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## STATUTORY INSTRUMENTS

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# 1978 No. 1049

## Pollution Control and Local Government (Northern Ireland) Order 1978

### PART II

#### WASTE ON LAND

**Modifications etc. (not altering text)**

**C1** Pt. II (arts. 3-36) modified by [S.R. 2003/493, Sch. 3 Pt. I para. 10](#) (as substituted (8.4.2011) by [Waste Regulations \(Northern Ireland\) 2011 \(S.R. 2011/127\), regs. 1, 40](#) (with [reg. 9\(2\)](#)))

*Arts. 3 and 4 rep. by 1997 NI 19*

*Arts. 5#17 rep. by 1997 NI 19*

Waste other than controlled waste

*Art. 18 rep. by 1997 NI 19*

#### **Removal of waste deposited on land**

**19.**—(1) If any waste, other than controlled waste or a motor vehicle, is deposited on any land in the open air or on any other land forming part of a road in the district of a district council in contravention of<sup>F1</sup> Article 31(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 or Article] 28(1), the council may, subject to paragraph (2), remove the waste.

(2) A district council may not exercise its powers under paragraph (1) as respects waste deposited on land appearing to the council to be occupied by any person unless the council has served on him notice that the council proposes to remove the waste and he has failed to serve on the council, within the prescribed period, notice that he objects to the proposal.

(3) A district council by whom any waste is removed under paragraph (1) may recover the cost of doing so and of disposing of it from any person who deposited the waste on the land or any person convicted of an offence under<sup>F1</sup> Article 31(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 or Article] 28(1) in consequence of the depositing of the waste on that land.

**F1** [1997 NI 19](#)

#### **Powers of district councils as respects other waste**

**20.** Each district council may collect information about, and make arrangements for the disposal of, waste which is situated or likely to be situated in its district and is not controlled waste; but nothing in section 98 of the Local Government Act (Northern Ireland) 1972 or in Article 72 or 76 shall apply to functions conferred on a district council or information collected by a district council under this Article.

*Arts. 21—24 rep. by 1997 NI 19*

*Arts. 25—28 rep. by 1994 NI 10*

## Motor vehicles

### Penalty for abandoning motor vehicles

**29.**—(1) Any person who, without lawful authority, abandons on any land in the open air, or on any other land forming part of a road,—

- (a) a motor vehicle, or
- (b) any thing which formed part of a motor vehicle and was removed from it in the course of dismantling the vehicle on the land,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>[F2]</sup> level 5 on the standard scale] or, in the case of a second or subsequent conviction, to such a fine or to imprisonment for a term not exceeding three months or both.

(2) For the purposes of paragraph (1), a person who leaves any motor vehicle or thing which formed part of a motor vehicle on any land in such circumstances or for such a period that he may reasonably be assumed to have abandoned it there shall be deemed to have abandoned it there or, as the case may be, to have brought it to the land for that purpose unless the contrary is shown.

(3) In this Article and Article 30, “road” includes any street, carriageway, highway or roadway to which the public has access.

<b>F2</b> 1984 NI 3
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### <sup>[F3]</sup>Fixed penalty notices for offence of abandoning vehicles

**29A.**—(1) Where on any occasion it appears to an authorised officer of a district council that a person has committed an offence under Article 29(1)(a) in the district of that council, the officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the district council.

(2) Where a person is given a notice under this Article in respect of an offence—

- (a) no proceedings shall be instituted for that offence before the expiration of the period of 14 days following the date of that notice; and
- (b) he may not be convicted of that offence if he pays the fixed penalty before the expiration of the period.

(3) 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.

(4) A notice under this Article shall also state—

- (a) the period during which, by virtue of paragraph (2), 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.

(5) 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 (in cash or otherwise) to the person mentioned in paragraph (4)(c) at the address so mentioned.

(6) Where a letter is sent in accordance with paragraph (5) 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.

- (7) The form of a notice under this Article shall be such as the Department may by order prescribe.
- (8) The fixed penalty payable to a district council under this Article is, subject to paragraph (9), £200.
- (9) The Department may by order substitute a different amount for the amount for the time being specified in paragraph (8).
- (10) The district council to which a fixed penalty is payable under this Article may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the council.
- (11) The Department may by regulations restrict the extent to which, and the circumstances in which, a district council may make provision under paragraph (10).
- (12) In any proceedings a certificate which—
- (a) purports to be signed on behalf of the clerk of the council, 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”, in relation to a district council, means an employee of the council who is authorised in writing by the council for the purpose of giving notices under this Article;
- “clerk of the council”, in relation to a district council, means the clerk appointed in accordance with section 41 of the Local Government Act (Northern Ireland) 1972.

**F3** Arts. 29A-29C inserted (18.1.2012 for specified purposes) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011 \(c. 23\)](#), ss. 7, 78; S.R. 2012/13, art. 2(1), Sch. 1

### Fixed penalty notices: power to require name and address

- 29B.**—(1) If an authorised officer of a district council proposes to give a person a notice under Article 29A, the officer may require the person to give him his name and address.
- (2) A person commits an offence if—
- (a) he fails to give his name and address when required to do so under paragraph (1), or
  - (b) he gives a false or inaccurate name or address in response to a requirement under that paragraph.
- (3) A person guilty of an offence under paragraph (2) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) In this Article “authorised officer” has the same meaning as in Article 29A.

**F3** Arts. 29A-29C inserted (18.1.2012 for specified purposes) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011 \(c. 23\)](#), ss. 7, 78; S.R. 2012/13, art. 2(1), Sch. 1

### Use of fixed penalties under Article 29A

- 29C.**—(1) This Article applies in relation to amounts paid to a district council in pursuance of notices under Article 29A (its “fixed penalty receipts”).
- (2) A district council may use its fixed penalty receipts only for the purposes of—
- (a) its functions under this Part;

*Status: Point in time view as at 18/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Pollution Control and Local Government (Northern Ireland) Order 1978, PART II . (See end of Document for details)*

- (b) its functions under Part 8 of the Road Traffic Regulation (Northern Ireland) Order 1997;
  - (c) its functions relating to the enforcement of sections 2 and 3 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011; and
  - (d) such other of its functions as may be specified in regulations made by the Department.
- (3) Regulations made under paragraph (2)(d) may in particular have the effect that a district council may use its fixed penalty receipts for the purposes of any of its functions.
- (4) A district council shall supply the Department with such information relating to its use of its fixed penalty receipts as the Department may require.
- (5) The Department may by regulations—
- (a) make provision for what a district council is to do with its fixed penalty receipts—
    - (i) pending their being used for the purposes of functions of the council referred to in paragraph (2);
    - (ii) if they are not so used before such time after their receipt as may be specified by the regulations;
  - (b) make provision for accounting arrangements in respect of a district council's fixed penalty receipts.
- (6) The provision that may be made under paragraph (5)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the district council.
- (7) Before making regulations under this Article, the Department shall consult—
- (a) district councils;
  - (b) such other persons as the Department thinks fit.]

**F3** Arts. 29A-29C inserted (18.1.2012 for specified purposes) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011 \(c. 23\)](#), ss. 7, 78; S.R. 2012/13, art. 2(1), Sch. 1

### Removal of abandoned vehicles

**30.**—(1) Where it appears to a district council that a motor vehicle in its district is abandoned without lawful authority on any land in the open air or on any other land forming part of a road the council shall, subject to the following provisions of this Article, remove the vehicle.

[<sup>F4</sup>(2) Where it appears to a district council that the land on which a motor vehicle is abandoned as aforesaid is occupied by any person, the council shall before removing the vehicle under paragraph (1) serve on that person notice that it proposes to remove the vehicle and the council shall not be entitled to remove it if within the prescribed period that person serves on the council notice that he objects to the proposal.

(2A) Paragraph (2) does not apply where the vehicle is abandoned on a road.

(2B) A district council shall not be required under paragraph (1) to remove a vehicle situated otherwise than on a carriageway if it appears to the council that the cost of its removal to the nearest convenient carriageway would be unreasonably high.]

(3) Where under this Article a district council proposes to remove a vehicle which in its opinion is in such a condition that it ought to be destroyed the council shall, not less than the prescribed period before removing it, cause to be affixed to the vehicle a notice stating that the council proposes to remove it for destruction on the expiration of that period.

(4) While a vehicle, other than a vehicle to which a notice was affixed under paragraph (3), is in the custody of a district council under this Article, the council shall take such steps as are reasonably necessary for the safe custody of the vehicle.

**F4** Art. 30(2)-(2B) substituted for art. 30(2) (18.1.2012 for specified purposes) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011 \(c. 23\), ss. 8\(2\), 78; S.R. 2012/13, art. 2\(1\), Sch. 1](#)

### Disposal of removed vehicles

**31.**—(1) Subject to paragraph (5), a district council may, in such manner as it thinks fit, dispose of any vehicle which is in its custody in pursuance of Article 30—

- (a) in the case of a vehicle to which a notice was affixed under paragraph (3) of that Article and on which no current licence was displayed at the time of its removal, at any time in the course of or after its removal;
- (b) in the case of a vehicle to which a notice was so affixed and on which a current licence was so displayed, at any time after the licence ceases to be in force;
- (c) in any other case, at any time after the council has taken reasonable steps to find a person appearing to it to be the owner of the vehicle and either—
  - (i) the council has failed to find such a person, or
  - (ii) he has failed to comply with a notice served on him by the council requiring him to remove the vehicle within the prescribed period from the custody of the council,

but, in a case where it appears to the council that a licence is in force in respect of the vehicle, not before the licence ceases to be in force.

(2) In paragraph (1)—

- (a) any reference in sub-paragraphs (a) and (b) to a current licence includes a reference to a licence which was current during any part of the period of fourteen days ending with the day preceding that on which the removal of the vehicle in question took place; and
- (b) for the purposes of sub-paragraphs (b) and (c) a licence shall be treated as still in force for a period of fourteen days beginning with the day following that on which it expired, and “ceases to be in force” shall be construed accordingly.

(3) The power to dispose of vehicles conferred on a district council by paragraph (1) includes power—

- (a) to provide plant and apparatus for the purpose of disposing of vehicles; and
- (b) to enter into an agreement with any other person for the provision of facilities by him for the purpose of disposing of vehicles at any place under his control.

(4) A district council by whom a vehicle is disposed of under this Article shall give particulars of the disposal to any person who appears to it to have been the owner of the vehicle immediately before it was disposed of.

(5) If before a vehicle is disposed of by a district council under the foregoing provisions of this Article the vehicle is claimed by a person who satisfies the council that he is its owner and pays to the council any expenses reasonably incurred by it in respect of its removal and storage, the council shall permit him to remove the vehicle from its custody during such period as may be prescribed; and if before the expiration of the period of one year beginning with the date on which a vehicle is sold by a district council under this Article any person satisfies the council that at the time of its sale he was the owner of the vehicle, the council shall pay over to him any sum by which the proceeds of sale exceed any expenses reasonably incurred by the council in respect of the removal, storage and disposal of the vehicle.

(6) If in the case of any vehicle it appears to the district council that more than one person is or was its owner at the relevant time, such one of them as the council thinks fit shall be treated as its owner for the purposes of paragraph (5).

**Recovery of expenses connected with removed vehicles**

**32.**—(1) Where a vehicle is removed by a district council under Article 31(1), the council may recover from any person responsible any expenses reasonably incurred by it—

- (a) in respect of the removal of the vehicle; and
- (b) in respect of any period during which the vehicle is in its custody; and
- (c) where the vehicle is disposed of under Article 31, in respect of its disposal.

(2) Any sum recoverable by virtue of this Article shall be a civil debt recoverable summarily; and without prejudice to the foregoing provisions of this paragraph the court by which a person is convicted of an offence under Article 29(1) in respect of a motor vehicle, may on the application of the district council by whom the vehicle was removed as aforesaid and in addition to any other order made by the court in relation to that person order him to pay to the council any sum which, in the opinion of the court, the council are entitled to recover from him under this Article in respect of the vehicle.

(3) In this Article “person responsible”, in relation to a vehicle, means—

- (a) the owner of the vehicle at the time when it was put in the place from which it was removed under Article 30(1), unless he shows that he was not concerned in and did not know of its being put there;
- (b) any person by whom it was put in the place aforesaid;
- (c) any person convicted of an offence under Article 29(1) in consequence of the putting of the vehicle in the place aforesaid.

## Supplemental

**Enforcement of Articles 28 and 29**

**33.**—(1) Where an authorised person believes that an offence under Article<sup>F5</sup> . . . 29 has been committed, he may demand the name and address of any person whom he believes to be guilty of the offence.

(2) An authorised person (other than the owner or occupier of land or a constable in uniform) demanding the name and address of any other person under paragraph (1) shall, if so required, produce his credentials.

(3) If a person whose name and address has been demanded under paragraph (1) fails to comply with the demand, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>F6</sup> level 2 on the standard scale].

(4) Without prejudice to the right of any other person to institute proceedings for an offence under Article<sup>F5</sup> . . . 29, a district council may institute proceedings for such an offence committed in its district and a district council or public body may institute proceedings for such an offence committed on land controlled or managed by it.

(5) In this Article—

“authorised person” in relation to an offence believed to have been committed, means—

- (a) an officer of the district council within whose district the<sup>F5</sup> . . . land is situated, being an officer authorised by the council to exercise functions under this Article;
- (b) an officer of the district council or public body by whom the<sup>F5</sup> . . . land is controlled or managed, being an officer authorised by the council or body to exercise functions under this Article;
- (c) the owner or occupier of the<sup>F5</sup> . . . land, or any servant or agent of his duly authorised by him in writing, or

(d) a constable;

“believes” means believes on reasonable grounds.

F5 1994 NI 10

F6 1984 NI 3

Arts. 34#35 rep. by 1997 NI 19

## Interpretation, etc., of Part II

36.—(1) In this Part—

*Definition rep. by 1997 NI 19*

“carriageway” means a way constituting or forming part of a road, being a way over which the public have a right of way for the passage of motor vehicles;

[<sup>F7</sup>“controlled waste” has the same meaning as in the Waste and Contaminated Land (Northern Ireland) Order 1997]

*Definition rep. by 1997 NI 19*

“licence”, in relation to a vehicle, means a licence issued in respect of the vehicle under [<sup>F8</sup> the Vehicle Excise and Registration Act 1994] or anything which appears to the district council concerned to be a corresponding licence in a country other [<sup>F8</sup> than the United Kingdom];

*Definition rep. by 1994 NI 10*

“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer and anything attached to such a vehicle or trailer;

“owner”, in relation to a motor vehicle which is the subject of a hiring agreement or hire-purchase agreement, includes the person entitled to possession of the vehicle under the agreement;

“public body” means any public authority, board, commissioners or public body of any kind constituted by or under any statutory provision whether of a general or special nature;

*Definition rep. by 1997 NI 19*

“road” has the same meaning as in the Roads Act (Northern Ireland) 1948 <sup>F9</sup>;

“waste” includes—

- (a) any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process; and
- (b) any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled,

but does not include a substance which is an explosive within the meaning of the Explosives Acts 1875 to 1970 or any substance to which Article 3 of the Explosives (Northern Ireland) Order 1972 applies;

and for the purposes of this Part any thing which is discarded or otherwise dealt with as if it were waste shall be presumed to be waste unless the contrary is proved.

*Paras. (2)#(4) rep. by 1997 NI 19*

(5) In Articles 19, 28, 29 and 30 any reference to a place or land in the open air includes a reference to a place or land covered only by water.

**Status:** Point in time view as at 18/01/2012.

**Changes to legislation:** There are currently no known outstanding effects for the Pollution Control and Local Government (Northern Ireland) Order 1978, PART II . (See end of Document for details)

(6) The district of a district council which is bounded by or to seaward of the high-water mark of mean tides shall also include for the purposes of this Part, the land between that high-water mark and the low-water mark of ordinary spring tides which is outside that district to seaward of any place where that high-water mark is within or on the boundary of that district.

**F7** 1997 NI 19

**F8** 1994 c. 22

**F9** 1980 NI 11

**Modifications etc. (not altering text)**

**C2** Art. 36 modified (temp. from 1.12.2006) by [Manufacture and Storage of Explosives Regulations \(Northern Ireland\) 2006 \(S.R. 2006/425\)](#), reg. 27(1), **Sch. 6 para. 12** (with reg. 26)



**Status:**

Point in time view as at 18/01/2012.

**Changes to legislation:**

There are currently no known outstanding effects for the Pollution Control and Local Government (Northern Ireland) Order 1978, PART II .