

WASTE (AMENDMENT) (NORTHERN IRELAND) ORDER 2007

S.I. 2007 NO. 611 (N.I. 3)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Waste (Amendment) (Northern Ireland) Order 2007 (“the 2007 Order”) was made on 6th March 2007.
2. This Explanatory Memorandum has been prepared by the Department of the Environment (“the Department”) to assist the reader in understanding the 2007 Order. It does not form part of the 2007 Order.
3. The 2007 Order updates the legislation governing the management and disposal of waste, as set out in the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”).
4. The majority of the provisions in the 2007 Order replicate those in Part 5 of the Clean Neighbourhoods and Environment Act 2005.

BACKGROUND AND POLICY OBJECTIVES

5. Illegal waste activity is a major problem in Northern Ireland. Such activity has netted large profits for unauthorised waste operators, including organised criminal gangs. It has a negative impact not only in terms of damage to the environment and risk to public health, but also on the competitive status of legitimate waste businesses. The costs involved in cleaning up illegally deposited waste are also significant.
6. The powers contained in the 1997 Order were not considered to be sufficient to deal with this growing problem. The 2007 Order therefore provides stronger powers for enforcement officers and additional powers for the courts to impose wider ranging and more significant pecuniary penalties in order to combat and deter the illegal waste activity.
7. The new powers largely replicate those in the rest of the United Kingdom. However the 2007 Order does include some unique provisions because of the nature and extent of the problems faced in Northern Ireland.

CONSULTATION

8. The Department consulted on proposed amendments to the 1997 Order in August 2005 and subsequently on the draft Order in Council in July 2006. The majority of the responses to both consultation papers were received from district councils, or groups representing councils, with a particular interest in illegal waste disposal in terms of impact on amenity. While generally welcoming the proposals, respondents' main concerns were that the proposals were focused too narrowly on the powers of the Department in dealing with waste management and disposal activities and did not provide a greater role for district councils to become involved in this important area.

9. The Department sees merit in the suggestion that district councils should play a more proactive role in policing illegal waste activities. Given the urgent need for stronger enforcement provision, the decision was taken to proceed with the legislation as it now stands. However the Department proposes to engage further with district councils on the possibility of enhancing their powers in this area.

MAIN ELEMENTS OF THE ORDER

10. The 2007 Order has 20 Articles and one Schedule.

Articles 1 and 2 contain introductory provisions.

Articles 3–9 deal with offences relating to the deposit, disposal, etc. of waste. They significantly increase powers to tackle illegal waste activities, including enhanced powers to stop, search and seize vehicles. They also introduce higher financial and custodial penalties for offences as well as introducing new powers for the courts to impose other forms of pecuniary penalties on offenders, including the forfeiture of vehicles.

Articles 10–12 deal with waste collection and disposal, and enhance district councils' powers to tackle those who fail to use waste receptacles correctly. They also give district councils a new power to serve notice on the owner of land to take such steps as are necessary to remove waste illegally deposited on that land.

Articles 13–16 deal with the transport of waste and introduce enhanced enforcement powers to stop, search and seize vehicles. They also make provision for new requirements relating to the registration of carriers to be introduced through Regulations.

Article 17 gives the Department powers to introduce, by Regulations, a new system requiring the preparation of site waste management plans for construction or demolition projects.

Articles 18–19 deal with enforcement and give the Department stronger powers of entry and a new power to stop a vehicle on a road.

Article 20 deals with minor repeals required as a result of the new provisions introduced by this Order.

COMMENTARY ON ARTICLES

11. A commentary on the provisions follows below (comments are not given where the wording is self-explanatory).

INTRODUCTORY

Articles 1 and 2 are introductory provisions.

OFFENCES RELATING TO DEPOSIT, DISPOSAL ETC. OF WASTE

Article 3 – Defence of acting under employer’s instructions

This Article amends Article 4 of the 1997 Order (under which it is an offence to make an unauthorised or harmful deposit etc. of waste) so as to remove the defence of acting under one’s employer’s instructions.

Article 4 – Penalties on conviction

This Article amends the penalties on conviction of an offence under Article 4 of the 1997 Order. It increases the maximum available fine on summary conviction from £20,000 to £50,000 and raises the maximum term of imprisonment (on conviction on indictment) for non hazardous waste offences from 2 years to 5 years. It also requires a court, in determining the fine for specific offences under Article 4 of the 1997 Order, to take account of any financial benefit that an offender has accrued, or is likely to accrue, as a consequence of the offence.

These changes effectively remove the distinction between hazardous and non-hazardous waste for offences under Article 4 of the 1997 Order.

Article 5 – Failure to furnish documentation: fixed penalty notice

Article 5 of the 1997 Order places a duty on any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, to secure a written description of the waste whenever it is transferred. Article 5(7) provides for regulations to be made to require such documents to be retained and furnished.

This Article inserts a new Article 5A into the 1997 Order. The new Article empowers the Department to issue a fixed penalty notice to a person who has failed to comply with a requirement to furnish documents under the regulations, offering him the opportunity to discharge any liability to conviction by payment of a fixed penalty.

The amount of the fixed penalty is set at £300, which may be amended by an order made by the Department. The Department may also make provision for treating the fixed penalty as being paid if a lesser amount is paid during such shorter period as it may specify.

Article 6 – Investigation and enforcement costs

This Article inserts a new Article 5B into the 1997 Order. Article 5B applies where a person is convicted for an offence under Articles 4 or 5 of the 1997 Order and enables the court to make an order requiring the offender to pay the Department's investigation and enforcement costs, and any costs associated with the seizure of vehicles involved in the offence.

Article 7 – Clean-up costs

This Article inserts a new Article 5C into the 1997 Order. Article 5C applies where a person has been convicted of an offence under Article 4(1) of the 1997 Order consisting of the deposit or disposal of controlled waste. It enables the court to make an order requiring the offender to pay any costs incurred by district councils, the Department or the occupier or owner of the land in removing, or otherwise dealing with, waste that has been illegally disposed of or deposited.

Article 8 – Forfeiture of vehicles

This Article inserts a new Article 5D into the 1997 Order. Article 5D applies where a person has been convicted of an offence involving a contravention of Articles 4 or 5 of the 1997 Order consisting of the deposit or disposal of controlled waste. It enables the court to make an order depriving the offender of his rights to a vehicle (and its contents) and vesting those rights in the Department. The court must be satisfied that the vehicle was used in connection with the offence, and the Article specifies a number of factors which must be considered in deciding whether to make such an order.

Article 9 – Power to search and seize vehicles

This Article inserts new Articles 5E and 5F into the 1997 Order. The new Articles empower an authorised officer or a constable to stop, search and seize a vehicle (and its contents) where it is reasonably believed that the vehicle has been, is being, or is about to be, used in the commission of an offence under Articles 4 or 5 of the 1997

Order. A vehicle or its contents seized by a constable are seized on behalf of the Department.

The Article also creates two new offences. Firstly, intentionally obstructing, or otherwise failing to assist, an authorised officer or a constable. Secondly, failure, without reasonable excuse, to provide accurate information about the owner of the vehicle, or any other information that may reasonably be requested. Any such offence is punishable on summary conviction by a fine not exceeding level 5 on the standard scale (currently £5,000).

The Article also requires the Department to make regulations specifying how it must deal with any seized property.

WASTE COLLECTION AND DISPOSAL

Article 10 – Offences relating to waste receptacles

This Article inserts new Articles 22A, 22B and 22C into the 1997 Order. The new Articles apply where an authorised officer of a district council believes that a person has committed an offence under Article 21 or Article 22 of the 1997 Order. It enables the officer to issue a notice to that person, offering him the opportunity to discharge any liability to conviction for that offence by payment of a fixed penalty. Article 22B fixes the amount of the fixed penalty at £100, which may be substituted by a different amount by an order made by the Department. The council may choose to treat the fixed penalty as having been paid if a lesser amount is paid within a shorter specified period; the extent and circumstances for doing so may be subject to restrictions made by the Department.

Article 22C allows a district council to use amounts raised through these fixed penalties for the exercise of its functions under Part II of the 1997 Order, or such other purposes as may be specified in regulations made by the Department.

Article 11 – Daily fine for offence under Article 27 of the 1997 Order

Under Article 27 of the 1997 Order, the Department may give directions as to the management of controlled waste. Any person who fails, without reasonable excuse, to comply with such a direction, is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

Article 11 amends Article 27 of the 1997 Order to make provision for a continuing daily offence of failure to comply with a notice served under Article 27.

Article 12 – Power to require owner of land to remove waste

Under Article 28 of the 1997 Order, district councils have powers to deal with controlled waste unlawfully deposited in their area. Article 28 enables a notice to be served by a district council on the **occupier** of land, requiring him to remove the waste or to take remedial action to eliminate or reduce the consequences of the unlawful deposit.

Article 12 inserts a new Article 28A into the 1997 Order which enables a notice to be served on the **owner** of the land in certain specified circumstances. An occupier or owner can appeal the notice if he neither deposited the waste nor knowingly caused or knowingly permitted its deposit.

If an occupier or owner fails to comply with the requirements in a notice, a district council has powers to enter the land, remove the waste or take appropriate remedial action, and recover the associated costs.

TRANSPORT OF WASTE

Article 13 – Unregistered transport: defence of acting under employer’s instruction

Under Article 38 of the 1997 Order, it is an offence for anyone who is not a registered carrier of controlled waste to transport such waste within Northern Ireland in the course of any business of his or otherwise with a view to profit. Article 13 amends Article 38 of the 1997 Order so as to remove the defence of acting under one’s employer’s instructions.

Article 14 – Registration requirements and conditions

Article 39 of the 1997 Order sets out provisions relating to the registration of waste carriers. Article 14 amends the provisions relating to certificates of registration for carriers of controlled waste. In particular, it removes the requirement that a certificate of registration must be provided free of charge.

Regulations under this Article may stipulate conditions relating to the vehicles used by registered carriers, and may provide for the revocation of a registration in event of breach of such a condition. In support of this, the Regulations may provide for inspections of such vehicles and charges for such inspections.

Article 15 – Enforcement powers

This Article replaces Article 42 of the 1997 Order. The principal effect is to enable a constable or an authorised officer of the Department to stop, search and seize a vehicle that he reasonably believes is being used in the commission of an offence

under Article 38 of that Order (transporting controlled waste without an appropriate registration). A vehicle or its contents seized under this Article are seized on behalf of the Department, and the Article requires the Department to make regulations specifying how it must deal with such seized property

The Article re-enacts the offence contained in Article 42 of the 1997 Order of failing to comply with a requirement to produce authority for transporting controlled waste, and creates a new offence of failing to assist an authorised officer or a constable. It also empowers an authorised officer or a constable to require any occupant of the vehicle to give his name and address, or that of the registered owner of the vehicle, or any other information he may reasonably request. Failure to provide accurate information is an offence, punishable by a fine not exceeding level 5 on the standard scale (currently £5,000).

Article 16 – Failure to produce authority: fixed penalty notice

This Article inserts a new Article 42B into the 1997 Order. The new Article deals with circumstances where a person fails to produce authority for transporting controlled waste). It provides for such a person to be offered the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty. The fixed penalty is set at £300, though a different amount may be substituted by an Order made by the Department.

The Department may make provision for treating the fixed penalty as having been paid if a lesser amount is paid within a shorter specified period; the extent and circumstances for doing so may be subject to restrictions made by the Department.

SITE WASTE MANAGEMENT PLANS

Article 17 – Site waste management plans

This Article provides new powers to make regulations specifying the circumstances in which developers and contractors of construction and demolition projects must prepare site waste management plans. Such plans – which may be restricted to projects over a specified value - would set out the arrangements for managing and disposing of waste created in the course of the project.

ENFORCEMENT

Article 18 – Powers of enforcing authorities

Article 18 makes a number of amendments to simplify the exercise of the Department's powers of entry under Article 72 of the 1997 Order. In particular, it:

*This Explanatory Memorandum refers to the Waste (Amendment) (Northern Ireland) Order
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- (i) reduces the period of notice that must be given prior to exercising the power of entry from 7 days to 24 hours;
- (ii) removes the requirement for an authorised person to be accompanied only by any other duly authorised person;
- (iii) increases the scope of articles or substances that can be taken and detained.

The Article also increases from 6 months to 12 months the period of time within which the Department can take a prosecution in a Magistrate's Court with respect to offences under Articles 74(2) or (3) of the 1997 Order.

Article 19 – Power to stop vehicles

Article 19 inserts a new Article 73A into the 1997 Order which gives an authorised officer of the Department a new power to require any person driving a vehicle on a road or other public place to stop. Any person who fails to stop when so required is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

REPEALS

Article 20 and the Schedule

This Article introduces the Schedule, which makes a number of repeals to the 1997 Order as a consequence of the provisions being introduced by the 2007 Order.

COMMENCEMENT

12. Articles 1 and 2 come into operation one week after the date of making of the Order. The remaining Articles of the 2007 Order will be brought into operation on a day or days to be appointed by commencement order.