

# **WASTE AND CONTAMINATED LAND (AMENDMENT) ACT (NORTHERN IRELAND) 2011**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011 which received Royal Assent on 10 February 2011. They have been prepared by the Department of the Environment in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The Act makes a number of amendments to Part 2 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”). These were generated from a number of sources including previous engagement with key stakeholders and commitments made in the 2006 Northern Ireland Waste Management Strategy. They are designed to clarify and strengthen the existing statutory framework for waste on land. They also legislate for a partnership approach between the Department of the Environment (“the Department”) and local government in tackling illegal waste activity.
4. The Act also makes some changes to the legislative framework contained in Part 3 of the 1997 Order for the management of land which has been contaminated by pollution. This part of the Order has not yet been commenced; these amendments mainly reflect lessons learned through experience of operating the legislation in England and Wales. They include an amended definition of contaminated land that more accurately reflects the definition of controlled waters applicable in England and Wales; and the introduction of the notion of “significant” pollution of waterways or underground strata or the “significant possibility” of such pollution.
5. In addition, the Act includes a minor amendment to the Producer Responsibility Obligations (Northern Ireland) Order 1998 to provide an inclusive definition of the Department’s powers of entry and inspection.

## **CONSULTATION**

6. On 6 April 2009, the Department launched a public consultation on its proposals for new primary legislation. The responses that were received were mainly from councils or from groups representing councils.
7. The majority of responses that were received expressed support for the Department's policy proposals.

## **OVERVIEW**

8. The Act contains 14 sections and 2 Schedules.

## **COMMENTARY ON SECTIONS**

### **Waste**

#### **Section 1 – Fixed penalty notices for offences under Article 4**

This section deals with offences relating to unauthorised or harmful deposit, treatment or disposal etc of waste – as provided for under Article 4 of the 1997 Order. It enables the Department or relevant district council to issue a notice to a perceived offender, offering him the opportunity to pay a fixed penalty as an alternative to court action.

The powers are intended to be used for less serious waste offences. However they are discretionary; the Department or district councils can choose instead to prosecute any offences under Article 4 through the courts.

District councils will be able to use any funds raised through these fixed penalties to cover the costs of enforcement and clean up of illegally deposited waste.

#### **Section 2 – Detention of seized property**

Articles 5E and 42 of the 1997 Order give Departmental enforcement officers the powers in certain circumstances to seize vehicles and other property suspected of being used in illegal waste activity. Articles 5F and 42A specify that subordinate legislation is necessary to give effect to these powers and that the required regulations must set out how the Department will deal with seized property.

This section allows the Department to include in the regulations powers to retain property for a certain period after seizure. The Department must apply to a magistrates' court if it wishes to keep the property for longer than this prescribed period. However any person claiming entitlement to the seized property must be given an opportunity to be heard by the court, before it makes a decision on the Department's application.

### **Section 3 – Offence of failing to pay charge for subsistence of licence**

Article 15 of the 1997 Order makes provision for the Department to charge for its range of waste management licensing activities. This section creates new offences of:

- (i) a failure to pay subsistence fees; and
- (ii) continued non payment after a conviction for the offence described in (i) above.

### **Section 4 – Powers to require removal of waste unlawfully deposited**

Articles 28 and 28A of the 1997 Order give district councils powers to deal with waste unlawfully deposited in their areas. They enable councils to serve a notice on the occupier or in certain specified circumstances, the owner of land requiring him to remove illegal waste or take remedial action.

This section extends to the Department the power to issue such notices. It also enables a notice under Article 28 to be served on the person believed to have illegally deposited the waste on the land. This person has the same rights of appeal as those currently provided to owners and occupiers and the existing penalties apply in the event of failure to comply with such a notice.

### **Section 5 – Councils to enforce Articles 4 and 5 of 1997 Order**

This section gives councils the same enforcement powers as the Department in relation to breaches of Article 4 (prohibition on unauthorised or harmful deposit, treatment or disposal, etc., of waste) and Article 5 (Duty of care, etc., as respects waste) of the 1997 Order.

### **Section 6 – Right of entry with heavy equipment or to domestic premises**

This section removes the requirement, as set out in Article 72 of the 1997 Order, for enforcement officers investigating illegal waste offences to give 24 hours notice before they can enter residential premises or bring heavy machinery onto premises.

Enforcement officers must continue to obtain a court warrant by virtue of Schedule 4 of the 1997 Order, or alternatively must have permission from a person occupying the premises.

## **Contaminated land**

### **Section 7 – Contaminated land: pollution of waterways and underground strata**

This section revises the definition of “contaminated land” for the purposes of Part 3 of the 1997 Order. The contaminated land regime now covers substances causing significant harm in, on or under the land and significant pollution of waterways and waters within underground strata in the saturation zone but does not cover those waters in direct contact with the ground or subsoil within the unsaturated zone.

## **Section 8 – Appeals against remediation notices**

This section provides for an appeal against a remediation notice, issued by either the Department or a council, to be heard by the Planning Appeals Commission. It also provides for an appeal fee to be charged.

## **Section 9 – Interaction with other provisions**

This section means that the contaminated land regime cannot be used in circumstances where land has been contaminated by the final deposit of controlled waste and enforcement action can be taken under Regulations 24 and 26(2) of the Pollution Prevention and Control Regulations (Northern Ireland) 2003.

## **Producer responsibility obligations**

### **Section 10 – Producer responsibility obligation regulations**

The Producer Responsibility Obligations (Northern Ireland) Order 1998 gives the Department powers to make regulations obliging certain persons to undertake the re-use, recovery and recycling of products or materials. These powers include provision for entry and inspection, so that the Department can carry out its functions under the regulations.

This section amends existing legislation in order to provide a more precise definition of the Department's powers of entry and inspection.

## **Supplementary**

### **Section 12 – Commencement**

This section allows the Department to bring the various sections of the Act into operation on a day or days to be appointed by commencement order.

## **Schedules**

### **Schedule 1 - Amendments**

This Schedule contains a number of amendments to the 1997 Order. It includes an amendment to Article 27(2) designed to ensure that the Order covers the illegal deposit of waste in, on, over or under land. It also includes an amendment to require that any future adjustment of fixed penalty amounts under Articles 4A(10), 5A(10), 22B(5) or 42B(10) of the 1997 Order must be subject to draft affirmative resolution procedure.

## **HANSARD REPORTS**

9. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

<b>STAGE</b>	<b>DATE</b>
Introduction of the Act to the Committee for the Environment	15 October 2009
Introduction to the Assembly	22 March 2010
Second Stage Debate	13 April 2010
Committee Stage – Departmental briefing. Evidence from arc21	10 June 2010
Committee Stage - evidence from Banbridge District Council, the Southern Waste Management Partnership (SWaMP2008) and the Northern Ireland Local Government Association (NILGA)	24 June 2010
Committee Stage – evidence from the Northern Ireland Environment Agency (NIEA)	16 September 2010
Committee Stage - Departmental briefing	23 September 2010
Committee Stage – consideration of sections 1 to 14 and Schedules 1 and 2. Sections 1, 5 and 8 referred for further consideration	28 September 2010
Committee Stage - consideration of sections 1, 5 and 8	21 October 2010
Committee's report on the Act - Report number 06/10/11R	4 November 2010
Consideration Stage in the Assembly	15 December 2010
Further Consideration Stage	17 January 2011
Final Stage	25 January 2011
Royal Assent	10 February 2011

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