

**States of Jersey**  
**Planning and Environment Department**  
**Waste Management (Jersey) Law 2005**

**Guidance Notes on the new**  
**Waste Management Licensing System (JWL016)**

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## 1.0 Introduction

- 1.1 Article 23 of the Waste Management (Jersey) Law 2005 (“the Law”) requires that any person who carries on any of the following activities must do so in accordance with a waste management licence (“a licence”) issued under this Law by the Minister for Planning and Environment (“The Minister”) -

- (a) the deposit of controlled waste on any land;
- (b) the keeping of controlled waste on any land;
- (c) the treatment of controlled waste on any land, or by means of any mobile plant; and
- (d) the disposal or recovery of controlled waste on any land, or by means of any mobile plant.

Terms such as “controlled waste”, “deposit”, “keeping”, “treating”, “disposal”, “recovery” and “mobile plant” used above are detailed and defined in Chapter 2.

- 1.2 The waste regulation function introduced by the Law will be the responsibility of the Minister and will be performed on his behalf by the Planning and Environment Department. When the Law was drafted the Committee would have been the regulator of its own waste management activities so a separate regulatory control system via the issue of a waste management certificate was proposed, however, the introduction of Ministerial government has in effect repealed this part of the law. The application of the Law to waste management certificates is detailed in Chapter 13, which provides an explanation as to why the provisions no longer apply.

**Important note:** In this document all reference to the “Committee” in extracts of the law have been replaced with the word “Minister” for clarity.

- 1.3 Article 24 provides for some specified activities to be exempt from this requirement to hold a licence, with these exempt activities being detailed in the Waste Management (Exemptions from Licensing) (Jersey) Order 2006. Further detail on these exemptions is provided in Chapter 7.

- 1.4 Anyone who causes or knowingly permits any of the activities specified in paragraph 1.1 above to be carried out, unless it is in accordance with a licence, shall be guilty of an offence under the Law and, if found guilty, shall be liable to imprisonment for a term not exceeding 2 years or to a fine, or both (subject to the provisions detailed in paragraphs 1.2 and 1.3 above).

- 1.5 Anyone who deposits, keeps, treats, disposes of or recovers controlled waste in a manner that is likely to cause pollution (see paragraph 6.1) shall be guilty of an offence and, if found guilty, shall be liable to imprisonment for a term not exceeding 2 years or to a fine, or both. This means that even if the activity is covered by a valid licence, if it is carried out in such a way that it may cause pollution it is illegal.

- 1.6 A licence will specify both the activity which may be carried out and the precise area of land on which the activity may be carried out. A licence will also have conditions attached which will detail the permitted waste types for the site and control its design, construction, operation, monitoring and maintenance. It is an offence to contravene any condition of a licence. More details on licence conditions can be found in Chapter 6.

**1.7** The objectives of this licensing system, together with other aspects of the Waste Management (Jersey) Law 2005, are -

- (a) minimizing of the generation of any kind of waste within the Island;
- (b) the adequacy, for the environmentally sound management of controlled wastes within the Island, of facilities used by persons who carry on activities relating to those wastes;
- (c) ensuring that those persons who are involved in the management of controlled wastes take all necessary measures to avoid and prevent pollution from their activities; and
- (d) compliance with applicable or binding international agreements, instruments and obligations concerning the movement of wastes to and from Jersey from other Countries.

**1.8** A licence may only be issued to a person if the Minister is satisfied that he is “fit” to carry on the activity applied for. This test of “fitness” is detailed in Chapter 4.

**1.9** Licences may be transferred to another person, their conditions may be varied and they can be suspended or revoked. They may also, subject to the level of existing and future environmental risks from the site, be surrendered. All of these issues are covered in their own Chapters within this document.

**1.10** At the time of writing application fees are required for certain waste management licence applications. For details of any fees and charges which may be relevant to your application please contact the Head of Waste Regulation for further information. An annual subsistence charge may also be payable whilst the licence is in force. Application fees may also be required for any application to transfer, vary or surrender the licence. These fees are being introduced to cover the public costs of administering and enforcing the system under the “polluter pays” principle and will be non-refundable. Non-payment of any application fee will prevent a licence or any changes to a licence being issued and non payment of the annual subsistence charge may result in the suspension or revocation of the licence.

**1.11** The size of the application fee and the subsistence charge will depend upon the degree of environmental risk presented by the site. Sites managing large quantities of waste or sites with a high pollution potential will have higher charges than small sites or sites with a low pollution potential. The difference in the charges will reflect the level of regulatory input required from the Planning and Environment Department.

**1.12** Whilst a licence is in force the site it relates to will be subject to regular inspections by Inspectors from the Planning and Environment Department who will have been appointed by the Minister. These inspections will determine whether or not the site is in compliance with its licence and, if not, what actions need to be taken to ensure compliance. Inspectors carry proof of authority and have powers of entry and investigation conferred on them by the Minister to enable them to carry out their duties. Any intentional obstruction of either an Inspector or any person lawfully accompanying an Inspector whilst carrying out their duties is an offence. See Chapter 11 for details about Inspectors and site inspections.

- 1.13** Licences, licence applications and associated documents are required by Article 14 (2) to be made available to the public for inspection. Detail of what information is available to the public can be found in Chapter 14. Applicants may, however, apply in writing for trade secrets to be kept confidential - see Chapter 15.
- 1.14** There are transitional arrangements provided by Article 112 and Schedule 10 of the Law which delay the enforcement provisions of the Law to enable all existing waste management activities which require a licence under the Law to carry on as if the person carrying them on were the holder of a licence. Whilst the detail of the law may appear confusing at first the transitional arrangements are provided such that anyone wishing to continue operating a licensable site must submit their application to the Planning and Environment Department within 9 months of the commencement of the Law. If an application is made, the activity may lawfully carry on until the application is determined.
- 1.15** The Waste Management (Jersey) Law 2005 (Appointed Day) Act 2006 brings the law into force and delays several Articles for a further 3 months [i.e. Articles 23, 38 and 49, Part 4, Articles 86, 87, 88, 89, 90, 91, 92 and 112 (as far as it relates to Schedule 11) and paragraphs 3, 13 and 14 of Schedule 11]. Schedule 10 sets out the timescale for those provisions to have effect after the 3 month period has elapsed.

## 2. Waste, Controlled Waste and Other Definitions

2.1 The Law and its associated Orders regulate “Controlled Waste”. Before considering what constitutes Controlled Waste it is first necessary to consider how the word “waste” is defined.

2.2 “Waste” is defined within Article 1 of the Law as follows -

“waste” means -

- (a) any substance or object, that is discarded;
- (b) any substance or object, in a person’s possession or control, that he intends to discard;  
or
- (c) any substance or object, in a person’s possession or control, that he is required by a national law to discard,

but does not mean a gaseous effluent that is emitted into the atmosphere, and does not mean waste water that is not waste in liquid form.

The word “discard” is not defined in the Law, but it is key to determining whether a substance or object is a waste. The definition of waste within the law is effectively the same as that found in the 1975 EC Directive on Waste<sup>1</sup>. This definition has been the subject of much legal scrutiny within the EC and this has established some important concepts about the term “discard”.

2.2.1 For a substance or object to be discarded does not necessarily mean that it has been gotten rid of, however the substance or object’s purpose must now be to be recovered or disposed of..

2.2.2 Discarding therefore requires the substance or object to be intended for disposal or recovery. Schedule 1 to the Law details what are to be defined as disposal and recovery operations. This Schedule is provided as Appendix 1 to this document.

2.3 “Controlled waste” is defined within Article 2 of the Law as follows -

- (a) hazardous waste;
- (b) health care waste; or
- (c) municipal waste.

This Article also provides that the States may, by the issue of Regulations, declare any other kind of waste to be controlled waste. These three elements of controlled waste are defined in the Law as explained in the following sections.

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<sup>1</sup> Council Directive of 15<sup>th</sup> July 1075 on Waste (75/442/EEC), (OJ L194/39 25.7.75), as amended.

## 2.4 Hazardous waste.

2.4.1 Article 3 of the Law defines hazardous waste as -

- (a) waste that is described in Section A of Part 1 of Schedule 2 (which Part relates to wastes specified in the Basel Convention<sup>2</sup>), and possesses at least one of the hazardous characteristics described in Section B of that part; and
- (b) waste that is described in Part 2 of Schedule 2 (which Part relates to other wastes that are hazardous by national definition).

As with Article 2, this Article also provides that the States may, by the issue of Regulations, declare any other kind of waste as hazardous waste. The Article specifically excludes -

- (a) radioactive waste that is subject to international control systems or instruments (other than the Basel Convention); and
- (b) waste from the normal operation of a ship, the discharge of which is regulated by international instruments other than the Basel Convention,

as long as the international control systems or instruments apply to or are binding upon the Island, such as MARPOL<sup>3</sup>

2.4.2 In simple terms, if the waste is within one of the categories listed in the waste streams detailed in Section A of Part 1 to Schedule 2 of the Law (Schedule 2 is reproduced as Appendix 2 to this document) and it possesses a hazardous characteristic detailed in Section B of Part 1 to Schedule 2, it is a hazardous waste ( as long as it is not a radioactive waste or waste from a ship as detailed in the previous paragraph). An example for waste engine oil is given in the box below:

### **EXAMPLE - Waste engine oil - a hazardous waste?**

Is it in Section A?	Yes, Y8 - waste mineral oils unfit for their original purpose.
Does it have a hazardous characteristic from Section B?	Yes, H11 - toxic substances or wastes delayed or chronic (due to carcinogenicity)

Waste engine oil is therefore a hazardous waste.

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<sup>2</sup> 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (UNEP EP/IG.80/3 22<sup>nd</sup> March 1989. 1 JEL 2 (1989), 255 - 277

<sup>3</sup>International Convention on Marine Pollution (London, 1973)

**2.4.3** Identifying whether a waste has a hazardous characteristic included in Section B can sometimes prove difficult - often the information can be obtained from the manufacturer of the substance or object that has become a waste via data sheets on its products. Some substances, however, develop hazardous characteristics from the uses they are subjected to and which result in them becoming waste, hence it is occasionally necessary to seek further sources of information or carry out some form of laboratory analysis.

**2.4.4** A precautionary principle should be adopted - if a substance or object is suspected of being a hazardous waste, it should be considered as such unless proven otherwise. It should also be noted that waste from any of the other categories of controlled wastes can be a hazardous waste. If in doubt seek further guidance from the Waste Regulation Section of the Planning and Environment Department.

## **2.5 Health care waste.**

**2.5.1** Article 4 of the Law defines health care waste as -

- (a) waste arising from medical, nursing, dental, veterinary, pharmaceutical or similar practice, investigation, treatment, care, instruction or research; or
- (b) waste arising from the collection of blood for transfusion or from the conduct of the business of an undertaker or embalmer,

if it consists wholly or partly of any of the following things, namely human or animal tissue, blood or any other bodily fluid or excretion, a drug or other pharmaceutical product, a swab or dressing or a syringe, needle or other sharp instrument.

**2.5.2** The definition excludes household waste (see paragraph 2.6.3) from a building, self-contained part of a building, caravan or premises that is or are used wholly for the purposes of private living accommodation, or a garage or store that is used wholly in connection with purposes of private living accommodation.

**2.5.3** The State, by Regulations, may include household waste from one or more of the sources described above or exclude municipal waste in certain circumstances.

**2.5.4** Health care waste, therefore, depends upon a combination of two clearly defined factors - the premises or occupation from which it is produced and the nature of the substances or objects that are waste.

## **2.6 Municipal waste.**

**2.6.1** Article 6 of the Law defines municipal waste as -

- (a) household waste;
- (b) any residue from the incineration of household waste;
- (c) any other waste that, because of its nature or composition, is similar to household waste;
- (d) commercial or trade refuse;
- (e) waste from any charitable undertaking; or
- (f) any residue from the incineration of anything described in any of paragraphs (c), (d) and (e).

**2.6.2** This introduces a further term requiring a definition - “household waste”, to which the first three definitions refer. Household waste is defined in paragraph 2.6.3 below. Subparagraph (d) refers to commercial or trade refuse - any waste from the carrying out of a trade or commercial operation will therefore be a municipal waste, as will wastes produced by any charity. This Article also provides that the ashes and any other residues from the incineration of any municipal wastes will also be a municipal waste.

### **2.6.3 Household waste.**

Household waste is defined by Article 5 of the Law as follows -

- (a) waste from a building, or self-contained part of a building, that is used wholly for the purposes of private living accommodation;
- (b) waste from a garage, or store, that is used wholly in connection with the purposes of private living accommodation;
- (c) waste from a caravan or campsite;
- (d) waste from premises that are used wholly or partly for the purposes of a college, school or other educational establishment;
- (e) waste from premises that are used wholly or partly for the purposes of a hospital, nursing home or residential home;
- (f) waste from a penal institution;
- (g) waste from a residential hostel; or
- (h) waste from premises that are used wholly or mainly for public meetings.

**2.6.4** Article 5 also details that household waste, when subject to the requirements of the Basel Convention, will have the same meaning as it does in the Basel Convention, for the purposes of international movements of waste.

**2.6.5** Thus any waste that is produced at any of the types of premises listed will be defined as household waste. This does not prevent any such waste also being classified as hazardous waste if it meets the criteria - it would be hazardous household waste.

**2.7** The licensable activities involving controlled waste are its deposit, keeping, treatment, disposal or recovery. Each of these activities is considered in turn.

### **2.7.1 Deposit**

The term “deposit” is not defined within the Law. In the UK it has been the subject of much legal debate, the conclusion being that to deposit waste involves placing or putting the waste onto or into the ground or into a container or containers and that a deposit of waste can be either temporary or permanent.

**2.7.2** Examples of depositing waste include -

- ◆ Placing a skip containing waste onto the ground with a view to moving the skip elsewhere at a later date.
- ◆ Putting waste into a skip.
- ◆ Placing waste onto the ground, either as a deposit into a landfill site, for the purpose of carrying out another activity upon it at that place or for subsequent removal elsewhere.

### **2.7.3 Keeping**

The keeping of waste is not defined within the Law. It can be taken to involve the waste being retained or stored in the control and/or on the site of its current holder. For it to be a licensable activity, it must consist of more than just transient storage of short duration that may be incidental to the intent of the holder to the waste, e.g. keeping a loaded skip of waste on a vehicle overnight awaiting its deposit in the morning would not be considered as licensable “keeping” of the waste. If, however, such skips were regularly kept on vehicle for several days at a site, that may well constitute licensable keeping of wastes.

**2.7.4** Wastes will often be “kept” prior to undergoing some other activity such as treatment or recovery. The temporary keeping of wastes at the site where they are produced is generally not licensable under the provision of the Waste management (Exemptions From Licensing)(Jersey) Order 2006 - see Chapter 7 for more details.

### **2.7.5 Treating**

Whilst not defined within the Law, treatment requires the waste to be subjected to a process or processes. This might be a simple process such as the manual or automatic removal of non-inert wastes from mixed wastes or a more complex process such as those involved in solvent recovery. Waste recovery operations invariably involve the treatment of the waste in some manner, many waste disposal operations will also involve treatment of some sort.

### 2.7.6 Examples of treating waste include -

- ◆ Sorting/grading of waste by hand or by use of plant/equipment.
- ◆ Subjecting waste to physical, chemical or biological processes for the purpose of recovering or disposing of the waste.

### 2.7.7 Disposal and Recovery

Disposal is defined within the Law as “disposal by an operation described in Part 1 of Schedule 1” and recovery as “recovery by an operation described in Part 2 of Schedule 1”. Schedule 1 to the Law is provided as Appendix 1 to this document. Part 1 provides a list of disposal operations D1 to D15 and Part 2 provides a list of recovery operations R1 to R13. These lists of disposal and recovery operations were first provided by the 1975 EC Directive on Waste<sup>4</sup> and have now been incorporated into many National and International instruments regarding waste.

## 2.8 Mobile Plant

Licensable disposal and recovery activities can be carried out by mobile plant. “Mobile plant” is not defined within the Law, however it may be taken to mean an apparatus that is designed to be (or is readily capable of being) moved from one place to another and can treat, recover or dispose of waste.

### 2.9 Examples of mobile plant might include -

- ◆ Small, mobile waste incinerators.
- ◆ Mobile waste recovery plants, e.g. filtration units.
- ◆ Mobile soil remediation plants e.g. contaminated land remediation

### 2.10 A licence to use a mobile plant is to all intents and purposes the same as any other waste management licence. Each individual site where the mobile plant will be operated will require a licence.

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<sup>4</sup>Council Directive of 15<sup>th</sup> July 1075 on Waste (75/442/EEC), (OJ L194/39 25.7.75), as amended.

### **3. Applying for a Waste Management Licence**

- 3.1** Applications for a licence must be made in writing to the Planning and Environment Department on a Waste Management Licence Application Form (the application form), available from the Waste Regulation Section. The application must be made by the person who intends to carry on the activity to which it relates. An agent may be used to complete the application as long as the application form is signed by the applicant.
- 3.2** Upon the production of a draft licence, the Minister will consult internally upon the application and will also consult the Minister for Health and Social Services, the Minister for Employment and Social Security and the Minister for Economic Development (the statutory consultees). The Minister may also consult any other person or body that it considers necessary to assist with its determination. Multiple copies of the application form and some of the other associated documents will therefore be required. Section 6.1 of the application form details how many copies of each document are required.
- 3.3** The Minister shall also publish a notice of the application in the Jersey Gazette. For more details on public access to information under this law please refer to Chapter 14. Applicants may apply in writing for trade secrets to be kept confidential - see Chapter 15.
- 3.4** An applicant for a licence must be able lawfully to use the land where the licensed activity is to be carried on for the purposes of the activity for which they are applying. This means that the applicant must have a suitable planning permission for the activity applied for and/or must have some other means of proving that he can lawfully use the land for the proposed activity.
- 3.5** If the applicant is not the owner of the land where the licensed activity is to be carried out, the application must include a copy of a legal agreement between the landowner and the applicant in relation to the land. This agreement must be legally binding on both the owner and the owner's successors in title and must allow the applicant to carry out works that The Minister may in future require to avoid pollution arising from the licensed activity or to protect the environment.
- 3.6** The application form requires the applicant to identify clearly the waste management activity to be undertaken and the area of land where it is to be carried out. These details will be specified in the licence. The form also requires details of the types and quantities of waste to be managed at the site. Conditions to the licence will control the types and amounts of waste to be accepted and managed at the site. These factors will also determine the application fee, annual subsistence charge and any other fees or charges that may be required.
- 3.7** An essential part of the application will be the "working plan". This is essentially an operational method statement and it will describe in detail the methods of construction, operation, maintenance and monitoring of the site. A comprehensive and well-written working plan will, if its contents are technically suitable, result in a licence where many conditions will refer to standards or methods detailed within the working plan. A less detailed working plan, if it is considered acceptable, will result in many conditions detailing standards and methods required by The Minister. An inadequate working plan may result in the refusal of the application. Chapter 5 details what is required of a working plan.

**3.8** Upon receiving a complete application, Article 20 provides that The Minister has three months within which to determine the application. This three-month period can be extended with the agreement of the applicant. Should The Minister fail to determine the application within the specified time limit, this will be considered as a decision to refuse the application without stated reasons.

**3.9** Under Article 27, if The Minister is satisfied that -

- (a) the application is properly made;
- (b) that the applicant is fit to hold the licence; and
- (c) that the activity applied for will not involve a risk of pollution that cannot be controlled by conditions in a licence,

he shall grant the application and issue a licence. The licence will specify both the activity that may be carried on and the land where it may be carried on and will include such conditions that The Minister chooses to specify. It shall also state its reasons for issuing the licence in writing.

**3.10** When a waste management licence is granted, The Minister will specify the date from which it shall have effect. The licence will continue in effect until it is either revoked (see Chapter 12) or surrendered (see Chapter 10). The only time a licence will otherwise not have effect is during any period in which it may be suspended (see Chapter 12).

**3.11** If The Minister considers that the application is not properly made, that the applicant is not fit to hold the licence or that the activity applied for will involve a risk of pollution that cannot be controlled by conditions in a licence, he shall refuse to issue a licence. It shall state his reasons for refusing the licence in writing.

**3.12** There is a right of appeal against any of the above decisions. An appeal must be made to the Royal Court within 21 days of the appellant being served with a written copy of the decision (or within such further time as the Royal Court may allow). Please refer to Chapter 14 for more details on the rights of appeal under this Law and the appeal process.

**3.13** In order to ensure that a licence application is properly made, it is highly recommended that applicants hold a pre-application meeting with the Waste Regulation Section of the Planning and Environment Department. It is also good practice to submit a draft application to the Waste Regulation Section for consideration and comment prior to making a full application.

## 4. “Fitness”

4.1 Article 25 (2) and (3) of the Law require that:

- (2) A waste management licence may be granted or transferred to a person only if The Minister is satisfied that he is fit to carry on the activity to which it relates.
- (3) In deciding whether he is fit to do so, The Minister shall take into account *inter alia* the following factors -
  - (a) his financial security;
  - (b) his technical resources; and
  - (c) any relevant convictions for offences

## 4.2 Financial Security

4.2.1 The financial security element of these three factors is defined by Article 25 (4) as -

- (4) In paragraph (3), “financial security” means the sufficiency of the person’s financial resources to ensure that the activity is carried on in accordance with the terms and conditions of the waste management licence.

4.2.2 This requirement for sufficient financial security is intended to ensure that the applicant will be able to afford all necessary site engineering works and pollution control measures and will also be able to manage unforeseen or emergency expenditure, which may be required by The Minister. It is important, however, to ensure that the financial provision covers only the obligations imposed by the licence and matters of historic site contamination or non-waste activities on the same site should not be considered in assessing the provision.

4.2.3 As the level of financial resources required is directly linked to the terms and conditions of the licence, a draft copy of the proposed licence conditions will be required in order to prepare a detailed statement on the financial provision to be made for the site. The applicant should, when submitting the application, include a detailed expenditure plan for the site and provide details of how the applicant intends to provide financial security for the site. The Waste Regulation Section of the Planning and Environment Department will provide the applicant with a draft copy of the proposed licence conditions as soon as practicable and it is essential that the applicant then discusses their proposals for financial provision with the Waste Regulation Section, prior to making a formal agreement.

- 4.2.4** A licensed site may operate for many years and may also require expenditure to be made long after its original waste management activities have ceased (see Chapter 10 on Licence Surrender). It will therefore be necessary to ensure that the financial security proposed is sufficient to cover both planned and unplanned expenditure for the lifetime of the licence. It is not, however, appropriate for the Waste Regulation Section to comment on the viability of business proposals but to assess that there are sufficient resources to ensure that the licence conditions can be complied with.
- 4.2.5** The financial security required and the mechanism chosen for its provision will be different for every licence application, being dependant upon the size and nature of the activity and the particular financial circumstances of the applicant. There are a variety of different mechanisms for providing financial security, most of which take the form of a performance agreement that specifies the mechanism by which funds are provided and which actions trigger payment.
- 4.2.6** Proof of financial security is not only required when applying for a new licence but also for modifications/variations (whether on application by the licensee or on the initiative of The Minister) and transfers. Furthermore, when a licence is modified such that the obligations placed upon the licensee are more costly, the performance agreement should be updated to ensure that there are sufficient funds available to meet the new obligations. Such modifications may include increasing the range of wastes to be accepted at the site or increasing site storage capacity. Conversely, if the modification results in reduced pollution potential the amount may be reduced.
- 4.2.7** It should be remembered that it is for the licensee/applicant to demonstrate how they intend to make adequate financial provision and they should demonstrate the level of provision that may reasonably be required and to justify the proposed delivery mechanism.
- 4.2.8** Providing sufficient evidence of financial security is only part of the process of determining 'fitness'. The financial provision must cover the obligations arising from the licence and the waste law and the agreement must be secure until the licence is transferred or surrendered. The Minister must be able to use the funds provided by the agreement to fulfil the obligations of the licensee in the event that they are unable or unwilling to do so themselves.
- 4.2.9** It is also necessary for the condition to specify what event will trigger payment of the financial provision. The amount of financial provision should reflect the costs to The Minister of undertaking the identified works in the event of the licensee defaulting. Financial provision does not, of itself, protect the environment, but it should help to minimise the impact on the public purse. It therefore follows that financial provision is NOT a substitute for the normal environmental protection measures required by licence conditions.

## Acceptable methods of securing financial provision

**4.2.10** The Minister has identified a number of acceptable mechanisms for making short or long term financial provision. Whether the mechanism will be adequate in respect of a particular licence is a decision that must be made on the facts of each case. Any other methods must meet the requirements of Article 25(4). The duties agreed under the terms of a performance agreement may be met by the use of any of the following options:

- (a) Lump sum agreements (deed of trust)
- (b) Fixed bond
- (c) Renewable Bond
- (d) Parent Company Guarantee
- (e) Insurance Policy
- (f) Bank Guarantee
- (g) Escrows

**4.2.11 Lump sum agreements** are favoured for smaller financial obligations of say, less than £10,000.00, where the licensee or applicant may wish to deposit a cash lump sum with The Minister. The cash will be deposited into a separately identified Minister bank account. It must, however, be secured by way of a legal agreement (normally deed of trust) to ensure that The Minister is able to access the money when required. If the licensee places a lump sum amount in The Minister's designated account as secure financial provision that sum may attract interest for the time it is held by The Minister. The rate of interest and other terms will be specified in the performance agreement at the time of drafting, with provision to reflect the changing economic situation. Repayments will be made when the obligations imposed by the licence are no longer the responsibility of the licensee or when alternative provision is proposed and executed. The amount repaid to the licensee will be the original principal sum plus interest accruing as agreed in the conditions of the agreement.

**4.2.12 Fixed bonds** are a form of guarantee whereby in the event of the licensee becoming unable to meet the liabilities arising from the licence The Minister would be able to obtain the required funds from the bondsman to take the action specified in the performance agreement. Bonds are normally taken for a fixed period of time, usually short term. This option would require a licence condition which ensured that the bond was replaced by another suitable mechanism, which may include a replacement bond, prior to expiry of the bond.

**4.2.13 Renewable Bonds** are more suitable for long term financial provision because the terms under which they are to be renewed and reviewed can be set in licence conditions and in the performance agreement. Failure to renew the bond arrangement prior to the expiry of the current agreement would constitute a default and The Minister would be able to draw upon the existing bond to make alternative arrangements.

- 4.2.14 Parent Company Guarantees** may be used where a subsidiary of a group of companies is the licensee/applicant and the group proposes to provide a guarantee to discharge the financial obligations imposed by the licence. The Minister will only accept a parent company guarantee in respect of a short-term liability, since it is not possible to predict the financial stability of any company beyond the short term. The Minister considers “short term” to mean less than one year. This period will enable The Minister to reconsider the agreement in light of the site’s performance and the parent company’s financial standing on a 12 monthly basis. In light of recent corporate collapses this option will only be considered if alternative provision cannot be made and if significant financial information is provided to make an assessment of the stability of the parent company.
- 4.2.15 Insurance Policies** are often proposed to cover unexpected events and normally provide cover for one year only, subject to ongoing renewal premiums. This option is only acceptable if the licensee/applicant can be relied upon to continue premiums and the insurance company can be relied upon to renew and honour the policy. The standing of the insurance company and the precise terms of the policy should be checked to ensure that it is properly regulated. Insurance policies contain a number of conditions and exclusions. Those conditions and exclusions can be amended by means of an endorsement to the policy. Failure to renew the policy may result in suspension of licenced activities and will preclude the continuation of insurance policies, after which other methods will have to be used.
- 4.2.16 Bank guarantee** A licensee could obtain a guarantee of funding (in the event of financial failure) from a third party, normally a bank. The third party will normally require security in the form of cash or assets as security for the guarantee.
- 4.2.17 Escrows** are normally cash based agreements held by a third party (usually a bank) until one or both of the two parties has fulfilled specified conditions. However, the agreement must specify that the first legal charge on the account is held by The Minister and not the bank, as would normally be the case. The escrow account would be in the joint names of the licensee and The Minister so it is vital that bank statements are issued to both parties at least on a quarterly basis. Escrow accounts are a suitable means of making short and long term financial provision.
- 4.2.18** All agreements drafted or considered by The Minister will take into account the risks presented by a site and the benefits to be obtained from having a particular type of financial security. All assessments will be carried out in a reasonable, transparent and consistent manner after taking account of site specific factors.
- 4.2.19** It is important that individual financial provision agreements are kept under review and monitored to ensure that the level of provision available at any point in time is adequate to cover the estimated liability.
- 4.2.20** Whilst this chapter refers to The Minister’s preferred financial provision methods, it will consider other proposals provide that they meet the objectives set out in Paragraph 4.2.23 below.

**4.2.21** In any event, the executed performance agreement and corresponding financial measures taken to comply with the agreement must be in place before a waste management licence can be issued. Licence conditions may specify that the agreement requires monitoring or review, the joint responsibility for which falls upon The Minister's finance department and waste regulation function. Failure to maintain the financial aspects of a performance agreement may result in partial revocation of the licence, the appeal route for which is set out in Article 97.

**4.2.22** It is not for The Minister to dictate to the licensee/applicant how they should make financial provision. The Minister will consider any mechanism that meets the following objectives -

- (a) the amount is sufficient to cover the obligations of the licence;
- (b) the mechanism is secure for the duration of the licence; and
- (c) that The Minister can access the money when required.

#### **What is the scope of the performance agreement?**

**4.2.23** A risk assessment, which will normally have been required as part of the application, will consider the following factors -

- ◆ Hazard: A property or situation that, in particular circumstances, could lead to or cause harm.
- ◆ Consequence: The adverse effect or harm resulting from a hazard being realised, leading to the quality of human health and/or the environment being impaired in the short or long term.
- ◆ Risk: A combination of the probability of the occurrence of a defined hazard and the magnitude of the consequence of the occurrence

It should identify the potential hazards and risks associated with a particular site and its potential effect upon targets or receptors. It should include an estimation of the magnitude of the consequences of those hazards, taking into account the likelihood (i.e. probability) of their occurrence and the potential impact upon the targets or receptors - the estimated risk. Once the potential impacts of the proposed operation have been assessed the estimated risks are usually managed by implementing controls set out in the working plan and/or the licence conditions.

**4.2.24** It should be remembered that financial provision is not an alternative to the provision of the safeguards in the licence necessary to prevent pollution of the environment or harm to human health. However, where such safeguards fail, due to the default of the licence holder or site operator, the sum provided by the performance agreement should be available to ensure that pollution does not occur or, if pollution has occurred, the costs of remediation can be met.

- 4.2.25** When assessing the amount of financial provision, the calculation should include an amount based on the cost of removing and disposing of the maximum amount of waste permitted under the licence (a limit should be inserted in the appropriate licence condition).
- 4.2.26** Compliance with licence conditions in respect of waste types and quantities must be assumed. Other predictable costs should be agreed with the licensee/applicant and included in the calculations (such as cleaning out drainage systems and disposing of waste waters, maintenance and possible replacement of pollution control systems, maintenance of site security etc).
- 4.2.27** Some examples of aspects in respect of which The Minister may consider securing financial provision are -

- ◆ restoration and aftercare (landfill);
- ◆ maintenance and replacement of site security;
- ◆ clearance of the site (non landfill);
- ◆ post closure monitoring;
- ◆ maintenance (and replacement) of pollution control systems; and
- ◆ corrective or remedial works in the event of a specified event.

**When would the agreement be utilised?**

- 4.2.28** The circumstances of the default in which The Minister would seek to use the funds provided by the performance agreement are as follows -

In the event that the licensee

- ◆ fails to comply with licence conditions and the notice served by The Minister requiring compliance with the conditions;
- ◆ becomes bankrupt, insolvent, ceases to exist or dies;
- ◆ fails to ensure that the financial provision is properly maintained throughout the life of the licence (eg by failing to maintain the necessary payments or renew a bond);
- ◆ the licence is revoked (whether partially or completely) or suspended; or
- ◆ The Minister has incurred expense in exercising its duty under Article 92 to take the steps needed to prevent pollution.

- 4.2.29** At landfills The Minister would seek to ensure that the site is secure, unrestored areas are capped and that pollution control systems (including gas and leachate extraction and monitoring) are maintained.
- 4.2.30** At transfer stations or treatment plant - securing the site and the subsequent removal and disposal of the potential pollution sources (eg the waste). It is unlikely that The Minister would need to remove any of the site infrastructure unless it was causing or likely to cause pollution as land use is a matter for the relevant planning authority. At facilities where waste is sorted on arrival, and the non-waste element is subsequently stored at the site (ie material which is suitable for use in its present state without any further processing or treatment i.e. not waste), provision need only be made for the cost of removing the maximum amount of waste permitted on site at any time.
- 4.2.31** The Minister would not normally do more than is required to maintain the site in a condition unlikely to cause pollution, harm or detriment.
- 4.2.32** The fact that financial provision may have to be called upon does not bring the licence to an end nor does it bring the legal agreement between The Minister and the licensee upon which the provision is made to an end, because all the standard agreements will contain provisions which ensure that the funds are renewed and the agreement is continued until the licence is surrendered or transferred, or revoked entirely.
- 4.2.33** Consequently the licensee remains bound by the terms of the licence and the legal agreement. This will also be the case where the licensee has gone into liquidation. The liquidator is required to use funds available to the company in order to comply with the terms of the licence in priority to distributing those funds to any creditor of the company, subject to being able to take a reasonable fee for acting as liquidator. Where a licensee goes into liquidation and the financial provision mechanism is a trust deed or escrow, The Minister will not need take immediate action to access the money as it is already held in an account to which The Minister has a contractual and preferential right of access.

### **4.3 Technical Resources**

- 4.3.1** Article 25(5) defines “technical resources” for an applicant as -

- (5) In paragraph (3), “technical resources” means the sufficiency of the expertise that is directly available to the person -
- (a) by way of relevant and up-to-date experience of waste management practices or of similar activities;
  - (b) by reason of appropriate qualifications; or
  - (c) because of a combination of such experience and qualifications, to ensure that the activity is carried on competently and responsibly.

- 4.3.2** This requirement to demonstrate suitable training and/or experience is intended to ensure that the management of the site is suitably competent to carry out the requirements of the licence and ensure that the site is responsibly operated, so as to prevent pollution of the environment (see paragraph 6.1).

- 4.3.3** As part of the licence application, the person(s) responsible for the management of the site is/are required to provide completed Statements of Qualifying Experience (SQEs) to demonstrate to the satisfaction of The Minister that the management of the site will be in the hands of suitably technically competent personnel. An SQE form is included with the licence application form.
- 4.3.4** The SQE should include details of all relevant experience. Experience from activities other than the waste management industry, where relevant to the activity being applied for, will be taken into account. The management of the site will be expected to have a detailed knowledge and understanding of waste management law and practice.
- 4.3.5** Although all applicants will have to submit completed SQE's for the management of their site, sites that have been operating prior to the Law requiring that they hold a waste management licence and which do not have a significant history of relevant offences (see paragraph 4.4), will be considered to have sufficient technical resources.
- 4.3.6** For sites that have not been in operation before the implementation of the waste management licensing system, the persons responsible for providing the technical resources, as well as completing SQE's, may be required to undergo an interview by the Planning and Environment Department to qualify their SQE. The Planning and Environment Department will inform the applicant of which, if any, of the persons who have completed SQE's it wishes to interview.

#### 4.4 Relevant Convictions

4.4.1 Article 25 requires the Department to take into account any relevant convictions for offences. This means that the applicant should notify the details of any relevant convictions as part of the application, even if the applicant was not directly convicted but contributed the offence. A relevant offence is considered to be one that has the potential for pollution of the environment, human health issues or other factors which are considered relevant for considering the fitness of a person to hold a licence. A list of current relevant offences is included as Appendix 3 and may be subject to variation.

4.4.2 Article 25(6) & (7) details the circumstances in which a conviction is “relevant”-

- (6) A conviction for an offence is relevant for the purposes of this Article if -
- (a) the person who has been convicted is either the person whose fitness to hold a waste management licence is under consideration or a person who is or is to be engaged in a position of managerial responsibility in the activity to which it relates; and
  - (b) the conviction, taken by itself or together with any other relevant conviction (whether or not of the same person), gives rise to an issue whether the person whose fitness is under consideration should hold the licence.
- (7) In considering whether a conviction for an offence is relevant for the purposes of this Article, The Minister shall have particular regard to any conviction for an offence involving -
- (a) actual or potential pollution; or
  - (b) any other risk to human health or the environment,
- whether or not the offence relates to waste, but this paragraph does not limit the generality of paragraph (6).

4.4.3 An offence must also be disclosed if -

- (a) it was committed by a person in the course of their employment by the applicant;
- (b) it was committed it in the course of the carrying on of any business by a partnership, one of the members of which was the applicant;
- (c) it was committed by a body corporate and at the time when the offence was committed the applicant was a director, manager, company secretary or other similar officer of that company;
- (d) it was committed by a director, manager, company secretary or other similar officer of the applicant (where the applicant is a body corporate); or
- (e) it was committed by a body corporate and at the time when the offence was committed a director, manager, company secretary or other similar officer of the applicant held such an office in the body corporate which committed the offence.

**4.4.4** When an offence is disclosed, particularly an offence involving pollution or other environmental consequences (or which, for other reasons, may have a particular bearing on the activity applied for), it is in the applicants interests to detail on the application form any mitigating circumstances or steps taken to prevent a recurrence of the offence. These factors will be taken into account by The Minister when assessing an application..

**4.4.5** It is unlikely that a single conviction will result in an application being refused on the grounds of fitness. In making its decision on this matter The Minister will take into account the following factors when considering disclosed offences -

- ◆ the number of offences;
- ◆ the nature of the offences; and
- ◆ the gravity of the offences.

**4.5** Should The Minister decide that the applicant is not fit to hold a waste management licence, as a result of an issue or issues with any of the three factors detailed above, he shall refuse to issue a licence. There is a right of appeal against any such decision - please refer to Chapter 14 for more details on the rights of appeal under this Law and the appeal process.

## **5. The Working Plan**

- 5.1** The working plan is an essential part of a successful licence application. The applicant should ensure that the working plan provided with the application is a detailed and comprehensive statement that clearly describes all aspects of the site's development, operations, monitoring, completion and (for landfills) restoration and the methods and working practices to be used to ensure that the operation of the site does not cause pollution.
- 5.2** The plan should consist of comprehensive descriptions of the methods and working practices to be used, accompanied by detailed plans and drawings showing the engineering development of the site infrastructure and pollution control systems, including Construction Quality Assurance (CQA) details where necessary. The plan should also include supporting information such as environmental risk assessments. Failure to include risk assessments will result in either the Planning and Environment Department carrying out the assessment and applying very prescriptive conditions to the licence or in the refusal of the application.
- 5.3** The working plan will be different depending upon whether the application is for an existing or a proposed facility. For existing facilities it will be necessary to provide as much information as possible about the previous history of construction and operation at the site. Where information is lacking, it may be necessary to carry out some form of post construction assessment to provide the required information. For proposed sites, and undeveloped aspects of existing sites, the working plan will detail how the applicant proposes to develop, operate, monitor, complete and restore the site and what methods and working practices will be used to ensure that the operation of the site does not cause pollution.
- 5.4** The working plan, when submitted as part of the licence application, will be available for inspection by the public. For more information on public access to information under this Law and on confidentiality issues see Chapters 15 & 16.
- 5.5** The working plan will require updating as the site develops. Working practices will change, new techniques and technologies will become available and site development will change to meet new or unforeseen circumstances. Proposed revisions to the working plan must be sent to the Waste Regulation Section of the Planning and Environment Department. Depending on the nature and extent of the proposed revision it may be dealt with in one of four ways:
- (a) Minor revisions, where there is no environmental consequence and no impact upon licence conditions, may simply be notified to the Planning and Environment Department.
  - (b) If the revision is small in consequence or extent, the Waste Regulation Section may give its written approval to the revision without consultation with or reference to any other parties.
  - (c) If the revision is more significant, the Waste Regulation Section will consult with its statutory consultees and any other person that may be considered necessary. It will, decide whether to allow or refuse the revision and give its decision in writing.
  - (d) Some revisions may require the variation of a licence condition or conditions. In this case, an application for a variation must be made, with the proposed working plan revision included as part of the application. See Chapter 8 for more details on the variation of licence conditions.

- 5.6 A working plan must be highly specific to the site it is drawn up for. Examples of the type of information that should be provided are detailed in the boxes below. This is not a comprehensive list as every site may have specific issues that are not included - it is the responsibility of the applicant to ensure that all relevant and necessary issues are covered.

#### **Methods and Working Practices**

- ◆ Hours of opening and operation
- ◆ Waste acceptance and control procedures
- ◆ Amounts and types of waste to be managed
- ◆ Methods of keeping, disposal and/or treatment of wastes
- ◆ An environmental monitoring scheme
- ◆ Keeping of records
- ◆ Types, operation and maintenance of plant
- ◆ Site employees - numbers, roles, training, experience, qualifications
- ◆ Management systems
- ◆ Operation and maintenance of pollution control systems
- ◆ Details of the site's location and surroundings
- ◆ An environmental assessment of the site and its surroundings
- ◆ Emergency action plans

#### **Engineering Development**

- ◆ Location and layout of the site
- ◆ Construction of pollution control infrastructures
- ◆ Water balance calculation
- ◆ Site security (landfill)
- ◆ Construction of site roads, hard standings etc.
- ◆ Site office and associated facilities
- ◆ Weighbridge, wheel cleaning facilities
- ◆ Laboratory facilities, sampling and analysis
- ◆ Storage bay or area construction
- ◆ Site drainage
- ◆ Environmental monitoring infrastructures
- ◆ Bunds, liners and capping
- ◆ CQA procedures

See also Appendix 4 for a list of issues to be covered by licence conditions and included within the working plan.

- 5.7 The structure of the working plan should be arranged in such a way that it is easy to reference licence conditions to the relevant part of the working plan. It is recommended that it should be presented in a loose leaf format, to enable the easy updating of sections or parts of the plan. Each section should be numbered and each paragraph within a section should be numbered as well. A contents list for both text and plans should be included.

## 6. Licence Conditions

- 6.1 The licence conditions are required to control the licenced activities taking place at the site in order to prevent pollution of the environment. "Pollution" is defined within Article 1 of the Law as:

Pollution includes the introduction directly or indirectly into the environment of any substance or energy, if its introduction results or is likely to result in -

- (a) a hazard to human health or food or water supplies;
- (b) harm to any living resource or ecosystem;
- (a) damage to any amenity; or
- (b) interference with any legitimate use of land, water or air.

and whether or not its introduction is or would be the only contributing factor to that hazard, harm, damage or interference.

- 6.2 The licence will require each licensed facility to be constructed, operated, maintained and monitored to provide a high standard of environmental protection. In order to achieve this, each licence condition should meet the following four criteria:

- ◆ Necessary
- ◆ Enforceable
- ◆ Unambiguous
- ◆ Comprehensive

The conditions will have to ensure that the site can be operated cost effectively whilst providing a high degree of environmental protection. The submission of a comprehensive and well-written working plan (see Chapter 5), together with all the information required by the application form, will greatly facilitate this process.

**6.3** Licence conditions will be used to set the standards to which the site must operate. A suitable working plan will allow the licence applicant/holder to describe how those standards will be met. Conditions will generally be one of three types:

- (i) Conditions that have absolute requirements which are straightforward to meet, e.g. the frequency of submission of monitoring data.
- (ii) Conditions that have absolute standards that allow the licensee the freedom to decide how to meet the standards, e.g. standards for litter control.
- (iii) Conditions which require the licensee to undertake specific operations in accordance with the manner detailed within the working plan, by reference to the exact section within the working plan e.g. dealing with wastes arriving at the site in accordance with the waste control procedures detailed in the working plan.

**6.4** Article 28 (1) of the Law requires that the following will be conditions of every licence -

- (a) that the licensee must not carry on the activity to which the licence relates on any land that he may not for the time being lawfully use for that purpose;
- (b) that if the licensee is the owner of the land, he must not dispose of his interest in the land without first obtaining from his successor in title an undertaking, in the terms described in Article 26(3)\*, to allow the licensee to carry out the future works to which Article 26(3) refers; and
- (c) that any undertaking obtained under Article 26(3) or under sub-paragraph (b) of this paragraph must remain legally binding until the licence is revoked or surrendered in accordance with this Law.

*\* see Chapter 3, paragraph 3.5 for the requirements of Article 26(3)*

**6.5** Article 28(2) allows The Minister to impose conditions in respect of -

- (a) other activities that are or may be carried on by the licensee on the land specified in the licence;
- (b) precautions that are to be taken in respect of any activity that is carried on by the licensee on that land; and
- (c) works to be carried out in connection with the activity to which the licence relates.

This Article also excludes any conditions which relate to health and safety at work or to commercial practice.

**6.6** Article 28(3) allows that any conditions imposed may cover any of the following matters -

- (a) the design or construction of any plant that is to be used for the purposes of the activity to which the licence relates;
- (b) the manner in which the activity is to be carried on;
- (c) the times at which the activity may be carried on;
- (d) the types and quantities of waste that may be received and dealt with in any specified period;
- (e) emission and discharge limits;
- (f) the keeping of records, the period or periods for which they shall be kept, the making of returns and the giving of other information in respect of the activity; and
- (g) time limits for complying with any conditions.

**6.7** Conditions to the licence may require the licensee to carry out works before the waste management activity permitted by the licence has begun and/or after the activity has ceased (before the licence is revoked or surrendered).

**6.8** Conditions may also relate to the deposit, keeping, treatment or disposal of non-controlled waste.

**6.9** Licence conditions are legally binding - the site will have to operate in accordance with the standards and methods detailed within its licence conditions and working plan. Breach of a licence condition is an offence under Article 99(1) and a licensee found guilty of such an offence shall be liable to imprisonment for a term not exceeding 2 years or to a fine, or both.

**6.10** Licenced sites will be regularly inspected by Inspectors appointed by The Minister - see Chapter 11 for details about Inspectors and site inspections.

**6.11** Licence conditions can be varied. See Chapter 8 for more detail on the variation of licence conditions.

**6.12** A list of issues to be covered by licence conditions and included within the working plan is provided as Appendix 4.

## 7. Exemptions from Licensing

7.1 Article 24 of the Law allows The Minister to designate, by means of an Order under the Law, activities that may be exempt from requiring a licence. Such exemptions are only to be provided for activities that meet the following criteria -

- (a) an activity that is adequately controlled under another enactment;
- (b) an activity that consists of the deposit of controlled waste in quantities that are so small or so temporary as not to significantly endanger human health, the environment or flora or fauna;
- (c) an activity that consists of the treatment or disposal of controlled waste and does not significantly endanger human health, the environment or flora or fauna; or
- (d) an activity relating to household waste.

The Article also provides that The Minister may, with such an Order, specify conditions that must be complied with, Such conditions may -

- (a) require that an activity to which an Order relates must be registered;
- (b) specify maximum periods for which an activity to which an Order relates may be carried on; and
- (c) specify maximum amounts of waste that may be stored at place where an activity to which an Order relates is carried on (whether or not all of those wastes are controlled wastes).

but this paragraph does not limit the generality of the conditions that may be applied.

7.2 For an activity specified within such an Order to be covered by the exemption it provides from Article 23 (see Chapter 1, paragraph 1.1), the person carrying out the activity must either be the owner of the land where the activity is taking place or have the permission of the landowner to carry out the activity. The requirements of the conditions within the order must also be complied with.

7.3 If the Order requires that the activity must be registered The Minister must be provided, in writing, with the following information -

- (a) the nature of the activity;
- (b) the person who will be carrying on the activity;
- (c) the place where it is to be carried on; and
- (d) the time or times when it will be carried on

- 7.4** The Order made under this Article is the Waste Management (Exemptions from Licensing) (Jersey) Order 2006. Article 1 to the Order lists 25 activities that may be exempt from requiring a licence - this Article is included as Appendix 5 to this document. For more information on these exemptions please refer to the document “Guidance on Exemptions from Waste Management Licensing”, available from the Waste Regulation Section of the Planning and Environment Department.

## 8. Variation of Licences

8.1 The terms and conditions of a licence may be varied in the following circumstances -

- ◆ on the application of the licensee; or
- ◆ on the initiative of The Minister.

### 8.2 Application by the licensee

8.2.1 Article 32 of the Law allows a licensee to apply for a variation to any term or condition of a licence. The only conditions that cannot be varied are the conditions required in every licence by Article 28(1) (see paragraph 6.4). An application form and associated guidance notes are available from the Waste Regulation Section of the Planning and Environment Department.

8.2.2 The Minister may, if it is satisfied that -

- ◆ the application is duly made;
- ◆ the requirements for financial security and/or technical resources have been met; and
- ◆ the variation applied for will not involve a risk of pollution that cannot be controlled by varying the terms or conditions of the licence,

vary any term or condition as they see fit in relation to the application made.

8.2.3 Should The Minister refuse to vary the licence there is a right of appeal under Article 32(2). See Chapter 14 for more details on the rights of appeal under this Law and the appeal process.

### 8.3 Variation on the initiative of The Minister

8.3.1 Article 33 of the Law allows that in certain circumstances The Minister may, if it considers on reasonable grounds that it is necessary to so do, vary any term or condition of a licence (other than those required by Article 28(1)).

8.3.2 The circumstances in which The Minister may vary a term or condition are -

- (a) because the activity to which the licence relates is causing pollution or may do so, and it is practicable to deal with the matter effectively by so varying that term or condition;
- (b) in order to take proper account of evolving scientific knowledge or changes in environmental standards.

- 8.3.3** The Minister may also vary a term or condition if it considers on reasonable grounds that such a variation is desirable and is unlikely to cause the licensee unreasonable expense.
- 8.3.4** Where The Minister proposes to vary a term or condition of a licence it will inform the licensee by notice in writing. The notice will describe the proposed variation and allow 21 days for the licensee to make written representations to The Minister. The Minister will consider any such representation from the licensee before deciding whether to carry out the variation.
- 8.3.5** Any variations approved by The Minister will take effect after notice of the variation has been issued to the licensee. The notice may specify a later date on which the variation is to take effect.
- 8.3.6** If a variation places any new restrictions, obligations or requirements on the licensee, it will not take effect sooner than six months after the variation notice has been served on the licensee. Under exceptional circumstances (such as the threat of imminent pollution) this requirement may not apply. Should this be the case, The Minister will specify what it considers to be the exceptional circumstances in its written decision.
- 8.3.7** A licensee may appeal against a decision of The Minister to vary a term or condition of a licence - see Chapter 14 for more details on the rights of appeal under this Law and the appeal process.
- 8.4** The Minister will consult internally upon the proposed variation and will also consult the Minister for Health and Social Services, the Minister for Employment and the Minister for Social Security and the Minister for Economic Development (the statutory consultees). The Minister may also consult any other person that he considers necessary to assist with its determination. Multiple copies of the application form and some of the other associated documents will therefore be required. Section 4.1 of the application form details how many copies of each document are required.
- 8.5** The Minister shall also make public notice of the application by publishing a notice in the Jersey Gazette. For more details on public access to information under this law please refer to Chapter 14. Applicants may apply in writing for trade secrets to be kept confidential - see Chapter 15.

## **9. Transfer of Licences**

- 9.1** Article 34 of the Law allows that a licensee may apply to have the licence transferred to another person. The application must be made on the correct form, available from the Waste Regulation Section of the Planning and Environment Department, and must be made jointly by the licensee (the transferor) and the proposed new holder (the transferee). The licence may be transferred even if it is suspended (see Chapter 12).
- 9.2** Any such application must be accompanied by all the evidence, undertakings and supporting documents as if it were an application for a licence (see Chapter 3). This information may include, where it remains relevant, that which was supplied with the original licence application or any previous transfer applications.
- 9.3** The proposed transferee of the licence will need to supply all the evidence required to demonstrate that they are fit to hold the licence (see Chapter 4), as well as a revised working plan and all other relevant supporting information.
- 9.4** The Minister may decide to grant the application subject to specified conditions. Should the application be granted, from the date of The Minister's decision (or from such later date that The Minister may specify) -
- (a) the transferor shall cease to be the licensee; and
  - (b) the transferee shall become the licensee.
- 9.5** There is a right of appeal against any decision made by The Minister in dealing with an application for a transfer of a licence - see Chapter 14 for more details on the rights of appeal under this Law and the appeal process.
- 9.6** The Minister will consult internally upon the proposed transfer and will also consult the Minister for Health and Social Services, the Minister for Employment and Social Security and the Minister for Economic Development Minister (the statutory consultees). The Minister may also consult any other person that he considers necessary to assist with its determination. Multiple copies of the application form and some of the other associated documents will therefore be required. The application form details how many copies of each document are required.
- 9.7** The Minister shall also make public notice of the application by publishing a notice in the Jersey Gazette. For more details on public access to information under this Law please refer to Chapter 14. Applicants may apply in writing for trade secrets to be kept confidential - see Chapter 15.

## 10. Surrender of Licences

**10.1** Article 37 of the Law requires that a licence may only be surrendered with the permission of The Minister. A licensee must apply to surrender their licence to The Minister on the appropriate application form, available from the Waste Regulation Section of the Planning and Environment Department.

**10.2** When deciding on whether to allow the surrender of a licence, The Minister must have regard to the following considerations -

- (a) the state of the land on which the activity to which the licence relates is carried on;
- (b) the measures that the licensee has taken to prevent the occurrence of environmental problems in consequence of that activity;
- (c) the measures that the licensee has taken to remedy environmental problems that have occurred in consequence of the activity; and
- (d) the likelihood that environmental problems may occur in the future in consequence of the activity's having been carried out on the land.

**10.2** It is important to establish how each of the above considerations can be addressed. Different activities will have different issues to address, for instance the surrender of a licence for a transfer station that -

- ◆ is empty of waste;
- ◆ has had an impermeable base constructed and maintained to high quality standards throughout the life of the site;
- ◆ has suitable drainage and pollution controls; and
- ◆ good records of measures taken to prevent and/or remedy any environmental problems,

should be a straightforward process as the state of the land should be undamaged by the activity, the measures taken to prevent and/or remedy any environmental problems have been recorded and the likelihood of any future environmental problems is very small.

**10.3** Surrendering a licence for a landfill site, however, will prove to be a very different proposition as the state of the land will inevitably be affected by the waste deposited there and the likelihood of future environmental problems will be difficult to assess (although the probability will be greater than for the example of the transfer station above). A licence for a landfill site that is producing, or is capable of producing, landfill gases (methane and carbon dioxide) and/or leachates with a potential to pollute the environment is unlikely to be able to be surrendered until the wastes within the site have degraded sufficiently so that pollution of the environment is unlikely.

- 10.4** It is therefore necessary to give further detail on each of the considerations detailed in paragraph 10.1 above, each of which should form linked parts of a report on the site to accompany the surrender application form.
- 10.4.1** The state of the land can only be determined by carrying out of some form of a site investigation survey. The nature and extent of any such survey will depend upon the licensed activities that have taken place at the site. For example, a transfer station such as that detailed in paragraph 10.2 above may only require a visual survey to be carried out in order to confirm that all wastes have been removed and that the impermeable base and other pollution control infrastructure is in good condition. Where there are any questions on the condition of the pollution control infrastructure, some soil samples may need to be taken and analysed. The types of pollutants that might be analysed for will depend upon the types of wastes that the site has managed under the terms and conditions of its licence. A landfill site will require a detailed site investigation survey which must include the analysis results of a sufficient number of samples to give a reliable indication of the condition of the land and areas of significant contamination. Any such survey must detail how many samples were taken and show where they were taken from.
- 10.4.2** The measures taken to prevent the occurrence of environmental problems should have been detailed in the original licence application and working plan and in any subsequent modifications to the licence or working plan. Where the information has been so provided, it will not need to be submitted again but it must be clearly referenced to. This will include information about site engineering works (including site restoration work), pollution control measures (such as leachate and/or gas control systems, location and construction of monitoring points) and an interpretive report on monitoring data for the site.
- 10.4.3** The measures taken to remedy any environmental problems that have occurred at the site as a result of the licensed activity must be detailed. If any such environmental problems have occurred, the Planning and Environment Department should have been informed at the time of occurrence and any subsequent remedial measures should have been discussed and agreed with the Planning and Environment Department. Any such information would therefore not need to be submitted again but must be clearly referenced to. The information provided should be detailed and include, where relevant, details of any monitoring carried out or other methods to demonstrate the effectiveness of the remedial actions taken.
- 10.4.4** In order to assess the likelihood that any environmental problems may occur in the future, it will be necessary to undertake a risk assessment of the site and its environment. This assessment must include details of the likely or potential sources of pollution, the likely or possible receptors of such pollution and must identify the potential pathways between them. These considerations may all be affected by the current and potential future uses of the site and any neighbouring land and this should be taken into account in the risk assessment process.
- 10.5** The Minister will not grant an application for the surrender of a licence unless the applicant has, via the report discussed in paragraph 10.3 above, demonstrated that the site covered by the licence is unlikely to cause pollution resulting from the licensed activity carried out at the site.
- 10.6** The Minister may, by virtue of Article 37(4), grant an application to surrender a licence subject to any conditions that he wishes to specify in his decision. These conditions may require the licensee to carry out works or comply with other matters and must be complied with before the licence may be surrendered. The contravention of any such condition is an offence under Article 99(1) and any person who is guilty of such an offence shall be liable to imprisonment for a term not exceeding two years or to a fine, or both.

- 10.7** When The Minister grants an application to surrender a licence, he will inform the licensee of how and when the licence is to be surrendered.
- 10.8** There is a right of appeal against any decision made by The Minister in dealing with an application for a surrender of a licence - see Chapter 14 for more details on the rights of appeal under this Law and the appeal process.
- 10.9** The Minister will consult internally upon the proposed surrender and will also consult the Minister for Health and Social Services, the Minister for Employment and Social Security and the Minister for Economic Development (the statutory consultees). The Minister may also consult any other person that he considers necessary to assist with his determination. Multiple copies of the application form and some of the other associated documents will therefore be required. The application form details how many copies of each document are required.
- 10.10** The Minister shall also publish a notice of the application in the Jersey Gazette. For more details on public access to information under this law please refer to Chapter 15. Applicants may apply in writing for trade secrets to be kept confidential - see Chapter 16.

## 11. Inspections

11.1 Whilst the site is licensed, it will be visited regularly by Inspectors from the Planning and Environment Department appointed in writing by The Minister under Article 82. The Inspector will assess the condition and operation of the site against its licence conditions and check for any pollution or risk of pollution being caused by the licenced activity.

11.2 Inspectors are granted various powers under the Law (see Appendix 6). Whilst carrying out their duties, Inspectors will carry proof of their authority, which must be produced upon request. Inspectors shall also state on request their name and the power that they propose to exercise.

11.3 Article 85(1) requires that these powers shall only be exercisable -

- (a) if there are reasonable grounds for so doing;
- (b) in a manner that is proportionate and otherwise reasonable; and
- (c) at a reasonable hour.

11.4 Following the exercising of any of these powers an Inspector shall, if requested to do so by an owner, occupier, driver, master, commander or person in charge (as the case may be), inform him as soon as is reasonably practicable of the powers they have exercised and everything taken or removed in the course of exercising those powers. This shall be done within 21 days of the exercising of the powers.

11.5 Article 84 allows Inspectors, when exercising any of their powers, to take with them any persons, motor vehicles, equipment and/or materials that are reasonably necessary or expedient. A person accompanying an Inspector under this Article may, under the Inspector's supervision, perform any of the Inspector's functions under the Law.

11.6 It is an offence under Article 85(8) to obstruct Inspectors in the carrying out of their powers, as detailed below:

Any person who without reasonable excuse -

- (a) intentionally obstructs an inspector who is exercising or seeking to exercise any power under this Article; or
- (b) intentionally obstructs any person who is lawfully accompanying an inspector, or performing any function under his supervision, under Article 84.

shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or both.

- 11.7** When inspecting a licensed facility, Inspectors can require the site management to provide reasonable assistance to them in carrying out the inspection, in accordance with Article 86 of the Law. This may involve, for example, stopping operations in part of the site to allow safe access or using site vehicles to transport the inspector around the site. A person who intentionally and without reasonable excuse does not meet such a requirement made of them commits an offence and could be liable to imprisonment for a term not exceeding two years or to a fine, or both.
- 11.8** The frequency of inspection for a licensed facility will depend upon the size of the site and/or the type of activity carried out at the site. Sites dealing with large quantities of waste or those with a high pollution potential will receive a greater number of inspections than smaller sites managing wastes with a low pollution potential.
- 11.9** Site inspections may occur at any time, even when the site is closed. Advance notification of an inspection will not usually be given, unless the inspection is intended to focus on a specific issue which require certain personnel to be present.
- 11.10** Following a site inspection, the Inspector will complete a site inspection report detailing the findings of the inspection and what, if any, actions are required of the licensee. If the Inspector proposes to take enforcement action (see Chapter 12), this will also be detailed on the report. The report will normally be completed at the site and a copy left with the person in charge at the site, who will be expected to read and sign the report before the Inspector leaves the site.
- 11.11** Where breaches of licence conditions are identified by the Inspector, these will be detailed on the inspection report and given an environmental impact score (see box below). These scores will be totalled to give a site inspection score. A high score may result in the Inspector recommending enforcement action. For each breach, the report will specify what actions need to be taken and a timescale for completing these actions. Failure to comply with these requirements may result in enforcement action being taken by the Planning and Environment Department.

<b>Environmental Impact</b>	<b>Score</b>
Compliance with condition	0
Breach of condition with no or very minor environmental impact	1
Breach of condition with a potential long term environmental impact	3
Breach of condition with an immediate environmental impact	5

- 11.12** Should the person in charge at the site disagree with any of the detail on the inspection report, this should be noted on the report before they sign the report. The matter will then be reported by the Inspector to their manager and a written response will be given to the licensee as soon as reasonably practicable.

## 12. Enforcement Action

12.1 Offences under this Law are criminal offences and can be prosecuted through the Courts. This course of action, however, will only be followed for serious or persistent breaches of the law. There are other enforcement sanctions for licensed facilities available to the Planning and Environment Department - suspension or revocation of the licence. The Minister may also serve notices that -

- ◆ require information from persons managing waste;
- ◆ require actions to be taken to control potential pollution; or
- ◆ require remedial action following a pollution incident.

12.2 Licences may be suspended either wholly or in part. If the whole licence is suspended, no waste management activities may take place at the site whilst the suspension is in effect. A partial suspension may, for example, prevent certain activities taking place or prevent the site from accepting certain waste types.

12.3 Revocation of a licence is a very serious act. The licence will no longer exist and the activities which the licence authorised must cease completely. Once revoked, the licence cannot be reinstated - any further waste management activities at the site would have to be the subject of a new licence application.

12.4 Licences may be suspended in an emergency (see 12.5 below), or suspended or revoked for other defined reasons (see 12.6 below).

12.5 Article 35 allows The Minister to suspend wholly or partly a licence, if he considers on reasonable grounds that it is necessary to do so because of an emergency. The suspension must be carried out by serving a notice in writing on the licensee and must be for a specified period which does not exceed 14 days. The suspension may be extended for further periods of up to 14 days by serving subsequent notices. There is a right of appeal against such a suspension - see Chapter 14 for more details on the rights of appeal under this Law and the appeal process.

12.6 Article 36 provides other cases in which a licence may be wholly or partly suspended, or revoked. These cases are where:

- ◆ A licensee fails for a period exceeding one month to pay any fee or charge due under this Law in connection with the licence.
- ◆ A licensee contravenes any condition of their licence.
- ◆ The Minister considers on reasonable grounds that the licensee is not fit to hold a waste management licence.
- ◆ The Minister considers on reasonable grounds that it is desirable to suspend or revoke the licence because the licenced activity is causing pollution or there is a risk it will cause pollution and it is not practicable to deal with the matter effectively by varying the licence.

- 12.7** Before suspending or revoking a licence under this Article, The Minister must write to the licensee giving notice of his intention and allowing 21 days for the licensee to make written representations to The Minister. The Minister must then consider any such representations made before going ahead with the suspension or revocation.
- 12.8** Any suspension or revocation must be carried out by serving a notice in writing on the licensee.
- 12.9** A licence may be suspended for a specified period not exceeding 14 days, or until the licensee has complied with specified conditions. If the suspension is for a specified period, the suspension may be extended on the same grounds for further periods of up to 14 days by serving subsequent notices.
- 12.10** There is a right of appeal against any suspension or revocation imposed under this Article - see Chapter 14 for more details on the rights of appeal under this Law and the appeal process.
- 12.11** The Minister will consult internally upon a proposal to revoke a licence and will also consult the Minister for Health and Social Services, the Minister for Employment and Social Security and the Minister for Economic Development (the statutory consultees). The Minister may also consult any other person that he considers necessary to assist with his determination.
- 12.12** The Minister shall also make public notice of the proposed revocation by publishing a notice in the Jersey Gazette. For more details on public access to information under this law please refer to Chapter 15.
- 12.13** Another possible enforcement option is provided by Article 93. This Article permits The Minister or an Inspector to apply to the Royal Court for injunctions to enforce compliance by any persons with any requirements of the Law (or made under the Law). An injunction may also be sought to restrain any person from contravening any provision of the Law.

### **13. Waste Management Certificates**

- 13.1** The Law requires that for the Committee to carry out any of the waste management activities detailed in paragraph 1.1, it is required by Schedule 11 to the Law to issue itself a waste management certificate (a certificate) which authorises the activity. However, the changes to Ministerial government introduced in December 2005 effectively nullify Schedule 11 because the Committee is no longer the regulator.

## **14. Appeals**

**14.1** With regard to waste management licences, Article 97 of the Law provides that the following persons have a right of appeal under the Law:

- ◆ An applicant for a waste management licence, against the refusal of their application by The Minister or the imposing by The Minister (when granting the licence) of any term or condition to the licence.
- ◆ A licensee, against the refusal by The Minister of an application to vary the licence in the way requested in the application.
- ◆ A licensee, against the variation of any term or condition of the licence by The Minister of its own motion.
- ◆ A licensee, against the refusal of The Minister of an application to transfer the licence.
- ◆ A licensee, against the suspension or revocation of the licence by The Minister.
- ◆ A licensee, against the refusal by The Minister of an application for the surrender of the licence or the imposing by The Minister (when granting the application) of any condition of its surrender.
- ◆ An applicant for the grant of a certificate of confidentiality, against the refusal of the application in whole or in part.

**14.2** Appeals are made to the Royal Court and must be brought within 21 days of the appellant being served with a written copy of the decision or notice in writing of the requirement which is to be appealed against. The Royal Court may allow an appeal to be brought after the 21-day period has expired.

**14.3** Persons wishing to lodge an appeal are advised to consider securing appropriately qualified legal advice and/or assistance in making their appeal.

**14.4** The Minister will write to inform everyone who has made representations concerning the matter to which the appeal relates (and has provided an address for service within the Island) that the appeal has been lodged. Anyone who has made such representations may appear and be heard at the appeal.

**14.5** Unless the Royal Court orders otherwise, the lodging of an appeal will not prevent the effect of a decision or requirement whilst the appeal is being determined.

**14.6** On hearing the appeal, the Royal Court may decide to confirm, reverse or vary the decision or requirement which is the subject of the appeal. It may also make what orders it thinks fit concerning the costs of the appeal.

**14.7** Should the appellant be dissatisfied with the decision of the Royal Court, there is a right of appeal to the Court of Appeal against a decision of the Royal Court.

- 14.8** Paragraph 11 of Schedule 11 provides a similar process for certificates, which will no longer have effect as certificates cannot now be issued.
- 14.9** Any such application for a review must be made by notice to The Minister within 21 days of the applicant has being served with a written copy of The Minister's decision. The Royal Court may allow a review to be applied for after the 21-day period has expired.
- 14.10** Unless the Royal Court orders otherwise, the lodging of an application for review will not prevent the effect of a decision or requirement whilst the appeal is being determined.
- 14.11** On hearing an application for review, the Royal Court may in its own judgement confirm, reverse or vary the decision of The Minister. It may also make what orders it thinks fit concerning the costs of the review.

## **15. Public Access to Information**

**15.1** Article 17 of the Law requires that The Minister must give public notice of any proposal to grant, vary, transfer, revoke or surrender a licence and, as applied by paragraph 4 of Schedule 11. This public notice will be made by publishing in the Jersey Gazette a notice that -

- (a) states that a copy of the proposal will be available for inspection free of charge at a place specified in the notice;
- (b) specifies the period for which the proposal will be available for inspection (being a period of not less than 21 days beginning after the notice is published in the Jersey Gazette);
- (c) specifies times, during reasonable office hours, when the proposal may be inspected; and
- (d) explains that anyone may make representations in writing to The Minister in respect of the proposal at any time before the expiry of the seven days following the period for inspection.

**15.2** The requirement detailed in 15.1 above need not apply if The Minister is satisfied on reasonable grounds that the proposal does not have and is not likely to have any appreciable adverse effect on the environment.

**15.3** Any person who wishes to comment upon a proposal can do so by writing to The Minister at any time up to seven days following the period for inspection of the proposal.

**15.4** If a person making comments upon a proposal wishes to be given notice of an appeal, they must provide an address for service within the Island.

**15.5** With regard to proposals relating to licences, The Minister will provide the applicant or licensee with copies of all representations made by other persons concerning the proposal. The applicant or licensee may respond to these representations by writing to The Minister within 14 days of receipt of the copies.

**15.6** No decisions will be made by The Minister on any proposal until the time limits for making representations have elapsed. The Minister will take into account all representations duly made in determining a proposal.

**15.7** The Minister is obliged by Article 14 to publish reports of his activities under the Law. He must also make available for public inspection the following information that he possesses in relation to licences subject to the requirements detailed in paragraph 15.8 and certificates of confidentiality - see Chapter 16):

- ◆ Copies of current licences, including any supporting documents that form part of the licences (e.g. working plans).
- ◆ Copies of applications for licences or for the variation, transfer, revocation or surrender of a licence, including any supporting documents that form part of the applications.
- ◆ Information obtained by The Minister under the conditions of licences.
- ◆ Details of the suspension and revocation of licences.

**15.8** Schedule 7 of the Law details information that need not be made publicly available. This includes any information -

- (a) affecting the confidentiality of the deliberations of any public or Parish authority;
- (b) relating to international relations, national defence or public security;
- (c) relating to matters that are under enquiry (whether or not the enquiry is of a disciplinary nature) or to documents that are still in draft form or to any internal communications of a public or parish authority;
- (d) relating to matters that are or have been the subject of legal or other proceedings (whether actual or prospective) or to any investigations taken with a view to such proceedings;
- (e) relating to matters to which commercial or industrial confidentiality attaches (including matters of that character relating to intellectual property);
- (f) relating to matters to which domestic or personal confidentiality attaches;
- (g) supplied to The Minister by a person who was not under a legal obligation to do so;
- (h) if The Minister, reasonably, is not satisfied of the reliability of the information;
- (i) that cannot be separated, for the purpose of making it available, from information specified in any of paragraphs (a) to (h) (inclusive); or
- (j) if the request for information is manifestly unreasonable or is formulated in too general a manner.

- 15.9** Information that is available to the public shall be available for inspection as soon as possible after it is requested (and in any event within 28 days). It will be made available during reasonable office hours. Facilities will be made available to allow the copying of information being inspected
- 15.10** The Minister may make a reasonable charge for providing information and the facilities to enable it to be copied.
- 15.11** Should The Minister refuse any request for the inspection of information, he shall give the applicant written reasons for his refusal.

## 16. Confidentiality

16.1 Certificates of confidentiality concerning waste management licences may be sought from The Minister concerning any information provided to The Minister in the circumstances detailed in paragraph 16.2 below, on the grounds that its disclosure will reveal a trade secret.

16.2 Certificates of confidentiality may be applied for by the following people:

- (a) Any person making an application for a licence, or a licensee applying to vary, transfer or surrender a licence, in respect of any information that they are required or wish to give to The Minister in support of the application.
- (b) A licensee, in respect of any information that he wishes to give or is required to give by virtue of conditions of the licence.
- (c) A licensee or any other person, in respect of any information relating to them, or to any business (including any research or experiment) carried on by them, that The Minister or an inspector may obtain directly or indirectly in the course of any power exercised by an inspector in relation to a licensed site.

16.3 Applications for certificates of confidentiality must be made in writing to The Minister and should, where possible, accompany the information being provided for which confidentiality is being sought. In the case of (b) or (c) in the box above the application may be made orally, either to the person who has required or obtained the information or to The Minister directly. Any such oral application must be delivered to The Minister in writing within 14 days following the day on which it was made or it shall cease to be an application.

16.4 Applications should clearly identify the information for which confidentiality is being sought and provide clear reasons why its disclosure would reveal a trade secret.

16.5 The following information cannot be subject to a certificate of confidentiality -

- (a) the name and address of the applicant for the certificate of confidentiality;
- (b) the fact that the applicant has applied for or been granted such a certificate or that an appeal to the Royal Court, or any further appeal, is pending in respect of his application for it; and
- (c) the site of the operation to which the confidential information relates.

**16.6** In the absence of a certificate of confidentiality, the information for which a certificate has been applied for is considered as confidential (subject to paragraph 16.5 above) whilst the following circumstances apply -

- (a) an application for a certificate of confidentiality has not been determined by The Minister;
- (b) any time allowed for appealing to the Royal Court against the decision of The Minister in respect of the application has not expired, and the Royal Court has not dismissed such an appeal;
- (c) any time allowed for a further appeal has not expired, and the court concerned has not dismissed such an appeal; or
- (d) any appeal, having been lodged, has not been determined.

**16.7** The Minister will consider any applications for confidentiality and, if satisfied that disclosure of the relevant information would reveal a trade secret, he shall grant a certificate of confidentiality for that information.

**16.8** The Minister will provide the applicant with a written copy of his decision within 14 days of making his determination. There is a right of appeal against this decision of The Minister - see Chapter 14 for more details on the rights of appeal under this Law and the appeal process.

**16.9** Should a certificate of confidentiality be granted, the information to which it relates shall be confidential.

**16.10** For any information that is covered by a certificate of confidentiality, or is confidential by virtue of the circumstances detailed in paragraph 16.6 above, it is an offence for any person to knowingly or recklessly disclose the information to any other person or use the information for any purpose other than the purposes of the Law. Anyone found guilty of such an offence shall be liable to imprisonment for a term not exceeding 2 years or to a fine, or both.

**16.11** The offence detailed in 16.10 above will not apply to The Minister nor any of its members, officers, employees or agents unless it is proved that they were acting in bad faith.

**16.12** The offence detailed in paragraph 16.10 above does not apply to any disclosure of such information in the following circumstances -

- (a) disclosure by the applicant for the certificate of confidentiality, or with their consent;
- (b) disclosure to the Minister for Planning and Environment or to any other Minister of the States or to any public officer or to any other person specified in Article 84 (see paragraph 11.5), for the purposes of this law; or
- (c) disclosure to a court or a party, in any civil or criminal proceedings under this Law, in private and for the purposes of those proceedings.

## **Appendix 1.**

### **Schedule 1 to the Waste Management (Jersey) Law 2005 - Summary**

#### **Disposal and recovery operations**

##### **Part 1 - Disposal operations**

- D1 Deposit on land, (for example, landfill).
- D2 Land treatment, (for example, biodegradation of liquid or sludgy discards in soils).
- D3 Deep injection, (for example, injection of pumpable discards into wells, salt domes or naturally occurring repositories).
- D4 Surface impoundment, (for example, placement of liquid or sludge discards into pits, ponds or lagoons).
- D5 Specially engineered landfill (for example, placement into lined discrete cells that are capped and isolated from one another and the environment).
- D6 Release into a water body except a sea or ocean.
- D7 Release into a sea or ocean, including seabed insertion.
- D8 Biological treatment, not specified elsewhere in this Schedule, that results in final compounds or mixtures that are discarded by means of any of the operations in this Part.
- D9 Physico-chemical treatment, not specified elsewhere in this Schedule, that results in final compounds or mixtures that are discarded by means of any of the operations in this Part (for example, evaporation, drying, calcination, neutralisation or precipitation).
- D10 Incineration on land.
- D11 Incineration at sea.
- D12 Permanent storage (for example, emplacement of containers in a mine).
- D13 Blending or mixing prior to submission to any of the operations in this Schedule.
- D14 Repacking prior to submission to any of the operations in this Part.
- D15 Storage pending any of the operations in this Part.

## **Part 2 - Recovery operations**

- R1 Use as a fuel (other than in direct incineration) or other means to generate energy.
- R2 Solvent reclamation or regeneration.
- R3 Recycling or reclamation of organic substances that are not used as solvents.
- R4 Recycling or reclamation of metals and metal compounds.
- R5 Recycling or reclamation of other inorganic materials.
- R6 Regeneration of acids or bases.
- R7 Recovery of components used for pollution abatement.
- R8 Recovery of components from catalysts.
- R9 Re-refining of used oil or other reuses of previously used oil.
- R10 Land treatment resulting in benefit to agriculture or ecological improvement.
- R11 Uses of residual materials obtained from any of the operations numbered R1 - R10.
- R12 Exchange of wastes for submission to any of the operations numbered R1 - R11.
- R13 Accumulation of material intended for any operation in this Part.

## **Appendix 2.**

### **Schedule 2 to the Waste Management (Jersey) Law 2005**

#### **Hazardous wastes**

##### **Part 1 - Hazardous waste specified in Convention**

##### **Section A: Categories**

###### *Waste streams*

- Y1 Clinical wastes from medical care in hospitals, medical centres and clinics.
- Y2 Wastes from the production and preparation of pharmaceutical products.
- Y3 Waste pharmaceuticals, drugs and medicines.
- Y4 Wastes from the production, formulation and use of biocides and phytopharmaceuticals.
- Y5 Wastes from the manufacture, formulation and use of wood preserving chemicals.
- Y6 Wastes from the production, formulation and use of organic solvents.
- Y7 Wastes from heat treatment and tempering operations containing cyanides.
- Y8 Waste mineral oils unfit for their originally intended use.
- Y9 Waste oils/water, hydrocarbons/water mixtures, emulsions.
- Y10 Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs).
- Y11 Waste tarry residues arising from refining, distillation and any pyrolytic treatment.
- Y12 Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers or varnish.
- Y13 Wastes from production, formulation and use of resins, latex, plasticizers or glues/adhesives.
- Y14 Waste chemical substances arising from research and development or teaching activities that are not identified and/or are new and whose effects on man and/or the environment are not known.
- Y15 Wastes of an explosive nature not subject to other legislation.
- Y16 Wastes from production, formulation and use of photographic chemicals and processing materials.
- Y17 Wastes resulting from surface treatment of metals and plastics.
- Y18 Residues arising from industrial waste disposal operations.

*Wastes having as constituents -*

- Y19 metal carbonyls;
- Y20 beryllium or beryllium compounds;
- Y21 hexavalent chromium compounds;
- Y22 copper compounds;
- Y23 zinc compounds;
- Y24 arsenic or arsenic compounds;
- Y25 selenium or selenium compounds;
- Y26 cadmium or cadmium compounds;
- Y27 antimony or antimony compounds;
- Y28 tellurium or tellurium compounds;
- Y29 mercury or mercury compounds;
- Y30 thallium or thallium compounds;
- Y31 lead or lead compounds;
- Y32 inorganic fluorine compounds (excluding calcium fluoride);
- Y33 inorganic cyanides;
- Y34 acidic solutions or acids in solid form;
- Y35 basic solutions or bases in solid form;
- Y36 asbestos (dust and fibres);
- Y37 organic phosphorous compounds;
- Y38 organic cyanides;
- Y39 phenols or phenol compounds (including chlorophenols);
- Y40 ethers;
- Y41 halogenated organic solvents;
- Y42 organic solvents excluding halogenated solvents;
- Y43 any congener of polychlorinated dibenzo-furan;
- Y44 any congener of polychlorinated dibenzo-p-dioxin; or
- Y45 organohalogen compounds other than substances referred to in this Part (for example Y39, Y41, Y42, Y43, Y44).

## Section B: Hazardous characteristics

UN Class*	Code	Characteristics
1	H1	<u>Explosive substances or wastes</u> An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) that is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.
3	H3	<u>Flammable liquids</u> The word “flammable” has the same meaning as “inflammable”. Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example, paints or varnishes, lacquers, but not including substances or wastes otherwise classified on account of their dangerous characteristics) that give off a flammable vapour at temperatures of not more than 60.5° C, closed-cup test, or not more than 65.6° C, open-cup test. (Because the results of open-cup tests and of closed-cup tests are not strictly comparable and individual results even by the same test are often variable, results varying from the above figures to make allowance for such differences are within the scope of this definition.)
4.1	H4.1	<u>Flammable solids</u> Solids, or waste solids, other than those classed as explosives, that under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.
4.2	H4.2	<u>Substances or wastes liable to spontaneous combustion</u> Substances or wastes that are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and are then liable to catch fire.
4.3	H4.3	<u>Substances or wastes that, in contact with water, emit flammable gases</u> Substances or wastes that, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.
5.1	H5.1	<u>Oxidizing substances or wastes</u> Substances or wastes that, while in themselves not necessarily combustible, may (usually by yielding oxygen) cause or contribute to the combustion of other materials.
5.2	H5.2	<u>Organic peroxides or wastes</u> Organic substances or wastes that contain the bivalent-O-O- structure and are thermally unstable substances that may undergo exothermic self-accelerating decomposition.
6.1	H6.1	<u>Poisonous substances or wastes</u> Substances or wastes that are liable either to cause death or serious injury or harm to human health if swallowed or inhaled or by skin contact.

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\* Corresponds to the hazard classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/SG/AC.10/1/Rev.5, United Nations, New York, 1988).

- 6.2 H6.2 Infectious substances  
Substances or wastes containing viable micro-organisms or their toxins that are known or suspected to cause disease in animals or humans.
- 9 H8 Corrosives  
Substances or wastes that, by chemical action, will cause severe damage when in contact with living tissue, or, in the case of leakage, will materially damage or even destroy other goods or the means of transport (whether or not they may cause other hazards).
- 9 H10 Liberation of toxic gases in contact with air or water  
Substances or wastes that, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.
- 9 H11 Toxic substances or wastes delayed or chronic  
Substances or wastes that, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.
- 9 H12 Ecotoxic substances or wastes  
Substances or wastes that, if released, present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.
- 9 H13 Other substances or wastes  
Substances or wastes, that, by any means, are capable after disposal of yielding another material (for example, leachate) that possesses any of the characteristics listed above.

## **Part 2 - Hazardous waste by national definition**

Any waste that is the subject of a transboundary movement (whether or not it is hazardous waste within the meaning of Part 1 of this Schedule), if it is defined or considered to be a hazardous waste by the domestic legislation of the country of dispatch or any country of transit or the country of destination.

## Appendix 3.

### Relevant Offences

An offence under any of the following enactments may be considered to be relevant-

1. The Waste Management (Jersey) Law 2005.
2.
  - (a) Merchant Shipping Act 1894 57 & 58 Vict (c.60) of the United Kingdom, in so far as it applies to the Island;
  - (b) Merchant Shipping (Liability of Shipowners and others) Act 1900 63 & 64 Vict (c.32) of the United Kingdom, in so far as it applies to the Island;
  - (c) Merchant Shipping Act 1906 6 Edw 7 (c.45) of the United Kingdom, in so far as it applies to the Island;
  - (d) Maritime Conventions Act 1911 1 & 2 Geo 5 (c.57) of the United Kingdom, in so far as it applies to the Island;
  - (e) Merchant Shipping (Jersey) Act 1916;
  - (f) Oil in Territorial Waters (Jersey) Law 1950;
  - (g) Merchant Shipping (Registry of British Ships) (Jersey) Law 1987.
3. “Loi” (1934) sur la Santé Publique.
4.
  - (a) “Loi” (1937) sur les Egouts;
  - (b) Sewerage (Amendment) (Jersey) Law 1953;
  - (c) “Loi” (1954) (Amendment No. 3) sur Les Egouts;
  - (d) Sewerage (Amendment No. 5) (Jersey) Law 1961;
  - (e) Drainage (Jersey) Law 1962;
  - (f) Island Planning (Jersey) Law 1964;
  - (g) Sea Defence (Jersey) Law 1970.
5. Food and Environment Protection Act 1985 (Jersey) Order 1987.
6. Health and Safety at Work (Jersey) Law 1989.
7. Pesticides (Jersey) Law 1991.
8. Statutory Nuisances (Jersey) Law 1999.
9. Conservation of Wildlife (Jersey) Law 2000.
10. Water Pollution (Jersey) Law 2000.

## Appendix 4.

### Topics to be Covered by Licence Conditions

The following table lists the topics that conditions to a waste management licence will usually cover, grouped under key areas for licensing control. Not all of these will be relevant to every site (and hence will not feature in every licence), whilst other sites will require site specific conditions not featured here. The table details the likely licence condition requirements and the information required in the working plan for each topic.

Topic	Licence Condition	Working Plan
<b>A. General Considerations</b>		
A1. Application area	Statement that licensed activities may only take place within licenced area, referenced to approved copy of site plan.	Plan with unique reference number showing application area clearly outlined in red.
A2. Waste types and quantities	Condition clearly stating what wastes are permitted and in what quantities (quantities should be controlled by both an overall annual limit and by a combination of daily, weekly or monthly limits. Separate limits may be applied to individual waste types where necessary).	Covered in licence application form and detailed in the working plan.
A3. Hours of operation	Conditions detailing permitted hours for receipt of wastes and, where appropriate, other site operations.	Section clearly detailing what hours are applied for and, if relevant, what site activities will take place outside of permitted hours for receipt of waste.
A4. Commencement of activities	If relevant, conditions(s) clearly detailing what criteria must be achieved before licenced activities can commence and a requirement to notify the licensing authority before activities commence.	Section detailing what work is to be undertaken and expected timescales for completion.
A5. Manning and management	Conditions(s) requiring minimum manning level for activities to take place and notification of any changes to site management in relation to fitness of licensee to hold licence.	Detail of staff numbers and job titles. Management structure. Staff training and development systems.
A6. Working plan	Condition making sections of the working plan part of licence conditions. Condition(s) requiring notification of, and approval criteria for, proposed modification to working plan.	Nothing required
A7. Emergency procedures	Conditions(s) requiring the inclusion of emergency procedures within the working plan. Examples of emergencies to include are: <ul style="list-style-type: none"> <li>◆ Fire/explosion on site.</li> <li>◆ Failure of pollution control systems.</li> <li>◆ landfill gas migration from site.</li> </ul>	Specific emergency procedures, including action trees, to cover generic emergency situations (see examples under Licence Condition column and site specific issues (e.g. spillage of particular waste types)

Topic	Licence Condition	Working Plan
<b>A. General Considerations (continued)</b>		
A8. Maximum duration of waste storage	Condition(s) detailing maximum time of waste storage for specific areas of the site or for specific waste types. This will in most cases relate to biodegradable wastes only.	Section detailing how wastes will be managed to prevent excessive storage times and how compliance with the condition(s) will be demonstrated.
A9. Financial security	Where relevant condition requiring upkeep and maintenance of financial security provision.	Section detailing how financial security provision will be provided and maintained.
A10. Relevant convictions	Condition requiring disclosure of any relevant conviction following issue of licence	Nothing required.
<b>B. Site Infrastructure</b>		
B1. Site access	Conditions requiring details of site access construction and location, together with details of control of access to the site.	Sections on location, design and construction of site access. Section on control procedures for vehicles and/or persons accessing and leaving the site.
B2. Site security	Conditions requiring provision and maintenance of adequate fencing, gates and, where necessary, other security measures.	Section detailing fencing and gating specifications (height, construction etc), referenced to site plan. Details of inspection and maintenance of security measures.
B3. Wheel cleaning	Condition requiring appropriate methods to prevent mud being tracked onto public highways.	Section detailing wheel cleaning system to be used, including specifications, maintenance, breakdown cover and instructions for use.
B4. Noticeboard and signs	Condition requiring appropriately sized and located site noticeboard giving site name, address, licence number and daytime/emergency contact telephone numbers. Also to include name and contact number for regulatory authority. Other signs as relevant to site.	Section detailing specification and location of noticeboard. Section(s) detailing type and locations of other signs.
B5. Internal roads	Condition(s) requiring details of locations, standards and maintenance of internal roads.	Section(s) detailing construction standards and maintenance procedures for internal roads. Referenced to site plan showing locations.
B6. Fuel tanks and bunding	Condition requiring details of locations and capacities of all fuel tanks. Condition detailing required bunding capacity, shut-off valves and location of fill and draw pipes.	Section detailing design and construction of fuel tanks and bunding, including fill and draw pipes. Referenced to site plan showing location(s).
B7. Weighing/ measuring of loads	Condition requiring weighbridge or provision of alternative method for measuring waste inputs/outputs.	Section detailing type and specification of weighbridge, procedures for use, maintenance and breakdown cover. Referenced to site plan showing location.

Topic	Licence Condition	Working Plan
<b>B. Site Infrastructure (continued)</b>		
B8. Secure compound	Condition requiring secure compound for storage of quarantined wastes.	Section detailing construction and security of compound. Referenced to site plan showing location.
B9. Hardstanding/parking	Condition(s) requiring details of locations, standards and maintenance of hardstandings/parking areas.	Section(s) detailing construction standards and maintenance procedures for hardstandings/parking areas. Referenced to site plan showing locations.
B10. Laboratory	Where relevant, condition(s) requiring laboratory facilities.	Section detailing how laboratory provision is to be made. Details of equipment to be used, reference methods and qualifications, training and experience of staff. If on-site, referenced to site plan showing locations. If off-site, name and address of facility.
B11. Drainage	Condition(s) requiring suitable dedicated site drainage system and plans.	Section detailing justification, construction, testing and maintenance of site drainage, including interceptors and/or sumps where appropriate. Provision of proposed and/or as built detailed site drainage plan.
B12. Plant design, construction and operation	Conditions requiring full details of the design and construction of waste management plant (e.g. incinerators, shredders), including details of capacities and method(s) of operation.	Sections detailing full plant design and construction details (including construction materials). Details of theoretical and actual capacities and method(s) of operation. Provision of proposed and/or as-built plans and referenced to site plan showing locations.
B13. Bays and bins	Conditions requiring details of design, construction and use of bays or bins for waste deposit/storage.	Sections detailing design, construction (including construction materials) and use of bays and/or bins. Details of drainage and maintenance procedures. Provision of proposed and/or as-built plans and referenced to site plan showing locations.
B14. Site office	Conditions requiring provision of site office with suitable communications and sanitation.	Sections detailing design, construction (including construction materials ) and outfitting of site office. Details of drainage and utility supplies. Provision of proposed and/or as-built plans and referenced to site plan showing locations.

Topic	Licence Condition	Working Plan
<b>C. Site Preparation</b>		
C1. Protection of stripped soil	Condition requiring protection of any stripped soil that is later to be used as cover or for restoration.	Section detailing storage and protection measures for such stripped soils. Referenced to site plan showing location(s) of storage.
C2. Surface water	Conditions requiring control and protection of surface waters.	Sections detailing design and construction of cut-off ditches and/or drainage systems to control and/or prevent contamination of surface waters. Provision of proposed and/or as-built plans and referenced to site plan showing locations.
C3. Design of containment systems: non-landfill	Conditions requiring full details of the design and construction and quality assurance of impermeable surfaces for waste, including drainage systems and inspection and maintenance procedures.	Sections detailing design and construction of impermeable surfaces. Sections detailing drainage systems (see B11). Sections detailing 3 <sup>rd</sup> party CQA systems used/to be used. Sections detailing inspection, maintenance and repair procedures. Provision of proposed and/or as-built plans and referenced to site plan showing locations.
C4. Design of containment systems: landfill	Conditions requiring full details of the justification, design, construction, testing and quality assurance for landfill liner systems, including cell design, water balance calculations, drainage layers, protection of clays and/or membranes, inspection and maintenance/repair procedures.	Sections detailing justification, design and construction of landfill liner system. Section detailing 3 <sup>rd</sup> party CQA systems used/to be used and testing methodology and reporting of results. Sections detailing drainage blanket details and methods for protecting clays and/or membranes. Sections detailing inspection and maintenance/repair procedures.
C5. Leachate/ landfill gas control systems: landfill	Conditions requiring full details of the justification, design, construction, testing and quality assurance for leachate and landfill gas control systems.	Sections detailing justification, design and construction of leachate and landfill gas control systems, including predicted quantities/flows, capacities of proposed systems. Sections detailing inspection, maintenance and repair procedures, including emergency procedures (see A7). Provision of proposed and/or as-built plans and referenced to site plan showing locations.
C6. Installation of monitoring facilities	Conditions requiring provision of monitoring facilities and full details of their location, design and construction.	Sections detailing design and construction of monitoring facilities. Sections detailing inspection, maintenance and repair procedures. Referenced to site plan showing locations.

Topic	Licence Condition	Working Plan
<b>D. Waste Reception</b>		
D1. Checking loads: reception	Condition requiring all loads to be inspected upon reception to ensure compliance with permitted waste types.	Section detailing methodology used to inspect loads and training provided to relevant staff.
D2. Recording loads	Condition requiring recording of all loads of waste received or removed. Minimum detail required - date, time, type(s) of waste, weight/volume (see B7), carrier details.	Section detailing how records will be made.
D3. Inspection of wastes: deposit	Condition requiring all wastes to be inspected upon deposit to ensure compliance with permitted waste types.	Section detailing how deposits will be inspected.
D4. Rejection of loads	Condition requiring all non-conforming wastes to be rejected. Condition requiring non-conforming loads identified on deposit to be isolated to secure storage prior to removal (see B8).	Section detailing methods for rejecting loads and recording of rejections. Section detailing how non-conforming wastes will be handled and disposed of.
D5. Sampling and analysis	Condition requiring sampling and analysis of wastes in certain circumstances, i.e. unknown wastes, certain hazardous wastes.	Section detailing methods for sampling and analysis of wastes.
D6. Handling, segregation and storage	Conditions requiring that wastes be handled appropriately and, where appropriate, segregation of waste types. Conditions concerning storage areas and duration.	Sections detailing methods for waste handling on receipt at the site. Where relevant, sections concerning waste segregation. Sections detailing storage methods and timescales, Referenced to site plan showing locations.
D7. Labelling	Where relevant, condition requiring appropriate labelling of wastes e.g. drummed hazardous wastes.	Where relevant, section providing details of labelling methods and information.
<b>E. Site Operations</b>		
E1. Sequence of filling: landfill	Condition requiring information on how landfilling is to be phased/sequenced. Condition requiring information on proposed final levels and landforms.	Sections providing details of filling and phasing, including plans showing proposed levels and landforms.
E2. Plant and machinery	Condition requiring information on the numbers and types of plant and machinery to be used on site and how they are to be used.	Section detailing numbers and types of plant and machinery to be used on site and how they are to be used, including details of maintenance procedures and breakdown management.
E3. Method of placement	Condition requiring details of how wastes are to be deposited and, where relevant, moved around the site. For landfills, details of layering and compaction methods.	Sections detailing how wastes are to be deposited and, where relevant, moved around the site. Details of layering and compaction methods where relevant.

Topic	Licence Condition	Working Plan
<b>E. Site Operations (continued)</b>		
E4. Emergency tipping area	Condition requiring the provision of an emergency tipping area for times when circumstances such as bad weather prevent the environmentally safe use of the normal tipping area.	Sections providing details of the emergency tipping area, including construction, drainage, conditions for use, location. See B11, B13, C3, C4 for level of detail required.
E5. Cell sizing: landfill	Condition requiring calculations to justify cell size and drainage/leachate management provision.	Section providing details of cell sizes and water balance calculations.
E6. Cover materials: landfill	Condition requiring appropriate cover to be placed on non-inert and/or hazardous wastes and waste which may become windborne.	Section detailing what materials will be used for cover, where and how they will be stored and how they will be used.
E7. Compatible wastes	Condition requiring that only compatible wastes may be deposited together.	Section detailing how operations will be managed to ensure that only compatible wastes will be deposited together, including details of what wastes may be incompatible and how they will be identified and managed.
E8. Special waste management procedures	Condition requiring details of procedures to be adopted for the management or disposal of wastes requiring special care, e.g. drums/bulky wastes, dusty waste/ashes.	Sections detailing special waste management procedures and techniques for wastes requiring special care.
E9. Residues	Condition requiring suitable management of any residues arising from waste management processes at the site.	Section detailing what residues will be produced and how they will be managed.
E10. Leakages/spills	Conditions requiring any leakages or spills to be appropriately managed to prevent pollution.	Sections detailing what plant, machinery or operations on the site may give rise to leaks or spillages and how any such events will be managed.
E11. Tidiness	Conditions requiring the site to be kept in a tidy condition and all storage areas to be kept within capacity.	Sections detailing what procedures will be used to monitor and maintain the tidiness of the site and how storage areas will be kept within their capacity
E12. Process	Where the waste management activity is a process based operation (e.g. an incinerator), conditions requiring the production of a process manual with key process stages and criteria clearly identified, along with trigger levels for process exceedence and action plans for such breaches.	Inclusion of a process manual containing required information.

Topic	Licence Condition	Working Plan
<b>F. Pollution Control</b>		
F1. Leachate control	Conditions requiring suitable control and collection measures for leachate. For landfills, conditions setting maximum allowable leachate levels.	Sections detailing procedures and systems for leachate collection and control. For landfills, details of actions to be taken to minimise leachate production (see C2, C4, E1, E5).
F2. Landfill gas control: landfill	Conditions requiring suitable collection and control systems for landfill gas. Condition requiring trigger levels for monitoring boreholes. Condition requiring site survey for sensitive receptors and preferential migration pathways.	Sections detailing procedures and systems for landfill gas collection and control. Sections detailing trigger levels and actions to be taken upon exceedence of such levels (see A7 and G3).
F3. Dust	Condition requiring dust emissions from the site to be controlled and minimised.	Section detailing dust suppression and control procedures.
F4. Noise/vibration	Condition requiring noise and vibration to be kept to a minimum. Possible conditions requiring noise/vibration survey and setting noise limits from the site.	Sections detailing procedures and systems for minimising noise and vibration from the site. Where relevant, details of noise/vibration survey and actions taken.
F5. Odour	Condition requiring odours from the site to be kept to a minimum. Condition requiring deliveries of odorous waste to be managed immediately on arrival to reduce odour emissions.	Sections detailing procedures and systems for minimizing odours from the site. Sections detailing how odorous wastes will be managed to minimize emissions.
F6. Vermin/insect/ bird control	Conditions requiring suitable control procedures for vermin, insects and birds.	Sections detailing what control procedures will be used to control vermin, insects and birds.
F7. Litter	Condition requiring that no litter be allowed to escape beyond the site boundary.	Section detailing what litter control procedures will be used and what actions will be taken should litter escape from the site.

Topic	Licence Condition	Working Plan
<b>G. Monitoring</b>		
G1. Surface water	Where relevant, conditions requiring regular monitoring and assessment of surface water for specified determinants and establishing trigger levels for remedial actions. Condition requiring regular submission of monitoring data to the regulator.	Sections detailing how the surface water monitoring will be carried out and how the data will be assessed, including details of the training and experience of the monitoring personnel. A plan identifying the surface water monitoring points. Section detailing actions to be taken upon breach of trigger level(s).
G2. Groundwater	Where relevant, conditions requiring monitoring and assessment of groundwater levels and flows and/or quantity. Condition setting trigger levels for investigation and remedial actions. Condition requiring regular submission of monitoring data to the regulator.	Sections detailing how the groundwater monitoring will be carried out and how the data will be assessed, including details of the training and experience of the monitoring personnel. A plan identifying the groundwater monitoring boreholes. Section detailing actions to be taken upon breach of trigger level(s).
G3. Landfill gas	Where relevant, conditions requiring monitoring and assessment of landfill gas levels both within and without the waste. Condition setting trigger levels for investigation and remedial actions. Condition requiring regular submission of monitoring data to the regulator.	Sections detailing how the landfill gas monitoring will be carried out and how the data will be assessed, including details of the training and experience of the monitoring personnel and details of the monitoring equipment used. A plan identifying the gas monitoring boreholes. Section detailing actions to be taken upon breach of trigger level(s) (see A7 and F2).
G4. Void space: landfill	Condition requiring an annual site survey to identify amount of void space remaining and produce a detailed site survey plan. Condition requiring submission of the data to the regulator.	Section detailing how the survey will be carried out and a plan identifying the survey points.
G5. Process	Where relevant, conditions requiring recording of process data and assessment of the data against the criteria within the process manual (see E12). Condition requiring regular submission of data to the regulator.	Section detailing what data will be recorded and how data assessment will take place.
G6. Dust, noise and vibration	Where relevant, conditions requiring monitoring and assessment of levels of dust noise and/or vibration (see F4 and F5). Condition requiring regular submission of data to the regulator.	Section detailing how the monitoring will be carried out (including what equipment is to be used) and how the data will be assessed. A plan identifying the monitoring points.
G7. Odour	Condition requiring regular odour surveys around the site boundaries and recording of findings.	Section detailing how the monitoring will be carried out, including details of training and experience of the monitoring personnel.
G8. Leachate	Conditions requiring the regular monitoring of leachate levels and quality (see F1) and regular submission of data to the regulator.	Section detailing how the monitoring will be carried out, including details of training and experience of the monitoring personnel.

<b>Topic</b>	<b>Licence Condition</b>	<b>Working Plan</b>
<b>H. Records</b>		
H1. Wastes received and removed	Condition requiring records to be kept of all wastes received and (where relevant) removed from the site (see D2). Condition requiring regular submission of records to the regulator.	Section detailing how the records will be made and where they will be kept.
H2. Rejected wastes	Condition requiring records to be kept of all wastes rejected from the site (see D4). Condition requiring regular submission of records to the regulator.	Section detailing how the records will be made and where they will be kept.
H3. Site diary	Condition requiring the making and upkeep of a site diary to record specified events.	Section detailing who will be responsible for the diary and where it will be kept.
H4. Monitoring data	Conditions requiring the keeping and submission of monitoring data (see Section G).	Sections detailing records to be kept and place of keeping.
H5. Waste analysis	Condition requiring the keeping of data concerning waste analysis (see D5).	Section detailing how and where records will be made and kept.
H6. Recording of hazardous waste deposits: landfill	Condition requiring the recording on a suitable plan or plans of the location and depth of hazardous waste deposits.	Section detailing how such deposits will be recorded and where the plan will be kept.
H7. Site inspections	Condition requiring the retention at the site of site inspection reports from site inspections.	Section detailing how and where reports will be kept.
<b>I. Site Completion</b>		
I1. Finished levels: landfill	Condition requiring the preparation and submission of a plan showing proposed site levels, both pre and post settlement.	Preparation of a site levels plan.
I2. Settlement: landfill	Condition requiring the monitoring of settlement of the site and, where necessary, the deposit of suitable materials to enable adherence to the proposed finished levels.	Section detailing how settlement will be monitored and how over or under-settlement will be managed.
I3. Seeding/planting of vegetation: landfill	Condition requiring the production of a suitable planting scheme, including aftercare of soils and vegetation.	Preparation of planting and aftercare scheme.
I4. Drainage: landfill	Condition requiring the design and installation of a suitable drainage scheme to manage surface water arisings on the completed site.	Production of drainage plan and installation of system (see C2).

Topic	Licence Condition	Working Plan
<b>I. Site Completion (continued)</b>		
I5. Capping: landfill	Conditions requiring full details of the justification, design, construction, testing and quality assurance for landfill capping, including protection of clays and/or membranes, inspection and maintenance/repair procedures.	Sections detailing justification, design and construction of the capping system. Section detailing 3 <sup>rd</sup> party CQA systems used/to be used and testing methodology and reporting of results. Sections detailing drainage blanket details and methods for protecting clays and/or membranes. Sections detailing inspection and maintenance/repair procedures.
I6. Site clearance: non-landfill	Condition requiring the site to be fully cleared of wastes upon cessation of waste management activities.	Sections detailing site clearance methodology and other work to be undertaken in order to surrender the licence.

## Appendix 5.

### Waste Management (Exemptions from Licensing) (Jersey) Order 2006, Article 1

#### Activities that are exempt from licensing

1. (1) The burning of a controlled waste that is oil, as a fuel in an appliance with a net rated thermal input of less than 0.4 megawatts.
- (2) The secure storage of such waste at a place where it is to be burned in accordance with this paragraph.
2. (1) The carrying out of an activity specified in Table 1, in respect of a controlled waste shown in that table, if –
  - (a) the activity is carried out with a view to the reuse or recovery of that waste; and
  - (b) the quantity of the waste that is dealt with in any period of 7 days does not exceed the limit specified in respect of that waste in Table 1.

Table 1

Kind of waste	Activity	Limit (tonnes)
Paper or cardboard	Baling, sorting or shredding	300
Textiles	Baling, sorting or shredding	10
Plastic	Baling, sorting, shredding, densifying or washing	100
Glass	Sorting, crushing or washing	100
Steel cans, aluminium cans or aluminium foil	Sorting, crushing, pulverising, shredding, compacting or baling	10
Food or drink cartons	Sorting, crushing, pulverising, shredding, compacting or baling	10

- (2) In this paragraph, “controlled waste” does not include hazardous waste or health care waste.

3. (1) The composting of biodegradable controlled waste -
  - (a) at a place where the waste is produced or the compost is to be used; or
  - (b) at any other place that is occupied by the person producing the waste or using the compost,if the quantity that is at any time being composted does not exceed 1000 cubic metres.
  - (2) The storage of such waste, at a place where the waste is produced or is to be composted, before it is composted.
  - (3) In this paragraph, “controlled waste” does not include hazardous waste.
4. (1) The manufacture of finished goods, using controlled waste that consists of metal, plastic, glass, ceramics, rubber, textiles, wood, paper or cardboard.
  - (2) The storage of such a waste at a place where the finished goods are to be manufactured, if -
    - (a) the waste is to be used in their manufacture; and
    - (b) the total quantity of all wastes specified in sub-paragraph (1) that are for the time being stored at that place does not exceed 100 tonnes.
  - (3) In this paragraph, “controlled waste” does not include hazardous waste or health care waste.
5. (1) The use of a controlled waste in a way that is beneficial to the environment, if –
  - (a) it is put to use without further treatment; and
  - (b) the use does not amount to disposal.
  - (2) The storage of a controlled waste at any place, if –
    - (a) the waste is to be beneficially used in accordance with sub-paragraph (1); and
    - (b) the quantity that is for the time being stored at that place does not exceed 100 tonnes.
  - (3) In this paragraph, “controlled waste” does not include health care waste.
6. (1) The storage of a controlled waste specified in Table 2, at any place in secure containers or where it is otherwise securely kept, if -
  - (a) the waste is to be reused, or to be subjected to any activity specified in Table 1 or to any other recovery process;
  - (b) the total quantity of the wastes specified in items (a), (b), (c), (d), (e), (f) and (g) of Table 2 that are for the time being stored at that place does not exceed in the aggregate the limit specified in respect of those wastes in that table;
  - (c) the quantity of any other waste specified in Table 2 and for the time being stored at

that place does not exceed the limit specified in respect of that waste in that table;

- (d) each different kind of waste specified in Table 2 and being stored at that place is stored there separately; and
- (e) the period of storage at that place of any particular quantity of a kind of waste that is specified in Table 2 does not exceed 12 months.

Table 2

	Kind of waste	Limit
(a)	Paper or cardboard	} Total } quantity } 1000 tonnes } } }
(b)	Textiles	
(c)	Plastics	
(d)	Glass	
(e)	Steel cans, aluminium cans or aluminium foil	
(f)	Food and drink cartons	
(g)	Articles that are to be used for construction work and are capable of being so used in their existing state	
(h)	Solvents	5 cubic metres
(i)	Refrigerants and halons	18 tonnes
(j)	Vegetable oils	20 tonnes
(k)	Mineral oils	3 cubic metres

(3) In this paragraph, “controlled waste” does not include health care waste.

- 7. (1) The laundering, cleaning or selling of a controlled waste that is a textile, with a view to its reuse or recovery.
- (2) The storage of such waste at a place where it is to be cleaned, or laundered, with a view to its reuse or recovery.
- (3) In this paragraph, “controlled waste” does not include hazardous waste or health care waste.
- 8. (1) Any of the following activities, namely -
  - (a) the chipping, shredding, cutting or pulverising of controlled waste consisting of wood, bark or other plant matter; or
  - (b) the sorting or baling of controlled waste consisting of sawdust or wood shavings, if the activity is carried out for the purposes of reuse or recovery, and the total quantity of such wastes that is dealt with in any period of 7 days does not exceed 1000 tonnes.
- (2) The storage of such a waste at a place where an activity described in sub-paragraph (1) is to be carried out, if -
  - (a) the waste is to be used in that activity; and

- (c) the total quantity of all wastes specified in sub-paragraph (1) that are for the time being stored at that place does not exceed 1000 tonnes.
  - (3) In this paragraph, “controlled waste” does not include hazardous waste.
- 9.**
- (1) The recovery of silver from a controlled waste that is a photographic or copying waste, if the total quantity of such wastes that is being used in the activity does not exceed 500 litres per day.
  - (2) The secure storage of such waste, if –
    - (a) the waste is to be used for the recovery of silver; and
    - (b) the total quantity of all wastes specified in sub-paragraph (1) that are for the time being stored at that place does not exceed 5000 litres.
- 10.**
- (1) Any crushing, grinding or other size reduction process, when applied to controlled waste that consists of bricks, tiles, concrete, stone or similar materials.
  - 2. The storage of such a waste at a place where an activity described in sub-paragraph (1) is to be carried out, if -
    - (a) the waste is to be used in that activity; and
    - (b) the total quantity of all wastes specified in sub-paragraph (1) that are for the time being stored at that place does not exceed 5000 tonnes.
  - (3) In this paragraph, “controlled waste” does not include hazardous waste or health care waste.
- 11.**
- (1) The baling, compacting, crushing, shredding or pulverising of controlled waste at a place where it is produced.
  - (2) The storage of controlled waste at a place where an activity described in sub-paragraph (1) is to be carried out, if the waste is to be used in that activity.
  - (3) In this paragraph, “controlled waste” does not include hazardous waste or health care waste.
- 12.** The storage by the manufacturer, distributor or retailer of controlled waste that consists of returned goods, if -
- (a) they are to be reused or subjected to a recovery operation; or
  - (b) they are being stored, pending disposal, at a place where the decision to dispose of them was made,
- and the period of storage at that place of any particular returned goods that are controlled waste does not exceed six months.
- 13.**
- (1) The disposal of health care waste or municipal waste by the person producing it, by incineration at the place where it is produced.

- (2) However –
    - (a) where the waste is health care waste, the exemption in sub-paragraph (1) only applies if the capacity of the disposal plant is less than 10 kilograms per hour; and
    - (b) where the waste is municipal waste, the exemption in sub-paragraph (1) only applies if the capacity of the disposal plant is less than 50 kilograms per hour.
  - (3) The secure storage of health care waste, or the storage of municipal waste, by the person producing it, at the place where it is produced, pending its disposal by incineration in accordance with this paragraph.
  - (4) In this paragraph, “health care waste” and “municipal waste” do not include hazardous waste.
- 14.** (1) The burning on open land of controlled waste consisting of wood, bark or other plant matter, if -
- (a) the waste is produced in a forest, woodland, park, garden, verge, landscaped area, sports ground, recreation ground, churchyard or cemetery, or it is produced on other land as a result of demolition work;
  - (b) the burning is carried out on the land where the waste was produced; and
  - (c) the total quantity of such wastes that is burned in any period of 24 hours does not exceed ten tonnes.
- (2) The storage of such waste, at a place where it is to be burned in accordance with this paragraph.
- (3) In this paragraph, “controlled waste” does not include hazardous waste.
- 15.** (1) The burning on open land of controlled waste consisting of wood, bark or other plant matter, in a traditional bonfire (for example, on Guy Fawkes’ Night) or in a recognized ceremonial bonfire (for example, in celebration of an event such as the Millennium).
- (2) The storage of such waste, at a place where it is to be burned in accordance with this paragraph.
- (3) In this paragraph, “controlled waste” does not include hazardous waste or health care waste.
- 16.** The temporary storage of controlled waste deriving from the normal operations of a ship if -
- (a) the storage site is provided within harbour limits under the terms of an international instrument for such facilities;
  - (b) the waste is to be transferred to another facility at which it may lawfully be disposed of or recovered; and
  - (c) the waste is so transferred as soon as possible, and in any event within one month of its discharge from the ship.

- 17.** (1) The burial of controlled waste that consists of an animal carcass, by its owner.
- (2) However, the exemption in sub-paragraph (1) does not apply -
- (a) in respect of a bovine or ovine animal; or
  - (d) in any other case, if a recognized veterinary surgeon (as defined in Article 1 of the Veterinary Surgeons (Jersey) Law 1999) considers that the burial is hazardous because the animal is diseased or infected.
- 18.** (1) The deposit at any place of a sample of controlled waste that is to be analysed or tested, if -
- (a) it is the place where the analysis or testing is to take place;
  - (b) the sample is taken for the purposes of bona fide research; and
- (2) The storage of a sample to which sub-paragraph (1) refers, at the place where it is deposited in accordance with that sub-paragraph, pending its analysis or testing.
- (3) The analysis or testing of such a sample at the place where it is so deposited.
- 19.** The secure storage at a pharmacy of controlled waste that is a returned medicine, pending its lawful disposal elsewhere, if -
- (a) the total quantity of returned medicines that are controlled wastes and are for the time being stored at the pharmacy does not exceed three cubic metres; and
  - (b) the period of storage at the pharmacy of any particular returned medicine that is a controlled waste does not exceed six months.
- 20.** (1) The secure storage of any health care waste, at a place specified in paragraph (2), if –
- (a) the quantity of the waste that is for the time being stored at that place does not exceed 3 cubic metres;
  - (b) the period of storage at that place of any particular quantity of the waste does not exceed 6 months; and
  - (c) where the controlled waste is hazardous waste, it is in secure containers.
- (2) The places to which this paragraph refers are –
- (a) the place where the waste is generated; and
  - (b) a laundry facility maintained for such waste by the Minister for Health and Social Services.

- 21.** The storage of household waste that is not hazardous waste, pending its collection or transport, if –
- (a) the quantity of the waste that is for the time being stored at that place does not exceed 20 cubic metres; and
  - (b) the period of storage at that place of any particular quantity of the waste does not exceed one month.
- 22.** The storage of controlled waste that is neither hazardous waste nor waste in liquid form, at any place (other than that where it was produced) pending its collection or transport, if –
- (a) the waste is in secure containers;
  - (b) the quantity of the waste that is for the time being stored at that place does not exceed 50 cubic metres;
  - (c) the period of storage at that place of any particular quantity of the waste does not exceed 3 months; and
  - (d) the place of storage is not designed or purposely adapted for the reception and transfer of waste.
- 23.** (1) The temporary storage of controlled waste at the place where it was produced, pending its collection or transport, if –
- (a) where the waste is a hazardous waste in liquid form, it is in secure containers and does not for the time being exceed a total of 2500 litres; and
  - (b) where the waste is a hazardous waste in non-liquid form, it is either in secure containers and does not for the time being exceed a total of 5 cubic metres, or it is in other secure storage and does not for the time being exceed a total of 3 cubic metres,
- and the period of storage of any particular quantity of the waste does not in any event exceed 2 years, other than in the circumstances described in sub-paragraph (2).
- (2) Where the waste is to be exported from Jersey, and its export is delayed for reasons beyond the control of the person on whose behalf it is stored, the period to which sub-paragraph (1) refers shall be such longer period as the Committee allows.
- 24.** The reception and treatment of a controlled waste in liquid form at the Bellozanne sewage treatment works, if it is disposed of by direct introduction to the treatment process as soon as reasonably practicable after it is brought into the Bellozanne sewage treatment works.
- 25.** (1) The secure storage, on a ship that is temporarily in Jersey waters in the course of a voyage, of controlled waste that is derived from the normal operations of that ship, pending the eventual discharge of the waste either at an appropriate facility within harbour limits in the Island or at an appropriate facility outside Jersey.
- (2) In this paragraph, “appropriate facility” means a facility at which the waste may lawfully be discharged.

## **Appendix 6.**

### **Waste Management (Jersey) Law 2005, Article 85**

#### **Power of Inspectors**

##### **ARTICLE 85**

###### General powers of entry and investigation

- (1) A power conferred on an inspector by paragraph (3) shall only be exercisable -
  - (a) if there are reasonable grounds for doing so;
  - (b) in a manner that is proportionate and otherwise reasonable; and
  - (c) at a reasonable hour,and, where it is to be exercised in respect of residential land, if the inspector has given not less than 48 hours' notice in writing to the owner or occupier.
- (2) However, the requirements in paragraph (1) as to the time at which the power may be exercised and (in the case of residential land) as to the notice that must be given before it may be exercised do not apply in an emergency.
- (3) An inspector may do all or any of the following things in respect of any land, motor vehicle, ship or aircraft, for the purposes of carrying this Law into effect -
  - (a) he may enter, board, inspect or search it;
  - (b) he may take or carry out on or in it any measurements, surveys, tests, investigations or photographs;
  - (c) he may install, maintain or operate on or in it any monitoring equipment or other apparatus;
  - (d) he may take or remove from it, for analysis, samples of any substances, articles or other things found there;
  - (e) he may take or remove any substances, articles or other things found there, for the purposes of evidence in any civil or criminal proceedings under this Law; or
  - (f) he may in the case of any land, carry out or dig on or in it any exploratory, investigatory or experimental borings, pits or holes.

- (4) If the Bailiff, a Jurat or the Magistrate or Sous-Magistrat is satisfied on sworn information that -
- (a) there are reasonable grounds for the exercise of any power under paragraph (3); and
  - (b) in the circumstances of the case it is desirable to grant a warrant under this paragraph,
- he may grant a warrant authorizing an inspector at any time to enter or board any land, motor vehicle, ship or aircraft specified in the warrant and there exercise any other powers under paragraph (3), and in doing so to use such reasonable force as may be necessary.
- (5) A warrant shall continue in force until -
- (a) the purposes for which the warrant is granted have been fulfilled; or
  - (b) the expiry of the period of one month following its grant,
- whichever event occurs first.
- (6) If an inspector enters any land, motor vehicle, ship or aircraft in the exercise of his powers under this Article, and it is for the time being unoccupied or unmanned, he shall leave it secured as effectually as he found it.
- (7) If an inspector has exercised any powers under this Article in respect of any land, motor vehicle, ship or aircraft, and the owner, occupier, driver, master, commander, or person in charge (as the case may be) asks him to do so, the inspector shall inform him as soon as reasonably practicable and in any event within 21 days of -
- (a) the powers he has so exercised; and
  - (b) everything he has taken or removed in the course of exercising those powers.
- (8) Any person who without reasonable excuse -
- (a) intentionally obstructs an inspector who is exercising or seeking to exercise any power under this Article; or
  - (b) intentionally obstructs any person who is lawfully accompanying an inspector, or performing any function under his supervision, under Article 84,
- shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or to a fine, or both.