
STATUTORY INSTRUMENTS

1997 No. 2778

The Waste and Contaminated Land (Northern Ireland) Order 1997

PART III

CONTAMINATED LAND

Recovery of, and security for, the cost of remediation by the enforcing authority

61.—(1) Where, under Article 60(3)(a), (c), (e) or (f), the enforcing authority does any particular thing by way of remediation, it may, subject to^{[F1} Article 56A(3) or 57(6)], recover the reasonable cost incurred in doing it from the appropriate person or, if there are two or more appropriate persons in relation to the thing in question, from those persons in proportions determined pursuant to Article 54(7).

(2) In deciding whether to recover the cost, and, if so, how much of the cost, which it may recover under paragraph (1), the enforcing authority shall have regard—

- (a) to any hardship which the recovery may cause to the person from whom the cost is recoverable; and
- (b) where the enforcing authority is a district council, to any guidance issued by the Department for the purposes of this paragraph.

(3) Paragraph (4) shall apply in any case where—

- (a) any cost is recoverable under paragraph (1) from a person—
 - (i) who is the owner of any premises which consist of or include the contaminated land in question; and
 - (ii) who caused or knowingly permitted the substances, or any of the substances, by reason of which the land is contaminated land to be in, on or under the land; and
- (b) the enforcing authority serves a notice under this paragraph (a “charging notice”) on that person.

(4) Where this paragraph applies—

- (a) the cost shall carry interest, at such reasonable rate as the enforcing authority may determine, from the date of service of the notice until the whole amount is paid; and
- (b) subject to the following provisions of this Article, the cost and accrued interest shall be a charge on the premises mentioned in paragraph (3)(a)(i).

(5) A charging notice shall—

- (a) specify the amount of the cost which the enforcing authority claims is recoverable;
- (b) state the effect of paragraph (4) and the rate of interest determined by the authority under that paragraph; and
- (c) state the effect of paragraphs (7) and (8).

Changes to legislation: *The Waste and Contaminated Land (Northern Ireland) Order 1997, Section 61 is up to date with all changes known to be in force on or before 28 July 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) On the date on which an enforcing authority serves a charging notice on a person, the authority shall also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.

(7) Subject to any order under paragraph (9)(b) or (c), the amount of any cost specified in a charging notice and the accrued interest shall be a charge on the estate in the premises—

- (a) as from the end of the period of 21 days from the service of the charging notice, or
- (b) where an appeal is brought under paragraph (8), as from the final determination or (as the case may be) the withdrawal, of the appeal,

until the cost and interest are recovered.

(8) A person served with a charging notice or a copy of a charging notice may appeal against the notice to a county court within the period of 21 days beginning with the date of service.

(9) On an appeal under paragraph (8), the court may—

- (a) confirm the notice without modification;
- (b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it; or
- (c) order that the notice is to be of no effect.

(10) Regulations may make provision with respect to—

- (a) the grounds on which appeals under this Article may be made; or
- (b) the procedure on any such appeal.

(11) A charge under this Article may be recovered by the same means and in the like manner in all respects as if it were a mortgage by deed created by the owner of the estate in favour of the enforcing authority and, for the recovery thereof, the enforcing authority may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgages by deed.

(12) Where any cost is a charge on premises under this Article, the enforcing authority may by order declare the cost to be payable with interest by instalments within the specified period until the whole amount is paid.

(13) In paragraph (12)—

“interest” means interest at the rate determined by the enforcing authority under paragraph (4);
and

“the specified period” means such period of 30 years or less from the date of service of the charging notice as is specified in the order.

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Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 5A(12A)(13) substituted for art. 5A(13) by [2011 c. 5 \(N.I.\) s. 5\(2\)\(e\)](#)
- art. 5C(2A) inserted by [2011 c. 5 \(N.I.\) s. 5\(4\)](#)
- art. 2828A-28B substituted for art. 28 28A by [2011 c. 5 \(N.I.\) s. 4](#)
- art. 58(1A) inserted by [2011 c. 5 \(N.I.\) s. 8\(3\)](#)
- art. 70(2A)-(2C) inserted by [2011 c. 5 \(N.I.\) s. 9](#)