



Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011

2011 CHAPTER 5

An Act to amend the Waste and Contaminated Land (Northern Ireland) Order 1997 and the Producer Responsibility Obligations (Northern Ireland) Order 1998. [10th February 2011]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Waste

Fixed penalty notices for offences under Article 4

1 After Article 4 of the 1997 Order insert—

“Fixed penalty notices for offences under Article 4

4A.—(1) This Article applies where on any occasion an authorised officer has reason to believe that a person has committed an offence under Article 4.

(2) The authorised officer may give to 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 enforcing authority.

(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 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) Subject to paragraph (10), the fixed penalty payable to an enforcing authority under this Article is an amount fixed by the enforcing authority being—
 - (a) not less than £100; and
 - (b) not more than £400.
- (10) The Department may by order substitute a different amount for any amount for the time being specified in paragraph (9).
- (11) An enforcing authority 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 enforcing authority.
- (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.

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

Changes to legislation: There are currently no known outstanding effects for the Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011. (See end of Document for details)

(13) Article 22C (use of fixed penalty receipts by a district council) applies in relation to amounts received by a council under this Article as it applies in relation to amounts received under Article 22A.

(14) In this Article—

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

“enforcing authority” means—

- (a) the Department; and
- (b) in relation to an offence committed within its district, a district council.”.

Commencement Information

II [S. 1](#) in operation at 12.3.2013 by [S.R. 2013/34](#), [art. 2\(1\)](#)

Detention of seized property

2.—(1) In Article 5F of the 1997 Order (seizure of vehicles) after paragraph (3) insert—

“(3A) Regulations making provision under paragraph (3)(b)—

- (a) must (subject to sub-paragraph (b)) provide for seized property to be returned as mentioned in paragraph (3)(b) before the expiry of a period specified in the regulations;
- (b) may provide for a magistrates' court, on an application by the Department, to authorise the Department to retain the seized property until such date or the happening of such event as the court may specify;
- (c) must, if they contain provision under sub-paragraph (b), provide for any person claiming to be entitled to the property to be afforded an opportunity to be heard by the court before it determines the application.”.

(2) In Article 42A of the 1997 Order (seizure of vehicles) after paragraph (3) insert—

“(3A) Regulations making provision under paragraph (3)(b)—

- (a) must (subject to sub-paragraph (b)) provide for seized property to be returned as mentioned in paragraph (3)(b) before the expiry of a period specified in the regulations;
- (b) may provide for a magistrates' court, on an application by the Department, to authorise the Department to retain the seized

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property until such date or the happening of such event as the court may specify;

- (c) must, if they contain provision under sub-paragraph (b), provide for any person claiming to be entitled to the property to be afforded an opportunity to be heard by the court before it determines the application.”.

Commencement Information

I2 S. 2 in operation at 12.3.2013 by S.R. 2013/34, art. 2(2)

Offence of failing to pay charge for subsistence of licence

3 In Article 15 of the 1997 Order (fees and charges for licences) after paragraph (5) insert—

“(5A) If the holder of a licence fails to pay a charge due in consideration of the subsistence of the licence, the holder of the licence shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5B) If the failure to pay continues after conviction of an offence under paragraph (5A), the offender shall be guilty of a further offence and shall be 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.

(5C) The court by which the holder of a licence is convicted of an offence under paragraph (5A) or (5B) may order the holder of the licence to pay to the Department any amount outstanding as at the date of conviction in respect of—

- (a) any charge due in consideration of the subsistence of the licence; and
- (b) any expenditure incurred by the Department under Article 16(2) in relation to—
 - (i) the land or mobile plant to which the licence relates; or
 - (ii) any equipment on the land to which the licence relates;

and any amount so ordered to be paid to the Department is enforceable in the same manner as any other sum adjudged to be paid by a conviction of that court.”.

PROSPECTIVE

Powers to require removal of waste unlawfully deposited

4 For Articles 28 and 28A of the 1997 Order substitute—

“Power to require removal of waste unlawfully deposited

28.—(1) If any controlled waste is deposited in or on any land in contravention of Article 4(1), an enforcing authority may, by notice served on him, require the appropriate person to do either or both of the following, that is—

- (a) to remove the waste from the land within a specified period not less than a period of 21 days from the service of the notice;
- (b) to take within such a period specified steps with a view to eliminating or reducing the consequences of the deposit of the waste.

(2) A person on whom any requirements are imposed under paragraph (1) may, within the period of 21 days mentioned in that paragraph, appeal against the requirement to a court of summary jurisdiction.

(3) On any appeal under paragraph (2) the court shall quash the requirement if it is satisfied that—

- (a) the appellant neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste;
- (b) there is a material defect in the notice; or
- (c) in order to comply with the requirement the appellant would be required to enter the land unlawfully;

and in any other case shall either modify the requirement or dismiss the appeal.

(4) Where a person appeals against any requirement imposed under paragraph (1), the requirement shall be of no effect pending the determination of the appeal; and where the court modifies the requirement or dismisses the appeal it may extend the period specified in the notice.

(5) If a person on whom a requirement has been imposed under paragraph (1) fails, without reasonable excuse, to comply with the requirement he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) If in the case of a continuing offence under paragraph (5), the offender continues to fail to comply with the requirement he shall be guilty of a further offence and shall be liable on summary conviction to