



Clean Neighbourhoods and Environment Act 2005

2005 CHAPTER 16

PART 5

WASTE

CHAPTER 2

DEPOSIT AND DISPOSAL OF WASTE

Offence of unlawful deposit of waste etc

40 Defence of acting under employer's instructions

- (1) In section 33 of the Environmental Protection Act 1990 (c. 43) (offence of unauthorised or harmful deposit etc of controlled waste), omit subsection (7)(b) (defence of acting on employer's instructions).
- (2) This section does not have effect in relation to an offence committed, or alleged to have been committed, before the commencement of this section.

41 Penalties on conviction

- (1) In section 33 of the Environmental Protection Act 1990 (offence of unauthorised or harmful deposit etc of waste), for subsections (8) and (9) (penalties) substitute—
 - “(8) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £50,000 or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.”

- (2) Subsection (1) does not have effect in relation to offences committed before the commencement of this section.
- (3) In relation to offences committed after the commencement of this section but before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the amendment made by this section has effect as if for “12 months” there were substituted “6 months”.

42 Investigation and enforcement costs

- (1) After section 33 of the Environmental Protection Act 1990 (c. 43) insert—

“33A Section 33 offences: investigation and enforcement costs

- (1) This section applies where a person is convicted of an offence under section 33 above in respect of a contravention of subsection (1) of that section.
- (2) The court by or before which the offender is convicted may make an order requiring him to pay to an enforcement authority a sum which appears to the court not to exceed the costs arising from—
 - (a) investigations of the enforcement authority which resulted in the conviction; and
 - (b) the seizure by the enforcement authority under section 34B below of a vehicle involved in the offence.
- (3) The costs arising from the seizure of a vehicle as specified in subsection (2) (b) above may include the cost of disposing of the contents of the vehicle.
- (4) The power of a court to make an order under this section is in addition to its power to make an order under section 18 of the Prosecution of Offences Act 1985 (award of costs against accused).
- (5) In this section “enforcement authority” means the Environment Agency or a waste collection authority.”
- (2) This section does not have effect in relation to an offence under section 33 of that Act committed before the commencement of this section.

43 Clean-up costs

- (1) After section 33A of the Environmental Protection Act 1990 (as inserted by section 42 above) insert—

“33B Section 33 offences: clean-up costs

- (1) This section applies where a person is convicted of an offence under section 33 above in respect of a contravention of subsection (1) of that section consisting of the deposit or disposal of controlled waste.
- (2) The reference in section 130(1)(a) of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders) to loss or damage resulting from the offence includes costs incurred or to be incurred by a relevant person 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) In subsection (2) above “relevant person” means—
 - (a) the Environment Agency;
 - (b) a waste collection authority;
 - (c) the occupier of the land;
 - (d) the owner of the land (within the meaning of section 78A(9) below).
- (4) The reference in subsection (2) above to costs incurred does not, in the case of the Environment Agency or a waste collection authority, include any costs which the Agency or authority has already recovered under section 59(8) below.
- (5) In relation to the costs referred to in subsection (2) above, the reference in section 131(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (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).”
- (2) In section 59 of that Act (power to require removal of waste unlawfully deposited), after subsection (8) insert—
 - “(8A) An authority may not recover costs under subsection (8) above if a compensation order has been made under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 in favour of the authority in respect of any part of those costs.
 - (8B) Subsection (8A) does not apply if the order is set aside on appeal.”
- (3) This section does not have effect in relation to an offence under section 33 of that Act committed before the commencement of this section.

44 Forfeiture of vehicles

- (1) In the Environmental Protection Act 1990 (c. 43), after section 33B (as inserted by section 43 above) insert—

“33C Section 33 offences: forfeiture of vehicles

- (1) This section applies where a person is convicted of an offence under section 33 above in respect of a contravention of subsection (1) of that section consisting of the deposit or disposal of controlled waste.
- (2) The court by or before which the offender is convicted may make an order under this section 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.
- (3) An order under this section 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 relevant enforcement authority.

Status: This is the original version (as it was originally enacted).

- (4) In a case where a vehicle has been seized under section 34B below and the offender retains rights in any of the vehicle's contents, an order under this section may, if and to the extent that it so specifies, deprive the offender of those rights and vest them in the relevant enforcement authority.
 - (5) Where an order under this section is made, the relevant enforcement authority may take possession of the vehicle (if it has not already done so under section 34C below).
 - (6) The court may make an order under this section whether or not it also deals with the offender in any other way in respect of the offence of which he is convicted.
 - (7) In considering whether to make an order under this section 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 section 33 above, the making of the order is likely to inhibit the offender from engaging in further such activities.
 - (8) Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (power to deprive offender of property) does not apply in any case where this section applies.
 - (9) For the purposes of this section, where a vehicle or its contents have been seized under section 34B below in connection with the offence referred to in subsection (1) above, 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.
 - (10) In this section—

“relevant enforcement authority” means—

 - (a) the Environment Agency, where the proceedings in respect of the offence have been brought by or on behalf of the Agency, or
 - (b) in any other case, the waste collection authority in whose area the offence was committed;

“vehicle” means any motor vehicle or trailer within the meaning of the Road Traffic Regulation Act 1984 or any mobile plant.”
- (2) This section does not have effect in relation to an offence under section 33 of that Act committed before the commencement of this section.

*Offences relating to documentation***45 Failure to furnish documentation: fixed penalty notices**

In the Environmental Protection Act 1990 (c. 43), after section 34 (duty of care etc as respects waste) insert—

“34A Fixed penalty notices for certain offences under section 34

- (1) This section applies where it appears to an enforcement authority that a person has failed to comply with a duty to furnish documents to that authority imposed under regulations made at any time under section 34(5) above.
- (2) The authority may serve on that person a notice offering him the opportunity of discharging any liability to conviction for an offence under section 34(6) above by payment of a fixed penalty.
- (3) Where a person is given a notice under this section in respect of an offence—
 - (a) no proceedings may be instituted for that offence before expiration of the period of fourteen 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 section 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 section must also state—
 - (a) the period during which, by virtue of subsection (3) above, 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 (in cash or otherwise) to the person mentioned in subsection (5) (c) above at the address so mentioned.
- (7) Where a letter is sent in accordance with subsection (6) above 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 section is to be such as the appropriate person may by order prescribe.
- (9) The fixed penalty payable to an enforcement authority under this section is, subject to subsection (10) below, £300.
- (10) The appropriate person may by order substitute a different amount for the amount for the time being specified in subsection (9) above.
- (11) The enforcement authority to which a fixed penalty is payable under this section may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority.

Status: This is the original version (as it was originally enacted).

- (12) The appropriate person may by regulations restrict the extent to which, and the circumstances in which, an enforcement authority may make provision under subsection (11) above.
- (13) In any proceedings a certificate which—
- (a) purports to be signed on behalf of the chief finance officer of the enforcement authority, 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.
- (14) In this section—
- “chief finance officer”, in relation to an enforcement authority, means the person having responsibility for the financial affairs of the authority;
- “enforcement authority” means the Environment Agency or a waste collection authority.”

Offences: powers of seizure

46 Power to search and seize vehicles

- (1) After section 34A of the Environmental Protection Act 1990 (c. 43) (as inserted by section 45 above), insert—

“Offences under sections 33 and 34: powers of seizure etc

34B Power to search and seize vehicles etc

- (1) This section applies where an authorised officer of an enforcement authority or a constable reasonably believes that the grounds in subsection (2) or (3) below exist.
- (2) The grounds in this subsection are that—
- (a) an offence under section 33 or 34 above 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 subsection are that—
- (a) an offence under section 33 or 34 above 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 subsection (4) above the authorised officer or constable may—

- (a) stop the vehicle (but only a constable in uniform may stop a vehicle on any road);
 - (b) enter any premises for the purpose of searching or seizing the vehicle.
- (6) A vehicle or its contents seized under subsection (4) above—
 - (a) by an authorised officer of an enforcement authority, are seized on behalf of that authority;
 - (b) by a constable in the presence of an authorised officer of an enforcement authority, are seized on behalf of that authority;
 - (c) by a constable without such an officer present, are seized on behalf of the waste collection authority in whose area the seizure takes place.
- (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 subsection (4) or (5) above;
 - (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 subsection (5)(a) above, 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 subsection (8) above;
 - (b) he gives information required under that subsection 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 section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (11) In this section and section 34C below—
 - “authorised officer” means an officer of an enforcement authority who is authorised in writing by the authority for the purposes of this section;
 - “enforcement authority” means—
 - (a) the Environment Agency, or
 - (b) a waste collection authority;
 - “road” has the same meaning as in the Road Traffic Regulation Act 1984;
 - “vehicle” means any motor vehicle or trailer within the meaning of that Act or any mobile plant.

34C Seizure of vehicles etc: supplementary

- (1) Where under section 34B above an authorised officer or constable seizes a vehicle or its contents (“seized property”) on behalf of an enforcement authority, the authority may remove the seized property to such a place as it considers appropriate.
 - (2) An enforcement authority must deal with any seized property in accordance with regulations made by the appropriate person.
 - (3) Regulations under subsection (2) above may in particular include provision as to—
 - (a) the duties of enforcement authorities in relation to the safe custody of seized property;
 - (b) the circumstances in which they 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 an enforcement authority 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 subsection (3)(d) above—
 - (a) must (subject to paragraph (c) below) require the enforcement authority 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 paragraph (c) below) prohibit the authority 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 authority to return the property to any person;
 - (c) may allow for the requirements in paragraphs (a) and (b) above to be dispensed with if the condition of the seized property requires its disposal without delay.
 - (5) The appropriate person may issue guidance to enforcement authorities in relation to the performance of their functions under regulations under subsection (2) above.”
- (2) In section 71 of that Act (obtaining information from persons and authorities)—
- (a) after subsection (2) insert—

“(2A) A waste collection authority has the power referred to in subsection (2) for the purpose of the discharge of its functions under sections 34B and 34C above.”;
 - (b) in subsection (3) after “subsection (2)” insert “or (2A)”.

*Local authority waste collection and disposal***47 Abolition of requirement to contract out waste disposal functions**

Section 32 of and Schedule 2 to the Environmental Protection Act 1990 (c. 43) (power to require local authorities to transfer waste disposal functions etc to specially formed companies) shall cease to have effect.

48 Offences relating to waste receptacles: fixed penalty notices

In the Environmental Protection Act 1990, after section 47 (receptacles for commercial or industrial waste) insert—

“47ZA Fixed penalty notices for offences under sections 46 and 47

- (1) This section applies where on any occasion an authorised officer of a waste collection authority has reason to believe that a person has committed an offence under section 46 or 47 above in the area of that authority.
- (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 waste collection authority.
- (3) Where a person is given a notice under this section in respect of an offence—
 - (a) no proceedings may be instituted for that offence before the expiration of the period of fourteen 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 section 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 section must also state—
 - (a) the period during which, by virtue of subsection (3) above, 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 (in cash or otherwise) to the person mentioned in subsection (5) (c) above at the address so mentioned.
- (7) Where a letter is sent in accordance with subsection (6) above 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 section is to be such as the appropriate person may by order prescribe.
- (9) In any proceedings a certificate which—

Status: This is the original version (as it was originally enacted).

- (a) purports to be signed on behalf of the chief finance officer of the waste collection authority, 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 section—

“authorised officer”, in relation to a waste collection authority, means—

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

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

47ZB Amount of fixed penalty under section 47ZA

- (1) This section applies in relation to a fixed penalty payable to a waste collection authority in pursuance of a notice under section 47ZA above.
- (2) The amount of the fixed penalty—
 - (a) is the amount specified by the waste collection authority in relation to the authority’s area, or
 - (b) if no amount is so specified, is £100.
- (3) The waste collection authority 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 authority.
- (4) The appropriate person may by regulations make provision in connection with the powers conferred on waste collection authorities under subsections (2)(a) and (3) above.
- (5) Regulations under subsection (4) may (in particular)—
 - (a) require an amount specified under subsection (2)(a) above to fall within a range prescribed in the regulations;
 - (b) restrict the extent to which, and the circumstances in which, a waste collection authority can make provision under subsection (3) above.
- (6) The appropriate person may by order substitute a different amount for the amount for the time being specified in subsection (2)(b) above.”

49 Payments for waste recycling and disposal

- (1) Section 52 of the Environmental Protection Act 1990 (c. 43) (payments for recycling and disposal etc of waste) is amended as follows.
- (2) In subsection (1) after “so retained” insert—

- “(a) in the case of a waste disposal authority in England, of such amounts as may be determined in accordance with regulations made by the Secretary of State; and
- (b) in the case of a waste disposal authority in Wales”.

(3) After subsection (1) insert—

“(1A) The Secretary of State may by order disapply subsection (1) above in relation to any waste disposal authority constituted under section 10 of the Local Government Act 1985 (joint arrangements for waste disposal in London and metropolitan counties).”

(4) After subsection (1A) (as inserted by subsection (3) above) insert—

“(1B) A waste disposal authority is not required to make payments to a waste collection authority under subsection (1) above where, on the basis of arrangements involving the two authorities, the waste collection authority has agreed that such payments need not be made.”

(5) In subsection (2) after “so collected” insert—

- “(a) in the case of a waste collection authority in England, of such amounts as may be determined in accordance with regulations made by the Secretary of State; and
- (b) in the case of a waste collection authority in Wales”.

(6) In subsection (3) after “so collected” insert—

- “(a) in the case of a waste disposal authority in England, of such amounts as may be determined in accordance with regulations made by the Secretary of State; and
- (b) in the case of a waste disposal authority in Wales”.

(7) In subsection (4) after “so collected” insert—

- “(a) in the case of a waste collection authority in England, of such amounts as may be determined in accordance with regulations made by the Secretary of State; and
- (b) in the case of a waste collection authority in Wales”.

(8) After subsection (8) insert—

“(8A) The Secretary of State may give guidance—

- (a) to a waste disposal authority in England, for the purposes of determining whether to exercise the power in subsection (3) above;
- (b) to a waste collection authority in England, for the purposes of determining whether to exercise the power in subsection (4) above.”

(9) At the end insert—

“(12) In this section, references to recycling waste include re-using it (whether or not the waste is subjected to any process).”

50 Power to require owner of land to remove waste

- (1) In section 59 of the Environmental Protection Act 1990 (c. 43) (power to require removal of waste unlawfully deposited), in subsection (7)(b) after “occupier of

the land” insert “or the occupier cannot be found without the authority incurring unreasonable expense”.

(2) After that section insert—

“59ZA Section 59: supplementary power in relation to owner of land

- (1) Where the grounds in subsection (2), (3) or (4) below are met, a waste regulation authority or waste collection authority may, by notice served on him, require the owner of any land in its area to comply with either or both of the requirements mentioned in subsection (1)(a) and (b) of section 59 above.
- (2) The grounds in this subsection are that it appears to the authority that waste has been deposited in or on the land in contravention of section 33(1) above and—
 - (a) there is no occupier of the land, or
 - (b) the occupier cannot be found without the authority incurring unreasonable expense.
- (3) The grounds in this subsection are that—
 - (a) the authority has served a notice under subsection (1) of section 59 above 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 paragraph (a) above within the period specified in the notice.
- (4) The grounds in this subsection are that—
 - (a) the authority has served a notice under subsection (1) of section 59 above 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 paragraph (a) above has been quashed on the ground specified in subsection (3)(a) of that section.
- (5) Subsections (2) to (4) of section 59 above apply in relation to requirements imposed under this section on the owner of the land as they apply in relation to requirements imposed under that section on the occupier of the land but as if in subsection (3) there were inserted after paragraph (a)—
 - “(aa) in order to comply with the requirement the appellant would be required to enter the land unlawfully; or”.
- (6) In this section “owner” has the meaning given to it in section 78A(9) below.”

Supplementary

51 “Appropriate person”

In section 29 of the Environmental Protection Act 1990 (c. 43), after subsection (1) insert—

“(1A) “Appropriate person” means—

- (a) in relation to England, the Secretary of State;

(b) in relation to Wales, the National Assembly for Wales.”

52 Use of fixed penalty receipts

In the Environmental Protection Act 1990 (c. 43), after section 73 insert—

“73A Use of fixed penalty receipts

- (1) The Environment Agency must pay amounts received by it under section 34A above to the Secretary of State.
- (2) A waste collection authority may use amounts received by it under section 34A or 47ZA above (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 appropriate person.
- (3) Regulations under subsection (2)(b) above may (in particular) have the effect that a waste collection authority may use its fixed penalty receipts for the purposes of any of its functions.
- (4) A waste collection authority must supply the appropriate person with such information relating to its use of its fixed penalty receipts as the appropriate person may require.
- (5) The appropriate person may by regulations—
 - (a) make provision for what a waste collection authority is to do with its fixed penalty receipts—
 - (i) pending their being used for the purposes of functions of the authority referred to in subsection (2) above;
 - (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 waste collection authority’s fixed penalty receipts.
- (6) The provision that may be made under subsection (5)(a)(ii) above includes (in particular) provision for the payment of sums to a person (including the appropriate person) other than the waste collection authority.
- (7) Before making regulations under this section, the appropriate person must consult—
 - (a) the waste collection authorities to which the regulations are to apply;
 - (b) such other persons as the appropriate person thinks fit.
- (8) Regulations under this section may make different provision for different purposes (including different provision in relation to different authorities or different descriptions of authority).
- (9) The powers to make regulations conferred by this section are, for the purposes of subsection (1) of section 100 of the Local Government Act 2003, to be regarded as included among the powers mentioned in subsection (2) of that section.”

53 Supplementary enforcement powers

In section 108 of the Environment Act 1995 (c. 25) (powers of enforcing authorities etc), in subsection (15), in the definition of “pollution control functions” in relation to a waste collection authority, for “conferred on it by section 59” substitute “conferred or imposed on it by or under Part 2”.