

STATES OF JERSEY



DRAFT WASTE MANAGEMENT (AMENDMENT No. 2) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 30th May 2017
by the Minister for the Environment

STATES GREFFE



Jersey

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REPORT

This reports sets out the proposals to amend the Waste Management (Jersey) Law 2005.

The Waste Management (Jersey) Law 2005 (“the Law”) came fully into force in 2007. The Law was enacted in order to allow the United Kingdom to extend its ratification of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (“the Convention”) to Jersey, which occurred in 2007. The Convention obliges parties to take measures to ensure the environmentally sound management of hazardous or other wastes. The Law therefore regulates the transboundary movement of wastes, as well as creating a regulatory licensing regime for waste management activities within Jersey.

The definitions of recovery and disposal operations are set out in the Law within Article 1 and Schedule 1 and are derived from the Convention.

Schedule 1, Part 1 defines disposal operations. One such disposal operation is *D10 Incineration on land*. Schedule 1, Part 2 defines recovery operations. One such recovery operation is *R1 Use as a fuel (other than in direct incineration) or other means to generate energy*.

The European definition of the recovery operation R1 is defined in the updated Annex II of the Waste Framework Directive 2008/98/EC (“the EC directive”) as: *R1 Use principally as a fuel or other means to generate energy*. The definition includes incineration facilities processing municipal solid waste only where the energy efficiency is equal to or exceeds a threshold using a specific calculation.

The Draft Waste Management (Amendment No. 2) (Jersey) Regulations 201- (“the draft Regulations”) will amend the R1 definition in the Law to match the definition and the energy efficiency calculation in the EC directive.

This allows waste incineration activities in Jersey, for example, the Energy from Waste Plant at La Collette, to be defined as a recovery activity R1 where they meet or exceed the energy efficiency threshold. This will also allow the Plant to be compared with similar plants in the UK and Europe.

For clarity, the change in the recovery definition proposed will not allow waste to be imported from other jurisdictions. The importation of waste from other jurisdictions will not proceed until the principle of waste importation has been discussed and approved by the States Assembly as required by proposition [P.17/2010](#). The change in the recovery definition proposed will therefore enable the importation of waste into

Jersey from other jurisdictions for incineration in the Energy from Waste Plant at La Collette if approved by the States Assembly. This is because –

- If Jersey’s waste plant is not capable of being defined as a recovery activity, it can only be defined as a disposal activity. The Waste Management (Jersey) Law 2005, Schedule 8, Part 3, The Standard Control Procedure for Import, paragraph 4(e) requires that the Minister for the Environment **must object** to the movement, if the import is for disposal and the Minister considers that the waste can be disposed of within the country of dispatch in a manner that is effective and environmentally sound.
- Jurisdictions importing waste to Jersey will want waste to be sent to a facility that can be defined as a recovery activity. Waste strategies of jurisdictions generally want to show that their waste is moved further up the waste hierarchy (where recovery activities are preferable to disposal activities).
- Movements of waste within and into Europe are subject to the prior written notification and informed consent procedures under the Waste Shipment Regulations (EC/1013/2006), which implement the requirements of the Basel Convention. This is implemented in Jersey by the Waste Management (Jersey) Law 2005. EC law permits the movement of waste to energy from waste facilities which are energy-efficient and defined as R1 recovery operations. The proposed changes will enable a policy comparison with Europe.

Articles 26 and 28 of, and Schedule 11 to, the Law were amended by the Waste Management (Amendment) (Jersey) Regulations 2012 (“the 2012 Regulations”).

The amendments made to Article 26 of the Law by the 2012 Regulations set out the information that constitutes evidence that land will be lawfully used for the purpose of waste management activities to be covered by a waste management licence.

The amendments made to Article 28 of, and Schedule 11 to, the Law by the 2012 Regulations were concerned with the continuing lawful use of land for waste management activities. Specifically, Article 28(1) of the Law provides that it is a condition of every waste management licence that the licensee must not carry on waste management activities on any land that he or she may not *for the time being lawfully use* for that purpose. The 2012 Regulations inserted Article 28(1A) of, and paragraph 6(1A) of Schedule 11 to, the Law to specify the evidence that may be used to show this condition is being fulfilled. However, an ambiguity in the drafting of these new provisions has since been identified. Specifically, while they make it clear that evidence of the continuous use of land beginning prior to 1st April 1965 is evidence of lawful use *for the time being*, they do not make it clear that evidence that planning permission that has been granted *and implemented* is also evidence of such lawful use, as should be the case.

The draft Regulations seek to amend the relevant provisions of the Law so as to remove this ambiguity. The opportunity is also taken to clarify that the provisions apply to corporate entities as well as individual persons.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers for the Environment, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

There are no financial implications for the States arising from the adoption of the draft Regulations, and they will be implemented without any change to the current manpower levels.

Explanatory Note

These Regulations amend the Waste Management (Jersey) Law 2005 (the “principal Law” as defined in *Regulation 1*).

Article 28(1) of the principal Law provides that it is a condition of every waste management licence that the licensee must not carry on activities in respect of controlled waste (within the meaning of Article 2 of the principal Law) in relation to which the licence relates (i.e. “controlled waste activities”), on any land that he or she may not for the time being lawfully use for that purpose.

The effect of the amendments in *Part 1* of these Regulations would clarify the circumstances in which land can be lawfully used for the purpose of carrying on controlled waste activities.

Regulation 2 amends Article 26 of the principal Law as a consequence of the substituted Article 28(1A) (as substituted by *Regulation 3(b)*) which clarifies the expression “for the time being lawfully use”. The amendment under *Regulation 2* re-orders the provisions contained in Article 26(3)(a) and (b) so that the evidence required to support an application for a waste management licence is aligned with the order of the provisions contained in substituted Article 28(1A). The opportunity is also taken to clarify that a proposed transferee of a waste management licence is subject to the same evidence requirements as are imposed on an applicant for a waste management licence (see *Regulation 2(b)* and (c)).

Regulation 3 amends Article 28(1A) of the principal Law the effect of which is to clarify what constitutes the lawful use of land by a licensee for the purpose of carrying on controlled waste activities. For example, if the licensee is using the land in accordance with planning permission granted for the purpose of the carrying on the controlled waste activity, or the licensee is occupying the land with the land owner’s permission for the purposes of carrying on the controlled waste activity, then those circumstances would constitute lawful use of the land. The opportunity is also taken to make a minor amendment the effect of which is to provide that a licensee may be a corporate body or an individual person (see *Regulation 3(a)*).

Regulation 4 makes analogous amendments to those set out in *Regulation 3*, to paragraph 6 of Schedule 11 to the principal Law which makes provision about the conditions that apply to a waste management certificate issued by the Minister for the Environment (where he or she is acting as a waste operator).

Regulation 5 amends Part 2 of Schedule 1 to the principal Law so as to alter the description in R1 of what constitutes a waste recovery operation. The amended description means that a recovery operation is one where waste is recovered for use principally as a fuel, including use in an incineration facility which meets all of the energy efficiency requirements set out in the Framework Directive (within the meaning of Article 1(1) of the principal Law), so as to generate energy.

Regulation 6 sets out the title of these Regulations and provides that they will come into force 7 days after they are made.



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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 107, 108 and 110 of the Waste Management (Jersey) Law 2005¹ and Article 2(2) of the European Union Legislation (Implementation) (Jersey) Law 2014², have made the following Regulations –

1 Interpretation

In these Regulations, “principal Law” means the Waste Management (Jersey) Law 2005³.

PART 1

WASTE MANAGEMENT LICENCES AND CERTIFICATES

2 Article 26 amended

In Article 26 of the principal Law –

- (a) in paragraph (3), for sub-paragraphs (a) and (b) there are substituted the following sub-paragraphs –
- “(a) that the applicant has the land-owner’s consent to occupy the land for the purposes of the activity to which the application relates; and
 - (b) of planning permission (where required) as described in paragraph (2)(a) or of continuous use as described in paragraph (2)(b).”;
- (b) in paragraph (4), for sub-paragraph (b) there is substituted the following sub-paragraph –
- “(b) the proposed transferee shall produce in support of the application such evidence as would be required of an applicant for the grant of a waste management licence.”;

- (c) in paragraph (5), for the words “and documents that have” there are substituted the words “that has”.

3 Article 28 amended

In Article 28 of the principal Law –

- (a) in paragraph (1), for the words “he or she” there are substituted the words “the licensee”;

- (b) for paragraph (1A) there is substituted the following paragraph –

“(1A) For the purposes of fulfilling the condition specified in paragraph (1), land is for the time being lawfully used for the purpose of carrying on the activity to which the licence relates in the following cases –

- (a) where the land is owned by the licensee –

- (i) the licensee is using that land in accordance with planning permission granted (where required) for the purpose of carrying on the activity to which the licence relates, or
- (ii) the licensee is continuing to carry on the activity to which the licence relates, on land in respect of which that activity has been carried on prior to 1st April 1965 and has continued to be carried on (without a break) since that date; or

- (b) where the land is not owned by the licensee –

- (i) the licensee is, with the land-owner’s consent, occupying that land for the purpose of carrying on the activity to which the licence relates, and
- (ii) the licensee is using that land in accordance with planning permission as described in paragraph (1A)(a)(i), or
- (iii) the licensee is continuing to carry on the activity to which the licence relates as described in paragraph (1A)(a)(ii).”.

4 Schedule 11 amended

In paragraph 6 of Schedule 11 to the principal Law, for sub-paragraph (1A) there is substituted the following sub-paragraph –

“(1A) For the purposes of fulfilling the condition specified in sub-paragraph (1), land is being lawfully used for the purpose of carrying on the activity to which the certificate relates in the following cases –

- (a) where the land is owned by the Public of the Island –

- (i) the Minister is using that land in accordance with planning permission granted (where required) for the purpose of carrying on the activity to which the certificate relates, or

- (ii) the Minister is continuing to carry on the activity to which certificate relates, on land in respect of which that activity has been carried on prior to 1st April 1965 and has continued to be carried on (without a break) since that date;
- (b) where the land is not owned by the Public of the Island –
 - (i) the Minister is, with the land-owner’s consent, occupying that land for the purpose of carrying on the activity to which the certificate relates, and
 - (ii) the Minister is using that land in accordance with planning permission as described in subparagraph (1A)(a)(i), or
 - (iii) the Minister is continuing to carry on the activity to which the certificate relates as described in subparagraph (1A)(a)(ii).”.

PART 2

DESCRIPTION OF RECOVERY OPERATIONS

5 Schedule 1 amended

In Part 2 (Recovery Operations) of Schedule 1 to the principal Law, for the recovery operation numbered R1 there is substituted the following recovery operation –

“R1 Use principally as a fuel or other means to generate energy, which includes use in an incineration facility that meets all of the requirements described in the footnote to the recovery operation numbered R1 in Annex II to the Waste Framework Directive, as amended from time to time, including in particular the requirements in that footnote as to energy efficiency.”.

PART 3

CLOSING

6 Citation and commencement

These Regulations may be cited as the Waste Management (Amendment No. 2) (Jersey) Regulations 201- and shall come into force 7 days after the day they are made.

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- ¹ *chapter 22.950*
 - ² *chapter 17.245*
 - ³ *chapter 22.950*