2011 CHAPTER 5

Waste

Fixed penalty notices for offences under Article 4

1 After Article 4 of the 1997 Order insert—

"**Fixed penalty notices for offences under Article 4**

4A.—(1) This Article applies where on any occasion an authorised officer has reason to believe that a person has committed an offence under Article 4.

(2) The authorised officer may give to that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the enforcing authority.

(3) Where a person is given a notice under this Article in respect of an offence—

(a) no proceedings may be instituted for that offence before the expiration of the period of 14 days following the date of the notice; and

(b) he may not be convicted of that offence if he pays the fixed penalty before the expiration of the period.

(4) A notice under this Article must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(5) A notice under this Article must also state—

(a) the period during which, by virtue of paragraph (3), proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid.

(6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty to the person mentioned in paragraph (5)(c) at the address so mentioned.

(7) Where a letter is sent in accordance with paragraph (6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(8) The form of a notice under this Article is to be such as the Department may by order prescribe.

(9) Subject to paragraph (10), the fixed penalty payable to an enforcing authority under this Article is an amount fixed by the enforcing authority being—

(a) not less than £100; and

(b) not more than £400.

(10) The Department may by order substitute a different amount for any amount for the time being specified in paragraph (9).

(11) An enforcing authority may make provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the enforcing authority.

(12) In any proceedings a certificate which—

(a) purports to be signed by an authorised officer, and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(13) Article 22C (use of fixed penalty receipts by a district council) applies in relation to amounts received by a council under this Article as it applies in relation to amounts received under Article 22A.

(14) In this Article—

"authorised officer" means an officer of the enforcing authority who is authorised in writing by the enforcing authority for the purposes of this Article;

"enforcing authority" means—

(a) the Department; and

(b) in relation to an offence committed within its district, a district council.".

Commencement Information

I1 S. 1 in operation at 12.3.2013 by S.R. 2013/34, **art. 2(1)**

Detention of seized property

2.—(1) In Article 5F of the 1997 Order (seizure of vehicles) after paragraph (3) insert—

"(3A) Regulations making provision under paragraph (3)(b)—

(a) must (subject to sub-paragraph (b)) provide for seized property to be returned as mentioned in paragraph (3)(b) before the expiry of a period specified in the regulations;

(b) may provide for a magistrates' court, on an application by the Department, to authorise the Department to retain the seized property until such date or the happening of such event as the court may specify;

(c) must, if they contain provision under sub-paragraph (b), provide for any person claiming to be entitled to the property to be afforded an opportunity to be heard by the court before it determines the application.".

(2) In Article 42A of the 1997 Order (seizure of vehicles) after paragraph (3) insert—

"(3A) Regulations making provision under paragraph (3)(b)—

(a) must (subject to sub-paragraph (b)) provide for seized property to be returned as mentioned in paragraph (3)(b) before the expiry of a period specified in the regulations;

(b) may provide for a magistrates' court, on an application by the Department, to authorise the Department to retain the seized property until such date or the happening of such event as the court may specify;

(c) must, if they contain provision under sub-paragraph (b), provide for any person claiming to be entitled to the property to be afforded an opportunity to be heard by the court before it determines the application.".

Commencement Information

I2 S. 2 in operation at 12.3.2013 by S.R. 2013/34, **art. 2(2)**

Offence of failing to pay charge for subsistence of licence

3 In Article 15 of the 1997 Order (fees and charges for licences) after paragraph (5) insert—

"(5A) If the holder of a licence fails to pay a charge due in consideration of the subsistence of the licence, the holder of the licence shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5B) If the failure to pay continues after conviction of an offence under paragraph (5A), the offender 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.

(5C) The court by which the holder of a licence is convicted of an offence under paragraph (5A) or (5B) may order the holder of the licence to pay to the Department any amount outstanding as at the date of conviction in respect of—

(a) any charge due in consideration of the subsistence of the licence; and

(b) any expenditure incurred by the Department under Article 16(2) in relation to—

(i) the land or mobile plant to which the licence relates; or

(ii) any equipment on the land to which the licence relates;

and any amount so ordered to be paid to the Department is enforceable in the same manner as any other sum adjudged to be paid by a conviction of that court.".

VALID FROM 02/01/2023

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).

(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.”.

VALID FROM 02/01/2023

Councils to enforce Articles 4 and 5 of 1997 Order

5.—(1) In Article 72 of the 1997 Order (powers of enforcing authority), in paragraph (12)—

(a) in the definition of “enforcing authority” after paragraph (a) insert—

“(aa) a district council in relation to Articles 4 and 5;”;

(b) in the definition of “pollution control statutory provisions” in paragraph (b) after sub-paragraph (i) insert—

“(ia) Articles 4 and 5;”.

(2) In Article 5A of the 1997 Order (fixed penalty notices for certain offences under Article 5(8))—

(a) in paragraph (1) for “the Department” (where it first occurs) substitute “ an authorised officer of an enforcing authority ” and for “to the Department” substitute “ to the enforcing authority ”;

(b) in paragraph (2) for "Department" substitute " authorised officer " and at the end add " to the enforcing authority ";

(c) in paragraph (9) for "the Department" substitute " an enforcing authority ";

(d) in paragraph (11) for "The Department may" substitute " An enforcing authority may " and for "by the Department" substitute " by the enforcing authority ";

(e) for paragraph (13) substitute—

"(12A) Article 22C (use of fixed penalty receipts by a district council) applies in relation to amounts received by a council under this Article as it applies in relation to amounts received under Article 22A.

(13) In this Article—

"authorised officer" means an officer of the enforcing authority who is authorised in writing by the enforcing authority for the purposes of this Article;

"enforcing authority" means—

(a) the Department; and

(b) in relation to an offence committed within its district, a district council.".

(3) In Article 5B of the 1997 Order (investigation and enforcement costs) for paragraph (2) substitute—

"(2) The court by or before which the offender is convicted may make an order requiring him to pay—

(a) to the Department or a district council a sum which appears to the court not to exceed the costs arising from investigations of the Department or the district council which resulted in the conviction; and

(b) to the Department a sum which appears to the court not to exceed the costs arising from the seizure by the Department under Article 5E of a vehicle involved in the offence.".

(4) In Article 5C of the 1997 Order (clean up costs) after paragraph (2) insert—

"(2A) The reference to costs in paragraph (2) does not include any costs which the Department or the council has already recovered under Article 28B(2).".

Status: *Point in time view as at 12/03/2013. This version of this cross heading contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011, Cross Heading: Waste. (See end of Document for details)*

Right of entry with heavy equipment or to domestic premises

6 In Article 72(4) of the 1997 Order omit sub-paragraph (a) (right of entry with heavy equipment or to residential premises to require 24 hours' notice to occupier).

Status:
Point in time view as at 12/03/2013. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation:
There are currently no known outstanding effects for the Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011, Cross Heading: Waste.