



Control of Pollution (Amendment) Act 1989

CHAPTER 14

ARRANGEMENT OF SECTIONS

Section

1. Offence of transporting controlled waste without registering.
2. Registration of carriers.
3. Restrictions on power under section 2.
4. Appeals against refusal of registration etc.
5. Duty to produce authority to transport controlled waste.
6. Seizure and disposal of vehicles used for illegal waste disposal.
7. Further enforcement provisions.
8. Regulations.
9. Interpretation.
10. Expenses.
11. Short title, commencement and extent.



Control of Pollution (Amendment) Act 1989

1989 CHAPTER 14

An Act to provide for the registration of carriers of controlled waste and to make further provision with respect to the powers exercisable in relation to vehicles shown to have been used for illegal waste disposal. [6th July 1989]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) Subject to the following provisions of this section, it shall be an offence for any person who is not a registered carrier of controlled waste, in the course of any business of his or otherwise with a view to profit, to transport any controlled waste to or from any place in Great Britain.

Offence of transporting controlled waste without registering.

(2) A person shall not be guilty of an offence under this section in respect of—

- (a) the transport of controlled waste within the same premises between different places in those premises;
- (b) the transport to a place in Great Britain of controlled waste which has been brought from a country or territory outside Great Britain and is not landed in Great Britain until it arrives at that place;
- (c) the transport by air or sea of controlled waste from a place in Great Britain to a place outside Great Britain.

(3) The Secretary of State may by regulations provide that a person shall not be required for the purposes of this section to be a registered carrier of controlled waste if—

- (a) he is a prescribed person or a person of such a description as may be prescribed; or

(b) without prejudice to paragraph (a) above, he is a person in relation to whom the prescribed requirements under the law of any other member State are satisfied.

(4) In proceedings against any person for an offence under this section in respect of the transport of any controlled waste it shall be a defence for that person to show—

(a) that the waste was transported in an emergency of which notice was given, as soon as practicable after it occurred, to the disposal authority in whose area the emergency occurred;

(b) that he neither knew nor had reasonable grounds for suspecting that what was being transported was controlled waste and took all such steps as it was reasonable to take for ascertaining whether it was such waste; or

(c) that he acted under instructions from his employer.

(5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) In this section “emergency”, in relation to the transport of any controlled waste, means any circumstances in which, in order to avoid, remove or reduce any serious danger to the public or serious risk of damage to the environment, it is necessary for the waste to be transported from one place to another without the use of a registered carrier of such waste.

Registration of carriers.

2.—(1) Subject to section 3 below, the Secretary of State may by regulations make provision for the registration of persons with disposal authorities as carriers of controlled waste and, for that purpose, for the establishment and maintenance by such authorities, in accordance with the regulations, of such registers as may be prescribed.

(2) Regulations under this section may—

(a) make provision with respect to applications for registration;

(b) impose requirements with respect to the manner in which disposal authorities maintain registers of carriers of controlled waste;

(c) provide for the issue of a certificate of registration free of charge to a registered carrier of controlled waste both on his registration and on the making of any alteration of any entry relating to him in a register of such carriers;

(d) provide for such a certificate to be in such form and to contain such information as may be prescribed;

(e) provide that the provision by a disposal authority to a registered carrier of such copies of a certificate of registration as are provided in addition to the certificate provided free of charge in pursuance of provision made by virtue of paragraph (c) above is to be made subject to the payment of a charge imposed under the regulations.

(3) Provision contained in any regulations under this section by virtue of subsection (2)(a) above may, in particular, include provision which—

(a) prescribes the manner of determining the disposal authority to which an application is to be made;

- (b) prescribes the form on which and other manner in which an application is to be made;
- (c) prescribes the period within which an application for the renewal of any registration which is due to expire is to be made;
- (d) imposes requirements with respect to the information which is to be provided by an applicant to the authority to which his application is made;
- (e) requires disposal authorities to impose charges in respect of their consideration of applications.

(4) Provision contained in any regulations under this section by virtue of subsection (2)(b) above may, in particular, include provision—

- (a) specifying or describing the information to be incorporated in any register maintained by a disposal authority in pursuance of any such regulations;
- (b) requiring a registered carrier of controlled waste to notify a disposal authority which maintains such a register of any change of circumstances affecting information contained in the entry relating to that carrier in that register;
- (c) requiring a disposal authority, to such extent and in such manner as may be prescribed, to make the contents of any such register available for public inspection free of charge; and
- (d) requiring such an authority, on payment of such charges as may be imposed under the regulations, to provide such copies of the contents of any such register to any person applying for a copy as may be prescribed.

(5) Subsections (2) to (4) above are without prejudice to the generality of subsection (1) above.

3.—(1) Nothing in any regulations under section 2 above shall authorise a disposal authority to refuse an application for registration except where—

Restrictions on power under section 2.

- (a) there has, in relation to that application, been a contravention of the requirements of any regulations made by virtue of subsection (2)(a) of that section; or
- (b) the applicant or another relevant person has been convicted of a prescribed offence and, in the opinion of the authority, it is undesirable for the applicant to be authorised to transport controlled waste.

(2) Nothing in any regulations under section 2 above shall authorise any disposal authority to revoke any person's registration as a carrier of controlled waste except where—

- (a) that person or another relevant person has been convicted of a prescribed offence; and
- (b) in the opinion of the authority, it is undesirable for the registered carrier to continue to be authorised to transport controlled waste;

but registration in accordance with any regulations under that section shall cease to have effect after such period as may be prescribed or if the registered carrier gives written notice requiring the removal of his name from the register.

(3) Regulations under section 2 above may require every registration in respect of a business which is or is to be carried on by a partnership to be a registration of all the partners and to cease to have effect if any of the partners ceases to be registered or if any person who is not registered becomes a partner.

(4) Nothing in any regulations under section 2 above shall have the effect of bringing the revocation of any person's registration as a carrier of controlled waste into force except—

- (a) after the end of such period as may be prescribed for appealing against the revocation under section 4 below; or
- (b) where that person has indicated, within that period, that he does not intend to make or continue with an appeal.

(5) In relation to any applicant for registration or registered carrier, another relevant person shall be treated for the purposes of any provision made by virtue of subsection (1) or (2) above as having been convicted of a prescribed offence if—

- (a) any person has been convicted of a prescribed offence committed by him in the course of his employment by the applicant or registered carrier or in the course of the carrying on of any business by a partnership one of the members of which was the applicant or registered carrier;
- (b) a body corporate has been convicted of a prescribed offence committed at a time when the applicant or registered carrier was a director, manager, secretary or other similar officer of that body corporate; or
- (c) where the applicant or registered carrier is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate—
 - (i) has been convicted of a prescribed offence; or
 - (ii) was a director, manager, secretary or other similar officer of another body corporate at a time when a prescribed offence for which that other body corporate has been convicted was committed.

(6) In determining for the purposes of any provision made by virtue of subsection (1) or (2) above whether it is desirable for any individual to be or to continue to be authorised to transport controlled waste, a disposal authority shall have regard, in a case in which a person other than the individual has been convicted of a prescribed offence, to whether that individual has been a party to the carrying on of a business in a manner involving the commission of prescribed offences.

Appeals against
refusal of
registration etc.

4.—(1) Where a person has applied to a disposal authority to be registered in accordance with any regulations under section 2 above, he may appeal to the Secretary of State if—

- (a) his application is refused; or
- (b) the relevant period from the making of the application has expired without his having been registered;

and for the purposes of this subsection the relevant period is two months or, except in the case of an application for the renewal of his registration by a person who is already registered, such longer period as may be agreed between the applicant and the disposal authority in question.

(2) A person whose registration as a carrier of controlled waste has been revoked may appeal against the revocation to the Secretary of State.

(3) On an appeal under this section the Secretary of State may, as he thinks fit, either dismiss the appeal or give the disposal authority in question a direction to register the appellant or, as the case may be, to cancel the revocation.

(4) Where on an appeal made by virtue of subsection (1)(b) above the Secretary of State dismisses an appeal, he shall direct the disposal authority in question not to register the appellant.

(5) It shall be the duty of a disposal authority to comply with any direction under this section.

(6) The Secretary of State may by regulations make provision as to the manner in which and time within which an appeal under this section is to be made and as to the procedure to be followed on any such appeal.

(7) Where an appeal under this section is made in accordance with regulations under this section—

(a) by a person whose appeal is in respect of such an application for the renewal of his registration as was made, in accordance with regulations under section 2 above, at a time when he was already registered; or

(b) by a person whose registration has been revoked,
that registration shall continue in force, notwithstanding the expiry of the prescribed period or the revocation, until the appeal is disposed of.

(8) For the purposes of subsection (7) above an appeal is disposed of when any of the following occurs, that is to say—

(a) the appeal is withdrawn;

(b) the appellant is notified by the Secretary of State or the disposal authority in question that his appeal has been dismissed; or

(c) the disposal authority comply with any direction of the Secretary of State to renew the appellant's registration or to cancel the revocation.

5.—(1) If it reasonably appears to any duly authorised officer of a disposal authority or to a constable that any controlled waste is being or has been transported in contravention of section 1(1) above, he may—

Duty to produce authority to transport controlled waste.

(a) stop any person appearing to him to be or to have been engaged in transporting that waste and require that person to produce his authority or, as the case may be, his employer's authority for transporting that waste; and

(b) search any vehicle that appears to him to be a vehicle which is being or has been used for transporting that waste, carry out tests on anything found in any such vehicle and take away for testing samples of anything so found.

(2) Nothing in subsection (1) above shall authorise any person other than a constable in uniform to stop a vehicle on any road.

(3) Subject to the following provisions of this section, a person who is required by virtue of this section to produce an authority for transporting controlled waste shall do so by producing it forthwith to the person making the requirement, by producing it at the prescribed place and within the prescribed period or by sending it to that place within that period.

(4) A person shall be guilty of an offence under this section if he—

(a) intentionally obstructs any authorised officer of a disposal authority or constable in the exercise of the power conferred by subsection (1) above; or

(b) subject to subsection (5) below, fails without reasonable excuse to comply with a requirement imposed in exercise of that power;

and in paragraph (b) above the words “without reasonable excuse” shall be construed in their application to Scotland, as in their application to England and Wales, as making it a defence for a person against whom proceedings for the failure are brought to show that there was a reasonable excuse for the failure, rather than as requiring the person bringing the proceedings to show that there was no such excuse.

(5) A person shall not be guilty of an offence by virtue of subsection (4)(b) above unless it is shown—

(a) that the waste in question was controlled waste; and

(b) that that person did transport it to or from a place in Great Britain.

(6) For the purposes of this section a person’s authority for transporting controlled waste is—

(a) his certificate of registration as a carrier of controlled waste or such a copy of that certificate as satisfies prescribed requirements; or

(b) such evidence as may be prescribed that he is not required to be registered as a carrier of controlled waste.

(7) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Seizure and disposal of vehicles used for illegal waste disposal.

1974 c. 40.

6.—(1) A justice of the peace or, in Scotland, a sheriff or a justice of the peace may issue a warrant to a disposal authority for the seizure of any vehicle if he is satisfied, on sworn information in writing—

(a) that there are reasonable grounds for believing—

(i) that an offence under section 3 of the Control of Pollution Act 1974 (prohibition on unlicensed disposal of waste) has been committed; and

(ii) that that vehicle was used in the commission of the offence;

(b) that proceedings for that offence have not yet been brought against any person; and

(c) that the authority have failed, after taking the prescribed steps, to ascertain the name and address of any person who is able to provide them with the prescribed information about who was using the vehicle at the time when the offence was committed.

(2) Subject to subsections (3) and (4) below, where a warrant under this section has been issued to a disposal authority in respect of any vehicle, any duly authorised officer of the disposal authority or any constable may stop the vehicle and, on behalf of the authority, seize the vehicle and its contents.

(3) Nothing in this section shall authorise any person other than a constable in uniform to stop a vehicle on any road; and a duly authorised officer of a disposal authority shall not be entitled to seize any property under this section unless he is accompanied by a constable.

(4) A warrant under this section shall continue in force until its purpose is fulfilled; and any person seizing any property under this section shall, if required to do so, produce both the warrant and any authority in pursuance of which he is acting under the warrant.

(5) Where any property has been seized under this section on behalf of a disposal authority, the authority may, in accordance with regulations made by the Secretary of State, remove it to such place as the authority consider appropriate and may retain custody of it until either—

- (a) it is returned, in accordance with the regulations, to a person who establishes that he is entitled to it; or
- (b) it is disposed of by the authority in exercise of a power conferred by the regulations to sell or destroy the property or to deposit it at any place.

(6) Regulations under this section shall not authorise a disposal authority to sell or destroy any property or to deposit any property at any place unless—

- (a) the authority have published such notice and taken such other steps (if any) as may be prescribed for informing persons who may be entitled to the property that it has been seized and is available to be claimed; and
- (b) either—
 - (i) the prescribed period has expired without any obligation arising under the regulations for the disposal authority to return the property to any person; or
 - (ii) the condition of the property requires it to be disposed of without delay.

(7) Regulations under this section may—

- (a) impose obligations on a disposal authority to return any property which has been seized under this section to a person who claims to be entitled to it and satisfies such requirements for establishing his entitlement, and such other requirements, as may be prescribed;
- (b) provide for the manner in which the person entitled to any such property is to be determined where there is more than one claim to it;
- (c) provide for the proceeds of sale of any property sold by a disposal authority under the regulations to be applied towards meeting expenses incurred by the authority in exercising their functions by virtue of this section and, in so far as they are not so applied, to be applied in such other manner as may be prescribed;

- (d) make provision which treats a person who establishes that he is entitled to a vehicle as having established for the purposes of regulations under this section that he is also entitled to its contents.

(8) Subject to their powers by virtue of any regulations under this section to sell or destroy any property or to dispose of it by depositing it at any place, it shall be the duty of a disposal authority, while any property is in their custody by virtue of a warrant under this section, to take such steps as are reasonably necessary for the safe custody of that property.

(9) Any person who intentionally obstructs any authorised officer of a disposal authority or constable in the exercise of any power conferred by virtue of a warrant under this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Further
enforcement
provisions.
1974 c. 40.

7.—(1) Subject to subsection (2) below, the provisions of sections 91 to 94 of the Control of Pollution Act 1974 (powers of entry, power to obtain information and duty not to disclose information) shall have effect as if the provisions of this Act were provisions of that Act and as if, in those sections, references to a relevant authority were references to a disposal authority.

(2) Nothing in section 94 of the Control of Pollution Act 1974 (prohibition on disclosure of information) shall prohibit the disclosure of information in pursuance of such arrangements for the exchange of information between different disposal authorities or between disposal authorities and the Secretary of State or other local authorities as—

- (a) are entered into for the purpose of facilitating the carrying out by disposal authorities of their functions by virtue of this Act or any regulations under this Act; and
(b) are approved by the Secretary of State;

and no person shall be liable to another in respect of any disclosure in pursuance of any such arrangements.

(3) A person shall be guilty of an offence under this subsection if he—

- (a) fails, without reasonable excuse, to comply with any requirement in pursuance of regulations under this Act to provide information to the Secretary of State or a disposal authority; or
(b) in complying with any such requirement, provides information which he knows to be false in a material particular or recklessly provides information which is false in a material particular;

and in paragraph (a) above the words “without reasonable excuse” shall be construed in their application to Scotland, as in their application to England and Wales, as making it a defence for a person against whom proceedings for the failure are brought to show that there was a reasonable excuse for the failure, rather than as requiring the person bringing the proceedings to show that there was no such excuse.

(4) A person guilty of an offence under subsection (3) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) Where the commission by any person of an offence under this Act is due to the act or default of some other person, that other person shall also be guilty of the offence; and a person may be charged with and convicted of an offence by virtue of this subsection whether or not proceedings for the offence are taken against any other person.

(6) Where a body corporate is guilty of an offence under this Act (including where it is so guilty by virtue of subsection (5) above) in respect of any act or omission which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(7) Where the affairs of a body corporate are managed by its members, subsection (6) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(8) Section 97 of the Control of Pollution Act 1974 (default powers) shall apply in relation to any functions of a disposal authority in England and Wales by virtue of this Act or any regulations under this Act as it applies in relation to the functions of a relevant authority under that Act. 1974 c. 40.

8.—(1) The powers of the Secretary of State under this Act to make regulations shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. Regulations.

(2) Regulations made in exercise of any such power may—

- (a) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and
- (b) make different provision for different cases (including different provision for different persons, circumstances or localities).

9.—(1) In this Act—

Interpretation.

“controlled waste” has, subject to subsection (2) below, the same meaning as in Part I of the Control of Pollution Act 1974;

“disposal authority” has the same meaning as in that Part of that Act but, in relation to any area with respect to which the functions of a disposal authority are carried out by more than one such authority, means whichever one of those authorities for the time being has responsibility for the issue of disposal licences under that Part;

“prescribed” means prescribed by regulations made by the Secretary of State;

“road” has the same meaning as in the Road Traffic Act 1988; 1988 c. 52.

“transport”, in relation to any controlled waste, includes the transport of that waste by road or rail or by air, sea or inland waterway but does not include moving that waste from one place to another by means of any pipe or other apparatus that joins those two places.

“vehicle” means any motor vehicle or trailer within the meaning of the Road Traffic Regulation Act 1984. 1984 c. 27.

1974 c. 40.

(2) Subsection (4) of section 30 of the Control of Pollution Act 1974 (power to extend the meaning of controlled waste for the purposes of prescribed provisions of Part I of that Act) and any regulations made under that subsection before the coming into force of this subsection shall have effect as if the provisions of this Act were contained in Part I of that Act.

Expenses.

10. There shall be paid out of money provided by Parliament—

- (a) any administrative expenses incurred by the Secretary of State in consequence of this Act; and
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

Short title,
commencement
and extent.

11.—(1) This Act may be cited as the Control of Pollution (Amendment) Act 1989.

(2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be so appointed for different provisions and for different purposes.

(3) Section 107 of the Control of Pollution Act 1974 (modification of Act in its application to Isles of Scilly) shall apply in relation to this Act as it applies in relation to that Act.

(4) This Act shall not extend to Northern Ireland.

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