
STATUTORY INSTRUMENTS

2007 No. 611

The Waste (Amendment) (Northern Ireland) Order 2007

Transport of waste

Unregistered transport: defence of acting under employer's instructions

13.—(1) In Article 38 of the 1997 Order (offence of transporting controlled waste without registering), in paragraph (4)—

- (a) at the end of sub-paragraph (a), insert “or”; and
- (b) omit sub-paragraph (c) (defence of acting under employer's instructions) and the preceding “or”.

(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.

Registration requirements and conditions

14.—(1) Article 39 of the 1997 Order (power to make regulations about registration of carriers) is amended as follows.

(2) In paragraph (2)—

- (a) in sub-paragraph (c), omit “free of charge”;
- (b) omit sub-paragraph (d);
- (c) in sub-paragraph (e), omit “free of charge”.

(3) In paragraph (3), omit sub-paragraph (a) (provision as to form of applications).

(4) In paragraph (4)—

- (a) for “paragraph (3)(a) and (c)” substitute “paragraph (3)(c)”; and
- (b) omit sub-paragraph (a) (further provision as to form of application).

(5) After paragraph (5) insert—

“(5A) Regulations under this Article may include provision for—

- (a) the registration of a person as a carrier of controlled waste to be subject to conditions relating to the vehicles used by him in transporting such waste; or
- (b) the revocation by the Department of the registration of a carrier of controlled waste who has breached a condition imposed on him under sub-paragraph (a).

(5B) Provision contained in any regulations under this Article by virtue of paragraph (5A) may, in particular, include provision—

- (a) for inspection by the Department of the vehicles of registered carriers of controlled waste for the purpose of ensuring compliance with conditions imposed under paragraph (5A)(a);
- (b) for the Department to impose charges on registered carriers of controlled waste in respect of such inspections.”.

(6) In paragraph (6), for “to (5)” substitute “to (5B)”.

(7) In Article 40 of the 1997 Order (restrictions on power under Article 39), in paragraph (2), after “except” insert “in accordance with regulations under paragraph (5A) of that Article or”.

Enforcement powers

15. For Article 42 of the 1997 Order substitute—

“Power to require production of authority, stop and search etc

42.—(1) This Article applies where an authorised officer or a constable reasonably believes that controlled waste has been, is being or is about to be transported in contravention of Article 38(1).

(2) The authorised officer or constable may—

- (a) require any person appearing to him to be or to have been engaged in transporting that waste to produce his (or, as the case may be, his employer's) authority to do so;
- (b) search any vehicle that appears to him to be a vehicle that has been, is being or is about to be used for transporting that waste;
- (c) carry out tests on anything found in any such vehicle (including by taking away samples for testing of anything so found);
- (d) seize any such vehicle and any of its contents.

(3) For the purposes of paragraph (2)(a), a person's authority for transporting controlled waste is—

- (a) his certificate of registration as a carrier of controlled waste;
- (b) such copy of that certificate as satisfies requirements prescribed in regulations made by the Department; or
- (c) such evidence as may be so prescribed that he is not required to be registered as a carrier of controlled waste.

(4) Where an authorised officer or constable has required a person to produce an authority under paragraph (2)(a), the person must do so—

- (a) by producing it forthwith to the authorised officer or constable;
- (b) by producing it at a place and within a period specified in regulations made by the Department; or
- (c) by sending it to that place and within that period.

(5) In acting under paragraph (2) an authorised officer or constable may—

- (a) stop any vehicle as referred to in sub-paragraph (b) of that paragraph;
- (b) enter any premises for the purpose specified in sub-paragraph (b) or (d) of that paragraph.

(6) A vehicle or its contents seized under paragraph (2)(d) is seized on behalf of the Department.

(7) A person commits an offence if—

- (a) he fails without reasonable excuse to comply with a requirement imposed under sub-paragraph (a) of paragraph (2);
- (b) 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 that paragraph;

- (c) he otherwise intentionally obstructs an authorised officer or constable in the exercise of a power under that paragraph .
- (8) A person is not guilty of an offence by virtue of paragraph (7)(a) unless it is shown—
 - (a) that the waste in question was controlled waste; and
 - (b) that the waste was or was being transported to or from a place in Northern Ireland.
- (9) Where an authorised officer or constable has stopped a vehicle under paragraph (5), he may (in addition to any requirement that may be imposed under sub-paragraph (a) of paragraph (2)) 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.
- (10) A person commits an offence if—
 - (a) he fails without reasonable excuse to comply with a requirement under paragraph (9);
 - (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.
- (11) 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.
- (12) In this Article and Articles 42A and 42B “authorised officer” means an officer of the Department who is authorised in writing by the Department for the purposes of those Articles.
- (13) Summary proceedings for an offence under paragraph (11) may be instituted at any time within 12 months after the commission of the offence.

Seizure of vehicles etc: supplementary

- 42A.**—(1) Where under Article 42 an authorised officer or a 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 the Department 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.”.

Failure to produce authority: fixed penalty notice

16. In the 1997 Order, after Article 42A (inserted by Article 15) insert—

“Fixed penalty notices for offences under Article 42

42B.—(1) This Article applies where it appears to the Department that a person has failed without reasonable excuse to comply with a requirement under Article 42(2)(a) (requirement to produce authority to transport waste).

(2) The Department may give that person a notice offering him the opportunity of discharging any liability to conviction for an offence under Article 42(7)(a) 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 must 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) The Department may by regulations restrict the extent to which, and the circumstances in which, the Department may make provision under paragraph (11).

(13) 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.”.