly **regulation 13** provides that no condition is to be included in a licence solely for the purpose of ensuring the health and safety of persons at work. It is of course likely that conditions set to protect the environment and human health from the effects of waste management activities will also have an indirect effect on the welfare of workers. However, the protection of health and safety at work is the responsibility of the Health and Safety Executive, and WRAs should not seek to duplicate their role. The Health and Safety Executive are also statutory consultees on licence applications and any more specific problems of overlap arising in individual cases should be resolved through consultation.

4.29 **Regulation 14** implements certain requirements of the EC Directive on Waste Oils (75/439/EEC, as amended by 87/101/EEC). The provisions of **regulation 14** apply only to a licence which authorises the regeneration of waste oils, and require such licences to:- impose certain standards upon the base oils derived from regeneration (**regulation 14(1)**); and ensure that waste oils are not mixed with polychlorinated biphenyls, polychlorinated terphenyls or toxic and dangerous waste (within the meaning of Directive 78/319/EEC; **regulation 14(2)**).

4.30 Section 35(7) provides that the Secretary of State may direct the terms and conditions of an individual licence. This power is exercisable while an application for a waste management licence is before a WRA. The authority is under a duty to give effect to any such direction, and the applicant has no right of appeal under section 43 of the 1990 Act against the substance of the direction. It is intended that this power would only be used in exceptional circumstances. The detailed terms and conditions of licences should normally be settled on the basis of discussion between the applicant and the authority; the latter will be required to have regard to guidance from the Secretary of State (see para-graph 4.31 below).

4.31 Section 35(8) places a duty on WRAs to have regard to any guidance issued to them by the Secretary of State with respect to the discharge of their function in relation to licences. Much of this Circular constitutes such advice. The Secretary of State has also issued such advice in the form of Waste Management Paper No. 4, "The Licensing of Waste Facilities", published by HMSO. Advice to which WRAs are required to have regard has also been issued on other aspects of their duties relating to the surrender of licences, in the form of Waste Management Paper 26A "Completion of Waste Management Site Licences" (see paragraphs 4.50-4.54 below).

4.32 Sections 35(9), (10) and (11) change the way in which a waste management licence is held from that prevailing under the 1974 Act. Section 35(9) prohibits the surrender of a licence except by means of the surrender procedure in section 39 (see paragraphs 4.50-4.54 below). Section 35(10) removes a licensee's presumed right to transfer his licence to another person; new procedures for transfer are set out in section 40 (see paragraphs 4.55-4.56 below). Section 35(11) provides for the continuation in force of a licence until it is entirely revoked under section 38 (see paragraphs 4.42-4.49 below) or 42 (paragraphs 4.59-4.62 below), or surrendered under section 39. Until such time, the obligations of a licence will therefore continue to govern the licensee whether or not he is carrying out the activities authorised by the licence, or while the licence is partially revoked or suspended.

Section 36: Grant Of Licences

4.33 Section 36 establishes the procedure for applications for, and grant of, waste management licences. Section 36(1) provides that an application shall be made for a site licence to the WRA in whose area the land is situated; and for a mobile plant licence, to the WRA in whose area the operator has his principal place of business. The term "principal place of business" has its ordinary meaning and is the place at which the applicant carries on his business. Where the applicant has more than one place of business, the principal place of business is a matter to be determined on the facts of the case; in the Departments' view, it is the place at which the applicant conducts the administration of his business and from which the various divisions of his business are controlled.

4.34 Section 36(1) provides that an application must be made "in the form" prescribed by the Secretary of State in regulations. This power by itself, however, is insufficient to provide for the prescription in regulations of a standard form or a common set of information that must be supplied with each application. Accordingly, **regulation 2(1)** requires simply that the application be in writing. WRAs will therefore need to continue their current practice of

issuing their own application forms, referring as appropriate to the Secretary of State's guidance in Waste Management Paper 4 to determine what information is necessary for the different types of activity that may be authorised by licences. Where regional groups of WRAs are established it will be helpful to standardise as much as possible the amount and type of information requested. Each application must be accompanied by the fee prescribed in the charging scheme made under section 41. **Regulation 10(1)(a) and (b)** requires a copy of the application and a copy of the licence if granted to be put on the public register of information maintained by the authority under section 64 (see paragraphs 9.12-9.14 of Annex 9).

4.35 Section 36(2) introduces changes to the planning status necessary to confer eligibility for grant of a licence. The relationship between Planning and Licensing is further affected by the Directive and is explained in Annex 3.

4.36 Section 36(3) introduces the new test of whether an applicant for a licence is a fit and proper person (see paragraphs 4.65-4.73 below). A WRA shall not reject a duly made application for a licence if it is satisfied that the applicant is a fit and proper person unless it is satisfied that its rejection is necessary to prevent pollution of the environment, harm to human health or (in cases where no planning permission is in force in relation to the use to which the land will be put under the licence) serious detriment to the amenities of the locality. This last test is to be applied to land wherever no relevant planning permission is in force, whether or not an established use certificate or certificate of lawful use or development is in existence. Guidance on how "serious detriment to the amenities of the locality" is to be treated in the absence of planning permission will be found in Annex 1.

4.37 Section 36(4) to (10) sets out the procedure for consideration of an application. Before issuing a licence, a WRA (in England and Wales) must refer the proposal to the Health and Safety Executive and the National Rivers Authority. In Scotland, a WRA (if other than an islands council) must refer the proposal to the Health and Safety Executive, the river purification authority whose area includes any of the relevant land, and, where the WRA is not also a district planning authority, to the general planning authority for the area. Where any part of the land to be used is land which has been notified under section 28(1) of the Wildlife and Countryside Act 1981 (protection for certain areas) the WRA must also, before it issues the licence, consult the appropriate nature conservation body. If the National Rivers Authority or (in Scotland) river purification authority request that the licence not be issued or disagrees with the WRA about the conditions of the proposed licence, either of them may refer the matter to the Secretary of State and the licence shall not be issued except in accordance with his decision. The bodies consulted by the WRA are allowed twenty-one days (or such longer period as both may agree in writing) from the date of their receipt of the proposal in which to make representations. Details of any representations made to the authority following consultation must be entered on the authority's public register of information, as must a copy of the Secretary of State's decision on any matter referred to him (see paragraphs 9.15-9.16 of Annex 9). The WRA shall be deemed to have rejected an application if it has not determined that application within the period of four months after it received it, or within such longer period as the authority and the applicant may at any time agree in writing.

Section 37: Variation Of Licences

4.38 Section 37 deals with modifications of existing waste management licences. A WRA may modify the conditions of a licence on its own initiative to any extent which, in the opinion of the authority, is desirable and does not involve unreasonable expense on the part of the licensee; and may modify a licence in response to an application from the holder, which must be accompanied by the fee prescribed in the charging scheme made under section 41. An authority must modify the conditions of an existing licence (except where it revokes it entirely) to the extent which, in the opinion of the authority, is required to prevent pollution of the environment, harm to human health or serious detriment to the amenities of the locality; and to the extent required by regulations in force under section 35(6) (see paragraphs 4.27-4.29 above). Applications for modification of licence conditions, notices effecting or rejecting modification, and information on the consultations in respect of modifications, must be put on the public register of information in accordance with **regulation 10(1)(b) and (c).** (see paragraphs 9.13-9.19 of Annex 9).

4.39 These regulations introduce a number of specific requirements of licences in **regulations 13, 14 and 15**, and **paragraphs 6 and 14** of Schedule 4. These deal with health at work, regeneration of waste oils and protection of groundwater (see paragraphs 4.28 and 4.29 above and Annex 7); and matters to be covered by licences for disposal operations and record keeping (Annex 1). WRAs should review the current licences in their areas in the light of these provisions. This review should be completed as soon as practicable. All licences that need variation to comply with these regulations should be identified and action put in hand to vary them by 31 April 1995.

4.40 Section 37(3) gives the Secretary of State powers of direction as to the modifications to be made in the conditions of any licence. As with the power to direct the terms and conditions of a licence while the relevant application is before the WRA, this power would only be used in exceptional circumstances.

4.41 Section 37(5) sets out the consultation procedure to be followed in modifying licences. Section 37(6) provides that the WRA shall be deemed to have rejected an application for the modification of a licence if it has not determined the application within a period of two months (or such longer period as the authority and the applicant may agree in writing).

Section 38 : Revocation And Suspension Of Licences

4.42 Section 38 sets out the grounds and procedure for revoking or suspending waste management licences. Licences may be revoked in whole (section 38(4)) or in part - that is, so far as it authorises the carrying on of the activities specified in the licence or such of them as the authority specifies in revoking the licence (section 38(3)). Section 38(5) provides that a partial revocation shall not affect those requirements imposed by the licence which the authority, in revoking the licence, specify as requirements which are to continue to bind the licence holder. Suspension of a licence has the effect of temporarily withdrawing authorisation for the activities specified in the licence or such of them as the authority specifies in suspending the licence (section 38(8)). Obligations and requirements of the licensee under the licence will continue in force during the suspension. Revocation or suspension are also possible where a licensee fails to

comply with a notice requesting compliance with a licence condition (see paragraphs 4.59-4.62 below).

4.43 Section 38(1) sets out the grounds on which an authority may exercise, as it thinks fit, its powers to revoke a licence either in part or in whole. There are three sets of circumstances to be tested in subsections (a), (b) and (c). To meet the circumstances it must appear to the authority that either (a) or both (b) and (c) are the case. Test (a) is that the licensee has been convicted of a relevant offence prescribed in **regulation 3** and has therefore ceased to be a fit and proper person as defined in section 74 of the 1990 Act (see paragraphs 4.65-4.73 below; in particular, attention is drawn to provision of section 74(4) explained in paragraph 4.67 below). Test (b) is that if the licensed activities continue, they would cause pollution of the environment, harm to human health or serious detriment to the amenities of the locality. Test (c) is of the need to revoke the licence; it may only be revoked if the pollution, harm or detriment cannot be avoided by modifying the conditions of the licence.

4.44 Section 38(2) provides that when the authority judge that the management of the licensed activities has ceased to be in the hands of a technically competent person, and that the authority therefore judge the licensee to be no longer a fit and proper person under section 74, the authority may revoke the licence in part. A partial revocation is also possible where the holder of the licence fails to pay the relevant subsistence charge (see paragraph 4.58 below).

4.45 Section 38(6) sets out the grounds for suspension of a licence. There are two alternative tests; either that in (a) or both those in (b) and (c) must be satisfied. The test in (a) is that it appears to the authority that the management of the activities authorised by the licence has ceased to be in the hands of a technically competent person and therefore that the licensee has ceased to be a fit and proper person as defined in section 74. Test (b) is that it appears to the authority that serious pollution of the environment or serious harm to human health has resulted from, or is about to be caused by, the licensed activities or is the threatened outcome of an event affecting those activities; and test (c) is that the continuation of those activities will continue or cause the serious pollution or harm.

4.46 Where a licence is suspended, the WRA may require the licensee to take such measures as they consider necessary to deal with or avert the pollution or harm. Failure (without reasonable excuse) of the licensee to comply with any such requirement is an offence for which the penalties are on summary conviction, a fine not exceeding £5,000 and, on conviction on indictment, to imprisonment for a term not exceeding two years or an unlimited fine or both. Higher penalties will be available on the making of regulations under section 62 for offences involving special waste.

4.47 Section 38(12) provides that any revocation, suspension or requirement imposed during suspension, shall be effected by notice served on the holder of the licence. This provision therefore benefits from the provision on the service of notices in section 160 of the 1990 Act. Any notice must state the time at which the revocation, suspension or requirement is to take effect and, in the event of suspension, the period at the end of which or the event on the occurrence of which, the suspension is to cease. Authorities issuing any notice revoking or suspending a licence should take care that the notice specifies

clearly what activities are affected by the notice; and what requirements and obligations remain in place. Copies of such notices are required to be placed on the public register under **regulation 10(1)(d)** (see paragraph 9.20 of Annex 9).

4.48 The Secretary of State has a reserve power in section 38(7) to give directions to a WRA as to whether and in what manner it should exercise its powers under this section in relation to any licence.

4.49 This section includes provisions that have effect where it appears to the WRA that the licensee has ceased to be a fit and proper person. Any person applying for and obtaining a licence under the 1990 Act will have been subject to the authority's determination of whether or not he was a fit and proper person. However, waste disposal licences granted under the 1974 Act that are current on the appointed day for licences (1 May 1994) will be treated from then on as waste management licences by virtue of section 77(2) (see paragraphs 4.74-4.75 below). A person holding such a licence will not have been subject to the tests of whether or not he is a fit and proper person in relation to that licence. There is no way of determining that such a person has ceased to be a fit and proper person unless, on or after 1 May 1994, he is convicted of a relevant offence or the management of the licensed activities comes into the hands of a different person who appears to the authority not to be technically competent. If neither of those events occurs, therefore, the authority should deem the licence holder to be a fit and proper person in relation to that licence (and that licence only).

Section 39 : Surrender Of Licences

4.50 Section 39 introduces new requirements for the surrender of site licences (mobile plant licences may be surrendered by simply returning them, subject to payment of any outstanding fees or charges). A site licence may only be surrendered if the WRA which granted it accepts the surrender. The Secretary of State has provided more detailed guidance to WRAs under section 35(8) on the discharge of their duties under this section in Waste Management Paper 4 and in Waste Management Paper 26A, Landfill Completion, published by HMSO.

4.51 Section 39(3) and **regulation 2(2)** provide that the holder of a site licence who wishes to surrender it shall apply in writing, giving the information prescribed in Schedule 1 to the regulations, and paying the fee prescribed in the charging scheme made under section 41. **Regulation 2(3)** provides that an applicant need not provide certain information in an application for the surrender of a licence, if he has previously provided that information to the authority in connection with the site licence, whether originally granted under the 1990 or the 1974 Act. A copy of the application and supporting information must be put on the authority's public register (see paragraph 9.32 of Annex 9). Schedule 1 provides that the information and evidence accompanying an application must in all cases include information on the holder of the licence, the location of the site, the number of the site licence, and a description of the different activities which were carried out on the site (whether or not under the terms of the site licence). Information must also be provided on the location on the site of those activities, the period over which they were carried out and an estimate of the total quantities of the different types of waste dealt with at the site. In the case of a landfill, information is also to be provided on the main engineering works

carried out; on the geology, hydrology and hydrogeology of the site and the area surrounding the site; on the production of landfill gas and leachate at the site, the quality of groundwater as affected by the site, and physical stability; where special waste has been deposited, a copy of the records and plans relating to the deposits kept under the Control of Pollution (Special Waste) Regulations 1980 (S.I. 1980 No.1709); and more detailed information on the types and amounts of waste deposited. For sites other than landfills, information is required on the contaminants likely to be present on the site given the activities pursued and the types and quantities of waste dealt with; and a report of the actual contamination present, based on the analysis of samples taken at the site, with details of how many samples were taken and where. **Regulation 2(4)** provides that an applicant is only required to supply information relating to the history of the site before the applicant's involvement with it insofar as that information is known to the applicant.

4.52 Section 39(4) to (7) (39(8) in Scotland) and 39(9) sets out the procedure to be followed by the authority in dealing with an application for surrender of a site licence. The authority is under a duty to inspect the land to which the licence relates, and may require the holder of the licence to furnish further information or evidence. The authority must determine whether it is likely or unlikely (that is, the balance of probabilities) that the condition of the land will cause pollution of the environment or harm to human health. In making that determination, the authority is to consider only matters relating to the condition of the land that are the result of the use of that land for the treatment, keeping or disposal of waste, but must take into account all such activities whether or not they were in pursuance of the licence. If the authority is satisfied that the condition of the land is unlikely to cause pollution or harm then it must, subject to the consultation arrangements described in paragraph 4.53 below, accept the surrender of the licence; otherwise the authority must reject the surrender. The authority must put on its public register details of its findings on inspection of the site, as well as a copy of the certificate of completion, if issued (see paragraph 9.32 of Annex 9).

4.53 Where the authority proposes to accept the surrender it must before it does so refer the proposal to (in England and Wales) the National Rivers Authority; and must consider any representations made to it by that Authority. If the National Rivers Authority requests that the surrender of the licence not be accepted then either authority may refer the matter to the Secretary of State for determination. In Scotland, the WRA (other than where it is an islands authority) must refer the proposed acceptance of the surrender of a licence to the relevant river purification authority; and, where the WRA is not also a district planning authority, the relevant general planning authority. The Scottish WRA must consider any representation that either of the consulted authorities makes; and, if the river purification authority requests that the surrender of the licence not be accepted either authority may refer the matter to the Secretary of State for determination. Details of representations made and of any determination by the Secretary of State must be entered on the register of information open to the public (see paragraph 9.32 of Annex 9).

4.54 Where the WRA accepts surrender of a licence, it must issue to the applicant with its determination a certificate of completion stating that the authority is satisfied that the condition of the land is unlikely to cause pollution or harm; and on the issue of that certificate, the licence ceases to have effect.

Section 39(10) provides that, where the authority has neither issued a certificate of completion nor given notice of rejection within a period of three months (or such longer period as the authority and the applicant may agree) of the date of receipt of an application to surrender a licence, it shall be deemed to have rejected it. Section 39(11) provides a period for representations of twenty-one days (or such longer period as may be agreed in writing) for bodies consulted by the WRA to make representations.

Section 40 : Transfer Of Licences

4.55 Section 40 sets out the procedure for the transfer of licences. Section 40(1) provides that a licence may be transferred whether or not it is partly revoked or suspended. Where the holder of a licence wishes to transfer it to another person, both the holder and the proposed transferee must jointly apply to the WRA which issued the licence for its transfer (section 40(2)). Section 40(3) and **regulation 2(5)**, together with Schedule 2, provide that an application shall be made in writing and shall include the information prescribed in Schedule 2 and be accompanied by the fee prescribed in the charging scheme made under section 41. In addition to basic information about the licence, the location of the site or description of the mobile plant, and on the holder and proposed transferee, the main information required by Schedule 2 is that bearing on whether or not the proposed transferee is a fit and proper person within the meaning of section 74 of the 1990 Act (see paragraphs 4.65-4.73 below, and the Secretary of State's guidance in Chapter 3 of Waste Management Paper No.4). On receiving an application for the transfer of a licence, the authority must ensure that a copy is placed on the public register of information in accordance with **regulation 10(1)(b)** (see paragraphs 9.13-9.14 of Annex 9).

4.56 If the WRA is satisfied that the proposed transferee is a fit and proper person it shall effect a transfer of the licence to the proposed transferee by causing the licence to be endorsed with his name and other particulars as the holder of the licence from such date (to be specified in the endorsement) as has been agreed with the applicants. If the authority has not determined an application for the transfer of a licence within two months of the date of the receipt of the application, or such longer period as the authority and the applicants may agree in writing, the authority shall be deemed to have rejected the application.

Section 41 : Fees And Charges For Licences

4.57 Section 41 provides that fees and charges are to be paid to WRAs in respect of applications for licences, for modification of the conditions, surrender or transfer of licences, and in respect of the holding (subsistence) of licences. WRAs shall pay prescribed amounts to the National Rivers Authority (in England and Wales) and to a river purification authority (in Scotland) when consulting those authorities. The relevant fees and charges, and the manner in which charging is to be administered, are prescribed in a scheme which the Secretary of State has made under section 41 (see paragraphs - of the main Circular). Authorities are required to include information on receipts from fees and charges from waste management licensing in their Annual Reports prepared in compliance with section 67 of the 1990 Act (see paragraph 9.54 of Annex 9).

4.58 Section 41(7) provides that, where it appears to a WRA that a holder of a licence has failed to pay a subsistence charge due, the authority may revoke the licence so far as it authorises the carrying on of the activities specified in the licence. The authority may specify which of the activities specified in the licence are no longer authorised; and any requirements of the licence specified by the authority in revoking the licence shall continue to bind the holder. Before taking steps to revoke the licence under this section, the authority should give the licensee a reasonable opportunity to make good his failure to pay the subsistence charge.

Section 42 : Supervision Of Licensed Activities

4.59 Section 42(1) places a duty on the WRA that granted a licence to take the steps needed to ensure that the licence conditions are complied with and that the activities authorised by the licence do not cause pollution of the environment or harm to human health or become seriously detrimental to the amenities of the locality. In practice, this means that an authority must supervise, monitor and inspect the carrying out of licensed activities in its area. The Secretary of State has issued guidance to authorities in Waste Management Paper 4 which includes guidance on the inspection and monitoring of licensed activities. Section 42(2) further provides that where it appears to the authority that water pollution is likely to be caused by the activities to which the licence relates, the authority must consult the National Rivers Authority or, in Scotland, the relevant river purification authority, as to the discharge of this duty.

4.60 Section 42(3) and (4) provides authorised officers of the WRA with powers to carry out work in an emergency and for the recovery of any costs necessarily incurred.

4.61 Section 42(5) and (6) provide powers for an authority to act where the licence holder is failing to comply with the conditions of his licence, and where, on being served with a notice requiring compliance, the licensee still does not comply. The powers which are provided for authorities in this event enable it to suspend or revoke the licence in part or in full. Subsection (7) applies the provisions governing suspension and revocation of licences in section 38 (see paragraphs 4.42-4.49 above).

4.62 The Secretary of State has a power under section 42(8) to issue a direction to an authority as to the discharge of its functions in respect of supervising licensed activities. WRAs must give effect to any such direction.

Section 43 : Appeals

4.63 Section 43 provides specified persons with a right of appeal to the Secretary of State against a decision of a WRA in respect of licences, and together with **regulations 6 to 9** sets out the procedure for making and determining appeals. Guidance on appeals is contained in Annex 10.

Section 44 : Offence Of Making False Statements

4.64 Section 44 makes it an offence to knowingly or recklessly provide false information in an application for a waste management licence, an application

for the modification of licence conditions, or an application to surrender or transfer a licence, and sets out the penalties which may be imposed.

Section 74 : Fit And Proper Persons

4.65 The provisions of section 74 apply to any function of a WRA that requires it to determine whether a person is or is not a fit and proper person to hold a waste management licence. The relevant functions are conferred under section 36(3) (grant of licences), section 38(1), (2) and (6) (revocation and suspension of licences) and section 40(4) (transfer of licences). Section 74(2) provides that determinations of whether or not a person is a fit and proper person to hold a waste management licence are to be made by reference to the carrying on by him of the activities which are to be authorised by the licence and the fulfilment of the requirements of the licence. Section 74(5) places a duty on authorities to have regard to any guidance issued to them by the Secretary of State with respect to making such determinations; and section 74(6) provides that the Secretary of State may prescribe by regulations the offences that are relevant for section 74(3)(a) and the qualifications and experience required of a person for the purposes of section 74(3)(b). The Secretary of State has issued guidance to authorities on the fit and proper person provisions of the 1990 Act in Chapter 3 of Waste Management Paper 4.

4.66 Section 74(3) lists three criteria ((a) convictions of relevant offences; (b) lack of technical competence; and (c) lack of financial provision). If it appears to the authority that any one of these is satisfied in relation to any person then that person shall be treated as not being a fit and proper person.

4.67 **Regulation 3** prescribes the offences which are relevant for the purposes of section 74(3)(a). Section 74(4) provides that the authority may if it considers it proper to do so in any particular case, treat a person as fit and proper notwithstanding that he or another relevant person (defined in section 74(7)) has been convicted of relevant offence(s).

4.68 **Regulation 4** prescribes that a person is technically competent for the purposes of section 74(3)(b) in relation to types of facility listed in the Table to that regulation if he is the holder of the relevant certificate of technical competence (COTC) awarded by the Waste Management Industry Training and Advisory Board (WAMITAB). The effect of this provision is that gaining the relevant WAMITAB certificate is the only way of demonstrating technical competence in relation to any of the types of facility listed in that regulation.

4.69 WAMITAB certificates are also National/Scottish Vocational Qualifications at levels 3 and 4. They are therefore assessed at the workplace in relation to the actual work of managing the relevant type of facility. To gain a certificate a candidate must demonstrate a wide range of management competencies and technical knowledge. Such a certificate could not be gained in a short period of time; however, in the period immediately after 1 May 1994 there will be a substantial number of existing managers who wish to be able to demonstrate technical competence.

4.70 **Regulation 5** therefore makes transitional provisions. **Regulation 5(1)** disapplies until 10 August 1999 (and in connection with a particular type or types of facility, defined in **regulation 5(1)(b))** **regulation 4** from an existing

manager who is registered with WAMITAB as an applicant for a COTC for that type of facility. "Existing manager" means a person who has been a manager of the relevant type of facility at any time in the twelve months prior to 10 August 1994. **Regulation 5(1)** provides that, until 10 August 1999, an existing manager who has so applied shall be treated as technically competent for the purposes of section 74(3)(b) of the 1990 Act.

4.71 **Regulation 5(2)** disapplies until 10 August 2004 (and in connection with a particular type or types of facility - see **regulation 5(2)(b)) regulation 4** from a person who is aged 55 or over on 10 August 1994 and in the 10 years prior to 10 August 1994 has had at least 5 years' experience as the manager of that type of facility. **Regulation 5(2)** provides that, until 10 August 2004, a manager with such experience shall be treated as technically competent for the purposes of section 74(3)(b) of the 1990 Act.

4.72 Both **regulations 4 and 5** provide a holder of a COTC or, transitionally, a person to whom **regulation 5(1) or (2)** applies, with some flexibility as to the precise type of facility they may manage. Certain certificates also qualify the person to manage a facility of the same type as that to which the COTC relates but of a lower level of complexity. For example that for managing landfill operations involving special waste also qualifies a person to manage all the other types of landfill for which a certificate is required.

4.73 The Secretary of State has issued guidance, in Chapter 3 of Waste Management Paper No 4, on the determination of whether a person is technically competent to manage certain facilities of a type not specified in **regulation 4**, specifically scrap metal yards and small landfills taking only inert waste.

Section 77(2) And The Environmental Protection Act 1990 (Commencement No.15) Order 1994 : Transition From The 1974 Act

4.74 Section 77(2) defines the status of a waste disposal licence granted under the Control of Pollution Act 1974 which is in force when the provisions in Part II of the 1990 Act on waste management licences come into force. A disposal licence in force on that day is to be treated as if it were a waste management site licence and will be subject to the provisions of Part II of the 1990 Act.

4.75 It is important to note that this means that the WRA must treat the operator of a site previously operated under a waste disposal licence as a fit and proper person until such time as circumstances relating to the operation of that site change eg the person or persons responsible for the management of the site changes or a relevant person is convicted of a relevant offence (see also paragraph 4.49 above).

4.76 The Environmental Protection Act 1990 (Commencement No.15) Order 1994, (The Commencement Order) (see paragraphs 2-3 of the main Circular), brings the licensing provisions of the Environmental Protection Act 1990 into force and repeals relevant provisions of Part 1 of the 1974 Act. However it does this with four transitional provisions. Thus these changes are not brought into effect in the cases of: applications for waste disposal licences made before but not determined by 1 May 1994; outstanding appeals against revocation of a waste disposal licence; activities carried out under a 1974 Act licence that will be exempted from waste management licensing when an authorisation is

granted under Part I of the 1990 Act; and activities relating to scrap metal carried out under a 1974 Act licence. The commencement order also provides for certain cases that fall into more than one of these categories.

4.77 The purpose of the provision relating to waste disposal licence applications and appeals is to permit them to be duly determined in accordance with the requirement imposed by the 1974 Act. The commencement order provides that the provisions of the 1990 Act will come into force in each particular case the day after the application is either granted or refused (where there is an appeal this will be the day after the application is granted or refused following the decision on the appeal). The effect is that any person who has an outstanding application for, or an appeal against revocation of, a waste disposal licence at 1 May 1994 will be, on the day after any licence is granted, in the same position as any person who had a current waste disposal licence on 1 May 1994.

4.78 The purpose of the provision relating to processes to be authorised under Part I of the 1990 Act is to facilitate the smooth transition between waste licensing and Part I authorisation of an existing prescribed process in respect of which a waste disposal licence is held, but where a waste management licence will not be required once the process is authorised. The effect of the provision is that these processes will remain regulated by the waste disposal licence until the application for a Part I authorisation is determined. If the authorisation is granted, the waste disposal licence can be surrendered, thus avoiding the procedure (and fee) that would be involved in surrendering a waste management licence - for an activity where such a licence is no longer necessary. If the authorisation is refused, and the process remains licensable, then the waste disposal licence will be treated as a waste management licence from the date of refusal of authorisation.

4.79 The purpose of the provision relating to scrap metal dealers (or in Scotland, metal dealers) is to provide more time for the metal recycling industry to consider the details of the new system; and to make any further representations. The effect of the provision is to apply the requirements of the 1990 Act to the sites operated under 1974 Act licences by scrap metal dealers (and in Scotland metal dealers) 5 months later than they are applied to other waste management activities. The provisions of the 1990 Act will apply to them in full on 1 October 1994.

4.80 Where there is no requirement in law for a person to have a licence for the purpose of enabling him to lawfully carry on an activity, eg because he is covered by an exemption from a licensing requirement, a document which on its face purports to be a licence for that activity cannot in fact be a licence. Section 77(2) cannot therefore convert a subsisting waste disposal licence into a waste management licence where there is no requirement for such a licence.

Local Authority Resolutions : Scotland

4.81 As described in paragraph 4.18 above, section 54 provides for a system of resolutions by WRAs to govern the use of land by waste disposal authorities and, with their consent, by other persons to deposit treat, keep, or dispose of waste. The arrangements have much in common with licensing procedures but one very significant difference is that Section 54 does not provide for there to be

exceptions from the need to have a resolution. The arrangements are as described in the following paragraphs.

4.82 Sections 54(4) and (5) require that, where a waste disposal authority proposes to operate on land in its area which it occupies, the WRA must prepare a statement of conditions which it intends to specify in a resolution and it must (unless it is an Islands Council), refer the proposal and statement to the Health and Safety Executive and, to the river purification authority whose area includes any of the land in question. Furthermore where the WRA is not a district planning authority, it must consult also the general planning authority whose area includes any of the land. In the case of a proposal to operate mobile plant the WRA, if other than an Islands Council, must consult each river purification authority whose area includes the area of the waste disposal authority. Where any part of the land to be used has been notified under section 28(1) of the Wildlife and Countryside Act 1981, Scottish Natural Heritage must also be consulted by the WRA, whether or not it is an Islands Council.

4.83 Under section 54(13) a body consulted in accordance with paragraph 4.82 above has 21 days in which to make representations or such longer period as the WRA and the body agree in writing.

4.84 If a river purification authority, to which a proposal is referred by a WRA, requests the authority not to proceed with the resolution or disagrees with the authority as to conditions to be specified in the resolution, then under section 54(7) either of them may refer the matter to the Secretary of State and the authority may not pass a resolution except in accordance with his decision.

4.85 Under the terms of section 54(8) a resolution may be varied or rescinded by a subsequent resolution by the authority that passed it. In terms of section 54(9) the requirement to prepare and refer a statement of conditions to specified bodies applies to a subsequent resolution except that -

(a) It does not apply to a resolution or proposal which only rescinds a previous resolution; and

(b) the WRA may postpone consultation if it is appropriate to do so because of an emergency; and

(c) the WRA need not consult the river purification authority, the planning authority or the Health and Safety Executive in relation to a subsequent resolution if it considers that the interests of that organisation will be unaffected by it; and

(d) there is no requirement to consult Scottish Natural Heritage.

4.86 Section 54(10) provides that the authority which passed a resolution must rescind it and the waste disposal authority must discontinue the activities if it appears to the WRA:

(a) that the continuation of activities to which the resolution relates would cause pollution of the environment or harm to human health or would be seriously detrimental to the amenities of the locality affected; and

(b) that the pollution, harm or detriment cannot be avoided by modifying the conditions relating to the carrying on of the activities.

4.87 Under section 54(11), if it appears to a river purification authority that activities to which a resolution relates are causing or likely to cause pollution to controlled waters (within the meaning of Part II of the 1974 Act) in the area of the authority, the authority may, without prejudice to the provisions described in the preceding paragraph or to Part II of the 1974 Act, request the Secretary of State to direct the WRA which passed the resolution to rescind it and the waste disposal authority to discontinue the activities. The disposal and regulation authorities then have a duty to comply.

4.88 WRAs have a duty to have regard to any guidance issued to them by the Secretary of State with regard to their functions under (section 54(12). The Secretary of State may also, under section 54(14), make regulations providing conditions which are, or are not, to be included in a resolution; and such regulations may make different provision for different circumstances. It should be particularly noted that under regulation 1(5) the requirements of **regulations 13, 14 and 15**, and Schedule 4, are applied to resolutions made under Section 54. As a result they impose conditions to be included and excluded from resolutions in the same way as they do for licences. See paragraphs 4.27-4.29 above.

4.89 The Secretary of State may also give directions to an authority under section 54(15) as respects any resolution:-

(a) as to conditions which are or are not to be included in the resolution;

(b) as to modifications which it would be appropriate to make in the conditions included in a resolution in relation to paragraph 4.81 above;

(c) as to the rescinding of a resolution.

The authority then has a duty to give effect to the directions.

4.90 Under Section 54(16) any resolution of a waste disposal authority under Part I of the 1974 Act effective immediately before the commencement of section 54 shall have effect as if it were a resolution of a WRA under section 54.

Application of Waste Law to Particular Substances and Materials

Animal By-Products

4.91 A variety of materials arise from the slaughter of animals, nearly all of which are of value to the producer. Meat, offals, hides, wool, feathers etc have a range of important uses once they leave the slaughterhouse; and the effect of the advice in Annex 2 is that transfers of such by-products for use by the rendering or another user industry is not a discard of waste but a transfer for normal commercial use. But there may be circumstances where such materials fall within the definition of controlled waste. Even so, however, a separate control regime regulates the supply and use of a range of animal materials that is not destined for direct human consumption. This control system is in the Animal By-Products Order 1992 (S.I. 1992 No.3303), which itself implements an EC directive. Given that the control regime in the Animal By-Products

Order 1992 meets many of the same objectives as waste management regulations, and for the avoidance of doubt, a number of exceptions have been incorporated in the regulations for persons dealing with the materials covered by, and in accordance with, that Order.

4.92 **Regulation 24(7)** amends the Controlled Waste Regulations 1992 (S.I. 1992 No.588) so that animal waste which is collected and transported in accordance with Schedule 2 to the Animal By-Products Order 1992 shall not be treated as industrial or commercial waste for the purposes of section 34 of the 1990 Act (the duty of care). That schedule to the Order contains a system of control on the transfer of waste which achieves broadly the same object as the duty of care.

4.93 **Regulation 23(3)** amends the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 (S.I. 1991 No.1624) so as to add to the list of persons exempt from the requirement to register as carriers of controlled waste. Exempt persons include any category of persons who is authorised under the Animal By-Products Order 1992 to hold or deal with animal waste or the holder of a knackers yard licence which in England and Wales has the same meaning as in Section 34 of the Slaughterhouses Act 1974 and in Scotland means a licence under Section 6 of the Slaughter of Animals (Scotland) Act 1980. This regulation does not exempt from the need to register any person who carries material in circumstances where it is clearly waste and whose only involvement with animal waste is as a carrier.

4.94 **Paragraph 23** of Schedule 3 prescribes that a waste management licence is not required in the case of keeping or treating animal by-products in accordance with the Animal By-Products Order 1992. This paragraph does not exempt the final disposal of any waste.

Ozone Depleting Substances

4.95 In certain circumstances, ozone depleting substances may come within the ambit of waste law. For example, some waste solvents have ozone depleting potential. However most problems arise with ozone depleting substances that may become gases at or near normal temperatures and pressures. This will most often be the case with chlorofluorocarbons (CFCs) used as refrigerants.

4.96 Waste CFCs typically arise in two main ways. First, when refrigeration or air cooling equipment is discarded the coolant circuit will contain a quantity of CFC. Second, the maintenance of such plant in use sometimes involves the removal of the coolant and its replacement with virgin material.

4.97 The provisions of waste regulation that are, in the opinion of the Departments, relevant are the duty of care on all producers and holders of waste (other than occupiers of domestic premises producing their own household waste) to take all reasonable steps to have their waste treated lawfully; and the prohibition on disposal of controlled waste in a manner likely to cause pollution of the environment or harm to human health. These are sections 34 and 33(1)(c) respectively of the 1990 Act and taken together they oblige the producer and holders of waste CFCs to prevent (as far as is reasonable in the circumstances) their release to the atmosphere through their own actions or those of others.

4.98 Discharging this responsibility would imply draining CFC coolant into pressurised containers and delivering it to an authorised person for the purposes of the duty of care - in this instance, registered carriers of controlled waste, recycling or disposal facilities in possession of a waste management licence, or secure storage facilities exempt from waste management licensing (see paragraphs 5.132-5.140 of Annex 5). CFCs can be disposed of by high temperature incineration. This is the recommended route where the CFCs are heavily contaminated. However the more usual and economic method of dealing with waste CFCs will be recycling.

4.99 The duty of care also requires that a description of the waste adequate to enable it to be handled and treated is transferred with the waste and that both parties to the transfer complete a transfer note recording details of the transfer and keep both documents for two years. Where the waste is transported by a party other than its producer (in this case the producer will be the maintenance engineer, or the person who discarded the refrigerator or other plant) that party will need to be a registered carrier.

4.100 Responsible companies carrying out the maintenance of refrigeration and air cooling plant will already be doing most of what is needed under the duty of care. Some modifications to contract documentation or invoices will probably be needed to provide the documentary audit chain that is a vital requirement under the duty. Waste disposal facilities receiving waste refrigerators and other equipment containing CFC coolant should make arrangements for the CFCs to be extracted and sent for recovery before the equipment is itself recycled or disposed of. Schemes for the recovery of CFCs have been actively encouraged in applications for supplementary credit approvals from local authorities providing such sites (in particular civic amenity sites). In Wales, schemes may be eligible for support under the Welsh Office's Strategic Development Scheme.

4.101 CFCs are also present in the insulating foam of older refrigerators. However in encouraging recycling it is necessary to weigh the benefits against the economic costs. In the Department's view, at the time of issuing this guidance there are no operational processes in Britain which will recover the CFCs in foam at a cost proportionate to the environmental benefit achievable. For so long as the costs of recovering CFCs in foam remain disproportionately high it is not suggested that local authorities or others who receive discarded refrigerators need attempt to remove the CFCs from the foam before disposal.

4.102 CFCs are colourless and odourless and the direct detection of the venting of waste CFCs to atmosphere is therefore virtually impossible. WRAs and other authorities involved in handling waste equipment which should have contained CFCs should be alert for the possibility of such breaches of the law. If they suspect these, they should make use of the duty of care waste transfer note system to investigate the fate of the CFCs; WRAs will wish to consider demanding copies of these records and prosecution where appropriate.

4.103 In the Departments' view, these provisions of waste law are not relevant to the incidental and unintentional emission of ozone depleting substances in the course of normal operation of plant using these substances. Further controls on the emission and recovery of ozone depleting substances will be proposed in due course as part of the process of implementing the forthcoming EC Regulation

on Substances that deplete the Ozone Layer. This is likely to require recovery where practicable of ozone depleting substances for recycling or destruction from commercial refrigeration and air conditioning equipment, equipment containing solvents and fire protection systems.

EXEMPTIONS FROM LICENSING

Introduction

5.1 The provisions of regulations 16 and 17 and of Schedule 3 prescribe exemptions from waste management licensing. These replace corresponding provisions providing exemptions from disposal licensing under section 3 of the 1974 Act. There are significant changes in the exemptions prescribed. These changes arise from the increased scope of licensing under section 33(1) compared with section 3(1) of the 1974 Act, from the effect of implementing EC requirements, from the Government's policies of encouraging recycling and from the Government's general presumption in favour of deregulation. The net effect will be a considerable increase in the activities exempted.

Scotland

5.2 Regulations 16 and 17 and Schedule 3 apply equally in England, Scotland and Wales. In Scotland, licensing under the 1974 Act has continued under the Control of Pollution (Licensing of Waste Disposal) (Scotland) Regulations 1977, S.I. 1977/2006. The Collection and Disposal of Waste Regulations 1988, S.I. 1988/819, in force in England and Wales have not applied or been paralleled in full in Scotland and therefore the starting point for implementation of the new licensing provisions is different. The Control of Pollution (Licensing of Waste Disposal) (Scotland) Regulations 1977 were amended in the Control of Pollution (Licensing of Waste Disposal) (Scotland) Amendment Regulations 1992, S.I. 1992/1368, to add two exemptions. However, the licensing provisions of the 1990 Act and the factors mentioned in paragraph 5.1 of this Annex above are common throughout Great Britain.

Relation To Exemptions Under The 1974 Act

5.3 Section 33 of the 1990 Act replaces both the existing system of disposal licensing and the provision for exemptions in the 1974 Act. Under the 1974 Act six sets of regulations were made which prescribed the exemptions for the purposes of section 3(1) of the 1974 Act. In addition, one set of regulations before these present regulations was made prescribing exemptions under section 33(3) of the 1990 Act. All of these six sets of regulations, insofar as they deal with exemptions, are replaced in these regulations by exemptions under section 33(3) of the 1990 Act:-

The Control of Pollution (Licensing of Waste Disposal) (Scotland) Regulations 1977 (S.I.1977/2006);

The Control of Pollution (Landed Ships' Waste) Regulations 1987 (S.I.1987/402);

The Collection and Disposal of Waste Regulations 1988 (S.I.1988/819);

The Control of Pollution (Landed Ships' Waste) (Amendment) Regulations 1989 (S.I.1989/65);

The Disposal of Controlled Waste (Exceptions) Regulations 1991 (S.I.1991/508);

The Controlled Waste Regulations 1992 (S.I.1992/588 as amended by S.I. 1993/588); (made under the 1990 Act); and

The Control of Pollution (Licensing of Waste Disposal) (Scotland) Amendment Regulations 1992 (S.I.1992/1368).

5.4 References in this Circular to previous provisions have been kept to a minimum. The Table (**Table 5.1**) at the end of this Annex shows which exemptions under the 1974 Act are equivalent to which under the 1990 Act. However, **Table 5.1** should be used only as a general indication, as the detailed scope and provisos of most exemptions and the definitions of terms used in them has changed.

Relevant Provisions Of Section 33

5.5 Guidance on the effect of section 33(1) of the 1990 Act and the activities that are subject to licensing if not exempt is at Annex 4, The Licensing System (general). Section 33(3) of the 1990 Act provides a power for the Secretary of State to make regulations prescribing cases in which section 33(1)(a), (b) or (c) do not apply. This power includes the discretion to disapply either all those provisions or only selected subsections.

5.6 In making exemptions under section 33(3), section 33(4) requires the Secretary of State to have regard to the expediency of excluding from the controls imposed by waste management licensing three categories of case:-

(a) deposits which are small enough or of such a temporary nature that they may be excluded;

(b) any means of treatment or disposal which are innocuous enough to be excluded; and

(c) cases for which adequate controls are provided by another provision.

Relation To The Directive

5.7 Guidance on the Directive is at Annex 1, The Framework Directive. Exemptions are affected by the provisions of the Directive. Under Article 11(1) of the Directive, Member States may only exempt from permits:-

(a) establishments or undertakings carrying out their own waste disposal, that is, the operations listed in Schedule 4 Part III of the Regulations, at the place of production; and

(b) establishments or undertakings that carry out waste recovery, that is, the operations listed in Schedule 4 Part IV of the Regulations.

5.8 In either case the exemption may only be conferred:

(a) provided that the competent authorities have adopted general rules for each type of activity laying down:-

(i) the types and quantities of waste; and

(ii) the conditions under which the activity may be exempted; and

(b) the types or quantities of waste and methods of disposal or recovery are such that the conditions of Article 4 are complied with.

5.9 The Regulations contain provisions to ensure that these requirement are met. Where activities subject to the Directive are exempted in Schedule 3, the specification of each individual exemption limits the quantity and type of waste

that may be involved, either explicitly or arising implicitly from the nature of the exemption. Conditions to ensure that the disposal or recovery activity is carried out without harm to health or the environment are reinforced by the continued application of section 33(1)(c) of the 1990 Act to all the activities exempted in Schedule 3. Finally, there is an overriding provision in regulation 17(4) to the effect that the exemptions in Schedule 3 only apply if the types or quantities of waste and methods of disposal or recovery are consistent with the need to attain the objectives mentioned in paragraph 4(1)(a) of Part I of Schedule 4 (these are the conditions of Article 4 of the Directive).

5.10 Activities that are outside the scope of the Directive may be and are exempted in Schedule 3 without necessarily meeting all the detailed requirements of Article 11 of the Directive, especially as to the limitation of quantities and types of waste. Such activities are either:-

(a) activities not carried out by establishments or undertakings; organisations may be regarded as "establishments or undertakings" but private individuals acting in their personal capacity may not; or

(b) exemptions of activities not within the scope of the Directive; an operation may be licensable within section 33(1) of the 1990 Act yet be neither disposal nor recovery within the meaning of those terms in the Directive; the clearest example is the storage of waste where this amounts to deposit within the scope of section 33(1)(a) but is neither a disposal nor recovery operation.

5.11 The effect of the Directive in limiting the scope for exemptions reinforces the Government's priorities on waste management licensing: the permitted exemptions serve to encourage the management of waste at the point of production and the recovery of waste.

Relation To The Duty Of Care

5.12 Under section 34(1) of the 1990 Act, the duty of care, waste may be transferred lawfully only to an "authorised person" (defined in section 34(3)) or to a person for "authorised transport purposes" (defined in section 34(4)) of the 1990 Act. Not all persons to whom waste is consigned have hitherto fitted readily into one or other of these categories. Those who are neither carriers nor authorities must be either licensed (section 34(3)(b)) or exempt from licensing (section 34(3)(c)) "by reason of regulations under subsection (3)" of section 33. These regulations provide greatly increased exemptions under section 33(3), and in doing so bring many more persons who legitimately receive or hold waste within the list of "authorised persons".

Recycling And Reuse

5.13 The Government have set as a policy objective the encouragement of the reuse and recycling of waste.

5.14 Schedule 3 therefore makes as many exemptions from waste management licensing of reuse or recycling and activities leading to reuse or recycling as are consistent with environmental protection.

Regulation 16 - Exclusion of Activities under other Control Regimes from Waste Management Licensing

5.15 **Regulation 16** provides that the carrying on of any of the four cases of waste recovery or disposal activities specified in **regulation 16(1)** is excluded from all the provisions of section 33(1). These are those cases where the prevention of pollution of the environment or harm to human health is fully dealt with by other legal controls outside Part II of the 1990 Act, and, unlike the exempt activities in Schedule 3, it would be superfluous to apply the safeguard in section 33(1)(c). The exclusions in **regulation 16**, also unlike most of the exemptions in Schedule 3, apply equally to activities involving special waste.

Prescribed Processes For Central And Local Control

5.16 **Regulation 16** and Schedule 3 confer exclusions and exemptions for certain processes controlled under Part I of the 1990 Act. Processes for central and local control, exceptions and the timetable for authorisations are designated in the Environmental Protection (Prescribed Processes and Substances) Regulations 1991 (S.I.1991/472, as amended by S.I. 1991/836, 1992/614, 1993/1749 and 1993/2405), "the 1991 Regulations". A transitional provision in Article 2 of the Commencement Order deals with the position of processes designated for central or local control which have not yet reached their prescribed date. The subject of the boundary between Parts I and II of the 1990 Act and the effect of exemptions on it is dealt with separately in Chapter 1 of Waste Management Paper No.4.

5.17 It should be noted that waste management licensing exemptions and exclusions do not necessarily remove from waste management licensing all activities at the site of a process controlled under Part I of the 1990 Act. The actual extent of an exemption or exclusion is only what is specified. **Regulation 16(2)** has the effect that the two exclusions in regulation 16 involving Part I processes (that is, **regulation 16(1)(a) and (b)**) do not apply to the final disposal of controlled waste by deposit in or on land, reflecting the wording of section 28(2) of the 1990 Act.

Prescribed Processes For Central Control : Regulation 16(1)(a)

5.18 **Regulation 16(1)(a)** excludes any recovery or disposal of waste where this is an authorised process or to the extent that it forms part of an authorised process that is subject to central control.

Waste Incineration Subject To Local Control : Regulation 16(1)(b)

5.19 **Regulation 16(1)(b)** excludes the disposal of waste by incineration where this is an authorised process or to the extent that it forms part of an authorised process that is subject to local control under paragraph (a) of Part B of Section 5.1 of Schedule 1 to the 1991 Regulations. That paragraph of the 1991 Regulations, as amended by S.I. 614/1992, specifies:

> "The destruction by burning in any incinerator other than an exempt incinerator of any waste, including animal remains, except where related to a Part A process."

5.20 The 1991 Regulations go on to define "exempt incinerator" as:-

"any incinerator on premises where there is plant designed to incinerate waste, including animal remains, at a rate of not more than 50 kgs per hour, not being an incinerator employed to incinerate clinical waste, sewage sludge, sewage screenings or municipal waste (as defined in Article 1 of EC Directive 89/369/EEC); and for the purposes of this section, the weight of waste shall be determined by reference to its weight as fed into the incinerator".

5.21 The exclusion only applies insofar as the activity results in releases of substances into air. This proviso reflects the scope of local authority air pollution control, which regulates only the release of substances into the air; other aspects (including the storage and handling of wastes and residues) are regulated by a waste management licence. The same control regimes apply to incinerators designed to burn waste at a rate of not more than 50 kg per hour and burning clinical waste, sewage sludge, sewage screenings or municipal waste.

Other exclusions

Disposal Of Liquid Waste Subject To Consents : Regulation 16(1)(c)

5.22 **Regulation 16(1)(c)** deals with the disposal of liquid waste subject to consents under two provisions: Chapter II of Part III of the Water Resources Act 1991 and Part II of the 1974 Act. Such consents authorise discharges to controlled waters, that is territorial waters within the three mile limit, coastal waters, inland waters and ground water. ("Inland waters" are defined in regulation 1(3), see paragraphs 5.251 and 5.252 of this Annex). The paragraph excludes from waste management licensing the disposal of liquid waste provided that the activity is under such a consent. Liquid waste is not defined, it bears its normal meaning.

5.23 Note that this exclusion does not apply to the discharge of waste to a sewer under a discharge consent. Such discharges are waste waters, within the meaning of Article 2 of the Directive, subject to other legislation. They are not therefore a disposal operation and are subject neither to the Directive nor to waste management licensing. The status of waste waters and waste in liquid form is discussed in Annex 1, The Framework Directive, paragraph 1.19.

Deposits Of Waste At Sea : Regulation 16(1)(d)

5.24 The deposit of waste at sea is regulated by the Food and Environment Protection Act 1985. Further advice on that Act and its interaction with waste management licensing is provided in Annex 3.

5.25 **Regulation 16(1)(d)(i)** excludes from waste management licensing the recovery or disposal of waste where this is an operation or forms part of an operation that is the subject of a licence under Part II of the Food and Environment Protection Act 1985. Part II of that 1985 Act deals with the licensing of deposits at sea including waste deposited from vessels, hovercraft or marine structures and under the sea bed. The definition of "land" for the purposes of Part II of the 1990 Act in section 29(8) includes land covered by

waters above low water mark, so this exemption prevents the duplication of controls.

5.26 **Regulation 16(1)(d)(ii)** similarly excludes from waste management licensing the recovery or disposal of waste where this would be subject to licensing under Part II of the Food and Environment Protection Act 1985, but is exempted by any order made under section 7 of the Food and Environment Protection Act 1985. The present such order is the Deposits in the Sea (Exemptions) Order 1985.

Exemptions from Control : Regulation 17

5.27 **Regulation 17** uses the Secretary of State's powers in section 33(3) of the 1990 Act to prescribe exemptions from control by waste management licensing.

Regulation 17(1)

5.28 **Regulation 17(1)** provides that the carrying on of any exempt activity is exempted only from the prohibition of unlicensed waste management in section 33(1)(a) and (b). In these cases the safeguard in section 33(1)(c) continues to apply. "Exempt activity" is defined in **regulation 1(3)** as any of the activities in Schedule 3; this does not refer to any activity that is excluded by reason of **regulation 16** or to any activity that is not licensable for any other reason than its exemption by **regulation 17** and Schedule 3.

5.29 The prescription of these exemptions is subject to the further provisions set out in **regulation 17(2) to (5) and regulation 18.**

Regulation 17(2)

5.30 **Regulation 17(2)** introduces the proviso that specified exemptions do not apply unless:-

(a) the activity is carried on by the occupier or with the consent of the occupier of the land where the activity is carried on; or

(b) the person carrying on the activity is entitled to do so on that land for some other reason which renders the consent of the occupier superfluous (for example he may be entitled to act by reason of being the owner of the land or by reason of statute).

5.31 This proviso applies to Schedule 3 **paragraphs 4, 7, 9, 11, 13, 14, 15, 17, 18, 19, 25, 37, 40, and 41.**

Regulation 17(3)

5.32 **Regulation 17(3)** provides that, unless otherwise stated, **regulation 17(1)** does not apply to the carrying on of an exempt activity insofar as it involves special waste. The effect is that most activities are subject to licensing where the waste managed is special waste. Special waste presents the greatest threat to the environment and human health, and its uncontrolled management

is only to be permitted where the activity is inherently innocuous or adequately circumscribed.

5.33 The exceptions to this general provision are specified where they occur in individual exemptions within Schedule 3, **paragraphs 17, 36, 38, 39, 41, 42 and 43.**

Regulation 17(4)

5.34 **Regulation 17(4)** makes provisions to ensure consistency with the objectives in Schedule 5, Part I, **paragraph 2(a)**. This provision applies where an establishment or undertaking is carrying on an activity involving the disposal or recovery of waste. In such a case, the types and quantities of waste submitted to the exempt activity, and the methods of disposal or recovery, must be consistent with the need to attain these objectives. If they are not consistent, then the activity is not exempt. The objectives are derived from the Directive, and guidance on their interpretation and in particular on the need to have regard to proportionality is in Annex 1 : The Waste Framework Directive. The objectives are:-

(a) ensuring that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and in particular without:-

(i) risk to water, air, soil, plants or animals; or

(ii) causing nuisance through noise or odours; or

(iii) adversely affecting the countryside or places of special interest.

5.35 **Regulation 17(4)** makes explicit the need for such exempt activities to be consistent with the objectives, but in practice this is unlikely to invalidate exemptions that would otherwise be permitted; inconsistent activities are likely to be already caught by other provisions. It is likely that carrying out an activity using methods of disposal or recovery inconsistent with the objectives would fall foul of section 33(1)(c). In other cases, where excessive quantities or dangerous or harmful types of waste were subject to the activity, they would exceed the limits as to types and quantities of wastes specified in individual exemptions in Schedule 3.

Regulation 17(5)

5.36 **Regulation 17(5)** provides for the interpretation of a "secure" container, lagoon, or place in Schedule 3. It is to be interpreted as meaning that all reasonable precautions are taken to ensure that the waste kept in it cannot escape and that members of the public cannot have access to that waste. This does not necessarily exclude the public from access to the container or place, especially for the purpose of depositing waste there. Where Schedule 3 refers to "secure storage", storage in a secure container, lagoon or place is meant.

5.37 **Regulation 18**, which requires the registration of establishments and undertakings carrying out exempt activities, is dealt with separately in Annex 6: The Registration of Exemptions.

Schedule 3 : Activities exempt from Waste Management Licensing

5.38 Schedule 3 lists those activities that are exempted by **regulation 17** from the requirement to have a waste management licence. Each exemption is only effective provided that the activity meets the requirements of **regulation 17** and, where applicable, **regulation 18** and is within the terms specified in that exemption, for example as to the type and quantity of waste involved.

5.39 In interpreting quantity limits on individual exemptions it should be noted that where a quantity is exceeded, the entire activity becomes licensable, not only the quantity dealt with in excess of the limit. In interpreting time limits on the storage of waste, it should be noted that a limit on the time for which waste may be stored does not preclude the continuous use of a site for waste storage for longer, it is the turnover of waste at the site that must be within the time limit.

5.40 In cases where storage or other associated activities are exempted, particular attention should be paid to the wording used to describe any necessary connection between the storage and any other activity. Where the exemption is limited to the storage of waste that is "intended to be" subject to another operation, this permits storage only before the operation, not the storage of that waste thereafter, (although in practice what emerges from a recovery operation may in many cases no longer be waste). Where the exemption applies to the storage of waste "in connection with" another operation, that exemption applies to the storage of that waste both before and after that operation. It would not apply to any other waste than that specified waste, such as waste arising from the operation, nor would it extend to the subsequent disposal by deposit of waste.

The Recovery or Reuse of Waste

5.41 A number of exemptions apply only in circumstances involving or leading to recovery. Where only "recovery" is specified, this is limited, as defined in **regulation 1(3)**, to the types of recovery operations listed in Part IV to Schedule 4. Where an exemption applies to any circumstance involving "recovery or reuse" this means that the intended destinations of the waste need not be so limited, provided that they are not disposal.

Recovery Operations Related To Local Control Processes

5.42 **Paragraphs 1-3 and 24** provide exemptions for certain recovery activities that are also processes designated for local control under Part I of the 1990 Act. In each case the activity is specified (in some cases related activities, notably storage, are also specified), and the exemption is related to a part of Schedule 1 of the 1991 Regulations. The exemption applies insofar as the activity falls within that prescription, either by being a prescribed process or by being part of a prescribed process. Paragraphs 5.16-5.17 of this Annex, above, are relevant to these exemptions.

Glass Manufacture And Production : Schedule 3 Paragraph 1

5.43 **Paragraph 1(1)** exempts the use of waste glass in glass manufacture and production. The exemption applies only where the use is under an authorisation under Part I of the 1990 Act. The use must be a part of a process within Part B of Section 3.5 (glass manufacture and production) of Schedule 1 to the 1991 Regulations. The paragraph adds a quantity limit: the exemption only applies in a case where no more than 600,000 tonnes of waste glass are used in any twelve month period.

5.44 **Paragraph 1(2)** additionally exempts the storage of the waste glass at the place where it is intended to be used in the exempt manufacture or production.

5.45 There is special provision for the registration of establishments and undertakings carrying out this exempt activity in **regulation 18**, see Annex 6: The Registration of Exemptions.

Scrap Metal Furnaces : Schedule 3 Paragraph 2

5.46 **Paragraph 2(1)** exempts the operation of a scrap metal furnace. The exemption applies only where the operation is under an authorisation under Part I of the 1990 Act. The operation must be or form part of a process within paragraph (a), (b) or (d) of Part B of Section 2.1 (iron and steel) or paragraph (a), (b) or (e) of Part B of Section 2.2 (non-ferrous metals) of Schedule 1 to the 1991 Regulations. The paragraph includes a quantity limit: the exemption only applies in a case where the furnace has a designed holding capacity of less than 25 tonnes.

5.47 **Paragraph 2(2)** additionally exempts the loading or unloading of such a furnace, in connection with an operation covered by the exemption in **paragraph 2(1).**

5.48 **Paragraph 2(3)** further exempts the storage of scrap metal at the place where there is such a furnace. The scrap metal must be intended to be used in an operation covered by the exemption in **paragraph 2(1).** However, at a place used as a scrap metal dealer's business, or, in Scotland, a metal dealer's business, only the exemptions for the operation of the furnace (Schedule 3 **paragraph 2(1)**) and its loading and unloading (Schedule 3 **paragraph 2(2)**) apply; at such sites the exemption of scrap metal storage is not to apply. The interpretation of "scrap metal", "scrap metal dealer's business", and "metal dealer's business" are governed by **regulation 1(3) and (4)**, see paragraphs 5.255-5.257 of this Annex.

5.49 There is special provision for the registration of establishments and undertakings carrying out this exempt activity in regulation 18, see Annex 6: The Registration of Exemptions.

Burning As Fuel : Schedule 3 Paragraph 3

5.50 **Paragraph 3** exempts the carrying on of certain operations all involved with the burning of certain wastes as fuel. **Paragraph 3(a)-(e)** lists the operations that are exempt.

5.51 **Paragraph 3(a)** exempts the burning of any of the specified wastes as fuel. The wastes specified are straw, poultry litter, wood, waste oil and solid fuel manufactured from waste by a process involving the application of heat. ("Waste oil" is defined in **regulation 1(3)**) as "any mineral-based lubricating or industrial oil which has become unfit for the use for which it was originally intended and, in particular, used combustion engine oil, gearbox oil, mineral lubricating oil, oil for turbines and hydraulic oil".) The exemption applies only where the burning is carried out under an authorisation under Part I of the 1990 Act. This operation must be or form a part of a process within Part B of any Section of Schedule 1 to the 1991 Regulations.

5.52 **Paragraph 3(b)** provides an associated exemption for the storage of any of the wastes in **paragraph 3(a)** except waste oil. The storage may be on any premises, not limited to the place of origin or use, but the storage must be secure, as interpreted in **regulation 17(5)**, and the waste must be intended to be burned under **paragraph 3(a)**. **Paragraph 3(b)** also provides an exemption for the feeding of these wastes into the appliance in which they are burned under **paragraph 3(a)**.

5.53 **Paragraph 3(c)** provides a more restricted associated exemption for the storage of waste oil. The storage must be at the place where it is produced, the storage must be secure, as defined in **regulation 17(5)** and the waste must be intended to be burned under **paragraph 3(a)**. Under the exemption no waste oil may be stored for longer than twelve months.

5.54 **Paragraph 3(d)** exempts the burning of tyres as fuel. The exemption applies only where the burning is carried out under an authorisation under Part I of the 1990 Act. This operation must be a part of a process within Part B of Section 1.3 (combustion processes) of Schedule 1 to the 1991 Regulations. **Paragraph 3(d)** also provides an exemption for the shredding and feeding of tyres into the appliance in which they are burned under this paragraph.

5.55 **Paragraph 3(e)** provides a restricted associated exemption for the storage of waste tyres. The storage may be on any premises, not limited to the place of origin or use, but the storage must be secure, as interpreted in **regulation 17(5)**, and the exemption is subject to four further restrictions:-

(a) the waste tyres must be intended to be shredded, fed or burned in an operation within the scope of **paragraph 3(d)**;

(b) the waste tyres must be stored separately, that is, separately both from other wastes and from other materials; separate storage does not preclude the use of the same site for waste tyres and other storage, but there must be some separation between them, whether a barrier or simply of distance;

(c) no waste tyres may be stored for longer than twelve months;

(d) a total of no more than 1,000 tyres may be stored on the premises at any one time; this does not permit separate piles each of up to 1,000 tyres on the same premises.

5.56 There is special provision for the registration of establishments and undertakings carrying out this exempt activity in regulation 18, see Annex 6: The Registration of Exemptions.

Containers

Packaging Or Containers : Schedule 3 Paragraph 4

5.57 **Paragraph 4(1)** exempts the cleaning, washing, spraying or coating of waste consisting of packaging or containers so that it or they can be re-used. The total quantity of that waste so dealt with at any one place must not exceed 1000 tonnes in any period of seven days.

5.58 This exemption is intended to permit the return and re-use after recovery of whole containers and packaging. Recycling the materials from which packaging or containers are made does not fall within the scope of this exemption, but may partly fall within Schedule 3 **paragraphs 11 and 14.**

5.59 **Paragraph 4(2)** provides an exemption for the associated storage of such wastes in connection with their recovery under the terms of **paragraph 4(1).** The storage may only take place at the place where the exempt treatment is carried on. There are two separate quantity limits, and if either is exceeded, the exemption does not apply:-

(a) the total quantity of any such waste stored at the place of treatment may not exceed 1,000 tonnes at any one time; and

(b) not more than 1 tonne may be dealt with in any week, in the special case of metal containers used for the transport or storage of any chemical.

5.60 There is special provision in **regulation 18** for the registration of establishments and undertakings carrying out this exempt activity in some circumstances, see Annex 6 : The Registration of Exemptions.

Burning as fuel other than under local or central control

Burning Waste As Fuel In Small Appliances : Schedule 3 Paragraph 5

5.61 **Paragraph 5(1)** exempts the burning of any waste as fuel in an appliance with a net rated thermal input of less than 0.4 megawatts. Where more than one appliance is used together, their aggregate net rated thermal input must be less than 0.4 megawatts. 0.4 megawatts is the lower limit of local control processes using wastes as fuel prescribed in paragraph (e) of Part B of Section 1.3 (combustion processes) of Schedule 1 to the 1991 Regulations. The use of wastes as fuel in larger appliances is either exempt under Schedule 3 paragraph 3 (straw, poultry litter, wood, tyres or waste oil) or paragraph 6 (waste oil in mobile engines), or, if the waste is not within one of those prescriptions, is licensable.

5.62 **Paragraph 5(2)** provides an exemption for the associated storage of such wastes if they are intended to be submitted to burning under the terms of **paragraph 5(1).** The storage must be "secure" as interpreted in **regulation 17(5).**

5.63 **Paragraph 5(3)** defines "net rated thermal input" for the purposes of this paragraph only, as the rate at which fuel can be burned at the maximum continuous rating of the appliance multiplied by the net calorific value of the fuel and expressed as megawatts thermal. This follows the definition in Part B of section 1.3 (combustion processes) of Schedule 1 to the 1991 Regulations.

Burning Waste Oil As Fuel In An Engine : Schedule 3 Paragraph 6

5.64 **Paragraph 6(1)** exempts the burning of waste oil as a fuel in an engine. Waste oil is defined in **regulation 1(3)**, see paragraph 5.51 of this Annex. The engine must be that of an aircraft, hovercraft, mechanically propelled vehicle, railway locomotive, ship or other vessel. The paragraph provides that the total amount of such waste oil burnt may not exceed 2,500 litres an hour in any one engine. The exemption is necessary because the use of waste oil as fuel in these types of engine is not within the description of Part B of Section 1.3 (combustion processes) in Schedule 1 to the 1991 Regulations, and so the exemption in Schedule 3 **paragraph 3(a)(ii)** of these Regulations does not apply.

5.65 **Paragraph 6(2)** further exempts the storage of waste oil that is intended to be burnt under the exemption in **paragraph 6(1)**. The storage must be in a secure container, as interpreted in **regulation 17(5)**.

The recovery or use of waste on land

Waste For The Benefit Of Land : Schedule 3 Paragraph 7

5.66 This paragraph exempts the deposit of certain specific wastes in certain places, where that deposit results in benefit to agriculture or ecological improvement. The exemption is in two parts: **paragraph 7(1), 7(3)** and Table 2 govern the spreading of wastes on land which is used for agriculture; and **paragraph 7(2), 7(3)** and Part I of Table 2 govern the spreading of wastes on specified land.

5.67 **Paragraph 7(1)** exempts the spreading of specified wastes on land used for agriculture (as interpreted in **paragraph 7(8)**). The specified wastes are any of those in Table 2.

5.68 **Paragraph 7(2)** exempts the spreading of specified wastes on specified categories of land. The specified wastes are those in Part I of Table 2. The specified categories of land, the cases where the specified wastes might legitimately be applied to improve land, are:-

(a) operational land of a railway, light railway, internal drainage board or the National Rivers Authority; the definition of "operational land" is in regulation 1(3), see paragraph 5.253 of this Annex; "internal drainage board" is interpreted in paragraph 7(9); or

(b) land which is forest, woodland, park, garden, verge, landscaped area, sports ground, recreation ground, churchyard or cemetery; none of these terms have particular definitions in these Regulations, they bear their ordinary meanings.

5.69 Part I of Table 2 lists the wastes permitted to be spread on a wide range of land under either paragraph 7(1) or 7(2):-

(a) waste soil or compost; and

(b) waste wood, bark, or other plant matter.

5.70 Part II of Table 2 lists a wide range of wastes permitted to be spread only on land used for agriculture under paragraph 7(1):-

(a) waste food, drink or materials used in or resulting from the preparation of food or drink;

(b) blood and gut contents from abattoirs;

(c) waste lime;

(d) lime sludge from cement manufacture or gas processing;

(e) waste gypsum;

(f) paper waste sludge, waste paper and de-inked paper pulp;

(g) dredgings from any inland waters; "inland waters" is defined in **regulation 1(3)**, see paragraphs 5.251 and 5.252 of this Annex; note that Schedule 3 **paragraphs 9 and 25** provide further exemptions in certain circumstances for the treatment, deposit and spreading of dredgings;

(h) textile waste;

(i) septic tank sludge; as interpreted in **paragraph 7(10)**;

(j) sludge from biological treatment plants; the materials and substances are not specified, this includes any sludge resulting from the biological treatment of wastes; and

(k) waste hair and effluent treatment sludge from a tannery.

5.71 In the interpretation of this exemption and of the lists in Table 2 in particular, it should be remembered that these provisions govern only materials and substances that are controlled waste. The inclusion or exclusion of something in or from Table 2 does not imply anything about the circumstances in which such a thing is or is not waste. The Departments' advice in Annex 2 : The Definition of Waste should be considered in deciding in particular circumstances whether a material spread on land for beneficial purposes is waste at all. Further, it should be remembered that materials originating from agricultural premises, even if those materials are wastes, are not controlled waste within the scope of these Regulations.

5.72 **Paragraph 7(3)** sets three provisos, all of which must be met if the exemptions in **paragraph 7(1) and (2)** are to apply.

5.73 **Paragraph 7(3)(a)** provides that not more than 250 tonnes per hectare of any of the specified wastes may be spread in any period of twelve months. Where more than one type is applied, the quantities applied must be taken together. A higher limit applies in the case of dredgings from inland waters only, of which up to 5,000 tonnes per hectare may be spread. These limits are reserve ceilings. On most land and for most of these wastes quantities approaching these figures are most unlikely to be within the other constraints of the exemption.

5.74 **Paragraph 7(3)(b)** provides that the exemption only applies where the activity in question (the spreading and associated storage) results in benefit to agriculture or ecological improvement. The phrase "benefit to agriculture or ecological improvement" is taken from the list of recovery operations in the Directive, Annex IIB R10, which is transposed into these Regulations as Schedule 4 Part IV **paragraph 10**. The phrase is not defined but bears the same meaning as in the Directive. There are limits to what may be considered as resulting in such benefit or improvement, for example it may not include the

bulk application of waste simply to raise the level of land. All application of waste materials to soil should be in quantities and at frequencies which convey positive benefits. In order to keep within the terms of the exemption it will be essential to establish on the basis of properly qualified advice what application rate is appropriate for each waste material, each soil and each site. The phrase should be interpreted according to the type of wastes and the category of land involved. On land not used for agriculture, only ecological improvement may be relevant.

5.75 **Paragraph 7(3)(c)** applies only in cases where the waste is spread:-

(a) on land used for agriculture; and

(b) by an establishment or undertaking.

5.76 In such cases exemption is only effective provided that the establishment or undertaking furnishes prescribed particulars to the WRA for the area where the waste is to be spread. Note that this responsibility rests on the establishment or undertaking carrying out the spreading, who is not necessarily the owner or occupier of the land.

5.77 Two cases are provided for. In the first case, **paragraph 7(3)(c)(i)**, where there is to be a single spreading, the establishment or undertaking must furnish the particulars in advance of carrying out the spreading. In the second case, **paragraph 7(3)(c)(ii)**, where there is to be regular or frequent spreading of wastes of a similar composition, the establishment or undertaking must furnish the particulars every six months; except that, where the waste to be spread is of a description different from that last notified, the particulars must be furnished in advance of carrying out the spreading, as if for a single spreading. In practice it would be open to an establishment or undertaking to furnish particulars more frequently than every six months if that were convenient to them, simply by regarding the next spreading as a single spreading or as the beginning of a new series.

5.78 **Paragraph 7(4)** prescribes the particulars to be furnished under **paragraph 7(3)(c)**. Unless otherwise stated, these apply equally to a single spreading or a series of spreadings. The establishment or undertaking must furnish the following particulars:-

(a) under **paragraph 7(4)(a)**,its name, address and telephone or fax number (if any);

(b) under **paragraph 7(4)(b)**, a description of the waste (to be spread under the exemption), including a statement of the process from which it arises;

(c) under **paragraph 7(4)(c)**, where the waste is being stored or, if it is to be moved for further storage before being spread, or is stored in different places, all the places where it will be stored, until it is spread;

(d) under **paragraph 7(4)(d)**, an estimate of the quantity of the waste; in a case falling under **paragraph 7(3)(c)(ii)** (where there are to be regular or frequent spreadings of wastes of a similar composition), this estimate must be of the total quantity of waste to be spread during the next six months; and

(e) under **paragraph 7(4)(e)**, where it is intended to spread the waste; and also the date when it is to be spread, or, in a case falling under **paragraph 7(3)(c)(ii)** (where there are to be regular or frequent spreadings of wastes of a similar composition), the frequency of spreading rather than the date.

5.79 **Paragraph 7(5)** provides an exemption for the storage of wastes, except septic tank sludge, that are intended to be spread under the terms of **paragraph 7(1) or (2)**, but only at the place where they are to be spread. (Note also the additional restrictions on the storage of waste in liquid form in **paragraph 7(6)**). This associated storage exemption is not so limited as to require the waste to be spread directly onto the land. It would permit storage of a pile of waste in such a place as a corner of the field where it was to be spread, or elsewhere within the same premises, for example in another field or yard on the same farm.

5.80 **Paragraph 7(6)** specifies the circumstances in which the associated exemptions for storage applies to waste in liquid form. Liquid waste is not defined, it is to bear its normal meaning. Waste in liquid form may be spread directly on the land, in the same circumstances as non-liquid waste, and liquid septic tank sludge may be stored within the terms of **paragraph 7(7)**. However, notwithstanding **paragraph 7(5)**, **paragraph 7(6)** provides that liquid waste other than septic tank sludge may only be stored (prior to its spreading on land under the terms of the exemption) provided that:-

(a) it is stored in a secure container or lagoon ("secure" as interpreted in **regulation 17(5)**); and

(b) no one container or lagoon has more than 500 tonnes in it at a time.

5.81 **Paragraph 7(7)** provides a complementary exemption for the storage of septic tank sludge that is intended to be spread under the terms of **paragraph 7(1)**. Septic tank sludge may be stored only in a lagoon or other form of container that is secure ("secure" as interpreted in **regulation 17(5)**). Further, dewatered sludge only (a dry cake material capable of being stacked) may be stored in a secure place.

5.82 **Paragraph 7(8)** provides that "agriculture" in this paragraph and in Schedule 3 **paragraph 8(1)** is defined by reference to the Agriculture Act 1947 (section 109(3)), and in Scotland, the Agriculture (Scotland) Act 1948 (section 86(3)). (Note that "agricultural land" has a different definition in Schedule 3 **paragraph 8(2)**). The definition (for the purposes of Schedule 3 **paragraph 7**) of "agriculture" is a wide and inclusive one:-

> "'agriculture' includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes".

5.83 **Paragraph 7(9)** provides that "internal drainage board", used in **paragraph 7(1)(a)** and in Schedule 3 **paragraph 30** has the meaning given by section 1(1) of the Land Drainage Act 1991, section 1(1). In that section:-

"1.-(1) For the purposes of the drainage of land, there shall continue to be-

(a) districts, known as internal drainage districts, which shall be such areas within the areas of the regional flood defence committees as will derive benefit, or avoid danger, as a result of drainage operations; and

(b) boards, known as internal drainage boards, each of which shall be the drainage board for an internal drainage district;

and, subject to the following provisions of this Part, the internal drainage districts which were such districts immediately before the coming into force of this section, and the boards for those districts, shall continue as such districts and boards."

5.84 **Paragraph 7(9)** further provides that in this paragraph and in Schedule 3 **paragraph 30** an internal drainage board shall be deemed to be a statutory undertaker for the purposes of the definition of "operational land", which is defined in **regulation 1(3)**, see paragraphs 5.253 and 5.254 of this Annex.

5.85 **Paragraph 7(10)** defines "septic tank sludge" by reference to the Sludge (Use in Agriculture) Regulations 1989 ("the 1989 Regulations") so that this exemption may only apply to septic tank sludge whose use is controlled by those Regulations. The status of septic tank sludge under the 1989 Regulations and waste management licensing is considered in paragraph 5.86 of this Annex. "Septic tank sludge", is defined in the 1989 Regulations as:-

"residual sludge from septic tanks and similar installations for the treatment of sewage".

5.86 There is special provision for the registration of establishments and undertakings carrying out this exempt activity in **regulation 18(7)**, see Annex 6 : The Registration of Exemptions. The effect is that establishments and undertakings spreading waste on land used for agriculture within the scope of the exemption need take no separate action to register. However, establishments and undertakings spreading waste on other land still need to register the exemption in the normal way set out in Annex 6.

Sludge And Septic Tank Sludge On Land : Schedule 3 Paragraph 8

5.87 The supply and use of sewage sludge on "agricultural land" are already controlled by the 1989 Regulations. Similarly, in the case of septic tank sludge the 1989 Regulations control use (though in that case not supply). The supply and use of sludge and the use of septic tank sludge, in each case if in accordance with the 1989 Regulations, are placed entirely outside the controlled waste regime by **regulation 7(1)(b) and (c)** of the Controlled Waste Regulations 1992. Septic tank sludge, which is not completely taken out of the controlled waste regime, is given an exemption for spreading on land and associated storage in Schedule 3 **paragraph 7(1) and (6)**. However, no licensing exemption for the actual application of sludge in accordance with the 1989 regulations is required.

5.88 **Paragraph 8(1)** provides an exemption for the associated storage of sludge before such use. The wording of **paragraph 8(1)** imposes restrictions. Any sludge may be stored in a lagoon or other form of container that is secure ("secure" as interpreted in **regulation 17(5)**). Further, dewatered sludge only

(see paragraph 5.80 of this Annex) may be stored in a secure place. In either case the storage must be sited on "land used for agriculture", which, as defined in **regulation 1(3)** by reference to the Agriculture Act 1947 and the Agriculture (Scotland) Act 1948, has a wide meaning not confined to the land on which crops are grown.

5.89 **Paragraph 8(2)** complements **paragraph 8(1)** by exempting the spreading of sludge on land that is not agricultural. In this provision the term "agricultural land" is used, following the definition of the 1989 Regulations, so as to distinguish all that land to which the 1989 Regulations do not apply. In the 1989 Regulations, regulation 2(1), "agriculture" is defined as the growing of commercial food crops, including the growing of such crops for stock-rearing purposes. That gives a different, narrower definition of "agricultural land" from that of "land used for agriculture" in **paragraph 8(1)**.

5.90 **Paragraph 8(2)** sets two provisos:-

(a) that the spreading must result in ecological improvement (there can be no question of "benefit to agriculture" in this case, because no agricultural land is involved);

(b) as an effective limit on the quantities spread, Schedule 2 of the Sludge (Use in Agriculture) Regulations 1989, which control applications to agricultural land, is cited; that Schedule contains a Table listing elements and a maximum concentration limit for each; the spreading of sludge and septic tank sludge under **paragraph 8(2)** must not cause the concentration in the soil of any element in column 1 of that Table to exceed the limit value set out in column 2 of the Table.

5.91 **Paragraph 8(3)** provides an exemption for the associated storage of sludge before it is spread under the terms of **paragraph 8(2)**. This matches the provisions of **paragraph 8(1)**. Sludge or septic tank sludge may be stored only in a lagoon or other form of container that is secure but dewatered sludge may also be stored in a secure place.

5.92 **Paragraph 8(4)** provides for the interpretation of terms used in **paragraph 8**. In this exemption only, "the 1989 Regulations" means the Sludge (Use in Agriculture) Regulations 1989. "Used", in relation to sludge in **paragraph 8(1)**, has the same meaning as in the 1989 Regulations, where regulation 2(1) states:-

> "`use' means spreading on the soil or any other application on or in the soil, and `used' shall be construed accordingly."

5.93 **Paragraph 8(5)** defines "sludge" by reference to the Sludge (Use in Agriculture) Regulations 1989 ("the 1989 Regulations") so that this exemption may only apply to sludge whose use is controlled by those Regulations. "Septic tank sludge" is defined in **paragraph 7(10)**). "Sludge", is defined in the 1989 Regulations as:-

> "residual sludge from sewage plants treating domestic or urban waste waters and from other sewage plants treating waste waters of a composition similar to domestic and urban waste waters."

5.94 **Paragraph 9(1)** provides an exemption for the spreading of any:-

(a) wastes consisting of soil;

(b) wastes consisting of rock;

(c) wastes consisting of ash;

(d) sludge; defined in Schedule 3 **paragraph 8(5)** as in the 1989 Regulations;

(e) waste arising from dredging any inland waters; inland waters are defined in **regulation 1(3)**, see paragraph 5.251 and 5.252 of this Annex; note that Schedule 3 **paragraphs 7 and 25** provide further exemptions in certain circumstances for the treatment, deposit and spreading of dredgings; or

(f) waste arising from construction or demolition work; (note that the definition of "construction work" in **regulation 1(3)** includes the repair, alteration or improvement of existing works and that the definition of "work" in **regulation 1(3)** includes preparatory work).

5.95 The waste may be deposited on any land in connection with the reclamation or improvement of that land. The reclamation or improvement may be for any subsequent land use, including development. This distinguishes its scope from Schedule 3 **paragraph 7**, which is concerned with benefit to agriculture or ecological improvement. **Paragraph 9(1)** adds three further provisos:-

(a) the land must be, by reason of industrial or other development, incapable of beneficial use without treatment;

(b) the spreading must be carried out in accordance with a planning permission for the reclamation or improvement of the land; (note that this need for a specific planning permission excludes from the scope of the exemption even reclamation schemes that do not require planning permission); and must result in benefit to agriculture or ecological improvement; and

(c) no more than 20,000 cubic metres per hectare of these wastes may be spreads within the terms of the exemption.

5.96 **Paragraph 9(2)** provides an exemption for the associated storage of such waste before it is spread under the terms of **paragraph 9(1)**. The storage may only take place at the place where the waste is intended to be spread.

5.97 **Paragraph 9(3)** excludes from the scope of the exemption any disposal of waste at a site that has been designed or adapted for the purpose of the final disposal of waste by landfill. This ensures that the exemption is not available for cases where waste disposal rather than land reclamation is the main purpose of the scheme.

Treatments of waste for recovery

Sewage And Water Treatment Works : Schedule 3 Paragraph 10

5.98 The first part of this exemption completes the clarification of the position of sludge and septic tank sludge under waste licensing begun with the Controlled

Waste Regulations 1992. In those 1992 Regulations, regulation 7(1)(a) has the effect that sewage, sludge and septic tank sludge are not controlled waste when treated, kept or disposed of (other than by means of mobile plant) within the curtilage of a sewage treatment works as an integral part of the operation of those works. This excludes the usual storage and treatment operations of sewage treatment works from licensing requirements. However even after that exclusion, sludge and septic tank sludge remain controlled waste when moved from place to place, including from one works to another. Their disposal or recovery at the recipient works would be licensable unless exempt.

5.99 **Paragraph 10(1)** exempts any recovery operation within the curtilage of one sewage works of sludge or septic tank sludge brought from another. "Sludge" is interpreted in **paragraph 8(5)** and "septic tank sludge" in **paragraph 7(10)**, in each case in conformity with the 1989 Regulations. The provisos are:-

(a) that the sludge or septic tank sludge is subjected to a recovery operation, as defined in **regulation 1(3)** and Part IV of Schedule 5, rather than to a disposal operation; the effect is that imported sludge or septic tank sludge may be treated to produce such products as fertiliser, but if any imported sludge or septic tank sludge is disposed of at the works or treated at the works prior to disposal, then that treatment or disposal is licensable; and

(b) the total quantity of that sludge or septic tank sludge brought from another works and treated at a recipient works, (not all the sludge or septic tank sludge at the works) must not exceed 10,000 cubic metres in any period of twelve months.

5.100 It should be noted that the deposit and keeping of screenings at the sewage works where they are produced, pending their treatment or disposal elsewhere, is exempted by Schedule 3 **paragraph 41**, because screenings are produced at the sewage works where they are screened out of sewage.

5.101 There is no exemption for the deposit, recovery or disposal at sewage treatment works of controlled waste other than sludge and septic tank sludge. For example some water service companies take liquid industrial waste, delivered by road tanker, and treat it at their treatment works. This treatment is a licensable activity.

5.102 **Paragraph 10(2)** exempts any treatment within the curtilage of a water treatment works of waste arising at the works from water treatment. The total quantity of that waste so treated at the works must not exceed 10,000 cubic metres in any period of twelve months. (Note that although included for convenience within this exemption under the heading in this Annex "Recovery or Reuse of Waste", **paragraph 10(2)** is strictly speaking a disposal operation at the place of production).

5.103 **Paragraph 10(3)** provides an exemption for the associated storage of such wastes before they are dealt with under the terms of **paragraph 10(1) or (2)**. The storage may only take place at the place (the sewage or water treatment works) where the waste is to be so dealt with.

Preparatory Treatments Of Certain Wastes : Schedule 3 Paragraph 11

5.104 This paragraph exempts specified treatments of specified waste materials. This exemption complements the provisions of Schedule 3 **paragraph 21** which exempts treatments of plant matter including wood. There are characteristic treatments for each waste intended to reduce the bulk of materials or to make them easier to handle which may be applied at any place from the production or collection point to the ultimate recovery site. The two provisos are that:-

(a) the activity must be carried on with a view to the recovery or reuse of the waste; although the exempt pre-treatment involved need not necessarily be carried on at the recovery or reuse site or by the same person as will undertake the recovery operation or the reuse;

(b) each activity is limited to the processing of a maximum quantity of each kind of waste on any site in seven days (the limits govern the tonnages of waste treated, as they weigh before they are treated).

5.105 The wastes involved are waste paper or cardboard; waste textiles; waste plastic; waste glass; waste steel cans, aluminium cans or aluminium foil; and waste food or drink cartons. The processes which may be applied to each of these kinds of waste within the scope of the exemption and the quantity limits are set out in Table 3 and are as follows:-

(a) waste paper or cardboard may be baled, sorted or shredded; at a maximum of 3,000 tonnes a week;

(b) waste textiles may be baled, sorted, or shredded; at a maximum of 100 tonnes a week;

(c) waste plastic may be baled, sorted, shredded, densified (densifying machinery exists involving the application of heat to plastic) or washed; at a maximum of 100 tonnes a week;

(d) waste glass may be sorted, crushed or washed; at a maximum of 1,000 tonnes a week;

(e) waste steel cans, aluminium cans or aluminium foil may be sorted, crushed, pulverised, shredded, compacted or baled; at a maximum of 100 tonnes a week; and

(f) waste food or drink cartons may be sorted, crushed, pulverised, shredded, compacted or baled; at a maximum of 100 tonnes a week.

Composting Waste : Schedule 3 Paragraph 12

5.106 **Paragraph 12(1)** exempts the process of composting waste. The exemption only applies to bio-degradable waste; there is no definition of this term in the Regulations. The exempt composting may take place at any of the following places:-

(a) at the place at which the waste composted is produced;

(b) at any other place occupied by the producer of that waste;

(c) on the land where the compost produced is to be used; or

(d) at any other place occupied by the person who uses the compost.

5.107 This leaves subject to licensing any operations taking waste from outside sources, then sending on the compost for use by other users; this is a part of the commercial waste management industry and is so regulated.

5.108 There are two quantity limits on the waste processed at a site within the scope of the exemption:-

(a) in the case where the waste is composted or to be composted for the purposes of cultivating mushrooms, 10,000 cubic metres a year; (there is special provision for the registration of establishments and undertakings carrying on this exempt activity in **regulation 18**, see Annex 6 : The Registration of Exemptions; the effect is that establishments and undertakings producing compost for the purposes of cultivating mushrooms within the scope of the exemption and under an authorisation under Part I of the 1990 Act need take no separate action to register); and

(b) in any other case, 1,000 cubic metres a year.

5.109 **Paragraph 12(2)** provides an exemption for the associated storage of such biodegradable waste before it is composted under the terms of **paragraph 12(1)**. The storage may only take place at the place where the waste is produced or where it is to be so composted.

5.110 **Paragraph 12(3)** provides a wide inclusive definition of "composting" for the purposes of this exemption only, as including any other biological transformation processes such as anaerobic digestion that result in materials which may be spread on land for the benefit of agriculture or ecological improvement.

Construction And Soil Materials : Schedule 3 Paragraph 13

5.111 **Paragraph 13(1)** exempts the manufacture of specified materials from specified wastes, all of which are related to construction. The full list of wastes that may be used in manufacturing under **paragraph 13(1)** are:-

(a) waste arising from:-

(i) demolition;

(ii) construction work (note that the definition of "construction work" in **regulation 1(3)** includes the repair, alteration or improvement of existing works and that the definition of "work" in **regulation 1(3)** includes preparatory work);

(iii) tunnelling; or

(iv) other excavations; and

(b) waste which consists of ash, slag, clinker, rock, wood, bark, paper, straw or gypsum.

5.112 The construction materials which may be made from such wastes are timber products, straw board, plasterboard, bricks, blocks, roadstone or aggregate.

5.113 The wastes which may be used under this exemption include all those to which Schedule 3 **paragraph 19** applies. The two exemptions are closely linked; **paragraph 19** exempts the storage of waste for construction, this

paragraph exempts their processing. In deciding whether or not a particular activity involving construction materials is exempt it should be remembered that the manufacture of wastes into construction materials may in some cases be a process designated under Part I of the 1990 Act for central or local control, which may be already excluded or exempted elsewhere in **regulation 16** or Schedule 3; an example is Schedule 3 **paragraph 24**, the crushing of bricks, tiles or concrete.

5.114 **Paragraph 13(2)** exempts the manufacture of soil or soil substitutes from any of the same list of wastes specified in **paragraph 13(1)**. The exemption is subject to two provisos:-

(a) the manufacture must take place either at the place where the waste is produced or at the place where the resulting soil or soil substitute is to be applied to land; and

(b) the quantity manufactured on any day must not exceed 500 tonnes.

5.115 **Paragraph 13(3)** provides a similar but more closely circumscribed exemption for the treatment of waste soil or rock. The exemption only applies if the treated soil or rock is then to be spread on land under the terms of the exemptions in Schedule 3 **paragraphs 7 or 9**. This ties it to the terms of those exemptions, including the provision that the spreading must result in benefit to agriculture or ecological improvement. **Paragraph 13(3)** is subject to two further provisos:-

(a) the treatment must take place either at the place where the waste is produced or at the place where the resulting product is to be applied to land; and

(b) the quantity treated on any day must not exceed 100 tonnes.

5.116 **Paragraph 13(4)** provides an exemption for the associated storage of such wastes which are to be dealt with under the terms of **paragraph 13(1), (2) or (3)**. The phrase "which is to be submitted" permits storage only before the activity. After the completion of recovery, materials manufactured from waste under **paragraph 13(1) or (2)** would be likely to be no longer waste, so no further storage exemption would be needed. Waste soil and rock treated under **paragraph 13(3)** might well remain waste, but there is provision for their storage at the place of spreading under Schedule 3 **paragraphs 7 and 9**.

5.117 The storage is subject to two sets of provisos:-

(a) the waste may only be stored at the place where the exempt activity is to be carried on; and

(b) there are two separate quantity limits:-

(i) in the special case of the manufacture of roadstone from road planings, the total amount of any such waste stored at the place of manufacture may not exceed 50,000 tonnes at any one time; and

(ii) in any other case, the total amount of any waste stored at the place of the activity may not exceed 20,000 tonnes at any one time.

Manufacture Of Finished Goods : Schedule 3 Paragraph 14

5.118 **Paragraph 14(1)** exempts the manufacture of any finished goods from specified wastes. The wastes that may be used in such manufacturing are waste metal, plastic, glass, ceramics, rubber, textiles, wood, paper or cardboard.

5.119 This general exemption takes out of waste management licensing the final stage of any process of turning such wastes into finished goods. As indicated in paragraphs 2.46-2.50 of Annex 2, a substance or object may cease to be waste because it has been recovered within the meaning of the Directive. As indicated in paragraph 2.2 of Annex 2, recovery will generally take place when the recovered substance or object can be used as a raw material in the same way as raw materials of non-waste origin by a person other than *a specialised recovery establishment or undertaking*. Where a substance or object is recovered in this way it may cease to be waste before it has necessarily become finished goods. If this is the case, then the final manufacturing process will be utilising feedstock that is no longer waste and no question of waste management licensing for manufacture arises. In other cases, however, a manufacturing process may take waste directly and transform it at one operation into finished goods. Such processes are the subject of this exemption. It should be noted, however, that the exemption only applies to manufacturing processes that end with finished goods, it does not apply to intermediate stages of processing waste even if these are recovery operations that produce materials that are no longer waste.

5.120 **Paragraph 14(2)** provides an exemption for the associated storage of such wastes which are intended to be used under the terms of **paragraph 14(1)**. The phrase "intended to be used" permits storage only before the activity. After the completion of manufacture, the finished goods would be no longer waste, so no further storage exemption would be needed. The storage is subject to two provisos:-

(a) the waste may only be stored at the place where the exempt manufacture is carried on; and

(b) the total amount of any such waste stored at the place of manufacture may not exceed 15,000 tonnes at any one time.

Use of waste

Use of Waste : Schedule 3 Paragraph 15

5.121 This paragraph exempts from waste management licensing the beneficial use of waste and its prior storage.

5.122 The general principle behind this exemption is that waste management licensing should not regulate the useful employment of objects or materials which have been salvaged from waste in cases where indistinguishable materials or objects that have not been discarded may be used in an identical way without such regulation.

5.123 Without exemption, the use of waste in itself would be licensable if it involved any disposal or recovery operation or any deposit; for example use as fuel is a form of recovery operation. Schedule 3 confers exemptions on certain

specified recovery operations. However there may be circumstances in which waste is simply taken unchanged and put to a beneficial use without being subjected to any process. This exemption is to make it clear that simple use, even if in a way that constitutes a recovery operation, and the storage of waste prior to such use are not licensable.

5.124 **Paragraph 15(1)** restricts the exemption to "beneficial use". Apart from the general disapplication of the exemption in any case of special waste, and the application of section 33(1)(c) of the 1990 Act, there are two further specific safeguards:-

(a) the exemption only applies where there is no treatment of waste before it is put to use; and

(b) the use for which the waste is kept may not involve any form of disposal.

5.125 In interpreting these twin provisos the definitions of "disposal" and "treatment" for the purposes of these Regulations are important. "Disposal" is defined in **regulation 1(3)** as any of the disposal operations listed in Part III of Schedule 4, but does not include any other form of disposal, notwithstanding its meaning in the 1990 Act. "Treatment" has no definition particular to these Regulations, but under section 29 of the 1990 Act "...waste is "treated" when it is subjected to any process, including making it re-usable or reclaiming substances from it....". Accordingly the effect of Schedule 3 **paragraph 15(1)(a) and (b)** is to disapply the exemption in any case involving:-

(a) the subjecting of waste, before it is put to use, to any process including making it re-useable or reclaiming substances from it; or

(b) a disposal operation.

5.126 What is left as being exempted by **paragraph 15(1)** is any beneficial use of waste that may involve a recovery operation but no treatment.

5.127 **Paragraph 15(2)** provides an exemption for the associated storage of wastes which are to be used under the terms of **paragraph 15(1)**. The phrase "intended to be used" permits storage only before the use, but once in use anything stored would no longer be waste.

5.128 **Paragraph 15(3)** excludes from the scope of the exemption specified activities. These are some of the uses of waste, (uses which may not always involve treatment, so are not excluded by **paragraph 15(1)(a)**), for which specific exemptions, subject to particular provisos, are already specified:-

(a) Schedule 3 **paragraph 7** (spreading waste for the benefit of land);

(b) Schedule 3 **paragraph 8** (storage of sludge and septic tank sludge);

(c) Schedule 3 **paragraph 9** (reclamation or improvement of land);

(d) Schedule 3 **paragraph 19** (storage of wastes for construction); and

(e) Schedule 3 **paragraph 25** (deposit on banks and towpaths).

5.129 This avoids the inadvertent exemption of treatment processes whose permitted bounds are set in other exemptions. Moreover waste may not be kept for a use for which it would not be suitable without such treatment.

Waste food

Diseases Of Animals (Waste Food) Order 1973 : Schedule 3 Paragraph 16

5.130 **Paragraph 16** exempts the carrying on of activities under a licence granted under the Diseases of Animals (Waste Food) Order 1973, S.I. 1973/ 1936 ("the 1973 Order"). The activity must be authorised by a licence granted under article 7 or 8 of that Order, and the activity must be carried out in accordance with the conditions and requirements of the licence. Such licences authorise the operation of plant or equipment for processing waste food and sites for the reception of waste food intended for feeding to animals.

5.131 There is special provision for the registration of establishments and undertakings carrying out this exempt activity in **regulation 18**, see Annex 6: The Registration of Exemptions. The effect is that establishments and undertakings acting within the scope of the exemption need take no separate action to register.

Storage of waste for recovery

5.132 The storage of waste is licensable unless exempt. The majority of the individual exemptions in Schedule 3 provide matching provision for the storage of waste in connection with the activity exempted. In addition, eight paragraphs of Schedule 3 provide exemptions solely devoted to the storage of waste pending its disposal, recovery or use. The purpose of each is as follows:-

(a) **paragraph 17** provides an exemption for the storage in a secure place of specified wastes including some special wastes and some wastes in quantities exceeding those allowed in the more general exemption in **paragraph 40**, provided that they are destined for recovery;

(b) **paragraph 18** provides an exemption for the storage of specified wastes in secure containers at sites for the reception of waste for recovery;

(c) **paragraph 19** provides a specific exemption for the storage of waste for use in construction;

(d) **paragraph 36** provides a specific exemption for the temporary storage of garbage and tank washings incidental to their collection and transport, whether for disposal or recovery;

(e) **paragraph 38** provides a specific exemption for the deposit and storage of samples of waste for testing or analysis;

(f) **paragraph 39** provides a specific exemption for the storage, prior to disposal, of medical, nursing and veterinary wastes;

(g) **paragraph 40** provides a general exemption for the storage of non-liquid waste incidental to its collection and transport, for recovery or disposal, with a quantity limit; and

(h) **paragraph 41** provides a general exemption for the temporary storage of waste on the site where the waste is produced, pending its collection for either disposal or recovery.

5.133 This paragraph provides exemptions for the secure storage, on any premises, of specified wastes destined for recovery. The intention is to permit the bulking up of the most important materials returned for recycling at intermediate depots and stores between the initial collection and final recovery points.

5.134 Under **paragraph 17(1)** the waste must be in a "secure place", as interpreted in **regulation 17(5)**, meaning that reasonable precautions are taken to ensure that the waste kept in it cannot escape and that members of the public cannot have access to that waste. (This requirement distinguishes the scope of the paragraph from **paragraph 18**, which permits the deposit or keeping of waste in secure containers).

5.135 **Paragraph 17(1)(a)** limits the exemption to the quantities listed in Table 4. More than one substance may be stored on the same site within the exemption, so long as at any time the quantity of each is within its individual limit. Where more than one substance is named in a single entry the quantity limit applies to the quantity of both added together on a single site.

5.136 **Paragraph 17(1)(b)** requires that the waste must be for reuse or recovery. The possibilities permitted are either:-

(a) that the waste is to be reused, a term embracing any reuses even if they are outside the operations defined as recovery in these Regulations; or

(b) that it is to be used for the purposes of recovery, that is, one of the recovery operations in Part IV of Schedule 4; specifically, the recovery operation for which the waste is to be used may be either:-

(i) the activities listed in **paragraph 11** (that is, various preparatory activities mostly involving the reduction of bulk for transport and handling prior to recovery); or

(ii) any other recovery operation, whether exempt or not.

5.137 **Paragraph 17(1)(c)** requires that each kind of waste listed in Table 4 must be kept separately, that is, separately both from other wastes and from other materials. Where more than one waste is grouped in a single entry in the Table, this permits those wastes to be stored together, for example aluminium foil and cans need not be segregated from steel cans.

5.138 **Paragraph 17(1)(d)** provides that no waste may be stored on the premises for longer than twelve months within the exemption.

5.139 In Table 4 the list of wastes and the maximum quantities in which each may be stored without a licence under this exemption is as follows:-

Kind of waste	Maximum total quantity (tonnes)
Waste paper or cardboard	15,000 tonnes
Waste textiles	1,000 tonnes
Waste plastics	500 tonnes
Waste glass	5,000 tonnes
Waste steel cans, aluminium cans or aluminium foil	500 tonnes
Waste food or drink cartons	500 tonnes
Waste articles which are to be used for construction work which are capable of being so used in their existing state	100 tonnes
Solvents (including solvents which are special waste)	5 cubic metres
Refrigerants and halons (including refrigerants and halons which are special waste)	18 tonnes
Tyres	1,000 tyres

5.140 Note that the definition of "construction work" in **regulation 1(3)** includes the repair, alteration or improvement of existing works and that the definition of "work" in **regulation 1(3)** includes preparatory work. The description of "articles for construction work" refers only to articles such as architectural salvage, it excludes wastes that require further processing before use and wastes that are materials rather than articles. There are specific provisions in Schedule 3 **paragraph 19** for the storage of wastes, including materials, to be used in construction.

5.141 In the cases of solvents, halons and refrigerants alone, this exemption applies even in a case where the waste is special waste. In **paragraph 17(2)**, "refrigerant" is defined as a list of substances, or mixtures of those substances, comprising the following (here, the usual reference by which the substance is known is shown alongside its name):-

R12	dichlorodifluoromethane
R13	chlorotrifluoromethane
R114	dichlorotetrafluoroethane
R115	chloropentafluoroethane
R13b1	bromotrifluoromethane
R22	chlorodifluoromethane
R124	chlorotatrafluoroethane
R23	trifluoromethane
R32	difluoromethane
R125	pentafluoroethane
R134a	tetrafluoroethane
R142b	chlorodifluoroethane
R152a	difluoroethane
R11	trichlorofluoromethane
R113	trichlorotrifluoroethane
R123	dichlorotrifluoroethane
R141b	dichlorofluoroethane

5.150 **Paragraph 18(2)** determines the wastes which may be stored under this exemption. The resulting list is similar to that in **paragraph 17** and Table 4, but with the addition of waste oil and the omission of waste solvents, halons and refrigerants, as follows:-

(a) Waste aluminium foil or cans;

(b) Waste articles which are to be used for construction work which are capable of being so used in their existing state (see paragraph 5.140 of this Annex);

(c) Waste food or drink cartons;

(d) Waste glass;

(e) Waste oil (as defined in **regulation 1(3)**; see paragraph 5.51 of this Annex);

(f) Waste paper and cardboard;

(g) Waste plastics;

(h) Waste steel cans;

(i) Waste textiles; and

(j) Tyres.

5.151 Note that because this exemption does not apply where the waste is special waste, the exemption does not apply in a case where waste oil is mixed or contaminated with special waste.

Waste For Construction : Schedule 3 Paragraph 19

5.152 **Paragraph 19** exempts the storage on a site of specified wastes for the purposes of specified construction work, and their use in that work.

5.153 **Paragraph 19(1)** specifies the wastes that may be stored as:-

(a) waste which arises from demolition or construction work; (note that the definition of "construction work" in **regulation 1(3)** includes the repair, alteration or improvement of existing works and that the definition of "work" in **regulation 1(3)** includes preparatory work);

(b) waste arising from tunnelling or from other excavations; and

(c) waste consisting of ash, slag, clinker, rock, wood, or gypsum.

5.154 **Paragraph 19(1)(a)** adds the proviso that the material in question must be suitable for use for the purposes of relevant work which will be carried on at the site. This proviso effectively excludes the unlicensed storage of waste if it is:-

(a) not suitable for being used in relevant work;

(b) suitable for use in relevant work but there is as yet no designated construction project in which it is to be so used;

(c) destined for relevant work at a site other than that where it is stored; (but see paragraph 5.155 of this Annex for storage at the place of production); or

(d) excessive in quantity; although there is no numerical quantity limit on the storage of waste under paragraph 19(1), it is effectively limited to the quantity that might be used in the relevant work and is suitable for that use.

5.155 **Paragraph 19(1)(b)** provides that, in the special case of waste which is not produced on the site where the exempt storage takes place, that waste may not be stored there for longer than three months before the relevant work starts. Waste produced at the site where it is later to be used may be stored indefinitely within the terms of the exemption, and storage at the place of production pending disposal or recovery elsewhere is in any case exempt by reason of Schedule 3 **paragraph 41.**

5.156 **Paragraph 19(2)** exempts the use in relevant work of the specified wastes stored on the site under **paragraph 19(1).** As in **paragraph 19(1),** the waste in question must be suitable for use for the purposes of relevant work which will be carried on at the site.

5.157 **Paragraph 19(3)** makes special provision for waste consisting of road planings. Road planings are one form of waste produced from demolition or construction, and they may therefore be stored at the place where they are to be used with the benefit of **paragraph 19(1).** However, in the nature of road planing operations, the planings are produced in large quantities that need to be removed at once from the site of production and temporarily stored until they can be taken to a construction site for use. **Paragraph 19(3)** therefore provides an exemption for the storage of road planings at one place for use in relevant work elsewhere. There are two provisos:-

(a) no more than 50,000 tonnes of road planings may be stored at the site; this specific quantity limit is necessary because the storage is not tied to the use of the waste in any particular construction work at any particular place; and

(b) no planings may be stored there for longer than 3 months.

5.158 **Paragraph 19(4)** defines "relevant work" for the purposes of **paragraph 19.** Its basic meaning is defined as "construction work", and "construction work" as defined in **regulation 1(3)** includes the repair, alteration or improvement of existing works and the definition of "work" in **regulation 1(3)** includes preparatory work. However the meaning of "relevant work" is narrowed here to be construction work, including the deposit of waste on land, undertaken in connection with specified types of project:-

(a) the provision of recreational facilities on that land; an example is landscaping golf courses; or

(b) the construction, maintenance or improvement of a building, highway, railway, airport, dock or other transport facility on that land.

5.159 This definition excludes the "construction" of heaps or mounds of waste on land, unless they are in connection with these types of project. Nor may it be claimed that waste arising from construction work may be deposited under this exemption relying on its connection with the work that produced it. To take an illustration, waste arising from excavations during road construction may be deposited to form a noise bund or cutting that is part of the designed contours of the scheme, but may not be left at the site in a heap as a means of waste disposal.

Other recovery and reuse

Recovery Of Textiles : Schedule 3 Paragraph 20

5.160 **Paragraph 20(1)** exempts the laundering or otherwise cleaning of waste textiles. The activity must be carried out with a view to the recovery or reuse of the textiles. Note that as this is with a view to either recovery or reuse, the destination may be any use, it need not be confined to one of the recovery operations in Part IV of Schedule 4.

5.161 **Paragraph 20(2)** provides an exemption for the associated storage of such waste textiles where they are to be laundered or cleaned under the terms of **paragraph 20(1)**. The phrase "where are to be" permits storage only before the activity, but after the completion of cleaning the finished textiles would be no longer waste, so no further storage exemption would be needed. The storage may only take place at the place of the cleaning or laundering; prior storage elsewhere might qualify for exemption under Schedule 3 **paragraph 17 or 18.**

Preparatory Treatments Of Waste Plant Matter : Schedule 3 Paragraph 21

5.162 This paragraph exempts specified treatments of specified waste plant matter including wood. These are treatments intended to reduce the bulk of materials or to make them easier to handle or recover which may be applied at any premises from the production or collection point to the ultimate recovery site. Note that "premises" may include any place, including the street or open land. This exemption complements the provisions of Schedule 3 **paragraph 11.**

5.163 **Paragraph 21(1)** provides that, within the exemption, any waste plant matter, including wood or bark, may be chipped, shredded, cut or pulverised. Further, sawdust and shavings alone of these wastes may be sorted and baled. The two provisos are that:-

(a) the activities must be carried on for the purposes of recovery or reuse, although the exempt pre-treatment involved need not necessarily be carried on at the recovery site or by the same person who will undertake the recovery operation; note that as this is with a view to either recovery or reuse, the destination may be any use, it need not be confined to one of the recovery operations in Part IV of Schedule 4;

(b) the activity is limited to the processing of a maximum quantity of 1,000 tonnes on any premises in seven days.

5.164 **Paragraph 21(2)** provides an exemption for the associated storage of such waste plant matter in connection with this exempt activity under the terms of **paragraph 21(1)**. The phrase "in connection with" permits storage before, during and after the activity, because after these preparatory treatments the recovery or reuse of the wastes is likely still to be incomplete, so they are still waste, and a continued exemption would be needed for further storage. The storage must take place at the premises where the activity exempted under **paragraph 21(1)** takes place.

Recovery Of Silver : Schedule 3 Paragraph 22

5.165 **Paragraph 22(1)** exempts the recovery of silver from waste produced in connection with printing or photographic processing. The recovery may take place at any premises. The activity is limited to the processing of a maximum quantity of 50,000 litres of the waste on any premises in any day. Note that it is the quantity of waste processed to which the limit applies, not the quantity of material recovered.

5.166 **Paragraph 22(2)** provides an exemption for the associated storage of such waste from which silver is to be recovered within the terms of **paragraph 22(1)**. The phrase "which is to be" permits storage only before the activity, but after the completion of recovery the silver would be no longer waste, so no further storage exemption would be needed. The storage may only take place at the place of the recovery operation; prior storage elsewhere would only be exempt at the place of production, under Schedule 3 **paragraph 41.**

Animal By-Products : Schedule 3 Paragraph 23

5.167 This paragraph provides an exemption for the keeping or treatment of animal by-products in accordance with the Animal By-products Order 1992, S.I. 1992/3303. This provision completes a set of provisions on any animal by-products that may be waste. **Regulations 23(3) and 24(7)** disapply waste carrier registration and the duty of care from persons dealing with animal by-products in certain circumstances. The exemption in **paragraph 23** removes the need for a waste management licence in any case whereby animal by-products are kept or treated in accordance with the Order. There is special provision for the registration of establishments and undertakings carrying out this exempt activity in **regulation 18**, see Annex 6 : The Registration of Exemptions. The effect is that establishments and undertakings acting within the scope of the exemption need take no separate action to register. Note that the disposal of any animal by-products that are waste would remain licensable. Further explanation of the Order is at Annex 4, paragraphs 4.91 to 4.94 of the Circular.

Operations leading to recovery, reuse or disposal

Crushing, Grinding Or Size Reduction Of Bricks, Tiles Or Concrete : Schedule 3 Paragraph 24

5.168 **Paragraph 24(1)** exempts the crushing, grinding or other size reduction of waste bricks, tiles or concrete. The exemption applies only where the operation is under an authorisation under Part I of the 1990 Act. The operation must be or form part of a process within paragraph (c) of Part B of Section 3.4 of Schedule 1 to the 1991 Regulations.

5.169 **Paragraph 24(2)** imposes an additional proviso only in the case where the crushing, grinding or other size reduction is not taking place at the place where the waste is produced. In that case the exemption only applies if the activity is carried on with a view to recovery or reuse of the waste. Note that as this is with a view to either recovery or reuse, the destination may be any use, it need not be confined to one of the recovery operations in Part IV of Schedule 4.

5.170 **Paragraph 24(3)** further exempts the storage of these wastes at the place where they are intended to be so pulverised in an operation covered by the exemption in paragraph 24(1). Within the terms of the exemption, a total of no more than 20,000 tonnes of these wastes may be stored at that place at any one time.

Waterway Dredging : Schedule 3 Paragraph 25

5.171 **Paragraph 25(1)** exempts the deposit of waste arising from dredging inland waters or from clearing plant matter from inland waters. "Inland waters" are defined in **regulation 1(3)**, see paragraphs 5.251 and 5.252 of this Annex. To be exempt from licensing the waste must be deposited either:-

(a) along the bank or towpath of the waters where the dredging or clearing takes place; or

(b) along the bank or towpath of any inland waters, provided that this deposit results in benefit to agriculture or ecological improvement; on this last phrase see paragraph 5.74 of this Annex.

5.172 **Paragraph 25(2)** sets the quantity limit that no more than 50 tonnes of these wastes may be deposited on any day along the bank or towpath for each metre of the bank or towpath where the waste is deposited.

5.173 **Paragraph 25(3)** provides that the waste may not be deposited in a lagoon or container, so as to bar their unlicensed use for disposal. The exemption in **paragraph 25(1)(a)** would therefore permit the deposit of waste from dredging or of waste from clearing plant matter only as these operations proceed.

5.174 **Paragraph 25(4)** provides that, in a case in which an establishment or undertaking deposits waste from dredging, the exemption under **paragraph 25(1)(a)** applies only where the waste deposited is their own waste. This provision does not apply to the deposit of waste under **paragraph 25(1)(b)**, where benefit to agriculture or ecological improvement is involved.

5.175 **Paragraph 25(5)** provides an exemption for the associated treatment of wastes. It exempts the screening or dewatering of any of the wastes arising from dredging inland waters or from clearing plant matter from inland waters. The exemption only applies if the screening or dewatering is taking place prior to those wastes being employed under one of the three exemptions in Schedule 3 that permit the use of dredgings. In these three cases the treatment is exempt if it takes place:-

(a) in a case where the waste is to be deposited under the terms of the exemption in **paragraph 25**, either:-

  (i) on the bank or towpath of the inland waters where the dredging or clearing takes place; or

  (ii) on the bank or towpath where the waste is to be deposited;

(b) in a case where the waste is to be spread under the terms of the exemption in **paragraph 7(1) or (2)**, (that is, waste for the benefit of land), either:

  (i) on the bank or towpath of the inland waters where the dredging or clearing takes place; or

(ii) at a place where the waste is to be spread;

(c) in a case where waste from dredging (not plant matter, which may not be spread in this case) is to be spread under the terms of the exemption in **paragraph 9(1)**, (that is, land reclamation), either:-

(i) on the bank or towpath of the inland waters where the dredging takes place; or

(ii) at a place where the waste is to be spread.

Recovery Or Disposal As Part Of The Production Process : Schedule 3 Paragraph 26

5.176 **Paragraph 26(1)** exempts the recovery or disposal of waste as an integral part of the process that produces it. The exemption is not confined to industrial processes, nor necessarily to "processes" in the sense used in Part I of the 1990 Act, it may refer to any process. As is in the nature of this exemption, the recovery or disposal may only take place at the place of production of the waste.

5.177 **Paragraph 26(2)** provides an associated exemption for the storage of the waste at that place where it is produced, before it is recovered or disposed of under **paragraph 26(1)**.

5.178 **Paragraph 26(3)** provides that the exemption does not apply to the final disposal of waste by deposit in or on land.

5.179 The cases covered by this exemption divide into:-

(a) cases where recovery on site is involved, because waste is reincorporated in the production process, for example scrap from the finishing stage is returned to be mixed with raw materials at the beginning of a process;

(b) cases where final disposal is integrated into the process; and

(c) cases where all that is involved is treatment, as part of the production process, for example packing, prior to further recovery or disposal operations that are either not part of the process, or take place off-site.

Baling, Compacting Or Pulverising : Schedule 3 Paragraph 27

5.180 **Paragraph 27(1)** exempts certain treatments of waste at the place of its production. Within the exemption waste may be baled, compacted, crushed, shredded or pulverised.

5.181 **Paragraph 27(2)** provides an associated exemption for the storage of the waste at that place where it is produced, before it is submitted to the operations under **paragraph 27(1)**. Note that storing waste at its place of production pending its recovery or disposal elsewhere is not a recovery or disposal operation, but is a deposit of waste and is also exempted, by paragraph 41.

Storing Returned Goods : Schedule 3 Paragraph 28

5.182 This paragraph exempts the storage of waste consisting of goods returned to their manufacturer, distributor or retailer. The goods must be stored by that

business. No goods may be stored for longer than one month. The goods must be destined either:-

(a) for reuse or submission to a recovery operation; note that as this is with a view to either recovery or reuse, the destination may be any use, it need not be confined to one of the recovery operations in Part IV of Schedule 4; or

(b) for disposal, in which case they must be stored, pending disposal, at the place where it was decided to discard them.

5.183 This exemption allows for the circumstances of businesses who accept returned goods from their customers. This would usually be a discarded product they have themselves sold, but not always. It also embraces the acceptance of waste that was formerly goods, now discarded and returned as trade-ins on sales. After goods are returned, the business must decide whether or not to discard them. This sorting of returned goods into waste (whether recoverable waste or not) and saleable or useable goods may take place immediately, or the goods may be passed back up the distribution chain before any decision is taken. When the decision to discard is taken, the goods become waste. The place at which the goods then are is therefore the place of production of the waste. The goods may then be stored at those premises for up to a month. Note that storage at the place of production pending recovery or disposal elsewhere is specifically covered by Schedule 3 **paragraph 41.** If the intention formed at the time they become waste is to recover the waste goods, under this exemption they may be kept at other premises of the retailer, distributor, or manufacturer for up to a further month at each, without a licence (and other exemptions for storage prior to recovery may apply). But once the decision is taken to dispose of the waste goods, the exemption may not apply to their storage at other premises.

5.184 Articles, goods or machinery that are incapable of use without repair may be waste if an intention is formed to discard them. However, in the view of the Departments, where such waste is brought back into use by repair, it ceases to be waste at the moment when an intention is formed to repair it. Accordingly no licensing exemption for repair is necessary.

Disposal of own waste at the place of production

Disposal By Incineration At The Place Of Production : Schedule 3 Paragraph 29

5.185 **Paragraph 29(1)** exempts the disposal of waste by burning it in an incinerator. The burning must be carried out by the person who produces the waste and at the place where the waste is produced. The incinerator must be within the definition of "exempt incinerator" for the purposes of Section 5.1 (incineration) of Schedule 1 to the 1991 Regulations; for the definition of "exempt incinerator" see paragraph 5.20 of this Annex. The point of the distinction is that exempt incinerators are not controlled under Part I of the 1990 Act.

5.186 **Paragraph 29(2)** further exempts the storage of waste at the place where it is intended to be burnt under the exemption. The storage must be secure, as interpreted in **regulation 17(5).**

Burning Waste In The Open : Schedule 3 Paragraph 30

5.187 **Paragraph 30(1)** exempts the burning of waste on land in the open if:-

(a) the waste burnt consists only of wood, bark or other plant matter;

(b) it is waste produced on land that is either:-

(i) operational land of a railway, light railway, tramway, internal drainage board, or the National Rivers Authority; ("operational land" is defined in **regulation 1(3)**, see paragraph 5.253 of this Annex; "internal drainage board" is defined in Schedule 3 **paragraph 7(9)**, see paragraph 5.83 of this Annex); or

(ii) forest, woodland, park, garden, verge, landscaped area, sports ground, recreation ground, churchyard or cemetery;

or on other land as a result of demolition work;

(c) it may be burnt only on the land where it is produced; and

(d) the quantity burned must not exceed 10 tonnes in any 24 hour period.

Exempted burning in the open may be controlled under the statutory nuisance provisions in Part III of the 1990 Act or, in Scotland, smoke nuisance provisions in the Clean Air Act 1993.

5.188 **Paragraph 30(2)** provides that the exemption for burning under **paragraph 30(1)** applies to establishments and undertakings only where they are burning their own waste. Persons other than establishments and undertakings may burn waste from any source provided that the other limitations on the exemption are met.

5.189 **Paragraph 30(3)** further exempts the storage of waste on the land where it is intended to be burnt under the exemption in **paragraph 30(1)**. Only storage before burning is exempt.

Waste From Railway Sanitary Conveniences Or Sinks : Schedule 3 Paragraph 31

5.190 This paragraph provides an exemption for the direct discharge onto the track of a railway of waste from a sanitary convenience or a sink forming part of a passenger-carrying railway vehicle. The exemption is subject to a limit on each discharge of not more than 25 litres.

5.191 Under section 75(7) of the 1990 Act sewage is not controlled waste unless provided otherwise in regulations. However sewage from a rail vehicle does come within regulation 5(1) and Schedule 3, paragraph 7(a) of the Controlled Waste Regulations 1992, as "sewage disposed of on land" and is therefore "industrial waste", and this exemption is therefore necessary.

Waste From Sanitary Conveniences With Removable Receptacles : Schedule 3 Paragraph 32

5.192 This paragraph provides an exemption for the small-scale disposal by burial of waste arising from a sanitary convenience equipped with a removable receptacle. The waste must be buried on the premises where the appliance is used, and a quantity limit of 5 cubic metres in twelve months may not be exceeded within the terms of the exemption.

5.193 The exemption is intended to enable the local burial of waste from toilets on such premises as temporary entertainment sites or non-residential camps. Any similar disposal within the curtilage of a residential dwelling, provided it is carried out by or with the permission of the occupier and is household waste from that domestic property, is already outside licensing by reason of section 33(2) of the 1990 Act.

Peatworking : Schedule 3 Paragraph 33

5.194 **Paragraph 33(1)** provides an exemption for the keeping or deposit of waste consisting of excavated materials arising from peatworking. The waste may only be kept at the site of the workings.

5.195 **Paragraph 33(2)** provides that, in a case in which an establishment or undertaking is keeping or depositing such waste, the exemption under **paragraph 33(1)** applies only if the waste kept or deposited is its own waste.

Railway Ballast : Schedule 3 Paragraph 34

5.196 **Paragraph 34(1)** exempts the keeping or deposit of spent ballast at the place where it is produced. The keeping or deposit must be on land which is operational land of a railway, light railway or tramway. Operational land is defined in regulation 1(3), see paragraph 5.253 of this Annex. That definition does not permit the exemption to cover any land not clearly used for the purpose of carrying on the railway, light railway or tramway. **Paragraph 34(1)** also sets the quantity limit that no more than 10 tonnes of spent ballast may be kept or deposited at that place for each metre of track from which the ballast derives. In calculating this limit, each track of a multiple track line may contribute its quota of 10 tonnes for each metre.

5.197 **Paragraph 34(2)** provides that, in a case in which an establishment or undertaking is keeping or depositing such waste, the exemption under **paragraph 34(1)** applies only where the waste kept or deposited is its own waste.

Waste From Prospecting : Schedule 3 Paragraph 35

5.198 This paragraph provides an exemption for the deposit of waste consisting of excavated material from a borehole or other excavation made for the purpose of prospecting for coal workable by opencast methods or minerals (other than petroleum).

5.199 **Paragraph 35(1)** provides that such a deposit is exempt provided that the borehole or excavation is made for the purposes of mineral exploration. Further, the exemption only applies where:-

(a) the waste is deposited in or on land at the place where it is excavated; and

(b) the quantity limit is not exceeded; the limit is set as 45,000 cubic metres of deposited waste per hectare over any period of 24 months.

5.200 **Paragraph 35(2)** further limits the exemption to certain categories of mineral exploration. This is done by referring to classes of development as described in specified provisions of Orders. The exemption applies only if:-

(a) the borehole or excavation takes place within those classes; and

(b) it is carried out within the conditions of those specified provisions.

5.201 The specified provisions are article 3, and Class A or B of Part 22 of Schedule 2 to the Town and Country Planning (General Development) Order 1988; and in Scotland, Class 53, 54 or 61 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. These provisions relate to:-

> "Development on any land...consisting of-
>
> (a) the drilling of boreholes,
>
> (b) the carrying out of seismic surveys, or
>
> (c) the making of other excavations,
>
> for the purpose of mineral exploration, and the provision or assembly on that land or adjoining land of any structure required in connection with any of those operations";

subject to qualifications and conditions, notably excluding the drilling of boreholes for petroleum exploration.

5.202 Note that exploration for coal falls within the provisions of those planning Orders and this exemption. There is no longer any distinct provision in either the Orders or the exemption for coal, which is considered and regulated in the same way as other mineral exploration.

5.203 **Paragraph 35(3)** provides that expressions used in this paragraph have the same meaning as in the Town and Country Planning (General Development Order) 1988 (or, in Scotland, the Town and Country Planning (General Permitted Development) (Scotland) Order 1992) where those expressions are used in both. The most relevant term is "mineral exploration" which is defined in A.3. and B.3. of Part 22 of Schedule 2 to the Town and Country Planning (General Development Order) 1988 and, to similar effect, in Part 15 of Schedule 1 to the Town and Country (General Permitted Development) (Scotland) Order 1992, as:-

> "ascertaining the presence, extent or quality of any deposit of a mineral with a view to exploiting that mineral".

5.204 No separate exemption is provided for the deposit of waste arising from boreholes or excavations carried out in connection with water supply and sewerage. (An exemption to this effect was included in the Collection and Disposal of Waste Regulations 1988, Schedule 6, paragraph 6(1)(c)). The National Rivers Authority and water undertakings are on a par with other public and private utilities who carry out excavations and streetworks. The temporary storage of material arising from a borehole or excavation at the site of that excavation will not normally require a licence. If the material is stored awaiting its reuse to fill in the same hole again, it cannot be regarded as waste. If the material is waste, awaiting collection for carriage elsewhere, its temporary storage falls under the exemption in Schedule 3 **paragraph 41.** However, the permanent disposal of such waste by deposit, whether on or off the site of production, will require a licence.

Other deposits of waste

The Temporary Storage Of Ships' Garbage Or Tank Washings : Schedule 3 Paragraph 36

5.205 This paragraph deals with the control of tank washings and garbage landed from ships. Annexes I, II and V of the International Convention for the Prevention of Pollution from Ships 1973 (Cmnd 5748) and the Protocol to that Convention of 1978 (Cmnd 7347) ("MARPOL") require the provision of reception facilities in harbours for three categories of landed wastes: under MARPOL Annex I, tank washings that are residues and mixtures containing oil; under Annex II, tank washings that are residues and mixtures containing noxious substances; and under Annex V, ships' garbage. Annexes I and II of MARPOL were implemented by the Prevention of Pollution (Reception Facilities) Order 1984 (S.I.1984/862) which requires harbour authorities and terminal operators to provide adequate reception facilities to enable vessels to discharge or deposit either of these two types of residues or mixtures. The discharge to these reception facilities of each of these two types of tank washings is governed by a separate set of UK regulations: Annex I tank washings under the Merchant Shipping (Prevention of Pollution) Regulations 1983 (S.I.1983/1398); and Annex II tank washings under the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations 1987 (S.I.1987/551). Annex V of MARPOL was implemented by the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1988 (S.I.1988/2292) and the Merchant Shipping (Reception Facilities for Garbage) Regulations 1988 (S.I.1988/2293).

5.206 The handling of landed ships' wastes, where these are "dangerous substances", is also subject to the Dangerous Substances in Harbour Areas Regulations 1987 (S.I.1987/37). Those Regulations impose a system of notice of entry and provide harbour masters with powers of prohibition, removal and regulation relating to dangerous substances. The Regulations apply only in harbour areas.

5.207 Regulation 5(1) and Schedule 3 paragraph 18 of the Controlled Waste Regulations 1992 bring tank washings and ships' garbage within the definition of industrial (and therefore controlled) waste for the purposes of the 1990 Act. The storage of waste in reception facilities is an operation involving the gathering together of waste, incidental to its collection and transport for disposal or recovery elsewhere. As such, it is not recovery or disposal within the definition in **regulation 1(3)**, that is, one of the disposal or recovery operations in Parts III and IV of Schedule 4. However, it would still constitute a deposit of waste under section 33(1)(a), and without an exemption any deposit of waste in reception facilities would require a waste management licence. The exemption conferred in **paragraph 36** avoids duplication within harbour areas where the other controls listed above provide adequate environmental protection.

5.208 **Paragraphs 36(1) and (2)** provide these exemptions for temporary storage. In each case the temporary storage must be incidental to the collection or transport of the waste (for example it could not be stored without a licence under this exemption pending treatment or disposal at that place). In each case the reception facilities must be within a harbour area; any reception facilities not in harbour areas, even if they are facilities provided under MARPOL at

terminals, remain licensable. The exemptions in both **paragraph 36(1) and (2)** apply even where the waste stored is special waste.

5.209 **Paragraph 36(1)** exempts the temporary storage of ships' garbage at reception facilities provided under the Merchant Shipping (Reception Facilities for Garbage) Regulations 1988. Paragraph 36(1)(a) sets the quantity limit that no more than 20 cubic metres of garbage may be stored for each ship from which the garbage was landed. **Paragraph 36(1)(b)** provides that no garbage may be stored under the exemption for more than one week.

5.210 **Paragraph 36(2)** exempts the temporary storage of tank washings at reception facilities provided in accordance with the Prevention of Pollution (Reception Facilities) Order 1984. The exemption sets two separate quantity limits. Under paragraph 36(2)(a), for tank washings consisting of dirty ballast, the quantity stored at any one time may not exceed 30% of the total deadweight of the ships from which the tank washings were landed. Under **paragraph 36(2)(b)**, for tank washings consisting of waste mixtures containing oil (not "waste oil" as defined in regulation 1(3)), the quantity stored at any one time may not exceed 1% of the total deadweight of the ships from which the tank washings were landed.

5.211 **Paragraph 36(3)** provides definitions consistent with those used in other controls. The definition of "garbage" is in effect the same as that used in Schedule 3 paragraph 18(2) of the Controlled Waste Regulations 1992 which also cite the Merchant Shipping (Reception Facilities for Garbage) Regulations 1988. The definition there is:-

> " 'garbage' means all kinds of victual, domestic and operational waste excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically, except sewage originating from ships."

5.212 In further explanation "operational waste" is defined in the same regulations as:-

> "all maintenance wastes, cargo associated wastes and cargo residues except residues or wastes from oil or oily mixtures, noxious liquid substances, non-polluting liquid substances or harmful substances in packaged form but does not include waste directly arising from the exploration, exploitation and associated off-shore processing of sea-bed mineral resources."

5.213 The definition of "harbour area" follows the Dangerous Substances in Harbour Areas Regulations 1987. The definition in those regulations is:-

> " 'harbour area' means -
>
> (a) (i) all areas of water within the statutory jurisdiction of a statutory harbour authority, other than the areas of water referred to in sub-paragraph (b),
>
> (ii) any berth, abutting any of the areas of water falling within head (i) above, where the loading or unloading of any dangerous substance [as defined in the Dangerous Substances in Harbour Areas Regulations 1987] takes place

(whether or not that berth is for other purposes under the statutory jurisdiction of the harbour authority),

(iii) any land, within the statutory jurisdiction of a statutory harbour authority or occupied by a statutory harbour authority, used in connection with the loading or unloading of vessels,

(iv) a monobuoy connected to one or more storage facilities in a harbour area as defined above and its monobuoy area,

but excluding -

(b) areas of water which are within the statutory jurisdiction of another statutory harbour authority where those areas of water are used primarily by vessels using berths or land within the harbour area of that other statutory harbour authority (for the purpose of these Regulations [ie the Dangerous Substances in Harbour Areas Regulations 1987] the harbour area of that other statutory harbour authority is known as 'an overlapping harbour area')."

5.214 The definition of "ship" is necessary because the word is used in the definition of "tank washings". The definition follows that in the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1988, with one amendment. The amended definition refers to a "vessel of any type whatsoever". This ensures that hovercraft are included, a well as all other ships including offshore installations, because MARPOL applies to waste from all of these.

5.215 The definition of "tank washings" is consistent with the definition in Schedule 3, paragraph 18 of the Controlled Waste Regulations 1992 and with the scope of tank washings controlled under MARPOL Annexes I and II.

5.216 The limited scope of the exemption should be noted. The storage of landed ships' waste is only exempt from waste management licensing provided that:-

(a) the waste stored falls within the definitions of tank washings and garbage;

(b) it is stored in reception facilities provided in accordance with the cited other regulations;

(c) it is within a harbour area;

(d) it is only being stored incidentally to collection or transport; and

(e) the storage is within the limits of quantity and time set out in the exemption.

5.217 Landed ships' waste remains controlled waste subject to measures including the duty of care and the registration of waste carriers. The provisions of regulation 5 and the Schedule to the Control of Pollution (Landed Ships' Waste) Regulations 1987, which apply the Control of Pollution (Special Waste) Regulations 1980 to landed ships' waste, also remain in force.

Pet Burial : Schedule 3 Paragraph 37

5.218 **Paragraph 37(1)** provides an exemption for the burial of a dead domestic pet. The burial may be only in the garden of the domestic property where the pet

lived. Note also that this is one of the exemptions where **regulation 17(2)** provides that the exemption only applies if the burial is carried out by or with the consent of the occupier or that the person carrying on the exempt activity is otherwise entitled to do so on that land. (See paragraph 5.30 of this Annex).

5.219 **Paragraph 37(2)** limits the exemption in two ways:-

(a) so that it does not exempt the burial of any dead domestic pet that may prove hazardous to anyone who may come into contact with it (that is, which falls within the definition of clinical waste); and

(b) if the pet died at a place away from the domestic property where it lived and is to be buried, a private person may still carry out the burial, but the burial may not be carried out by an establishment or undertaking if it is to be exempt; this follows the strictly literal interpretation of the Directive, however, given that the exemption is concerned only with burials at domestic property by or with the permission of the occupier, it is not envisaged that any "establishment or undertaking" will be involved, so this final proviso should not prevent any pet burials.

Samples Of Waste : Schedule 3 Paragraph 38

5.220 This paragraph provides an exemption for the deposit or storage of samples of waste, including special waste, in connection with testing them and subjecting them to analysis. In the view of the Departments, the testing and analysis of samples taken from waste is neither a disposal nor a recovery operation within the scope of those terms and the lists in Parts III and IV of Schedule 4 and are therefore not licensable. The exemption therefore only needs to deal with the deposit and storage of samples before and in conjunction with testing and analysis. After testing and analysis, discarded samples would be waste, and the exemption does not extend to the subsequent disposal of that waste.

5.221 The exemption is limited to samples taken:-

(a) using statutory powers under the 1990 Act, or under the Radioactive Substances Act 1993, the Sewerage (Scotland) Act 1968, the Control of Pollution Act 1974, the Water Industry Act 1991 or the Water Resources Act 1991; it is envisaged that these would be the powers of inspectors under those Acts;

(b) by, or on behalf of, the holder of a waste management licence (under section 35 of the 1990 Act) in pursuance of the conditions of that licence, which might require the sampling and testing of waste, not necessarily at the licensed site;

(c) by, or on behalf of anyone acting under an exemption, that is, carrying out an activity within the terms of one of the exemptions set out in **regulation 16(1)** or Schedule 3 of these Regulations; such sampling might be undertaken to establish the appropriate handling, treatment or disposal or even whether or not the waste met the specified circumstances of an exemption;

(d) by or on behalf of the owner or occupier of the land from which the samples are taken; such sampling may be necessary to establish the

nature of waste previously deposited on land, with a view to its clearance and treatment or disposal;

(e) for the purposes of research.

Storage Of Medicines And Medical, Nursing Or Veterinary Waste : Schedule 3 Paragraph 39

5.222 This paragraph provides two exemptions for the special circumstances of waste medicines and medical, nursing or veterinary waste. Such wastes may need to be gathered together for collection and transport at places other than the exact place at which the waste is produced. The exemptions are intended to permit and encourage schemes for the return, gathering and responsible handling of such wastes. (A more general explanation of the distinction between storage incidental to collection and transport and storage incidental to disposal is in paragraph 5.225 of this Annex).

5.223 **Paragraph 39(1)** provides an exemption for the storage of waste medicines which have been returned from households or by individuals. "Returned" does not necessarily require the medicines to be returned to the same pharmacy from which they were obtained. This exempt storage may only be at a pharmacy. The exemption applies even where the waste is special waste, which is the case with prescription only medicines. There are two further provisos:-

(a) the quantity stored at the pharmacy within the terms of the exemption may not exceed 5 cubic metres in total at any time; and

(b) no returned waste medicine may be stored at the pharmacy for longer than six months.

5.224 **Paragraph 39(2)** provides an exemption for the storage of waste at the premises of a medical, nursing or veterinary practice. The waste must be that produced in the course of carrying on that practice, but it need not have been produced on the premises where it is stored, so it may include waste brought back from calls elsewhere. The exemption applies even where the waste is special waste, which is the case with prescription only medicines. There are two further provisos:-

(a) the quantity stored at the premises within the terms of the exemption may not exceed 5 cubic metres in total at any time; and

(b) no waste may be stored for longer than six months.

Storage Of Waste Not At The Place Of Production : Schedule 3 Paragraph 40

5.225 This paragraph provides a limited exemption for the storage of waste at a place other than the place of production, even where the waste is not destined for recovery. More generous exemptions for storage pending recovery are in Schedule 3 **paragraphs 17 and 18.** After it leaves its place of production, the storage of waste that is destined for disposal, in connection with that disposal, is itself a disposal operation and must be licensed; but some storage of waste, at the stage where it is being gathered together, is incidental to the collection and transport of the waste rather than incidental to its disposal. This latter form of storage, in places such as yards and depots where waste from different sources is brought together for temporary storage pending collection, is distinct from

the licensable disposal operations of a waste transfer station. The terms of this exemption draw a distinction between these two forms of storage, based on exempting a modest quantity of waste that is gathered and stored for a short time incidental to its collection and transport.

5.226 **Paragraph 40(1)** provides an exemption for the storage of non-liquid waste at any place other than the premises where it is produced. Liquid waste is not defined, it is to bear its normal meaning. There are three provisos.

5.227 **Paragraph 40(1)(a)** provides that the waste must be stored in a secure container or containers. "Secure" as interpreted in **regulation 17(5)**, means that reasonable precautions are taken to ensure that the waste kept in it cannot escape and that members of the public cannot have access to that waste. The quantity stored within the terms of the exemption may not at any time exceed 50 cubic metres in total. No waste may be kept there for longer than 3 months.

5.228 **Paragraph 40(1)(b)** provides that the person storing the waste must be either the owner of the container or has the consent of the owner. This is in addition to the proviso, in **regulation 17(2)**, that the use of the land may only be with the occupier's consent or on the basis of some other entitlement.

5.229 **Paragraph 40(1)(c)** provides that the waste may not be stored at a site designed or adapted for the reception of waste with a view to its being disposed of or recovered elsewhere. This excludes storage at sites commonly known as transfer stations. The key is that the transfer of waste is the purpose of a transfer station, and it is designed or adapted for that purpose. The exemption is only to apply at sites where the transfer of waste is merely ancillary to the operations of the site.

5.230 **Paragraph 40(1)(d)** provides that the storage must be incidental to the collection or transport of the waste. This clearly distinguishes it from disposal or recovery operations. Such exempt storage might include gathering waste from multi-occupied premises into shared containers for collection; the gathering in a skip at a yard or depot of waste produced by a contractor in the course of work at other sites; and the storage of waste in mobile containers that are temporarily stationary during a journey.

5.231 **Paragraph 40(2)** provides a similar exemption for the special case of the storage of scrap rails, necessary because they would not normally fit into a container, nor would that be needful while they were stored at the trackside awaiting collection. The exemption permits their temporary storage on operational land of a railway, light railway or tramway. "Operational land" is defined in **regulation 1(3)**, see paragraph 5.253 of this Annex. The quantity stored within the terms of the exemption may not exceed 10 tonnes in total in any one place. The storage must be incidental to the collection or transport of the scrap rails.

Storage Of Waste At The Place Of Production : Schedule 3 Paragraph 41

5.232 This paragraph provides a general exemption for the temporary storage of waste on the site where it is produced, pending its collection.

5.233 "On the site where it is produced" need not be limited to within a building or its grounds. For example, it would cover the temporary storage of waste in skips or other containers in the street just outside a building where the waste is produced, even in excess of the limitations of Schedule 3 **paragraph 40.**

5.234 **Paragraph 41(1)** provides that the exemption shall apply to the storage of special waste, subject to the following provisos.

5.235 **Paragraph 41(1)(a)** provides that special waste may not be stored under the terms of the exemption for longer than twelve months. This applies to any special waste, liquid or not.

5.236 **Paragraph 41(1)(b)** provides for the storage of special waste that is liquid waste. This may not be stored under the terms of the exemption unless it is stored in a secure container (or containers) and the total volume of that waste in storage there at any time is not more than 23,000 litres.

5.237 **Paragraph 41(1)(c)** provides for the storage of other special waste, that is not liquid waste. This may not be stored under the terms of the exemption unless it is stored either:-

(a) in a secure container (or containers), and the total volume of that waste in storage there at any time is not more than 80 cubic metres; or

(b) in a secure place, and the total volume of that waste in storage there at any time is not more than 50 cubic metres.

5.238 A "secure" container or place, as interpreted in **regulation 17(5)**, means that reasonable precautions are taken to ensure that the waste kept in it cannot escape and that members of the public cannot have access to that waste. Liquid waste is not defined, it is to bear its normal meaning.

Transitional exemptions

Scrap Metal And Waste Motor Vehicles : Schedule 3 Paragraph 42

5.239 Transitional provisions were made in regulations 3(2) and 7(2) of the Controlled Waste Regulations 1992, providing that scrap metal shall not be treated as controlled waste for the purposes of section 34 of the 1990 Act (the duty of care) before 1 April 1993. This provision was extended by the Controlled Waste (Amendment) Regulations 1993, S.I. 1993/566, so that it lasts until the date on which sections 3 to 10 of the 1974 Act are repealed.

5.240 The further transitional provision in the Commencement Order provides in effect that waste management licensing under the 1990 Act in respect of scrap metal shall not replace disposal licensing under the 1974 Act until 1 October 1994. This consequently extends the effect of the transitional exclusion so that scrap metal will not come under the duty of care until 1 October 1994. It will then become a breach of section 34 to consign scrap metal that is controlled waste to an unlicensed waste manager in a case where a licence is required. This will, as intended, cut off the supply of waste for unlawful treatment. However, it is considered that this should not be the outcome in a case where no

licence is current solely because there is an outstanding licence application that was made under the 1974 Act but has not been determined.

5.241 Not all scrap metal activities that require a licence under the 1974 Act are yet licensed. This places their operators in breach of section 3 of the 1974 Act, or, from 1 October 1994, section 33 of the 1990 Act. It is for site operators and waste regulation authorities to work together to secure the licensing of all licensable activities as soon as possible, but it is recognised that, for a variety of reasons, some of these sites may still not have received licences. (The transitional provisions of the Commencement Order provide for the determination of outstanding applications for waste disposal licences.) Schedule 3 **paragraph 42** makes a further transitional provision for these cases.

5.242 The Courts have determined that waste motor vehicles are not scrap metal, and so previous transitional provisions have not applied to such waste. Waste motor vehicles are already subject to the duty of care and the dismantling of motor vehicles requires a licence under the 1974 Act. However, the licensing of motor vehicle dismantlers is as incomplete as that of scrap yard operators, and it is recognised that in many respects motor vehicle dismantlers are in the same position under waste law as scrap metal operators. The further transitional exemption in Schedule 3 **paragraph 42** is therefore being applied equally to both industries.

5.243 **Paragraph 42(1)** provides a transitional exemption from licensing for the treatment, keeping or disposal by any person at any premises of scrap metal (defined in **regulation 1(3)**, see paragraph 5.255 of this Annex) or of waste motor vehicles which are to be dismantled. In either case the exemption applies even where the waste involved includes special waste. The exemption applies subject to two provisos:-

(a) that the activity to which the exemption applies was being carried on at the same premises and by the same person before 1 May 1994; and

(b) that same person has applied before 1 May 1994 for a disposal licence authorising that activity under Part I of the 1974 Act, and that application is pending (has not been withdrawn or determined) on that date.

5.244 **Paragraph 42(2)** limits the exemption so that it only applies until the date when the licence applied for is granted. If the application is rejected (or deemed to be rejected under section 36(9) of the 1990 Act because of the lapse of time without its determination) then the exemption will continue until either:-

(a) the period during which the applicant could appeal, which under **regulation 7(1)(a)** is six months from the decision or deemed rejection, runs out without an appeal being made; or

(b) if an appeal is made, the date on which the appeal is settled, either because it is determined or withdrawn.

5.245 It should be noted that the exemption is made effective by the existence of any application for a licence for the activity under section 5 of the 1974 Act. No limits are set on the soundness or admissibility of the application. Nor is the exemption dependent on the status of the activity or application in planning

law. These are matters to be considered by the authority, or if necessary by the Secretary of State, in determining the application.

Activities Previously Not Licensable : Schedule 3 Paragraph 43

5.246 The detailed changes to the definition of waste, to the scope of controlled waste, to the interpretation of section 33 of the 1990 Act and to the exemptions from waste management licensing will make many changes to the boundary between the activities that require a licence and those that do not. On balance these changes will have a substantial net deregulatory effect, but there will be instances of activities for which no licence has hitherto been required under the 1974 Act which will require a licence under the 1990 Act. Continuing such activities without a licence will become an offence. There is a legitimate expectation that a period of notice should be permitted to persons undertaking new licensable activities to secure a necessary licence. This exemption provides a twelve month period of transition.

5.247 **Paragraph 43(1)** provides a transitional exemption from licensing for the treatment, keeping or disposal of waste, by any person at any premises. The exemption applies even where the waste involved includes special waste. The exemption is only effective in a case where, immediately before 1 May 1994:-

(a) the activities to which the exemption applies were being carried on at the same premises and by the same person before 1 May 1994; and

(b) no licence was required under Part I of the 1974 Act.

5.248 **Paragraph 43(2)** provides that, if the person benefitting from the exemption does not apply for a waste management licence, the exemption will cease to have effect for his activities at those premises after 30 April 1995.

5.249 **Paragraph 43(3)** provides that, if the person benefitting from the exemption does apply for a waste management licence for the relevant activity before 30 April 1995, the exemption applies until the date when the licence applied for is granted. If the application is rejected (or deemed to be rejected under section 36(9) of the 1990 Act because of the lapse of time without its determination) then the exemption will continue until either:-

(a) the period during which the applicant could appeal, which under **regulation 7(1)(a)** is six months from the decision or deemed rejection, runs out without an appeal being made; or

(b) if an appeal is made, the date on which the appeal is settled, either because it is determined or withdrawn.

Definitions used in exclusions and exemptions

5.250 The following terms, defined in **regulation 1**, are important to the interpretation of the exemptions in Schedule 3.

"Inland Waters"

5.251 "Inland waters", a term used in **regulation 16(1)(c)** and in Schedule 3 **paragraphs 7, 9 and 25**, are defined in **regulation 1(3)** by reference to

section 221(1) of the Water Resources Act 1991, and, in Scotland, section 30A(1)(c) of the 1974 Act, subject to minor amendments. Other than in Scotland the definition therefore is:-

"the whole or any part of-

(a) any river, stream, or other watercourse (within the meaning of Chapter II of Part II of this Act) whether natural or artificial, and whether tidal or not;

(b) any lake or pond, whether natural or artificial, or any reservoir or dock that does not fall within paragraph (a) of this definition; and

(c) so much of any channel, creek, bay, estuary or arm of the sea as does not fall within paragraph (a) or (b) of this definition;".

5.252 In Scotland the definition covers (a) the waters of any relevant loch or pond (whether it is natural or artificial or above or below ground, including a reservoir of any description, and (b) the waters of so much of any relevant river or watercourse as is above the fresh-water limit. The expressions "relevant loch or pond" and "relevant river or watercourse" are defined in section 30A(4) of the 1974 Act and section 30A empowers the Secretary of State by order to extend the definition of "relevant loch or pond" in certain respects.

"Operational Land"

5.253 "Operational land" of a statutory undertaker is a term used in Schedule 3 **paragraphs 7, 30, 34 and 40.** Such land is defined by reference to sections 263 and 264 of the Town and Country Planning Act 1990 (or in Scotland, sections 211 and 212 of the Town and Country Planning (Scotland) Act 1972). The definition in section 263(1) and (2) of that 1990 Act, reproduced here, and the matching provision in Scotland, do not cover any land not clearly used for the purpose of carrying on the statutory undertaking:-

"(1) Subject to the following provisions of this section and to section 264, [which qualifies the definition in respect of some cases where an interest is held in land] in this Act `operational land' means, in relation to statutory undertakers -

(a) land which is used for the purpose of carrying on their undertaking; and

(b) land in which an interest is held for that purpose.

(2) Paragraphs (a) and (b) of subsection (1) do not include land which, by reason of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of carrying on of statutory undertakings."

5.254 "Statutory undertakings" are defined in section 262 of that same 1990 Act to include the National Rivers Authority and persons authorised by any enactment to carry on various specified undertakings including any railway, light railway or tramway. Note that Schedule 3 **paragraph 7(9)** provides that in **paragraphs 7 and 30** an internal drainage board shall also be deemed to be a statutory undertaker for the purposes of the definition of "operational land".

"Scrap Metal"

5.255 "Scrap metal" is used in Schedule 3 **paragraphs 2 and 42**, and is defined in **regulation 1(3)** by reference to the definition in the Scrap Metal Dealers Act 1964, section 9(2), which is:-

> "'scrap metal' includes any old metal, and any broken, worn out, defaced or partly manufactured articles made wholly or partly of metal, and any metallic wastes, and also includes old, broken, worn out or defaced tooltips or dies made of any of the materials commonly known as hard metal or of cement or sintered metallic carbides;".

5.256 The term "scrap metal dealer's business" occurs in Schedule 3 only in **paragraph 2. Regulation 1(4)** provides for the interpretation of references to carrying on business as a scrap metal dealer and, in Scotland, to carrying on business as a metal dealer. Carrying on business as a scrap metal dealer (other than in Scotland) is to be interpreted as in the Scrap Metal Dealers Act 1964. The provision there, in section 9(1), is:-

> "a person carries on business as a scrap metal dealer if he carries on a business which consists wholly or partly of buying or selling scrap metal, whether the scrap metal sold is in the form in which it was bought or otherwise, other than a business in the course of which scrap metal is not bought except as materials for the manufacture of other articles and is not sold except as a by-product of such manufacture or as surplus materials bought but not required for such manufacture;".

5.257 In Scotland, the equivalent term is "metal dealer's business", to be interpreted as in section 37(2) of the Civic Government (Scotland) Act 1982, where the definition is:-

> "a person carries on business as a metal dealer if he carries on a business which consists wholly or partly of buying and selling for scrap old, broken, worn out, defaced or partly manufactured articles made wholly or partly of metal (whether the metal sold is in the form in which it was bought or otherwise), other than a business in the course of which metal is not bought except as materials for the manufacture of other articles and is not sold except as a by-product of such manufacture or as surplus materials bought but not required for such manufacture".

Table 5.1 Table of Waste Management Licensing Exemptions

Case	Regulation	Equivalent 1974 Act Exception (1988 Regulations Schedule 6, unless stated)	Applies Where Special Waste	Requires Occupier's or Owner's Consent under Reg 17 (2)	Register with:
A. EXCLUSION FROM WASTE MANAGEMENT LICENSING OF ACTIVITIES UNDER OTHER CONTROL REGIMES					
Prescribed processes for central control	16(1)(a)	SI 1991/508	yes	no	N/A
Waste incineration subject to local control	16(1)(b)	SI 1991/508	yes	no	N/A
Disposal of liquid waste subject to consents	16(1)(c)	1	yes	no	N/A
Deposits of waste at sea	16(1)(d)	2 & 3; SI 1977/2006 Reg 4(1)(k)	yes	no	N/A
B. RECOVERY OR REUSE OF WASTE					
	Schedule 3				
Glass manufacture and production	1	SI 1991/508	no	no	other
Scrap metal furnaces	2	SI 1991/508	no	no	other
Burning as fuel	3	23 & SI 1991/508	no	no	other
Packaging or containers	4		no	yes	other or WRA
Burning waste as fuel in small appliances	5	SI 1977/2006 Reg 4(1)(j)	no	no	WRA
Burning waste oil as fuel in an engine	6		no	no	WRA
Waste for the benefit of land	7	9 & 13(1)(b); SI 1992/1368	no	yes	WRA
Sludge and septic tank sludge on land	8	10; SI 1992/1368 & SI 1977/2006 Reg 3(c)(ii)	no	no	WRA
Land reclamation	9		no	yes	WRA
Sewage and water treatment works	10	SI 1992/2006 Reg 3(c)(i)	no	no	WRA
Preparatory treatments of certain wastes	11	19 & 20	no	yes	WRA
Composting waste	12		no	no	other or WRA

Case	Schedule 3	Equivalent 1974 Act Exception (1988 Regulations Schedule 6, unless stated)	Applies Where Special Waste	Requires Occupier's or Owner's Consent under Reg 17 (2)	Register with:
Construction and soil materials	13		no	yes	WRA
Manufacture of finished goods	14		no	yes	WRA
Use of waste	15		no	yes	WRA
Diseases of Animals (Waste Food) Order 1973	16		no	no	other
Storage of waste in a secure place	17	17	yes	yes	WRA
Wastes in secure containers	18	16; SI 1977/2006 Reg 4(1)(i)	no	yes	WRA
Waste for construction	19	4; SI 1977/2006 Reg 4(1)(a)(b) & (c)	no	yes	WRA
Recovery of textiles	20		no	no	WRA
Preparatory treatments of waste plant matter	21		no	no	WRA
Recovery of silver	22		no	no	WRA
Animal by-products	23		no	no	other
C. OPERATIONS LEADING TO RECOVERY/REUSE OR DISPOSAL					
Crushing, grinding or size reduction of bricks, tiles or concrete	24	SI 1991/508	no	no	other
Waterway dredging	25	8; SI 1977/2006 Reg 4(1)(a)	no	yes	WRA
Recovery or disposal as part of the production process	26	18; SI 1977/2006 Reg 4(1)(l)	no	no	WRA
Bailing, compacting or pulverising	27	19	no	no	WRA
Storing returned goods	28		no	no	WRA
D. DISPOSAL OF OWN WASTE AT THE PLACE OF PRODUCTION					
Disposal by incineration at the place of production	29	22; SI 1977/2006 Reg 4(1)(j)	no	NO	WRA

Case	Schedule 3	Equivalent 1974 Act Exception (1988 Regulations Schedule 6, unless stated)	Applies Where Special Waste	Requires Occupier's or Owner's Consent under Reg 17 (2)	Register with:
Burning waste in the open	30	22; SI 1977/2006 Reg 4(1)(j)	no	no	WRA
Waste from railway sanitary conveniences or sinks	31	11; SI 1977/2006 Reg 3(c)(iii)	no	no	WRA
Waste from sanitary conveniences with removable receptacles	32	12; SI 1977/2006 Reg 3(c)(iv)	no	no	WRA
Peatworking	33	5	no	no	WRA
Railway ballast	34	7; SI 1977/2006 Reg 4(1)(d)	no	no	WRA
Waste from prospecting	35	6(1)(a) & (b)	no	no	WRA
E. OTHER DEPOSITS OF WASTE					
The temporary storage of ships' garbage or tank washings	36	SI 1987/402 & SI 1989/65	yes	no	N/A
Pet burial	37		no	yes	N/A
Samples of waste	38	SI 1977/2006 Reg 4(1)(g)	yes	no	WRA
Storage of medicines, and medical, nursing or veterinary waste	39		yes	no	WRA
Storage of waste not at the place of production	40	16; SI 1977/2006 Reg 4(1)(a)(b)(h) & (i)	no	yes	N/A
Storage of waste at the place of production	41	14, 15 & 21; SI 1977/2006 Reg 4 (1)(a)(b)(c)(e)(f)(h) & (i)	yes	yes	N/A
F. TRANSITIONAL EXEMPTIONS					
Scrap metal and waste motor vehicles	42		yes	no	N/A
Activities previously not licensable	43		yes	no	N/A

THE REGISTRATION OF EXEMPTIONS

Introduction

6.1 Article 11(2) of the Directive requires that establishments or undertakings exempted under Article 11(1) shall be registered with the competent authorities. Regulation 18 implements this requirement. The regulation imposes a registration system for exempt establishments or undertakings that is designed to be as little onerous both for business and for WRAs as is consistent with the implementation of the Directive.

Regulation 18

6.2 **Regulation 18(1)** creates a new offence in support of the requirement to register. The offence is for an establishment or undertaking to carry on an exempt activity involving the recovery or disposal of waste without being registered with the appropriate registration authority. This will be an offence after 31 December 1994, allowing a transitional period of 8 months during which establishments and undertakings may register.

6.3 **Regulation 18(2)** imposes a new duty on each appropriate registration authority to establish and maintain a register. The register shall be a register of the establishments and undertakings carrying on those exempt activities involving the recovery and disposal of waste for which that authority is the appropriate registration authority.

6.4 **Regulation 18(3)** specifies that the register shall contain the following particulars of each establishment or undertaking:-

(a) the name of the establishment or undertaking;

(b) the activity which constitutes the exempt activity; that is, which of the activities listed in Schedule 3; it would be sufficient to indicate the Schedule and paragraph references or, if instead the activity is described, it is not necessary to specify more information than will establish the basis for the claimed exemption; such details as quantity, type of waste, and type of container are only relevant in a case where they are a part of the definition of the scope of the exemption; a claim under a very general exemption should only need to describe the activity in very general terms;

(c) the place where the activity is carried on; in interpreting statute, the singular includes the plural, so this would equally permit the register to list several places where an activity was carried on; again, this need be no more specific than is required to establish the basis of the exemption, so that to register for an exemption applicable to all the premises of a firm within the area of the appropriate registration authority it would only be necessary to list the addresses of that firm within the area of that authority.

6.5 **Regulation 18(4)** requires each appropriate registration authority to enter these relevant particulars in the register. There are no grounds for refusing registration to establishments or undertakings notifying an authority.

Registration, once effected, remains valid indefinitely. The authority must enter relevant particulars in relation to an establishment or undertaking in the register:-

(a) if the authority receives that information by notice in writing; or

(b) if the authority becomes aware in any other way of the particulars of an establishment or undertaking carrying on an exempt activity.

6.6 **Regulation 18(5)** makes additional provision for registration in the special cases of the exempt activities mentioned in **regulation 18(10)(a), (b) or (c)**. The authority who grant authorisations or licences or register the activities under certain other enactments are the appropriate registration authority for these activities, by reason of **regulation 18(10)(a), (b) and (c)**. The authority are therefore already well supplied with the information for registration of the exemption. Accordingly **regulation 18(5)** provides that the authority shall be taken to be aware of the relevant particulars in relation to those activities. By reason of **regulation 18(4)** the authority must then enter the information in the register. The effect is that no further information need be furnished by the establishment or undertaking to secure registration in these cases.

6.7 **Regulation 18(6)** sets the penalty for the offence in **regulation 18(1)**. On summary conviction (in a magistrate's court or in Scotland the sheriff or district court) the penalty is not to exceed level 2, currently (April 1994) a £500 fine.

6.8 **Regulation 18(7)** makes special provision for registration in the case of landspreading waste on land used for agriculture, where this is carried out within the terms of the exemption in Schedule 3 **paragraph 7**. These provisions so far as possible continue the established arrangements for the pre-notification of the spreading of waste on land used for agriculture. In order to benefit from the exemption in Schedule 3 **paragraph 7(1)**, Schedule 3 **paragraph 7(3)(c)** provides that an establishment or undertaking spreading prescribed waste on land used for agriculture must furnish the information listed in Schedule 3 **paragraph 7(4)**. There is substantial overlap between the two information requirements under Schedule 3 **paragraph 7(4)** and regulation 18. The information that must be furnished under Schedule 3 **paragraph 7(4)** includes all that required to register the exemption under **regulation 18(3)**, so the establishment or undertaking need take no separate action to register. **Regulation 18(7)** accordingly provides that **regulation 18(1) to (6)** do not apply to establishments or undertakings to which Schedule 3 **paragraph 7(3)(c)** applies.

6.9 It is equally in the interests of simplicity that the information that the authority anyway receive under Schedule 3 **paragraph 7(4)** should be that which they then place on the register of exemptions. Accordingly **regulation 18(7)** provides that in such case the register shall contain the particulars listed in Schedule 3 **paragraph 7(4)**.

6.10 **Regulation 18(8)** provides for the operation of the register. These provisions are in line with those on registers maintained under section 64 of the 1990 Act. Each authority must keep the register open to public inspection at its principal offices at all reasonable hours. The public must also be permitted

reasonable facilities for obtaining copies of entries. No charge may be made for inspection, but a reasonable charge may be made for copies of entries.

6.11 **Regulation 18(9)** provides that these registers may be kept in any form. Authorities may choose to keep and make the information available simply in the form in which it arrives or is first recorded. Alternatively authorities may find it convenient to keep the registers together with or as part of any other public registers of environmental information that they may already keep (see Annex 9 : Public Registers and Annual Reports).

6.12 **Regulation 18(10)** sets out who are the appropriate registration authorities for the purposes of regulation 18. There are four separate groups of exempt activities, each with different registration authorities according to which is most involved with that class of activity. (Note that the effect of **regulation 18(5)** is that establishments and undertakings acting within the scope of any of the exemptions in regulation 18(10)(a), (b) and (c) need take no separate action to register, see paragraph 6.6 of this Annex.)

6.13 **Regulation 18(10)(a)** prescribes the first group of exempt activities. These involve processes prescribed for local control under Part I of the 1990 Act, and also activities that are merely related to such a process, in particular storage. The activities are those exempted within:-

(a) (regulation 18(10)(a)(i)): Schedule 3 **paragraph 1** (glass manufacture and production), **paragraph 2** (scrap metal furnaces), **paragraph 3** (burning as fuel), **paragraph 8** (crushing, grinding or other size reduction of bricks, tiles and concrete); note that to qualify as within the scope of these exemptions the activity must in any case be a process or part of a process specified for local control in the 1991 Regulations and must have an authorisation under Part I of the 1990 Act; each of these paragraphs includes an associated exemption for storage, so that the activities that this registration provision applies to include associated storage within the terms of the exemption;

(b) (regulation 18(10)(a)(ii)): Schedule 3 **paragraph 4** (packaging or containers), but only if:-

  (i) the activity involves the coating or spraying of metal containers;

  (ii) that coating or spraying is undertaken as a process or part of a process within Part B of Section 6.5 (coating processes and printing) of Schedule 1 to the 1991 Regulations (this distinction is necessary to distinguish those activities within the exemption that are regulated under Part 1 of the 1990 Act); and either

  (iii) that process is the subject of an authorisation under Part I of the 1990 Act; or

  (iv) the activity involves storage related to that authorised process;

(c) (regulation 18(10)(a)(iii)): Schedule 3 **paragraph 12** (composting), but only if:-

  (i) the activity involves the composting of biodegradable waste;

  (ii) that activity is undertaken as a process or as part of a process within paragraph (a) of Part B of Section 6.9 (treatment or processing of animal or vegetable matter) of Schedule 1 to the 1991 Regulations;

(iii) the compost is to be used for the purposes of cultivating mushrooms; and either

(iv) that process is the subject of an authorisation under Part I of the Act; or

(v) the activity involves storage related to that authorised process.

6.14 In this first group of cases **regulation 18(10)(a)** designates as registration authority the local enforcing authority, defined via **regulation 1(3)** as in section 1(7) (for England and Wales) and (8) (for Scotland) of the 1990 Act.

6.15 **Regulation 18(10)(b)** prescribes the second group of exempt activities as being any activity within Schedule 3 **paragraph 16.** An activity only falls within the provisions of that paragraph if it is authorised by a licence granted under article 7 or 8 of the Diseases of Animals (Waste Food) Order 1973. In that case the registration authority is the issuing authority responsible for granting that licence. The issuing authority as defined in article 2(1) of that 1973 Order is the Minister of Agriculture Fisheries and Food or (as would be the case in Scotland and Wales) the Secretary of State.

6.16 **Regulation 18(10)(c)** prescribes the third group of exempt activities as being certain activities within Schedule 3 **paragraph 23** (animal by-products). In these cases the registration authority is the authority responsible for granting a relevant licence or registering the activity under certain other enactments. The activities must fall into one of three sub-groups, according to which other provision and registration authority is involved:-

(a) the Minister (for the definition see paragraph 6.17 of this Annex) is to be the registration authority in a case where the exempt activity is carried on by virtue of a licence under the following provisions of the Animal By-Products Order 1992:-

(i) article 5(2)(c) or 6(2)(d); or

(ii) an approval under article 8;

(b) the appropriate Minister (for the definition see paragraph 6.17 of this Annex) is to be the registration authority in a case where the exempt activity is carried on by virtue of a registration under article 9 or 10 of the Animal By-Products Order 1992; and

(c) the local authority (for the definition see paragraph 6.17 of this Annex) is to be the registration authority in a case where the exempt activity is carried on at a "knacker's yard" (for the definition see paragraph 6.17 of this Annex), provided that:-

(i) the occupier of the knacker's yard holds a licence under section 1 of the Slaughterhouses Act 1974 authorising the use of that yard as a knacker's yard; or

(ii) in Scotland, a licence has been granted under section 6 of the Slaughter of Animals (Scotland) Act 1980 in respect of that yard.

6.17 Four terms used in **regulation 18(10)(c)** bear particular meanings in that sub-paragraph only: **"the Minister", "the appropriate Minister", "knacker's yard"** and **"local authority"**. These are defined by reference to section 86(1) of the Animal Health Act 1981, in the cases of "the Minister" and

"the appropriate Minister"; or by reference to section 34 of the Slaughterhouses Act 1974 or, in Scotland, section 22 of the Slaughter of Animals (Scotland) Act 1980, in the cases of "knacker's yard" and "local authority". These cited definitions are:-

(a) in section 86(1) of the Animal Health Act 1981, applying to the whole of Great Britain:-

"'the Minister' means, in relation to the whole of Great Britain, the Minister of Agriculture, Fisheries and Food";

"'the appropriate Minister' means, in relation to England, the Minister of Agriculture, Fisheries and Food, and, in relation to Scotland or to Wales, the Secretary of State";

(b) in section 34 of the Slaughterhouses Act 1974, applying except in Scotland:-

"'knacker's yard' means any premises used in connection with the business of slaughtering, flaying or cutting up animals whose flesh is not intended for human consumption";

"'local authority' has the meaning assigned to it by section 27 above and, in relation to any premises or to an application in respect of any premises, means the local authority within whose district the premises are situated";

(c) in section 27 of the Slaughterhouses Act 1974:-

"'local authority' means-

(a) as respects the City of London, the Common Council;

(b) as respects any London Borough, the council of the borough; and

(c) as respects any district, the council of the district"; and

(d) in section 22 of the Slaughter of Animals (Scotland) Act 1980, applying in Scotland only:-

"'knacker's yard' means any building or place used for the killing of animals the flesh of which is not intended for sale for human consumption";

"'local authority' means an islands or district council".

6.18 **Regulation 18(10)(d)** prescribes the fourth and final group of exempt activities as being any other case not within **regulation 18(10)(a), (b) or (c)**. In any such case the registration authority is the WRA for the area in which the exempt activity is (or is to be) carried on. Note that this applies only to any exempt activity in Schedule 3, it does not apply to any activity excluded by **regulation 16**. (One of the exclusions, regulation 16(d)(ii), itself makes provision for exemptions from permit requirements, under section 7 of the Food and Environment Protection Act 1985. The registration of such exemptions is described separately in Annex 12, Food and Environment Protection Act.)

Scope and application of the Registration requirement

Establishment Or Undertaking

6.19 Only "establishments or undertakings" must register; where any exempt activity is undertaken other than by an establishment or undertaking, the person carrying on that activity need not register in order to benefit from the exemption. In the Regulations the phrase bears the same meaning as it has in the Directive, where it is used but not defined. For the purpose of the interpretation of these Regulations "establishments or undertakings" who must be registered may be taken to include any organisation, whether a company, partnership, authority, society, trust, club, charity or other organisation, but not private individuals.

Exempt Activities Requiring Registration

6.20 The provisions of Article 11(2) of the Directive only apply to those activities that are disposal or recovery operations of waste falling under the scope of the Directive. Therefore it is only establishments and undertakings carrying on those activities (in these Regulations the activities listed in Parts III and IV of Schedule 4) who must register if they are to benefit from an exemption conferred under Article 11. In these Regulations certain exempt activities are neither disposal nor recovery operations as listed in Schedule 4. Exempt activities that are neither disposal nor recovery operations do not need to be registered. Further, the activities in regulation 16 are exclusions from waste management licensing whose authorisation or exemption is controlled by another legal regime, and do not involve any registration under these Regulations. The provisions of these regulations as to registration of exempt activities do not apply to waste that is not controlled waste, such as waste from agricultural premises or waste from mines and quarries.

6.21 In the view of the Departments, the exempt activities that do require registration by establishments or undertakings under regulation 18 are activities within the scope of the exemptions in Schedule 3 **paragraphs 1 to 35, 38 and 39.**

Keeping The Register

6.22 It is only in cases where a WRA is the appropriate registration authority that either the authority or the establishment or undertaking need take any action to establish a register beyond that already built into the procedures for issuing consents or licences.

6.23 The register should be kept in whatever way imposes least burden on establishments and undertakings and on authorities. Provided that it contains the necessary information, the register may simply consist of the originals of any notices received from an establishment or undertaking with added details of other cases that have come to the authority's notice.

6.24 An establishment or undertaking carrying out an activity for which the registration authority is the WRA must be registered with each authority in whose area they carry out the activity. However, there is no reason why a single

notification and entry in the register should not cover all the activities of an establishment or undertaking in an authority's area.

Enforcement

6.25 In applying the provisions on the registration of exemptions and weighing these against competing priorities, authorities and operators should have regard to the aims both of the Directive and of waste management licensing. These aims centre on the prevention and minimisation of pollution and harm. Where an activity is carried on properly within the scope of an exemption and within all the other requirements of the Directive and these Regulations this aim will be achieved. A failure to register an exempt activity, where this is the only breach of the Regulations, does not in itself threaten pollution or harm. Authorities should not expect to take enforcement action for such technical breaches, until and unless the establishment or undertaking concerned fails to cooperate with the reasonable actions open to the authority to secure a registration.

6.26 It is envisaged that, in view of the very wide scope of the exempt activities concerned, and the fact that no previous waste licensing requirement has impinged on many of them, there may be a substantial number of establishments and undertakings who remain for some time unaware or inadequately informed of the requirement to be registered. Authorities are advised to give the completion of registration a significantly lower priority than the licensing and regulation of licensable activities.

6.27 When, in the course of discharging their other functions, authorities become aware of the carrying on of waste management activities by unregistered establishments and undertakings, they will wish to establish whether the activity is within the terms of an exemption. If so, and it is an exemption to which regulation 18 applies, then, provided the authority have the information required by **regulation 18(3)**, **regulation 18(4)** immediately comes into effect, requiring the authority to register the establishment or undertaking. At this time, any contravention of **regulation 18(1)** ceases, and it will be unnecessary to take any enforcement action. In cases where the activity proves to be not within the terms of an exemption, the provisions of **regulation 18(1)** do not arise, but more serious charges would be possible under section 33 of the 1990 Act.

PROTECTION OF GROUNDWATER

Introduction

7.1 **Regulation 15** transposes into British law certain requirements of the EC Directive on the Protection of Groundwater against Pollution caused by Certain Dangerous Substances (80/68/EEC; referred to in this Annex only as "the Directive"). The attention of WRAs was drawn to the Directive in DOE Circulars 4/82 and 20/90 (Welsh Office Circulars 7/82 and 34/90, respectively; and Scottish Development Department letter of 1/3/82 and Scottish Office Environment Department Circular 4/94). However, the Departments now accept that the Directive requires us to apply the approach in the Directive by more formal legal means. **Regulation 15** does this.

Implementing The Directive

7.2 The Government delegates responsibility for the routine implementation of the Directive to those authorities to whom the necessary powers of control over relevant activities are available under existing legislation. In broad terms the Directive envisages that all relevant activities which produce discharges of listed substances into groundwater, whether directly or indirectly, will be subject to an authorisation procedure, and that appropriate measures will be taken to secure the protection of underground water resources. In the main this function is fulfilled by the National Rivers Authority in England and Wales or, in Scotland, by river purification authorities. In respect of licensed waste disposal activities (and, in Scotland, disposal activities of a waste disposal authority operating under a resolution) however, the appropriate controls are vested in WRAs. For these activities, therefore, controls over potential discharges to groundwater are exercised by WRAs. The National Rivers Authority or, in Scotland, river purification authorities, are statutory consultees on decisions taken by WRAs to grant, or accept the surrender of, a waste management licence; and on decisions relating to resolutions in Scotland. In the event of disagreement between the NRA or river purification authority and the WRA, either of them may refer the matter to the Secretary of State for determination.

Scope And Purpose Of The Directive

7.3 The general purpose of the Directive is to prevent the pollution of groundwater by the substances listed in the Annex to the Directive and reprinted at the end of this Annex. More specifically, Member States are obliged to take the necessary steps:

(a) to prevent substances in List 1 from entering groundwater, and

(b) to limit the introduction of List II substances into groundwater so as to avoid pollution.

7.4 **Regulation 15(12)** provides that expressions used in **regulation 15** which are also used in the Directive have the same meaning as in that Directive. "Groundwater" is defined for the purposes of the Directive as "all water which

is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil". It is this definition, narrower than that in Part III of the Water Resources Act 1991 (and, for Scotland, in Part II of the 1974 Act) which also covers underground waters in the unsaturated zone, that is to be applied when implementing the Directive. "Pollution" is defined for the purpose of the Directive as "the discharge by man, directly or indirectly, of substances or energy into groundwater, the results of which are such as to endanger human health or water supplies, harm living resources and the aquatic ecosystem or interfere with other legitimate uses of water".

7.5 The Directive also divides discharges into "direct" and "indirect" discharges. "Direct discharge" means the introduction into groundwater of substances in Lists I or II without percolation through the ground or subsoil. "Indirect discharge" means the introduction into groundwater of substances in Lists I or II after percolation through the ground or subsoil. In the context of waste disposal, direct discharge might arise through deep disposal of waste in subterranean cavities, deposits in water-filled mineshafts or boreholes, or where groundwater is allowed to enter the body of waste in a landfill. Indirect discharge is likely to be a consideration for the vast majority of landfill sites.

7.6 The Annex to the Directive specifies the families and groups of substances which belong to List I and List II. However, the introductory paragraphs to List I note that some individual substances belonging to the families or groups may be inappropriate to List I on the basis of low risk of toxicity, persistence and bioaccumulability. In cases of uncertainty over the classification of listed substances, further advice can be obtained from the National Rivers Authority or, in Scotland, the river purification authority. In this respect authorities should note that following correspondence with the European Commission, the Government agreed that on the basis of their intrinsic characteristics the three pesticides bromoxynil, bromoxynil octanoate and chlorpyrifos should be regarded as List I substances for the purpose of the Directive.

7.7 Exceptions from the general scope of the Directive are made in Article 2. One in particular needs to be considered in relation to waste disposal. This states (Article 2(b)) that the Directive shall not apply to discharges found to contain substances in List I or II in a quantity and concentration so small as to obviate any present or future danger of deterioration in the quality of the receiving groundwater.

7.8 This provision of the Directive has been interpreted in the European Court of Justice in Case C-131/88 (*Commission v Germany* [1991] ECR I-825), judgment given on 28 February 1991. The Court's ruling was that:-

> "Article 2(b) of the directive does not refer to discharges of substances in list I or II, whether or not in solution, but to discharges of other substances that contain substances in those two lists. Substances in lists I or II contained in such discharges must be present in quantities sufficiently small as to obviate prima facie, without there even being a need for an evaluation, all risk of pollution of the groundwater. That is why Article 2(b) of the directive refers not to an evaluation by the competent authority of a Member State but to a simple finding.
>
> Thus the meaning of that provision is that if the quantity of substances in list I (or II) contained in discharges of other substance is such that the risk

of pollution cannot be automatically excluded, the directive is applicable and, in that case, Article 2(b) cannot ..... be taken in conjunction with the other provisions of the directive in order to interpret them."

7.9 In the light of the above, the exception in Article 2(b) should be interpreted as applying to the disposal of waste only where the nature of the waste is such that any leachate from that waste can pose no danger of deterioration in the quality of the receiving groundwater.

Regulation 15

7.10 **Regulation 15** implements those parts of the Directive which deal with disposal or tipping for the purpose of disposal which might lead to discharges to groundwater of substances in Lists I and II. These activities are to be regulated under waste management licences in accordance with the Directive. **Regulation 1(5)** also applies **regulation 15** to waste disposal activities regulated in Scotland under a resolution.

7.11 **Regulation 15(1)** describes the cases where in response to an application an authority proposes to issue a licence covering waste disposal activities which might result in direct or indirect discharge to groundwater of substances in List I or List II. In each such case the WRA must ensure that the proposal is subjected to prior investigation.

7.12 **Regulation 15(2)** sets out the aspects the Directive requires be included in the prior investigations referred to in paragraph 7.11 above. These investigations must include examination of the hydrogeological conditions of the area concerned, of the possible purifying powers of the soil and subsoil, and of the risk of pollution and alteration of the quality of the groundwater from the discharge. They shall establish whether the discharge of substances into groundwater is a satisfactory solution from the point of view of the environment. The information on which these investigations and conclusions can be based would normally be required by the WRA of an applicant for a licence to dispose of waste in or on the ground. Expert assessment of this information is the role of the NRA or river purification authority; and sections 36(4) and (6), 39(7) and (8), and 42(2) of the Act make statutory provision for the consultation of these authorities in relation to the grant, surrender and supervision of licences, respectively.

7.13 **Regulation 15(3)** provides that a WRA shall not issue a licence in response to any of the kinds of application described in paragraph 7.11 above until they have checked that the groundwater, and in particular its quality, will undergo the requisite surveillance. Guidance on appropriate minimum requirements for groundwater monitoring to be included as conditions for landfill licences is provided in Waste Management Paper No 4, Appendix C.

7.14 **Regulation 15(4)** provides for the case where an authority proposes to issue a licence for disposal activities which might lead to a direct or indirect discharge of List I substances. **Regulation 15(4)(a)** provides that where the authority is satisfied, in the light of the prior investigation, that the groundwater which may be affected by the discharge is already permanently unusable, the authority may issue a licence that authorises the discharge, provided that it is also satisfied that the presence of the List I substance once discharged into

groundwater will not impede mineral exploitation; and that all technical precautions will be taken to ensure that List I substances cannot reach other aquatic systems or harm other ecosystems.

7.15 **Regulation 15(4)(b)** provides that where the authority is not satisfied that the groundwater is permanently unusable, a licence may only be issued subject to such conditions as will ensure the observance of all technical precautions necessary to prevent any discharges into groundwater of List I substances.

7.16 **Regulation 15(5)** provides that where a licence is granted for disposal activities which might lead to direct or indirect discharge of List II substances, the licence shall be subject to conditions which ensure that all technical precautions for preventing groundwater pollution by those substances are observed.

7.17 **Regulation 15(6) and (7)** lays down certain requirements of the Directive as to the terms and conditions of licences granted for activities which might lead to indirect or direct discharges of substances in Lists I or II, respectively. These relate to the disposal site, the methods to be used, the precautions to be taken, the types and quantities of wastes, and groundwater monitoring.

7.18 **Regulation 15(8)** implements the requirement of the Directive that authorisations granted under the licence be limited in time. Authorities are advised to set time limits that are commercially realistic in relation to the type of activity authorised. The obligations imposed by the waste management licence, however, would not be subject to time limit; they would only come to an end if the surrender of the licence were accepted, or if it were revoked, by the WRA. **Regulation 15(9)** provides that the authorisation granted by a licence must also be reviewed at least every four years. These reviews should of course be directed towards the groundwater protection aspects of the licence, and need to be thorough enough to provide a basis for any necessary modifications of the licence conditions.

7.19 **Regulation 15(11)** applies the provisions of **regulation 15**, with any necessary modifications, to the consideration of any outstanding applications for waste disposal licences under the 1974 Act that would authorise disposal or tipping that might lead to discharges to groundwater of substances in List I or List II.

7.20 **Regulation 15(10)** places an obligation on WRAs to review all licences current on 1 May 1994 which authorise any disposal or tipping which might lead to a discharge to groundwater of any substances in Lists I or II. Authorities shall also, if necessary, exercise their powers to vary or revoke the licence so as to give effect to the Directive.

7.21 WRAs, in consultation as necessary with water pollution control authorities, will therefore need to consider whether the conditions imposed at existing operational waste disposal sites achieve the level of groundwater protection required under the Directive and, if not, take whatever steps might be necessary. The necessary steps will of course depend in each case on the specific circumstances of the site and the conditions already imposed by the licence. However, the Departments expect that the commonest requirements

will be variations in the licence conditions to secure: adequate monitoring of the groundwater; containment of the waste deposited in new phases of site construction; prohibition of the deposit of all wastes containing List 1 substances where that would lead to a discharge of these substances into groundwater; and prohibition of the deposit of wastes where their composition or expected degradation products are such that this would lead to pollution of the groundwater by List II substances. In both the latter cases, of course, the continued deposit of such wastes may be permitted where all the technical precautions necessary to prevent such discharge or pollution are observed.

ANNEX FROM GROUNDWATER DIRECTIVE 80/68/EEC

List I of Families and Groups of Substances

List I contains the individual substances which belong to the families and groups of substances enumerated below, with the exception of those which are considered inappropriate to List I on the basis of a low risk of toxicity, persistence and bioaccumulation.

Such substances which with regard to toxicity, persistence and bioaccumulation are appropriate to List II are to be classed in List II.

1. Organohalogen compounds and substances which may form such compounds in the aquatic environment.
2. Organophosphorus compounds.
3. Organotin compounds.
4. Substances which possess carcinogenic, mutagenic or teratogenic properties in or via the aquatic environment[35].
5. Mercury and its compounds.
6. Cadmium and its compounds.
7. Mineral oils and hydrocarbons.
8. Cyanides.

List II of Families and Groups of Substances

List II contains the individual substances and the categories of substances belonging to the families and groups of substances listed below which could have a harmful effect on groundwater.

1. The following metalloids and metals and their compounds:-

1. Zinc	8. Antimony	15. Uranium
2. Copper	9. Molybdenum	16. Vanadium
3. Nickel	10. Titanium	17. Cobalt
4. Chrome	11. Tin	18. Thallium
5. Lead	12. Barium	19. Tellurium
6. Selenium	13. Beryllium	20. Silver
7. Arsenic	14. Boron	

2. Biocides and their derivatives not appearing in List I.

3. Substances which have a deleterious effect on the taste and/or odour of groundwater, and compounds liable to cause the formation of such substances in such water and to render it unfit for human consumption.

4. Toxic or persistent organic compounds of silicon, and substances which may cause the formation of such compounds in water, excluding those which are biologically harmless or are rapidly converted in water into harmless substances.

5. Inorganic compounds of phosphorus and elemental phosphorus.

6. Fluorides.

7. Ammonia and nitrites.

[35] Where certain substances in List II are carcinogenic, mutagenic or teratogenic they are included in category 4 of List I.

THE REGISTRATION OF WASTE BROKERS

8.1 **Regulation 20** of the Regulations introduces a requirement for brokers of controlled waste[36] to be registered.

8.2 Registration is required by virtue of Article 12 of the Directive. This requires establishments or undertakings which arrange for the disposal or recovery of waste on behalf of others (brokers or dealers) to be registered. The requirement to register is limited to those brokers or dealers "not subject to authorisation".

8.3 Subsequent references to the term "broker" include references to the term "dealer". Detailed guidance on the requirements of **regulation 20**, and Schedule 5 to which **regulation 20(7)** gives effect, is contained in this Annex.

Definition Of The Term "Broker"

8.4 An establishment or undertaking which acts as a broker has control of waste in the sense that it arranges for the disposal or recovery on behalf of another and is outside the chain of people who handle waste (the producer, holder, carrier, recovery operator, or disposal operator).

8.5 It is for the courts to decide whether, in a particular set of circumstances, an undertaking is acting as a broker of controlled waste. However, some general indications are offered here. Where, for instance, an environmental consultant contracts to arrange for the disposal or recovery of all the controlled waste generated by a particular producer, the consultant is acting as a broker since it is neither the producer, holder, carrier, recoverer nor disposer of the waste in question. However, on a building site where a main contractor, an architect or a civil engineer arrange for the disposal of controlled waste to an appropriate facility as part of their contract, they are arranging for the disposal on their own behalf given that they are the holder of the waste in question. They are not acting as a broker and do not need to register. Similarly, managing agents, development companies and janitors providing common services (including waste management), will not normally be acting as waste brokers, because they are the producers of the waste concerned.

Timetable For Implementation

8.6 The regulation is being brought into force in two stages:-

(a) <u>Stage One</u> The Regulations will come into force on 1 May 1994. The broad effect of regulation 20 will be to require each WRA to establish and maintain a register of waste brokers and to allow brokers to apply for registration.

(b) <u>Stage Two</u> will bring into force on 1 January 1995 the offence provisions of regulation 20. The broad effect of implementing these provisions will be to make it an offence for any establishment or undertaking to arrange for the disposal or recovery of controlled

[36] The definition of controlled waste is dealt with in Annex 2.

waste without being registered as a waste broker, unless covered by one of the exemptions in regulation 20(2), (3) and (4).

Co-ordinated Local Authority Database Of Waste Brokers

8.7 Each undertaking which acts as a broker will be required to register with only one WRA and, on acceptance of its application, its registration will be valid throughout Great Britain. This means that circumstances may arise in which it is necessary for WRAs to exchange information held on their individual registers.

8.8 A similar situation arose with the introduction of the waste carrier registration scheme under the Carriers Regulations[37]. In that case, the Local Authority Associations established a steering group, known as the Co-ordinated Local Authority Database of Waste Carriers (CLADWAC), to co-ordinate the arrangements for the exchange of information. A central feature of these arrangements is a national database of waste carriers. In the view of the Secretaries of State, the extension of the national co-ordinated database to include information on registered brokers would be helpful to the efficient and effective operation of broker registration. Consideration is being given to ways in which the existing system could be adapted, and WRAs will be informed about any arrangements that are made.

EC Waste Shipments Regulation (Council Regulation (EEC) No.259/93)

8.9 After 6 May 1994, under Article 2(g)(ii) of the EC Waste Shipments Regulation, waste brokers acting as "notifiers" for transfrontier waste shipments will have to be registered. The enforcement of the waste broker registration provisions is intended to ensure that all brokers who arrange international shipments of waste have a record of responsible operation. Guidance on the implementation of the Waste Shipments Regulation and associated domestic legislation is being issued separately.

Regulation 20 : The Requirement To Register

8.10 The requirement to register arises from **regulation 20(1)**. This provides that, subject to the provisions of **regulation 20(2) to (4)**, it will be an offence after 31 December 1994 for any establishment or undertaking which is not a registered broker of controlled waste to arrange for the disposal or recovery of controlled waste on behalf of another person. The exemptions conferred by **regulations 20(2), (3) and (4)** are discussed in paragraphs 8.12-8.16 below. The requirement applies also to any establishment or undertaking which is based outside Great Britain and which arranges for the disposal or recovery of controlled waste to, from, or within Great Britain, on behalf of another person.

An Establishment Or Undertaking

8.11 It should be noted that the requirement to register applies to any *"establishment or undertaking"*. For the purposes of **regulation 20**, *"an establishment or undertaking"* may be taken to include a body corporate, a

[37] Schedule 5 paragraph 1(1) defines "the Carriers Regulations".

partnership, an authority, society, trust, club, or other organisation. As a body corporate, each company in a group of companies is an establishment for the purposes of regulation 20 and each company must separately apply where necessary for registration. In the Departments' view, it will not be possible for a company to rely on the registration of another company in the same group as authority for arranging for the disposal or recovery of controlled waste. A private individual is not an establishment or undertaking, but a person operating a relevant business will need to register.

"Broker Of Controlled Waste"

8.12 Where an establishment or undertaking arranges for the disposal or recovery of its own waste, it is not acting as a broker because it is not acting on behalf of another person. There can be occasions when a waste carrier, recovery operator or disposer act as a broker. For instance, an establishment or undertaking which happens to be a carrier could act as a broker for a consignment of waste which it does not physically handle. In such a case it should register. On the other hand, if it is the carrier of that waste, it is not acting as a broker in relation to that waste, and will not need to register (**regulation 20(3)**). A licensed waste disposal operator could arrange to find a site for waste it is unable to accept itself. In such a case the undertaking would be acting as a broker, and it would be an offence not to register. If it disposed of the waste itself, it would not be acting as a broker. (**regulation 20(2)(a)**).

8.13 **Regulation 20(2)(a)** provides that where an establishment or undertaking which holds a waste management licence, an authorisation under Part I of the Environmental Protection Act 1990, a consent under Chapter II of Part III of the Water Resources Act 1991, a consent under Part II of the Control of Pollution Act 1974, or a licence under Part II of the Food and Environment Protection Act 1985, arranges for the disposal or recovery of controlled waste by itself on behalf of another, it is not required to register as a broker.

8.14 **Regulation 20(2)(b)** provides that registration as a broker is not required where an establishment or undertaking arranges for the recovery of waste by itself and that recovery is covered by an exemption under regulation 17(1)of, and Schedule 3 to, the Regulations. Similarly, where under an exemption conferred by article 3 of the Deposits in the Sea (Exemptions) Order 1985, an establishment or undertaking itself arranges to carry out waste recovery on behalf of another person, it does not need to register as a broker.

8.15 **Regulation 20(3)** provides that where a registered waste carrier, or a person registered as a collector or transporter of waste under paragraph 12(1) of Part I of Schedule 4 of the Regulations, arranges for the disposal or recovery of controlled waste on behalf of another person, and, as part of those arrangements transports that waste to or from any place in Great Britain himself, **regulation 20(1)** does not apply and no offence is committed.

Exemption From Registration

8.16 **Regulation 20(4)** sets out the exemptions from the requirement to register. These are:-

(a) a charity;

(b) a voluntary organisation within the meaning of section 48(11) of the Local Government Act 1985[38] or section 83(2D) of the Local Government (Scotland) Act 1973[39];

(c) an authority which is a waste collection authority, waste disposal authority or waste regulation authority for the purposes of Part II of the 1990 Act. The terms of this exemption apply to the "authority" which is a waste collection authority etc. This means that the exemption applies also to the arrangement for the disposal or recovery of controlled waste by any such authority in the fulfilment of their extant functions in England and Wales under Part I of the Control of Pollution Act 1974 (eg household, industrial or commercial waste collected under section 12 of the 1974 Act.) However, the terms of this exemption **do not** include a "waste disposal contractor" within the meaning of section 30(5) of the 1990 Act;

(d) an establishment or undertaking which before 1 January 1995 applies in accordance with Schedule 5 of the regulations for registration as a broker of controlled waste, but only whilst its application is pending. **Schedule 5, paragraphs 1(4) and 1(5)** provides that an application is to be treated as pending:-

(i) whilst it is being considered by the WRA, or

(ii) if it has been refused or the relevant period[40] from the making of the application has expired without the applicant's having been registered, whilst either:-

(a) the period for appealing in relation to that application has not expired; or

(b) the application is the subject of an appeal which has not been disposed of[41];

This exemption is a transitional provision. As explained in paragraph 8.6(b) above, the offence provisions of **regulation 20** will come into force on 1 January 1995. The effect of this exemption is to allow any establishment or undertaking which submits a valid application for registration before 1 January 1995 to continue to arrange for the disposal or recovery of controlled waste after that date until its application is accepted by the WRA or, if it is refused, until the appeal process is completed. (For further information regarding exemptions under regulation 20(4)(a) to (c) and other requirements of these Regulations, see paragraphs 1.70 to 1.84 of Annex 1 (especially paragraphs 1.71 and 1.78) which explain the provisions of paragraph 12 of Schedule 4.)

8.17 **Regulation 20(5)** provides that the penalty for committing an offence under regulation 20 is, on summary conviction, a fine not exceeding level 5 on the standard scale.

[38] "voluntary organisation" means a body the activities of which are carried on otherwise than for profit but does not include any public or local authority.

[39] "voluntary organisation" means a body which is not a public body but whose activities are carried on otherwise than for profit.

[40] Paragraph 1(1) of Schedule 5 provides that the relevant period is two months or, except in the case of an application for the renewal of his registration by a person who is already registered, such longer period as may be agreed between the applicant and the WRA in question.

[41] Paragraph 1(5) of Schedule 5 gives the meaning of "disposed of", in relation to an appeal.

8.18 **Regulation 20(6)** provides that section 157 of the 1990 Act shall apply in relation to an offence under regulation 20 as it does to an offence under the 1990 Act. See paragraph 8.50 for details.

8.19 **Regulation 20(8)** provides that sections 68(3) to (5), 69 and 71(2) and (3) of the 1990 Act, shall have effect as if the provisions of the regulation, and of Schedule 5, were provisions of Part II of the Act. Sections 68(3), (4) and (5) relate to the power of a regulation authority to appoint inspectors in order to help it discharge its responsibilities under Part II and to the legal immunity applying to such inspectors. Section 69 relates to an inspector's powers of entry and other powers necessary to enable an inspection to be carried out. Section 71(2) and (3) relate to the power of the Secretary of State and a WRA to obtain information. Further details of this are given in paragraph 8.28 below.

SCHEDULE 5

References Are To Part I Of The Schedule Unless Otherwise Indicated Registers

8.20 **Schedule 5 paragraph 2(1)** imposes on each WRA a duty to establish and maintain a register of brokers of controlled waste and:-

(a) to secure that the register is open for inspection at their principal office by members of the public free of charge at all reasonable hours; and

(b) to afford to members of the public reasonable facilities for obtaining copies of entries in the register on payment of reasonable charges.

8.21 **Paragraph 2(2)** provides that the register may be kept in any form (eg on paper or computer). It is desirable that it be indexed and arranged so that members of the public can readily trace information contained in it.

Applications For Registration

8.22 **Schedule 5 paragraph 3(1)** provides that an application for registration, or the renewal of a registration, must be made to the WRA for the area in which the applicant has or proposes to have his principal place of business in Great Britain. However, if the applicant does not have or propose to have a place of business in Great Britain (eg his business is based in Northern Ireland or a country outside the United Kingdom), he may apply to any WRA. The term "principal place of business" has its ordinary meaning and is the place at which the applicant carries on his business. Where the applicant has more than one place of business, the principal place of business is a matter to be determined on the facts of the case. In the Departments' view, where there is more than one place of business, the applicant's principal place of business is the place at which he conducts the administration of his business and from which the various divisions of his business are controlled.

8.23 **Paragraph 3(2)** is complementary to **paragraph 3(1)**. Its purpose is to provide the safeguards necessary to prevent a broker from being registered simultaneously with more than one WRA or from submitting a second application whilst a first is still under consideration or is subject to an appeal. Subject to

sub-paragraphs 3(3) to 3(5), paragraph 3(2) precludes a person from making an application for registration or renewal of a registration whilst:-

(a) a previous application of his is pending (see paragraph 8.16(d) above for an explanation of "pending"); or

(b) he is registered.

8.24 However, **Paragraph 3(3)** provides that **paragraph 3(2)** does not prevent a person from applying for renewal of a registration where the application is made within the six month period mentioned in **paragraph 7(5).**

8.25 **Paragraph 3(4)** provides that an application for registration or the renewal of a registration in respect of a business which is or is to be carried on by a partnership must be made by all of the partners or proposed partners. However, **paragraph 3(5)** provides that a prospective partner in a partnership whose members are already registered may apply for registration as a partner in that business to the WRA with whom the business is registered. The application of the regulations to partnerships is explained in more detail in paragraphs 8.93-8.94 below.

8.26 **Paragraph 3(6)** provides that an application for registration must be made on a form corresponding to that in ***Part II*** of Schedule 5 or on a form substantially to the like effect, and must contain the information required by that form. **Paragraph 3(7)** imposes similar requirements in relation to applications for the renewal of a registration, which must be made on a form corresponding to that in ***Part III*** **of Schedule 5.**

8.27 However, **paragraphs 3(8) and 3(9)** also allow combined applications for registration as both a broker and a carrier of controlled waste, or for the renewal of both such registrations, to be made instead on a single form. Such an application for registration must contain the information in the forms provided for by **paragraph 3(6)** of this Schedule (see *Part II* of Schedule 5) and by regulation 4(6) of the Carriers Regulations. In the case of a renewal, the information needed is that in the forms provided for by **paragraph 3(7)** of this Schedule (*see Part III* of Schedule 5) and by **regulation 4(7)** of the Carriers Regulations. Paragraph 8.33 deals with the charge for a combined registration. (Applications for registration as a carrier of controlled waste only, or for the renewal of such registration only, can continue to be made on the type of form used currently under the provisions of **regulation 4(6) and 4(7)** of the Carriers Regulations 1991.)

8.28 It is the responsibility of the applicant to provide true and complete information and the application form requires him to sign a declaration to this effect. **Regulation 20(8)** provides that it is an offence as under **section 71(3) of the 1990 Act** if a person fails, without reasonable excuse, to comply with any requirement of the regulations to provide information to a regulation authority or, in complying with any such requirement, provides information which he knows to be false or misleading in a material particular or recklessly provides such false or misleading information.

8.29 It will be the responsibility of each WRA to make their own arrangements for the printing of both forms. The forms must correspond to those in Schedules II and III and must require the applicant to provide the information shown on

the appropriate form. Where a single form is to be used for applications for registration as both a broker and a carrier, or for the renewal of both registrations, the information it should seek is described in paragraph 8.27 above. WRAs are not empowered to modify the forms to require the provision of additional information. However, the term "or on a form substantially to the like effect" does allow a WRA to make reasonable modifications to the presentation of the form. For example, the inclusion of the authority's name and address, any reference number or a continuation sheet for the provision of information where there is not sufficient space on the form itself.

8.30 WRAs may wish to bear in mind before printing or issuing forms that convictions under the Transfrontier Shipment of Waste Regulations 1994 (see paragraph 8.9 above) will also be relevant offences for the purposes of this regulation.

8.31 Change of principal place of business Circumstances may arise in which a broker's principal place of business changes whilst the undertaking is registered. Where this occurs the registered broker will be required by **Schedule 5, paragraph 4(6)** to notify the regulation authority with whom it is registered of the change of circumstances. However, the registration will continue in force until the expiry of the three year registration period (see **Schedule 5, paragraph 7(1)**). At the appropriate time, the broker may apply for renewal of its registration to the WRA for the area to which it has moved its principal place of business and in doing so may use the application form ***in Part III of Schedule 5***. In these circumstances, it will be necessary for the two WRAs concerned to liaise and to exchange information.

8.32 **Paragraph 3(10)** requires a WRA to provide a copy of the appropriate application form free of charge to any person requesting one.

8.33 Charges **Schedule 5, paragraph 3(11)** requires a WRA to charge an applicant in respect of their consideration of his application; and requires the applicant to pay the appropriate charge when he makes his application. The charges set by **paragraph 3(11)** are:-

(a) **£95, subject to paragraph 3(11)(c)**, in the case of either an application for registration as a broker or a combined application for registration as both a broker and a carrier; and

(b) **£65** in the case of an application for the renewal of a registration as a broker, or a combined application for renewal of registration both as a carrier and as a broker;

(c) **£25** in the case of an application from a registered carrier for registration as a broker. **(Regulation 23(6)** of the Regulations amends regulation 4(9) of the Carriers Regulations to provide that the same fee will apply to a registered broker applying for registration as a carrier).

8.34 The level of charges set recognises that WRAs may consider it appropriate to consult the existing co-ordinated database of carriers and the proposed co-ordinated database of brokers as part of their consideration of applications (see paragraphs 8.7 and 8.8 above).

8.35 It should be noted that the charges are in respect of WRAs' consideration of applications and that no refund of the charge, or any part of it, should be made in the event of the application's being refused or registration being revoked or ceasing to have effect for any other reason. **Paragraph 3 (4)** requires an application for registration by a partnership to be made by all of the partners or proposed partners (see paragraph 8.25 above). Only one fee of £95 or £65 or £25 is therefore payable when a partnership or proposed partnership applies for registration or renewal of a registration. However, a separate fee of £95 is payable when a prospective partner applies for registration under the terms of **paragraph 3(5)** (see paragraph 8.25 above).

8.36 **Paragraph 3(12)** requires a WRA on receipt of an application for registration or the renewal of a registration, to ensure that the register contains a copy of the application.

Refusal Of Applications For Registration

8.37 The guidance set out in paragraphs 8.40-8.52 below is provided by the Departments to address the need for consistency of practice between WRAs on the refusal of applications for registration. It is in the interests of both WRAs and the waste disposal industry that consistency should be achieved.

8.38 However, the regulations place the responsibility for any decision to refuse an application on the WRA to which it was made. The Departments wish to emphasise, therefore, that in each case the WRA concerned must form an opinion of their own and must decide each case on its merits. In reaching a decision on a particular application, it is important that the WRA consider carefully any representations made by the applicant. However, where either the applicant or another relevant person has been convicted of a relevant offence, the onus rests with the applicant to provide any information necessary to satisfy the WRA that it is desirable for him to be authorised to arrange for the disposal or recovery of controlled waste on behalf of others. For example, if there were mitigating circumstances or the applicant has taken all the steps which he reasonably can to ensure that there is no repetition of the offence. It is important, therefore, that where a relevant offence has been committed, the applicant fully completes section 10 of the application form[42], and provides the WRA with any additional information which he wishes the authority to take into account in determining whether or not it is undesirable for him to be registered.

8.39 In the interests of clarity, the guidance is written in terms of applications for registration but applies also to applications for renewal of a registration. The advice in paragraph 8.42 below does not apply where the revocation of a broker's registration is under consideration but the guidance is otherwise applicable in such cases.

Grounds For Refusal Of An Application For Registration

8.40 **Paragraph 3(13)** provides that, a WRA may refuse an application for registration if, ***and only if***:-

[42] Or section 5 of the renewal application form, if appropriate.

(a) there has, in relation to that application, been a contravention of any of the requirements of **paragraph 3** or

(b) the applicant or another relevant person[43] has been convicted of a relevant offence, **and, *in the opinion of the* WRA,** it is undesirable for **the applicant** to be authorised to arrange as dealer or broker for the disposal or recovery of controlled waste on behalf of others.

8.41 In addition, **paragraph 1(2)** of Schedule 5 imposes a specific duty on the WRA where:-

(a) the applicant is an individual[44];

(b) the WRA are considering whether it is desirable for him to be authorised to act as a broker of controlled waste; and

(c) a person other than the individual has been convicted of a relevant offence.

In these circumstances, the WRA are required to have regard to whether the individual has been a party to the carrying on of a business in a manner involving the commission of relevant offences.

8.42 **Contravention of the regulations** **Paragraph 3** makes provision with respect to applications for registration. A WRA should refuse an application for registration in any case in which the requirements of **paragraph 3(1), 3(2) or 3(4)** have been contravened. For example, if an application in respect of a partnership has not been made by all of the partners or proposed partners. An application for registration must also be made on the form required by **paragraph 3(6) or 3(7)**, or in accordance with **paragraphs 3(8) or 3(9)**, and **paragraph 3(11)** requires the applicant to pay the appropriate fee when he makes his application. However, **paragraph 3(13)** provides WRAs with the discretion to allow omissions to be corrected. For example, a WRA may allow an applicant the opportunity to provide an item of information or payment overlooked by him when completing the application form. In circumstances such as these, the Departments would expect a WRA to refuse the application only if the applicant failed to respond satisfactorily to their invitation to provide the missing information or payment.

8.43 **Conviction for a relevant offence** **Regulation 3** of the Regulations lists the enactments prescribed by the Secretary of State and under which an offence will count as a "relevant offence" for the purposes of broker registration. **Table 8.1** provides a brief summary of each of the relevant offences. Where an Act has been repealed and its offences provisions re-enacted in a later Act, convictions for offences under the earlier enactment which have not yet been "spent", should be taken into account by a WRA considering an application. **It is emphasised that the provisions of the Rehabilitation of Offenders Act 1974** apply to individuals convicted of these offences. In broad terms, what the 1974 Act does is to provide that an individual who has been convicted of a

[43] "relevant person" is defined in Paragraph 1(3) of Schedule 5.

[44] In the case of a partnership, Paragraph 3(4) of Schedule 5 of the regulations requires each partner to apply for registration. In most cases, a partner or prospective partner will be an individual for the purposes of Paragraph 1(2) of the Schedule.However, a body corporate may also be a member of a partnership and in any such case Paragraph 1(2) would not apply.

criminal offence and has not been sentenced to more than 2½ years in prison, becomes a "rehabilitated person" at the end of a "rehabilitation period", provided that he has not been convicted again during that period of an indictable offence. At the end of this period, his conviction is treated as "spent".

8.44 With some exceptions, the 1974 Act provides that a rehabilitated person "shall be treated for all purposes in law as a person who has not committed, or been charged with, or prosecuted for, or convicted of, or sentenced for the offence or offences which were the subject of that conviction." None of the exceptions applies to applications for waste broker registration and for these purposes a rehabilitated person can regard himself as a person who has no convictions to disclose.

8.45 This means that, when completing an application form for registration or renewal of a registration, a rehabilitated person can answer "No" to the question "Has the applicant....been convicted of any offence listed in **these regulations? - *provided that his conviction(s) became spent before he filled in the form and signed the declaration.*** (In the same way, "another relevant person" is not required to disclose a spent conviction to the person applying for registration.) However, if a spent conviction is disclosed by a person applying for registration, or in some other way comes to the attention of a WRA, the authority concerned ***cannot*** lawfully refuse a person's registration as a broker of controlled waste on the basis of such a conviction. Where the applicant or another relevant person has been convicted of a relevant offence, the WRA can refuse to register the applicant as a broker of controlled waste only if, ***at the time the WRA take their decision***, the conviction is not spent (ie it is "unspent").

8.46 **Table 8.2** sets out the rehabilitation periods applicable to convictions. It should be noted that where a rehabilitation period depends on the length of a prison sentence, it is the sentence imposed by the court that counts (even if it is a suspended sentence), **not** the time actually spent in prison. Further information about the 1974 Act is contained in "A Guide to the Rehabilitation of Offenders Act 1974" (ISBN 0 11 340755 6) which is available from HMSO. In individual cases where there is any doubt about the applicability of the 1974 Act, WRAs should obtain legal advice before refusing an application for registration.

Authorisation To Act As A Broker Of Controlled Waste Where A Relevant Offence Has Been Committed : Factors To Be Taken Into Account

8.47 In the Departments' view, there are four main factors which should be taken into account by WRAs in their consideration of whether it is undesirable for ***the applicant*** to be authorised to act as a broker of controlled waste. These are:-

Factor 1: The type of applicant;

Factor 2: Whether it is the applicant or another relevant person who has been convicted of a relevant offence(s);

Factor 3: The nature and gravity of the relevant offence(s); and

Factor 4: The number of relevant offences which have been committed.

Factor 1: The type of applicant
Factor 2: Whether it is the applicant or another relevant person who has been convicted of a relevant offence(s)

Establishments or undertakings?

8.48 There are three types of person who may apply for registration as a broker of controlled waste. These are (a) an individual; (b) a partner or prospective partner[45]; and (c) a body corporate. In the Departments' view, the questions which need to be addressed in each case by WRAs are:-

(a) In the case of an individual/partnership
(Where a variant of the question is needed in the case of a partnership, this is shown as an alternative.)
(i) was the offence committed by the individual **or** by one of the partners [or prospective partners] applying for registration (the applicant);
(ii) was the offence committed by another person;
(iii) if committed by another person, was that person a relevant person. That is to say, was the offence committed:-
(a) by him in the course of his employment by the applicant **or** of his employment by one of the partners applying for registration;
(b) by him in the course of the carrying on of any business by a partnership one of the members of which was the applicant **or** of which one of the partners applying for registration was a member; or
(c) by a body corporate at a time when the applicant, **or** one of the partners applying for registration, was a director, manager, secretary or other similar officer of that body corporate; and
(d) if the offence was committed by another relevant person, was the applicant, **or** were any of the partners applying for registration, a party to the carrying on of a business in a manner involving the commission of relevant offences?

(b) In the case of a body corporate
(i) was the offence committed by the body corporate (the applicant);
(ii) was the offence committed by another person;
(iii) if committed by another person, was that person a relevant person. That is to say, was the offence committed:-
(a) by him in the course of his employment by the applicant;
(b) by a person who is a director, manager, secretary or other similar officer of the applicant; or
(c) by another body corporate and at the time when the offence was committed a director, manager, secretary or other similar officer of the applicant held such an office in the body corporate which committed the offence?

[45] In most cases, partnerships will consist of individuals. However, in some cases a body corporate may be a member of a partnership. In any such case, reference should also be made to the guidance on applications by bodies corporate.

8.49 Given that the effect of **Paragraph 3(13)** is to require a WRA to determine whether it is desirable for ***the applicant*** to be authorised to act as a broker of controlled waste, WRAs will need to consider carefully any application where the applicant has been convicted of a relevant offence. However, there may be circumstances in which an offence committed by another relevant person is of commensurate significance. For example, where an individual or a partner[46] is applying for registration and, although he has not been convicted of a relevant offence, the WRA are satisfied that he has been a party to the carrying on of a business in a manner involving the commission of relevant offences (see **Paragraph 1(2) of the Schedule** and paragraph 8.41 above).

8.50 Similar circumstances may arise in the case of an application for registration by a body corporate. **Regulation 20(6)** provides that section 157 of the 1990 Act shall apply to offences under regulation 20. Section 157 provides that where an offence is committed by a body corporate and it is shown that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, proceedings may also be taken against that person. Where a director etc. is convicted of a relevant offence in such circumstances his conviction may be considered to be of commensurate significance to that of the body corporate itself.

8.51 The Rehabilitation of Offenders Act 1974 applies only where "***an individual***" has been convicted of an offence. A body corporate applying for registration must therefore provide full details of any relevant offences for which it has been convicted, regardless of the date of the conviction. However, where the person convicted of a relevant offence is a body corporate, the Departments recommend that in their consideration of whether it is undesirable for the applicant to be authorised to act as a broker of controlled waste, WRAs should normally have regard to whether the conviction would have been spent if it had been committed by an individual.

Factor 3: <u>The nature and gravity of the relevant offence(s)</u>
Factor 4: <u>The number of relevant offences which have been committed</u>

8.52 The Departments recommend that, in their assessment of the nature and gravity of relevant offences, WRAs have regard to the considerations set out in paragraphs (a)-(i) below. In most cases the application form will provide the information necessary for the WRA to reach a decision. However, where a relevant offence has been committed and the WRA reasonably consider that they need further information to discharge their functions under **the Regulations** they may serve a notice on the applicant under regulation 20(8) to obtain that further information. The considerations referred to are:-

(a) **<u>Has the applicant been convicted of more than one relevant offence?</u>**
WRAs should consider the gravity of any offences committed by the applicant. However, in the Departments' view, an isolated conviction where there are mitigating circumstances need not result in the refusal of an application.

[46] As explained in the footnote to paragraph 8.41, a partner or a prospective partner may be an individual for the purposes of Paragraph 1(2) of Schedule 5 of the regulations.

(b) **Has any relevant person been convicted of more than one offence?**

Similar considerations apply where another relevant person has been convicted of one or more relevant offences. In the assessment of any convictions by another relevant person, the Departments also advise that WRAs should have regard to:-

- whether the circumstances in which any of the offences were committed were of commensurate significance to an offence committed by the applicant; and
- the possible repetition of offences. In this respect, the WRA should have regard to any action which has been taken by the applicant within the organisation of his business to prevent the commission of further offences;

(c) **Have offences been committed by more than one relevant person?**

The issue which authorities are required to consider is whether it is desirable for ***the applicant*** to be authorised to act as a broker of controlled waste. Therefore, where offences have been committed by more than one relevant person, it is the Departments' view that it would be appropriate to have particular regard to the type of applicant and the position held by each relevant person in the applicant's business. For example, where the applicant is a body corporate and more than one person who is a director, manager, secretary or other similar officer of that body corporate has been convicted of a relevant offence. In circumstances of this kind where the relevant persons hold positions of authority in the applicant's business, the convictions by the relevant persons may be considered to be of significance commensurate with any which the applicant himself might have committed;

(d) In their assessment of the gravity of any offence, it would be appropriate in the Departments' view for WRAs to have particular regard to the considerations set out in paragraphs (f), (g) and (i) below.

(e) **Did any of the offences involve controlled waste?**

In the Departments' view each of the offences listed in **regulation 3** is relevant to the purposes of **regulation 20** and the question of determining whether any person should be authorised to act as a broker of controlled waste. However, in the light of the requirements of regulation 20(1), it would be appropriate in the Departments' view for WRAs to have particular regard to offences which involved:-

(i) the unlawful deposit, treatment, keeping, disposal or transport of controlled waste; or

(ii) the contravention of any duty of care under section 34 of the Environmental Protection Act 1990 which the applicant or another relevant person had in relation to such waste;

(f) **Did any of the offences involve special waste?**

Special waste[47] is controlled waste which the Secretary of State considers is or may be so dangerous or difficult to treat, keep or dispose of, that special provision is necessary to deal with it. In the

[47] "Special waste" is defined in The Control of Pollution (Special Waste) Regulations 1980 (S.I. 1980 No. 1709). For the purposes of this guidance the term may be taken to include "hazardous waste" as defined in The Transfrontier Shipment of Hazardous Waste Regulations 1988 (S.I. 1988 No.1562).

Departments' view, therefore, it would be appropriate for WRAs to have particular regard to any offence which involved the unlawful treatment, keeping or disposal of special waste;

(g) **Did any of the offences cause serious pollution?**

In WRAs' assessment of the nature and gravity of offences, the Departments advise that particular regard should also be given to whether the offence caused:-

(i) serious pollution of the environment;

(ii) harm to human health; or

(iii) serious detriment to the amenities of the locality in which it occurred;

(h) **What was the penalty imposed for the offence?**

The penalty imposed will provide an indication of the seriousness of the offence. An absolute or conditional discharge will indicate that, although the defendant (the accused in Scotland) was convicted, the Court considered that the offence which he committed was not serious. A fine will indicate that the offence was considered sufficiently serious for the Court to punish the offender. The fact that the level of fine imposed is high in relation to the maximum fine for that offence will provide an indication of the gravity of the offence. However, in setting the level of fine, the Court must take into account the offender's ability to pay. It should be noted, therefore, that a fine which is low in relation to the maximum for that offence will not necessarily indicate that the Court considered that the offence was not serious. In more serious cases, the Court may impose a community penalty such as a Community Service Order. The duration of the penalty will provide an indication of the gravity of the offence. For example, a Community Service Order may require an offender to perform unpaid work for between 40-240 hours;

(i) Each case must be considered by the WRA on its merits. However, a conviction which is sufficiently serious to justify a prison sentence will be of particular significance in considering the desirability of authorising the applicant to act as a broker of controlled waste. This will be so whether the offence was committed by the applicant or another relevant person.

8.53 **Paragraph 3(14)** provides that where a WRA decide to refuse an application for registration or the renewal of a registration, the authority must give notice to the applicant informing him that his application is refused and of the reasons for their decision. **Paragraph 1(6)** provides that any notice or other document required by Schedule 5 to be served on or given to a person may be served or given in accordance with section 160 of the 1990 Act. In their fulfilment of these requirements, WRAs should also inform the applicant of:-

(a) his right of appeal to the Secretary of State under **paragraph 6(1) or paragraph 6(2)** and the provisions relating to appeals in **paragraph 6** and

(b) as appropriate, the effect of **regulation 20 (4), and Schedule 5, paragraphs 7(6)(b), 7(7) and 7(8).**

8.54 **Paragraph 3(15)** provides that, if an appeal is made under and in accordance with **paragraph 6** of the regulations, the WRA must, as soon as reasonably practicable, make appropriate entries in their register indicating when the appeal was made and the result of the appeal.

8.55 **Paragraph 3(16)** provides that, if no such appeal is made, the WRA must, as soon as reasonably practicable, make an appropriate entry in their register indicating that the application has not been accepted[48] and that no appeal has been made.

8.56 **Paragraph 3(17)(a)** provides that a WRA **may** remove from their register a copy of an application included under Paragraph 3(12), and **paragraph 3(17)(b)** provides that a WRA may remove an entry made under **paragraph 3(15) or 3(16)**, at any time more than six years after the application was made. It should be noted that **paragraph 3(17)** is discretionary and does not impose an obligation on a WRA to remove the information from their register.

Registration As A Broker

8.57 **Paragraph 4(1)** provides that on accepting a person's application for registration, or on being directed by the Secretary of State under **paragraph 6(9)** to register a person following an appeal, the WRA must make an entry in their register which:-

(a) shows that person as a registered broker of controlled waste and allocates him a registration number, which may include any letter[49]. In the Departments' view, the adoption by WRAs of a co-ordinated system of numbering, which enables the individual authority with whom the broker is registered to be identified from his registration number, would help to ensure effective operation and enforcement of broker registration and is to be commended.

(b) specifies the date on which the registration takes effect and the date of its expiry;

(c) states any business name[50] of his and the address of his principal place of business, together with any telephone, telex or fax numbers; and in the case of an individual[51], his date of birth;

(d) in the case of a body corporate, lists the names of each director, manager, secretary or other similar officer of that body[52] and their respective dates of birth;

(e) in the case of a company registered under the Companies Acts[53], specifies its registered number and, in the case of a company

[48] This covers both cases in which the WRA refused the application for registration, or the renewal of a registration, and those in which the relevant period expired without the applicant's having been registered.

[49] Section 6(c) of the Interpretation Act 1978 provides that, unless the contrary intention appears, the singular includes the plural. This means that the registration number may include more than one letter.

[50] **Paragraph 4(8)** of Schedule 5 provides that "business name" means a name under which a person carries on business and by virtue of which the Business Names Act 1985 applies.

[51] "individual" means an individual as opposed to a body corporate and may include a partner.

[52] Each of these persons is a "relevant person" for the purpose of Paragraph 1(3) of Schedule 5 of the regulations.

[53] Paragraph 4(8) of Schedule 5 provides that "Companies Acts has the same meaning as in section 744 of the Companies Act 1985.

incorporated outside Great Britain, the country in which it was incorporated;

(f) in a case where the person who is registered or another relevant person[54] has been convicted of a relevant offence, gives the person's name, details of the offence, the date of conviction, the penalty imposed, the Court and, in the case of an individual, his date of birth; and

(g) in a case where the person who is registered or any company in the same group[55] of companies as that person is the holder of a waste management licence[56], states the name of the holder of the licence and the name of the WRA which granted it.

8.58 Individuals' dates of birth are required on the application form and entered in the register for reasons of identity and the need to take reasonable steps to ensure that registration is not refused or revoked because of mistaken identity. The grounds on which registration may be refused or revoked are explained in paragraphs 8.39-8.46 above and are essentially limited to conviction for a relevant offence. Reasonable care must be taken, therefore, to ensure that the person convicted of such an offence is the same person whose name is shown in the WRA's register.

8.59 As indicated in paragraph 8.57(f) above, **paragraph 4(1)** requires a WRA to make an appropriate entry in their register where the registered broker or another relevant person has been convicted of a relevant offence. Although applicants will be able to take full advantage of the 1974 Rehabilitation of Offenders Act when applying for registration, a conviction may subsequently become spent during the 3 year period of the broker's registration. The Departments are advised that, where the registered broker or another relevant person has been convicted of a relevant offence, it would not be unlawful under the 1974 Act for regulation authorities to retain details of that conviction on their register once it has become spent. However, the Departments consider that the retention on WRAs' registers of details of spent convictions would be contrary to the spirit of the 1974 Act. The Departments recommend, therefore, that WRAs should regularly review their registers with the aim of identifying and deleting convictions which have become spent for the purposes of the 1974 Act.

8.60 **Paragraph 4(2)** provides that where a business is or is to be carried on by a partnership, all of the partners must be registered under one entry but only one registration number is to be allocated to the partnership. The application of the regulations to partnerships is explained in more detail in paragraphs 8.93-8.94 below.

8.61 **Paragraph 4(3)** provides that, on making an entry in their register under **paragraph 4(1)** the WRA must provide the registered person or partnership with a copy of the entry in the register free of charge. The

[54] "relevant person" is defined in Paragraph 1(3) of Schedule 5.

[55] Paragraph 4(8) of Schedule 5 provides that "group" has the same meaning as in section 53(1) of the Companies Act 1989.

[56] **Regulation 1(3)** provides that "waste management licence" has the same meaning as in section 35(1) of the 1990 Act.

Departments suggest that, at the same time as issuing the copy, the WRA should advise the broker:-

(a) that he is required by **paragraph 4(6)** to notify the WRA of any change of circumstances affecting information contained in his entry in the register;

(b) if the broker is a partnership, advise them of the specific requirements of the regulations relating to partnerships - eg the registration of additional partners (see paragraphs 8.93-8.94 below).

Amendment Of Register Entries

8.62 **Paragraph 4(4)** provides that on accepting a person's application for the renewal of a registration, or on being directed by the Secretary of State under **Paragraph 6(9)** to register a person following an appeal in respect of such an application, the WRA must amend the relevant entry in the register:-

(a) to show the date on which the renewal takes effect and the revised date of expiry of the registration;

(b) to record any other change disclosed as a result of the application; and

(c) to note in the register the date on which the amendments are made.

8.63 **Paragraph 4(5)** provides that at the same time as amending the register, the WRA must provide the registered person or partnership with a copy of the amended entry in the register free of charge and should also have regard as appropriate to the suggestions made in paragraph 8.61 above.

Change Of Circumstances And Registration Of Additional Partners

8.64 **Paragraph 4(6)** requires a person who is registered to notify the WRA which maintains the relevant register of any change of circumstances affecting information in the entry relating to him.

8.65 **Paragraph 4(7)** requires the WRA to take certain action:-

(a) on being notified of any change of circumstances in accordance with **paragraph 4(6)**

(b) on accepting a prospective partner's application for registration in relation to a business carried on by a partnership whose members are already registered; or

(c) on being directed by the Secretary of State under **paragraph 6(9)** to register a prospective partner following an appeal.

8.66 In these circumstances, the WRA are required by **paragraph 4(7)**:-

(a) to amend the relevant entry to reflect the change of circumstances or the registration of the prospective partner;

(b) to note in the register the date on which the amendment is made; and

(c) to provide the registered person or partnership free of charge with a copy of the amended entry in the register.

8.67 If the change of circumstances notified by the registered broker relates to an unspent conviction for a relevant offence, the WRA should ensure that the details provided by the broker are not less than those which would be provided

by a person completing section 10 of the registration application form in Part II of Schedule 5. That is say, the full name of the person convicted, the position held by him, the name of the Court, the date of conviction, the offence and penalty imposed, and the number of offences. Before taking any action which may lead to the revocation of the broker's registration, the WRA should also invite the broker to provide any additional information which he wishes the authority to take into account in determining whether or not it is undesirable for the broker to continue to be authorised to arrange for the disposal or recovery of controlled waste on behalf of others.

8.68 A WRA may receive information of a change of circumstances (eg the granting of a waste management licence to the broker) from another authority and not the registered broker. If this occurs, the WRA should obtain confirmation of the change of circumstances from the broker before amending the register.

8.69 If a WRA receives information about an **unspent** conviction for a relevant offence from another authority, and the WRA which issued the broker's certificate of registration have reason to believe that the person convicted is a registered broker or another relevant person, that WRA should:-

(a) notify the registered broker that the information in question has been received and provide him with details of the conviction. **Where possible**, these details should be not less than those which would be provided by a person completing section 10 of the registration application form as shown in *Part II* of Schedule 5. That is to say, the full name of the person convicted, the position held by him, the name of the Court, the date of conviction, the offence and penalty imposed, and the number of offences;

(b) invite the registered broker:-

(i) to confirm the accuracy of the information provided by the WRA Where it is has not been possible for the WRA to provide all of the details referred to in paragraph (a) above, the broker should be requested to do so;

(ii) to confirm that the person convicted is either the registered broker or another relevant person; and

(iii) subject to confirmation of (1) and (2), to provide the WRA with any information which he wishes the authority to take into account in determining whether or not it is undesirable for the registered broker to continue to be authorised to arrange for the disposal or recovery of controlled waste on behalf of others.

Revocation Of Registration

8.70 **Paragraph 5(1)** of the Schedule provides that a WRA may revoke a person's registration if, **and only if**:-

(a) that person or another relevant person has been convicted of a relevant offence; and

(b) **in the opinion of the WRA** it is undesirable for the registered broker to continue to be authorised to act as a broker of controlled waste.

8.71 Paragraphs 8.67 to 8.69 above, set out the steps which the Departments consider WRAs should fulfil before taking action which may lead to the

revocation of a broker's registration. Guidance on the refusal of an application for registration or renewal is provided in paragraphs 8.40-8.52 above. With the exception of paragraph 8.42, this advice also applies where the revocation of a broker's registration is under consideration.

8.72 **Paragraph 5(2)** provides that where a WRA decide to revoke a person's registration, the authority must give notice to the broker informing him of the revocation and of the reasons for their decision. In their fulfilment of these requirements, WRAs should also inform the broker of:-

(a) his right of appeal to the Secretary of State under **paragraph 6(2)** and the provisions relating to appeals in **paragraphs 6(3) to 6(10).**

(b) the effect of **paragraphs 7(7)** and **7(8)(b).**

Appeals

8.73 **Paragraph 6(1)** provides that where a person has applied to be registered in accordance with the regulations, he may appeal to the Secretary of State if:-

(a) his application for registration or renewal of registration is refused; or

(b) the relevant period from the making of the application has expired without his having been registered. For this purpose, **paragraph 1(1)** provides that the relevant period is two months or, except in the case of an application for the renewal of his registration by a person who is already registered, such longer period as may be agreed between the applicant and the WRA in question.

8.74 **Paragraph 6(2)** provides that a person whose registration has been revoked may appeal against the revocation to the Secretary of State.

8.75 **Paragraph 7(8)** provides that where an appeal is made in accordance with the provisions of paragraph 6:-

(a) by a person whose application for renewal of his registration was made, in accordance with **paragraph 3**, at a time when he was already registered; or

(b) by a person whose registration has been revoked,

his registration will continue in force until his appeal is disposed of. **Paragraph 1(5)** lists the circumstances in which an appeal is disposed of. WRAs should also note the terms of the transitional exemption from registration provided by **regulation 20(4)** which are explained in paragraph 8.16(d) above. The effect of this exemption is to allow any person who submits a valid application for registration before 1 January 1995 to continue to act as a broker of controlled waste after that date while his application is pending, that is, as **paragraph 1(4)** explains, until his application is accepted by the WRA or, if it is refused, until the appeal process is completed.

8.76 **Paragraph 6(3)** provides that notice of appeal under **paragraph 6(1) or 6(2)** must be given in writing by the appellant to the Secretary of State. **Paragraph 6(4)** sets out the information which must accompany the notice. This is:-

(a) a statement of the grounds of appeal;

(b) in the case of an appeal under **paragraph 6(1)** a copy of the relevant application;

(c) in the case of an appeal under **paragraph 6(2)** a copy of the appellant's entry in the register;

(d) a copy of any relevant correspondence between the appellant and the WRA;

(e) a copy of any notice given to the appellant under **paragraphs 3(14) or 5(2);**

(f) a statement indicating whether the appellant wishes the appeal to be conducted by written representations or by a hearing.

8.77 **Paragraph 6(5)** requires the appellant, at the same time as giving notice of appeal to the Secretary of State, to serve on the WRA (see **paragraph 1(6)**) a copy of the notice and a copy of any of the documents mentioned in **paragraph 6(4)(a) and 6(4)(f)**

Time Limit For Bringing An Appeal

8.78 **Paragraph 6(6)** provides that notice of appeal is to be given before the expiry of 28 days beginning with:-

(a) in the case of an appeal under **paragraph 6(1)(a)** the date on which the appellant is given notice by the WRA that his application has been refused; or

(b) in the case of an appeal under **paragraph 6(1)(b)** the date on which the relevant period from the making of the application expired without the appellant's having been registered (see paragraph 8.73(b) above); or

(c) in the case of an appeal under **paragraph 6(2)**, the date on which the appellant is given notice by the WRA that his registration has been revoked;

(d) or before such later date as the Secretary of State may allow.

Hearings

8.79 The Departments anticipate that most appeals will be dealt with by means of written representations. However, the effect of **Paragraph 6(7)** is to provide both parties to an appeal, if they request it, with the right of a hearing before a person appointed by the Secretary of State. The Secretary of State may also decide that the appeal may be dealt with in the form of a hearing. **Paragraph 6(8)** requires the person holding the hearing to make a written report to the Secretary of State after the conclusion of the hearing. His report must include his conclusions and recommendations or his reasons for not making any recommendations.

Notification Of Determination

8.80 **Paragraph 6(9)** provides that the Secretary of State may, as he thinks fit, either dismiss the appeal or give the WRA in question a direction to register the appellant or, as the case may be, to cancel the revocation. Where the Secretary of State dismisses an appeal made by virtue of **paragraph 6(1)(b)**,

see paragraph 8.73(b) above), **paragraph 6(11)** requires him to direct the WRA in question not to register the appellant. **Paragraph 6(12)** places a duty on a WRA to comply with any direction under **paragraph 6**.

8.81 **Paragraph 6(10)(a)** requires the Secretary of State to notify the appellant in writing of his determination of the appeal and of his reasons for it. If a hearing has been held, the Secretary of State is required also to provide the appellant with a copy of the report of the person who conducted the hearing. **Paragraph 6(10)(b)** requires the Secretary of State, at the same time as notifying the appellant, to send to the WRA a copy of the documents sent under **paragraph 6(10)(a)**.

Duration Of Registration

8.82 **Paragraph 7** prescribes the periods after which registration ceases to have effect. **The basic period of registration prescribed in paragraph 7(1) is three years**,but this is subject to the provisions of **paragraphs 7(4) and 7(8)**.

8.83 **Paragraph 7(4)** provides that registration shall cease to have effect if the registered broker gives written notice requiring the removal of his name from the register.

8.84 **Paragraph 7(8)** provides that where an appeal is made in accordance with **paragraph 6**:-

(a) by a person whose application for renewal of his registration was made, in accordance with **paragraph 3**, at a time when he was already registered; or

(b) by a person whose registration has been revoked,

his registration will continue in force until his appeal is disposed of under **paragraph 6(9)**. **Paragraph 1(5)** provides that, for the purposes of **paragraph 7(8)**, an appeal is disposed of when any of the following occurs:-

(a) the appeal is withdrawn;

(b) the appellant is notified by the Secretary of State or the WRA in question that his appeal has been dismissed; or

(c) the WRA comply with any direction of the Secretary of State to renew the appellant's registration or to cancel the revocation.

8.85 **Paragraph 7(1)** provides that, subject to the other provisions of **paragraph 7**, a broker's registration will cease to have effect:-

(a) on the expiry of three years beginning with the date of registration; or

(b) if it has been renewed, on the expiry of three years beginning with the date on which it was renewed or last renewed.

8.86 Where a registered carrier applies to be registered as a broker of controlled waste otherwise than by way of renewal and his application is accepted, his registration as a carrier will normally expire within 3 years of the date of his registration as a broker. In these circumstances, **paragraph 7(2)** allows him to opt for his broker's and carrier's registration to expire on the same date (i.e. to have his broker's registration run for less than the normal 3 years). A combined

application at the appropriate time for the renewal of both registrations could then be made more easily.

8.87 **Paragraph 7(3)** makes a corresponding provision for a situation where, otherwise than by way of renewal of an existing registration as a carrier, a registered broker has applied to be registered as a carrier of controlled waste. On the first application he makes (after being registered as a carrier) for the renewal of his broker's registration, he may opt to have his renewed registration as a broker expire on the same date as his carrier's registration (i.e. in less than the usual 3 years). Again, the point of this would be to facilitate a combined renewal application on future occasions.

8.88 The purpose of **paragraph 7(5)** is to provide the registered broker with a reminder that his registration is due to expire. To fulfil this purpose, **paragraph 7(5)** requires the WRA **no later than six months before the expiry of the three year period set by Paragraph 7(1)** to serve on the registered person (see **paragraph 1(6)**:-

(a) a notice informing him of the date on which the three year period set by **paragraph 7(1)** is due to expire and of the effect of **paragraph 7(6)** and

(b) an application form for the renewal of his registration and a copy of his current entry in the register.

8.89 It is emphasised that this procedure is intended only as a reminder of the need for the broker to renew his registration and that the responsibility to apply for renewal rests with each broker. An application for renewal of registration is invalid if it is made after the period set by **paragraph 7(1)**. Should a broker fail to apply for renewal in time his registration will cease to have effect and he will cease to be authorised to arrange for the disposal or recovery of controlled waste. Should this occur it will be necessary for the broker to apply for registration using the form at ***Part II of Schedule 5*** to the regulations if he wishes to continue to act as a broker of controlled waste. But until his application is accepted he will not be authorised to act as a broker of controlled waste.

8.90 **Paragraph 7(6)** provides that where an application for the renewal of a registration is made within the last six months of the period of three years mentioned in **paragraph 7(1)** the registration continues in force, notwithstanding the expiry of that period:-

(a) until the application is withdrawn or accepted;

(b) if the WRA refuse the application or the relevant period[57] from the making of the application has expired without the applicant's having been registered until:-

(i) the expiry of the period for appealing against the refusal (see paragraph 8.78 above); or

(ii) where the applicant indicates within that period that he does not intend to make or continue with an appeal, the date on which such an indication is given.

[57] ***Paragraph 1(1)*** of Schedule 5 provides that the relevant period is two months or, except in the case of an application for the renewal of his registration by a person who is already registered, such longer period as may be agreed between the applicant and the regulation authority in question.

8.91 There are three points about registration and its renewal which should be noted. First, the practical effect of **paragraphs 3(2) and 3(3)** (see paragraphs 8.23-8.24 above) is to restrict the period during which a broker may apply for the renewal of his registration to the final six months of his current registration. Second, where an application for renewal of registration is made within that six month period but is not accepted before the expiry date of the broker's current registration, the effect of **paragraph 7(6)** is to ensure that the registration continues in force until either it is withdrawn, it is refused and no appeal is made, or it is renewed. Third, by virtue of **paragraph 7(8)** a broker's current registration may continue in force beyond the expiry date in the circumstances described in paragraph 8.75 above. Where the appeal is against a WRA's decision to revoke registration it will remain necessary for the registered broker to apply for renewal of his registration in the manner required by the regulations if he wishes his registration to continue in force in the event of his appeal being upheld by the Secretary of State.

8.92 **Paragraph 7(7)** provides that where a WRA revokes a person's registration, the registration continues in force, notwithstanding the revocation, until:-

(a) the expiry of the period for appealing against the revocation; or

(b) where that person indicates within that period that he does not intend to make or continue with an appeal, the date on which such an indication is given.

Partnerships

8.93 **Paragraphs 3(4) and 7(9)** provide that every registration in respect of a business which is or is to be carried on by a partnership is:-

(a) to be a registration of all the partners; and

(b) to cease to have effect:-

(i) if any of the partners ceases to be registered; or

(ii) if any person who is not registered becomes a partner.

8.94 However, **paragraph 7(10)** provides that the duration of a partnership's registration is not affected if a person ceases to be a partner or if a prospective partner is registered under **Paragraph 4(7)** in relation to the partnership. The practical effect of these provisions is as follows:-

(a) each business which acts as a broker of controlled waste and operates or is to operate as a partnership must be registered[58]. An application for registration or its renewal must be made by all of the partners or proposed partners;

(b) all of the partners in a business will be shown in the register under one entry and one registration number will be allocated to the partnership;

(c) a prospective partner in a business carried on by a partnership whose members are already registered may apply for registration as a partner in that business under **paragraph 3(5)**. Where this is done and the

[58] Subject to the exemptions from registration referred to in paragraphs 8.10 and 8.12-8.16 above.

prospective partner has been registered under **paragraph 4(7)**, the duration of the partnership's registration is not affected;

(d) registration is of the business which is carried on as a partnership and the registration of individual partners is not transferable. This means that if a person is a member of registered partnership A and wishes to become a member of registered partnership B he must separately apply under **paragraph 3(5)** as a prospective member of partnership B;

(e) where a person ceases to be a partner the duration of the partnership's registration is not affected but the partnership are required by **paragraph 4(6)** to notify the WRA of the change of circumstances;

(f) if any of the partners in a business ceases to be registered but remains a partner, the registration of the partnership as a whole ceases to have effect;

(g) if any person becomes a partner in a registered partnership without having applied for registration under **paragraph 3(5)** and been registered under **paragraph 4(7)**, the partnership's registration ceases to have effect.

8.95 **Paragraph 7(11)** provides that, where a WRA accepts an application for the renewal of a registration within the three year period mentioned in **paragraph 7(1)**, the renewal is to take effect at the expiry of that period.

Alteration Of Register To Reflect Cessation Of Registration

8.96 **Paragraph 8(a)** provides that where a registration ceases to have effect by virtue of **paragraphs 6(11) or 7**, the WRA must record this fact in the appropriate entry in their register and the date on which it occurred. **Paragraph 8(b)** provides that the WRA **may** remove the appropriate entry from their register at any time more than six years after the registration ceases to have effect.

Table 8.1 The Prescribed Offences

LEGISLATION	PROVISION	OFFENCE
The Public Health (Scotland) Act 1897	Section 22	Nuisance arising from the wilful fault or culpable negligence of the owner or occupier of premises.
The Public Health Act 1936	Section 95(1)	Failure without reasonable excuse to comply with, or knowingly contravene, a nuisance order.
The Control of Pollution Act 1974	Section 3	The deposit of controlled waste on land, or the use of plant or equipment either to dispose of controlled waste or to deal with it in a prescribed manner, without a disposal licence or contrary to the conditions of a licence.
	Section 5(6)	Making a false statement in an application for a disposal licence.
	Section 16(4)	Failure to comply with a notice served under section 16(1) to remove controlled waste deposited in contravention of section 3(1); or to take steps to eliminate or reduce the consequences of the deposit.
	Section 18(2)	The unlawful deposit of waste other than controlled waste.
	Section 31(1)	The pollution of streams and coastal waters etc.
	Section 32(1)	The discharge of trade and sewage effluent etc. without consent under section 34 or contrary to the conditions of consent.
	Section 34(5)	The making of a false statement in an application for consent to discharge trade and sewage effluent etc.

LEGISLATION	PROVISION	OFFENCE
	Section 78	Burning by a person of insulation from a cable with a view to recovering metal from the cable, where the place at which he does so is not a work registered in pursuance of section 9 of the Alkali Act (ie the Alkali, &c. Works Regulation Act 1906).
	Section 92(6)	Wilful obstruction of a person authorised by virtue of sections 91 and 92 to enter and inspect any land or vessel.
	Section 93(3)	Failure without reasonable excuse to comply with a notice served by a relevant authority which requires the provision of specified information.
The Refuse Disposal (Amenity) Act 1978	Section 2	Unauthorised abandonment of motor vehicles and other things (ie dumping).
The Control of Pollution (Special Waste) Regulations 1980	[Regulation 16]	(1) Failure by a producer, disposer, or carrier to comply with any provision of the 1980 Regulations other than regulation 15. (2) Failure by any person to comply with a direction by the Secretary of State under regulation 15 to accept and dispose of special waste.
The Food and Environment Protection Act 1985	Section 9(1)	Contravention of the licensing system established under section 6 for controlling the incineration of substances and articles at sea.
The Transfrontier Shipment of Hazardous Waste Regulations 1988	[Regulation 28]	(1) Failure by a holder, carrier or consignee to comply with any provision of the 1988 Regulations other than regulations 10, 15, and 18.

LEGISLATION	PROVISION	OFFENCE
		(2) Failure by any person to comply with the requirements of regulations 10, 15 or 18 to retain documents.
The Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1988	[Regulation 9]	Breach of the 1988 Regulations relating to the disposal into the sea of garbage from a ship.
The Control of Pollution (Amendment) Act 1989	Section 1	Transporting controlled waste in the course of a business or otherwise with a view to profit without registering as a carrier.
	Section 5	(1) Intentional obstruction of an authoritised officer of a regulation authority or constable exercising the power conferred by section 5(1) to stop any person engaged in transporting controlled waste and to search any vehicle appearing to be so used.
		(2) Failure without reasonable excuse to comply with a requirement imposed in the exercise of the power conferred by section 5(1).
	Section 6(9)	Intentional obstruction of an authorised officer of a regulation authority or constable exercising any power conferred by virtue of a warrant under section 6.
	Section 7(3)	(1) Failure without reasonable excuse to comply with any requirement of regulations made under the 1989 Act to provide information to the Secretary of State or a regulation authority.

LEGISLATION	PROVISION	OFFENCE
		(2) Provision of false information in complying with any such requirement.
The Water Act 1989	Section 107	Offences of polluting controlled waters etc.
	Section 118(4)	Failure without reasonable excuse to comply with a notice served under section 118 - provision and acquisition of information etc.
	Section 175(1)	Making of false statements in furnishing information or making any application for the purpose of any provision of the Water Act 1989.
The Environmental Protection Act 1990	Section 23(1)	Offences relating to Integrated Pollution Control (IPC) and air pollution control by local authorities.
	Section 33	The deposit, treatment, keeping or disposal of controlled waste contrary to section 33(1) or the contravention of any condition of a waste management licence.
	Section 34(6)	Failure to comply with the duty of care imposed by section 34(1).
	Section 44	Making a false statement in an application for a licence, for a modification of the conditions of a licence or for the surrender or transfer of a licence.
	Section 47(6)	Failure to comply with any requirements imposed by section 47(2) or (4) relating to the provision and use of receptacles for the storage of commercial or industrial waste.

LEGISLATION	PROVISION	OFFENCE
	Section 57(5)	Failure to comply with a direction by the Secretary of State to accept and keep, or accept and treat or dispose of, controlled waste.
	Section 59(5)	Failure to comply with a notice requiring the removal of controlled waste deposited in contravention of section 33(1) or to take specified steps with a view to eliminating or reducing the consequences of the deposit.
	Section 63(2)	The unlawful deposit of waste other than controlled waste.
	Section 69(9)	(1) Failure, without reasonable excuse, to comply with any requirement imposed under section 69 (powers of entry etc. of inspectors). (2) Prevention of any other person from appearing before or from answering any question to which an inspector may by virtue of section 69(3) require an answer. (3) Intentionally obstructing an inspector in the exercise or performance of his powers or duties.
	Section 70(4)	Intentional obstruction of an inspector in the exercise of his powers to deal with cause of imminent danger or serious pollution etc.
	Section 71(3)	Failure without reasonable excuse to comply with a requirement imposed under section 71(2) to furnish information or to provide false information.

LEGISLATION	PROVISION	OFFENCE
	Section 80(4)	Contravention or failure, without reasonable excuse, by a person on whom an abatement notice is served to comply with any requirement or prohibition imposed by the notice.
The Water Resources Act 1991	Section 85	Offences of permitting poisonous, noxious or polluting matter to enter controlled waters.
	Section 202	Information and assistance required in connection with the control of pollution.
	Section 206	Offence of making false statements etc.
The Clean Air Act 1993	Section 33	Burning insulation from a cable, unless burning is part of a process subject to Part I of the Environmental Protection Act 1990.

Table 8.2 Rehabilitation of Offenders Act 1974 Rehabilitation Periods

Sentence	Rehabilitation period
A sentence of prison or youth custody of more than 6 months and not exceeding 2½ years	10 years (5 years if aged under 17 at the time of conviction)
A sentence of prison or youth custody of 6 months or less	7 years (3½ years if aged under 17 at the time of conviction)
Fine	5 years (2½ years if aged under 17 at the time of conviction)
Community service order	5 years (2½ years if aged under 17 at the time of conviction)
Borstal	7 years
Detention centre	3 years
Absolute discharge	6 months
Probation order	1 year, or until the order expires (whichever is longer)
Care order	1 year, or until the order expires (whichever is longer)
Supervision order	1 year, or until the order expires (whichever is longer)
Conditional discharge	1 year, or until the order expires (whichever is longer)
Bind over	1 year, or until the order expires (whichever is longer)
Order for custody in a remand home or an approved school	Until the end of 1 year after the order expires
Attendance centre order	Until the end of 1 year after the order expires
Hospital order (with or without a restriction order)	5 years, or until the end of 2 years after the order expires (whichever is longer)
Supervision requirements made by children's hearings in Scotland	Similar to care or supervision orders (see above)

ENVIRONMENTAL INFORMATION: PUBLIC REGISTERS AND ANNUAL REPORTS

Public Registers

Introduction

9.1 Section 64 of the 1990 Act places a duty on each WRA to maintain a register, subject to sections 65 and 66, of such information as is prescribed in Regulations. This duty replaces and widens that imposed on waste disposal authorities under section 6(4) of the 1974 Act to maintain a register containing copies of waste disposal licences issued in their area.

9.2 Section 64 of the 1990 Act imposes an additional duty on waste collection authorities in England only. Any waste collection authority which is not a WRA must maintain a register containing such of the information kept in the register maintained by the WRA for their area as is prescribed in Regulations (**regulation 10(3)** of the Regulations and paragraph 9.47 below). This is a new duty for those authorities which were not waste disposal authorities under the 1974 Act.

9.3 Each WRA must supply to those waste collection authorities in its area which have a duty to maintain registers the information each collection authority needs to fulfil that duty.

Purpose Of The Registers

9.4 Building on the recommendations of the Royal Commission on Environmental Pollution[59], and the conclusions of the inter-Departmental Working Party[60] subsequently set up, measures to allow the public increased access to environmental information were included in section 64 of the 1990 Act.

The Environmental Information Regulations 1992

9.5 The Environmental Information Regulations 1992 implement the provisions of the EC Directive on Freedom of Access to Environmental Information (90/313/EEC[61]). WRAs and waste collection authorities are thus subject to two sets of Regulations requiring information on waste management activities to be publicly available. However, the 1992 Regulations provide that where other statutory provisions also require environmental information to be made available, the more liberal regime of the two shall prevail. Thus, where only some of the environmental information held by authorities is to be entered on the public register in compliance with the Waste Management Licensing

[59] Tenth Report, "Tackling Pollution: Experience and Prospects", HMSO 1984.
[60] "Public Access to Environmental Information", HMSO 1986.
[61] The Department of the Environment has issued guidance on the implementation of these Regulations. Copies are available from DOE, Room A1.32 Romney House, 43 Marsham Street, London SW1P 3PY.

Regulations 1994, the 1992 Regulations empower members of the public to seek access to that which is not included. The 1992 Regulations do, however, protect from disclosure certain kinds of confidential information.

Content Of Registers

9.6 **Regulation 10** prescribes the information to be included in registers maintained by WRAs and waste collection authorities under section 64. Sections 65 and 66 of the 1990 Act provide for information to be excluded from the register if it is commercially confidential, or if its inclusion would be contrary to the interests of national security (see paragraphs 9.37-9.44 below).

Access To Registers And Availability Of Copies

9.7 Under section 64(6) any authority which maintains a register under this section must ensure that the register is open to the public at all reasonable hours, free of charge, at its principal office. Further, the authority must provide reasonable facilities so that members of the public can obtain copies of any entry in the register, and may charge a reasonable amount for this service.

9.8 The duty in section 64(6) to allow access and make copies available carries forward unchanged that in section 6(4) of the 1974 Act. Most authorities will therefore already have in place appropriate arrangements to comply with this duty.

9.9 Neither the 1990 Act nor the Regulations prescribe a time limit within which authorities must enter the information on the register. However, once available, the prescribed information should be entered and, as necessary, furnished to waste collection authorities as soon as is reasonably practicable. In the view of the Departments, this will promote public confidence in the authority's performance, and is consistent with the underlying principle that information should be as freely available as possible. Authorities are also advised to have regard to regulation 5 of The Environmental Information Regulations 1992, which requires relevant persons subject to a statutory requirement to make information publicly available to make arrangements to secure that requests for that information should be met as soon as possible and at the latest within 2 months. A delay of more than two months may put an authority in breach of those Regulations. (However, time may be needed to assess the commercial confidentiality of information already held by the authority - see paragraph 9.42 below.)

Form Of Registers

9.10 Section 64(7) of the 1990 Act provides that registers may be kept in any form. The information may be kept, for example, on paper, computer or microfiche. An authority may choose the most cost-effective way of making information available according to the facilities and resources available, and taking into account the manner in which registers of waste disposal licences were maintained under the 1974 Act.

9.11 The Departments recommend that, whatever form is adopted, information on the registers should be so indexed or ordered that the public can readily trace

information contained in it. An authority which maintains a register should also consider the advantages of ordering and/or indexing it in such a way that it can be quickly and easily updated or amended.

Information On Registers

9.12 **Regulation 10(1)(a)** requires full particulars of current or recently current licences granted by the authority, and any associated working plans, to be included. The definition of "recently current" is given in **regulation 10(4)**, and means that this regulation applies to any licence which is in force or has been in force at any time during the previous 12 months. Authorities are advised that the requirement of this regulation can be fulfilled by including copies of the relevant licences and working plans. Authorities should also keep on the register copies of licences and working plans granted under the 1974 Act which by virtue of section 77(2) of the 1990 Act are to be treated as site licences.

9.13 **Regulation 10(1)(b)** requires inclusion in the register of full particulars of any application made to the authority for a waste management licence under the 1990 Act where the licence is currently in force or has been in force at any time during the previous 12 months, where the application has not yet been determined, or where the application was rejected or was deemed to have been rejected at any time during the previous 12 months, as well as all particulars of any application made to the authority:-

- for the transfer of a licence
- for the modification of licence conditions

in respect of a licence which is currently in force or has been in force at any time during the previous 12 months or which has not yet been determined.

9.14 **Regulations 10(1)(b)(i)-(v)** clarify further the meaning of "full particulars" in relation to licence applications. **Regulation 10(1)(b)(i)** provides that, in addition to the more specific information required by **regulation 10(1)(b)(ii)-(v)**, full particulars shall include details of the application together with any supporting documents; this requirement could reasonably be satisfied by including a copy of the application together with all supporting documents.

9.15 The effect of **regulation 10(1)(b)(ii)** is to require details of any representations received by the WRA in response to consultation from either the National Rivers Authority, the Health and Safety Executive, English Nature, Scottish Natural Heritage, or the Countryside Council for Wales, as well as, in Scotland, by any river purification authority or general planning authority, to be included on the register.

9.16 **Regulation 10(1)(b)(iii)** specifies that, where any matter is referred to the Secretary of State by the WRA under section 36(5) or (6) of the 1990 Act, in England and Wales by the National Rivers Authority under section 36(5), or in Scotland by a river purification authority under section 36(6), a copy of the Secretary of State's decision shall be put on the register.

9.17 **Regulation 10(1)(b)(iv)** requires that, where an authority rejects an application for a licence, for the transfer of, or the modification of conditions of a licence, the authority shall include in the register a copy of the notice rejecting the application.

9.18 A WRA is empowered under section 37(5)(a) of the 1990 Act to postpone referring to any of the statutory consultees a proposal to modify the conditions of a licence, so far as it considers it appropriate to do so by reason of an emergency. **Regulation 10(1)(b)(v)** requires that where an authority exercises this power, it must enter in the register a written statement of the nature of the emergency.

9.19 **Regulation 10(1)(c)** requires full particulars of any notice served by a WRA under section 37 of the 1990 Act effecting a variation in the conditions of a licence to be entered into the register.

9.20 Any WRA may, in respect of any licence it has issued or which is by virtue of section 77(2) of the 1990 Act to be treated as a site licence, serve a notice on the licensee under section 38 suspending, partially or completely revoking the licence. Additionally, the authority may, either on suspension of the licence or at any time while the licence is suspended, serve a notice on the licensee imposing requirements to deal with or avert pollution or harm. **Regulation 10(1)(d)** prescribes that full particulars of any such notice must be included on the register.

9.21 Section 43 and section 66 of the 1990 Act provide for appeals to the Secretary of State. **Regulation 10(1)(e)** prescribes that WRAs shall enter in their registers prescribed particulars of notices of appeals made under section 43 (but not under section 66 - relating to information which may be commercially confidential), including a copy of the appellant's notice of appeal, copies of those documents described in **regulation 6(2)** and provided to the authority under **regulation 6(3)**, as well as those provided under **regulation 6(4) and regulation 9(3)**. Thus on the register will appear a copy of the statement of the grounds of appeal and of the manner in which the appellant wishes the appeal to be disposed, together with a list of all supporting documents submitted with the appeal, a copy of any notice withdrawing the appeal or of the Secretary of State's notice of determination of the appeal and any documents that accompany it. Where an authority is in receipt of information which duplicates that which is already on the register, they are not, of course, required to maintain both sets on the register.

9.22 Where the holder of a licence issued by a WRA is convicted of any offence under Part II of the 1990 Act, **regulation 10(1)(f)** requires details of the conviction to appear in the register, whether or not the conviction was for an offence committed in connection with a licence issued by the authority, or in the area of the issuing authority. The prescribed details which must be entered in the register are the name of the offender (if the conviction was of an individual partner, senior officer or employee of the licensee then the name of that person should also be entered in the register), the date of conviction, the name of the Court and the penalty imposed.

9.23 Applicants for licences are required to provide details of convictions for any offence which is relevant for the purposes of section 74(3)(a) ("fit and

proper persons") in their applications (see paragraphs 4.65-4.73 of Annex 4). The relevant offences are prescribed in **regulation 3** of the Regulations. Since copies of application forms are required to be on the register under **regulation 10(1)(b)**, details of these convictions will therefore be publicly available.

9.24 In respect of information on convictions entered on the register either as part of an application or under **regulation 10(1)(f)**, authorities are advised to have regard to the provisions of the Rehabilitation of Offenders Act 1974. Under that Act, convictions of individuals can become "spent"; and this may happen during the subsistence of a licence. The Departments are advised that, where the licensee or another relevant person has been convicted of a relevant offence, it would not be unlawful under the Rehabilitation of Offenders Act 1974 for WRAs to retain details of that conviction on their register once it has become spent. However, the Departments consider that the retention on authorities' registers of details of spent convictions would be contrary to the spirit of that Act. The Departments recommend, therefore, that WRAs should regularly review their registers with the aim of identifying and deleting convictions which have become spent. Furthermore, while the provisions on spent convictions do not apply to bodies corporate, authorities should have regard to whether a conviction of a body corporate would have become spent had it been committed by an individual. In cases where it would have become spent, they should also aim to remove the relevant information from the register.

9.25 While a licence is in force, the issuing WRA has a duty under section 42 of the 1990 Act to carry out monitoring of the site and to supervise the operations authorised by the licence. A range of powers are conferred on authorities under this section to enable them to monitor sites, deal with non-compliance with the conditions of the licence and any problems of pollution or harm to health which may occur or be threatened. **Regulation 10(1)(g)** requires an authority to put on the register a copy of the reports produced by it in the course of the discharge of any of its functions under section 42. A copy of any correspondence between the authority and the National Rivers Authority (in England and Wales) or the river purification authority (in Scotland) in consequence of any consultation on matters affecting pollution of water under section 42(2) must be included in the register, as must all particulars of any emergency work carried out by an officer of the authority under section 42(3). Where the authority determines that any licence conditions have not been complied with, it may under section 42(5) require the licensee to comply. A copy of any notice requiring compliance must be put on the register.

9.26 **Regulation 10(1)(h)** requires an authority to put on the register monitoring information relating to the licensed activities obtained either as a result of its own monitoring or furnished to it under the terms of a licence condition.

9.27 Authorities are advised that the requirement in **regulations 10(1)(g) and 10(1)(h)** for particulars of reports and monitoring information to be put on the register may be satisfied by putting on the register all raw monitoring data, analysis of information obtained and completed reports; working drafts and preliminary reports may be omitted from the register.

9.28 **Regulation 11(1)** provides an exception to the requirements described in paragraphs 9.25 and 9.27 above where the information in a report relates to, or to anything which is or has been the subject-matter of, any legal or other proceedings (whether actual or prospective). This provides that an authority is not required to make public information on the activities at a site which may be used as evidence in a prosecution or other enforcement proceedings in order that those proceedings should not be compromised. The disclosure requirement is reapplied when the proceedings are finally disposed of.

9.29 In some cases, supervision of licensed activities carried out under the 1974 Act was recorded or reported on informally. One effect of **regulation 10(1)(g)** is to encourage the production of a written record of any inspection carried out under section 42 of the 1990 Act, in order that this information can be entered on the register. The Environmental Information Regulations 1992 provide that, with regard to any information authorities are required to, or may, provide, the publication thereby of any defamatory material contained in the information shall be privileged unless the publication is proved to be made with malice. However, authorities are advised to have regard to the matter of defamatory material and to avoid including such material in their reports where possible.

9.30 The Secretary of State is empowered to issue directions to WRAs on various matters related to the execution of their functions; authorities must comply with such directions. To facilitate identification of occasions where an authority has acted to meet the terms of such a direction, authorities in receipt of a specified direction must put a copy on the register. An underlying aim of the Regulations is to put on the register only information relevant to pollution control and on matters affecting the environment. For this reason, directions which relate only to the organisational structure of an authority are not to be included on the register, neither are those which relate to matters affecting national security. Under **regulation 10(1)(i)** the directions to be put on the register are those issued under:-

- section 35(7)	terms and conditions to be included in a licence;
- section 37(3)	modification of licence conditions;
- section 38(7)	revocation or suspension of licence;
- section 42(8)	monitoring and supervision of licensed activities;
- section 50(9)	information to be included in a disposal plan;
- section 54(11)	rescinding of a resolution (Scotland only);
- section 54(15)	conditions to be included in a local authority resolution (Scotland only);
- section 58	direction to a waste disposal authority to accept, keep, treat or dispose of waste (Scotland only);
- section 66(7)	information to be included in the register notwithstanding that it is commercially confidential.

9.31 Waste which is particularly dangerous or difficult to deal with may be classified in Regulations as "special waste". The current Regulations are the Control of Pollution (Special Waste) Regulations 1980 made under the 1974

Act. Those Regulations require certain records and registers kept at the site where special waste is disposed of to be provided to the WRA on the surrender of the licence. **Regulation 10(1)(k)** requires the authority to place these on the register. **Regulation 10(1)(j)** further requires any summary information on special waste arisings and disposal in their area which is prepared by authorities to be placed on the register.

9.32 **Regulation 10(1)(l)** requires inclusion in the register of full particulars of applications to the authority under section 39 for the surrender of a site licence. The meaning of "full particulars" in this context is clarified by **regulation 10(1)(l) (i) to (v)** and includes (i) a copy of any documents submitted by applicants containing supporting information and evidence; (ii) information obtained as a result of inspection of the site, or further information or evidence required to be furnished by the holder of the licence, in either case under section 39(4); (iii) a copy of written representations made by any body which the WRA is required to consult under section 39(7) or (8); (iv) a copy of any notice of determination made by the Secretary of State in the case of any matter referred to him under section 39(7) or (8) by the WRA, the National Rivers Authority in England and Wales, or in Scotland by a river purification authority; and (v) a copy of any notice of determination and certificate of completion issued under section 39(9).

9.33 Section 70 confers on inspectors emergency powers to act to prevent serious pollution of the environment or serious harm to human health. Section 70(3) requires the production of a written report of the circumstances of any such emergency action. **Regulation 10(1)(m)** requires a copy of any such report to be put on the register. **Regulation 11(1)** provides an exception to this requirement where the report contains information relating to, or to anything which is or has been the subject-matter of, any legal or other proceedings (whether actual or prospective). This provides that an authority is not required to make public information on the activities at a site which may be used as evidence in a prosecution or other enforcement proceedings in order that those proceedings should not be compromised. The disclosure requirement is reapplied when the proceedings are finally disposed of.

9.34 Certain activities which are exempt from the requirement to have a waste management licence attract the requirement to register with the competent authority (described in detail in Annex 6). Appropriate registration authorities are under a duty to keep registers of particulars of exempt establishments or undertakings (**Regulation 18**). This is strictly speaking an obligation to maintain a separate register of these details from that maintained under section 64 of the 1990 Act. However, WRAs will no doubt wish to keep the two registers in the same location and the same manner.

9.35 The legislation and Regulations require an extensive range of information on waste management licences to be available on the register. In Scotland, some waste disposal activities will be carried out not under waste management licences, but under local authority resolutions (see paragraphs 4.81-4.90 of Annex 4); to allow scrutiny of information related to such sites in the same way as that allowed in respect of licensed sites, **regulation 10(1)(n)** requires full particulars of local authority resolutions passed under section 54 of the 1990 Act to be put on the register. It is the Department's view that when read with section 54(16) these will include any relevant resolutions of a waste disposal

authority passed under Part I of the 1974 Act which are current on 1 May 1994. The effect of this is to ensure that local authority waste management and waste disposal activities are subject to the same degree of public access as are private sector operations. The requirement for full particulars of resolutions can reasonably be met by placing on the register a copy of the resolution together with certain further information spelt out in **regulation 10(1)(n)(i) to (iv)**. The information required includes details of (i) & (ii) proposals and statements made and written representations received by the authority under section 54(4); (iii) a copy of any written representations made by a river purification authority under section 54(7) and, where any matter is referred to the Secretary of State for decision under that subsection, a copy of his determination; and (iv) where a WRA postpones a reference to any of the statutory consultees in an emergency, a written record of the nature of the emergency.

9.36 An inspector appointed by a WRA is empowered under section 69(3) to enter premises and carry out a range of investigations and examinations in order to discharge any of his or the authority's functions under Part II of the 1990 Act, or to determine whether there has been compliance with that Part's provisions or any instruments issued thereunder. **Regulation 10(2)(a)** requires inclusion in the register of a record of when that power was exercised, and indicating what information was obtained and what action was taken on that occasion. The powers available under section 69(3) provide the formal backing for routine inspections, as well as providing a reserve power of entry. In most cases therefore, inspectors will exercise these powers to carry out supervision of licensed activities under section 42. The information recorded on such a visit may therefore also have been included in a report produced in compliance with **regulation 10(1)(g)**. Where an authority is required to enter information which duplicates that which is already on the register, they are not, of course, required to maintain two copies on the register. **Regulation 11(1)** provides an exception to the requirement of **regulation 10(2)(a)** where the report contains information relating to, or to anything which is or has been the subject-matter of, any legal or other proceedings (whether actual or prospective). This provides that an authority is not required to make public information on the activities at a site which may be used as evidence in a prosecution or other enforcement proceedings in order that those proceedings should not be compromised. The disclosure requirement is reapplied when the proceedings are finally disposed of.

Exclusions From The Register

9.37 Sections 65 and 66 of the 1990 Act provide that information required to be included in the register under **regulation 10** must be excluded if (i) the Secretary of State determines that the inclusion of the information would be contrary to the interests of national security or (ii) it is determined that the information is commercially confidential and the authority is not directed by the Secretary of State under section 66(7) to include the information in the register notwithstanding that it is commercially confidential.

9.38 Section 65 and section 66 set out the procedures under which information may be classified as a matter of national security or commercially confidential, respectively, and excluded from the register. Section 66(11) of the 1990 Act defines information as commercially confidential "if its being contained in the register would prejudice to an unreasonable degree the commercial interests of

(any) individual or person". It is for individual WRAs to determine whether or not information is commercially confidential as defined, although in making a determination they may find the guidelines in paragraphs 9.39-9.42 below useful.

9.39 In response to the recommendations of the Royal Commission on Environmental Pollution urging an increase in the information available to the public, the Government agreed there should be greater openness for environmental information with access restricted only where there are good reasons. The overriding principle governing access to information, and informing these legislative provisions, is that all information that affects the environment should be freely available unless it is genuinely commercially confidential. In that case, the amount of information excluded should be kept to the minimum necessary to safeguard the commercial advantage.

9.40 Where an application is made to an authority to have information excluded from the register on the grounds that it is commercially confidential, the onus is on the applicant to justify the claim. An application in respect of commercial confidentiality is unlikely to be sufficiently justified by a general claim that if the information were in the public domain the reputation of the operator and hence his commercial competitiveness would be adversely affected. The authority should require cogent and specific evidence to demonstrate that the inclusion of the information on the register would negate or significantly diminish a commercial advantage. Authorities should also consider to what extent the information about which they are being asked to make a determination is available elsewhere or can be inferred from other sources.

9.41 Further considerations apply in the case of recovery operations where the recovered material may be of considerable monetary value eg sorted and graded scrap metal. Provided that this is in a form that is unlikely to cause pollution or harm to health, the amounts stored, where they are stored and the relevant security precautions will have no environmental implications; and these details should not be published on a register as they could seriously prejudice the security and commercial future of the scrap metal merchant.

9.42 Section 66(4) of the 1990 Act makes provision for the circumstances where it appears to an authority that information which it has obtained under provisions of Part II of the 1990 Act might be commercially confidential. The authority is to give to the person to whom or to whose business the information relates a reasonable opportunity to object to including that information on the register on the grounds that it is commercially confidential. In the Departments' view, authorities should offer the same opportunity in circumstances where they have acquired the information in question under the 1974 Act.

9.43 Section 66(8) provides that information which has been determined to be commercially confidential and excluded from the register shall be treated as not being commercially confidential at the end of four years beginning with the date the determination was made. Unless a further application by the person who furnished that information to have it classified again as commercially confidential is successful, the authority must ensure that the excluded information is put on the register.

9.44 Section 64(2) requires that where any information is excluded from the register by virtue of section 66, a statement indicating the existence of information of that description must be entered. This excluded information may relate to compliance with the conditions of a licence, for example, monitoring data, or reports on activities at a site produced by WRA inspectors. It is the Departments' view that notwithstanding that the information is commercially confidential, it is in the public interest to know whether or not the activities at the site have been carried on properly. **Regulation 10(2)(b)** therefore prescribes that where the excluded information shows whether there has been compliance with any condition of the licence, the register should also contain an indication of whether or not there is compliance.

Retention Of Information On The Register

9.45 Section 64(3) defines the limits to the duration of keeping on the register of much of the information relating to a licence as being the lifetime of the licence, plus twelve months; and for applications for licences, the same period if the application was successful but if it was rejected, twelve months from the date on which it was rejected or deemed to be rejected. Certain information on the register however will not or may not refer to a current or recently current licence. This may for example be the case in relation to action taken under section 69 or 70. The Departments recommend that such information should be kept on the register for a period of four years.

9.46 **Regulation 11(2)** provides in particular that an authority may remove from the register monitoring data relating to licensed activities 4 years after that information was entered, or information which has been superseded by later information 4 years after that later information is entered on the register. The latter provision will enable the removal from the register of outdated working plans; of outdated inspection reports; of old summary information on special wastes; and of the details of appeal applications after the appeal has been determined.

Registers Kept By Waste Collection Authorities

9.47 Section 64(4) of the 1990 Act requires, in England only, any waste collection authority which is not also a WRA to maintain a register containing such of the information kept in the register of the WRA for their area as is prescribed in Regulations. The effect of **regulation 10(3)** is to require each collection authority to maintain a register of licences which are current or recently current in its area, and copies of those notices affecting the scope or status of such licences; that is, notices issued under section 37 (modification of licence) and section 38 (revocation or suspension of licences), as well as copies of certificates of completion issued under section 39.

Annual Reports

9.48 In addition to the duty of WRAs and waste collection authorities to maintain public registers of information, in order to increase public access to environmental information each WRA has a duty under section 67 of the 1990 Act to publish a report for each financial year on the discharge of its functions

under Part II. The report must be published not later than 6 months after the end of the financial year to which it relates, and a copy must be furnished to the Secretary of State.

9.49 Section 67(2)(a)-(e) of the 1990 Act lists the categories of information to be covered in the report. The manner in which the information is to be presented is a matter for each authority. An authority may choose any format which seems appropriate, for example, statistical tables or written summaries, or may combine existing material such a Committee reports and extracts from its public register.

9.50 Section 67(2)(a) requires a WRA to include in its report information on waste management licences. It must cover licences applied for during the year and licences granted, as well those in force (which may have been issued under the 1974 Act), modified, revoked, suspended, surrendered or transferred. In addition, information about the appeals made to the Secretary of State against the authority's decisions in respect of licences must be recorded.

9.51 Where an authority has exercised any of its powers under section 42 (monitoring and supervision of licensed activities), section 54 (authorisation and supervision of waste disposal operation: Scotland), section 62 (special waste provisions), or any instrument issued under the European Communities Act 1972 under which the authority has a function (in this context, this includes the registration of waste brokers), the relevant information must be put in the annual report (section 67(2)(b)).

9.52 Section 50 imposes on WRAs a duty to prepare a waste disposal plan, which must make provision for arrangements for recycling waste (section 50(7)). The annual report is required by section 67(2)(c) to contain information on the implementation of the authority's waste disposal plan, and in particular to address its recycling aspects.

9.53 Section 67(2)(d) requires each authority to include in its annual report the number of prosecutions brought by the authority under Part II of the 1990 Act during the reporting year, as well as a description of the prosecutions.

9.54 Authorities are empowered to recover various costs from landowners and licensees, and have a duty under section 41 to levy fees and charges in accordance with a scheme made under section 41(2). Section 67(2)(e) requires the authority to include in its report information on the costs incurred in the discharge of its functions (that is, its powers and duties) under Part II, as well as the sums received under that Part.

WASTE MANAGEMENT LICENSING AND COMMERCIAL CONFIDENTIALITY APPEALS

Introduction

10.1 The purpose of this Annex is to explain the procedure for, and the provisions relating to, the submission of appeals to the Secretary of State under:-

(a) section 43 of the 1990 Act against decisions made by WRAs on waste management licences[62]; and

(b) section 66(5)[63] of the 1990 Act against decisions made by WRAs that information is not commercially confidential and may be included on the public register maintained by the authority concerned under section 64 of the Act.

10.2 Section 43(8) of the 1990 Act provides that the Secretary of State may by Regulations make provision in relation to appeals and, in particular, the period within which and the manner in which appeals are to be brought; and the manner in which appeals are to be considered. Provision of this kind has been made in **regulations 6-9** of the Regulations.

10.3 Sections 35(8) and 74(5) of the 1990 Act place new duties on WRAs to have regard to any guidance issued to them by the Secretary of State with respect to the discharge of their functions in relation to licences and in making determinations of whether or not a person is a fit and proper person. The Secretary of State has issued guidance under sections 35(8) and 74(5) in the form of Waste Management Paper No.4 on Waste Management Licensing; and under section 35(8) in the form of Waste Management Paper No.26A on The Surrender of Site Licences. WRAs should make prospective applicants and licence holders aware of authorities' duty to have regard to this advice; and that the Secretary of State will similarly have regard to this advice in his determination of appeals made to him.

10.4 The Secretary of State has also made under section 41 of the 1990 Act a Charging Scheme prescribing fees for applications for licences; fees for applications for the modification, transfer or surrender of licences; and charges for the subsistence of licences (see paragraphs 21-22 of the main Circular). The effect of the Charging Scheme is to provide WRAs with the financial resources to deal with applications effectively and expeditiously. The objective of WRAs should be to determine applications for licences within the four month period specified in section 36(9) of the 1990 Act; to determine applications to modify licence conditions within the two month period specified in section 37(6); to determine applications to surrender site licences within the three month period specified in section 39(10); to determine applications to transfer licences

[62] Section 35(12) of the Act provides that "licence" means a waste management licence. The term "licence" is subsequently used in the text of this Annex.

[63] Section 66(6) provides that section 43(2)-(8) applies in relation to appeals under section 66(5).

within the three month period specified in section 40(6); and to make determinations as to whether information is or is not commercially confidential within the fourteen days specified in section 66(3). Where necessary, WRAs should make use of their powers under sections 36(9), 37(6), 39(10) and 40(6) to agree in writing with the applicant a longer period for the determination of an application.

10.5 Applicants and other persons have a right of appeal to the Secretary of State in the circumstances set out in paragraph 10.6 below. However, the effect of the measures referred to in paragraphs 10.3-10.4 above should be that proportionately fewer appeals need to be made to the Secretary of State than has historically been the case under Part I of the 1974 Act. **An appeal to the Secretary of State is intended to be, and should remain, a last resort.**

Right Of Appeal

10.6 Section 43(1) of the 1990 Act sets out the appeals which may be made to the Secretary of State and the person by whom an appeal may be made. An appeal may be made against a WRA's decision:-

Section 43(1)(a)

(a) **by the applicant** where an application for a licence submitted under section 36(1)(a) or (b) is rejected by a WRA or is deemed to be rejected under section 36(9);

(b) **by the licence holder** where an application to modify the conditions of a licence submitted under section 37(1)(b) is rejected by a WRA or is deemed to be rejected under section 37(6);

Section 43(1)(b)

(c) **by the licence holder** where a WRA grants a licence under section 36 subject to conditions;

Section 43(1)(c)

(d) **by the licence holder** where a WRA modifies the conditions of a licence under section 37(1)(a) or 37(2);

Section 43(1)(d)

(e) **by the licence holder** where a WRA suspends a licence under section 38(6) or 42(6)(c);

Section 43(1)(e)

(f) **by the former licence holder** where a WRA revokes a licence under section 38(3) or (4) or section 42(6)(a) or (b). (**There is no right of appeal where it appears to a WRA that the holder of a licence has failed to pay a subsistence charge due under the Charging Scheme (see paragraphs 21-22 of the main Circular) and the WRA exercises its discretion under section 41(7) to revoke the licence.**);

Section 43(1)(f)

(g) **by the licence holder** where an application to surrender a site licence[64] submitted under section 39(3) is rejected by a WRA or is deemed to be rejected under section 39(10);

Section 43(1)(g)

(h) **by the proposed transferee**[65] where an application for the transfer of a licence submitted under section 40(2) is rejected by a WRA or is deemed to be rejected under section 40(6);

Section 66(5)

(i) **by the person furnishing the information** where a WRA determines under section 66(2) that information is not commercially confidential; or

Section 66(5)

(j) **by the person to whom or to whose business the information relates** where a WRA determines under section 66(4) that information is not commercially confidential.

Notice Of Appeal

10.7 **Regulation 6(1)** provides that any person who wishes to appeal to the Secretary of State under section 43 or 66(5) must do so by notice in writing. **Regulation 6(2)** provides that the notice of appeal must be accompanied by the following information:-

All Appeals

(a) a statement of the grounds of appeal;

(b) a copy of any correspondence relevant to the appeal;

(c) a copy of any other document relevant to the appeal including, in particular, any relevant consent, determination, notice, planning permission, established use certificate or certificate of lawful use or development; and

(d) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be determined on the basis of written representations;

Appeals Under Section 43(1)(a), (b), (f) or (g)

(e) a copy of the appellant's application and any supporting documents;

Appeals Under Section 43(1)(c), (d) or (e)

(f) a copy of the waste management licence; and

[64] Section 35(12) provides that a "site licence" means a licence authorising the treatment, keeping or disposal of waste in or on land.

[65] Section 40(2) of the Act provides that the "proposed transferee" is the person to whom the licence holder desires that the licence be transferred.

Appeals Under Section 66(5)

(g) a copy of the information which the WRA has determined under section 66(2) or (4) of the 1990 Act is not commercially confidential.

10.8 A copy of a form on which notice of appeal may be given is available from:-

ENGLAND

The Planning Inspectorate
Room 10/13
Tollgate House
Houlton Street
Bristol BS10 9DJ
Tel: 0272 878812
Fax: 0272 878406

WALES

Welsh Office
Environment Division
Cathays Park
Cardiff CF1 3NQ
Tel: 0222 823665
Fax: 0222 825008

SCOTLAND

The Scottish Office Environment Department
Engineering, Water and Waste Directorate
Room 256
27 Perth Street
Edinburgh EH3 5RB
Tel: 031 244 3014
Fax: 031 244 6902

10.9 **Regulation 6(3)** requires the appellant to serve a copy of his notice of appeal, and any documents provided under paragraph 10.7 above, on the appropriate WRA. Subject to section 66 of the 1990 Act, **regulation 10(1)(e)** requires the WRA whose decision is subject to appeal to include on the public register which it is required to maintain under section 64(1), notices of appeal under section 43 of the Act and other documents relating to the appeal which have been served on or sent to that authority under **regulation 6(3)** (see Annex 9 paragraph 9.21).

The Effect Of Making An Appeal

10.10 **Waste Management Licensing Appeals** Section 43(4) of the 1990 Act provides that while an appeal is pending, and subject to section 43(6) (see paragraph 10.12 below), the WRA's decision is ineffective where:-

Appeals under section 43(1)(c)

(a) the appeal is made by a licence holder against the WRA's decision to modify the conditions of his licence under section 37(1)(a) or 37(2); or

Appeals under section 43(1)(e)

(b) the appeal is made by a former licence holder against the WRA's decision to revoke his licence under section 38(3) or (4) or section 42(6)(a) or (b).

10.11 Section 43(4) also provides that if the appeal is dismissed or withdrawn then the WRA's decision becomes effective from the end of the day on which the appeal referred to in paragraph 10.10(a) or (b) above is dismissed or withdrawn.

10.12 The effect of section 43(6) is to provide that, while an appeal of the kind referred to in paragraph 10.10(a) or (b) above is pending, the WRA's decision to modify the conditions of a licence under section 37 or to revoke a licence under sections 38 or 42 is effective where the notice of their decision states that in their opinion it is necessary:-

(a) to prevent pollution of the environment;

(b) to minimise pollution of the environment where it is not practicable to prevent it; or

(c) to prevent harm to human health.

10.13 Appeals under section 43(1)(d) Section 43(5) provides that where the appeal is made by a licence holder against a WRA's decision to suspend his licence under section 38(6) or 42(6)(c), the appeal has no effect on the WRA's decision (ie the licence is suspended pending determination of the appeal). However, see paragraph 10.14 on the effect of section 43(7) of the 1990 Act.

10.14 Appeals under section 43(1)(c), (d) or (e) Section 43(7) of the 1990 Act may be relevant where the decision under appeal falls within the terms of section 43(6) or is a decision under section 38(6) or 42(6)(c) to suspend a licence. Its effect is to enable the licence holder, or former licence holder in the case of a revocation under section 38(3) or (4) or section 42(6)(a) or (b), to apply to the Secretary of State for a determination that the authority concerned acted unreasonably in excluding the application of section 43(4) (see paragraph 10.10 above) or in suspending the licence. Section 43(7) provides that in the event of the Secretary of State's making a determination[66] that the authority acted unreasonably then:-

(a) if the appeal is still pending at the end of the day on which the determination is made, section 43(4) applies from the end of that day; and

(b) the licence holder, or former licence holder, is entitled to recover compensation from the WRA for any loss suffered by him in consequence of the exclusion of section 43(4) or the suspension of the licence.

10.15 Appeals under section 43(1)(a), (b), (f) or (g) The WRA's decision also remains in effect pending determination of the appeal where:-

Section 43(1)(a)

(a) an application for a licence submitted under section 36(1)(a) or (b) is rejected by a WRA or is deemed to be rejected under section 36(9);

(b) an application to modify the conditions of a licence submitted under section 37(1)(b) is rejected by a WRA or is deemed to be rejected under section 37(6);

[66] Or a determination by the person appointed by the Secretary of State under section 43(2)(b) of the Act to determine the appeal (see paragraph 10.21).

Section 43(1)(b)

(c) a WRA grants a licence under section 36 subject to conditions;

Section 43(1)(f)

(d) an application to surrender a site licence[67] submitted under section 39(3) is rejected by a WRA or is deemed to be rejected under section 39(10); or

Section 43(1)(g)

(e) an application for the transfer of a licence submitted under section 40(2) is rejected by a WRA or is deemed to be rejected under section 40(6).

10.16 **Commercial Confidentiality Appeals** Section 66(5) of the 1990 Act provides that where an appeal is made against a WRA's determination that information is not commercially confidential, pending the final determination or withdrawal of the appeal, the information is not to be entered in the register which the authority is required to maintain under section 64(1).

Withdrawal Of An Appeal

10.17 **Regulation 6(4)** provides that if an appellant wishes to withdraw his appeal he must do so by notifying the Secretary of State in writing and send a copy of that notification to the WRA. Subject to these requirements, an appellant may withdraw his appeal at any time. Subject to section 66 of the 1990 Act, **regulation 10(1)(e)** requires the WRA whose decision is subject to appeal to include on the public register which it is required to maintain under section 64(1), documents relating to the appeal which have been sent to that authority under **regulation 6(4)** (see Annex 9 paragraph 9.21). See also paragraphs 10.10-10.11 above on the effect of withdrawing an appeal made under section 43(1)(c) or (e) of the 1990 Act.

Time Limit For Making An Appeal

10.18 **Regulation 7(1)** provides that, subject to **regulation 7(2)**, notice of appeal must be given:-

Appeals Under Section 43(1)(a), (b), (c), (d), (e), (f) or (g)

(a) before the expiry of 6 months beginning with:-

(i) the date of the decision which is subject to appeal; or

(ii) the date on which the WRA is deemed by section 36(9), 37(6), 39(10) or 40(6) of the 1990 Act to have rejected the application; or

Appeals Under Section 66(5)

(b) before the expiry of 21 days beginning with the date on which the determination which is the subject of the appeal is notified to the person concerned.

[67] Section 35(12) provides that a "site licence" means a licence authorising the treatment, keeping or disposal of waste in or on land.

10.19 WRAs should acknowledge receipt of all applications. Other issues aside, doing so will ensure that there is no doubt about the date on which the authority may be deemed to have rejected the application under sections 36(9), 37(6), 39(10) or 40(6) of the 1990 Act.

10.20 **Regulation 7(2)** provides that the Secretary of State may, in relation to an appeal under section 43 of the 1990 Act, at any time allow notice of appeal to be given after the expiry of the 6 month period mentioned in paragraph 10.18(a) above. In any case in which the Secretary of State receives a notice of appeal after the expiry of this 6 month period he will request from the person wishing to appeal, and before considering the exercise of his discretion under **regulation 7(2)**, an explanation of the reasons for that person's not giving notice within the time limit provided by **regulation 7(1)(a)**. The Secretary of State has no discretion under **regulation 7(2)** to accept an appeal under section 66(5) after the expiry of the 21 day time limit provided by **regulation 7(1)(b)**.

Determination Of Appeals

10.21 Section 43(2)(a) and (b) of the 1990 Act provides that where an appeal is made to the Secretary of State he may:-

(a) refer any matter involved in the appeal to a person appointed by him for the purpose; and

(b) instead of determining the appeal himself, direct that the appeal or any matter involved in it is to be determined by a person appointed by him for the purpose. (A person appointed for this purpose has the same powers as the Secretary of State.)

10.22 **Written Representations Regulation 6(2)(g)** requires the appellant to provide with his notice of appeal a statement indicating whether he wishes the appeal to be determined on the basis of written representations (see paragraph 10.7(d) above). In the Secretary of State's view, it will be appropriate to determine most appeals in this manner.

10.23 Where the appeal is to be determined on the basis of written representations the following procedure will apply:-

First Stage

(a) As indicated in paragraph 10.7 above, **regulation 6(2)** requires that the appellant's notice of appeal must be accompanied by certain information; and **regulation 6(3)** requires the appellant to serve his notice of appeal on the appropriate WRA together with copies of documents provided under **regulation 6(2)**. Where an appeal has been duly made and the appellant has requested that it should be determined on the basis of written representations, the Secretary of State will invite the WRA to respond in writing to the grounds of appeal within six weeks (42 days) of the date of his letter. The Secretary of State will request the WRA to send a copy of their response to the appellant and, where necessary, he will seek either confirmation that this has been done or provide the appellant with a copy of the WRA's response. It is anticipated that at the conclusion of

this stage the Secretary of State will have been provided in most cases with sufficient written representations on which to determine the appeal.

Second Stage

(b) In some cases a second stage may be necessary. This may occur where the Secretary of State considers it appropriate for the parties to be given the opportunity to comment on each other's representations or where he considers that he requires further information from the parties before determining the appeal. In such cases, the Secretary of State will invite the parties to provide their comments or the required information within four weeks (28 days) of the date of his letter. The Secretary of State will request each party to the appeal to send a copy of their response to the other party and, where necessary, he will seek either confirmation that this has been done or provide the other party with a copy of the response in question.

Site Inspection

(c) In the course of his consideration of the appeal the Secretary of State may decide that a site inspection is necessary. Where a site inspection is to be held the parties will be invited to attend and a convenient date will be arranged. Should one of the parties not be present at the time arranged, the person appointed to carry out the inspection may decide not to defer his inspection.

10.24 **Hearings** Section 43(2)(c) of the 1990 Act provides that the appeal will take the form of a hearing, or continue in the form of a hearing, if a party to the appeal requests that it should do so or the Secretary of State decides that it should do so. **Regulation 6(2)(g)** therefore requires the appellant to provide with his notice of appeal a statement indicating whether he wishes the appeal to be in the form of a hearing or to be determined on the basis of written representations (see paragraphs 10.7(d) and 10.22-10.23 above).

10.25 Where the appeal is to be in the form of a hearing the Secretary of State will appoint a suitable person to conduct it. The persons entitled to be heard at a hearing are:-

(a) the appellant;

(b) the WRA whose decision is subject to appeal; and

(c) any person who was required to be consulted by the WRA before the decision subject to appeal was taken. For example, section 36(4) of the 1990 Act requires WRAs in England and Wales to consult the National Rivers Authority and the Health and Safety Executive before issuing a licence; and section 36(6) similarly requires WRAs in Scotland to consult with the appropriate river purification authority, Health and Safety Executive and relevant general planning authority.

10.26 Persons other than those referred to in paragraph 10.25(a), (b) or (c) may be permitted to be heard at the hearing only at the discretion of the person appointed to conduct the hearing.

10.27 A hearing, or any part of it, may be held in private if the person hearing the appeal so decides. However, as a matter of policy, all appeals under section 66(5) of the 1990 Act against a WRA's determination that information is not commercially confidential will be held in private unless the appellant requests that the hearing, or any part of it, is not held in private.

10.28 **Regulation 8** requires that the person hearing an appeal under section 43(2)(c) of the 1990 Act must submit a written report with his conclusions and recommendations, or his reasons for not making any recommendations, to the Secretary of State. This requirement does not apply where the Secretary of State has directed under section 43(2)(b) of the 1990 Act that the appeal is to be determined by a person appointed by him for the purpose (see paragraph 10.21 above).

Notification Of Decision

10.29 **Regulation 9(1)** requires the Secretary of State, or the person appointed by him under section 43(2)(b) of the 1990 Act to determine the appeal (see paragraph 10.21 above), to notify the appellant in writing of his decision and the reasons for it. **Regulation 9(2)** requires the Secretary of State, where he determines an appeal after a hearing held under section 43(2)(c) of the 1990 Act, to provide the appellant with a copy of any report made to him under **Regulation 8** (see paragraph 10.28 above).

10.30 **Regulation 9(3)** requires the Secretary of State, or the person appointed by him under section 43(2)(b) of the 1990 Act to determine the appeal (see paragraph 10.21 above), to send the WRA a copy of any document sent to the appellant under **regulation 9**. This requirement must be fulfilled at the same time as the appellant is notified under **regulation 9(1)** of the decision on the appeal.

10.31 Subject to section 66 of the 1990 Act, **regulation 10(1)(e)** requires the WRA whose decision is subject to appeal to include on the public register which it is required to maintain under section 64(1), documents relating to the appeal which have been sent to that authority under **regulation 9(3)** (see Annex 9 paragraph 9.21).

10.32 Section 43(3) of the 1990 Act provides that where the Secretary of State, or the person appointed by him under section 43(2)(b) of the Act to determine the appeal (see paragraph 10.21 above), determines that the decision subject to appeal is to be altered, the authority concerned has a duty to give effect to the determination. See paragraphs 10.10-10.11 above on the effect of the dismissal of an appeal made under section 43(1)(c) or (e) of the Act.

OTHER PROVISIONS RELATED TO WASTE MANAGEMENT LICENSING

Section 57 : Power Of The Secretary Of State To Require Waste To Be Accepted, Treated, Disposed Of Or Delivered

11.1 Section 57 of the 1990 Act provides the Secretary of State with a range of powers designed for use in an emergency where a particular consignment of waste, or waste of a particular type may not be being dealt with appropriately.

11.2 Section 57(2) and (4) empowers the Secretary of State to direct any holder of controlled waste to deliver that waste to a specified person, and to require the person so directed to pay to the person accepting the waste his reasonable costs of treating or disposing of it. Failure without reasonable excuse to comply with such a direction is an offence.

11.3 The complementary power to direct any holder of a waste management licence to accept and keep, treat or dispose of controlled waste is provided in section 57(1). The direction may further specify the place at which, or terms on which, the waste is to be kept, treated, or disposed of. Failure without reasonable excuse to comply with such a direction is an offence. Where any costs incurred by the person carrying out the treatment or disposal are not paid or not paid in full by the person delivering the waste to him, the Secretary of State may pay to him the relevant sums under section 57(7).

11.4 Under section 57(3) a direction, either to the holder of the waste, or to the holder of a waste management licence, may specify a particular consignment of waste, or any particular type of controlled waste, which is to be covered by the direction.

11.5 No Regulations have been made under section 57(6).

Section 58 : Power Of The Secretary Of State To Require Waste To Be Accepted, Treated, Disposed Of Or Delivered In Scotland

11.6 Section 58 provides for the Secretary of State a power in relation to Scotland, in addition to those powers conferred on him by section 57. In Scotland, some waste management operations will be carried out under local authority resolutions. The Secretary of State may, therefore, direct a Scottish waste disposal authority to accept and keep, treat or dispose of controlled waste at a particular place or on specified terms. Any authority so directed has a duty to comply.

Section 59 : Powers To Remove Waste Unlawfully Deposited

11.7 Section 33 of the 1990 Act (see paragraphs 4.3-4.17 of Annex 4) creates the offence of depositing or disposing of controlled waste illegally, that is, without a waste management licence (unless exempt), in contravention of the conditions of a waste management licence, or in a manner likely to cause

pollution of the environment or harm to human health. Section 59 of the 1990 Act provides local authorities with the means to effect the removal of illegally deposited waste and to eliminate or reduce the consequences of the deposit, and provides in section 59(6) and (8) for the reimbursement in part or in full of costs incurred.

11.8 WRAs and waste collection authorities may, where there has been an illegal deposit of controlled waste in their areas, serve a notice on the occupier of the land which forms the site of the illegal deposit. The notice may require the removal of the waste as well as the taking of steps to eliminate or reduce the consequences of the deposit within a specified time which may not be less than 21 days from the date of the notice. Failure without reasonable excuse to comply with a notice is an offence.

11.9 An occupier served with a notice under this section may appeal to a magistrates' court or, in Scotland, to the sheriff against its requirements. Section 59(2)-(4) sets out the procedure for appeals and the circumstances in which appeals may be upheld or dismissed. A further appeal to the Crown Court or, in Scotland, the Court of Session against the decision of the magistrates' court or sheriff is provided for under section 73(1)-(5) of the 1990 Act.

11.10 A WRA or waste collection authority may itself effect the removal of the waste or take the necessary steps to eliminate or reduce the consequences of the deposit in certain circumstances. These are:-

(a) the occupier fails to comply with the notice (section 59(6));

(b) there is no occupier of the land (section 59(7)(b));

(c) the occupier neither made nor knowingly caused or permitted the deposit (section 59(7)(c)); or

(d) there is imminent danger of pollution of the environment or harm to human health (section 59(7)(a)).

11.11 To avoid possible duplication and overlap of enforcement activities, it is advisable for a WRA taking action under this section to inform the relevant waste collection authority, and vice versa.

Section 60 : Prohibition On Unauthorised Interference With Waste Sites And Waste Receptacles

11.12 Section 60(1) prohibits the sorting over or disturbing of anything deposited at waste sites or in receptacles for waste as provided by the persons specified in section 60(1)(a) and (b), or falling within the terms of section 60(1)(c).

11.13 A person who has the relevant consent or right to do so may however sort over or disturb deposited waste. Section 60(2)(a)-(c) sets out the consents and rights which are necessary and relevant in the case of each type of site or receptacle.

Section 73 : Civil Liability For Damage From Illegally Deposited Waste

11.14 Section 73(6)-(9) provides the statutory grounding for civil action in respect of damage caused by illegally deposited waste.

11.15 Section 73(6) provides that where any damage is caused by waste deposited so as to commit an offence under section 33(1) or section 63(2) of the 1990 Act, the person who deposited it is liable for the damage except where the damage was due to the fault of the person who suffered it, or was suffered by a person who voluntarily accepted the risk of such damage.

11.16 Section 33(7) lists the statutory defences available to any person charged with an offence under that section. Section 73(7) provides for those defences against the criminal charge to be available also in the case of any action for liability under section 73(6).

Printed in the United Kingdom by HMSO

Dd 0296022 C6 4/94 152453 19585 CRC Supplied

HMSO

HMSO publications are available from:

HMSO Publications Centre
(Mail, fax and telephone orders only)
PO Box 276, London SW8 5DT
Telephone orders 071-873 9090
General enquiries 071-873 0011
(queuing system in operation for both numbers)
Fax orders 071-873 8200

HMSO Bookshops
49 High Holborn, London WC1V 6HB
(Counter service only)
071-873 0011 Fax 071-873 8200
258 Broad Street, Birmingham B1 2HE
021-643 3740 Fax 021-643 6510
33 Wine Street, Bristol BS1 2BQ
0272 264306 Fax 0272 294515
9-21 Princess Street, Manchester M60 8AS
061-834 7201 Fax 061-833 0634
16 Arthur Street, Belfast BT1 4GD
0232 238451 Fax 0232 235401
71 Lothian Road, Edinburgh EH3 9AZ
031-228 4181 Fax 031-229 2734

HMSO's Accredited Agents
(see Yellow Pages)

And through good booksellers

First published 1994

£12.40 net

ISBN 0-11-752975-3

9 780117 529755