

# **CIRCULAR ECONOMY BILL 2021**

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## **PART 1 – PRELIMINARY AND GENERAL**

### **HEAD 1 - Short title and commencement**

1) This Act may be cited as the Circular Economy Act 2021.

(2) The Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and provisions.

#### **Explanatory Note:**

Standard Provision

## **HEAD 2 - Definitions**

In this Act-

“Agency” means the Environmental Protection Agency;

“Circular economy” means an economic model, and the policies and practices which give effect to that model, in which resources are kept in use for as long as possible, the maximum value is extracted from those resources whilst in use, and products and materials are recovered and regenerated at the end of life;

“Circular economy fund” has the meaning assigned to it in Head 4;

“Circular economy strategy” has the meaning assigned to it in Head 3;

“National food waste prevention roadmap” has the meaning assigned to it in Head 7;

“prescribed” means prescribed by regulations made under this Act.

### **Explanatory Note:**

To provide for necessary definitions for the Circular Economy Act.

## **PART 2 – THE CIRCULAR ECONOMY**

### **HEAD 3 - Preparation by Minister of Circular Economy Strategy**

Section to provide that:

- (1) Subject to subsections (2) and (3), the Minister shall from time to time prepare and publish a Strategy (in this section referred to as the “circular economy strategy”) containing information setting out the policy objectives and priorities of the Government in relation to the circular economy.
- (2) The Minister shall ensure that the first circular economy strategy published in accordance with this Act is prepared and published not later than 6 months after the commencement of this section and relates to a period of not less than 3 years commencing on the date of the first publication of the statement.
- (3) The Minister shall, in preparing the circular economy policy strategy, take into account the following:
  - (a) the Waste Action Plan for a Circular Economy;
  - (b) the Climate Action Plan;
  - (c) the Programme for Government;
  - (d) the National Development Plan;
  - (e) the National Planning Framework
  - (f) the National Marine Planning Framework
  - (g) relevant EU directives
  - (h) national policies in relation to the bioeconomy.

#### **Explanatory Note:**

This Head will place the Circular Economy Strategy on a statutory footing, making the ongoing development of circular economy policy a legal requirement upon Government. The Circular Economy Strategy will set out policy objectives of the Government in relation to the circular economy and its development will be informed by a number of listed Government policies (NDP, NPF, CAP etc.).

#### HEAD 4 – Establishment of Circular Economy Fund

Section to provide that:

(1) There shall stand established, on the on the commencement of this section, a fund which shall be known, and is in this Act referred to, as the” Circular Economy Fund” .

(2) Subject to *subsection (3)*, the Minister shall manage and control the Circular Economy Fund.

(3) The Minister may by regulations delegate the management and control of all or part of the Circular Economy Fund and any other functions under this section related to such management and control to a specified person and functions so delegated shall, accordingly, be performable by that person.

(4) The Circular Economy Fund shall consist of such accounts as the Minister may determine.

(5) The said accounts shall be in such form and be prepared in such manner as the Minister may determine.

(6) As soon as may be after the end of each financial year, the Minister shall submit the accounts of the Circular Economy Fund to the Comptroller and Auditor General for audit and the Minister shall cause a copy of an abstract of the accounts as so audited together with a copy of the report of the Comptroller and Auditor General thereon to be laid before each House of the Oireachtas.

(7) Subject to, and in accordance with, regulations under Head 6, Head 15 and section 73 of the Waste Management Act there shall be paid into the Circular Economy Fund the amounts specified in those regulations of financial resources or levy collected or recovered thereunder.

(8) The Minister may, out of moneys provided by the Oireachtas, pay into the Circular Economy Fund in any financial year, such an amount as he or she determines, with the consent of the Minister for Finance, in relation to that year.

(9) Without prejudice to *subsection (12)* , the Minister may from time to time pay out of the Circular Economy Fund such amounts of moneys as he or she considers appropriate for any or all of the following purposes, namely —

( a ) to assist, support or promote any programmes or schemes established for the prevention or reduction of waste in the State or the establishment of such programmes or schemes,

( b ) to assist the establishment, equipping and, where appropriate, the operation of waste re-use and recycling activities generally, or recovery activities in respect of any specified class of waste,

( c ) to assist, support or promote research and development with respect to any aspect of waste management,

( d ) to assist, support or promote the production, distribution or sale of products of a particular class, being products which possess characteristics (whether characteristics of an

inherent nature or related to the process by which they are manufactured) likely to render them less harmful to the environment than other products falling within the same class,

( e ) to assist, support or promote the development of initiatives by producers to prevent or reduce waste arising from activities carried on by them,

( f ) to assist generally the implementation of waste management plans (within the meaning of *Part II* of the Waste Management Act 1996 ) and the hazardous waste management plan,

( g ) to facilitate or assist the enforcement of the provisions of any enactment (including this Act) relating to waste management or the prevention of litter or otherwise relating to the protection of the environment,

( h ) to facilitate or assist projects, commonly known as partnership projects, that involve local authorities and the purpose of which is to improve the quality of the environment in so far as it affects a particular local community or communities,

( i ) to promote awareness of the need generally to protect the environment and, in particular, to assist, support or promote national and regional campaigns the objectives of which are to foster such awareness,

( j ) to promote or support education and training that would facilitate the achievement of the objectives of campaigns as aforesaid,

( k ) to assist the provision of the necessary resources (whether human or material) to enable such education and training to be carried out or facilitate the improvement of any such resources that exist for the time being,

( l ) to facilitate, assist, support or promote initiatives undertaken by international organisations or other persons outside the State in respect of the protection of the environment or sustainable development or both,

( m ) to assist, support or promote initiatives undertaken by community groups, environmental groups or other like persons with respect to the protection of any aspect of the environment, and

( n ) such other purposes with respect to the protection of the environment as may be prescribed.

(10) Any payment of moneys out of the Circular Economy Fund under any of *paragraphs (a) to (n) of subsection (9)* shall be made to the person or persons who carry on or, as the case may be, carried on the activity the principal purpose of which is, in the opinion of the Minister, the particular purpose in respect of which that payment is made.

(11) Without prejudice to the preceding provisions of this section, no payment shall be made out of the Circular Economy Fund in respect of such activity as may be prescribed if the activity is carried on otherwise than in accordance with such guidelines as may be issued by the Minister for the purpose and the Minister shall cause copies of such guidelines to be laid before each House of the Oireachtas within 3 months after they have been issued.

(12) ( a ) The Minister may from time to time pay out of the Circular Economy Fund such an amount of moneys as he or she determines for the purposes of defraying, in whole or in part, the expenses incurred, on or after the establishment of the Circular Economy Fund, by him or her, or by any person to whom functions are delegated under *subsection (3)* , in connection with the administration of the Fund.

( b ) Any amount of moneys paid out of the Circular Economy Fund under *paragraph (a)* shall be paid into, or disposed of for the benefit of, the Exchequer in such manner as the Minister, with the consent of the Minister for Finance, may determine.

(13) The Minister may establish a committee to advise the Minister with respect to the performance by him or her of the functions under *subsection (9) or (11)* and a committee so established may advise the Minister accordingly.

**Explanatory Note:**

Recognising the role played by the Environment Fund since its inception and the need to more closely align its objectives with the promotion of the Circular Economy, this Head provides for the establishment of the Circular Economy Fund to replace the Environment Fund. Terms and scope of the Fund are unchanged and section 74 of the Waste Management Act, which provides for the establishment of the Environment Fund, is to be repealed. Saving provisions will be required to allow for management of funds already in the Environment Fund under the Circular Economy Fund.



## HEAD 5 - Circular Economy Programme

Section to provide that:

(1) The Agency shall establish a Circular Economy Programme setting out the measures to give effect to the Circular Economy Strategy. The programme, which shall include the programme set out under section 27B of the Waste Management Act, shall be integrated into the waste management plans required under *section 28 of the Waste Management Act*. If any such programme is integrated into the waste management plan, the circular economy objectives and measures shall be clearly identified.

(2) When establishing the programme, the Agency shall, where relevant, describe the contribution of instruments and measures towards the objectives of the Circular Economy Strategy provided for under Head 3, and shall evaluate the usefulness of the examples of measures indicated or other appropriate measures.

(3) The Agency shall from time to time as it thinks appropriate, and at least once in each period of 6 years after the date of making of a circular economy programme, evaluate the programme and make such revisions to it as it thinks fit and references in this Act to such a programme shall, unless the context otherwise requires, be construed as including references to such a programme as so revised.

(4) Upon the establishment of a circular economy programme or of any revisions thereto, the Agency shall—

(a) cause to be published in at least one national newspaper a notice of that fact and of the means by which a copy of the programme, as made or revised, may be obtained by members of the public at a cost not exceeding the reasonable cost of making a copy, and

(b) furnish a copy of the programme, as made or revised, to the Minister and each local authority, and any other public authority which in the opinion of the Agency has an interest in the programme.

(5) In this section, 'revise', in relation to the circular economy programme, includes a review of the programme.

### Explanatory Note:

This Head provides for the preparation by the Environmental Protection Agency (EPA) of a Circular Economy Programme to give practical effect to policies and objectives set out in the Circular Economy Strategy. The EPA recently published a non-statutory Circular Economy Programme alongside the Government's draft Circular Economy Strategy. This head would impose a statutory obligation on the EPA to prepare a Circular Economy programme to sit under the Government strategy.

## **HEAD 6 - Environmental Levies and Prohibitions on Certain Products**

Section to provide that:

(1) The Minister may, with the consent of the Government, make regulations seeking to reduce the use of the following specified categories of single-use products where reusable alternatives exist.

- (a) Disposable hot beverage cups;
- (b) Disposable cold beverage cups;
- (c) Single-use disposable food containers;
- (d) Single-use food packaging;
- (E) plastic bags.

Such regulations will have the objective of reducing the harmful environmental impacts and material wastage associated with these categories of products.

(2) (a) Consistent with *subsection 1*, the Minister may make regulations providing that there shall be chargeable, leviable and payable a levy (which shall be known as an “environmental levy” and is in this section referred to as the “levy”) on those items identified in subsection 1, recognising that the scope of this levy may widen, with the consent of the Government.

(b) Consistent with *subsection 1*, the Minister may, with the consent of the Government, and with an appropriate lead-in time and in such circumstances where reusable alternatives are available, make regulations providing that the sale or use of certain single-use products identified in subsection 1 shall be prohibited in the State for environmental reasons.

(c) The levy shall apply in respect of the supply to customers, at the point of sale to them of the products subject to the levy.

(d) The exact specifications of the categories of single-use products referred to in *subsection 1(a)-(e)* will be specified in the regulations.

(3) The amount of the levy shall be specified in the regulations but shall be no more than €1 per item.

(4) The levy shall be payable by the person who carries on the business of selling goods or products in or at the sales outlet concerned or, if two or more persons each carry on such a business in or at the particular premises, whichever of them causes to be made the particular supply of product(s) concerned.

(5) Where any amount of levy becomes payable in accordance with regulations made under this section and is not paid, simple interest on the amount shall be paid by the person liable to pay the

levy and such interest shall be calculated from the date on which the levy became payable and at a rate of 0.0322 per cent for each day or part of a day during which the amount remains unpaid.

(6) Interest due in accordance with *subsection (4A)* shall be payable to the collection authority specified in the regulations under *subsection (2)* and the provisions of those regulations relating to the recovery of the levy shall apply to the interest as if it were levy.

(7) For the purposes of *subsection (5)*, levy includes any estimated amount which has been included in a notice served by a collection authority on the person liable to pay the levy concerned provided such estimated amount has, in accordance with regulations under *subsection (2)*, become due and payable to the collection authority.

(8) Interest paid in accordance with *subsection (5)* shall be treated as levy for the purposes of *paragraph (1)* of *subsection (6)* and *section (7)* Head 4 .

(9) Regulations under *subsection (2)(a)* shall provide for the following matters —

( a ) the specification of the person or persons to whom the levy shall be payable (who or each of whom is referred to in this section as a “ collection authority ’ ),

( b ) the conferral of powers on a collection authority with respect to the collection and recovery of the levy (and, for this purpose, the regulations may adapt, with or without modifications, the provisions of any enactment relating to the estimation, collection and recovery of, or the inspection of records or the furnishing of information in relation to, any tax charged or imposed by that enactment).

(10) Regulations under *subsection (2)(a)* may provide for all or any of the following matters —

( a ) specifying the times at which payment of the levy shall be made and the form of such payment,

( b ) requiring the notification to a collection authority by a person who carries on a business of the kind referred to in *subsection (4)* (being a business that involves the supply of one or more of the specified categories of single-use products to customers in the circumstances mentioned in *subsection (2) (a)* of that fact,

( c ) requiring specified records to be kept by a person referred to in *subsection (4)* in respect of matters connected with liability to pay levy and specifying the form of such records,

( d ) requiring the furnishing of such records and other specified information relating to liability as aforesaid at specified intervals to a collection authority and specifying the manner in which such records and information shall be so furnished,

( e ) providing for exemptions in specified circumstances from the liability to pay the levy,

( f ) enabling the payment of the levy by specified persons to be deferred in specified circumstances,

( g ) requiring specified records and accounts to be kept by collection authorities in respect of levy paid or payable to them,

( *h* ) enabling the refund of payments of levy to be made to specified persons in specified circumstances,

( *i* ) enabling a collection authority to enter into arrangements with one or more specified persons whereby that person or those persons, by means of a scheme carried out by the person or persons for the discharge of the liabilities of others participating in the scheme in respect of levy, collect amounts due in respect of levy and remit them to the collection authority in consideration of the payment of specified sums by the authority to that person or persons,

( *j* ) providing for the payment into the Circular Economy Fund by collection authorities of amounts received by them on account of levy (subject to the deduction from such amounts of any amounts specified as being capable of being deducted therefrom for the purpose of defraying expenses incurred by collection authorities in collecting or recovering the levy).

(11) A person who fails to —

( *a* ) pay levy which is due and payable by virtue of regulations under *subsection (2)(a)* , or

( *b* ) comply with a provision of regulations under that subsection, or

( *c* ) comply with any term or condition of a scheme referred to in *subsection (6)(i)* carried out by him or her or in which he or she has assented to participate (and which assent has not, by notice in writing given to the person carrying out the scheme before the failure occurs, been withdrawn),

shall be guilty of an offence.

(12) In proceedings for the recovery of levy or for an offence under *subsection (11)(a)* , it shall be presumed, until the contrary is proved, that the product or products in respect of which the levy concerned is alleged not to have been paid was or were a product or product within the meaning of this section.

(13) In proceedings for the recovery of levy or for an offence under *subsection (11)(a)* , it shall be presumed, until the contrary is proved, that the number of products supplied to customers in or at the premises concerned in the circumstances mentioned in *subsection (2)(c)* in a particular period was equal to the number of products acquired for the purposes of such supply in that period by the person who carried on, during that period, the business of selling goods or products in or at those premises or, if two or more persons each carried on, during that period, such a business in or at those premises, whichever of them caused to be made the particular supply of product or products concerned.

(14) ( *a* ) The Minister may make a provisional order extending the application of this section to such other types of article as he or she considers appropriate by —

(i) substituting for references to the categories of single-use products referred to in subsection 1(a)-(d) in this section references to articles specified in the order (and the articles so specified shall include plastic bags), and

(ii) making such consequential amendments of this section (other than this subsection and *subsection (15)* ) as he or she considers necessary or appropriate, and such amendments may include a provision —

(l) specifying that *subsection (3)* shall, in relation to a particular article or articles referred to in the order, apply as if, for the amount standing specified in that subsection for the time being, there were substituted an amount specified in the order [(in *clause (II)* of this subparagraph referred to as the “ altered amount ” )],

( b ) The Minister may make a provisional order amending or revoking a provisional order under this subsection (including a provisional order under this paragraph).

(15) A provisional order under *subsection (14)* shall not have effect unless or until it is confirmed by an Act of the Oireachtas.

**Explanatory Note:**

This Head will provide power for the Minister to introduce levies for certain items such as disposable cups, in support of the Circular Economy Fund and in line with the policy objectives set out in the Waste Action Plan for a Circular Economy. It will also provide for the banning of certain items for environmental reasons. Section 72 of the Waste Management Act is to be repealed.

## **HEAD 7 - National Food Loss Prevention Roadmap**

Section to provide that:

(1) Subject to subsection (2), the Minister shall from time to time prepare and publish National Food Waste Prevention Roadmap (in this section referred to as the “Food Loss Prevention Roadmap”) containing information setting out the policy objectives and priorities of the Government in relation to food waste prevention.

(2) The Minister shall ensure that the first Food Waste Prevention Roadmap published in accordance with this Act is prepared and published not later than 6 months after the commencement of this section.

### **Explanatory Note:**

This Head will place the National Food Loss Prevention Roadmap on a statutory footing, making the ongoing development of policy in relation to food loss prevention a legal requirement upon Government.

## **PART 3 – AMENDMENTS TO THE WASTE MANAGEMENT ACT**

### **HEAD 8 - Amendment of Section 10 of the Waste Management Act**

This section will extend the application of Fixed Penalty Notices to additional waste-related offences.

#### **Explanatory Note:**

This Section will update the range of Fixed Penalty Notices (FPNs) applicable in the management of waste collection permits. An additional Head may be required to adjust FPNs outside of the Waste Management Act structure e.g. in respect of the Litter Pollution Act.

## **HEAD 9 - Amendment of Section 10A of the Waste Management Act**

This Head will update the range of Fixed Penalty Notices related to producer responsibility in the management of waste tyres.

### **Explanatory Note:**

The Waste Management (Tyres and Waste Tyres) Regulations (SI 400 of 2017) established an Extended Producer Responsibility scheme to ensure the environmentally sound management of waste tyres. This Head provides for the introduction of FPNs to apply to offences under the Regulations to enable swift enforcement responses to breaches and keep small scale infringements away from the courts.



## **HEAD 10 – Insertion of New Section 14A Operation of CCTV for the purposes of Waste Management Act**

Provide that the Waste Management Act is amended by inserting the following section after section 14:

- 14A (1) A local authority may propose the installation and subsequent operation of closed-circuit television (CCTV) under this Act, where the (sole or) primary operational purpose of the CCTV shall be the deterrence of environmental pollution and/or the detection and enforcement of offences against this Act. Such a proposal shall at least include:
- (a) the location, precise number, technical specification and extent of coverage of the proposed device(s),
  - (b) a site management plan, setting out proposed arrangements for monitoring, recording and disclosing the images produced and for preserving the recordings, within the meanings assigned under the Data Protection Act 2018,
  - (c) a Data Protection Impact Assessment carried out in accordance with section 84 of the Data Protection Act 2018.
- (2) A proposal under subsection (1) must be considered by an authorised officer, as established under section 14, within the local authority concerned. In approving or rejecting such a proposal, the authorised officer shall consider:
- (a) If the application/installation is proportionate to the enforcement and deterrence needs identified at the proposed site.
  - (b) If the application is accompanied by a suitable Data Protection Impact Assessment, as defined by the Data Protection Act 2018.
  - (c) If the application and management plan is compliant with PART 5 of the Data Protection Act 2018 in respect of the processing of Personal Data for Law Enforcement Purposes
  - (d) That proposed access to footage is limited to persons of good character in direct employment with the local authorities concerned or, where relevant, An Garda Síochána.

(3) An approved CCTV application shall at all times comply with any technical specifications that may be issued and be operated in accordance with any code of practice for such systems which may be so issued.

(4) Where an application is approved, an authorised officer shall, at intervals, and not less than every five years, perform a full review of the management plan and again consider the applicability of subsection (2)(a) and the compliance of the installation with the terms of part 5 of the Data Protection Act 2018.

(5) The authorised officer may at any time recommend the cessation of the operation, where criteria under subsections (2) and (3) are no longer met.

(6) For the purposes of subsections (1)(c) and (2)(b), template Data Protection Impact Assessment documentation shall be developed by the local authorities, to ensure that a full consideration of data impacts is completed.

**Explanatory Note:**

This Waste Action Plan contains a commitment to ensuring that all waste enforcement legislation will be “data proofed” to provide for all available and emerging technologies to be fully utilised in a manner which is GDPR compliant. In September 2020, the Data Protection Commissioner also raised specific concerns on the use of CCTV by local authorities and queried the empowerments under the Waste Management Act and Litter Pollution Act. This Head aims to resolve the issue of the use of CCTV under the Waste Management Act and to build in appropriate Data Protection Act compliance into the procedure of procuring and managing CCTV for such purposes.

## **HEAD 11 - Insertion of new section 14B in the Waste Management Act – Use of Mobile Visual Recording Devices by Authorised Officers for Enforcement Purposes**

Provide that the Waste Management Act is amended by inserting the following section after section 14:

- 14B (1) An authorised officer, within the meaning of Section 14 of this Act, in the course of his or her duties may, in accordance with this Section operate a recording device in a public place or any other place for the primary purpose of -
- (a) preventing, investigating, detecting or prosecuting offences under this Act and
  - (b) ensuring his or her security in the context of such work.
- (2) Any use of a recording device under subsection (1) must be necessary and proportionate in relation to the risks identified in sub paragraphs 1(a) and 1(b).
- (3) In order to support correct and time- limited use of such devices, the local authority shall:
- (a) develop template Data Protection Impact Assessment documentation for the technologies utilised, in order to ensure that a timely consideration of data impacts is completed in accordance with section 84 of the Data Protection Act 2018, and
  - (b) develop a template operating manual for the technologies utilised, so that arrangements for monitoring, recording and disclosing the images produced and for preserving the recordings, within the meanings assigned under the Data Protection Act 2018, are clear in advance of utilisation and complied with during and on completion of any specific work programme.

### **Explanatory Note:**

The Waste Action Plan contains a commitment to ensuring that all waste enforcement legislation will be “data proofed” to provide for all available and emerging technologies to be fully utilised in a manner which is GDPR compliant.

This Head aims to provide a wider underpinning for a range of more mobile technologies (aside from fixed CCTV), so encompassing drones, body cams, dash cams etc. It is also considered to be appropriate to link in Data Protection Act considerations into the procedure of utilising such technology.

## **HEAD 12 - Amendment of Section 22 of the Waste Management Act**

Provide that section 22 the Waste Management Act is amended:

(a) by replacing subsection (6)(b)(ix) with the following:

‘ (ix) appropriate qualitative or quantitative indicators and targets, including on the quantity of generated waste and its treatment, and on municipal waste that is disposed of or subject to energy recovery and on the use of reused and repaired products and materials.

and

(b) by the insertion in subsection (9) of the following after the word ‘matter’:

‘, including relevant targets, ‘.

### **Explanatory Note:**

The Waste Action Plan for a Circular Economy provides, inter alia, for the inclusion, on a non-statutory basis, of targets related to reuse and repair in Waste Management Plans. In order to ensure ongoing alignment of Circular Economy Policy at national and local levels, this head places that requirement for inclusion of targets on a statutory basis and provides for the Minister to specify the exact targets to be included if deemed appropriate.

## **HEAD 13 - Amendment of Section 34C of the Waste Management Act**

Provide that Section 34C is amended by inserting the following subsections after subsection (8):

“(9) Each local authority or, as the case may be, a nominated authority may utilise the register created in subsection (7), and specifically, postcode information mentioned in subsection 3 (a), to create a register and shall maintain a register of postcodes without household waste collection service for the purpose of establishing compliance by original producers and other waste holders with section 32(1A) and any regulations or bye-laws made under this Act relating to household waste.

(10) In the creation of registers under subsection (7) and subsection (9), the local authority or nominated authority concerned shall consult with the organisations Data Protection Officer and complete a Data Protection Impact Assessment, in accordance with section 84 of the Data Protection Act 2018.”.

### **Explanatory Note:**

Article 34C already provides for the creation of registers by the local authorities of premises with waste collection services. This facilitates the monitoring of services provided and that waste holder and service provider are complying with respective obligations. . The intention under this Head is to provide, that a register of premises without a waste collection service, or without aspects of service, may also be developed. This will allow local authorities to direct efforts to filling in service gaps in a more focused manner.

The amendments also include a requirement for registers and information created to be managed in compliance with GDPR requirements.

## HEAD 14 - Amendment of Section 34 of the Waste Management Act

Provide that Section 34 of the Waste Management Act is amended:

1. In subsection (1A) by the insertion of a definition for “commercial waste”;
2. In subsection (3) by the insertion of “or deem the application to be abandoned” after “refuse to grant the permit”;
3. In subsection (7)(b) the insertion of “or commercial waste” after “household” in each instance that it occurs;
4. In subsection (7)(c)(i) by the insertion of “or shall” after “may”;
5. In subsection (7)(c)(iv) by the insertion of “or prohibited from being delivered” after “required to be delivered”;
6. In subsection (7)(c)(viii) by the insertion of “and the format for such records,” after “as may be prescribed,”;
7. In subsection (7)(c)(xxii), by the substitution of “incorrect segregation of waste in receptacles for segregated waste” for “incorrect segregation of household waste from other waste in receptacles for segregated household waste”;
8. In subsection (7)(c), by the insertion of the following after paragraph (xxii):
  - “(xxiii) the achievement of targets in relation to recycling rates as may be prescribed.
  
  - (xxiv) effecting and maintaining a record, document, and data management system of a standard or to criteria that may be prescribed, and which may include an electronic record, document, and data management system.
  
  - (xxv) the requirement to collect waste where a waste service is not currently provided.
  
  - (xxvi) the requirement to effect and maintain a customer communication and awareness programme.”.
9. By replacing subsections (7)(e) – (g) with the following:
  - “(e) The Minister, where he or she considers that it is necessary for waste management in accordance with the principle that the costs of that management shall be borne by the original waste producer or by the current or previous waste holders, shall make regulations prescribing a requirement for attachment of a condition to a waste collection permit that a permit holder shall charge fees for the collection or transport of household or commercial waste.
  
  - (f) Regulations under paragraph (e) shall provide for the means by which fees for collection or transport of household or commercial waste shall be calculated by a permit holder and shall require a permit holder to —
    - (i) charge a fee for each kilogramme of household or commercial waste collected or transported which fee shall only be calculated by reference to weight of household or commercial waste collected and transported, and for the avoidance of doubt, methods of calculation of a fee based on pay by lift or throw, tags or a flat-rate shall not be considered to be calculated by reference to weight of waste collected,

(ii) charge a service fee, as considered appropriate by the permit holder (including a nil fee), in addition to the fee referred to in subparagraph (i) ,

(iii) demonstrate by prescribed means if the fees charged for collection or transport of waste incentivise household or commercial waste prevention and household waste segregation, and

(iv) furnish to an authorised person, information in a prescribed form, regarding the billing system used by the permit holder in respect of fees referred to under subparagraph (i) or (ii).

(g) (i) For the purposes of paragraph (f)(i) , the Minister shall prescribe the minimum amount of the fee required to be charged for each kilogramme of household or commercial waste collected or transported and that minimum fee shall be based on the approximate cost per kilogramme of managing segregated household or commercial waste, including its collection from the person who presented that waste for collection, its delivery to an authorised facility by a permit holder and its final treatment, which in any event shall not exceed an amount of 30 cent per kilogramme of household or commercial waste.

(ii) The Minister shall review the costs of managing household waste, on which the minimum charges prescribed under subparagraph (i) are based, at least every 12 months and may amend the amount of the fee prescribed under subparagraph (i) .

(iii) The Minister following a review under subparagraph (ii) , once and only once in each financial year beginning in the financial year that he or she first prescribes under subparagraph (i) , may substitute for the amount of the fee prescribed under subparagraph (i) , an amount which does not exceed the amount so prescribed by 5 cent.”.

10. In subsection (8)(b) by the insertion of “or (iii) to deem an application as being abandoned,” after “refuse to grant such a permit”.

11. In subsection (9), by the substitution of “28 days” for “one month”.

12. By inserting the following after subsection (10A):

“ (10B) Any person or entity, carrying out any waste collection activity for, or on behalf of, the holder of the permit, shall be an authorised waste collector.”.

13. In subsection (11)(b)(x) by the insertion of

“and requiring that a permit holder defray, or contribute towards, any costs incurred by the local authority/nominated authority concerned in the ongoing maintenance of the waste collection permitting system” after “application”.

#### **Explanatory Note:**

This head provides for a number of amendments to Section 34 of the Waste Management Act which sets out the process of waste collection permitting, which is delivered as a shared service by the National Waste Collection Permit Office on behalf of all local authorities.

The amendments provide for, inter alia:

- the application of incentivised pricing to commercial waste collection on the same basis as the existing provisions support incentivised pricing and the segregation of household waste into separate streams categories with different per kilogram charges applicable;
- amendments to the administration of the collection permit application process and;
- powers for local authorities (and ultimately the NWCPO) to set targets for the achievement of recycling performance rates, requirements for maintaining records by permit holders, and requirements in relation to service provision.



## HEAD 15 - Insertion of new Section 73A into the Waste Management Act – Waste Recovery Levy

Provide that the Waste Management Act is amended by inserting the following section after section 73:

73A (1) The Minister may, after consultation with such other Minister of the Government, if any, as the Minister considers appropriate, make regulations providing that there shall be chargeable, leviable and payable a levy (which shall be known as a 'recovery levy' and is in this section referred to as the 'levy') in respect of —

( a ) the carrying on of a specified class or classes of waste recovery activity (being an activity referred to in paragraph [X or Y] of the Fourth Schedule ), or

( b ) the recovery by means of a waste recovery activity referred to in paragraph X or Y of the Fourth Schedule , or a specified class or classes of such activity, of a specified class or classes of waste, or

( c ) subject to subsection (2) , both the carrying on of an activity referred to in paragraph (a) and an activity referred to in paragraph (b) or

(d) the export of waste for recovery by means of backfilling or incineration

(2) Regulations under subsection (1)(c) shall not result in levy being payable twice in respect of a particular recovery of a particular quantity of waste.

(3) The amount of the levy shall be specified in the regulations under subsection (1) but shall not exceed an amount of €120 for each tonne of waste recovered or sent for recovery.

(4) The Minister may, subject to subsections (3) and (5) , amend the amount of the levy standing specified in regulations under subsection (1) for the purposes of promoting —

( a ) the prevention of the generation of waste, and

( b ) the reduction of the quantity of waste recovered / sent for recovery by means of an activity referred to in subsection (1) ,

once and once only in each financial year beginning with the financial year in which the Circular Economy Act is passed.

(5) The Minister shall, when amending the amount of levy standing specified in regulations under subsection (1) , substitute an amount that does not exceed the amount so standing specified by €50.

(6) Subject to subsection (3), regulations under subsection (1) may specify, as respects the amount of the levy payable under them, different such amounts by reference to different activities referred to in any of paragraphs (a) , (b) and (c) of subsection (1) in respect of which the levy is so payable.

(7) The levy shall be payable by:

- (a) the person who carries on the waste recovery activity concerned or
- (b) the person who ships the waste for recovery.

(8) Where any amount of levy becomes payable in accordance with regulations made under this section and is not paid, simple interest on the amount shall be paid by the person liable to pay the levy and such interest shall be calculated from the date on which the levy became payable and at a rate of 0.0322 per cent for each day or part of a day during which the amount remains unpaid.

(9) Interest due in accordance with subsection (8) shall be payable to the Circular Economy Fund in the manner specified in the regulations under subsection (1) and the provisions of those regulations relating to the recovery of the levy shall apply to the interest as if it were levy.

(10) Interest paid in accordance with subsection (8) shall be treated as levy for the purposes of —

- ( a ) subsection (13) , in relation to provision under that subsection for levy by virtue of paragraph (l) of section 72(6) , and
- ( b ) section 74(7).

(11) Regulations under subsection (1) shall —

( a ) provide that the levy (not being levy chargeable by virtue of those regulations on the local authority) shall be payable to the local authority in whose functional area the waste recovery activity concerned is carried on, or, where the waste recovery activity is to take place outside of the State , the levy shall be payable to Dublin City Council.

( b ) confer on that local authority powers with respect to the collection and recovery of the levy (and, for this purpose, the regulations may adapt, with or without modifications, the provisions of any enactment relating to the estimation, collection and recovery of, or the inspection of records or the furnishing of information in relation to, any tax charged or imposed by that enactment).

(12) ( a ) Regulations under subsection (1) may, for the purpose mentioned in paragraph (b) , restrict the extent to which a local authority may exercise a power to make a charge for the provision by it of any service in circumstances where, in the opinion of the Minister, such exercise is so as to enable the local authority to recoup amounts paid by it by way of levy.

( b ) The purpose mentioned in paragraph (a) is ensuring that the exercise of the power referred to in that paragraph does not result in one or more categories of person paying a disproportionate amount of the total amount of charges a local

authority could reasonably be expected to make in respect of the provision of services in the circumstances concerned.

( c ) For so long as regulations under subsection (1) restrict the exercise of the power referred to in paragraph (a) , the enactment that confers that power shall be construed as if there were contained in it a provision the effect of which is to restrict the exercise of the power in the manner provided by the said regulations.

(13) Regulations under subsection (1) may provide, in relation to levy under this section, for all the matters which regulations under section 72 may, by virtue of paragraphs (a) , (c) , (d) and (g) to (l) of subsection (11) of that section, provide in relation to levy under that section and those paragraphs shall, accordingly, apply for the purposes of this section with any necessary modifications (including such modifications as will enable like provision with respect to the payment into the Circular Economy Fund of amounts received by a local authority on account of levy under this section to be made with respect to levy under this section chargeable on the local authority itself).

(14) A person who fails to —

( a ) pay levy which is due and payable by virtue of regulations under subsection (1) ,  
or

( b ) comply with a provision of regulations under that subsection,

shall be guilty of an offence.

#### **Explanatory Note:**

This Head provides for the insertion of a new Section 73A into the Waste Management Act providing powers for the Minister to impose a levy on waste recovery to apply on a per tonne basis to:

- Waste subject to recovery in Ireland and
- Waste exports from Ireland for recovery elsewhere in the EU and outside of the EU.

This is listed as a deliverable in the Waste Action Plan for a Circular Economy, which proposed a Waste Recovery Levy of €5 applying to recovery operations at Municipal Solid Waste (MSW) Landfills, Waste to Energy Plants and Co-Incineration Plants and the export of MSW.

**HEAD 16 - Insertion of new Section in to the Waste Management Act – Powers to make Regulations in respect of End of Waste and By-products processes**

Provide:

Provide that the Waste Management Act is amended by inserting the following section:

(1) The Minister may make regulations providing for the payment to the Agency, or such other public authority or other body as may be specified, of fees in relation to –

- (a) An application for a determination under Regulation 27 of the European Union (Waste Directive) Regulations 2011-2020.
- (b) An application for a decision under Regulation 28 of the European Union (Waste Directive) Regulations 2011-2020.
- (c) Matters ancillary to the processing of such applications.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision for all or any of the following:

- (a) The format and content of application and decision or determination, including different formats and contents in different circumstances or classes of circumstances or for different cases or classes of cases,
- (b) The time within which an application for a decision or determination shall be made relative to the generation of the material the subject of the application,
- (c) Specifying the submissions, plans, documents and other information and particulars to be forwarded to the Agency or other specified public authority or other body as may be prescribed within such period as may be specified,
- (d) Requiring applicants or other persons concerned to furnish to the Agency or other public authority or other body, as the case may be, within such period as may be specified, such additional information or particulars relating to applications as the Agency or other public authority or other body, as the case may be, may request,
- (e) The processing of applications by local authorities or other public authorities or bodies,
- (f) Requiring an applicant to defray or contribute towards the cost of any investigation carried out, caused to be carried out, or arranged for, by the Agency or other public authority or body, as the case may be, in relation to an application,
- (g) The person or persons who may be entitled to make an application,
- (h) The storage, movement, disposal, or other handling or processing of any material the subject of an application either before or after a decision or determination on the application

- (i) The nature of materials, including restrictions on particular materials, in respect of which an application may be made,
- (j) The circumstances in which the Agency or other public authority or body, as the case may be, may reject or refuse to consider an application,
- (k) The circumstances in which the Agency or other public authority or body, as the case may be, may waive the requirement for an application
- (l) The attachment by the Agency, or other public authority or body as the case may be, of conditions to a decision or determination,
- (m) The creation and operation of a register or registers by the Agency, or other public authority or body, in respect of such materials or classes of materials as may be prescribed, and the conditions for entry onto the register or registers,
- (n) Such incidental, supplementary, consequential or transitional provisions as appear to the Minister to be necessary for the purposes or in consequence of, or to give full effect to, the regulations.

(3) Regulations made under subsection (1) may provide for different fees or for exemption from the payment of fees or for the waiver, remission, or refund (in whole or in part) of fees in different circumstances or classes of circumstances or for different cases or classes of cases and for the manner in which fees are to be disposed of.

(4) Where under regulations made under subsection (1) a fee is payable in respect of any application or matter, the application or matter shall be invalid and shall not be decided or otherwise dealt with, as may be appropriate, by the Agency or such other public authority or other body as may be concerned unless the Agency or other public authority or other body, as the case may be, is in receipt of the fee.

(5) A person who, in relation to an application for a determination under Regulation 27 of the European Union (Waste Directive) Regulations 2011-2020 or a decision under Regulation 28 of the European Union (Waste Directive) Regulations 2011-2020, or in relation to any other matter the subject of regulations made under this Section, makes a statement in writing which to his knowledge is false or misleading in a material respect, shall be guilty of an offence.

(6) A defrayment or contribution the payment of which is required under regulations made under this section shall be payable on demand and, in default of being so paid, shall be recoverable as a simple contract debt in any court of competent jurisdiction.

### **Explanatory Note**

Under certain circumstances substances may be considered to be a by-product rather than a waste or, where material is recovered or recycled from waste, to no longer be a waste (have reached end

of waste status). These processes have considerable potential for furthering circular economy objectives by extending the productive life of materials and supporting the use of secondary materials over virgin materials. The EPA is the competent authority for making determination on by-product or end of waste notifications and the processes for end of waste and by-product determination in Ireland is the European Communities (Waste Directive) Regulations 2011 (S.I. 126 of 2011). This head is intended to provide powers for the Minister to make regulations setting out more detailed requirements for the notification and determination processes, including through the introduction of a fee.

## **HEAD 17 - Repeals**

Provide for repeal of sections 72 and 74 of the Waste Management Act and associated regulations.

## Part 4 – Amendment to the Litter Pollution Act 1997 – Operation of CCTV

### HEAD 18 - Insertion of new section 23A into the Litter Pollution Act 1997

Provide that the Litter Pollution Act is amended by inserting the following section after section 23:

- 23A (1) A local authority or litter warden may propose the installation and subsequent operation of closed-circuit television (CCTV) under this Act, where the (sole or) primary operational purpose of the CCTV shall be the deterrence of environmental pollution and/or the detection and enforcement of offences against this Act. Such a proposal shall at least include:
- (a) the location, precise number, technical specification and extent of coverage of the proposed device(s),
  - (b) a site management plan, setting out proposed arrangements for monitoring, recording and disclosing the images produced and for preserving the recordings, within the meanings assigned under the Data Protection Act 2018,
  - (c) a Data Protection Impact Assessment carried out in accordance with section 84 of the Data Protection Act 2018,
- (2) A proposal under subsection (1) must be considered by an authorised officer, as established under section 14 of the Waste Management Act, within the local authority concerned. In approving or rejecting such a proposal, the authorised officer shall consider:
- (a) If the application/installation is proportionate to the enforcement and deterrence needs identified at the proposed site,
  - (b) If the application is accompanied by a suitable Data Protection Impact Assessment, as defined by the Data Protection Act 2018,
  - (c) If the application and management plan is compliant with PART 5 of the Data Protection Act 2018 in respect of the processing of Personal Data for Law Enforcement Purposes,
  - (d) That proposed access to footage is limited to persons of good character in direct employment with the local authorities concerned or, where relevant, An Garda Síochána.
- (3) An approved CCTV application shall at all times comply with any technical specifications that may be issued and be operated in accordance with any code of practice for such systems which may be so issued.



- (4) Where an application is approved, an authorised officer shall, at intervals, and not less than every five years, perform a full review of the management plan and again consider the applicability of subsection (2)(a) and the compliance of the installation with the terms of part 5 of the Data Protection Act 2018.
- (5) The authorised officer may at any time recommend the cessation of the operation, where criteria under subsection (2) and subsection (3) are no longer met.
- (6) For the purposes of subsections 1 (c) and 2(b), template Data Protection Impact Assessment documentation shall be developed by the local authorities, to ensure that a full consideration of data impacts is completed.

**Explanatory Note:**

This Waste Action Plan contains a commitment to ensuring that all waste enforcement legislation will be “data proofed” to provide for all available and emerging technologies to be fully utilised in a manner which is GDPR compliant. In September 2020, the Data Protection Commissioner raised specific concerns on the use of CCTV by local authorities and queried the empowerments under the Waste Management Act and Litter Pollution Act. This Head aims to resolve the issue of CCTV under the Litter Pollution Act and to build in appropriate Data Protection Act compliance into the procedure of procuring and managing CCTV for such purposes.

## **PART 5 – NATURAL RESOURCES**

### **HEAD 19 - Amendment to Section 8 of the Minerals Development Act 1940 to 1999**

Provide that Section 8 of the Minerals Development Acts 1940 to 1999 is amended by the insertion of the following after subsection (1):

(1A) Any prospecting licence granted by the Minister under this section after the commencement of the *Circular Economy Act 2021* shall not permit prospecting for coal, lignite or oil shale.

#### **Explanatory Note:**

This provision is intended to provide that future prospecting licences issued under the existing/operational legislation do not provide for the prospecting for coal, lignite or oil shales. A person cannot apply for a state mining lease, licence or permission to extract a mineral unless they hold a prospecting licence for that specified mineral in the area specified on the prospecting licence. This rule was introduced on an administrative basis in 2006 as a result of the “Bula case”.

## **HEAD 20 - Amendment to Section 17 of the Minerals Development Act 2017**

Provide that Section 17 of the Minerals Development Act 2017 is amended by the insertion of the following after subsection (3):

(4) Any prospecting licence granted by the Minister under this section after the commencement of the *Circular Economy Act 2021*, shall not permit prospecting for coal, lignite or oil shale.

### **Explanatory Note:**

This provision is intended to provide that future prospecting licences issued under the future Minerals Development Act 2017 (enacted, but not yet commenced) shall not provide for the prospecting for coal, lignite or oil shales.

## **HEAD 21 - Amendment to Section 65 of the Minerals Development Act 2017**

Provide that Section 65 of the Minerals Development Act 2017 is amended by the insertion of the following after “specified minerals”:

“not including coal, lignite and oil shales”.

### **Explanatory Note:**

This provision is intended to provide that future licences issued under the 2017 Act do not provide for the mining of coal, lignite or oil shales.

## **HEAD 22 - Amendment to Section 66 of the Minerals Development Act 2017**

Provide that Section 66 of the Minerals Development Act 2017 is amended by the insertion of the following after “additional minerals”:

“with the exception of coal, lignite and oil shales”.

### **Explanatory Note:**

This provision is intended to provide that future licences renewed under the 2017 Act do not provide for the mining of coal, lignite or oil shales.