



2011 CHAPTER 5

Waste

Powers to require removal of waste unlawfully deposited

4. For Articles 28 and 28A of the 1997 Order substitute—

“Power to require removal of waste unlawfully deposited

28.—(1) If any controlled waste is deposited in or on any land in contravention of Article 4(1), an enforcing authority may, by notice served on him, require the appropriate person to do either or both of the following, that is—

- (a) to remove the waste from the land within a specified period not less than a period of 21 days from the service of the notice;
- (b) to take within such a period specified steps with a view to eliminating or reducing the consequences of the deposit of the waste.

(2) A person on whom any requirements are imposed under paragraph (1) may, within the period of 21 days mentioned in that paragraph, appeal against the requirement to a court of summary jurisdiction.

(3) On any appeal under paragraph (2) the court shall quash the requirement if it is satisfied that—

- (a) the appellant neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste;
- (b) there is a material defect in the notice; or
- (c) in order to comply with the requirement the appellant would be required to enter the land unlawfully;

and in any other case shall either modify the requirement or dismiss the appeal.

(4) Where a person appeals against any requirement imposed under paragraph (1), the requirement shall be of no effect pending the determination of the appeal; and where the court modifies the requirement or dismisses the appeal it may extend the period specified in the notice.

(5) If a person on whom a requirement has been imposed under paragraph (1) fails, without reasonable excuse, to comply with the requirement he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) If in the case of a continuing offence under paragraph (5), the offender continues to fail to comply with the requirement he shall be guilty of a further offence and shall be liable on summary conviction to an additional fine not exceeding one-tenth of level 5 on the standard scale for each day on which the offence is continued and before the enforcing authority has begun to exercise its powers under paragraph (7).

(7) Where a person on whom a requirement has been imposed under paragraph (1) by an enforcing authority fails to comply with the requirement, the enforcing authority may do what that person was required to do and may recover from him any expenses reasonably incurred by the enforcing authority in doing it.

(8) In this Article and Articles 28A and 28B “enforcing authority” means—

- (a) the Department; and
- (b) in relation to land in its district, a district council.

The “appropriate person”

28A.—(1) Subject to the following provisions of this Article, the appropriate person in relation to any deposit of waste in or on any land is the person (“D”) who deposited the waste.

(2) Unless paragraph (3) applies, the appropriate person is the occupier of the land if—

- (a) D cannot be identified or cannot be found without the enforcing authority incurring unreasonable expense; or
- (b) the enforcing authority has served a notice under Article 28(1) imposing a requirement on D and—
 - (i) D has failed to comply with that requirement within the period specified in the notice; or
 - (ii) that requirement has been quashed on the ground specified in Article 28(3)(a).

Status: This is the original version (as it was originally enacted).

- (3) The appropriate person is the owner of the land if—
 - (a) there is no occupier of the land or the occupier cannot be found without the enforcing authority incurring unreasonable expense; or
 - (b) the enforcing authority has served a notice under Article 28(1) imposing a requirement on the occupier of the land and—
 - (i) the occupier has failed to comply with that requirement within the period specified in the notice; or
 - (ii) that requirement has been quashed on the ground specified in Article 28(3)(a).
- (4) This Article applies for the purposes of Article 28.
- (5) A notice under Article 28(1) which may be served—
 - (a) by virtue of paragraph (1) may not be served by virtue of paragraph (2) or (3);
 - (b) by virtue of paragraph (2) may not be served by virtue of paragraph (3).

Reserve powers of enforcing authority

- 28B.**—(1) If it appears to an enforcing authority that waste has been deposited in or on any land in contravention of Article 4(1) and that—
- (a) in order to remove or prevent pollution of land, water or air or harm to human health it is necessary that the waste be forthwith removed or other steps taken to eliminate or reduce the consequences of the deposit or both, or
 - (b) there is no occupier of the land, or
 - (c) the occupier neither made nor knowingly permitted the deposit of the waste,

the enforcing authority may remove the waste from the land or take other steps to eliminate or reduce the consequences of the deposit or, as the case may require, to remove the waste and take those steps.

- (2) Where an enforcing authority exercises any of the powers conferred on it by paragraph (1) it may recover any costs necessarily incurred by it in removing the waste or taking the steps or both and in disposing of the waste—
- (a) from the person who deposited the waste; or
 - (b) if that person cannot be identified or cannot be found without the enforcing authority incurring unreasonable expense—
 - (i) in a case falling within paragraph (1)(a), from the occupier of the land,

(ii) in a case falling within paragraph (1)(b) or (c), from the owner of the land,

unless (in either case) he proves that he neither made nor knowingly caused nor knowingly permitted the deposit of the waste.

(3) Any waste removed by an enforcing authority under paragraph (1) shall belong to the enforcing authority and may be dealt with accordingly.”