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## STATUTORY INSTRUMENTS

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# 1997 No. 2778

## The Waste and Contaminated Land (Northern Ireland) Order 1997

### PART II

#### WASTE ON LAND

##### *Publicity*

#### **Public registers**

**34.**—(1) Subject to Articles 35 and 36, the Department shall maintain a register containing prescribed particulars of or relating to—

- (a) current or recently current licences (“licences”) granted by the Department;
- (b) current or recently current applications to the Department for licences;
- (c) applications made to the Department under Article 10 for the modification of licences;
- (d) notices issued by the Department under Article 10 effecting the modification of licences;
- (e) notices issued by the Department under Article 12 effecting the revocation or suspension of licences or imposing requirements on the holders of licences;
- (f) appeals under Article 17 relating to decisions of the Department;
- (g) certificates of completion issued by the Department under Article 13(8);
- (h) notices issued by the Department imposing requirements on the holders of licences under Article 16(4);
- (i) convictions of the holders of licences granted by the Department for any offence under this Part (whether in relation to a licence so granted or not);
- (j) the occasions on which the Department has discharged any function under Article 16;
- (k) such matters relating to the treatment, keeping or disposal of waste or any pollution of the environment caused thereby as may be prescribed;

and any other document or information required to be kept in the register under any provision of this Part.

(2) Where information of any description is excluded from any register under Article 36, a statement shall be entered in the register indicating the existence of information of that description.

(3) For the purposes of paragraph (1) licences are “recently” current for the period of 12 months after they cease to be in force and applications for licences are “recently” current if they relate to a licence which is current or recently current or, in the case of an application which is refused, for the period of 12 months from the date on which the Department gives notice of refusal or, as the case may be, on which the application is deemed by Article 8(6) to have been refused.

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(4) Each district council shall maintain a register containing prescribed particulars of such information contained in any register maintained under paragraph (1) as relates to the treatment, keeping or disposal of controlled waste in the district of the council.

(5) The Department shall furnish district councils with the particulars necessary to enable them to comply with paragraph (4).

(6) The Department and each district council—

- (a) shall secure that any register maintained under this Article is open to inspection by members of the public free of charge at all reasonable hours; and
- (b) shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register;

and, for the purposes of this paragraph, places may be prescribed at which any such registers or facilities as are mentioned in sub-paragraphs (a) or (b) are to be available or afforded to the public in pursuance of the sub-paragraph in question.

(7) Registers under this Article may be kept in any form.

#### **Exclusion from registers of information affecting national security**

**35.**—(1) No information shall be included in a register maintained under Article 34 (a “register”) if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which paragraph (1) applies, give to the Department directions—

- (a) specifying information, or descriptions of information, to be excluded from its register; or
- (b) specifying descriptions of information to be referred to the Secretary of State for his determination;

and no information referred to the Secretary of State in pursuance of sub-paragraph (b) shall be included in any such register until the Secretary of State determines that it should be so included.

(3) The Department shall notify the Secretary of State of any information it excludes from the register in pursuance of directions under paragraph (2).

(4) A person may, as respects any information which appears to him to be information to which paragraph (1) may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—

- (a) he shall notify the Department that he has done so; and
- (b) no information so notified to the Secretary of State shall be included in the register until the Secretary of State has determined that it should be so included.

#### **Exclusion from registers of certain confidential information**

**36.**—(1) No information relating to the affairs of any individual or business shall be included in a register maintained under Article 34 (a “register”), without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—

- (a) is, in relation to him, commercially confidential; and
- (b) is not required to be included in the register in pursuance of directions under paragraph (9);

but information is not commercially confidential for the purposes of this Article unless it is determined under this Article to be so by the Department or, on appeal, by the Planning Appeals Commission.

(2) Where information is furnished to the Department for the purpose of—

- (a) an application for, or for the modification of, a licence;
- (b) complying with any condition of a licence; or
- (c) complying with a notice under Article 44(1);

then, if the person furnishing it applies to the Department to have the information excluded from the register on the ground that it is commercially confidential (as regards himself or another person), the Department shall determine whether the information is or is not commercially confidential.

(3) A determination under paragraph (2) shall be made within the period of 14 days from the date of the application and if the Department fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.

(4) Where it appears to the Department that any information (other than information furnished in circumstances within paragraph (2)) which has been obtained by the Department under any provision of this Part might be commercially confidential, the Department shall—

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register unless excluded under this Article; and
- (b) give him a reasonable opportunity—
  - (i) of objecting to the inclusion of the information on the grounds that it is commercially confidential; and
  - (ii) of making representations to the Department for the purpose of justifying any such objection;

and, if any representations are made, the Department shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(5) Where, under paragraph (2) or (4), the Department determines that information is not commercially confidential—

- (a) the information shall not be entered in the register until the end of the period of 21 days from the date on which the determination is notified to the person concerned;
- (b) that person may appeal to the Planning Appeals Commission against the decision;

and, where an appeal is brought in respect of any information, the information shall not be entered in the register until the end of the period of 7 days from the day on which the appeal is finally determined or withdrawn.

(6) Part II of Schedule 2 shall have effect with respect to appeals under paragraph (5).

(7) On receipt of an appeal under paragraph (5) the Planning Appeals Commission shall give notice of the appeal to the Department.

(8) Regulations may make provision with respect to appeals under this Article and in particular as to the period within which and the manner in which appeals are to be brought.

(9) The Department may specify information, or descriptions of information, which the public interest requires to be included in the registers notwithstanding that the information may be commercially confidential.

(10) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this Article at the expiry of the period of 4 years from the date of the determination under which it was excluded; but the person who furnished it may apply to the Department for the information to remain excluded from the register on the ground that it is still commercially confidential and the Department shall determine whether or not that is the case.

(11) Paragraphs (5) to (7) shall apply in relation to a determination under paragraph (10) as they apply in relation to a determination under paragraph (2) or (4).

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(12) The Department may, by order, substitute for the period for the time being specified in paragraph (3) such other period as the Department considers appropriate.

(13) Information is, for the purposes of any determination under this Article, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interest of that individual or person.

### Annual reports

**37.**—(1) The Department shall, for each financial year, prepare and publish a report on the discharge by the Department of its functions under this Part or under any relevant instrument.

(2) A report under paragraph (1) shall include information as respects—

- (a) the licences respectively applied for, granted, in force, modified, revoked, suspended, surrendered or transferred during the year and the appeals made against decisions taken in respect of them;
- (b) the exercise by the Department of its powers under Article 16 or 30 or any relevant instrument;
- <sup>F1</sup>(c) the implementation by district councils of plans under Article 23, with particular reference to recycling waste;
- (d) the number and description of prosecutions brought under this Part; and
- (e) the cost incurred, and the sums received, by the Department in discharging its functions under this Part.

(3) The Department may require district councils to furnish the Department with the particulars necessary to enable it to comply with paragraphs (1) and (2).

(4) The Department shall arrange for the report for any year under paragraph (1) to be published not later than the end of the period of 6 months following the end of the year to which the report relates.

(5) In paragraphs (1) and (2) “relevant instrument” means any instrument under section 2(2) of the European Communities Act 1972 under which the Department has functions with respect to waste.

<b>F1</b> prosp. rep. by <a href="#">1997 NI 19</a>
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