
STATUTORY INSTRUMENTS

1997 No. 2778

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

PART IV

GENERAL

Supervision and enforcement

Powers of enforcing authorities and persons authorised by them

72.—(1) An authorised person may, on production (if so required) of his authority, exercise any of the powers in paragraph (2) for the purpose of—

- (a) determining whether any provisions of the pollution control statutory provisions in the case of an enforcing authority are being, or have been, complied with;
- (b) discharging one or more of the functions conferred or imposed on an enforcing authority by or under the pollution control statutory provisions; or
- (c) determining whether and, if so, how such a function should be discharged.

(2) The powers of an authorised person are—

- (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
- (b) on entering any premises by virtue of sub-paragraph (a), to take with him—
 - (i) any other person duly authorised by the enforcing authority and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may in any circumstances be necessary;
- (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
- (g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to

cause pollution of the environment or harm to human health, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);

- (h) in the case of any such article or substance as is mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which he has power to do under that sub-paragraph;
 - (ii) to ensure that it is not tampered with before examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under the pollution control statutory provisions in the case of the enforcing authority under whose authorisation he acts or in any other proceedings relating to a variation notice, enforcement notice or prohibition notice under those statutory provisions;
- (i) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
- (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records—
 - (i) which are required to be kept under the pollution control statutory provisions for the enforcing authority under whose authorisation he acts, or
 - (ii) which it is necessary for him to see for the purposes of an examination or investigation under sub-paragraph (c),
 and to inspect and take copies of, or of any entry in, the records;
- (k) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this Article;
- (l) any other power for a purpose mentioned in paragraph (1) which is conferred by regulations.

(3) The powers which under paragraphs (1) and (2) are conferred in relation to any premises for the purpose of enabling an enforcing authority to determine whether any provision of the pollution control statutory provisions in the case of that authority is being, or has been, complied with shall include power, in order to obtain the information on which that determination may be made,—

- (a) to carry out experimental borings or other works on those premises; and
- (b) to install, keep or maintain monitoring and other apparatus there.

(4) Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of this Article shall only be effected—

- (a) after the expiration of at least 7 days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question, and
- (b) either—
 - (i) with the consent of a person who is in occupation of those premises; or

(ii) under the authority of a warrant by virtue of Schedule 4.

(5) Except in an emergency, where an authorised person proposes to enter any premises and—

- (a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry, or
- (b) he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to those premises by virtue of this Article shall only be effected under the authority of a warrant by virtue of Schedule 4.

(6) Regulations may make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under paragraph (2)(f).

(7) Where an authorised person proposes to exercise the power conferred by paragraph (2)(g) in the case of an article or substance found on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(8) Before exercising the power conferred by paragraph (2)(g) in the case of any article or substance, an authorised person shall consult—

- (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test, and
- (b) such other persons,

as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do or cause to be done under the power.

(9) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(i) shall be admissible in evidence in Northern Ireland against that person in any proceedings.

(10) Nothing in this Article shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

(11) Schedule 4 shall have effect with respect to the powers of entry and related powers which are conferred by this Article.

(12) In this Article and Schedule 4—

“authorised person” means a person who is authorised in writing by an enforcing authority for the purposes of this Article;

“emergency” means a case in which it appears to the authorised person in question—

- (a) that there is an immediate risk of serious pollution of the environment or serious harm to human health, or
- (b) that circumstances exist which are likely to endanger life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy;

“enforcing authority” means—

- (a) the Department;
- (b) a district council in its capacity as an enforcing authority for the purposes of Part III;
- (c) a district council for the purposes of Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978;

“pollution control statutory provisions”—

- (a) in relation to the Department, means—
 - (i) this Order; and
 - (ii) regulations made under section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution;
- (b) in relation to a district council, means—
 - (i) Part III;
 - (ii) Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978; and
 - (iii) regulations made under section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution;

“premises” includes any land, vehicle, vessel or mobile plant.

(13) Nothing in section 98 of the Local Government Act (Northern Ireland) 1972 shall apply to functions conferred on a district council under this Order, other than functions under Article 28.

Power to deal with cause of imminent danger of serious pollution etc.

73.—(1) Where, in the case of any article or substance found by him on any premises which he has power to enter, an authorised person has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious pollution of the environment or serious harm to human health, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).

(2) As soon as may be after any article or substance has been seized and rendered harmless under this Article, the authorised person shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall—

- (a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and
- (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;

and if, where sub-paragraph (b) applies, the authorised person cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under sub-paragraph (a).

(3) In this Article, “authorised person” has the same meaning as in Article 72.

Offences

74.—(1) It is an offence for a person intentionally to obstruct an authorised person in the exercise or performance of his powers or duties.

- (2) It is an offence for a person, without reasonable excuse,—
 - (a) to fail to comply with any requirement imposed under Article 72;
 - (b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the discharge of his functions under that Article; or
 - (c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer under that Article.

(3) It is an offence for a person falsely to pretend to be an authorised person.

(4) A person guilty of an offence under paragraph (1) shall be liable—

- (a) in the case of an offence of obstructing an authorised person in the exercise of his powers under Article 73—
 - (i) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine or to both;
 - (ii) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) in any other case, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (5) A person guilty of an offence under paragraph (2) or (3) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) In this Article—
- “authorised person” has the same meaning as in Article 72;
 - “powers or duties” includes powers or duties exercisable by virtue of a warrant under Schedule 4.