

*Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament*

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DRAFT STATUTORY INSTRUMENTS

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**2007 No. (N.I. )**

**NORTHERN IRELAND**

**The Waste (Amendment) (Northern Ireland) Order 2007**

*Made* - - - - - *2007*

*Coming into operation in accordance with Article 1(2) and (3)*

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*Waste (Amendment)*

At the Court at Buckingham Palace, the \*\* day of \*\* 2007

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

*Introductory*

**Title and commencement**

1.—(1) This Order may be cited as the Waste (Amendment) (Northern Ireland) Order 2007.

(2) This Article and Article 2 come into operation one week after the day on which this Order is made.

(3) The remaining provisions of this Order come into operation on such day or days as the Department of the Environment may by order appoint.

(4) An order under paragraph (3) may contain such transitional or saving provisions as that Department thinks appropriate.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c.33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order “the 1997 Order” means the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19).

*Offences relating to deposit, disposal, etc. of waste*

**Defence of acting under employer’s instructions**

3.—(1) In Article 4 of the 1997 Order (offence of unauthorised or harmful deposit etc of controlled waste), omit paragraph (7)(b) (defence of acting on employer's instructions).

(2) This Article does not have effect in relation to an offence committed, or alleged to have been committed, before the coming into operation of this Article.

**Penalties on conviction**

4.—(1) Article 4 of the 1997 Order (offence of unauthorised or harmful deposit etc of waste) is amended as follows.

(2) For paragraphs (8) to (10) (penalties) substitute—

“(8) Subject to paragraph (9), a person who commits an offence under this Article is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.

(9) A person (other than an establishment or undertaking) who commits a relevant offence shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(10) In this Article “relevant offence” means an offence under this Article in respect of a contravention of paragraph (1)(c) consisting of the treatment, keeping or disposal within the curtilage of a domestic property of household waste from that property.

(11) In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”.

(3) This Article does not have effect in relation to an offence committed before the coming into operation of this Article.

**Failure to furnish documentation: fixed penalty notice**

5. In the 1997 Order, after Article 5 insert—

**“Fixed penalty notices for certain offences under Article 5(8)**

5A.—(1) This Article applies where it appears to the Department that a person has failed to comply with a duty to furnish documents to the Department imposed under regulations made at any time under Article 5(7).

(2) The Department may serve on that person a notice offering him the opportunity of discharging any liability to conviction for an offence under Article 5(8) by payment of a fixed penalty.

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

(a) no proceedings may be instituted for that offence before expiration of the period of 14 days following the date of the notice; and

(b) he may not be convicted of that offence if he pays the fixed penalty before the expiration of the period.

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(4) 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.

(5) A notice under this Article must also state—

- (a) the period during which, by virtue of paragraph (3), 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.

(6) 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 to the person mentioned in paragraph (5)(c) at the address so mentioned.

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

(8) The form of a notice under this Article is to be such as the Department may by order prescribe.

(9) The fixed penalty payable to the Department under this Article is, subject to paragraph (10), £300.

(10) The Department may by order substitute a different amount for the amount for the time being specified in paragraph (9).

(11) The Department may make provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the Department.

(12) In any proceedings a certificate which—

- (a) purports to be signed by an authorised officer; 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” means an officer of the Department who is authorised in writing by the Department for the purposes of this Article.”.

### **Investigation and enforcement costs**

6.—(1) After Article 5A of the 1997 Order (inserted by Article 5) insert—

*“Provisions relating to offences under Articles 4 and 5*

#### **Article 4 and 5 offences: investigation and enforcement costs**

5B.—(1) This Article applies where a person is convicted of—

- (a) an offence under Article 4 in respect of a contravention of paragraph (1) of that Article; or

(b) an offence under Article 5 in respect of a failure to comply with paragraph (1) of that Article.

(2) The court by or before which the offender is convicted may make an order requiring him to pay to the Department a sum which appears to the court not to exceed the costs arising from—

(a) investigations of the Department which resulted in the conviction; and

(b) the seizure by the Department under Article 5E of a vehicle involved in the offence.

(3) The costs arising from the seizure of a vehicle as specified in paragraph (2)(b) may include the cost of disposing of the contents of the vehicle.

(4) The power of a court to make an order under this Article is in addition to its power to make an order under section 2 of the Costs in Criminal Cases Act (Northern Ireland) 1968 (award of costs against accused).”.

(2) This Article does not have effect in relation to an offence committed before the coming into operation of this Article.

### **Clean-up costs**

7.—(1) After Article 5B of the 1997 Order (inserted by Article 6) insert—

#### **“Article 4 offences: clean-up costs**

5C.—(1) Paragraph (2) applies where a person is convicted of an offence under Article 4 in respect of a contravention of paragraph (1) of that Article consisting of the deposit or disposal of controlled waste.

(2) The reference in Article 14(1) of the Criminal Justice (Northern Ireland) Order 1994 (compensation orders) to loss or damage resulting from the offence includes costs incurred or to be incurred by the owner or occupier of the land, the Department or a district council 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) Subject to paragraph (4), in relation to the costs referred to in paragraph (2), the reference in Article 14(11) of the Criminal Justice (Northern Ireland) Order 1994 (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).

(4) Paragraph (3) does not apply where a person (other than an establishment or undertaking) is convicted of a relevant offence within the meaning of Article 4.”.

(2) This Article does not have effect in relation to an offence committed before the coming into operation of this Article.

### **Forfeiture of vehicles**

8.—(1) In the 1997 Order, after Article 5C (inserted by Article 7) insert—

#### **“Article 4 and 5 offences: forfeiture of vehicles**

5D.—(1) Subject to paragraph (2), this Article applies where a person is convicted of—

- (a) an offence under Article 4 in respect of a contravention of paragraph (1) of that Article consisting of the deposit or disposal of controlled waste;
- (b) an offence under Article 5 in respect of a failure to comply with paragraph (1) of that Article.

(2) This Article does not apply where a person (other than an establishment or undertaking) is convicted of a relevant offence within the meaning of Article 4.

(3) The court by or before which the offender is convicted may make an order under this Article 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.

(4) An order under this Article 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 Department.

(5) In a case where a vehicle has been seized under Article 5E and the offender retains rights in any of the vehicle's contents, an order under this Article may, if and to the extent that it so specifies, deprive the offender of those rights and vest them in the Department.

(6) Where an order under this Article is made, the Department may take possession of the vehicle (if it has not already done so under Article 5F).

(7) The court may make an order under this Article whether or not it also deals with the offender in any other way in respect of the offence of which he is convicted.

(8) In considering whether to make an order under this Article 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 Article 4, the making of the order is likely to inhibit the offender from engaging in further such activities.

(9) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (power to deprive offender of property) does not apply in any case where this Article applies.

(10) For the purposes of this Article, where a vehicle or its contents have been seized under Article 5E in connection with the offence referred to in paragraph (1), 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.

(11) In this Article “vehicle” includes any mobile plant.”.

(2) This Article does not have effect in relation to an offence committed before the coming into operation of this Article.

### **Power to search and seize vehicles**

9. After Article 5D of the 1997 Order (inserted by Article 8), insert—

#### **“Power to search and seize vehicles etc**

5E.—(1) This Article applies where an authorised officer or a constable reasonably believes that the grounds in paragraph (2) or (3) exist.

(2) The grounds in this paragraph are that—

- (a) an offence under Article 4 or 5 has been committed,
- (b) a vehicle was used in the commission of the offence, and
- (c) proceedings for the offence have not yet been brought against any person.

(3) The grounds in this paragraph are that—

- (a) an offence under Article 4 or 5 is being or is about to be committed, and
- (b) a vehicle is being or is about to be used in the commission of the offence.

(4) The authorised officer or constable may—

- (a) search the vehicle;
- (b) seize the vehicle and any of its contents.

(5) In acting under paragraph (4) the authorised officer or constable may—

- (a) stop the vehicle;
- (b) enter any premises for the purpose of searching or seizing the vehicle.

(6) A vehicle or its contents seized under paragraph (4) are seized on behalf of the Department.

(7) A person commits an offence if—

- (a) he fails without reasonable excuse to give any assistance that an authorised officer or constable may reasonably request in the exercise of a power under paragraph (4) or (5);



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- (b) he otherwise intentionally obstructs an authorised officer or constable in exercising that power.
- (8) Where an authorised officer or constable has stopped a vehicle under paragraph (5)(a), he may require any occupant of the vehicle to give him—
  - (a) the occupant's name and address;
  - (b) the name and address of the registered owner of the vehicle;
  - (c) any other information he may reasonably request.
- (9) A person commits an offence if—
  - (a) he fails without reasonable excuse to comply with a requirement under paragraph (8);
  - (b) he gives information required under that paragraph that is—
    - (i) to his knowledge false or misleading in a material way, or
    - (ii) given recklessly and is false or misleading in a material way.
- (10) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (11) In this Article and Article 5F—
  - “authorised officer” means an officer of the Department who is authorised in writing by the Department for the purposes of this Article;
  - “vehicle” includes any mobile plant.

### **Seizure of vehicles etc: supplementary**

- 5F—(1) Where under Article 5E an authorised officer or constable seizes a vehicle or its contents (“seized property”) on behalf of the Department, the Department may remove the seized property to such a place as it considers appropriate.
- (2) The Department must deal with any seized property in accordance with regulations made by the Department.
  - (3) Regulations under paragraph (2) may in particular include provision as to—
    - (a) the duties of the Department in relation to the safe custody of seized property;
    - (b) the circumstances in which the Department must return any such property to a person claiming entitlement to it;
    - (c) the manner in which such persons, and the seized property to which they are entitled, may be determined;
    - (d) the circumstances in which the Department may sell, destroy or otherwise dispose of seized property;
    - (e) the uses to which the proceeds of any such sale may be put.
  - (4) Regulations making provision under paragraph (3)(d)—
    - (a) must (subject to sub-paragraph (c)) require the Department to publish a notice in such form, and to take any other steps, as may

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be specified in the regulations for informing persons who may be entitled to the seized property that it has been seized and is available to be claimed;

- (b) must (subject to sub-paragraph (c)) prohibit the Department from selling, destroying or otherwise disposing of any seized property unless a period specified in the regulations has expired without any obligation arising under the regulations for the Department to return the property to any person;
- (c) may allow for the requirements in sub-paragraphs (a) and (b) to be dispensed with if the condition of the seized property requires its disposal without delay.”.

*Waste collection and disposal*

**Offences relating to waste receptacles: fixed penalty notices**

**10.** In the 1997 Order after Article 22 (receptacles for commercial or industrial waste) insert—

**“Fixed penalty notices for offences under Articles 21 and 22**

22A.—(1) This Article applies where on any occasion an authorised officer of a district council has reason to believe that a person has committed an offence under Article 21 or 22 in the district of that council.

(2) The authorised 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 council.

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

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

(4) 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.

(5) A notice under this Article must also state—

- (a) the period during which, by virtue of paragraph (3), 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.

(6) 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 to the person mentioned in paragraph (5)(c) at the address so mentioned.

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

(8) The form of a notice under this Article is to be such as the Department may by order prescribe.

(9) In any proceedings a certificate which—

- (a) purports to be signed on behalf of the chief finance officer 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.

(10) In this Article—

“authorised officer”, in relation to a council, means—

- (a) an employee of the council who is authorised in writing by the council for the purposes of giving notices under this Article;
- (b) any person who, in pursuance of arrangements made with the council, has the function of giving such notices and is authorised in writing by the council to perform that function;
- (c) any employee of such a person who is authorised in writing by the council for the purpose of giving such notices;

“chief finance officer”, in relation to a council, means the person having responsibility for the financial affairs of the council.

### **Amount of fixed penalty under Article 22A**

22B—(1) This Article applies in relation to a fixed penalty payable to a district council in pursuance of a notice under Article 22A.

(2) The amount of the fixed penalty is £100.

(3) The council may make provision for treating the fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the council.

(4) The Department may by regulations make provision in connection with the power conferred on councils under paragraph (3) and such regulations may (in particular) restrict the extent to which, and the circumstances in which, a council can make provision under that paragraph.

(5) The Department may by order substitute a different amount for the amount for the time being specified in paragraph (2).

### **Use of fixed penalty receipts**

22C.—(1) A district council may use amounts received by it under Article 22A (its “fixed penalty receipts”) only for the purposes of—

- (a) its functions under this Part (including functions relating to the enforcement of offences under this Part); and

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(b) such other of its functions as may be specified in regulations made by the Department.

(2) Regulations under paragraph (1) may (in particular) have the effect that a council may use its fixed penalty receipts for the purposes of any of its functions relating to waste.

(3) A council must supply the Department with such information relating to its use of its fixed penalty receipts as the Department may require.

(4) The Department may by regulations—

(a) make provision for what a 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 (1);

(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 council's fixed penalty receipts.

(5) The provision that may be made under paragraph (4)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the council.

(6) Before making regulations under this Article, the Department must consult—

(a) district councils; and

(b) such other persons as the Department thinks fit.”.

### **Daily fine for offence under Article 27 of 1997 Order**

**11.—**(1) In Article 27 of the 1997 Order (directions requiring waste to be accepted, treated, disposed of or delivered) after paragraph (5) insert—

“(5A) If in the case of a continuing offence under paragraph (5) the offender continues to fail to comply with the direction he shall be guilty of a further offence and liable on summary conviction to an additional fine not exceeding one-tenth of level 5 on the standard scale for each day on which the offence is continued.”.

(2) This Article does not have effect in relation to an offence under Article 27(5) of the 1997 Order committed before the coming into operation of this Article.

### **Power to require owner of land to remove waste**

**12.—**(1) In Article 28 of the 1997 Order (power to require removal of waste unlawfully deposited), in paragraph (8)(b) after “occupier of the land” insert “or the occupier cannot be found without the council incurring unreasonable expense”.

(2) After that Article insert—

**“Article 28: supplementary power in relation to owner of land**

28A.—(1) Where the grounds in paragraph (2), (3) or (4) are met, a district council may, by notice served on him, require the owner of any land in its district to comply with either or both of the requirements mentioned in paragraph (1)(a) and (b) of Article 28.

(2) The grounds in this paragraph are that it appears to the council that waste has been deposited in or on the land in contravention of Article 4(1) and—

- (a) there is no occupier of the land, or
- (b) the occupier cannot be found without the council incurring unreasonable expense.

(3) The grounds in this paragraph are that—

- (a) the council has served a notice under paragraph (1) of Article 28 imposing a requirement on the occupier of the land,
- (b) the occupier of the land is not the same person as the owner of the land, and
- (c) the occupier has failed to comply with the requirement mentioned in sub-paragraph (a) within the period specified in the notice.

(4) The grounds in this paragraph are that—

- (a) the council has served a notice under paragraph (1) of Article 28 imposing a requirement on the occupier of the land,
- (b) the occupier of the land is not the same person as the owner of the land, and
- (c) the requirement mentioned in sub-paragraph (a) has been quashed on the ground specified in paragraph (3)(a) of that Article.

(5) Paragraphs (2) to (7) of Article 28 apply in relation to requirements imposed under this Article on the owner of the land as they apply in relation to requirements imposed under that Article on the occupier of the land but as if in paragraph (3) there were inserted after sub-paragraph (a)—

- “(aa) in order to comply with the requirement the appellant would be required to enter the land unlawfully; or”.

*Transport of waste*

**Unregistered transport: defence of acting under employer’s instructions**

13.—(1) In Article 38 of the 1997 Order (offence of transporting controlled waste without registering), in paragraph (4)—

- (a) at the end of sub-paragraph (a), insert “or”; and
- (b) omit sub-paragraph (c) (defence of acting under employer's instructions) and the preceding “or”.

(2) This Article does not have effect in relation to an offence committed, or alleged to have been committed, before the coming into operation of this Article.

### **Registration requirements and conditions**

14.—(1) Article 39 of the 1997 Order (power to make regulations about registration of carriers) is amended as follows.

(2) In paragraph (2)—

- (a) in sub-paragraph (c), omit “free of charge”;
- (b) omit sub-paragraph (d);
- (c) in sub-paragraph (e), omit “free of charge”.

(3) In paragraph (3), omit sub-paragraph (a) (provision as to form of applications).

(4) In paragraph (4)—

- (a) for “paragraph (3)(a) and (c)” substitute “paragraph (3)(c)”; and
- (b) omit sub-paragraph (a) (further provision as to form of application).

(5) After paragraph (5) insert—

“(5A) Regulations under this Article may include provision for—

- (a) the registration of a person as a carrier of controlled waste to be subject to conditions relating to the vehicles used by him in transporting such waste; or
- (b) the revocation by the Department of the registration of a carrier of controlled waste who has breached a condition imposed on him under sub-paragraph (a).

(5B) Provision contained in any regulations under this Article by virtue of paragraph (5A) may, in particular, include provision—

- (a) for inspection by the Department of the vehicles of registered carriers of controlled waste for the purpose of ensuring compliance with conditions imposed under paragraph (5A)(a);
- (b) for the Department to impose charges on registered carriers of controlled waste in respect of such inspections.”.

(6) In paragraph (6), for “to (5)” substitute “to (5B)”.

(7) In Article 40 of the 1997 Order (restrictions on power under Article 39), in paragraph (2), after “except” insert “in accordance with regulations under paragraph (5A) of that Article or”.

### **Enforcement powers**

15. For Article 42 of the 1997 Order substitute—

#### **“Power to require production of authority, stop and search etc**

42.—(1) This Article applies where an authorised officer or a constable reasonably believes that controlled waste has been, is being or is about to be transported in contravention of Article 38(1).

(2) The authorised officer or constable may—

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

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- (b) search any vehicle that appears to him to be a vehicle that has been, is being or is about to be used for transporting that waste;
  - (c) carry out tests on anything found in any such vehicle (including by taking away samples for testing of anything so found);
  - (d) seize any such vehicle and any of its contents.
- (3) For the purposes of paragraph (2)(a), a person's authority for transporting controlled waste is—
- (a) his certificate of registration as a carrier of controlled waste;
  - (b) such copy of that certificate as satisfies requirements prescribed in regulations made by the Department; or
  - (c) such evidence as may be so prescribed that he is not required to be registered as a carrier of controlled waste.
- (4) Where an authorised officer or constable has required a person to produce an authority under paragraph (2)(a), the person must do so—
- (a) by producing it forthwith to the authorised officer or constable;
  - (b) by producing it at a place and within a period specified in regulations made by the Department; or
  - (c) by sending it to that place and within that period.
- (5) In acting under paragraph (2) an authorised officer or constable may—
- (a) stop any vehicle as referred to in sub-paragraph (b) of that paragraph;
  - (b) enter any premises for the purpose specified in sub-paragraph (b) or (d) of that paragraph.
- (6) A vehicle or its contents seized under paragraph (2)(d) is seized on behalf of the Department.
- (7) A person commits an offence if—
- (a) he fails without reasonable excuse to comply with a requirement imposed under sub-paragraph (a) of paragraph (2);
  - (b) he fails without reasonable excuse to give any assistance that an authorised officer or constable may reasonably request in the exercise of a power under that paragraph;
  - (c) he otherwise intentionally obstructs an authorised officer or constable in the exercise of a power under that paragraph .
- (8) A person is not guilty of an offence by virtue of paragraph (7)(a) unless it is shown—
- (a) that the waste in question was controlled waste; and
  - (b) that the waste was or was being transported to or from a place in Northern Ireland.
- (9) Where an authorised officer or constable has stopped a vehicle under paragraph (5), he may (in addition to any requirement that may be imposed under sub-paragraph (a) of paragraph (2)) require any occupant of the vehicle to give him—

- (a) the occupant's name and address;
  - (b) the name and address of the registered owner of the vehicle;
  - (c) any other information he may reasonably request.
- (10) A person commits an offence if—
- (a) he fails without reasonable excuse to comply with a requirement under paragraph (9);
  - (b) he gives information required under that paragraph that is—
    - (i) to his knowledge false or misleading in a material way, or
    - (ii) given recklessly and is false or misleading in a material way.
- (11) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (12) In this Article and Articles 42A and 42B “authorised officer” means an officer of the Department who is authorised in writing by the Department for the purposes of those Articles.
- (13) Summary proceedings for an offence under paragraph (11) may be instituted at any time within 12 months after the commission of the offence.

#### **Seizure of vehicles etc: supplementary**

- 42A.—(1) Where under Article 42 an authorised officer or a constable seizes a vehicle or its contents (“seized property”) on behalf of the Department, the Department may remove the seized property to such a place as the Department considers appropriate.
- (2) The Department must deal with any seized property in accordance with regulations made by the Department.
- (3) Regulations under paragraph (2) may in particular include provision as to—
- (a) the duties of the Department in relation to the safe custody of seized property;
  - (b) the circumstances in which the Department must return any such property to a person claiming entitlement to it;
  - (c) the manner in which such persons, and the seized property to which they are entitled, may be determined;
  - (d) the circumstances in which the Department may sell, destroy or otherwise dispose of seized property;
  - (e) the uses to which the proceeds of any such sale may be put.
- (4) Regulations making provision under paragraph (3)(d)—
- (a) must (subject to sub-paragraph (c)) require the Department to publish a notice in such form, and to take any other steps, as may be specified in the regulations for informing persons who may be entitled to the seized property that it has been seized and is available to be claimed;



- (b) must (subject to sub-paragraph (c)) prohibit the Department from selling, destroying or otherwise disposing of any seized property unless a period specified in the regulations has expired without any obligation arising under the regulations for the Department to return the property to any person;
- (c) may allow for the requirements in sub-paragraphs (a) and (b) to be dispensed with if the condition of the seized property requires its disposal without delay.”.

**Failure to produce authority: fixed penalty notice**

**16.** In the 1997 Order, after Article 42A (inserted by Article 15) insert—

**“Fixed penalty notices for offences under Article 42**

42B.—(1) This Article applies where it appears to the Department that a person has failed without reasonable excuse to comply with a requirement under Article 42(2)(a) (requirement to produce authority to transport waste).

(2) The Department may give that person a notice offering him the opportunity of discharging any liability to conviction for an offence under Article 42(7)(a) by payment of a fixed penalty.

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

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

(4) 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.

(5) A notice under this Article must also state—

- (a) the period during which, by virtue of paragraph (3), 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.

(6) 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 to the person mentioned in paragraph (5)(c) at the address so mentioned.

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

(8) The form of a notice under this Article must be such as the Department may by order prescribe.

## *Waste (Amendment)*

(9) The fixed penalty payable to the Department under this Article is, subject to paragraph (10), £300.

(10) The Department may by order substitute a different amount for the amount for the time being specified in paragraph (9).

(11) The Department may make provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the Department.

(12) The Department may by regulations restrict the extent to which, and the circumstances in which, the Department may make provision under paragraph (11).

(13) In any proceedings a certificate which—

(a) purports to be signed by an authorised officer, 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.”.

## *Site waste management plans*

### **Site waste management plans**

17.—(1) The Department may by regulations subject to negative resolution make provision requiring persons of a prescribed description—

(a) to prepare plans for the management and disposal of waste created in the course of prescribed descriptions of works involving construction or demolition;

(b) to comply with such plans.

(2) Descriptions of works that may be prescribed under paragraph (1)(a) include in particular description by reference to the cost or likely cost of such works.

(3) Regulations under this Article may make supplementary and incidental provision, including in particular provision as to—

(a) the circumstances in which plans must be prepared;

(b) the contents of plans;

(c) enforcement authorities in relation to plans and the powers of such authorities;

(d) the keeping of plans and their production to enforcement authorities;

(e) offences in relation to a failure to comply with a requirement under the regulations;

(f) penalties for those offences;

(g) the discharging of liability for an offence under the regulations by the payment of a fixed penalty to an enforcement authority;

(h) the uses to which such payments may be put by enforcement authorities.

*Enforcement*

**Powers of enforcing authorities**

- 18.**—(1) In Article 72 of the 1997 Order (powers of enforcement authorities)—
- (a) in paragraph (2)(b)(i) (power of entry) for “duly authorised by the enforcing authority, and” substitute “including,”;
  - (b) in paragraph (2)(g) (powers in relation to articles or substances found) omit from “being an article” to “human health”;
  - (c) in paragraph (4)(a) (notice of entry) for “7 days” substitute “24 hours”.
- (2) In Article 74 of the 1997 Order (offences of obstruction, etc) after paragraph (5) insert—
- “(5A) Summary proceedings for an offence under paragraph (2) or (3) may be instituted at any time within 12 months after the commission of the offence.”.

**Power to stop vehicles**

- 19.** In the 1997 Order, after Article 73 insert—

**“Power of authorised officers of Department to stop vehicles**

73A.—(1) An authorised officer may require any person driving a vehicle on a road or other public place to stop, and any person who fails to stop when he is so required shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (2) In this Article —

“authorised officer” means an officer of the Department who is authorised in writing for the purposes of this Article;

“public place” has the same meaning as in the Road Traffic (Northern Ireland) Order 1981 (NI 1).”.

*Repeals*

**Repeals**

- 20.** The statutory provisions set out in the Schedule (which include spent provisions) are repealed to the extent specified in the second column of the Schedule.

*A.K.Galloway*  
Clerk of the Privy Council

SCHEDULE

REPEALS

Short Title	Extent of repeal
The Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19)	In Article 2(2) in the definition of “controlled waste”, the words “, subject to Article 31(1),”. Article 4(7)(b). Article 38(4)(c) and the preceding “or” In Article 39— (a) in paragraph 2(c) the words “free of charge”; (b) paragraph (2)(d); (c) in paragraph (2)(e) the words “free of charge”; (d) paragraph (3)(a); (e) paragraph (4)(a). Article 43. In Article 72(2)(g) the words from “being an article” to “human health”.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes miscellaneous amendments to the Waste and Contaminated Land (Northern Ireland) Order 1997.

