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STATUTORY INSTRUMENTS

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**2007 No. 611**

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

*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.

(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
- (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.

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**Changes to legislation:** There are currently no known outstanding effects for the The Waste (Amendment) (Northern Ireland) Order 2007, Waste collection and disposal. (See end of Document for details)

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(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 subparagraph (a)—

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

**Changes to legislation:**

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