



Clean Neighbourhoods and Environment Act 2005

2005 CHAPTER 16

PART 5

WASTE

CHAPTER 2

DEPOSIT AND DISPOSAL OF WASTE

Offence of unlawful deposit of waste etc

40 Defence of acting under employer's instructions

- (1) In section 33 of the Environmental Protection Act 1990 (c. 43) (offence of unauthorised or harmful deposit etc of controlled waste), omit subsection (7)(b) (defence of acting on employer's instructions).
- (2) This section does not have effect in relation to an offence committed, or alleged to have been committed, before the commencement of this section.

41 Penalties on conviction

- (1) In section 33 of the Environmental Protection Act 1990 (offence of unauthorised or harmful deposit etc of waste), for subsections (8) and (9) (penalties) substitute—
 - “(8) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £50,000 or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.”

- (2) Subsection (1) does not have effect in relation to offences committed before the commencement of this section.
- (3) In relation to offences committed after the commencement of this section but before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the amendment made by this section has effect as if for “12 months” there were substituted “6 months”.

42 Investigation and enforcement costs

- (1) After section 33 of the Environmental Protection Act 1990 (c. 43) insert—

“33A Section 33 offences: investigation and enforcement costs

- (1) This section applies where a person is convicted of an offence under section 33 above in respect of a contravention of subsection (1) of that section.
- (2) The court by or before which the offender is convicted may make an order requiring him to pay to an enforcement authority a sum which appears to the court not to exceed the costs arising from—
 - (a) investigations of the enforcement authority which resulted in the conviction; and
 - (b) the seizure by the enforcement authority under section 34B below of a vehicle involved in the offence.
- (3) The costs arising from the seizure of a vehicle as specified in subsection (2) (b) above may include the cost of disposing of the contents of the vehicle.
- (4) The power of a court to make an order under this section is in addition to its power to make an order under section 18 of the Prosecution of Offences Act 1985 (award of costs against accused).
- (5) In this section “enforcement authority” means the Environment Agency or a waste collection authority.”
- (2) This section does not have effect in relation to an offence under section 33 of that Act committed before the commencement of this section.

43 Clean-up costs

- (1) After section 33A of the Environmental Protection Act 1990 (as inserted by section 42 above) insert—

“33B Section 33 offences: clean-up costs

- (1) This section applies where a person is convicted of an offence under section 33 above in respect of a contravention of subsection (1) of that section consisting of the deposit or disposal of controlled waste.
- (2) The reference in section 130(1)(a) of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders) to loss or damage resulting from the offence includes costs incurred or to be incurred by a relevant person 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) In subsection (2) above “relevant person” means—
 - (a) the Environment Agency;
 - (b) a waste collection authority;
 - (c) the occupier of the land;
 - (d) the owner of the land (within the meaning of section 78A(9) below).
- (4) The reference in subsection (2) above to costs incurred does not, in the case of the Environment Agency or a waste collection authority, include any costs which the Agency or authority has already recovered under section 59(8) below.
- (5) In relation to the costs referred to in subsection (2) above, the reference in section 131(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (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).”
- (2) In section 59 of that Act (power to require removal of waste unlawfully deposited), after subsection (8) insert—
 - “(8A) An authority may not recover costs under subsection (8) above if a compensation order has been made under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 in favour of the authority in respect of any part of those costs.
 - (8B) Subsection (8A) does not apply if the order is set aside on appeal.”
- (3) This section does not have effect in relation to an offence under section 33 of that Act committed before the commencement of this section.

44 Forfeiture of vehicles

- (1) In the Environmental Protection Act 1990 (c. 43), after section 33B (as inserted by section 43 above) insert—

“33C Section 33 offences: forfeiture of vehicles

- (1) This section applies where a person is convicted of an offence under section 33 above in respect of a contravention of subsection (1) of that section consisting of the deposit or disposal of controlled waste.
- (2) The court by or before which the offender is convicted may make an order under this section 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.
- (3) An order under this section 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 relevant enforcement authority.

Status: This is the original version (as it was originally enacted).

- (4) In a case where a vehicle has been seized under section 34B below and the offender retains rights in any of the vehicle's contents, an order under this section may, if and to the extent that it so specifies, deprive the offender of those rights and vest them in the relevant enforcement authority.
- (5) Where an order under this section is made, the relevant enforcement authority may take possession of the vehicle (if it has not already done so under section 34C below).
- (6) The court may make an order under this section whether or not it also deals with the offender in any other way in respect of the offence of which he is convicted.
- (7) In considering whether to make an order under this section 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 section 33 above, the making of the order is likely to inhibit the offender from engaging in further such activities.
- (8) Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (power to deprive offender of property) does not apply in any case where this section applies.
- (9) For the purposes of this section, where a vehicle or its contents have been seized under section 34B below in connection with the offence referred to in subsection (1) above, 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.
- (10) In this section—
- “relevant enforcement authority” means—
- (a) the Environment Agency, where the proceedings in respect of the offence have been brought by or on behalf of the Agency, or
 - (b) in any other case, the waste collection authority in whose area the offence was committed;
- “vehicle” means any motor vehicle or trailer within the meaning of the Road Traffic Regulation Act 1984 or any mobile plant.”
- (2) This section does not have effect in relation to an offence under section 33 of that Act committed before the commencement of this section.