



# Cabinet Environment, Energy and Climate Committee

## Minute of Decision

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### Waste Legislation 3: Regulating How People Manage Waste

Portfolio                      Environment

On 16 March 2023, the Cabinet Environment, Energy and Climate Committee (ENV):

#### Background

- 1        **noted** that the paper under ENV-23-SUB-0005 is the third of four papers that containing policy proposals for new waste legislation;
- 2        **noted** that the proposals in the paper under ENV-23-SUB-0005 relate to the government priorities identified in the paper under *Waste Legislation 1: Overview and Overarching Provisions* [ENV-23-SUB-0002];

#### Duties of care

- 3        **agreed** that new waste legislation should include a set of duties of care, to manage and dispose of waste or to recycle it appropriately and to assign obligations to each duty;
- 4        **agreed** that all waste holders will be subject to:
  - 4.1      general duty to manage and dispose of waste appropriately;
  - 4.2      a duty to pass waste to an authorised operator or facility;
  - 4.3      a duty to recycle properly;
- 5        **agreed** that disposers other than householders will be subject to a duty to separate specified organic waste for separate collection;
- 6        **agreed** that recycling operators will be subject to a duty to maintain separation and quality of materials for recycling;
- 7        **agreed** that all landlords (both residential and commercial) will be subject to a duty to facilitate tenants access to collection services;
- 8        **agreed** that for each of the overarching duties of care there will be specific requirements below them that specify clear expectations and direction on demonstrating compliance;
- 9        **noted** that the specific requirements in the new legislation will be guided by the proposed purpose and principles of the new Act;

- 10 **authorised** the Minister for the Environment (the Minister) and Associate Minister for the Environment, in consultation with other relevant Ministers to make final decisions on the drafting of specific requirements for each of the overarching duties of care to;
- 11 **noted** that the decision in paragraph 5 above enables the kerbside standardisation proposal agreed to by ENV in November 2022 to require separation of non-domestic food waste (to be phased in by 2030) [ENV-22-MIN-0058];
- 12 **noted** that it is proposed that duties of care and their associated specific requirements are obligations and that it will be an offence to not comply with them;
- 13 **noted** that applicable penalties for non-compliance with duties of care are set out in the companion paper *Waste Legislation 4: Waste Levy Collection and Administration, Waste Data and General Compliance Regime* [ENV-23-SUB-0006];
- 14 **noted** that the components of the general duty that carry over the requirement to not litter will come into effect immediately while other duties depend on when the licensing scheme is up and running;
- 15 **noted** the connection between duties of care and the current Litter Act 1979;
- 16 **agreed** to an enabling power to create regulations that provide detail on the exemptions, supporting infringement schedules for lower-level offending, and when the obligations come into force;
- 17 **agreed** that new legislation should require that, in making regulations for duties of care, the Minister must be satisfied that:
- 17.1 the regulation will achieve the purpose of the new legislation;
  - 17.2 there has been adequate consultation with persons or organisations significantly affected by the regulation;
  - 17.3 adequate lead-in time is provided to meet the requirements of the regulation;
- 18 **authorised** the Minister and Associate Minister for the Environment, in consultation with other relevant Ministers; to make final decisions on the operational split of the duty of care compliance monitoring and enforcement functions between Central and Local Government;

### **A national licensing scheme for the waste and resource recovery sector**

- 19 **noted** that in March 2022, Cabinet agreed in principle to introduce a national licensing scheme for the waste and resource recovery sector [CAB-22-MIN-0080] as an action in the inaugural Emissions Reduction Plan;
- 20 **agreed** to four key design principles to help guide the detailed development of national licensing in waste and resource recovery:
- 20.1 enshrining a risk-based regulatory model for licensing;
  - 20.2 encouraging waste minimisation by not disincentivising positive actions;
  - 20.3 establishing and maintaining a level playing field;
  - 20.4 meeting the costs of the scheme through cost recovery from participants;

- 21 **agreed** that national licensing be introduced which can place obligations on:
- 21.1 disposal facilities, including cleanfills and industrial monofills;
  - 21.2 disposal operators;
  - 21.3 transfer stations;
  - 21.4 resource recovery facilities;
  - 21.5 recycling operators;
  - 21.6 waste storage facilities including hazardous waste;
  - 21.7 composting operations (commercial);
  - 21.8 importers and import brokers;
  - 21.9 exporters and export brokers;
  - 21.10 transporters;
- 22 **noted** that the national licensing regime will be rolled out in a phased manner with careful consideration of factors such as risk;
- 23 **agreed** that obligations of licence holders will include requirements to register, provide information, meet performance obligations, and comply with national standards;
- 24 **agreed** that non-compliance with licensing obligations will be linked to the overall compliance framework, in addition to the ability for the regulator to suspend and revoke licences to address poor performers;
- 25 **agreed** that the Environmental Protection Authority be responsible for administering the licensing scheme subject to further policy work and financial considerations;
- 26 **agreed** that new legislation include a regulation-making power to expand on the detail and requirements of the national licensing scheme, create exemptions, and establish thresholds;
- 27 **agreed** that new legislation should require that, in making regulations for national licensing, the Minister must be satisfied that:
- 27.1 the regulation will achieve the purpose of the new legislation;
  - 27.2 there has been adequate consultation with persons or organisations significantly affected by the regulation;
  - 27.3 adequate lead-in time is provided to meet the requirements of the regulation;
- 28 **noted** that officials will establish a Technical Advisory Group from local government and the waste and resource recovery sector to guide the development of a national licensing scheme in waste and resource recovery;
- 29 **noted** that the Minister proposes to investigate the possibility for cost-recovery from licence fees for the management of the licensing scheme;
- 30 **noted** that the Minister intends to come back to ENV to seek agreement for any cost recovery mechanisms once further design work has been undertaken;

- 31 **noted** that it is proposed that non-compliance with the licensing provisions will be an offence;
- 32 **noted** that applicable penalties for non-compliance with the licensing provisions are set out in the companion paper *Waste Legislation 4: Waste Levy Collection and Administration, Waste Data and General Compliance Regime* [ENV-23-SUB-0006];

### National standards to regulate disposal and resource recovery

- 33 **agreed** to a regulation-making power to develop binding standards or technical requirements for operating waste or resource recovery services;
- 34 **agreed** that the scope for the regulation-making power to develop national standards for waste and resource recovery include the areas set out in the table below:

#### *Scope for national waste and resource recovery standards*

Area of regulation	Explanation
<b>Disposal</b>	
Landfill classifications	The classification of landfills, waste they can and cannot accept, and how they must operate (e.g., cover material, landfill gas capture).
Waste incineration (for energy or otherwise)	Whether and how waste can be incinerated, including potential prohibitions on certain types of waste.
Industry specific waste reduction requirements	Standards on practices to manage waste in particular industries (such as construction sites), e.g., covered bins, separating waste.
Management of the closing of landfills and closed landfills	Developing a consistent approach to the process for closing landfills and how they are managed in subsequent years.
<b>Collection rubbish and recycle</b>	
Collection and transportation of waste	How waste is collected and transported, such as requirements for covering waste, which waste types must be separated (e.g., kerbside standardisation), waste tracking.
<b>Resource recovery and recycling</b>	
Regulating resource recovery and recycling operations (e.g., composting, glass recycling)	How operations such as recycling are carried out (e.g., limits on contamination for recycling operations).
<b>Other waste activities</b>	
Stockpiling of waste	Standards on the long-term storage of waste, including limits on amounts of waste or the time it may stay there. These could be introduced for specific waste types (e.g., solvents).
Export of waste/recycling materials	How material may be imported and exported.
Giving effect to international agreements relating to waste	Where international agreements relate to waste and resource recovery, standards could be used to implement requirements (e.g., Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal).

- 35 **agreed** that new legislation should require that, in making regulations for national standards, the Minister must be satisfied that:
- 35.1 the regulation will achieve the purpose of the new legislation;
  - 35.2 there has been adequate consultation with persons or organisations significantly affected by the regulation;
  - 35.3 adequate lead-in time is provided to meet the requirements of the regulation;
- 36 **agreed** that that the ability to make bylaws is carried through to the new legislation, with the provision that where bylaws are inconsistent with national standards, national standards should prevail;
- 37 **agreed** to carry over the provisions of standardised kerbside collection in regulations under the Waste Management Act 2008;
- 38 **noted** that it is proposed that non-compliance with the national standards provisions will be an offence;
- 39 **noted** that applicable penalties for non-compliance with the national standards provisions are set out in the companion paper *Waste Legislation 4: Waste Levy Collection and Administration, Waste Data and General Compliance Regime* [ENV-23-SUB-0006];

### Tracking system for waste

- 40 **agreed** to require relevant waste holders to record details of transactions as specified types of waste moves through the economy;
- 41 **agreed** to the development of an electronic waste tracking system to enable the recording of details of transactions as waste moves through the economy;
- 42 **agreed** that new waste legislation should include regulation-making powers to develop the details of a waste tracking system;
- 43 **agreed** that new legislation should require that in making regulations for tracking systems for waste the Minister must be satisfied that:
- 43.1 the regulation will achieve the purpose of the new legislation;
  - 43.2 there has been adequate consultation with persons or organisations significantly affected by the regulation;
  - 43.3 adequate lead-in time is provided to meet the requirements of the regulation;
- 44 **noted** that the Minister for the Environment's preference is that hazardous waste would be the initial focus of a waste tracking system, with the possibility of tracking additional types of waste in the future (such as construction and demolition waste);
- 45 **noted** that a waste tracking system would be designed alongside the national licensing system;
- 46 **noted** that it is proposed that non-compliance with the waste tracking system will be an offence, and that further detail on delegated decision-making powers in relation to the detail of such offences are being sought in *Waste Legislation 4: Waste Levy Collection and Administration, Waste Data and General Compliance Regime* [ENV-23-SUB-0006];

- 47 **noted** that applicable penalties for non-compliance with the waste tracking system are set out in the companion paper *Waste Legislation 4: Waste Levy Collection and Administration, Waste Data and General Compliance Regime* [ENV-23-SUB-0006];

### Controls for the import and export of waste

- 48 **noted** that the current proposals are a good opportunity to ensure appropriate and robust import and export controls or prohibitions for waste management, with appropriate regulatory oversight of all aspects of waste management processes;
- 49 **authorised** the Minister for the Environment and the Minister of Customs to make policy decisions regarding appropriate import and export regulation- making powers for the new waste legislation, and to issue drafting instructions as required.

Rebecca Davies  
Committee Secretary

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#### Present:

Hon Kelvin Davis  
Hon Dr Megan Woods (part of item)  
Hon Michael Wood (part of item)  
Hon Willie Jackson  
Hon Damien O'Connor  
Hon David Parker (Chair)  
Hon Kieran McAnulty (part of item)  
Hon Willow-Jean Prime  
Jo Luxton, MP

#### Officials present from:

Office of the Prime Minister  
Officials Committee for ENV