

ENVIRONMENTAL PROTECTION WASTE AND CONTAMINATED LAND (NORTHERN IRELAND) ORDER 1997

FINANCIAL PROVISION

Consultation on amending the NIEA's Financial Provision Policy entitled Financial Provision for Waste Management Activities in Northern Ireland

27th March 2015



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General Information, Timing and Responses to this Consultation

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Information about this publication and further copies are available from the above address.

This document is available on the DOE website at :- <http://www.doeni.gov.uk/niea/waste-home/waste-publications.htm>

Under Section 75 of the Northern Ireland Act 1998, the Department is required to have due regard for the need to ensure equality. Accordingly, a screening exercise was carried out to ascertain if the policies contained in this document require a full equality impact assessment. This assessment can be accessed at:- <http://www.doeni.gov.uk/niea/waste-home/waste-publications.htm>

Additionally, a partial Regulatory Impact Assessment was carried out. This can be found in Annex 1 of the document. Rural screening was also carried out and the results can be accessed at:- <http://www.doeni.gov.uk/niea/waste-home/waste-publications.htm>

Timing

The commencement date of this consultation is 27th March 2015 and it will close on the **19th June 2015**

How to respond to this consultation

Responses can be sent:

By email to: FinancialProvisionPublicConsultation@doeni.gov.uk

By post to: Northern Ireland Environment Agency
Klondyke Building
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When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are representing an organisation, please make it clear which organisation you represent and, where applicable, how the views were assembled.

Enquiries

Enquiries regarding the content of this consultation paper, or requests for further copies, should be made to Pamela Patterson (e-mail: pamela.patterson@doeni.gov.uk; telephone: 028 9056 9381).

Confidentiality

The Department will publish a summary of the responses received on its website shortly after the consultation period has ended. It may also wish to publish individual responses to this consultation document. If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request.

You should also be aware that there may be circumstances in which the Department will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations.

Geographical Coverage

The proposed policy changes that are the subject of this consultation relate to Northern Ireland only.

Published by the Department of the Environment / Northern Ireland Environment Agency

1. PURPOSE

1.1 The purpose of this document is to, consult upon the proposed amendments to the NIEA Financial Provision Policy titled “Financial Provision for Waste Management Activities in Northern Ireland.”

2. FINANCIAL PROVISION

Background

2.1 Article 3(3)(c) of the 1997 Order requires that, anyone operating under a waste management licence must make financial provision adequate to discharge the obligations arising from the licence.

2.2 The NIEA is proposing to amend the Financial Provision Policy entitled, Financial Provision For Waste Management Activities In Northern Ireland http://www.doeni.gov.uk/niea/financial_provision_for_waste_management.pdf

Introduction

2.3 The Waste and Contaminated Land (Northern Ireland) Order 1997 (the 1997 Order), supported by a number of pieces of subordinate legislation, mostly transposes the requirements of the Waste Framework Directive. The requirement to protect the environment and human health, was put in place by way of a number of measures including, provisions that allow the Department (as the competent authority) to determine if the person who holds, or is to hold, the waste management licence, has made financial provision adequate to discharge the obligations arising from the licence.

2.4 There is a legal requirement to provide financial provision (FP) for waste management facilities. Financial provision for non-landfill and landfill activities, is set out in the Waste and Contaminated Land (NI) Order 1997 (as amended) (the 1997 Order) and the Pollution Prevention and Control (Industrial Emissions) Regulations (NI) 2013 (PPC Regulations). Activities covered include waste disposal, treatment, transfer and storage sites subject to waste management licensing and waste treatment facilities regulated under the PPC Regulations.

2.5 The FP requirement for active Landfill sites is specified in the Landfill Regulations (NI) 2003 and PPC Regulations. For closed landfill sites, FP is a requirement under the 1997 Order.

2.6 The 1997 Order requires the Department to determine whether a person is, or is not, a ‘fit and proper person’ to hold a waste management licence. If “the person who holds or is to hold the licence has not made and either has no intention of making or is in no position to make financial provision, adequate to discharge the obligations arising from the licence, then they will be deemed as not being a fit and proper person.”

This means that the provision has to be:

- Sufficient (in monetary terms);
- secure, and
- available when required.

2.7 The Department must consider the type of financial mechanism proposed and the security of that mechanism, as well as the amount.

2.8 A FP condition is included in all licences and permits for waste activities, to ensure that the operator has available funds in place. The operator is required to advise the Northern Ireland Environment Agency (NIEA) promptly of any changes in his/her company's status and the Agency will consider enforcement action, if an operator is found to have breached their FP condition.

2.9 NIEA undertakes a detailed examination of a proposed FP, to confirm that the provider is of an adequate financial standing. It is important to emphasise that, the provision of false and misleading information to the Agency, is an offence.

2.10 Financial Provision assessments are required for:

- An application for a licence/permit;
- An application to modify/vary a licence/permit, where additional (or where appropriate reduced) obligations result;
- The transfer of a licence/permit(transferee to complete); and
- The review of the licence/permit, where there is a need to re-assess the assumptions and calculations behind the financial provision.

2.11 NIEA published its FP policy - "Financial Provision for Waste Management Activities in Northern Ireland"* on the 1 April 2010. The Agency has undertaken a review of this policy and is now consulting on a number of proposed amendments. These are:

- The calculation of FP for non-landfill activities will be extended to include, a restoration sum to cover the cleaning of buildings, yards, drains, wider contamination issues, if the operator ceases to operate for any reason or wishes to surrender the licence/permit.
- The removal of the option to provide 'Alternative Evidence' as a means of demonstrating FP for Non- landfill activities.
- NIEA will carry out a Credit Reference Check for all Non-Landfill activities, to assess a waste operator's financial circumstances and whether there are sufficient, secure and available financial resources.
- Non-landfill facilities which pose a higher risk to the environment and potential harm to human health because of the waste quantities, types, treatment undertaken, will require a FP mechanism such as, Bond & Renewable Bond, Cash, Escrow, Parent Company Guarantee or Insurance.
- NIEA may request re-imburement to cover the costs of external expert advice, where required as part of the FP submission process.

* http://www.doeni.gov.uk/niea/financial_provision_for_waste_management.pdf

Calculation of Financial Provision: Non-Landfill Facilities

2.12 The amount of FP will be based on the maximum quantity of waste that, operators can keep, store, treat or dispose of at the site under the terms of their licence/permit. This quantity has to be converted into the total disposal costs to transport the material to a suitably authorised waste management facility. The calculation will also include a

restoration/remediation sum, to cover the cleaning of buildings, yards, drains, wider contamination issues, if the operator ceases to operate for any reason or wishes to surrender the licence/permit.

Question 1: Do you have any views on the inclusion of restoration/remedial costs?

Landfill Facilities

2.13 Financial provision applies to all new and existing PPC landfill permits. It also applies to extant closed licensed landfills. Provision for landfills should be calculated for 3 phases:

Phase 1 - the maximum sum that can be accrued during the operational phase to include monitoring and engineering etc.

Phase 2 - the post closure and aftercare phase. The FP costs usually decrease as there will be a reduction in gas and leachate emissions during this period.

Phase 3 - site surrender costs. This sum is required to cover the surrender stage and any unexpected costs.

2.14 A FP calculation should include detailed costs under the following headings for hazardous and non-hazardous waste landfills (see Appendix 1 for details):

- Environmental monitoring
- Capping
- Cap maintenance
- Leachate management
- Surface water management
- Landfill gas management
- Security (e.g. gates and fencing)
- Production of site reports (if not included in monitoring)
- Specified events

2.15 The detailed costs for inert waste landfills need to consider the following costs (see Appendix 1 for details):

- Environmental monitoring
- Surface water management
- Security (e.g. gates and fencing)
- Production of site reports (if not included in monitoring)
- Specified event (if appropriate)

2.16 The FP calculation should include a 'cost profile' to account for the life-cycle of the site. There are two main types of environmental liabilities, known and potential liabilities. The latter must include reasonably foreseen events and these must be covered in the calculation of the FP. The detailed analysis and calculations must be completed by a suitably qualified person and the calculation and FP costs must be agreed by the NIEA.

Mechanisms for making Financial Provision

2.17 An operator must agree the mechanism for providing FP with the NIEA and this must be in accordance with its Financial Provision Policy.

NIEA will consider any mechanism that meets the following criteria:

- The amount is **sufficient** to cover the obligations of the licence/permit
- The mechanism is **secure** for the duration of the licence/permit
- That the money is **available** when required.

2.18 NIEA proposes to amend the Financial Provision policy, to remove the option permitting an operator to supply a 'Letter of Comfort' for a licensed waste management facility. The Agency has experienced the situation that when required, FP has not been in place and, consequently, the mechanism was neither secure nor available. A waste operator must have financial provision in place which can be used to fully discharge the obligations of the licence/permit.

Question 2: What are your views on the removal of the 'Letter of Comfort' option as a FP mechanism?

2.19 As part of the FP assessment process, NIEA will carry out a number of checks e.g. a credit check to assess a waste operator's financial circumstances and whether there are sufficient, secure and available financial resources. The operator will be required to sign a consent form to permit NIEA to undertake such checks.

Question 3: Do you consider it unacceptable for NIEA to undertake a credit check on a business? If so please provide detailed reasons.

2.20 The following are some of the mechanisms available for demonstrating FP:

- Escrows
- Bond and Renewable Bond
- Insurance policy
- Cash
- Parent Company Guarantee
- Local Authority or public body signed Deed Agreement

More detail for these FP mechanisms is provided in Appendix 2.

Question 4: Please provide your views on the proposal to introduce a FP mechanism for non-landfill waste management sites, which pose a higher risk to the environment and to human health.

2.21 An applicant, who wishes to avail of one of these mechanisms, will need to submit detailed information to satisfy NIEA and its legal and financial advisors. If the Agency is required to commission external expert advice, it may seek to recover these additional costs from the applicant.

Question 5: What are your thoughts regarding the proposal to recover the costs for expert advice if required to assess a FP submission.

3. TRANSITIONAL ARRANGEMENTS

Should these FP changes be implemented, NIEA proposes the following transitional regulatory arrangements:

- a) *For all new applications submitted after the revised policy implementation date:*
Immediate as the revisions to the policy should be finite.
- b) *For applications (new, modification, transfer) in the pipeline:*
Twelve months will be permitted to provide adequate time for operators and NIEA to fully implement and satisfy the new requirements.
- c) *For existing licensed/permitted sites:*
Twelve months will be permitted to provide adequate time for NIEA and operators to fully implement and satisfy the new requirements.

Question 6: Do you consider these transitional arrangements are satisfactory? If not please provide your reasons with suggested timescales.

4. IMPACT

- 4.1 The changes to the Financial Provision Policy will help ensure that the amount is sufficient, the mechanism is secure and the money is available when required.
- 4.2 The inclusion of restoration/remedial costs within the financial provision assessment calculation for non-landfill facilities, will ensure the necessary funds are accounted for to help protect the environment and human health.
- 4.3 The removal of the letter of comfort, which has been shown to be unreliable as a mechanism for making financial provision available and accessible, will require more secure mechanisms which will provide better protection for the environment and human health.
- 4.4 A credit check as part of the assessment of a waste operator's financial circumstances and whether they have sufficient, secure and available financial resources, further reduces potential negative impacts on the environment, human health and the economy.
- 4.5 High risk non-landfill waste management facilities, have the potential to have significant negative impacts on the environment and human health therefore, a FP mechanism provides the necessary security that, if required, funds are available to remediate those facilities.
- 4.6 There will be costs for those businesses operating high risk non-landfill waste management facilities, due to the requirement to put in place a FP mechanism.

- 4.7 However, operators who comply with the conditions of their authorisation, should not incur additional costs as a result of the proposed changes.
- 4.8 The proposed changes do not impact on the human rights of legitimate operators.

Question 7: Do you have any views regarding these impact statements?

Question 8: Please indicate if you think there are further impacts that have not been considered and provide details of these impacts.

PARTIAL REGULATORY IMPACT ASSESSMENT

AMENDING THE NIEA'S FINANCIAL PROVISION POLICY ENTITLED FINANCIAL PROVISION FOR WASTE MANAGEMENT ACTIVITIES IN NORTHERN IRELAND

Summary

Purpose

The purpose of this Regulatory Impact Assessment, is to allow full consideration of the impact of the proposed amendments to the NIEA Financial Provision Policy entitled, "Financial Provision for Waste Management Activities in Northern Ireland".

The proposed changes will impact mostly on waste management licence holders, who have supplied the Agency with alternative evidence, for example a letter of comfort as a means of financial provision. NIEA may also seek re-imbursement of costs, to cover external legal and /or financial advice. This would relate to a small number of complex waste facilities and not routine applications/existing sites.

What is the problem under consideration?

There is a legal requirement to provide financial provision (FP) for waste management facilities. Financial provision for non-landfill and landfill activities, is set out in the Waste and Contaminated Land (NI) Order 1997 (as amended) (the 1997 Order) and the Pollution Prevention and Control (Industrial Emissions) Regulations (NI) 2013 (PPC Regulations).

The FP requirement for active landfill sites is specified in the Landfill Regulations (NI) 2003 and the PPC Regulations. For closed landfill sites, FP is a requirement under the 1997 Order.

The Financial Provision has to be:

- Sufficient (in monetary terms);
- Secure, and
- Available when required.

There have been instances where sites have been abandoned with stockpiled waste and/or, that have not been fully restored and made fit for future use. As a consequence, landowners and/or the Government have had to carry out remedial works and cover the associated costs of this work. Legislation requires that site operators are made responsible for these costs, in accordance with the 'polluter pays' principle.

The current Financial Provision Policy includes the option that, a waste licence holder may provide NIEA with alternative evidence confirming that, sufficient funds will be available when required to cover licensed activities. In a number of cases the Agency has found

this FP to be unreliable and therefore, proposes to require more secure FP mechanisms be put in place for higher risk facilities.

What are the policy objectives and the intended effects?

The policy objectives are to:

- Widen the FP to include a restoration sum;
- Remove 'Alternative Evidence' as a FP mechanism;
- Carry out a Credit Reference Check;
- Require a more robust FP mechanism for higher risk authorisations; and
- Request re-imburement of external expert advice costs, where required.

The overall objectives are to, minimise the risk to the environment and human health and thereby, reduce the cost burden to landowners and the public purse.

What policy options have been considered?

1. Do nothing
2. Amend the Financial Provision Policy

Benefits - Option 1

The NIEA could find no benefits in the 'do nothing' option. It is a legal requirement for a licensed/permitted operator to have adequate FP in place.

Disbenefits - Option 1

It would not bring about actions that would:

- prevent pollution and potential danger to human health;
- ensure compliance with European and National legislation; and
- provide assurances that those acting as waste operators were competent to do so.

Benefits - Option 2

The NIEA will be better equipped to:

- ensure compliance with European legislation;
- prevent pollution and potential danger to human health;
- ensure legitimate business is not disadvantaged by unscrupulous waste activities; and
- ensure that landowners and Government do not incur considerable expense to remediate/restore abandoned sites

Disbenefits - Option 2

If the NIEA Financial Policy is not amended:

- Northern Ireland will be out of step with legislation and practices elsewhere in the UK and Europe;
- Higher risk waste facilities may not have secure, sufficient and available finance in place, when required to meet their licence conditions;
- NIEA regulatory officers will find it more difficult to determine whether, waste operators are fit and proper persons to operate their facilities;
- the risk of harm to the environment and human health would remain and could potentially increase;
- waste companies with more substantive FP mechanisms in place, will continue to find it difficult to compete with those companies, who have not set aside sufficient funds to legally manage their sites; and
- private individuals and Government may incur extremely high costs to remediate/restore land.

Other Impact Assessments

An Equality Screening exercise under Section 75 of the Belfast Agreement and a Rural Proofing Screening exercise have been carried out and, given the all-inclusive nature of the proposed policy/legislation it was agreed that, there was no need to carry out full impact assessments for these areas. Both screening documents can be accessed at the following link:

<http://www.doeni.gov.uk/niea/waste-home/waste-publications.htm>

It is believed that the proposed policy amendments are compatible with the Human Rights Act 1998.

Costs

There will be a small administrative cost associated with the printing of copies of the Consultation paper.

There will be a slight increase in costs to the industry associated with the setting up of a FP mechanism.

Consultation with Small Businesses

A number of small businesses will receive the consultation document, as well as umbrella organisations. The consultation will be available on the DOE website for anyone who wishes to download it, free of charge. There is no restriction on who can respond to the consultation. Should any particular group or individual request it, the NIEA will meet with them to discuss the issues covered by the consultation in more depth.

Enforcement and Sanctions

Article 3 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (the 1997 Order), makes it an offence for anyone to hold a waste management licence, unless they are a Fit and proper Person. Anyone who does not comply with the requirements of Article 3 is committing an offence. Article 12 of the 1997 Order states that, the Department may revoke a licence if it appears that, the licence holder has ceased to be a fit and proper person.

Consultation

A 12-week consultation will take place. Consultation on the policy will take place with the following broad groups:

- All holders of waste management licences and PPC permits;
- NI 3 Waste Management Groups and NILGA;
- All NI District Councils; and
- Waste Industry and Business Representative Bodies.

Summary and Recommendation

It is recommended that, the NIEA Financial Provision Policy is amended to allow the NIEA to:

- ensure parity with the rest of the UK and Europe;
- regulate waste facilities and take enforcement action when required;
- protect the environment and human health;
- address a distortion in the waste market; and
- protect the private individual and Government finances

Declaration

“I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.”

Signed **M. Durkan**.....

Mark H. Durkan
Minister of the Environment
Department of the Environment

Date: **27/3/2015**.....

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Appendix 1. Calculating the sum

Landfill for Hazardous or Non-Hazardous waste

A1 Environmental Monitoring

A1.1 This usually comprises two costs: infrastructure replacement and sample analysis.

A1.1.1 Infrastructure Replacement. NIEA will check that the number of leachate pumps & wells, landfill gas wells and monitoring boreholes proposed are in line with the application and permit.

The following design life is assumed for the purposes of calculating FP based on the EA's Waste Management Paper 26B (WMP 26B):

Infrastructure	Design Life (years)
Leachate treatment plant	30
Leachate extraction wells	25
Leachate extraction pumps	10
Landfill gas plant	30
Landfill gas wells & pipework	20
Landfill gas flare	10
Monitoring boreholes	50+

NIEA will confirm that calculations are logical, based on the aftercare period.

A1.1.2 The monitoring regime may reduce during the aftercare period and this will be reflected in the cost profile. For estimating costs for monitoring (unless specified to the contrary in the permit), NIEA assume that;

- a. The operational monitoring regime persists for 10 years after closure,
- b. Between 11 and 30 years after closure, the monitoring regime is 50% of the operational frequency, or LFD, Annex 3 minimum whichever is higher, and
- c. From year 31 onwards Landfill Directive, Annex 3 minimum requirements apply.

A summary table of the minimum Landfill Directive monitoring requirements is provided at the end of this appendix.

A1.2 **Cap and cap protection**

As for monitoring, this can be subdivided into two costs; provision of the cap and maintenance of the cap during the aftercare phase.

A1.2.1 Provision of the cap. From the outset NIEA will consider whether the costs proposed are permit obligations, or whether they are planning issues. If they are planning issues (e.g. top soil application, seeding & tree planting etc.), then they are not subject to Financial Provision. If they involve the capping materials (clay or geomembrane), surface water drainage layer (stone or geocomposite), or protective soils these must be included in the costs. The amounts involved are normally not material in the context of the whole provision.

Things to consider:

- What sort of cap is proposed and what is its cost?
- Does the site require a geomembrane or mineral liner?
- Does the application assume that there are materials on the site which may be used for capping and cap protection (i.e. cost for the cap placement only)? If so this should be confirmed in the submission to the NIEA.

Note: Where the permit requires/allows progressive restoration of the site, the capping provision will cover the costs associated with the last phase only.

A1.2.2 Cap Maintenance. This is usually a small element of the total cost. The cap maintenance costs should be calculated on the basis of the approximate cost per hectare.

A1.3 **Leachate management**

This is usually the greatest cost element for hazardous and non-hazardous landfills waste FP proposals.

Leachate may be disposed of from site by discharge to sewer or by tankering by road to waste water treatment works. It may or may not be treated before leaving the site. Pre-treatment will reduce the cost of off-site disposal, however this result in running costs for a Leachate Treatment Plant. If leachate is pre-treated prior to disposal off-site, treatment costs must be covered in the FP calculations.

The expected quantity of leachate to be generated can be calculate using appropriate water balance calculations. Such calculations take account of factors like the absorptive capacity of the waste and effective rainfall.

In order to make a conservative assessment, assume that absorptive capacity is taken care of elsewhere in the sum.

Water balance calculation:

Leachate production (p)m³ = m x (y/1000) x q

Leachate disposal cost (£) = p x z

Where:

Total capped area of the landfill is **m**, m²,

Long-term infiltration rate through the cap is **y**, mm/per annum,

Unit cost of disposal is **z**, m³:

Leachate will be generated over **q** years (assume q = 60 unless informed otherwise, in order to arrive at a conservative figure).

NB: 1 hectare = 100 x 100m = 10,000m².

A1.4 Landfill gas management

Costs here are based on two factors:

- (a) The number of gas wells on site, their replacement profile and replacement cost (this is generally expressed as a cost per metre of extraction well); and
- (b) The cost of maintaining and replacement of any engine or flare.

A1.4.1 (a) Monitoring and extraction wells. Expected design lives are covered in A1.1 above.

A1.4.2 (b) Gas engines and flares

Gas engines – It is usually accepted that if there is a gas engine on site, this will be cost-neutral as any electricity produced will generate an income. However, there may be circumstances where a gas engine is installed to generate electricity for use on the site, or for sale locally. Where the gas engine is present as the principle method of landfill gas control and it is not generating an income, the FP calculation must include the cost of its replacement using a design life of 30 years.

A1.4.3 Flares – Where there are engines on site, a flare is usually only in operation when the engine is being repaired/maintained. Where there is no engine in place a flare has a life

expectancy of about 10 years. For flares in intermittent use (as gas engine support) it is taken to have a life expectancy of 15 years.

A1.5 Surface Water Management

The calculation needs to cover the cost of clearing and maintaining drains. What is the total length of drains on the site, what percentage is cleared each year and what is the unit cost of drain clearance (e.g. per metre)? The amount is usually a relatively small proportion of the total provision.

A1.6 Security (i.e. Gates and Fencing)

Similar to surface water management above the calculation should consider how much a metre of fencing costs, how many metres of fencing is on site and what proportion of construction the operator allows for maintenance. The amount involved here is usually a small part of the total provision.

A1.7 Production of site reports (if not included in monitoring)

Provision is generally made for two items:

- The expected cost of the final site report, and
- The regular (usually annual) reports.

The provision for the final report is carried forward throughout the life of the site; the provision for the annual reports (or whatever period is specified in the permit) reduces over the post closure period.

Summary of Landfill Directive, Annex 3 minimum monitoring requirements in the aftercare phase

Precipitation	Monthly	1	12)
Temperature	Monthly	1	12) Met office data
Evaporation	Monthly	1	12)
Humidity	Monthly	1	12)
Leachate (volume discharged)	6-monthly	1	2	Telemetry
Surface water (volume discharged)	6-monthly	1	2	Telemetry
Surface water	6-monthly	3	6	Spot sample

(quality)				
Groundwater (level)	6-monthly	3	6	Spot measurement, or telemetry
Landfill gas *	6-monthly	[15]	[30]	Spot measurement, or telemetry
Leachate (quality)	Annual	1	1	Spot sample
Groundwater (quality)	Annual	3	3	Spot sample
Settlement	Annual	1	1	Topographic survey

*- No minimum standards are proposed in the LFD. It is considered 30 spot measurements per annum to provide a reasonable average.

Landfill for Inert waste

B1.1 Environmental monitoring

The cost of monitoring landfill gas within the waste and possibly groundwater and surface water around the site must be included. Costs will relate to undertaking the monitoring and sample analysis. Boreholes will not need to be replaced give the short time scale over which monitoring is likely to be required.

B1.2 Cover soils and restoration

The final layer of soil on top of the waste is likely to be sub-soil, that will form a 'blinding layer' above the waste and a base for a cultivation or top-soil layer (together referred to as 'restoration soils'). This blinding layer will usually be accumulated on site during the operational phase or may be the last loads of waste deposited. Costs will therefore principally relate to spreading these soils using appropriate plant. Planning permission related costs such as top soil application, seeding and tree planting can be excluded from the costs.

B1.3 Surface water management (See A1.5)

B1.4 Security (See A1.6)

B1.5 Production of site reports (See A1.7)

Appendix 2. Mechanisms for demonstrating Financial Provision

A2.1 *Renewable Bonds*

A bond is a form of guarantee that, in this instance, will involve up to three parties

- i) the party requiring the bond (the operator)
- ii) the bondsman/surety
- iii) the bond receiver (NIEA or an operator).

In the event of the operator/licensee becoming unable to meet the liabilities arising from the licence/permit, there would be recourse to the bondsman to provide monies to fund any expenditure. It is therefore necessary to conduct a health check of the bondsman.

Understanding the basis on which the health checks will be conducted, will assist operators in selecting an appropriate bondsman, in advance of making their proposals for financial provision.

NIEA cannot supply a list of “acceptable” bondsmen or financial institutions. Considering the acceptability or otherwise of a particular bondsman will depend on individual circumstances. This may include the size of the bond and the credit rating of any proposed surety, which may change with time. It may therefore be that, a bondsman previously accepted does not satisfy the Agency on a subsequent application. NIEA currently apply the ‘Standard and Poor’s’ or Moody’s insurer ratings. NIEA will only accept ‘investment grade’ ratings.

Bonds may be operated in a similar way to escrow accounts, in relation to the value of the bond at any point of time in the life of the site. In the case of landfills, the expenditure profile will identify the potential exposure to financial liability that, may occur throughout the life of the permit.

Ordinarily bonds are taken for a fixed period of time (normally short term); this option is therefore unsuitable for long term provision, unless the duration of the bond will coincide with the life of the permit, e.g. inert landfill site. As it is not possible to predict with any certainty what the duration of a licence/permit will be, a renewable bond is more likely to meet the NIEA financial provision requirements.

However, the performance agreement associated with any bond contains a clause requiring the operator to renew the bond arrangement prior to the expiry of the current agreement/bond (the bond cannot be renewed merely by way of letter, except where that letter comes directly from the surety). Failure to comply would constitute a default and would result in the existing bond being drawn upon. The monies provided by the bondsman would then be used to discharge the

obligations of the licence/permit. Legal agreements would prevent their use for other purposes. Renewable bonds are therefore more suitable for long term financial provision.

A renewable bond may be for a fixed sum from day one, or it may be incremental building up or decreasing year by year as the liability on the site increases or decreases. In either case, the sum will be subject to an annual Retail Price Index (RPI) adjustment, as specified in the relevant clause in the performance agreement. The Agency will require written confirmation from the bondsman that the bond value has been amended.

Unlike an escrow account where the value of the provision may be related to the tonnage of waste deposited (and therefore may not necessarily be predetermined), the incremental bond will follow a profile agreed at the outset and will normally be documented within a schedule to the performance agreement. In relation to a landfill permit, it will be necessary to review the rate of input into the landfill and confirm that the estimated liability is adequately covered by the value of the bond at that point in time. Irrespective of whether the bond is renewable annually or every 3 years, 5 years or other period, it will be necessary to carry out the RPI adjustment annually.

A2.2 **Escrow accounts**

An Escrow Account, is a joint account between the operator and the Agency and is operated under an appropriate Deed of Trust Agreement and bank mandate. Escrow accounts are normally cash based, although government backed security, such as treasury bonds may also be acceptable.

NIEA will review the escrow account regularly, to ensure that the value of the deposit remains sufficient. The sum will be subject to an annual Retail Price Index (RPI) adjustment, to ensure that the escrow continues to meet the potential liability at the particular point in time.

The mandate attached to the agreement differs significantly from a typical mandate because, it is intended to vary the legal rights of the bank. It excludes by agreement, certain rights that would usually be exercisable by the bank as a matter of law, for example, the right of set off. This means that there must be evidence of the agreement by the bank, to operate the account in accordance with the agreement, to ensure that there can be no dispute at a later date. The mandate is signed by the operator, the bank and NIEA.

If the operator wishes to withdraw sums for works legitimately carried out under the licence/permit, they will be requested to present contractors' invoices as evidence. In circumstances where there is a major withdrawal, which has not been planned for, the sum taken out will impact upon the

financial profile of the account. As a result, the overall sum will need to be reviewed. Where necessary, a top up should be required, in consultation with the Agency.

As the escrow account is in the joint names of the operator and NIEA, it is vital that bank statements are issued to both parties on a quarterly basis. The Agency must review the bank statement, to ensure that the value of the deposit remains sufficient and meets the potential liability, at the particular point in time.

Escrow accounts are a suitable means of making short and long term financial provision.

A2.3 Parent Company Guarantee

This FP mechanism may be appropriate for certain waste activities, provided the parent company has been approved by the NIEA, as an acceptable entity for the specific licence/permit.

NIEA must be:

- satisfied that the parent company has sufficient finance to cover all potential FP costs; and
- satisfied that there is no risk or doubt of the ability of the Agency, to legally enforce the guarantee against the parent company, where it and/or its assets are established.

NIEA will require details including:

- Corporate Structure and confirmation from the auditors that there is a group structure in place between the guarantor and the licence/permit holder.
- A set of audited financial accounts from the proposed guarantor containing, in particular, details of profit/lose achieved in the last three financial years.

A2.4 Environmental Liability Insurance

Insurance FP may be suitable for potential environmental incidents at licensed/permitted facilities. However NIEA will not accept general 3rd party liability policies as FP. The Agency may consider environmental impairment liability policies with a RBME risk ranking of B or C, provided that the wording has NIEA approval.

A2.5 Cash Deposits

Operators may wish to deposit a cash lump or incremental sum into an agreed bank account. It must, however, be secured by way of a legal agreement (normally deed of trust), to ensure that the monies are only accessed for the required purposes. Interest accruing on these deposits may off-

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set an annual uplift for inflation. The Agency will need to confirm periodically that, the likely obligations arising from the licence/permit are still adequately covered by the cash deposit.

A2.6 *Local Authority Deed Agreement*

This mechanism may be considered where a local authority or public body is carrying on its own waste activities, can substantiate the FP to be appropriate and that the monies are readily accessible.