

Financial Provision for Waste Management Activities in Northern Ireland

Revised June 2016



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1. Introduction

The strategic objective of NIEA is to create prosperity and well-being through environment and heritage excellence.

The aim of the Financial Provision (FP) Policy is to ensure holders of licences and permits in Northern Ireland (NI) have sufficient, secure and available resources, to address the environmental and human health impacts of their waste activity.

The objectives of the Financial Provision Policy are;

- To ensure adequate funding is provided for as long as the waste activity presents a hazard to human health and/or the environment;
- In determining “adequate funding”, the operator must ensure all operational obligations, post-closure and restoration costs are identified and incorporated within the calculation of financial provision;
- The funding is available and readily accessible when required; and
- The measures in place must be demonstrated, sound and be auditable by NIEA.

The obligation to provide adequate financial provision, is laid down in legislation regulating waste management activities. The ‘polluter pays’ principle should apply. Activities that are covered by the legislation can be split into two broad headings; landfill and non-landfill waste management activities. Following the review of the original FP Policy, higher risk non-landfill activities will now be required to meet financial provision with a financial mechanism.

Financial provision for **non-landfill activities** is required under the Waste and Contaminated Land (NI) Order 1997 (the 1997 Order) and the Pollution Prevention and Control (Industrial Emissions) Regulations (NI) 2013 (PPC Regulations). Activities covered include, waste treatment and transfer sites subject to waste management licensing and waste treatment sites regulated under the Pollution Prevention and Control Regulations.

For **landfill activities**, the requirement for financial provision is made by the Landfill Regulations (NI) 2003 and the Pollution Prevention and Control (Industrial Emissions) Regulations (NI) 2013.

NIEA is required to enforce the financial provision requirements of the aforementioned legislation. This policy sets out the arrangements to satisfy the legal requirements for financial provision.

Background Information

The Pollution Prevention and Control Directive 1996 requires that, activities listed in Annex 1 of the Directive, must have a permit for the operation of the installation and must comply with the conditions of that permit. Landfilling activities are listed in paragraph 5 of Annex 1 and are therefore, required to obtain a PPC permit for the operation of the landfill.

This requirement has been implemented in Northern Ireland through primary legislation, in the form of The Environment (Northern Ireland) Order 2002, Schedule 1 of which empowers the Department to attach conditions to permits, including a requirement that permit holders are “fit and proper persons”. Paragraphs 5 of Schedule 1 relates specifically to the requirement to determine “fit and proper” status.

The PPC Regulations require NIEA to make an assessment of whether the applicant is “fit and proper”, prior to the issue of a PPC permit. On implementation of the policy, a condition will be included which requires the permit holder to maintain financial provision throughout the life of the permit.

In addition to the requirement to satisfy the “fit and proper person” requirements, the Landfill Directive 1999 requires that, operators of landfill sites are responsible for the closure and aftercare of their sites.

As part of this, the operator must put in place adequate provision by way of financial security. Article 28 of the Directive states that:

(28) Whereas the operator should make adequate provision by way of a financial security or any other equivalent to ensure that all the obligations flowing from the permit are fulfilled, including those relating to the closure procedure and after-care of the site.

The Directive is implemented in Northern Ireland through The Landfill Regulations (Northern Ireland) 2003. Regulation 8 of those Regulations specifies the conditions to be included in a landfill permit, including the following requirement for maintaining financial provision:

8. - (2) (b) Ensure that financial provision required by regulation 4(3) (b) (b) of the 2003 Regulations is maintained until the permit is surrendered in accordance with the Regulations.

In addition, Regulation 11 also specifies that:

11. - (1) The operator shall ensure that the charges it makes for the disposal of waste in its landfill covers all of the following:

(b) the cost of financial provision required by regulation 4(3) (b) of the 2003 Regulations.

All licensed and permitted site operators in Northern Ireland must demonstrate and provide adequate financial provision, in accordance with this revised policy. Transitional arrangements are detailed in section 4, on page 7 of this document.

Holders of existing Waste Management Licences or PPC permits and applicants submitting new Waste Management Licences or PPC applications to NIEA must satisfy the legal requirement for financial provision, in accordance with this revised policy.

To whom the Financial Provision Policy applies:

All waste management activities are subject to the waste management licensing requirements of the Waste and Contaminated Land (Northern Ireland) Order 1997. This includes all sites where a Waste Management Licence currently exists and any new applications for Waste Management Licences.

Any specified waste management activity listed in Schedule 1 of the Pollution Prevention and Control (Industrial Emissions) Regulations (NI) 2013, including, but not limited to; Section 5.2 Disposal of waste by landfill, Section 5.3 Disposal of waste other than by incineration or landfill and Section 5.4 Recovery of Waste.

The policy extends to current holders of PPC permits for specified waste management activities. The policy also applies to any new applications for a specified waste management activity, as listed in the PPC Regulations.

2. Executive Summary

The Waste and Contaminated Land (Northern Ireland) Order 1997 and the Pollution Prevention and Control (Industrial Emissions) Regulations (NI) 2013 state that, the Department must be satisfied that an applicant for a Waste Management Licence or PPC Permit is a “fit and proper person”, before it grants that licence or permit. This includes the applicant providing adequate financial provision.

The policy relating to landfill site and higher risk non-landfill facility financial provision, requires more robust financial provisions to be made available, than for lower risk non-landfill facilities.

Non-landfill activities must apply a simple indicative formula based on the appropriate management of waste tonnages and restoration/remediation costs, to calculate the amount of financial provision. This is followed by demonstration of the agreed sum, via credit check or other method of financial “health check” e.g. statement of account. The method of demonstration, of the agreed sum, will depend on the FP amount determined and whether the site is deemed to be lower or higher risk, with regard to FP. It is the operator’s responsibility to prepare a calculation of financial provision, specific to the facility in question and to submit an appropriate level of detail to be reviewed by NIEA officials.

For landfill sites, a detailed cost analysis of total liabilities for the duration of the impacts, including the closure and aftercare period, must be compiled. This is the amount of financial provision. This amount must be demonstrated through an agreed method that, must meet the FP objectives. It is the operator’s responsibility, to prepare a calculation of financial provision specific to the landfill in question and submit an appropriate level of detail for review by officials of NIEA.

If queries arise regarding financial provision, please contact your waste regulatory officer within NIEA. If you do not have their direct contact details, please utilise the following telephone number: (028) 9056 9359.

3. Summary of Revisions to the Policy

- 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 e.g. land contaminated with solid or liquid waste etc, if the operator ceases to operate for any reason or wishes to surrender the licence/permit.
- Operators will determine the financial provision amount for each site. Sites which have a financial provision figure of £10,000 or more, will be deemed to be higher risk.
- 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 (FP figure of £10,000 or more), will be required to meet FP with a FP mechanism, such as a Bond, Renewable Bond, Cash, Escrow, Parent Company Guarantee or Insurance.
- Alternative Evidence e.g. statements of accounts from financial institutions and credit reference checks, will be retained for those sites whose financial provision amount is less than £10,000. These sites are considered to be lower risk. However, a more general 'Letter of Comfort' from a third party will no longer be acceptable, as a means of demonstrating FP for any non-landfill activities.
- If very complex information is submitted by an operator, which requires independent expert interrogation, NIEA may seek to recover the costs from the operator. This is likely to only occur on limited occasions.

4. Transitional Provisions

The following transitional regulatory arrangements will apply from the date of publication of this revised FP Policy:

For all new applications submitted after the revised policy publication date:

- The revised policy applies immediately, as the revisions to the policy should be finite.

For all applications for new licences, licence modifications, or licence transfers already submitted to NIEA:

- Twelve months will be permitted to provide adequate time for operators and NIEA to fully implement and satisfy the new requirements.

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.

5. Financial Provision for Landfill Activities

The requirements of this revised financial provision policy will extend to the following:

All new PPC permit applications for landfill installations, received after the date of issue of the financial provision policy;

All PPC permit applications for landfill installations, which have been received by NIEA and have been deemed duly made prior to the date of issue of the revised financial provision policy;

All existing landfill installations, where a PPC permit was issued prior to the issue of the financial provision policy;

Any landfill sites which are operated under a Waste Management Licence or PPC Permit, but have been deemed by NIEA as closed. There will be a reduced financial provision sum required for closed sites, where NIEA has confirmed there is a reduced risk associated with the site.

Calculation of the amount of financial provision for landfill activities.

The financial liability of the landfills may be calculated through three phases:

Phase 1- the maximum sum required during the operational phase to include monitoring and engineering etc.

Phase 2- the post closure and aftercare phase. This usually represents a decrease in costs as a reduction in gas and leachate emissions occur over this period.

Phase 3- site surrender costs. This represents a contingency sum to account for the surrender stage and any unexpected costs.

Included in the calculation should be a 'cost profile' to account for the life cycle of the site. Any difference in the amount of FP provided and the liability should not exceed 10% of the total FP at any point in time.

Environmental liabilities can be subdivided into two main types, known and unknown liabilities. The quantification and costing of these liabilities must be totalled together for the duration of the impacts.

Analysis and calculations must be completed by a competent person. Both the amount and method must be agreed with NIEA.

The submitted calculation should be broken into the following known cost headings, where relevant, and must be calculated in today's prices;

- Environmental Monitoring
- Capping and Restoration
- Cap Maintenance
- Leachate Management
- Landfill Gas Management
- Surface Water Management
- Security
- Production of Site Reports

Further guidance on calculating the amount of FP is at Appendix 1

The submitted calculations should not be discounted however NIEA may consider discounting future expenditure to net present values after a realistic assessment of the effect of inflation.

Costs associated with the waste activity will be expected to be reviewed annually to reflect market variations and changing site conditions. The emphasis will be on the operator to calculate the costs which may be associated with each of the identified liabilities. A list of possible liabilities associated with waste activities is at Annex 1.

The analysis must set out aftercare costs for landfills for hazardous and non-hazardous wastes for a period until the waste stabilises and the environmental impacts are removed. Normally a period of approx 60 years should be used in the calculations however the period must be up to full stabilisation. A shorter period will be considered for landfills for inert waste but, should cover at least 3 years post closure.

Method of demonstrating Financial Provision for landfill activities.

An operator must agree the method of how he / she will make financial provision with NIEA.

NIEA will consider any mechanism for demonstrating FP that meets the following criteria:

- a) Ensures adequate funding is provided for as long as the waste activity presents a hazard to human health and / or the environment;
- b) All operational obligations and post-closure costs are identified and incorporated within the calculation of financial provision;
- c) The funding is available and readily accessible when required;
- d) The measures in place must be demonstrated, sound and be fully auditable by NIEA.

The following are the current principle mechanisms for demonstrating FP:

- Escrows
- Bonds and Renewable bonds
- Cash
- Local Authority Deed Agreement

More detail is provided in Appendix 2.

It may be possible, in some cases, to design a financial provision mechanism that brings together more than one of the different types of financial provision. In this way the shortcomings of one mechanism can be offset by the strengths of another. It must be proven that the shortcomings have been offset.

6. Financial Provision for Non-Landfill Activities

For non-landfill waste management activities, NIEA will accept that the applicant is in a position to make financial provision if, they can demonstrate they have sufficient financial means to fund the requirements of the licence. This amount will be based on the figures determined through the calculation method outlined below.

Calculation of the amount of financial provision for non-landfill activities.

The amount of FP will be based on the maximum permitted quantity of waste that, an operator can store on the site at any one time, under the terms of their licence/permit. This quantity has to be converted into the total costs to transport and deposit the material, at a suitably authorised waste management facility. Some waste types, such as, scrap metal, end-of-life vehicle components etc. may have a value and can be treated as an asset, with regard to this policy. This will remove these wastes from the calculation and will reduce the overall amount of FP the operator is required to have in place. The calculation must also include a restoration/remediation sum, to cover the cleaning of buildings, yards, drains, or as required, wider contamination issues, if the operator ceases to operate for any reason, or wishes to surrender the licence/permit. (see Appendix 1 and 2 for Example Calculations).

There may be site / licence / permit specific circumstances, which will merit a different or an increased multiplier being applied. There is a £700 minimum financial provision that must be demonstrated. NIEA may adjust this figure from time to time.

NIEA requires the waste operator to review and submit their financial provision at least annually. NIEA may also request a review at any stage, depending on the circumstances of a facility. Where there is a dispute between NIEA and an operator, on either the amount or method of financial provision, NIEA will impose a figure and method of demonstrating financial provision. There is no form of appeal or adjudication.

Methods of demonstrating Financial Provision for non-landfill activities

To demonstrate financial standing, the applicant shall provide one of the following options to NIEA, depending on the Financial Provision (FP) amount determined:

1) Lower Risk Sites (FP amount below £10,000)

- A Credit Reference Check submitted by the applicant/operator. The applicant is also required to sign an application form authorising NIEA to complete a separate credit reference check, if the Agency feels it is necessary.
NIEA may from time to time carry out a credit check on licence / permit holders. NIEA will endeavour to absorb the costs involved in this process but, where this is not possible they will be included in the overall calculation of fees and charges.
- A statement of account addressed to the applicant from a reputable / accredited person / financial institution.
- Parent Company Guarantee
- Financial Mechanism
 - Bonds
 - Renewable Bonds
 - Escrows
 - Cash

2) Higher Risk Sites (FP amount £10,000 and above)

- Financial Mechanism
 - Bonds
 - Renewable Bonds
 - Escrows
 - Cash

- Parent Company Guarantee

More detail is provided in Appendix 2.

3) Public Sector Sites

Evidence may be provided by showing that, the costs of operation and, if required, FP amount, will be funded out of a named, dedicated, budget indicating the allocation of funds.

7. Enforcement and Sanctions

Where there is a disagreement between NIEA and the operator, on either the amount or method, NIEA will impose a figure and method of demonstration.

There is no form of appeal or adjudication.

Use of funds / call-down of funds

Release of funds will be agreed at stages, agreed during the set up phase. A written notice issued by NIEA will be the trigger, to release funds from the FP account or bond.

The policy will be enforced in line with the NIEA Enforcement Policy. This can be viewed on the NIEA website at:

<https://www.daera-ni.gov.uk/sites/default/files/publications/doe/waste-guidance-policy-on-relevant-convictions-2016.pdf>

8. Monitoring and Review

NIEA will monitor and review the Financial Provision Policy from time to time. Significant changes will be notified to customers.

Where an operator applies to modify or vary a licence / permit, FP must be re assessed (and agreed by NIEA), by the applicant at that time.

9. Appendices

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 Landfill Directive, 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 results 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 calculated 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 (quality)	6-monthly	3	6	Spot sample
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 given 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. Calculating the amount of FP for non-landfill waste facilities

Example 1 - Smith & Sons, Authorised Treatment Facility (ATF) & Scrap Metal Dealer

Transport/Management of Waste

Cost (£s)

Examples of Waste Types

Un-depolluted ELVs	Potential Value	If so, not included in FP amount or
	Cost	£x per kg/tonne
Depolluted ELVs	Potential Value	If so, not included in FP amount or
	Cost	£x per kg/tonne
Oil and Air Filters	Cost	£x per kg/tonne
Oil Contaminated Rags	Cost	£x per kg/tonne
Spent Oil Absorbents	Cost	£x per kg/tonne
Solid Oily Waste	Cost	£x per kg/tonne
Anti Freeze	Cost	£x per litre
Petrol Diesel Mix	Potential Value	If so, not included in FP amount or
	Cost	£x per kg/tonne
Aerosols	Cost	£x per kg/tonne
Brake Fluid	Cost	£x per litre
Tyres	Cost	£x per tonne

Examples of Site Remediation

Cleaning Site Surfaces	Cost	£x per metre square
Cleaning Site Drains	Cost	£x per metre/litre
Emptying/Cleaning Interceptors	Cost	£x per tonne/litre
Additional Site Remediation (e.g. remediation of land contaminated with solid or liquid waste)	Cost	£x per metre square/tonne
Total Financial Provision =	Total Costs	£???????.??

N.B. Please note that, the transport and disposal costs for all waste types on a site and the costs for all site remediation, must be included in the financial provision amount. The list above includes a number of wastes and some examples of site remediation but, it is not exhaustive.

N.B. Some waste types, such as, scrap metal, end-of-life vehicles, end-of life vehicle components etc. may have a value and if this is the case they can be treated as an asset. The cost of removing an asset from the site will not contribute to the financial provision figure. These materials will not be included in the calculation of the financial provision amount and will reduce the overall amount of FP, the operator is required to have in place. Please note NIEA may request evidence that a waste type has a value. If market dynamics change whereby these materials have no value, the costs for the management of these waste types must be included in the financial provision amount.

N.B. Please note that, the transport and disposal costs for all waste types on a site and the costs for all site remediation cannot be offset against assets.

Example 2 - Smith & Sons, Waste Transfer and Materials Recovery Facility

Transport/Management of Waste	Cost (£s)	
Examples of Waste Types		
Untreated Mixed Municipal Waste	Cost	£x per tonne
Untreated construction waste	Cost	£x per tonne
Untreated mixed wood waste	Cost	£x per tonne
Bales of good quality paper	Potential Value	If so, not included in FP amount or
	Cost	£x per kg/tonne
Bales of good quality cardboard	Potential Value	If so, not included in FP amount or
	Cost	£x per kg/tonne
Bales of good quality plastic film	Potential Value	If so, not included in FP amount or
	Cost	£x per kg/tonne
Chipped untreated wood	Potential Value	if so, not included in FP amount or
	Cost	£x per kg/tonne
Segregated gypsum	Cost	£x per tonne
Mixed Residual waste	Cost	£x per tonne
Fines	Cost	£x per tonne

Examples of Site Remediation

Cleaning Site Surfaces	Cost	£x per metre square
Cleaning Site Drains	Cost	£x per metre/litre
Emptying/Cleaning Interceptors	Cost	£x per tonne/litre
Additional Site Remediation (e.g., remediation of land contaminated with solid or liquid waste)	Cost	£x per metre square/tonne
Total Financial Provision =	Total costs	£??????.??

N.B. Please note that, the transport and disposal costs for all waste types on a site and the costs for all site remediation, must be included in the financial provision amount. The list above includes a number of wastes and some examples of site remediation but, it is not exhaustive.

N.B. Some waste types, such as, good quality paper, cardboard, plastic film and woodchip etc. may have a value and can be treated as an asset. The cost of removing an asset from the site will not contribute to the financial provision figure. These materials will not be included in the calculation of the financial provision amount and will reduce the overall amount of FP, the operator is required to have in place. Please note NIEA may request evidence that a waste type has a value. If market dynamics change whereby these materials have no value, the costs for the management of these waste types must be included in the financial provision amount.

N.B. Please note that, the transport and disposal costs for all waste types on a site and the costs for all site remediation cannot be offset against assets.

Appendix 3. 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 may therefore be 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-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.

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Our aim is to protect, conserve and promote the natural environment and built heritage for the benefit of present and future generations.



An Agency within the Department of
**Agriculture, Environment
and Rural Affairs**

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