



**AN BILLE COMHSHAOIL (FORÁLACHA
ILGHNÉITHEACHA), 2011
ENVIRONMENT (MISCELLANEOUS PROVISIONS) BILL
2011**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, collective citations, construction and commencement.
2. Definitions.

PART 2

AMENDMENT OF ACT OF 1987

3. Amendment of section 12 of Act of 1987.
4. Fixed payment notice.

PART 3

AMENDMENT OF ACT OF 1996

5. Amendment of section 72 of Act of 1996.
6. Amendment of section 73 of Act of 1996.
7. Power to impose waste facility levy.
8. Amendment of section 74 of Act of 1996.

PART 4

MISCELLANEOUS

9. Amendment of Freedom of Information Act 1997.
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ACTS REFERRED TO

Air Pollution Act 1987	1987, No. 6
Freedom of Information Act 1997	1997, No. 13
Local Government Act 2001	2001, No. 37
Local Government (Business Improvement Districts) Act 2006	2006, No. 42
Waste Management Act 1996	1996, No. 10
Waste Management Acts 1996 to 2003	



AN BILLE COMHSHAOIL (FORÁLACHA
ILGHNÉITHEACHA), 2011
ENVIRONMENT (MISCELLANEOUS PROVISIONS) BILL
2011

BILL

entitled

AN ACT TO AMEND AND EXTEND THE AIR POLLUTION
ACT 1987; THE WASTE MANAGEMENT ACT 1996; AND
THE FREEDOM OF INFORMATION ACT 1997; AND TO
PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Environment (Miscellaneous
Provisions) Act 2011.

Short title,
collective citations,
construction and
commencement.

(2) The Air Pollution Act 1987 and *Part 2* may be cited together
as the Air Pollution Acts 1987 and 2011 and shall be read together
as one.

(3) The Waste Management Acts 1996 to 2003 and *Part 3* may be
cited together as the Waste Management Acts 1996 to 2011 and shall
be read together as one.

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

2.—In this Act—

Definitions.

“Act of 1987” means the Air Pollution Act 1987;

“Act of 1996” means the Waste Management Act 1996.

PART 2

AMENDMENT OF ACT OF 1987

Amendment of section 12 of Act of 1987.

3.—Section 12(1) of the Act of 1987 is amended—

(a) in paragraph (a) by substituting—

(i) “€5,000” for “£1,000” in both places where it occurs, 5
and

(ii) “€500” for “£100”,
and

(b) in paragraph (b) by substituting—

(i) “€500,000” for “£10,000”, and 10

(ii) “€5,000” for “£1,000”.

Fixed payment notice.

4.—The Act of 1987 is amended by inserting the following section after section 12:

“12A.—(1) Where an authorised person has reasonable grounds for believing that a person has committed a relevant offence and is liable to summary prosecution in respect thereof, the authorised person may give to the person a notice (in this Act referred to as a ‘fixed payment notice’) in writing and in the prescribed form stating that— 15

(a) the person is alleged to have committed that offence, 20

(b) the person may, during the period of 21 days beginning on the date of the notice, make to the local authority concerned at the address specified in the notice a payment of the amount specified in subsection (4) in respect of that offence, accompanied by 25
the notice,

(c) the person is not obliged to make the payment specified in the notice, and

(d) a prosecution of the person to whom the notice is given in respect of the relevant offence concerned 30
will not be instituted during the period of 21 days beginning on the date of the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of that offence will 35
be instituted.

(2) Where a fixed payment notice is given—

(a) the person to whom it applies may, during the period of 21 days beginning on the date of the notice, make to the local authority concerned at the address specified in the notice the payment specified in the notice, 40
accompanied by the notice,

(b) the local authority concerned shall receive the payment and shall, upon receipt of the payment, issue a

receipt for it and any payment so received shall not be recoverable by the person who made it and the local authority shall retain the money for disposal in accordance with subsection (5), and

5 (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

10 (3) In summary proceedings for a relevant offence it shall be a defence for the defendant to prove that he or she has made a payment in accordance with this section, pursuant to a fixed payment notice issued in respect of that offence.

15 (4) The amount to be specified in a fixed payment notice in respect of a relevant offence is—

(a) €1,000, where the relevant offence consists of a contravention of article 3(1) of the Fuel Regulations,

20 (b) €500, where the relevant offence consists of a contravention of article 3(2), 4 or 6 of the Fuel Regulations, or

(c) €250, where the relevant offence consists of a contravention of article 7 of the Fuel Regulations.

25 (5) Moneys received by a local authority pursuant to the giving of a fixed payment notice shall be lodged to the credit of the local fund maintained by the local authority concerned pursuant to, and in accordance with, section 97 (amended by the Local Government (Business Improvement Districts) Act 2006) of the Local Government Act 2001 and expended in accordance with that section.

30 (6) In this section—

‘Fuel Regulations’ means the Air Pollution Act 1987 (Marketing, Sale and Distribution of Fuels) Regulations 1998 (S.I. No. 118 of 1998);

35 ‘relevant offence’ means an offence under section 11 consisting of a contravention of article 3(1), 3(2), 4, 6 or 7 of the Fuel Regulations.”.

PART 3

AMENDMENT OF ACT OF 1996

5.—Section 72 of the Act of 1996 is amended—

40 (a) by substituting the following subsections for subsection (3):

Amendment of section 72 of Act of 1996.

45 “(3) The amount of the levy shall be specified in the regulations under subsection (2) but shall not exceed an amount of 70 cent for each plastic bag supplied to a customer.

(3A) The Minister may, subject to subsections (3) and (3B), amend the amount of the levy specified in regulations under subsection (2) for the purposes of promoting—

- (a) the prevention of the generation of waste, and 5
- (b) the reduction of the use of plastic bags,

once and once only in each financial year beginning with the financial year following the financial year in which the *Environment (Miscellaneous Provisions) Act 2011* is passed. 10

(3B) The amount by which the amount of the levy standing specified in regulations under subsection (2) may be amended shall, subject to subsection (3C), be obtained by multiplying the amount of the levy standing specified for the time being in regulations made under subsection (2) by the figure specified in subsection (3D) and if— 15

- (a) the amount so obtained is not a whole number of cent, and
- (b) the Minister considers it appropriate to do so and specifies in the regulations that the amount has so been rounded, 20

rounding (up or down as he or she thinks fit) the amount to the nearest whole number of cent.

(3C) The Minister may, where he or she considers it appropriate for the purposes referred to in subsection (3A), add, to the amount obtained in accordance with subsection (3B), a figure which is not greater than 10 per cent of the amount of the levy standing specified in regulations under subsection (2) and if— 25

- (a) the amount so obtained is not a whole number of cent, and 30
- (b) the Minister considers it appropriate to do so, and specifies in the regulations that the amount has been so rounded,

rounding (up or down as he or she thinks fit) the amount to the nearest whole number of cent. 35

(3D) The figure mentioned in subsection (3B) is the quotient, rounded up to 3 decimal places, obtained by dividing the consumer price index number relevant to the financial year in which the regulations amending the levy are made by the consumer price index number relevant to the financial year in which the regulations amending the levy were last made.”, 40

- (b) by deleting subsection (4E),
- (c) by deleting subsections (7) and (8), and 45
- (d) in subsection (12)(a)(ii), by deleting clause (II).

(a) in subsection (1), by substituting “such other Minister of the Government, if any, as the Minister considers appropriate” for “any Minister of the Government concerned”,

5 (b) by substituting the following subsections for subsection (3):

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

10 (3A) The Minister may, subject to subsections (3) and (3B), amend the amount of the levy standing specified in regulations under subsection (1) for the purposes of promoting—

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

15 (b) the reduction of the quantity of waste disposed of by means of an activity referred to in subsection (1),

20 once and once only in each financial year beginning with the financial year in which the *Environment (Miscellaneous Provisions) Act 2011* is passed.

(3B) The Minister shall, when amending the amount of levy standing specified in regulations under subsection (1), substitute an amount that does not exceed the amount so standing specified by €50.”,

25 (c) by inserting the following subsections after subsection (5):

30 “(5A) Where any amount of levy becomes payable in accordance with regulations made under this section and is not paid, simple interest on the amount shall be paid by the person liable to pay the levy and such interest shall be calculated from the date on which the levy became payable and at a rate of 0.0322 per cent for each day or part of a day during which the amount remains unpaid.

35 (5B) Interest due in accordance with subsection (5A) shall be payable to the Environment Fund in the manner specified in the regulations under subsection (1) and the provisions of those regulations relating to the recovery of the levy shall apply to the interest as if it were levy.

(5C) Interest paid in accordance with subsection (5A) shall be treated as levy for the purposes of—

40 (a) subsection (8), in relation to provision under that subsection for levy by virtue of paragraph (l) of section 72(6), and

(b) section 74(7).”,

and

45 (d) by deleting subsection (9).

7.—The Act of 1996 is amended by inserting the following section after section 73:

“73A.—(1) The Minister may, after consultation with such other Minister of the Government, if any, as the Minister considers appropriate, make regulations providing that there shall be chargeable, leviable and payable a levy (which shall be known as a ‘waste facility levy’ and is in this section referred to as the ‘levy’) in respect of— 5

(a) the carrying on of a specified class or classes of waste disposal activity (being an activity referred to in paragraph 8 of the Third Schedule), 10

(b) the disposal by means of a waste disposal activity referred to in paragraph 8 of the Third Schedule, or a specified class or classes of such activity, of a specified class or classes of waste, 15

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

(d) the carrying on of a specified class or classes of waste recovery activity (being an activity referred to in paragraph 9 of the Fourth Schedule), 20

(e) the submission for recovery by means of a waste recovery activity referred to in paragraph 9 of the Fourth Schedule, or a specified class or classes of such activity, of a specified class or classes of waste, 25

(f) subject to subsection (2), both the carrying on of an activity referred to in paragraph (d) and an activity referred to in paragraph (e), or

(g) subject to subsection (2), both the carrying on of an activity referred to in paragraph (a) and the carrying on of an activity referred to in paragraph (d). 30

(2) Regulations under subsection (1)(c), (1)(f) or (1)(g) shall not result in levy being payable more than once in respect of—

(a) a particular disposal of a particular quantity of waste, or 35

(b) a particular quantity of waste submitted for recovery.

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

(a) that is disposed of, or 40

(b) that is submitted for recovery by means of a waste recovery activity.

(4) When specifying the amount of the levy in regulations under subsection (1) the Minister shall, subject to subsection (3), specify such amount for the purposes of promoting— 45

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

(b) the reduction of the quantity of waste disposed of, or submitted for recovery, by means of an activity referred to in subsection (1).

5 (5) The Minister may, subject to subsections (3) and (6), amend the amount of the levy standing specified, for the time being, in regulations under subsection (1) for the purposes of promoting—

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

10 (b) the reduction of the quantity of waste disposed of, or submitted for recovery, by means of an activity referred to in subsection (1),

once and once only in each financial year beginning with the financial year in which the *Environment (Miscellaneous Provisions) Act 2011* is passed.

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

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

25 (8) The levy shall be payable by the person who carries on the waste disposal activity or waste recovery activity concerned.

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

35 (b) Interest due in accordance with paragraph (a) shall be payable to the Environment Fund in the manner specified in the regulations under subsection (1) and the provisions of those regulations relating to the recovery of the levy shall apply to the interest as if it were levy.

40 (c) Interest paid in accordance with paragraph (a) shall be treated as levy for the purposes of—

(i) subsection (12), in relation to provision under that subsection for levy by virtue of paragraph (l) of section 72(6), and

45 (ii) section 74(7).

(10) Regulations under subsection (1) shall—

(a) provide that the levy (not being levy chargeable by virtue of those regulations on the local authority)

shall be payable to the local authority in whose functional area the waste disposal activity or the waste recovery activity concerned is carried on, and

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

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

(b) The purpose mentioned in paragraph (a) is ensuring that the exercise of the power referred to in that paragraph does not result in one or more categories of person paying a disproportionate amount of the total amount of charges a local authority could reasonably be expected to make in respect of the provision of services in the circumstances concerned.

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

(12) Regulations under subsection (1) may provide, in relation to levy under this section, for all the matters which regulations under section 72 may, by virtue of paragraphs (a), (c), (d) and (g) to (l) of subsection (6) of that section, provide in relation to levy under that section and those paragraphs shall, accordingly, apply for the purposes of this section with any necessary modifications (including such modifications as will enable like provision with respect to the payment into the Environment Fund of amounts received by a local authority on account of levy under this section to be made with respect to levy under this section chargeable on the local authority itself).

(13) A person who fails to—

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

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

shall be guilty of an offence.”.

PART 4

MISCELLANEOUS

9.—The Third Schedule to the Freedom of Information Act 1997 is amended, at the end of Part I, by inserting—

Amendment of
Freedom of
Information Act
1997.

- 5
- (a) in column (1), “No. 6 of 1987”,
 - (b) in column (2), opposite the mention in column (1) of No. 6 of 1987, “Air Pollution Act 1987”, and
 - (c) in column (3), opposite the mention in column (2) of Air Pollution Act 1987, “section 16(4)”.



**AN BILLE COMHSHAOIL (FORÁLACHA
ILGHNÉITHEACHA), 2011
ENVIRONMENT (MISCELLANEOUS PROVISIONS) BILL
2011**

EXPLANATORY MEMORANDUM

General

The purpose of the Bill is to provide for increased penalties and a new scheme of graduated fixed payment notices for offences under the Air Pollution Act 1987. The Bill also proposes that the non-disclosure provisions of section 16 of the 1987 Act be made subject to the Freedom of Information Act.

The Bill also amends the Waste Management Acts 1996-2003, and aims to give greater flexibility in the setting of the levy on plastic bags and the landfill levy. Furthermore, it introduces the power to charge a waste facility levy on incineration facilities.

The amendment of the Act in relation to the plastic bag levy is driven by the need to respond in a flexible manner to levels of plastic bag usage. The Bill provides the mechanism by which the levy may be amended. The purpose of the amendment is to maintain the dissuasive impact of the levy and to reduce the usage of plastic bags.

The amendment of the Act in relation to the landfill levy is driven by the challenging targets set for Ireland in the EU Landfill Directive (1999/31/EC) with regard to the diversion of biodegradable municipal waste from landfill. Significant increases in the maximum landfill levy and in the annual maximum amount by which it can be increased are warranted in order to maintain the dissuasive impact of the levy and to drive recycling and diversion from landfill.

The Bill also provides for the introduction of a levy on incineration to ensure that it does not obtain a competitive advantage which would draw waste down the waste hierarchy.

Provisions

The Bill has 9 sections, divided into four Parts.

Part 1 of the Bill contains the preliminary and general sections.

Section 1 provides for the Short title, collective citations, construction and commencement.

Section 2 of the Bill is a standard definitions section.

Part 2 of the Bill provides for an increase in the monetary penalties under the Air Pollution Act 1987 and for the introduction of a system

of graduated fixed payment notices (formerly known as on-the-spot fines) for certain offences under the 1987 Act.

Sections 3 and 4 of the Bill bring the penalty provisions of the Air Pollution Act 1987 into line with current levels by increasing the penalty for offences on summary conviction from £1,000 to €5,000 and for continuing offences from £100 to €500 per diem. Penalties for offences on conviction on indictment are raised from £10,000 to €500,000 and for continuing offences from £1,000 to €5,000 per diem.

In addition, for certain offences, the Bill introduces a new graduated system of fixed payment notices. The offences which will attract graduated fixed payment notices generally relate to the marketing and sale of bituminous coal and are as follows:

Offences committed under Articles 3(1), 3(2), 4, 6 or 7 of the Air Pollution Act 1987 (Marketing, Sale and Distribution of Fuels) Regulations 1998 i.e.

- *Article 3(1)* in relation to the marketing, sale or distribution of bituminous coal within a ban area — payment of €1,000
- *Article 3(2)* in relation to the transport of bituminous coal within a ban area — payment of €500
- *Article 4* in relation to the requirement for bags of solid fuel to be sealed and appropriately labelled — payment of €500
- *Article 6* in relation to the requirement on fuel merchants, located within a ban area, to maintain a register of fuels stored at and transported from the premises — payment of €500, and
- *Article 7* in relation to the requirement on the owners of vehicles used to transport banned fuels within a ban area to produce a statement of the fuels being transported, including suppliers, destination and purchasers — payment of €250.

Further amendment to the Bill as published will be made to ensure alignment with the Fines Act 2010.

Part 3 of the Bill amends the Waste Management Act 1996 (as amended).

Section 5 amends Section 72 of the Waste Management Act 1996 (as amended), by providing that the ceiling on the plastic bag levy be set at an absolute limit of 70 cent. The upper limit of 70 cent is designed to allow for the application of the Consumer Price Index (CPI) to the levy for a number of years. This is provided for in the amendment to Section 72(3).

Section 5 also inserts a new subsection 72(3A) to provide the mechanism by which the levy may be increased through the application of CPI and a discretionary application of 10% by the Minister, for the purposes of the prevention of the generation of waste, and the reduction of the use of plastic bags. The existing power of the Minister to amend the rate of interest charged on unpaid levies is removed.

Section 6 provides for an amendment to Section 73 of the Waste Management Act 1996 (as amended by the Waste Management Act 2001), by providing that the ceiling on the landfill levy be set at an absolute limit of €120, for the purposes of prevention of the

generation of waste and reduction of the quantity of waste disposed of by landfill.

Section 6 also provides that the levy may be increased once only in any one financial year and by not more than €50. It also inserts the similar provisions in relation to interest charged on unpaid levies as provided for under the plastic bag levy.

Section 7 provides for the creation of a waste facility levy chargeable on incineration of waste classed either as disposal or recovery, for the purposes of the prevention of the generation of waste and the reduction of the quantity of waste disposed of or submitted for recovery.

It provides that no levy under this Section may exceed €120 or be increased by more than €50 once in any one financial year.

Section 7 also sets out the powers for the charging and collection of the new waste facility levy in the same manner as those for the existing landfill levy.

Section 8 provides for amendment to Section 74 of the Waste Management Act 1996 (as amended by the Protection of the Environment Act 2003), by providing for income from the Waste Facility Levy to be paid into the Environment Fund.

Section 9 of the Bill provides for an amendment to the Freedom of Information Act by the addition of section 16 of the Air Pollution Act 1987 to its Third Schedule. The FOI Act requires a decision maker considering an FOI request to refuse access to a record if its disclosure is prohibited by a provision in another Act. The Third Schedule of the FOI Act contains a list of those non-disclosure provisions to which the above requirement does not apply.

Section 16 of the Air Pollution Act 1987 contains such a non-disclosure provision in relation to information obtained by a local authority from the occupiers of premises on activities or processes being carried out, or fuels or materials used or burned on, or emissions from, premises to protect trade secrets or commercially sensitive information.

*Department of the Environment Heritage and Local Government,
January, 2011.*