
STATUTORY INSTRUMENTS

2007 No. 611 (N.I. 3)

NORTHERN IRELAND

The Waste (Amendment) (Northern Ireland) Order 2007

Made - - - - 6th March 2007
Coming into operation in accordance with Article 1(2)
and (3)

At the Court at Buckingham Palace, the 6th day of March 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.

Annotations:

Subordinate Legislation Made

P1 [Art. 1\(3\)](#) power partly exercised: 25.6.2007 appointed for specified provisions by [S.R. 2007/294, art. 2, Sch.](#);
7.4.2008 appointed for specified provision by [S.R. 2008/75, art. 2](#)

Status: This version of this Order contains provisions that are prospective.

Changes to legislation: The Waste (Amendment) (Northern Ireland) Order 2007 is up to date with all changes known to be in force on or before 24 July 2017. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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).

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(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.

(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.”.

Annotations:

Commencement Information

II Art. 5 in operation at 11.3.2013 by S.R. 2013/33, art. 2(a)

Investigation and enforcement costs

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

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“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.