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STATUTORY INSTRUMENTS

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**2007 No. 611**

**The Waste (Amendment) (Northern Ireland) Order 2007**

*Offences relating to deposit, disposal, etc. of waste*

**Defence of acting under employer's instructions**

3.—(1) In Article 4 of the 1997 Order (offence of unauthorised or harmful deposit etc of controlled waste), omit paragraph (7)(b) (defence of acting on employer's instructions).

(2) This Article does not have effect in relation to an offence committed, or alleged to have been committed, before the coming into operation of this Article.

**Penalties on conviction**

4.—(1) Article 4 of the 1997 Order (offence of unauthorised or harmful deposit etc of waste) is amended as follows.

(2) For paragraphs (8) to (10) (penalties) substitute—

“(8) Subject to paragraph (9), a person who commits an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £50,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.

(9) A person (other than an establishment or undertaking) who commits a relevant offence shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(10) In this Article “relevant offence” means an offence under this Article in respect of a contravention of paragraph (1)(c) consisting of the treatment, keeping or disposal within the curtilage of a domestic property of household waste from that property.

(11) In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”

(3) This Article does not have effect in relation to an offence committed before the coming into operation of this Article.

**Failure to furnish documentation: fixed penalty notice**

5. In the 1997 Order, after Article 5 insert—

**“Fixed penalty notices for certain offences under Article 5(8)**

**5A.—**(1) This Article applies where it appears to the Department that a person has failed to comply with a duty to furnish documents to the Department imposed under regulations made at any time under Article 5(7).

(2) The Department may serve on that person a notice offering him the opportunity of discharging any liability to conviction for an offence under Article 5(8) by payment of a fixed penalty.

(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 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) The fixed penalty payable to the Department under this Article is, subject to paragraph (10), £300.

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

(11) The Department 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 Department.

(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) In this Article “authorised officer” means an officer of the Department who is authorised in writing by the Department for the purposes of this Article.”.

**Investigation and enforcement costs**

**6.—**(1) After Article 5A of the 1997 Order (inserted by Article 5) insert—

*“Provisions relating to offences under Articles 4 and 5*

**Article 4 and 5 offences: investigation and enforcement costs**

**5B.**—(1) This Article applies where a person is convicted of—

- (a) an offence under Article 4 in respect of a contravention of paragraph (1) of that Article; or
- (b) an offence under Article 5 in respect of a failure to comply with paragraph (1) of that Article.

(2) The court by or before which the offender is convicted may make an order requiring him to pay to the Department a sum which appears to the court not to exceed the costs arising from—

- (a) investigations of the Department which resulted in the conviction; and
- (b) the seizure by the Department under Article 5E of a vehicle involved in the offence.

(3) The costs arising from the seizure of a vehicle as specified in paragraph (2)(b) may include the cost of disposing of the contents of the vehicle.

(4) The power of a court to make an order under this Article is in addition to its power to make an order under section 2 of the Costs in Criminal Cases Act (Northern Ireland) 1968 (award of costs against accused).”.

(2) This Article does not have effect in relation to an offence committed before the coming into operation of this Article.

**Clean-up costs**

7.—(1) After Article 5B of the 1997 Order (inserted by Article 6) insert—

**“Article 4 offences: clean-up costs**

**5C.**—(1) Paragraph (2) applies where a person is convicted of an offence under Article 4 in respect of a contravention of paragraph (1) of that Article consisting of the deposit or disposal of controlled waste.

(2) The reference in Article 14(1) of the Criminal Justice (Northern Ireland) Order 1994 (compensation orders) to loss or damage resulting from the offence includes costs incurred or to be incurred by the owner or occupier of the land, the Department or a district council in—

- (a) removing the waste deposited or disposed of in or on the land;
- (b) taking other steps to eliminate or reduce the consequences of the deposit or disposal; or
- (c) both.

(3) Subject to paragraph (4), in relation to the costs referred to in paragraph (2), the reference in Article 14(11) of the Criminal Justice (Northern Ireland) Order 1994 (limit on amount payable) to £5000 is instead to be construed as a reference to the amount of those costs (or, if the costs have not yet been incurred, the likely amount).

(4) Paragraph (3) does not apply where a person (other than an establishment or undertaking) is convicted of a relevant offence within the meaning of Article 4.”.

(2) This Article does not have effect in relation to an offence committed before the coming into operation of this Article.

**Forfeiture of vehicles**

8.—(1) In the 1997 Order, after Article 5C (inserted by Article 7) insert—

**“Article 4 and 5 offences: forfeiture of vehicles**

**5D.**—(1) Subject to paragraph (2), this Article applies where a person is convicted of—

- (a) an offence under Article 4 in respect of a contravention of paragraph (1) of that Article consisting of the deposit or disposal of controlled waste;
- (b) an offence under Article 5 in respect of a failure to comply with paragraph (1) of that Article.

(2) This Article does not apply where a person (other than an establishment or undertaking) is convicted of a relevant offence within the meaning of Article 4.

(3) The court by or before which the offender is convicted may make an order under this Article if—

- (a) the court is satisfied that a vehicle was used in or for the purposes of the commission of the offence; and
- (b) at the time of his conviction the offender has rights in the vehicle.

(4) An order under this Article operates to deprive the offender of his rights in the vehicle (including its fuel) at the time of his conviction and to vest those rights in the Department.

(5) In a case where a vehicle has been seized under Article 5E and the offender retains rights in any of the vehicle’s contents, an order under this Article may, if and to the extent that it so specifies, deprive the offender of those rights and vest them in the Department.

(6) Where an order under this Article is made, the Department may take possession of the vehicle (if it has not already done so under Article 5F).

(7) The court may make an order under this Article whether or not it also deals with the offender in any other way in respect of the offence of which he is convicted.

(8) In considering whether to make an order under this Article a court must in particular have regard to—

- (a) the value of the vehicle;
- (b) the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making);
- (c) the offender’s need to use the vehicle for lawful purposes;
- (d) whether, in a case where it appears to the court that the offender is engaged in a business which consists wholly or partly in activities which are unlawful by virtue of Article 4, the making of the order is likely to inhibit the offender from engaging in further such activities.

(9) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (power to deprive offender of property) does not apply in any case where this Article applies.

(10) For the purposes of this Article, where a vehicle or its contents have been seized under Article 5E in connection with the offence referred to in paragraph (1), any transfer by the offender after the seizure and before his conviction of any of his rights in the vehicle or its contents is of no effect.

(11) In this Article “vehicle” includes any mobile plant.”.

(2) This Article does not have effect in relation to an offence committed before the coming into operation of this Article.

## Power to search and seize vehicles

9. After Article 5D of the 1997 Order (inserted by Article 8), insert—

### “Power to search and seize vehicles etc

**5E.**—(1) This Article applies where an authorised officer or a constable reasonably believes that the grounds in paragraph (2) or (3) exist.

(2) The grounds in this paragraph are that—

- (a) an offence under Article 4 or 5 has been committed,
- (b) a vehicle was used in the commission of the offence, and
- (c) proceedings for the offence have not yet been brought against any person.

(3) The grounds in this paragraph are that—

- (a) an offence under Article 4 or 5 is being or is about to be committed, and
- (b) a vehicle is being or is about to be used in the commission of the offence.

(4) The authorised officer or constable may—

- (a) search the vehicle;
- (b) seize the vehicle and any of its contents.

(5) In acting under paragraph (4) the authorised officer or constable may—

- (a) stop the vehicle;
- (b) enter any premises for the purpose of searching or seizing the vehicle.

(6) A vehicle or its contents seized under paragraph (4) are seized on behalf of the Department.

(7) A person commits an offence if—

- (a) he fails without reasonable excuse to give any assistance that an authorised officer or constable may reasonably request in the exercise of a power under paragraph (4) or (5);
- (b) he otherwise intentionally obstructs an authorised officer or constable in exercising that power.

(8) Where an authorised officer or constable has stopped a vehicle under paragraph (5) (a), he may require any occupant of the vehicle to give him—

- (a) the occupant’s name and address;
- (b) the name and address of the registered owner of the vehicle;
- (c) any other information he may reasonably request.

(9) A person commits an offence if—

- (a) he fails without reasonable excuse to comply with a requirement under paragraph (8);
- (b) he gives information required under that paragraph that is—
  - (i) to his knowledge false or misleading in a material way, or
  - (ii) given recklessly and is false or misleading in a material way.

(10) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(11) In this Article and Article 5F—

“authorised officer” means an officer of the Department who is authorised in writing by the Department for the purposes of this Article;

“vehicle” includes any mobile plant.

#### **Seizure of vehicles etc: supplementary**

**5F.**—(1) Where under Article 5E an authorised officer or constable seizes a vehicle or its contents (“seized property”) on behalf of the Department, the Department may remove the seized property to such a place as it considers appropriate.

(2) The Department must deal with any seized property in accordance with regulations made by the Department.

(3) Regulations under paragraph (2) may in particular include provision as to—

- (a) the duties of the Department in relation to the safe custody of seized property;
- (b) the circumstances in which the Department must return any such property to a person claiming entitlement to it;
- (c) the manner in which such persons, and the seized property to which they are entitled, may be determined;
- (d) the circumstances in which the Department may sell, destroy or otherwise dispose of seized property;
- (e) the uses to which the proceeds of any such sale may be put.

(4) Regulations making provision under paragraph (3)(d)—

- (a) must (subject to sub-paragraph (c)) require the Department to publish a notice in such form, and to take any other steps, as may be specified in the regulations for informing persons who may be entitled to the seized property that it has been seized and is available to be claimed;
- (b) must (subject to sub-paragraph (c)) prohibit the Department from selling, destroying or otherwise disposing of any seized property unless a period specified in the regulations has expired without any obligation arising under the regulations for the Department to return the property to any person;
- (c) may allow for the requirements in sub-paragraphs (a) and (b) to be dispensed with if the condition of the seized property requires its disposal without delay.”.