
STATUTORY INSTRUMENTS

1997 No. 2778

**The Waste and Contaminated Land
(Northern Ireland) Order 1997**

PART II

WASTE ON LAND

Duty of care, etc., as respects waste

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5.—(1) Subject to paragraph (2), any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, shall take all such measures applicable to him in that capacity as are reasonable in the circumstances—

- (a) to prevent any contravention by any other person of Article 4;
- (b) to prevent the escape of the waste from his control or that of any other person; and
- (c) on the transfer of the waste, to secure—
 - (i) that the transfer is only to an authorised person or to a person for authorised transport purposes; and
 - (ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that Article and to comply with this paragraph as respects the escape of waste.

(2) Paragraph (1) does not apply to an occupier of domestic property as respects the household waste produced on the property.

(3) The following are authorised persons for the purpose of paragraph (1)(c)—

- (a) any district council;
- (b) any person who is the holder of a waste management licence under Article 6 or of a disposal licence under Article 7 of the Pollution Control and Local Government (Northern Ireland) Order 1978;
- (c) any person to whom Article 4(1) does not apply by virtue of regulations under paragraph (3) of that Article;
- (d) any person registered as a carrier of controlled waste under Article 39; and
- (e) any person who is not required to be so registered by virtue of regulations under Article 38(3).

(4) Regulations may amend paragraph (3) so as to add, whether generally or in such circumstances as may be prescribed, any person specified in the regulations, or any description of person so specified, to the persons who are authorised persons for the purposes of paragraph (1)(c).

(5) The following are authorised transport purposes for the purposes of paragraph (1)(c)—

- (a) the transport of controlled waste within the same premises between different places in those premises;
 - (b) the transport to a place in Northern Ireland of controlled waste which has been brought from a country or territory outside Northern Ireland not having been landed in Northern Ireland until it arrives at that place; and
 - (c) the transport by air or sea of controlled waste from a place in Northern Ireland to a place outside Northern Ireland.
- (6) For the purposes of paragraph (1)(c)(ii)—
- (a) a transfer of waste in stages shall be treated as taking place when the first stage of the transfer takes place, and
 - (b) a series of transfers between the same parties of waste of the same description shall be treated as a single transfer taking place when the first of the transfers in the series takes place.
- (7) Regulations may make provision imposing requirements on any person who is subject to the duty imposed by paragraph (1) as respects the making and retention of documents and the furnishing of documents or copies of documents.
- (8) Any person who fails to comply with paragraph (1) or with any requirement imposed under paragraph (7) shall be guilty of an offence and shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
 - (b) on conviction on indictment, to a fine.
- (9) The Department shall, after consultation with such persons or bodies as appear to the Department representative of the interests concerned, prepare and issue a code of practice for the purpose of providing to persons practical guidance on how to discharge the duty imposed on them by paragraph (1).
- (10) The Department may issue modifications of, or withdraw, a code of practice issued under paragraph (9); but where a code is withdrawn, the Department shall prepare and issue a new code under that paragraph in substitution for it.
- (11) The draft of the code prepared under paragraph (9) shall be laid before the Assembly.
- (12) If within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon but without prejudice to the laying before the Assembly of a new draft.
- (13) A code of practice issued under paragraph (9) shall be admissible in evidence and if any provision of such a code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.
- (14) In this Article “broker” means a person who has control of controlled waste for the purposes of having carried out on behalf of another person any of the activities mentioned in paragraph (1).