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## STATUTORY INSTRUMENTS

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# 1997 No. 2778 (N.I. 19)

## The Waste and Contaminated Land (Northern Ireland) Order 1997

- - - - - 26th November 1997

### PART I INTRODUCTORY

#### **Title and commencement**

1.—(1) This Order may be cited as the Waste and Contaminated Land (Northern Ireland) Order 1997.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint.

#### **Subordinate Legislation Made**

- P1** Art. 1(2) power partly exercised: 17.9.1998 appointed for specified provisions by S.R. 1998/288, **art. 2**  
Art. 1(2) power partly exercised: 1.12.1998 appointed for specified provisions by S.R. 1998/390, **art. 2**  
Art. 1(2) power partly exercised: different dates appointed for specified provisions by S.R. 1999/325, **art. 2, Schs. 1, 2**  
Art. 1(2) power partly exercised: 6.10.1999 appointed for specified provisions by S.R. 1999/373, **art. 2, Sch.**  
Art. 1(2) power partly exercised: 1.3.2001 appointed for specified provisions by S.R. 2001/40, **art. 2**  
Art. 1(2) power partly exercised: 3.6.2002 appointed for specified provision by S.R. 2002/185, **art. 2**  
Art. 1(2) power partly exercised: 27.11.2003 (and other ascertainable dates for limited purposes) appointed for specified provisions by S.R. 2003/489, **arts. 2, 3, Sch.**  
Art. 1(2) power partly exercised: 3.4.2008 appointed for specified provisions by S.R. 2008/138, **art. 2**

#### **General interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“associated works”, in relation to pipes, means any of the following connected with the pipes, namely, any valve, filter, stopcock, pump, inspection chamber and manhole and such other works as are prescribed;

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“commercial waste” means, subject to paragraph (3), waste from premises used wholly or mainly for the purposes of a trade or business or the purposes of sport, recreation or entertainment excluding—

- (a) household waste;
- (b) industrial waste; <sup>F1</sup>and]
- (c) <sup>F2</sup> .....
- (d) waste of any other description prescribed for the purposes of this sub-paragraph;

“controlled waste”<sup>F3</sup> . . . means household, industrial and commercial waste or any such waste;

“the Department” means the Department of the Environment;

“disposal”, in relation to waste, includes its disposal by way of deposit in or on land;

“the environment” consists of all, or any, of the following media, namely, land, water and the air;

“harm” means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes offence to any of his senses or harm to his property; and “harmless” has a corresponding meaning;

“household waste” means, subject to paragraph (3), waste from—

- (a) domestic property, that is to say, a building or self-contained part of a building which is used wholly for the purposes of living accommodation;
- (b) a caravan (as defined in section 25(1) of the Caravans Act (Northern Ireland) 1963) which usually and for the time being is situated on a caravan site (within the meaning of that Act);
- (c) a residential home;
- (d) premises forming part of a university or school or other educational establishment;
- (e) premises forming part of a hospital or nursing home;

“industrial waste” means, subject to paragraph (3), waste from any of the following premises—

- (a) any factory (within the meaning of the Factories Act (Northern Ireland) 1965);
- (b) any premises used for the purposes of, or in connection with, the provision to the public of transport services by land, water or air;
- (c) any premises used for the purposes of, or in connection with, the supply to the public of gas, water or electricity or the provision of sewerage services; <sup>F4</sup> . . .
- (d) any premises used for the purposes of, or in connection with, the provision to the public of postal or<sup>F5</sup> communications services];<sup>F6</sup> or
- (e) any mine or quarry or any premises used for agriculture within the meaning of the Agriculture Act (Northern Ireland) 1949;]

“licence” means a waste management licence;

“mobile plant” means, subject to paragraph (4), plant which is designed to move or be moved on roads or otherwise;

“mobile plant licence” means a licence authorising the treatment or disposal of waste by means of mobile plant;

“modifications” includes additions, omissions, amendments and substitutions;

“notice” means notice in writing;

“owner” means the person (other than a mortgagee not in possession) for the time being receiving the rackrent of the land in connection with which the word is used, whether on his

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own account or as agent or trustee for another person, or who would so receive the rackrent if the land were let at a rackrent; and for the purposes of this definition—

“mortgage” includes any charge on property for securing money or money's worth; and

“mortgagee” includes any person from time to time deriving title under the original mortgage;

[<sup>F7</sup>“the Packaging Waste Directive” means the European Parliament and Council Directive of 94/62/EC on packaging and packaging waste;]

“pollution of the environment” means pollution of the environment due to the release or escape (into any environmental medium) from—

- (a) the land on which controlled waste is treated;
- (b) the land on which controlled waste is kept;
- (c) the land in or on which controlled waste is deposited;
- (d) fixed plant by means of which controlled waste is treated, kept or disposed of,

of substances or articles constituting or resulting from the waste and capable (by reason of the quantity or concentrations involved) of causing harm to man or any other living organisms supported by the environment; and this definition applies in relation to mobile plant by means of which controlled waste is treated or disposed of as it applies to plant on land by means of which controlled waste is treated or disposed of;

“prescribed” means prescribed by regulations;

[<sup>F8</sup>“public consultees” means the persons to whose attention proposals for the waste management strategy are brought by the Department pursuant to Article 19B(1)(b);]

“recover”, in relation to waste, means reduction, reuse and recycling;

“regulations”, except in Article 77, means regulations made by the Department;

“road” has the same meaning as in the Roads (Northern Ireland) Order 1993;

“site licence” means a licence authorising the treatment, keeping or disposal of waste in or on land;

“special waste” means controlled waste as respects which regulations are in operation under Article 30;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

“transport”, in relation to any controlled waste, includes the transfer of that waste by road or rail or by air, sea or inland waterway but does not include moving that waste from one place to another by means of any pipe or other apparatus that joins those 2 places;

“vehicle” means any motor vehicle or trailer within the meaning of the Road Traffic (Northern Ireland) Order 1981;

“vessel” includes a hovercraft within the meaning of the Hovercraft Act 1968;

“waste” means any substance or object in the categories set out in Schedule 1 which the holder discards or intends or is required to discard; and for the purposes of this definition—

“holder” means the producer of the waste or the person who is in possession of it; and

“producer” means any person whose activities produce waste or any person who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;

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[<sup>F9</sup>“the Waste Directive” means Directive [2006/12/EC](#) of the European Parliament and of the Council, dated 5 April 2006, on waste;]

“waste disposal contractor” means a person who in the course of a business collects, keeps, treats or disposes of waste <sup>F10</sup> . . . .

[<sup>F11</sup>“waste management strategy” means the strategy prepared or modified pursuant to Article 19.]

(3) Regulations may provide that waste of a prescribed description shall be treated for the purposes of prescribed provisions of this Order as being or not being household waste or industrial waste or commercial waste; <sup>F12</sup> . . . and references in [<sup>F13</sup>the definition of commercial waste] and this paragraph to waste do not include sewage except so far as the regulations provide otherwise.

(4) Regulations may prescribe descriptions of plant which are to be treated as being, or as not being, mobile plant for the purposes of this Order.

(5) For the purposes of this Order references to land on which controlled waste is treated, kept or deposited are references to the surface of the land.

(6) Schedule 1 (which reproduces Annex I to the Waste Directive) shall have effect for the purpose of assigning to “waste” in this Order the meaning which it has in the Waste Directive by virtue of paragraphs (a) to (c) of Article 1 of, and Annex I to, that Directive.

(7) For the purposes of this Order, subject to paragraph (8), waste is “treated” when it is subjected to any process, including making it reusable or reclaiming substances from it and “recycle” shall be construed accordingly.

(8) Regulations may prescribe activities as activities which constitute the treatment of waste for the purposes of this Order or any provision of this Order prescribed in the regulations.

(9) The district of a district council which is bounded by or to seaward of the high-water mark of mean tides shall also include for the purposes of this Order, the land between that high-water mark and the low-water mark of ordinary spring tides which is outside that district to seaward of any place where that high-water mark is within or on the boundary of that district.

- F1** Word in the definition of "commercial waste" in art. 2(2) inserted (31.7.2006) by [S.R. 2006/280](#), **reg. 2(2)(a)(i)(aa)**
- F2** Sub-para. (c) in the definition of "commercial waste" in art. 2(2) repealed (31.7.2006) by [S.R. 2006/280](#), **reg. 2(2)(a)(i)(bb)**
- F3** [Art. 2\(2\)](#): words in the definition of "controlled waste" repealed (25.6.2007) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), 20, **Sch.**; [S.R. 2007/294](#), **art. 2**, **Sch.**
- F4** Word in the definition of "industrial waste" in art. 2(2) deleted (31.7.2006) by virtue of [S.R. 2006/280](#), **reg. 2(2)(a)(ii)(aa)**
- F5** 2003 c. 21
- F6** [Art. 2\(2\)](#): para. (e) and preceding word in definition of "industrial waste" inserted (31.7.2006) by [S.R. 2006/280](#), **reg. 2(2)(a)(ii)(bb)**
- F7** [Art. 2\(2\)](#): definition of "the Packaging Waste Directive" inserted (1.7.2009) by [Waste Management Strategy Regulations \(Northern Ireland\) 2009 \(S.R. 2009/178\)](#), **reg. 2(2)**
- F8** [Art. 2\(2\)](#): definition of "public consultees" inserted (1.7.2009) by [Waste Management Strategy Regulations \(Northern Ireland\) 2009 \(S.R. 2009/178\)](#), **reg. 2(2)**
- F9** [Art. 2\(2\)](#): definition of "the Waste Directive" substituted (1.7.2009) by [Waste Management Strategy Regulations \(Northern Ireland\) 2009 \(S.R. 2009/178\)](#), **reg. 2(3)**
- F10** [Art. 2\(2\)](#): words in the definition of "waste disposal contractor" omitted (1.10.2009) by virtue of [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 171** (with art. 10)
- F11** [Art. 2\(2\)](#): definition of "waste management strategy" inserted (1.7.2009) by [Waste Management Strategy Regulations \(Northern Ireland\) 2009 \(S.R. 2009/178\)](#), **reg. 2(2)**

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- F12** Words in art. 2(3) repealed (31.7.2006) by S.R. 2006/280, reg. 2(2)(b)(i)  
**F13** Words in art. 2(3) substituted (31.7.2006) by S.R. 2006/280, reg. 2(2)(b)(ii)

## PART II

### WASTE ON LAND

#### Modifications etc. (not altering text)

- C1** Pt. 2 (arts. 3-48) modified by S.R. 2003/493, Sch. 3 Pt. 1 para. 9 (as substituted (8.4.2011) by Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127), regs. 1(1), 40 (with reg. 9(2)))

#### Meaning of “fit and proper person”

3.—(1) The following provisions apply for the purposes of the discharge by the Department of any function under this Part which requires the Department to determine whether a person is or is not a fit and proper person to hold a waste management licence.

(2) Whether a person is or is not a fit and proper person to hold a licence is to be determined by reference to the carrying on by him of the activities which are or are to be authorised by the licence and the fulfilment of the requirements of the licence.

(3) Subject to paragraph (4), a person shall be treated as not being a fit and proper person if it appears to the Department—

- (a) that he or another relevant person has been convicted of a prescribed offence;
- (b) that the management of the activities which are or are to be authorised by the licence are not or will not be in the hands of a technically competent person; or
- (c) that the person who holds or is to hold the licence has not made and either has no intention of making or is in no position to make financial provision adequate to discharge the obligations arising from the licence.

(4) The Department may, if it considers it proper to do so in any particular case, treat a person as a fit and proper person notwithstanding that paragraph (3)(a) applies in his case.

(5) Regulations may prescribe the qualifications and experience required of a person for the purposes of paragraph (3)(b).

(6) For the purposes of paragraph (3)(a), another relevant person shall be treated, in relation to the licence holder or proposed licence holder, as the case may be, as having been convicted of a prescribed offence if—

- (a) any person has been convicted of a prescribed offence committed by him in the course of his employment by the holder or, as the case may be, the proposed holder of the licence or in the course of the carrying on of any business by 2 or more persons in partnership one of such persons was the holder or, as the case may be, the proposed holder of the licence;
- (b) a body corporate has been convicted of a prescribed offence committed when the holder or, as the case may be, the proposed holder of the licence was a director, manager, secretary or other similar officer of that body corporate; or
- (c) where the holder or, as the case may be, the proposed holder of the licence is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate—
  - (i) has been convicted of a prescribed offence; or

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- (ii) was a director, manager, secretary or other similar officer of another body corporate at a time when a prescribed offence for which that other body corporate has been convicted was committed.

*Prohibition on unauthorised or harmful depositing, treatment or disposal of waste*

**Prohibition on unauthorised or harmful deposit, treatment or disposal, etc., of waste**

- 4.—(1) Subject to paragraphs (2) and (3) a person shall not—
- (a) deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence;
  - (b) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of—
    - (i) in or on any land, or
    - (ii) by means of any mobile plant,
 except under and in accordance with a waste management licence;
  - (c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

[<sup>F14</sup>(2) Subject to paragraph (2A), sub-paragraphs (a) and (b) of paragraph (1) do not apply in relation to household waste from a domestic property which is treated, kept or disposed of within the curtilage of the property.

(2A) Paragraph (2) does not apply to the treatment, keeping or disposal of household waste by an establishment or undertaking.]

- (3) Paragraph (1)(a), (b) or (c) do not apply in prescribed cases.
- (4) When making regulations under paragraph (3) the Department shall have regard in particular to the expediency of excluding from the controls imposed by waste management licences—
  - (a) any deposits which are small enough or of such a temporary nature that they may be so excluded;
  - (b) any means of treatment or disposal which are innocuous enough to be so excluded;
  - (c) cases for which adequate controls are provided by another statutory provision.

(5) Where controlled waste is carried in and deposited from a vehicle, the person who controls or is in a position to control the use of the vehicle shall, for the purposes of paragraph (1)(a), be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done.

(6) A person who contravenes paragraph (1) or any condition of a waste management licence shall be guilty of an offence.

- (7) It shall be a defence for a person charged with an offence under this Article to prove—
  - (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or
  - (b) <sup>F15</sup>.....
  - (c) that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—
    - (i) he took all such steps as were reasonably practicable in the circumstances for minimising pollution of the environment and harm to human health; and

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(ii) particulars of the acts were furnished to the Department as soon as reasonably practicable after they were done.

[<sup>F16</sup>(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.]

- F14** Art. 4(2)(2A) substituted (31.7.2006) for art. 4(2) by S.R. 2006/280, **reg. 2(3)(a)**
- F15** Art. 4(7)(b) repealed (25.6.2007) by Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611 (N.I. 3)), arts. 1(3), 3(1), 20, **Sch.** (with art. 3(2)); S.R. 2007/294, **art. 2**, **Sch.**
- F16** Art. 4(8)-(11) substituted (25.6.2007) for art. 4(8)-(10) by Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611 (N.I. 3)), arts. 1(3), 4(2) (with art. 4(3)); S.R. 2007/294, **art. 2**, **Sch.**

**Modifications etc. (not altering text)**

- C2** Art. 4(1)(a) excluded (temp. from 31.7.2006) by S.R. 2006/280, **reg. 29(1)**
- C3** Art. 4(1)(b) excluded (temp. from 31.7.2006) by S.R. 2006/280, **reg. 29(1)**

*Duty of care, etc., as respects waste*

**Duty of care, etc., as respects waste**

**5.—(1)** Subject to paragraph (2), any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, shall take all such measures applicable to him in that capacity as are reasonable in the circumstances—

(a) to prevent any contravention by any other person of Article 4;

[<sup>F17</sup>(aa) to prevent any contravention by any other person of regulation 9 of the Pollution Prevention and Control Regulations (Northern Ireland) 2003 or of a condition of a permit granted under regulation 10 of those Regulations;]

(b) to prevent the escape of the waste from his control or that of any other person; and

(c) on the transfer of the waste, to secure—

- (i) that the transfer is only to an authorised person or to a person for authorised transport purposes; and
- (ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that Article<sup>F17</sup> or any condition of a permit

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granted under regulation 10 of those Regulations] and to comply with this paragraph as respects the escape of waste.

(2) Paragraph (1) does not apply to an occupier of domestic property as respects the household waste produced on the property.

[<sup>F18</sup>(2A) It shall be the duty of the occupier of any domestic property to take all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.]

(3) The following are authorised persons for the purpose of paragraph (1)(c) [<sup>F19</sup>or paragraph (2A)]—

- (a) any district council;
- (b) any person who is the holder of a waste management licence under Article 6<sup>F20</sup> or of a disposal licence under Article 7 of the Pollution Control and Local Government (Northern Ireland) Order 1978;
- (c) any person to whom Article 4(1) does not apply by virtue of regulations under paragraph (3) of that Article;
- (d) any person registered as a carrier of controlled waste under Article 39;<sup>F21</sup> . . .
- (e) any person who is not required to be so registered by virtue of regulations under Article 38(3).

[<sup>F21</sup>(f) any person who is the holder of an authorisation under Article 6 of the Industrial Pollution Control (Northern Ireland) Order 1997 in so far as such authorisation concerns controlled waste for the purposes of this Article; and

- (g) any person who is the holder of a permit under regulation 10 of the Pollution Prevention and Control Regulations (Northern Ireland) 2003 which authorises the carrying out of a specified waste management activity within the meaning of those Regulations.]

(4) Regulations may amend paragraph (3) so as to add, whether generally or in such circumstances as may be prescribed, any person specified in the regulations, or any description of person so specified, to the persons who are authorised persons for the purposes of paragraph (1)(c) [<sup>F22</sup>or paragraph (2A)] .

(5) The following are authorised transport purposes for the purposes of paragraph (1)(c) [<sup>F22</sup>or paragraph (2A)]—

- (a) the transport of controlled waste within the same premises between different places in those premises;
- (b) the transport to a place in Northern Ireland of controlled waste which has been brought from a country or territory outside Northern Ireland not having been landed in Northern Ireland until it arrives at that place; and
- (c) the transport by air or sea of controlled waste from a place in Northern Ireland to a place outside Northern Ireland.

(6) For the purposes of paragraph (1)(c)(ii)—

- (a) a transfer of waste in stages shall be treated as taking place when the first stage of the transfer takes place, and
- (b) a series of transfers between the same parties of waste of the same description shall be treated as a single transfer taking place when the first of the transfers in the series takes place.



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(7) Regulations may make provision imposing requirements on any person who is subject to the duty imposed by paragraph (1) as respects the making and retention of documents and the furnishing of documents or copies of documents.

(8) Any person who fails to comply with paragraph (1) [<sup>F23</sup>or paragraph (2A)] or with any requirement imposed under paragraph (7) shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to a fine.

(9) The Department shall, after consultation with such persons or bodies as appear to the Department representative of the interests concerned, prepare and issue a code of practice for the purpose of providing to persons practical guidance on how to discharge the duty imposed on them by paragraph (1).

(10) The Department may issue modifications of, or withdraw, a code of practice issued under paragraph (9); but where a code is withdrawn, the Department shall prepare and issue a new code under that paragraph in substitution for it.

(11) The draft of the code prepared under paragraph (9) shall be laid before the Assembly.

(12) If within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon but without prejudice to the laying before the Assembly of a new draft.

(13) A code of practice issued under paragraph (9) shall be admissible in evidence and if any provision of such a code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(14) In this Article “broker” means a person who has control of controlled waste for the purposes of having carried out on behalf of another person any of the activities mentioned in paragraph (1).

**F17** SR 2003/46

**F18** Art. 5(2A) inserted (31.7.2006) by S.R. 2006/280, reg. 2(4)

**F19** Words in art. 5(3) inserted (31.7.2006) by S.R. 2006/280, reg. 2(5)

**F20** prosp. rep. by 1997 NI 19

**F21** SR 2004/277

**F22** Words in art. 5(4)(5) inserted (31.7.2006) by S.R. 2006/280, reg. 2(6)

**F23** Words in art. 5(8) inserted (31.7.2006) by S.R. 2006/280, reg. 2(7)

VALID FROM 11/03/2013

#### [<sup>F24</sup>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

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- (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.]

**F24** Art. 5A inserted (11.3.2013) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), 5; S.R. 2013/33, art. 2(a)

*[<sup>F25</sup>Provisions relating to offences under Articles 4 and 5*

**F25** Art. 5B and preceding cross-heading inserted (25.6.2007) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), 6(1) (with art. 6(2)); S.R. 2007/294, art. 2, Sch.

**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.

*Status: Point in time view as at 01/10/2009. This version of this Order contains provisions that are not valid for this point in time.*

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(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).

#### [<sup>F26</sup> 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.]

**F26** Art. 5C inserted (25.6.2007) by Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611 (N.I. 3)), arts. 1(3), 7(1) (with art. 7(2)); S.R. 2007/294, art. 2, Sch.

#### [<sup>F27</sup> 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.

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(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.]]

**F27** Art. 5D inserted (25.6.2007) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), **8(1)** (with art. 8(2)); S.R. 2007/294, **art. 2**, Sch.

VALID FROM 11/03/2013

**[<sup>F28</sup>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.

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- (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);
  - (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.

**F28** Arts. 5E, 5F inserted (prosp.) by Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611 (N.I. 3)), arts. 1(3), 9

VALID FROM 11/03/2013

### **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;

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- (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.]

**F28** Arts. 5E, 5F inserted (prosp.) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), 9

### *Waste Management Licences*

#### **Waste management licences: general**

**6.—(1)** A waste management licence is a licence granted by the Department authorising the treatment, keeping or disposal of any specified description of controlled waste in or on specified land or the treatment or disposal of any specified description of controlled waste by means of specified mobile plant.

(2) A licence shall be granted to the following person, that is to say—

- (a) in the case of a licence relating to the treatment, keeping or disposal of waste in or on land, to the person who is in occupation of the land; and
- (b) in the case of a licence relating to the treatment or disposal of waste by means of mobile plant, to the person who operates the plant.

(3) A licence shall be granted on such terms and subject to such conditions as appear to the Department to be appropriate and the conditions may relate—

- (a) to the activities which the licence authorises, and
- (b) to the precautions to be taken and works to be carried out in connection with or in consequence of those activities;

and accordingly requirements may be imposed in the licence which are to be complied with before the activities which the licence authorises have begun or after the activities which the licence authorises have ceased.

(4) Conditions may require the holder of a licence to carry out works or do other things notwithstanding that he is not entitled to carry out the works or do the thing and any person whose consent would be required shall grant, or join in granting, the holder of the licence such rights in relation to the land as will enable the holder of the licence to comply with any requirements imposed on him by the licence.

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(5) Conditions may relate, where waste other than controlled waste is to be treated, kept or disposed of, to the treatment, keeping or disposal of that other waste.

(6) Regulations may make provision as to the conditions which are, or are not, to be included in a licence.

(7) Any person who—

(a) intentionally makes a false entry in any record required to be kept under any condition of a licence, or

(b) with intent to deceive, forges or uses a licence or makes or has in his possession a document so closely resembling a licence as to be likely to deceive,

shall be guilty of an offence and shall be liable—

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

(ii) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine or to both.

(8) A licence may not be surrendered by the holder except in accordance with Article 13.

(9) A licence is not transferable by the holder but the Department may transfer it to another person under Article 14.

(10) A licence shall continue in force until it is revoked entirely by the Department under Article 12 or it is surrendered or its surrender is accepted under Article 13.

#### **Commencement Information**

**II** [Art. 6](#) partly in operation; [art. 6](#) not in operation at date of making see [art. 1\(2\)](#); [art. 6\(1\)-\(3\)\(5\)-\(10\)](#) in operation at 27.11.2003 save for purposes of application to specified activities and otherwise in operation in relation to those activities in accordance with art. 3 of the commencing S.R. by [S.R. 2003/489](#), [arts. 2, 3, Sch.](#); [art. 6\(4\)](#) in operation at 3.4.2008 by [S.R. 2008/138](#), [art. 2](#)

#### **Compensation where rights granted pursuant to Article 6(4) or 12(9)**

7.—(1) This Article applies in any case where—

(a) the holder of a licence is required—

(i) by the conditions of the licence; or

(ii) by a requirement imposed under Article 12(8),

to carry out any works or do any other thing which he is not entitled to carry out or do;

(b) a person whose consent would be required has, pursuant to the requirements of Article 6(4) or 12(9), granted, or joined in granting, to the holder of the licence any rights in relation to any land; and

(c) those rights, or those rights together with other rights, are such as will enable the holder of the licence to comply with any requirements imposed on him by the licence or, as the case may be, under Article 12(8).

(2) In a case where this Article applies, any person who has granted, or joined in granting, the rights in question shall be entitled to be paid compensation under this Article by the holder of the licence.

(3) Regulations shall provide for the descriptions of loss and damage for which compensation is payable under this Article.

(4) Regulations may—

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- (a) provide for the basis on which any amount to be paid by way of compensation under this Article is to be assessed;
- (b) without prejudice to the generality of paragraph (3) and sub-paragraph (a), provide for compensation under this Article to be payable in respect of—
  - (i) any effect of any rights being granted, or
  - (ii) any consequence of the exercise of any rights which have been granted;
- (c) provide for the times at which any entitlement to compensation under this Article is to arise or at which any such compensation is to become payable;
- (d) provide for the persons or bodies by whom, and the manner in which, any dispute—
  - (i) as to whether any, and (if so) how much and when, compensation under this Article is payable; or
  - (ii) as to the person to or by whom it shall be paid, is to be determined;
- (e) provide for when or how applications may be made for compensation under this Article;
- (f) without prejudice to the generality of sub-paragraph (d), provide for when or how applications may be made for the determination of any such disputes as are mentioned in that sub-paragraph;
- (g) without prejudice to the generality of sub-paragraphs (e) and (f), prescribe the form in which any such applications as are mentioned in those sub-paragraphs are to be made;
- (h) make provision similar to any provision made by Article 18 of the Land Compensation (Northern Ireland) Order 1982;
- (i) include such incidental, supplemental, consequential or transitional provision as the Department considers appropriate.

### **Grant of licences**

**8.—**(1) An application for a licence shall be made to the Department and shall be made on a form provided for the purpose by the Department and accompanied by such information as the Department reasonably requires and the fee payable under Article 15.

(2) Where an applicant for a licence fails to provide the Department with any information required under paragraph (1), the Department may refuse to proceed with the application, or refuse to proceed with it until the information is provided.

(3) A licence shall not be granted for a use of land, plant or equipment for which planning permission is required under the Planning (Northern Ireland) Order 1991 or consent under the<sup>F29</sup> Water (Northern Ireland) Order 1999] is required unless such planning permission is in force or such consent has been granted in relation to that use of the land.

(4) Subject to paragraphs (3) and (5), the Department shall not refuse an application for a licence which has been duly made if it is satisfied that the applicant is a fit and proper person unless it is satisfied that such refusal is necessary for the purpose of preventing—

- (a) pollution of the environment;
- (b) harm to human health; or
- (c) serious detriment to the amenities of the locality;

but sub-paragraph (c) is inapplicable where planning permission is in force in relation to the use to which the land will be put under the licence.

(5) Where the Department proposes to grant a licence, the Department shall, before it does so,—



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- (a) refer the proposal to<sup>F30</sup> the Health and Safety Executive for Northern Ireland and to such other] body or person as the Department considers appropriate; and
  - (b) consider any representations about the proposal which<sup>F30</sup> the Executive or] any such body or person makes to it during the allowed period.
- (6) If within the period of 4 months from the date on which the Department received an application for the grant of a licence, or within such longer period as the Department and the applicant may at any time agree in writing, the Department has neither granted the licence in consequence of the application nor given notice to the applicant that the Department has refused the application, the Department shall be deemed to have refused the application.
- (7) Paragraph (6)—
- (a) shall not have effect in any case where, under paragraph (2), the Department refuses to proceed with the application in question, and
  - (b) shall have effect in any case where, under paragraph (2), the Department refuses to proceed with it until the required information is provided, with the substitution for the period of 4 months there mentioned of the period of 4 months from the date on which the Department received the information.
- (8) The period allowed to<sup>F30</sup> the Executive or] any body or person for the making of representations under paragraph (5) about a proposal is the period of 28 days from the date on which the proposal is received by<sup>F30</sup> Executive, the body] or, as the case may be, the person, or such longer period as the Department and the<sup>F30</sup> Executive, the body] or, as the case may be, the person, agree in writing.
- (9) This Article shall have effect subject to Article 9.

**F29** 1999 NI 6  
**F30** 1998 NI 18

### Consultation before the grant of certain licences

9.—(1) This Article applies where an application for a licence has been duly made to the Department, and the Department proposes to issue a licence subject (by virtue of Article 6(4)) to any condition which might require the holder of the licence to—

- (a) carry out any works, or
- (b) do any other thing,

which he might not be entitled to carry out or do.

(2) Before issuing the licence, the Department shall serve on every person appearing to the Department to be a person falling within paragraph (3) a notice which complies with the requirements set out in paragraph (4).

- (3) A person falls within this paragraph if—
  - (a) he is the owner, lessee or occupier of any land; and
  - (b) that land is land in relation to which it is likely that, as a consequence of the licence being issued subject to the condition in question, rights will have to be granted by virtue of Article 6(4) to the holder of the licence.
- (4) A notice served under paragraph (2) shall—
  - (a) set out the condition in question;
  - (b) indicate the nature of the works or other things which that condition might require the holder of the licence to carry out or do; and

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- (c) specify the date by which, and the manner in which, any representation relating to the condition or its possible effects are to be made to the Department by the person on whom the notice is served.
- (5) The date which, pursuant to paragraph (4)(c), is specified in a notice shall be a date not earlier than the date on which expires the period—
  - (a) beginning with the date on which the notice is served, and
  - (b) of such length as may be prescribed.
- (6) Before the Department issues the licence it shall, subject to paragraph (7), consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under paragraph (2).
- (7) Paragraph (6) does not require the Department to consider any representations made by a person after the date specified in the notice served on him under paragraph (2) as the date by which his representations in relation to the condition or its possible effects are to be made.

### Variation of licences

- 10.**—(1) While a licence is in force, the Department may, subject to regulations under Article 6(6),—
- (a) on its own initiative, modify the conditions of the licence to any extent which, in the opinion of the Department, is desirable and is unlikely to require unreasonable expense on the part of the holder; and
  - (b) on the application of the licence holder accompanied by the fee payable under Article 15, modify the conditions of his licence to the extent requested in the application.
- (2) While a licence is in force, the Department shall, except where it revokes the licence entirely under Article 12, modify the conditions of the licence—
- (a) to the extent which in the opinion of the Department is required for the purpose of ensuring that the activities authorised by the licence do not cause pollution of the environment or harm to human health or become seriously detrimental to the amenities of the locality affected by the activities; and
  - (b) to the extent required by any regulations in force under Article 6(6).
- (3) Any modification of a licence under this Article shall be effected by notice served on the holder of the licence and the notice shall state the time at which the modification is to take effect.
- (4) Article 8(5) and (8) shall with the necessary modifications apply to a proposal by the Department to modify a licence under paragraph (1) or (2)(a) as they apply to a proposal to grant a licence, except that—
- (a) the Department may postpone the reference so far as the Department considers that by reason of an emergency it is appropriate to do so; and
  - (b) the Department need not consider any representations as respects a modification which, in the opinion of the Department, will not affect<sup>F31</sup> the Health and Safety Executive for Northern Ireland or] any body or person mentioned in the paragraphs so applied.
- (5) If within the period of 2 months from the date on which the Department received an application by the holder of a licence for a modification of it, or within such longer period as the Department and the applicant may at any time agree in writing, the Department has neither granted a modification of the licence in consequence of the application nor given notice to the applicant that the Department has refused the application, the Department shall be deemed to have refused the application.
- (6) This Article shall have effect subject to Article 11.

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**F31** 1998 NI 18

**Modifications etc. (not altering text)**

**C4** Art. 10 power to apply conferred (10.8.2009) by [Groundwater Regulations \(Northern Ireland\) 2009](#) (S.R. 2009/254), **reg. 13** (with **reg. 5**)

**Commencement Information**

**I2** Art. 10 partly in operation; art. 10 not in operation at date of making see [art. 1\(2\)](#); [art. 10\(1\)-\(5\)](#) in operation at 27.11.2003 save for purposes of application to specified activities and otherwise in operation in relation to those activities in accordance with art. 3 of the commencing S.R. by S.R. 2003/489, [arts. 2, 3, Sch.](#); [art. 10\(6\)](#) in operation at 3.4.2008 by S.R. 2008/138, **art. 2**

**Consultation before certain variations**

**11.—(1)** This Article applies where—

- (a) the Department proposes to modify a licence under Article 10(1) or (2)(a); and
- (b) the licence, if modified as proposed, would be subject to a relevant new condition.

(2) For the purposes of this Article, a “relevant new condition” is any condition by virtue of which the holder of the licence might be required to carry out any works or do any other thing—

- (a) which he might not be entitled to carry out or do, and
- (b) which he could not be required to carry out or do by virtue of the conditions to which, prior to the modification, the licence is subject.

(3) Before modifying the licence, the Department shall serve on every person appearing to the Department to be a person falling within paragraph (4) a notice which complies with the requirements set out in paragraph (5).

(4) A person falls within this paragraph if—

- (a) he is the owner, lessee or occupier of any land; and
- (b) that land is land in relation to which it is likely that, as a consequence of the licence being modified so as to be subject to the relevant new condition in question, rights will have to be granted by virtue of Article 6(4) to the holder of the licence.

(5) A notice served under paragraph (3) shall—

- (a) set out the relevant new condition in question;
- (b) indicate the nature of the works or other things which that condition might require the holder of the licence to carry out or do but which he could not be required to carry out or do by virtue of the conditions (if any) to which, prior to the modification, the licence is subject; and
- (c) specify the date by which, and the manner in which, any representations relating to the condition or its possible effects are to be made to the Department by the person on whom the notice is served.

(6) The date which, pursuant to paragraph (5)(c), is specified in a notice shall be a date not earlier than the date on which expires the period—

- (a) beginning with the date on which the notice is served, and
- (b) of such length as may be prescribed.

(7) Before the Department issues the licence it shall, subject to paragraph (8), consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under paragraph (3).

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(8) Paragraph (7) does not require the Department to consider any representations made by a person after the date specified in the notice served on him under paragraph (3) as the date by which his representations in relation to the condition or its possible effects are to be made.

(9) The Department may postpone the service of any notice or the consideration of any representations required under this Article so far as the Department considers that by reason of an emergency it is appropriate to do so.

### **Revocation and suspension of licences**

**12.**—(1) Where a licence is in force and it appears to the Department—

(a) that the holder of the licence has ceased to be a fit and proper person by reason of his having been convicted of a prescribed offence; or

(b) that—

(i) the continuation of the activities authorised by the licence would cause pollution of the environment or harm to human health or would be seriously detrimental to the amenities of the locality affected; and

(ii) the pollution, harm or detriment cannot be avoided by modifying the conditions of the licence;

the Department may exercise, as it thinks fit, either of the powers conferred by paragraphs (3) and (4).

(2) Where a licence is in force and it appears to the Department that the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person, the Department may exercise the power conferred by paragraph (3).

(3) The Department may, under this paragraph, revoke the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the Department specifies in revoking the licence.

(4) The Department may, under this paragraph, revoke the licence entirely.

(5) A licence revoked under paragraph (3) shall cease to have effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the Department in revoking the licence but shall not affect the requirements imposed by the licence which the Department, in revoking the licence, specify as requirements which are to continue to bind the licence holder.

(6) Where a licence is in force and it appears to the Department—

(a) that the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person; or

(b) that—

(i) serious pollution of the environment or serious harm to human health has resulted from, or is about to be caused by, the activities to which the licence relates or the happening or threatened happening of an event affecting those activities; and

(ii) the continuing to carry on those activities, or any of those activities, in the circumstances will continue or, as the case may be, cause serious pollution of the environment or serious harm to human health;

the Department may suspend the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the Department specifies in suspending the licence.

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(7) A licence suspended under paragraph (6) shall, while the suspension has effect, be of no effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the Department in suspending the licence.

(8) Where a licence is suspended under paragraph (6), the Department, in suspending it or at any time while it is suspended, may require the holder of the licence to take such measures to deal with or avert the pollution or harm as the Department considers necessary.

(9) A requirement imposed under paragraph (8) may require the holder of a licence to carry out works or do other things notwithstanding that he is not entitled to carry out the works or do the thing and any person whose consent would be required shall grant, or join in granting, the holder of the licence such rights in relation to the land as will enable the holder of the licence to comply with any requirements imposed on him under that paragraph.

(10) Paragraphs (2) to (7) of Article 9 shall, with the necessary modifications, apply where the Department proposes to impose a requirement under paragraph (8) which may require the holder of a licence to carry out any such works or do any such thing as is mentioned in paragraph (9) as they apply where the Department proposes to issue a licence subject to any such condition as is mentioned in paragraph (1) of that Article, but as if—

- (a) the reference in paragraph (3) of that Article to Article 6(4) were a reference to paragraph (9); and
- (b) any reference in those paragraphs—
  - (i) to the condition, or the condition in question, were a reference to the requirement; and
  - (ii) to issuing a licence were a reference to serving a notice, under paragraph (14), effecting the requirement.

(11) The Department may postpone the service of any notice or the consideration of any representations required under Article 9, as applied by paragraph (10), so far as the Department considers that by reason of an emergency it is appropriate to do so.

(12) A person who, without reasonable excuse, fails to comply with any requirement imposed under paragraph (8) otherwise than in relation to<sup>F32</sup> hazardous waste] shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(13) A person who, without reasonable excuse, fails to comply with any requirement imposed under paragraph (8) in relation to<sup>F32</sup> hazardous waste] shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.

(14) Any revocation or suspension of a licence or requirement imposed during the suspension of a licence under this Article shall be effected by notice served on the holder of the licence and the notice shall state the time at which the revocation or suspension or the requirement is to take effect and, in the case of suspension, the period at the end of which, or the event on the occurrence of which, the suspension is to cease.

(15) If the Department is of the opinion that proceedings for an offence under paragraph (12) or (13) would afford an ineffectual remedy against a person who has failed to comply with any

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requirement imposed under paragraph (8), the Department may take proceedings in the High Court for the purpose of securing compliance with the requirement.

**F32** SR 2005/300

**Modifications etc. (not altering text)**

**C5** Art. 12 power to apply conferred (10.8.2009) by [Groundwater Regulations \(Northern Ireland\) 2009](#) (S.R. 2009/254), **reg. 13** (with **reg. 5**)

**Commencement Information**

**I3** Art. 12 partly in operation; art. 12 not in operation at date of making see art. 1(2); art. 12(1)-(8)(12)-(15) in operation at 27.11.2003 save for purposes of application to specified activities and otherwise in operation in relation to those activities in accordance with art. 3 of the commencing S.R. by S.R. 2003/489, arts. 2, 3, Sch.; art. 12(9)-(11) in operation at 3.4.2008 by S.R. 2008/138, **art. 2**

**Surrender of licences**

**13.—(1)** A licence may be surrendered by its holder to the Department but, in the case of a site licence, only if the Department accepts the surrender.

(2) The following provisions apply to the surrender and acceptance of the surrender of a site licence.

(3) The holder of a site licence who desires to surrender it shall make an application for that purpose to the Department on a form provided by the Department for the purpose, giving such information and accompanied by such evidence as the Department reasonably requires and accompanied by the fee payable under Article 15.

(4) On receiving an application for the surrender of a site licence the Department—

- (a) shall inspect the land to which the licence relates, and
- (b) may require the holder of the licence to furnish to it further information or further evidence.

(5) The Department shall determine whether it is likely or unlikely that the condition of the land, so far as that condition is the result of the use of the land for the treatment, keeping or disposal of waste (whether or not in pursuance of the licence), will cause pollution of the environment or harm to human health.

(6) In determining the matters referred to in paragraph (5) the Department shall—

- (a) consult with such body or person as the Department considers appropriate; and
- (b) consider any representations which any such body or person makes to it during a period of 28 days from the date of the consultation or such longer period as the Department and the body or person agree in writing.

(7) If the Department is satisfied that the condition of the land is unlikely to cause the pollution or harm mentioned in paragraph (5), the Department shall accept the surrender of the licence; but otherwise the Department shall refuse to accept it.

(8) Where the surrender of a licence is accepted under this Article the Department shall issue to the applicant, with the notice of its determination, a certificate (a “certificate of completion”) stating that it is satisfied as mentioned in paragraph (7) and, on the issue of that certificate, the licence shall cease to have effect.

(9) If within the period of 3 months from the date on which the Department receives an application to surrender a licence, or within such longer period as the Department and the applicant may at any time agree in writing, the Department has neither issued a certificate of completion nor given notice

to the applicant that the Department has refused the application, the Department shall be deemed to have refused the application.

### **Transfer of licences**

**14.—**(1) A licence may be transferred to another person in accordance with paragraphs (2) to (6) and may be so transferred whether or not the licence is partly revoked or suspended under any provision of this Order.

(2) Where the holder of a licence desires that the licence be transferred to another person (“the proposed transferee”) the licence holder and the proposed transferee shall jointly make an application to the Department for a transfer of the licence.

(3) An application under paragraph (2) for the transfer of a licence shall be made on a form provided by the Department for the purpose, accompanied by such information as the Department may reasonably require and the fee payable under Article 15 and the licence.

(4) If, on such an application, the Department is satisfied that the proposed transferee is a fit and proper person the Department shall effect a transfer of the licence to the proposed transferee.

(5) The Department shall effect a transfer of a licence under this Article by causing the licence to be endorsed with the name and other particulars of the proposed transferee as the holder of the licence from such date specified in the endorsement as may be agreed with the applicants.

(6) If within the period of 2 months from the date on which the Department receives an application for the transfer of a licence, or within such longer period as the Department and the applicants may at any time agree in writing, the Department has neither effected a transfer of the licence nor given notice to the applicants that the Department has refused the application, the Department shall be deemed to have refused the application.

### **Fees and charges for licences**

**15.—**(1) There shall be charged by and paid to the Department, in respect of applications for licences or relevant applications in respect of licences, and in respect of the holding of licences, such fees and charges as may be provided for by a scheme under paragraph (2).

(2) The Department may make, and from time to time revise, a scheme specifying—

- (a) fees payable in respect of applications for licences or relevant applications in respect of licences, and
- (b) charges payable in respect of the subsistence of licences,

to the Department by persons making applications for or in respect of licences, or holding licences, as the case may be.

(3) The applications in respect of licences which are relevant for the purposes of this Article are—

- (a) applications for a modification of the conditions of a licence;
- (b) applications to surrender a licence; and
- (c) applications for the transfer of a licence.

(4) A copy of the scheme or of the modifications made in the scheme shall be laid before the Assembly.

(5) A scheme under paragraph (2) may in particular—

- (a) provide for different fees or charges to be payable according to the description of activities authorised by licences and the descriptions and amounts of controlled waste to which those activities relate;

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- (b) provide for the times at which and manner in which payments of fees or charges are to be made; and
- (c) make such incidental, supplementary and transitional provision as appears to the Department to be appropriate.

(6) If it appears to the Department that the holder of a licence has failed to pay a charge due in consideration of the subsistence of the licence, the Department may, by notice in writing served on the holder, revoke the licence so far as it authorises the carrying on of the activities specified in the licence.

(7) Article 12(5) applies for the purposes of paragraph (6) as it applies for the purposes of paragraph (3) of that Article.

### **Supervision of licensed activities**

**16.**—(1) While a licence is in force the Department shall ensure—

- (a) that the activities authorised by the licence do not cause pollution of the environment or harm to human health or become seriously detrimental to the amenities of the locality affected by the activities; and
- (b) that the conditions of the licence are complied with.

(2) For the purpose of paragraph (1), an officer of the Department who is authorised in writing may, if it appears to him that by reason of an emergency it is necessary to do so, carry out work on the land or in relation to plant or equipment on the land to which the licence relates or, as the case may be, in relation to the mobile plant to which the licence relates.

(3) Where the Department incurs any expenditure under paragraph (2), the Department may recover the amount of the expenditure from the holder or, as the case may be, the former holder of the licence, except where the holder or former holder of the licence shows that there was no emergency requiring any work or except such of the expenditure as he shows was unnecessary.

(4) Where it appears to the Department that a condition of a licence is not being complied with or is likely not to be complied with, then, without prejudice to any proceedings under Article 4(6), the Department may—

- (a) serve on the holder of the licence a notice—
  - (i) stating that the Department is of the opinion that a condition of the licence is not being complied with or, as the case may be, is likely not to be complied with;
  - (ii) specifying the matters which constitute the non-compliance or, as the case may be, which make the anticipated non-compliance likely;
  - (iii) specifying the steps which must be taken to remedy the non-compliance or, as the case may be, to prevent the anticipated non-compliance from occurring; and
  - (iv) specifying the period within which those steps must be taken; and
- (b) if in the opinion of the Department the licence holder has not taken the steps specified in the notice within the period so specified, exercise any of the powers specified in paragraph (5).

(5) The powers referred to in paragraph (4)(b) are the following—

- (a) to revoke the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the Department specifies in revoking the licence;
- (b) to revoke the licence entirely; and
- (c) to suspend the licence so far as it authorises the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the Department in suspending the licence.



(6) If the Department is of the opinion that revocation or suspension of the licence, whether entirely or to any extent, under paragraph (5) would afford an ineffectual remedy against a person who has failed to comply with any requirement imposed under paragraph (4)(a), the Department may take proceedings in the High Court for the purpose of securing compliance with the requirement.

(7) Where a licence is revoked or suspended under paragraph (5), paragraphs (5) and (14) or, as the case may be, paragraphs (7) to (14) of Article 12 shall apply with the necessary modifications as they respectively apply to revocations or suspensions of licences under that Article.

### **Appeals from decisions with respect to licences**

**17.—**(1) Where—

- (a) an application for a licence or a modification of the conditions of a licence is refused;
- (b) a licence is granted subject to conditions;
- (c) the conditions of a licence are modified;
- (d) a licence is suspended;
- (e) a licence is revoked under Article 12 or 16;
- (f) an application to surrender a licence is refused; or
- (g) an application for the transfer of a licence is refused;

then, except in the case of an application for a transfer, the applicant for the licence or, as the case may be, the holder or former holder of it may appeal from the decision to the Planning Appeals Commission and, in the case of an application for a transfer, the proposed transferee may do so.

(2) Part I of Schedule 2 shall have effect with respect to appeals under paragraph (1).

(3) On receipt of an appeal under paragraph (1) the Planning Appeals Commission shall give notice of the appeal to the Department.

(4) Where, on such an appeal, the Planning Appeals Commission determines that the decision of the Department shall be altered the Department shall give effect to the determination.

(5) While an appeal is pending in a case falling within paragraph (1)(c) or (e), the decision in question shall, subject to paragraph (7), be ineffective; and if the decision in question is confirmed or the appeal is withdrawn the decision shall become effective from the end of the day on which the decision is confirmed or the appeal is withdrawn.

(6) Where an appeal is made in a case falling within paragraph (1)(d), the bringing of the appeal shall have no effect on the decision in question.

(7) Paragraph (5) shall not apply to a decision modifying the conditions of a licence under Article 10 or revoking a licence under Article 12 or 16 in the case of which the notice effecting the modification or revocation includes a statement that in the opinion of the Department it is necessary for the purpose of preventing or, where that is not practicable, minimising pollution of the environment or harm to human health that that paragraph should not apply.

(8) Where the decision under appeal is one falling within paragraph (7) or is a decision to suspend a licence, if, on the application of the holder or former holder of the licence, the Planning Appeals Commission determines that the Department acted unreasonably in excluding the application of paragraph (5) or, as the case may be, in suspending the licence, then—

- (a) if the appeal is still pending at the end of the day on which the determination is made, paragraph (5) shall apply to the decision from the end of that day; and
- (b) the holder or former holder of the licence shall be entitled to recover compensation from the Department in respect of any loss suffered by him in consequence of the exclusion of the application of that paragraph or the suspension of the licence;

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and any dispute as to a person's entitlement to such compensation or as to the amount of it shall be determined by arbitration.

(9) Regulations may make provision with respect to appeals under this Article and in particular as to the period within which and the manner in which appeals are to be brought.

### **Offences of making false or misleading statements or false entries**

18.—(1) A person who—

- (a) in purported compliance with a requirement to furnish any information imposed by or under any provision of this Part, or
- (b) for the purpose of obtaining for himself or another any grant of a licence, any modification of the conditions of a licence, any acceptance of the surrender of a licence or any transfer of a licence,

makes a statement which he knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, shall be guilty of an offence.

(2) A person who intentionally makes a false entry in any record required to be kept by virtue of a licence shall be guilty of an offence.

(3) A person guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

### *Collection, disposal or treatment of controlled waste*

#### **Waste management strategy**

<sup>F33</sup>19.—(1) The Department shall have a waste management strategy containing its policies in relation to the recovery and disposal of waste in Northern Ireland.

(2) The Department may from time to time modify the waste management strategy.

(3) The waste management strategy shall consist of a statement which relates to the whole of Northern Ireland.

(4) The waste management strategy shall include—

- (a) a statement of the Department's policies for attaining the objectives specified in Schedule 3;
- (b) in pursuance of the objectives and measures referred to in the Packaging Waste Directive, a chapter on the management of packaging and packaging waste, including measures taken pursuant to Articles 4 and 5 of that Directive; and
- (c) provisions relating to the following—
  - (i) the type, quantity and origin of waste to be recovered or disposed of;
  - (ii) general technical requirements;
  - (iii) any special arrangements for particular wastes;
  - (iv) suitable disposal sites or installations; and
  - (v) the management of hazardous waste.

(5) In preparing the waste management strategy the Department—

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- (a) shall consult district councils and such other bodies or persons appearing to it to be representative of the interests of industry as it considers appropriate, and may consult such other bodies or persons as it considers appropriate;
  - (b) may carry out a survey or investigation into—
    - (i) the kinds or quantities of waste which it appears to it is likely to be situated in Northern Ireland,
    - (ii) the facilities which are or appear to it likely to be available or needed in Northern Ireland for recovering or disposing of any such waste,
    - (iii) any other matter which the Department considers appropriate in connection with its preparation of the strategy.
- (6) Before carrying out a survey or investigation under paragraph (5)(b), the Department shall consult such bodies or persons appearing to it to be representative of the interests of industry as it may consider appropriate, and shall consult such other bodies or persons as it may consider appropriate.
- (7) The Department shall make its findings available to any bodies or persons it consults in accordance with paragraph (5)(a) or (6).]

**F33** Art. 19 substituted (1.7.2009) by [Waste Management Strategy Regulations \(Northern Ireland\) 2009](#) (S.R. 2009/178), [reg. 2\(4\)](#)

#### [<sup>F34</sup> **Application of public participation procedures**

- 19A.**—(1) Articles 19B and 19C apply to the modification of the waste management strategy as they apply to the preparation of such a strategy.
- (2) Articles 19B and 19C do not apply to—
- (a) a waste management strategy designed for the sole purpose of serving national defence or prepared in case of civil emergency; or
  - (b) a waste management strategy for which a public participation procedure is carried out under the Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004.

**F34** Arts. 19A-19C inserted (1.7.2009) by [Waste Management Strategy Regulations \(Northern Ireland\) 2009](#) (S.R. 2009/178), [reg. 2\(5\)](#)

#### **Public participation procedures**

- 19B.**—(1) As soon as reasonably practicable after preparing proposals for the waste management strategy the Department shall—
- (a) send a copy of the proposals to the persons or bodies mentioned in Article 19(5)(a);
  - (b) take such steps as it considers appropriate to bring the proposals to the attention of the persons who in its opinion—
    - (i) are, or are likely to be, affected by the strategy, or
    - (ii) have an interest in the strategy;
  - (c) inform the public consultees of the address (which may include a website)—
    - (i) at which a copy of the proposals may be viewed,
    - (ii) from which a copy of the proposals may be obtained;

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- (d) invite the persons or bodies mentioned in Article 19(5)(a) and the public consultees to express their opinion on the proposals, specifying the address to which, and the period within which, opinions must be sent.
- (2) The period referred to in paragraph (1) (d) shall be of such length as will ensure that the persons or bodies mentioned in Article 19(5)(a) and the public consultees are given an early and effective opportunity to express their opinion on the proposals.
- (3) The Department shall keep a copy of the proposals for inspection by the public at all reasonable times free of charge.
- (4) Nothing in paragraph (1) (c) requires the Department to provide copies of the proposals free of charge; but where a charge is made, it shall be of a reasonable amount.

**F34** Arts. 19A-19C inserted (1.7.2009) by [Waste Management Strategy Regulations \(Northern Ireland\) 2009 \(S.R. 2009/178\)](#), [reg. 2\(5\)](#)

### Procedures following public participation

- 19C.**—(1) Before decisions on the waste management strategy are made the Department shall take account of any opinions expressed in accordance with Article 19B(1)(d).
- (2) As soon as reasonably practicable after making decisions on the waste management strategy the Department shall—
- inform the persons or bodies mentioned in Article 19(5)(a) and the public consultees of the matters set out in paragraph (4);
  - take such steps as it considers appropriate to bring the matters in paragraph (4) to the attention of the public;
  - if it has adopted the waste management strategy, make a copy of the strategy available for inspection by the public at all reasonable times and free of charge.
- (3) Nothing in paragraph (2)(c) requires the Department to provide copies of the adopted waste management strategy free of charge, but where a charge is made, it shall be of a reasonable amount.
- (4) The matters are—
- the decisions made by the Department on the waste management strategy;
  - the reasons and considerations upon which those decisions are based; and
  - information about the public participation procedures under Article 19B.]

**F34** Arts. 19A-19C inserted (1.7.2009) by [Waste Management Strategy Regulations \(Northern Ireland\) 2009 \(S.R. 2009/178\)](#), [reg. 2\(5\)](#)

### Collection of controlled waste

- 20.**—(1) Each district council shall—
- arrange for the collection of household waste in its district except waste—
    - which is situated at a place which in the opinion of the council is so isolated or inaccessible that the cost of collecting it would be unreasonably high, and
    - as to which the council is satisfied that adequate arrangements for its disposal have been or can reasonably be expected to be made by a person who controls the waste; and

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- (b) if requested by the occupier of premises in its district to collect any commercial waste from the premises, arrange for the collection of the waste.
- (2) Each district council may, if requested by the occupier of premises in its district to collect any industrial waste from the premises, arrange for the collection of the waste.
- (3) No charge shall be made for the collection of household waste under paragraph (1) except in prescribed cases; and in any of those cases—
- (a) the duty to arrange for the collection of the waste shall not arise until a person who controls the waste requests the council to collect it; and
- (b) the district council may recover a reasonable charge for the collection of the waste from the person who made the request.
- (4) A person at whose request waste other than household waste is collected under this Article shall be liable to pay a reasonable charge for the collection and disposal of the waste to the district council which arranged for its collection; and the council shall recover the charge unless in the case of a charge in respect of commercial waste the council considers it inappropriate to do so.
- (5) A district council may—
- (a) construct, lay and maintain, within or outside its district, pipes and associated works for the purpose of collecting waste under this Article;
- (b) contribute towards the cost incurred by another person in providing or maintaining pipes or associated works connecting with pipes provided by the council under sub-paragraph (a).
- [<sup>F35</sup>(6) Articles 220 and 240 of the Water and Sewerages Services (Northern Ireland) Order 2006 shall apply in relation to pipes and associated works provided or to be provided under paragraph (5) (a) as they apply in relation to pipes and associated works for the purpose of Article 220 of that Order but as if for any reference to the relevant undertaker there were substituted a reference to the district council in question.]
- (7) A district council may contribute towards the cost incurred by another person in providing or maintaining plant or equipment intended to deal with household, commercial or industrial waste before it is collected under arrangements made by the council under paragraph (1) or (2).
- (8) Anything collected under arrangements made by a district council under this Article shall belong to the council and may be dealt with accordingly.

**F35** Art. 20(6) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 39(1)** (with arts. 8(8), 121(3), 307); [S.R. 2007/194](#), **art. 2(2)**, **Sch. 1 Pt. II** (with art. 3, Sch. 2)

### Receptacles for household waste

- 21.**—(1) Where a district council is required under Article 20(1)(a) to arrange for the collection of household waste from any premises, the council may, by notice served on him, require the occupier to place the waste for collection in receptacles of a kind and number specified.
- (2) The kind and number of the receptacles required under paragraph (1) to be used shall be such only as are reasonable but, subject to that, separate receptacles or compartments of receptacles may be required to be used for waste which is to be recycled and waste which is not.
- (3) In making requirements under paragraph (1) the council may, as respects the provision of the receptacles—
- (a) determine that they be provided by the council free of charge;
- (b) propose that they be provided, if the occupier agrees, by the council on payment by him of such a single payment or such periodical payments as he agrees with the council;

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- (c) require the occupier to provide them if he does not enter into an agreement under sub-paragraph (b) within a specified period; or
  - (d) require the occupier to provide them.
- (4) In making requirements as respects receptacles under paragraph (1), the council may, by the notice under that paragraph, make provision with respect to—
- (a) the size, construction and maintenance of the receptacles;
  - (b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;
  - (c) the placing of the receptacles for that purpose on roads;
  - (d) the substances or articles which may or may not be put into the receptacles or compartments of receptacles of any description and the precautions to be taken where particular substances or articles are put into them; and
  - (e) the steps to be taken by occupiers of premises to facilitate the collecting of waste from the receptacles.
- (5) No requirement shall be made under paragraph (1) for receptacles to be placed on a road, unless—
- (a) the Department has given its consent to their being so placed; and
  - (b) arrangements have been made as to the liability for any damage arising out of their being so placed.
- (6) A person who fails, without reasonable excuse, to comply with any requirements imposed under paragraph (1), (3)(c) or (d) or (4) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Where an occupier is required under paragraph (1) to provide any receptacles he may, within the period allowed by paragraph (8), appeal to a court of summary jurisdiction against any requirement imposed under paragraph (1), (3)(c) or (d) or (4) on the ground that—
- (a) the requirement is unreasonable; or
  - (b) the receptacles in which household waste is placed for collection from the premises are adequate.
- (8) The period allowed to the occupier of premises for appealing against such a requirement is the period of 21 days from—
- (a) in a case where a period was specified under paragraph (3)(c), the last day of that period; and
  - (b) where no period was specified, the day on which the notice making the requirement was served on him.
- (9) Where an appeal against a requirement is brought under paragraph (7)—
- (a) the requirement shall be of no effect pending the determination of the appeal;
  - (b) the court shall either quash or modify the requirement or dismiss the appeal; and
  - (c) no question as to whether the requirement is, in any respect, unreasonable shall be entertained in any proceedings for an offence under paragraph (6).
- (10) In this Article—
- “receptacle” includes a holder for receptacles; and
  - “specified” means specified in a notice under paragraph (1).

## Receptacles for commercial or industrial waste

**22.**—(1) A district council may, at the request of any person, supply him with receptacles for commercial or industrial waste which he has requested the council to arrange to collect and shall make a reasonable charge for any receptacle supplied unless in the case of a receptacle for commercial waste the council considers it appropriate not to make a charge.

(2) If it appears to a district council that there is likely to be situated, on any premises in its district, commercial waste or industrial waste of a kind which, if the waste is not stored in receptacles of a particular kind, is likely to cause a nuisance or to be detrimental to the amenities of the locality, the council may, by notice served on him, require the occupier of the premises to provide at the premises receptacles for the storage of such waste of a kind and number specified.

(3) The kind and number of the receptacles required under paragraph (2) to be used shall be such only as are reasonable.

(4) In making requirements as respects receptacles under paragraph (2), the council may, by the notice under that paragraph, make provision with respect to—

- (a) the size, construction and maintenance of the receptacles;
- (b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;
- (c) the placing of the receptacles for that purpose on roads;
- (d) the substances or articles which may or may not be put into the receptacles and the precautions to be taken where particular substances or articles are put into them; and
- (e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles.

(5) No requirement shall be made under paragraph (2) for receptacles to be placed on a road unless—

- (a) the Department has given its consent to their being so placed; and
- (b) arrangements have been made as to the liability for any damage arising out of their being so placed.

(6) A person who fails, without reasonable excuse, to comply with any requirements imposed under paragraph (2) or (4) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Where an occupier is required under paragraph (2) to provide any receptacles he may, within the period allowed by paragraph (8), appeal to a court of summary jurisdiction against any requirement imposed under paragraph (2) or (4) on the ground that—

- (a) the requirement is unreasonable; or
- (b) the waste is not likely to cause a nuisance or be detrimental to the amenities of the locality.

(8) The period allowed to the occupier of premises for appealing against such a requirement is the period of 21 days from the day on which the notice making the requirement was served on him.

(9) Where an appeal against a requirement is brought under paragraph (7)—

- (a) the requirement shall be of no effect pending the determination of the appeal;
- (b) the court shall either quash or modify the requirement or dismiss the appeal; and
- (c) no question as to whether the requirement is, in any respect, unreasonable shall be entertained in any proceedings for an offence under paragraph (6).

(10) In this Article—

“receptacle” includes a holder for receptacles; and

“specified” means specified in a notice under paragraph (2).

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### [<sup>F36</sup>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.

**F36** Arts. 22A-22C inserted (7.4.2008) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), 10; S.R. 2008/75, art. 2



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## 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).

**F36** Arts. 22A-22C inserted (7.4.2008) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), **10**; S.R. 2008/75, **art. 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.]

**F36** Arts. 22A-22C inserted (7.4.2008) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), **10**; S.R. 2008/75, **art. 2**

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### <sup>F37</sup>Waste management plans by district councils

23.—(1) Each district council shall—

- (a) carry out an investigation with a view to deciding—
  - (i) what arrangements are appropriate for dealing with controlled waste arising in its district by separating, baling or otherwise packaging it for the purpose of recovering it; and
  - (ii) what arrangements are needed for the purpose of treating or disposing of controlled waste which is situated in its district and controlled waste which is likely to be so situated so as to prevent or minimise pollution of the environment or harm to human health;
- (b) prepare a statement (“the plan”) of the arrangements made and proposed to be made—
  - (i) by the council and other persons, to recover controlled waste; and
  - (ii) by the council or waste disposal contractors, for the treatment or disposal of such waste;
- (c) carry out further investigations with a view to deciding what changes in the plan are needed; and
- (d) make any modification of the plan which the council thinks appropriate in consequence of any such further investigation.

(2) In considering any arrangements or modification for the purposes of paragraph (1)(b) or (d) a district council shall—

- (a) take account of the strategy prepared by the Department under Article 19;
  - (b) in relation to recovering waste, have regard to the effect which the arrangements or modification would be likely to have on the amenities of any locality and the likely cost or saving to the council attributable to the arrangements or modification;
  - (c) in relation to treatment or disposal of waste, have regard both to the likely cost of the arrangements or modification and to their likely beneficial effects on the environment.
- (3) The district council shall include in the plan information as to—
- (a) in relation to recovering waste—
    - (i) the kinds and quantities of controlled waste which the council expects to collect during the period specified in the plan;
    - (ii) the kinds and quantities of controlled waste which the council expects to purchase during that period;
    - (iii) the kinds and quantities of controlled waste which the council expects to deal with in the ways specified in paragraph (1)(a) during that period;
    - (iv) the arrangements which the council expects to make during that period with other district councils or waste disposal contractors for them to deal with waste in those ways;
    - (v) the plant and equipment which the council expects to provide under Article 25;
    - (vi) the estimated costs or savings attributable to the methods of dealing with the waste in the ways provided for in the plan;
  - (b) in relation to treatment or disposal of waste—
    - (i) the kinds and quantities of controlled waste which the council expects to be situated in its district during that period;

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- (ii) the kinds and quantities of controlled waste which the council expects to be brought into or taken for disposal out of its district during that period;
  - (iii) the kinds and quantities of controlled waste which the council expects to be disposed of within its district during that period;
  - (iv) the methods and the respective priorities for the methods by which in the opinion of the council controlled waste in its district should be disposed of or treated during that period;
  - (v) the sites and equipment which persons are providing and which during that period are expected to provide for disposal of controlled waste; and
  - (vi) the estimated costs of the methods of disposal or treatment provided for in the plan;
- but regulations may modify sub-paragraph (b) and may make provision requiring district councils to take into account in preparing plans and any modifications of plans under this Article such factors as may be prescribed.

(4) In considering what information to include in the plan under paragraph (3)(b)(iv) the district council shall have regard to the desirability, where reasonably practicable, of giving priority to recovering waste.

(5) A district council shall—

(a) in preparing the plan and any modification of it, consult—

- (i) the Department; and
- (ii) in a case where provisions of the plan or modification relate to the taking of waste for disposal or treatment into the district of another district council, that other council; and
- (iii) in any case, such persons as the council considers it appropriate to consult from among persons who in the opinion of the council are or are likely to be, or are representative of persons who are or are likely to be, engaged by way of trade or business in the collection, disposal or treatment of controlled waste situated in the district of the council; and

(b) before finally determining the content of the plan or modification, take, subject to paragraph (6), such steps as in the opinion of the council will—

- (i) give adequate publicity in its district to the plan or modification; and
- (ii) provide members of the public with opportunities of making representations to the council about it;

and consider any representations made by the public and make any change in the plan or modification which the council considers appropriate.

(6) No steps need be taken under paragraph (5)(b) in respect of a modification which in the opinion of the district council is such that no person will be prejudiced if those steps are not taken.

(7) Without prejudice to paragraph (5), a district council shall, in preparing the plan and any modification of it, consider, in consultation with such persons as the council considers appropriate and as agree to participate in the consultations—

- (a) what arrangements can reasonably be expected to be made for recovering waste; and
- (b) what provisions should be included in the plan for that purpose.

(8) A district council shall not finally determine the content of the plan or modification in a case falling within paragraph (5)(a)(ii) except with the consent of the other district council or, if the other council withholds its consent, with the consent of the Department.

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(9) A district council shall, before finally determining the content of the plan or modification, send a copy of it in draft to the Department for the purpose of enabling the Department to determine whether paragraph (3) has been complied with; and, if the Department gives any directions to the council for securing compliance with that paragraph, the council shall comply with the direction.

(10) When a district council has finally determined the content of the plan or a modification the council shall—

- (a) take such steps as in the opinion of the council will give adequate publicity in its district to the plan or modification; and
- (b) send to the Department a copy of the plan or, as the case may be, particulars of the modification.

(11) Each district council shall keep a copy of the plan and particulars of any modifications to it available at all reasonable times at its principal offices for inspection by members of the public free of charge and shall supply a copy of the plan and of the particulars of any modifications to it to any person who requests one, on payment by that person of such reasonable charge as the council requires.

(12) The Department may give to any district council directions as to the time by which the council is to perform any function imposed by this Article specified in the direction; and the council shall comply with the direction.

**F37** prosp. rep. by [1997 NI 19](#)

### **Payments for recycling and disposal, etc., of waste**

**24.**—(1) Where a person other than a district council, for the purpose of recycling it, collects waste arising in the district of a district council which would fall to be collected under Article 20, the council may make to that person payments, in respect of the waste so collected, of such amounts representing its net saving of expenditure on the collection and disposal of the waste as the council determines.

(2) Regulations may require district councils to make payments corresponding to the payments which are authorised by paragraph (1) to such persons in such circumstances and in respect of such descriptions or quantities of waste as are specified in the regulations.

(3) For the purposes of paragraph (1)—

- (a) the net saving of expenditure of a district council on the disposal of any waste collected for recycling is the amount of the expenditure which the council would, but for the collection, have incurred in having it disposed of less any amount payable by the council to any person in consequence of the collection for recycling (instead of the disposal) of the waste; and
- (b) the net saving of expenditure of a district council on the collection of any waste not falling to be collected by it is the amount of the expenditure which the council would, if it had had to collect the waste, have incurred in collecting it.

(4) Regulations shall make provision for the determination of the net saving of expenditure for the purposes of paragraphs (1) and (2).

### **Disposal of waste**

**25.**—(1) Each district council shall make arrangements—

- (a) for the disposal of any waste collected or removed under Article 20; and
- (b) for the provision of places at which persons may deposit their household waste at all reasonable times free of charge and for the disposal of waste so deposited.

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(2) Without prejudice to a district council's powers apart from the following provisions of this paragraph, a district council for the purpose of paragraph (1)(a) may provide within or outside its district—

- (a) places at which to deposit waste before the council transfers it to a place or plant or equipment provided under sub-paragraph (b); and
- (b) places at which to dispose of or recycle the waste and plant or equipment for recycling, processing or otherwise disposing of it.

(3) Paragraphs (5) and (6) of Article 20 shall have effect in relation to the disposal of waste under this Article as if the reference in sub-paragraph (a) of that paragraph (5) to the collection of waste under that Article included a reference to the disposal of waste under this Article and the disposal of anything produced from waste belonging to the council.

(4) Any place provided under paragraph (1)(b) shall either be situated within the district of the council or, if not so situated, be reasonably accessible to persons resident in that district; and a district council may, without prejudice to the generality of paragraph (1)(b), determine that any such place shall be available for the deposit of household waste of such descriptions only as are specified in the determination.

(5) A district council may permit another person to use facilities provided by the council under this Article and may provide for the use of another person any such facilities as the council may provide under this Article; and—

- (a) subject to sub-paragraph (b), the council shall make a reasonable charge in respect of the use by another person of the facilities unless the council considers it appropriate not to make a charge;
- (b) no charge shall be made under this paragraph in respect of household waste; and
- (c) anything delivered to the council by another person in the course of using the facilities shall belong to the council and may be dealt with accordingly.

### **Powers for recycling waste**

**26.**—(1) A district council may make arrangements to do such things as the council considers appropriate for the purpose of—

- (a) enabling waste belonging to the council, or belonging to another person who requests the council to deal with it under this Article, to be recycled, or
- (b) enabling substances to be reclaimed from such waste; or
- (c) enabling such waste to be used for the purpose of producing from it heat or electricity or gas.

(2) Without prejudice to the powers of district councils apart from this Article, a district council may—

- (a) buy or otherwise acquire waste with a view to its being recycled or to the reclamation of substances from it; and
- (b) use, sell or otherwise dispose of waste belonging to the council or anything produced from such waste.

### **Power of Department to require waste to be accepted, treated, disposed of or delivered**

**27.**—(1) The Department may, by notice, direct the holder of any waste management licence to accept and keep, or accept and treat or dispose of, controlled waste at specified places on specified terms.

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(2) The Department may, by notice, direct any person who is keeping controlled waste on any land to deliver the waste to a specified person on specified terms with a view to its being treated or disposed of by that other person.

(3) A direction under paragraph (1) or (2) may impose a requirement as respects waste of any specified kind or as respects any specified consignment of waste.

(4) A direction under paragraph (2) may require the person who is directed to deliver the waste to pay to the specified person his reasonable costs of treating or disposing of the waste.

(5) A person who fails, without reasonable excuse, to comply with a direction under paragraph (1) or (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

[<sup>F38</sup>(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.]

(6) A person shall not be guilty of an offence under any other statutory provision prescribed for the purposes of this paragraph by reason only of anything necessarily done or omitted in order to comply with a direction under paragraph (1) or (2).

(7) The Department may, where the costs of the treatment or disposal of waste are not paid or not fully paid in pursuance of paragraph (4) to the person treating or disposing of the waste, pay the costs or the unpaid costs, as the case may be, to that person.

(8) In paragraphs (1) to (4) “specified” means specified in a direction under paragraph (1) or (2).

**F38** Art. 27(5A) inserted (25.6.2007) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), **11(1)** (with art. 11(2)); S.R. 2007/294, **art. 2**, Sch.

### **Powers to require removal of waste unlawfully deposited**

**28.**—(1) If any controlled waste is deposited in or on any land in the district of a district council in contravention of Article 4(1), the district council may, by notice served on him, require the occupier 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; or
- (b) there is a material defect in the notice;

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.

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(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 an additional fine not exceeding one-tenth of level 5 on the standard scale for each day on which the offence is continued and before the district council has begun to exercise its powers under paragraph (7).

(7) Where a person on whom a requirement has been imposed under paragraph (1) by a district council fails to comply with the requirement the council may do what that person was required to do and may recover from him any expenses reasonably incurred by the council in doing it.

(8) If it appears to a district council that waste has been deposited in or on any land in contravention of Article 4(1) and that—

- (a) in order to remove or prevent pollution of land, water or air or harm to human health it is necessary that the waste be forthwith removed or other steps taken to eliminate or reduce the consequences of the deposit or both; or
- (b) there is no occupier of the land [<sup>F39</sup>or the occupier cannot be found without the council incurring unreasonable expense]; or
- (c) the occupier neither made nor knowingly permitted the deposit of the waste;

the council may remove the waste from the land or take other steps to eliminate or reduce the consequences of the deposit or, as the case may require, to remove the waste and take those steps.

(9) Where a district council exercises any of the powers conferred on it by paragraph (8) it may recover the cost incurred by it in removing the waste or taking the steps or both and in disposing of the waste—

- (a) in a case falling within paragraph (8)(a), from the occupier of the land unless he proves that he neither made nor knowingly caused nor knowingly permitted the deposit of the waste,
- (b) in any case, from any person who deposited or knowingly caused or knowingly permitted the deposit of any of the waste;

except such of the cost as the occupier or that person shows was incurred unnecessarily.

(10) Any waste removed by a district council under paragraph (8) shall belong to the council and may be dealt with accordingly.

**F39** Words in art. 28(8)(b) inserted (25.6.2007) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), **12(1)**; S.R. 2007/294, art. 2, Sch.

#### **[<sup>F40</sup> 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—

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- (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

.]

**F40** Art. 28A inserted (25.6.2007) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), **12(2)**; S.R. 2007/294, **art. 2**, Sch.

### **Interference with waste sites and receptacles for waste**

**29.**—(1) No person shall sort over or disturb—

- (a) anything deposited at a place for the deposit of waste provided by a district council or by a waste disposal contractor under arrangements made with a district council;
- (b) anything deposited in a receptacle for waste, whether for public or private use, provided by a district council or by a waste disposal contractor under arrangements made with a district council or by a holder of a waste management licence; or
- (c) the contents of any receptacle for waste which, in accordance with a requirement under Articles 21 or 22, is placed on any road or in any other place with a view to its being emptied;

unless he has the relevant consent or right do so so specified in paragraph (2).

- (2) The consent or right that is relevant for the purposes of paragraph (1)(a), (b) or (c) is—
  - (a) in the case of sub-paragraph (a), the consent of the council or contractor who provides the place for the deposit of the waste;
  - (b) in the case of sub-paragraph (b), the consent of the council or contractor or other person who provides the receptacle for the deposit of the waste;
  - (c) in the case of sub-paragraph (c), the right to the custody of the receptacle, the consent of the person having the right to the custody of the receptacle or the right conferred by the function under this Part of emptying such receptacles.
- (3) A person who contravenes paragraph (1) shall be guilty of an offence and shall be liable on summary conviction to a fine of an amount not exceeding level 3 on the standard scale.



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### *Special waste and non-controlled waste*

#### **Special provision with respect to certain dangerous or intractable waste**

**30.**—(1) If the Department considers that controlled waste of any kind is or may be so dangerous or difficult to treat, keep or dispose of that special provision is required for dealing with it, regulations shall make provision for the treatment, keeping or disposal of waste of that kind (in this Article referred to as “[<sup>F41</sup>hazardous waste]”).

- (2) Without prejudice to the generality of paragraph (1), the regulations may include provision—
- (a) for the giving of directions by the Department with respect to matters connected with the treatment, keeping or disposal of [<sup>F41</sup> hazardous waste];
  - (b) for securing that [<sup>F41</sup> hazardous waste] is not, while awaiting treatment or disposal in pursuance of the regulations, kept at any one place in quantities greater than those which are prescribed and in circumstances which differ from those which are prescribed;
  - (c) in connection with requirements imposed on consignors or consignees of [<sup>F41</sup> hazardous waste], imposing, in the event of non-compliance, requirements on any person carrying the consignment to re-deliver it as directed;
  - (d) for requiring the occupier of premises on which [<sup>F41</sup> hazardous waste] is situated to give notice of that fact and other prescribed information to a prescribed body;
  - (e) for the making and retention of records by the Department and by persons who import, export, carry, produce, keep, treat or dispose of [<sup>F41</sup> hazardous waste], either directly or as a broker, or deliver it to another person for keeping, treatment or disposal, for the inspection of the records and for the furnishing by such persons to the Department of copies of or information derived from the records;
  - (f) for the keeping in the register under Article 34(1) of copies of such of those records, or such information derived from those records, as may be prescribed;
  - (g) providing that a contravention of the regulations shall be an offence and prescribing the maximum penalty for the offence, which shall not exceed, on summary conviction, a fine at level 5 on the standard scale and, on conviction on indictment, imprisonment for a term of 2 years or a fine or both.
- (3) Without prejudice to the generality of paragraph (1), the regulations may include provision—
- (a) for the supervision by the Department—
    - (i) of activities authorised under the regulations or of activities by virtue of carrying on which persons are subject to provisions of the regulations, or
    - (ii) of persons who carry on activities authorised by virtue of the regulations or who are subject to provisions of the regulations,and for the recovery from persons falling within head (ii) of the costs incurred by the Department in performing functions conferred upon the Department by the regulations;
  - (b) as to the recovery of expenses or other charges for the treatment, keeping or disposal or the re-delivery of [<sup>F41</sup> hazardous waste] under the regulations;
  - (c) as to appeals from decisions of the Department under the regulations to the Planning Appeals Commission for determination.
- (4) In this Article “broker” has the same meaning as in Article 5.

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**Waste other than controlled waste**

31.—(1) <sup>F42</sup> .....

(2) A person who deposits, or knowingly causes or knowingly permits the deposit of, any waste—

- (a) which is not controlled waste, but
- (b) which, if it were controlled waste, would be<sup>F43</sup> hazardous waste],

in a case where he would be guilty of an offence under Article 4 if the waste were<sup>F43</sup> hazardous waste] and any management licence were not in force, shall, subject to paragraph (3), be guilty of that offence and punishable as if the waste were<sup>F43</sup> hazardous waste].

(3) No offence is committed under paragraph (2) if the act charged was done under and in accordance with any consent, licence, approval or authority granted under any statutory provision (excluding any planning permission under the Planning (Northern Ireland) Order 1991.)

(4) <sup>F42</sup> .....

**F42** Art. 31(1)(4) repealed (31.7.2006) by S.R. 2006/280, reg. 2(8)  
**F43** SR 2005/300

*Other controls on substances, articles or waste*

**Power to prohibit or restrict the use, supply or storage of injurious substances or articles**

32.—(1) Regulations may prohibit or restrict—

- (a) the use for any purpose,
- (b) the supply for any purpose, and
- (c) the storage,

of any specified substance or article if the Department considers it appropriate to do so for the purpose of preventing the substance or article from causing pollution of the environment or harm to human health or to the health of animals or plants.

(2) Regulations under this Article may—

- (a) enable the Department to direct that any substance or article whose use, supply or storage is prohibited or restricted is to be treated as waste or controlled waste of any description and in relation to any such substance or article—
  - (i) to apply, with or without modification, prescribed provisions of this Part; or
  - (ii) to direct that it be disposed of or treated in accordance with the direction;
- (b) confer powers corresponding to those conferred by Article 44 on persons authorised for any purpose of the regulations by the Department or on any district council; and
- (c) include such other incidental and supplemental, and such transitional provisions, as the Department considers appropriate.

(3) Subject to paragraph (4), before it makes any regulations under this Article the Department shall—

- (a) publish in the Belfast Gazette and in any other publication which the Department considers appropriate, a notice indicating the effect of the proposed regulations and specifying—
  - (i) the date on which it is proposed that the regulations will come into operation;
  - (ii) a place where a draft of the proposed regulations may be inspected free of charge by members of the public during office hours; and

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(iii) a period of not less than 14 days from the date on which the notice is first published during which representations in writing may be made to the Department about the proposed regulations; and

(b) consider any representations which are made in accordance with the notice.

(4) Regulations may be made under this Article in relation to any substance or article without observing the requirements of paragraph (3) where it appears to the Department that there is an imminent risk, if those requirements are observed, that serious pollution of the environment will be caused.

(5) After complying with paragraph (3) with respect to any proposed regulations, the regulations may be made either—

(a) in the form of the draft mentioned in paragraph (3)(a), or

(b) in that form with such modifications as the Department considers appropriate;

but regulations incorporating modifications shall not be made unless the Department is of the opinion that it is appropriate for the requirements of paragraph (3) to be disregarded.

(6) Regulations under this Article may provide that a person who contravenes a specified provision of the regulations or causes or permits another person to contravene a specified provision of the regulations commits an offence and may prescribe the maximum penalty for the offence.

(7) No offence under the regulations shall be made punishable with imprisonment for more than 2 years or punishable on summary conviction with a fine exceeding level 5 on the standard scale (if not calculated on a daily basis) or, in the case of a continuing offence, exceeding one-tenth of the level on the standard scale specified as the maximum penalty for the original offence.

(8) In this Article—

“the environment” includes the air within buildings and the air within other natural or man-made structures above or below ground; and

“substance” includes mixtures of substances.

### **Power to obtain information about potentially hazardous substances**

**33.**—(1) For the purpose of assessing their potential for causing pollution of the environment or harm to human health, regulations may make provision for and in connection with the obtaining of relevant information relating to substances which may be specified by the Department by order for the purposes of this Article.

(2) The Department shall not make an order under paragraph (1) specifying any substance—

(a) which was first supplied in any member State on or after 18th September 1981; or

(b) in so far as it is a regulated substance for the purposes of any relevant statutory provision.

(3) Regulations under this Article may—

(a) prescribe the descriptions of relevant information which are to be furnished under this Article in relation to specified substances;

(b) impose requirements on manufacturers or suppliers generally to furnish information prescribed under sub-paragraph (a);

(c) provide for the imposition of requirements on manufacturers or suppliers generally to furnish relevant information relating to products or articles containing specified substances in relation to which information has been furnished in pursuance of sub-paragraph (b);

(d) provide for the imposition of requirements on particular manufacturers or suppliers to furnish further information relating to specified substances in relation to which information has been furnished in pursuance of sub-paragraph (b);

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- (e) provide for the imposition of requirements on particular manufacturers to carry out tests of specified substances and to furnish information of the results of the tests;
  - (f) authorise persons to comply with requirements to furnish information imposed on them under the regulations by means of representative persons or bodies;
  - (g) impose restrictions on the disclosure of information obtained under this Article and provide for determining what information is, and what information is not, to be treated as furnished in confidence;
  - (h) create offences, subject to the limitation that no offence shall be punishable with imprisonment or punishable on summary conviction with a fine exceeding level 5 on the standard scale;
  - (i) make any district council or other body designated by the regulations responsible for the enforcement of the regulations to such extent as may be specified in the regulations;
  - (j) include such other incidental and supplemental, and such transitional, provisions as the Department considers appropriate.
- (4) The Department shall have regard, in imposing or providing for the imposition of any requirement under paragraph (3)(b), (c), (d) or (e), to the cost likely to be involved in complying with the requirement.

(5) In this Article—

“relevant information”, in relation to substances, products or articles, means information relating to their properties, production, distribution or use or intended use and, in relation to products or articles, to their disposal as waste;

“substance” includes mixtures of substances.

(6) The statutory provisions which are relevant for the purposes of paragraph (2)(b) are the following—

the<sup>F44</sup>Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006];

Parts II, III and VIII of the Medicines Act 1968;

Part IV of the Agriculture Act 1970;

the Misuse of Drugs Act 1971;

Part III of the Food and Environment Protection Act 1985;

the Food Safety (Northern Ireland) Order 1991; and

the Radioactive Substances Act 1993 ;

and a substance is a regulated substance for the purposes of any such statutory provision in so far as any prohibition, restriction or requirement is imposed in relation to it under the statutory provision for the purposes of that statutory provision.

**F44** Words in art. 33(6) substituted (1.12.2006) by S.R. 2006/425, reg. 27(1), Sch. 6 para. 16 (with reg. 26)

## *Publicity*

### **Public registers**

**34.**—(1) Subject to Articles 35 and 36, the Department shall maintain a register containing prescribed particulars of or relating to—

- (a) current or recently current licences ( “licences”) granted by the Department;
- (b) current or recently current applications to the Department for licences;

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- (c) applications made to the Department under Article 10 for the modification of licences;
- (d) notices issued by the Department under Article 10 effecting the modification of licences;
- (e) notices issued by the Department under Article 12 effecting the revocation or suspension of licences or imposing requirements on the holders of licences;
- (f) appeals under Article 17 relating to decisions of the Department;
- (g) certificates of completion issued by the Department under Article 13(8);
- (h) notices issued by the Department imposing requirements on the holders of licences under Article 16(4);
- (i) convictions of the holders of licences granted by the Department for any offence under this Part (whether in relation to a licence so granted or not);
- (j) the occasions on which the Department has discharged any function under Article 16;
- (k) such matters relating to the treatment, keeping or disposal of waste or any pollution of the environment caused thereby as may be prescribed;

and any other document or information required to be kept in the register under any provision of this Part.

(2) Where information of any description is excluded from any register under Article 36, a statement shall be entered in the register indicating the existence of information of that description.

(3) For the purposes of paragraph (1) licences are “recently” current for the period of 12 months after they cease to be in force and applications for licences are “recently” current if they relate to a licence which is current or recently current or, in the case of an application which is refused, for the period of 12 months from the date on which the Department gives notice of refusal or, as the case may be, on which the application is deemed by Article 8(6) to have been refused.

(4) Each district council shall maintain a register containing prescribed particulars of such information contained in any register maintained under paragraph (1) as relates to the treatment, keeping or disposal of controlled waste in the district of the council.

(5) The Department shall furnish district councils with the particulars necessary to enable them to comply with paragraph (4).

(6) The Department and each district council—

- (a) shall secure that any register maintained under this Article is open to inspection by members of the public free of charge at all reasonable hours; and
- (b) shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register;

and, for the purposes of this paragraph, places may be prescribed at which any such registers or facilities as are mentioned in sub-paragraphs (a) or (b) are to be available or afforded to the public in pursuance of the sub-paragraph in question.

(7) Registers under this Article may be kept in any form.

### **Exclusion from registers of information affecting national security**

**35.**—(1) No information shall be included in a register maintained under Article 34 (a “register”) if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which paragraph (1) applies, give to the Department directions—

- (a) specifying information, or descriptions of information, to be excluded from its register; or

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- (b) specifying descriptions of information to be referred to the Secretary of State for his determination;

and no information referred to the Secretary of State in pursuance of sub-paragraph (b) shall be included in any such register until the Secretary of State determines that it should be so included.

(3) The Department shall notify the Secretary of State of any information it excludes from the register in pursuance of directions under paragraph (2).

(4) A person may, as respects any information which appears to him to be information to which paragraph (1) may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—

- (a) he shall notify the Department that he has done so; and
- (b) no information so notified to the Secretary of State shall be included in the register until the Secretary of State has determined that it should be so included.

### **Exclusion from registers of certain confidential information**

**36.**—(1) No information relating to the affairs of any individual or business shall be included in a register maintained under Article 34 (a “register”), without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—

- (a) is, in relation to him, commercially confidential; and
- (b) is not required to be included in the register in pursuance of directions under paragraph (9);

but information is not commercially confidential for the purposes of this Article unless it is determined under this Article to be so by the Department or, on appeal, by the Planning Appeals Commission.

(2) Where information is furnished to the Department for the purpose of—

- (a) an application for, or for the modification of, a licence;
- (b) complying with any condition of a licence; or
- (c) complying with a notice under Article 44(1);

then, if the person furnishing it applies to the Department to have the information excluded from the register on the ground that it is commercially confidential (as regards himself or another person), the Department shall determine whether the information is or is not commercially confidential.

(3) A determination under paragraph (2) shall be made within the period of 14 days from the date of the application and if the Department fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.

(4) Where it appears to the Department that any information (other than information furnished in circumstances within paragraph (2)) which has been obtained by the Department under any provision of this Part might be commercially confidential, the Department shall—

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register unless excluded under this Article; and
- (b) give him a reasonable opportunity—
  - (i) of objecting to the inclusion of the information on the grounds that it is commercially confidential; and
  - (ii) of making representations to the Department for the purpose of justifying any such objection;

and, if any representations are made, the Department shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

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(5) Where, under paragraph (2) or (4), the Department determines that information is not commercially confidential—

- (a) the information shall not be entered in the register until the end of the period of 21 days from the date on which the determination is notified to the person concerned;
- (b) that person may appeal to the Planning Appeals Commission against the decision;

and, where an appeal is brought in respect of any information, the information shall not be entered in the register until the end of the period of 7 days from the day on which the appeal is finally determined or withdrawn.

(6) Part II of Schedule 2 shall have effect with respect to appeals under paragraph (5).

(7) On receipt of an appeal under paragraph (5) the Planning Appeals Commission shall give notice of the appeal to the Department.

(8) Regulations may make provision with respect to appeals under this Article and in particular as to the period within which and the manner in which appeals are to be brought.

(9) The Department may specify information, or descriptions of information, which the public interest requires to be included in the registers notwithstanding that the information may be commercially confidential.

(10) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this Article at the expiry of the period of 4 years from the date of the determination under which it was excluded; but the person who furnished it may apply to the Department for the information to remain excluded from the register on the ground that it is still commercially confidential and the Department shall determine whether or not that is the case.

(11) Paragraphs (5) to (7) shall apply in relation to a determination under paragraph (10) as they apply in relation to a determination under paragraph (2) or (4).

(12) The Department may, by order, substitute for the period for the time being specified in paragraph (3) such other period as the Department considers appropriate.

(13) Information is, for the purposes of any determination under this Article, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interest of that individual or person.

### **Annual reports**

**37.**—(1) The Department shall, for each financial year, prepare and publish a report on the discharge by the Department of its functions under this Part or under any relevant instrument.

(2) A report under paragraph (1) shall include information as respects—

- (a) the licences respectively applied for, granted, in force, modified, revoked, suspended, surrendered or transferred during the year and the appeals made against decisions taken in respect of them;
- (b) the exercise by the Department of its powers under Article 16 or 30 or any relevant instrument;
- <sup>F45</sup>(c) the implementation by district councils of plans under Article 23, with particular reference to recycling waste;
- (d) the number and description of prosecutions brought under this Part; and
- (e) the cost incurred, and the sums received, by the Department in discharging its functions under this Part.

(3) The Department may require district councils to furnish the Department with the particulars necessary to enable it to comply with paragraphs (1) and (2).

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(4) The Department shall arrange for the report for any year under paragraph (1) to be published not later than the end of the period of 6 months following the end of the year to which the report relates.

(5) In paragraphs (1) and (2) “relevant instrument” means any instrument under section 2(2) of the European Communities Act 1972 under which the Department has functions with respect to waste.

**F45** prosp. rep. by 1997 NI 19

*Registration of carriers of controlled waste*

**Offence of transporting controlled waste without registering**

**38.**—(1) Subject to the following provisions of this Article, if any person who is not a registered carrier of controlled waste, in the course of any business of his or otherwise with a view to profit, transports any controlled waste to or from any place in Northern Ireland he shall be guilty of an offence.

(2) A person shall not be guilty of an offence under this Article in respect of—

- (a) the transport of controlled waste within the same premises between different places in those premises;
- (b) the transport to a place in Northern Ireland of controlled waste which has been brought from a country or territory outside Northern Ireland and is not landed in Northern Ireland until it arrives at that place;
- (c) the transport by air or sea of controlled waste from a place in Northern Ireland to a place outside Northern Ireland.

(3) Regulations may provide that a person shall not be required for the purposes of this Article to be a registered carrier of controlled waste if—

- (a) he is a prescribed person or a person of such a description as may be prescribed; or
- (b) without prejudice to sub-paragraph (a), he is a person in relation to whom the prescribed requirements under the law of any member State are satisfied.

(4) In proceedings against any person for an offence under this Article in respect of the transport of any controlled waste it shall be a defence for that person to show—

- (a) that the waste was transported in an emergency of which notice was given, as soon as practicable after it occurred, to the Department; <sup>[F46]</sup>or
- (b) that he neither knew nor had reasonable grounds for suspecting that what was being transported was controlled waste and took all such steps as it was reasonable to take for ascertaining whether it was such waste; <sup>F47</sup> . . .
- (c) <sup>F47</sup> . . . . .

(5) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) In this Article “emergency”, in relation to the transport of any controlled waste, means any circumstances in which, in order to avoid, remove or reduce any serious danger to the public or serious risk of damage to the environment, it is necessary for the waste to be transported from one place to another without the use of a registered carrier of such waste.

**F46** Word in art. 38(4)(a) inserted (25.6.2007) by Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611 (N.I. 3)), arts. 1(3), **13(1)(a)** (with art. 13(2)); S.R. 2007/294, **art. 2**, Sch.



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**F47** Art. 38(4)(c) and preceding word repealed (25.6.2007) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), 13(1)(b), 20, [Sch.](#) (with art. 13(2)); S.R. 2007/294, [art. 2](#), [Sch.](#)

## Registration of carriers

**39.**—(1) Subject to Article 40, regulations may make provision for the registration of persons with the Department as carriers of controlled waste and, for that purpose, for the establishment and maintenance by the Department, in accordance with the regulations, of such registers as may be prescribed.

(2) Regulations under this Article may—

- (a) make provision with respect to applications for registration;
- (b) impose requirements with respect to registers of carriers of controlled waste;
- (c) provide for the issue of a certificate of registration free of charge to a registered carrier of controlled waste both on his registration and on the making of any alteration of any entry relating to him in a register of such carriers;
- (d) provide for such a certificate to be in such form and to contain such information as may be prescribed;
- (e) provide that the provision to a registered carrier of such copies of a certificate of registration as are provided in addition to the certificate provided free of charge in pursuance of provision made under sub-paragraph (c) is to be made subject to the payment of a charge imposed under the regulations.

(3) Provision contained in any regulations under this Article under paragraph (2)(a) may, in particular, include provision which—

- (a) prescribes the form on which and other manner in which an application is to be made;
- (b) prescribes the period within which an application for the renewal of any registration which is due to expire is to be made;
- (c) imposes requirements with respect to the information which is to be provided by an applicant;
- (d) requires the imposition of charges in respect of the consideration of applications.

(4) Without prejudice to the generality of paragraph (3)(a) and (c)—

- (a) the power to prescribe a form under sub-paragraph (a) includes power to require an application to be made on any form of any description supplied for the purpose by the Department; and
- (b) the power to impose requirements with respect to information under sub-paragraph (c) includes power to make provision requiring an application to be accompanied by such information as may reasonably be required by the Department.

(5) Provision contained in any regulations under this Article under paragraph (2)(b) may, in particular, include provision—

- (a) specifying or describing the information to be incorporated in any register maintained under any such regulations;
- (b) requiring a registered carrier of controlled waste to notify the Department of any change of circumstances affecting information contained in the entry relating to that carrier in that register;
- (c) requiring the Department, to such extent and in such manner as may be prescribed, to make the contents of any such register available for public inspection free of charge; and

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- (d) requiring the Department, on payment of such charges as may be imposed under the regulations, to provide such copies of the contents of any such register to any person applying for a copy as may be prescribed.
- (6) Paragraphs (2) to (5) are without prejudice to the generality of paragraph (1).
- (7) Article 35 shall apply in relation to a register maintained under this Article as it applies in relation to a register maintained under Article 34.

### **Restrictions on power under Article 39**

**40.**—(1) Nothing in any regulations under Article 39 shall authorise the Department to refuse an application for registration except where—

- (a) there has, in relation to that application, been a contravention of the requirements of any regulations made under Article 39(2)(a); or
- (b) the applicant or another relevant person has been convicted of a prescribed offence and, in the opinion of the Department, it is undesirable for the applicant to be authorised to transport controlled waste.

(2) Nothing in any regulations under Article 39 shall authorise the Department to revoke any person's registration as a carrier of controlled waste except where—

- (a) that person or another relevant person has been convicted of a prescribed offence; and
- (b) in the opinion of the Department, it is undesirable for the registered carrier to continue to be authorised to transport controlled waste;

but registration in accordance with any regulations under that Article shall cease to have effect after such period as may be prescribed or if the registered carrier gives written notice requiring the removal of his name from the register.

(3) Regulations under Article 39 may require every registration in respect of a business which is or is to be carried on by 2 or more persons in partnership to be a registration of all the partners and to cease to have effect if any of the partners ceases to be registered or if any person who is not registered becomes a partner.

(4) any regulations under Article 39 shall have the effect of bringing the revocation of any person's registration as a carrier of controlled waste into force except—

- (a) after the end of such period as may be prescribed for appealing against the revocation under Article 41; or
- (b) where that person has indicated, within that period, that he does not intend to make or continue with an appeal.

(5) Article 3(6) shall apply for the purposes of any provision made under paragraph (1) or (2) as it applies for the purposes of Article 3(3)(a).

(6) In determining for the purposes of any provision made under paragraph (1) or (2) whether it is desirable for any individual to be or to continue to be authorised to transport controlled waste, the Department shall have regard, in a case in which a person other than the individual has been convicted of a prescribed offence, to whether that individual has been a party to the carrying on of a business in a manner involving the commission of prescribed offences.

### **Appeals against refusal of registration, etc.**

**41.**—(1) Where a person has applied to be registered in accordance with any regulations under Article 39, he may appeal to the Planning Appeals Commission if—

- (a) his application is refused; or

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(b) the relevant period from the making of the application has expired without his having been registered;

and for the purposes of this paragraph the relevant period is 2 months or, except in the case of an application for the renewal of his registration by a person who is already registered, such longer period as may be agreed between the applicant and the Department.

(2) A person whose registration as a carrier of controlled waste has been revoked may appeal against the revocation to the Planning Appeals Commission.

(3) Part I of Schedule 2 shall have effect with respect to appeals under paragraph (1) or (2).

(4) On receipt of an appeal under paragraph (1) or (2) the Planning Appeals Commission shall give notice of the appeal to the Department.

(5) Where, on such an appeal, the Planning Appeals Commission confirms the decision of the Department the Department shall not register the appellant or, as the case may be, cancel the revocation.

(6) Where, on such an appeal, the Planning Appeals Commission determines that the decision of the Department shall be altered the Department shall register the applicant or, as the case may be, cancel the revocation.

(7) Regulations may make provision with respect to appeals under this Article and in particular as to the period within which and the manner in which appeals are to be brought.

(8) Where an appeal under this Article is made in accordance with regulations under this Article—

(a) by a person whose appeal is in respect of such an application for the renewal of his registration as was made, in accordance with regulations under Article 39, at a time when he was already registered; or

(b) by a person whose registration has been revoked,

that registration shall continue in force, notwithstanding the expiry of the prescribed period or the revocation, until the appeal is disposed of.

(9) For the purposes of paragraph (8) an appeal is disposed of when any of the following occurs, that is to say—

(a) the appeal is withdrawn;

(b) the appellant is notified by the Department that the decision of the Department has been confirmed; or

(c) the Department complies with any determination made by the Planning Appeals Commission to renew the appellant's registration or to cancel the revocation.

### **Duty to produce authority to transport controlled waste**

**42.**—(1) If it reasonably appears to any authorised officer or to a constable that any controlled waste is being or has been transported in contravention of Article 38(1), he may—

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

(b) search any vehicle that appears to him to be a vehicle which is being or has been used for transporting that waste, carry out tests on anything found in any such vehicle and take away for testing samples of anything so found.

(2) Nothing in paragraph (1) shall authorise any person other than a constable in uniform to stop a vehicle on any road.

(3) Subject to the following provisions of this Article, a person who is required under this Article to produce an authority for transporting controlled waste shall do so by producing it forthwith to the

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person making the requirement, by producing it at the prescribed place and within the prescribed period or by sending it to that place within that period.

- (4) A person shall be guilty of an offence under this Article if he—
- (a) intentionally obstructs any authorised officer or constable in the performance of his functions under paragraph (1); or
  - (b) subject to paragraph (5), fails without reasonable excuse to comply with a requirement imposed under paragraph (1).
- (5) A person shall not be guilty of an offence under paragraph (4)(b) unless it is shown—
- (a) that the waste in question was controlled waste; and
  - (b) that that person did transport it to or from a place in Northern Ireland.
- (6) For the purposes of this Article a person's authority for transporting controlled waste is—
- (a) his certificate of registration as a carrier of controlled waste or such a copy of that certificate as satisfies prescribed requirements; or
  - (b) such evidence as may be prescribed that he is not required to be registered as a carrier of controlled waste.
- (7) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) In this Article and Article 43 “authorised officer” means an officer of the Department who is authorised in writing for the purposes of this Article and Article 43.

VALID FROM 11/03/2013

**[<sup>F48</sup>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

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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.]

**F48** Arts. 42, 42A substituted (prosp.) for art. 42 by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), **15**

VALID FROM 11/03/2013

[<sup>F49</sup>**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.

(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).

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(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.]

**F49** Art. 42B inserted (prosp.) by Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611 (N.I. 3)), arts. 1(3), 16

### Seizure and disposal of vehicles used for illegal waste disposal

**43.**—(1) A justice of the peace may issue a warrant in writing to the Department for the seizure of any vehicle if he is satisfied, on complaint on oath,—

- (a) that there are reasonable grounds for believing—
  - (i) that an offence under Article 4<sup>F50</sup> . . . has been committed; and
  - (ii) that that vehicle was used in the commission of the offence;
- (b) that proceedings for that offence have not yet been brought against any person; and
- (c) that the Department has failed, after taking the prescribed steps, to ascertain the name and address of any person who is able to provide the Department with the prescribed information about who was using the vehicle at the time when the offence was committed.

(2) Subject to paragraphs (3) and (4), where a warrant under this Article has been issued to the Department in respect of any vehicle, any authorised officer or any constable may stop the vehicle and, on behalf of the Department, seize the vehicle and its contents.

(3) Nothing in this Article shall authorise any person other than a constable in uniform to stop a vehicle on any road; and an authorised officer may not seize any property under this Article unless he is accompanied by a constable.

(4) A warrant under this Article shall continue in force until its purpose is fulfilled or for a period of one month from the date on which it was issued, whichever first occurs; and any person seizing any property under this Article shall, if required to do so, produce both the warrant and any authority under which he is acting under the warrant.

(5) Where any property has been seized under this Article on behalf of the Department, the Department may, in accordance with regulations, remove it to such place as the Department considers appropriate and may retain custody of it until either—

- (a) it is returned, in accordance with the regulations, to a person who establishes that he is entitled to it; or
- (b) it is disposed of by the Department under a power conferred by the regulations to sell or destroy the property or to deposit it at any place.

(6) Regulations under this Article shall not authorise the Department to sell or destroy any property or to deposit any property at any place unless—

- (a) the following conditions are satisfied, that is to say—
  - (i) the Department has published such notice and taken such other steps (if any) as may be prescribed for informing persons who may be entitled to the property that it has been seized and is available to be claimed; and
  - (ii) the prescribed period has expired without any obligation arising under the regulations for the Department to return the property to any person; or

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(b) the condition of the property requires it to be disposed of without delay.

(7) Regulations under this Article may—

- (a) impose obligations on the Department to return any property which has been seized under this Article to a person who claims to be entitled to it and satisfies such requirements for establishing his entitlement, and such other requirements, as may be prescribed;
- (b) provide for the manner in which the person entitled to any such property is to be determined where there is more than one claim to it;
- (c) provide for the proceeds of sale of any property sold by the Department under the regulations to be applied towards meeting expenses incurred by the Department in exercising its functions under this Article and, in so far as they are not so applied, to be applied in such other manner as may be prescribed;
- (d) make provision which treats a person who establishes that he is entitled to a vehicle as having established for the purposes of regulations under this Article that he is also entitled to its contents.

(8) Subject to regulations under this Article making provision for the sale or destruction of any property or for the disposal of it by depositing it at any place, the Department shall, while any property is in its custody by virtue of a warrant under this Article, take such steps as are reasonably necessary for the safe custody of that property.

(9) Any person who intentionally obstructs any authorised officer or constable in the performance of any function conferred under a warrant under this Article shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**F50** 1997 NI 19

### *Miscellaneous*

#### **Obtaining of information**

**44.—**(1) For the purpose of the discharge of its functions under this Part the Department or a district council may, by notice in writing served on him, require any person to furnish such information specified in the notice as the Department or, as the case may be, the council reasonably considers it needs, in such form and within such period following service of the notice, or at such time, as is so specified.

(2) A person who fails, without reasonable excuse, to comply with a requirement to provide information imposed under paragraph (1) shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine or to both.

#### **Modifications etc. (not altering text)**

**C6** Art. 44(1)(2) modified by S.R. 2003/493, Sch. 3 Pt. I para. 13 (as substituted (8.4.2011) by Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127), regs. 1(1), 40 (with reg. 9(2)))

#### **Provisions relating to legal proceedings and civil liability**

**45.—**(1) Where a person appeals against a decision of a court of summary jurisdiction dismissing an appeal against any requirement imposed under this Part which was suspended pending

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determination of that appeal, the requirement shall again be suspended pending the determination of the appeal.

(2) Where an appeal against a decision of a district council lies to a court of summary jurisdiction under any provision of this Part, the council shall include in any document by which it notifies the decision to the person concerned a statement indicating that such an appeal lies and specifying the time within which it must be brought.

(3) Where on an appeal to any court against or arising out of a decision of a district council under this Part the court varies or reverses the decision the council shall act in accordance with the court's decision.

(4) Where any damage is caused by waste which has been deposited in or on land, any person who deposited it, or knowingly caused or knowingly permitted it to be deposited, in either case so as to commit an offence under Article 4(1) or 31(2), is liable for the damage except where the damage—

- (a) was due wholly to the fault of the person who suffered it; or
- (b) was suffered by a person who voluntarily accepted the risk of the damage being caused;

but without prejudice to any liability arising otherwise than under this paragraph.

(5) The matters which may be proved by way of defence under Article 4(7) may be proved also by way of defence to an action brought under paragraph (4).

(6) In paragraph (4)—

“damage” includes the death of, or injury to, any person (including any disease and any impairment of physical or mental condition); and

“fault” has the same meaning as in the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948.

(7) For the purposes of the following statutory provisions—

- (a) the Fatal Accidents (Northern Ireland) Order 1977,
- (b) the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948; and
- (c) the Limitation (Northern Ireland) Order 1989,

any damage for which a person is liable under paragraph (4) shall be treated as due to his fault.

### Supplementary provisions relating to pipes

46.—(1) Where a district council provides pipes under [<sup>F51</sup>Article 20(5)(a)] or 25(3), the council shall prepare a map showing the location of the pipes and shall secure that a copy of the map is available at its principal offices for inspection by the public free of charge at all reasonable hours.

[<sup>F52</sup>(2) Article 236(2), (3), (10) and (13) of the Water and Sewerage Services (Northern Ireland) Order 2006 shall have effect as if references to a sewer included any pipe provided as mentioned in paragraph (1) and references to a sewerage or relevant undertaker were references to a district council.]

(3) References to pipes in this Article include associated works.

**F51** Words in art. 46(1) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 39(2)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

**F52** Art. 46(2) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 39(3)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)



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### **Transitional provisions with respect to licences**

**47.**—(1) This Article has effect for the purposes of the transition from the provisions of Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978 (“the 1978 Order”) to the corresponding provisions of this Part and in this Article—

“existing disposal licence” means a disposal licence under Article 7 of the 1978 Order subsisting on the day appointed under Article 1(2) for the repeal of Articles 5 to 12 of the 1978 Order and “relevant appointed day for licences” shall be construed accordingly;

“existing disposal plan” means a plan under Article 4 of the 1978 Order subsisting on the day appointed under Article 1(2) for the repeal of that Article and “relevant appointed day for plans” shall be construed accordingly;

“existing resolution of a district council” means a resolution under Article 13 of the 1978 Order in force on the day appointed under Article 1(2) for the repeal of that Article and “relevant appointed day for resolutions” shall be construed accordingly.

(2) An existing disposal licence shall, on and after the relevant appointed day for licences, be treated as a site licence and shall continue in force<sup>F53</sup> in accordance with Article 6(10)]; and accordingly it shall be variable and subject to revocation or suspension under this Part and may not be surrendered or transferred except under this Part.

(3) An existing resolution of a district council shall, on and after the relevant appointed day for resolutions, have effect as if it were a waste management licence subject to the conditions specified in the resolution pursuant to Article 13(3)(d) of the 1978 Order and shall continue in force<sup>F53</sup> in accordance with Article 6(10)]; and accordingly it shall be variable and subject to revocation or suspension under this Part and may not be surrendered or transferred except under this Part.

(4) An existing disposal plan of a district council shall, on and after the relevant appointed day for plans, be treated as the plan of that council under Article 23 and shall continue in force for a period of 3 years from the relevant appointed day for plans; and accordingly that Article shall have effect as if references in it to “the plan” included the existing disposal plan of that council.

**F53** 2002 NI 7

### **This Part and radioactive substances**

**48.** Except as provided by regulations under this Article, nothing in this Part applies to radioactive waste within the meaning of the Radioactive Substances Act 1993; but regulations may—

- (a) provide for prescribed provisions of this Part to have effect with such modifications as the Department considers appropriate for the purposes of dealing with such radioactive waste;
- (b) make such modifications of the Radioactive Substances Act 1993 and any other statutory provision as the Department considers appropriate.

## **PART III**

### **CONTAMINATED LAND**

#### **Interpretation of Part III**

**49.**—(1) In this Part—

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“appropriate person” means any person who is an appropriate person, determined in accordance with Article 54, to bear responsibility for any thing which is to be done by way of remediation in any particular case;

“charging notice” means a notice under Article 61(3);

“contaminated land” is any land which appears to a district council in whose district it is situated to be in such a condition, by reason of substances in, on or under the land, that—

- (a) significant harm is being caused or there is a significant possibility of such harm being caused; or
- (b) pollution of waterways or underground strata is being, or is likely to be, caused;

and, in determining whether any land appears to be such land, a district council shall, subject to paragraph (2), act in accordance with guidance issued by the Department in accordance with Article 69 with respect to the manner in which that determination is to be made;

“enforcing authority” means—

- (a) in relation to a special site, the Department;
- (b) in relation to contaminated land other than a special site, the district council in whose district the land is situated;

“pollution of waterways or underground strata” means the entry into waterways or underground strata of any poisonous, noxious or polluting matter or any solid waste matter;

“remediation” means—

- (a) the doing of anything for the purpose of assessing the condition of—
  - (i) the contaminated land in question;
  - (ii) any waterways or underground strata affected by that land; or
  - (iii) any land adjoining or adjacent to that land;
- (b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose—
  - (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any pollution of waterways or underground strata, by reason of which the contaminated land is such land; or
  - (ii) of restoring the land, waterways or underground strata to their former state; or
- (c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land, waterways or underground strata;

“remediation declaration” means a document prepared and published under Article 56(6);

“remediation notice” means a notice under Article 53(1);

“remediation statement” means a document prepared and published under Article 56(7);

“required to be designated as a special site” shall be construed in accordance with Article 51(8);

“special site” means any contaminated land—

- (a) which has been designated as such a site under Article 51(7) or 52(4); and
- (b) whose designation as such has not been terminated by the Department under Article 62(4);

“waterways” has the same meaning as in<sup>F54</sup> Article 2(2) of the Water (Northern Ireland) Order 1999];

“underground strata” has the same meaning as in<sup>F54</sup> Article 2(2) of the Water (Northern Ireland) Order 1999].

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(2) For the purposes of this Part, the questions—

- (a) what harm is to be regarded as “significant”,
- (b) whether the possibility of significant harm being caused is “significant”,
- (c) whether pollution of waterways or underground strata is being, or is likely to be caused,

shall be determined in accordance with guidance issued for the purpose by the Department in accordance with Article 69.

(3) Without prejudice to the guidance that may be issued under paragraph (2), guidance under sub-paragraph (a) of that paragraph may make provision for different degrees of importance to be assigned to, or for the disregard of,—

- (a) different descriptions of living organisms or ecological systems;
- (b) different descriptions of places; or
- (c) different descriptions of harm to health or property, or other interference;

and guidance under sub-paragraph (b) of that paragraph may make provision for different degrees of possibility to be regarded as “significant” (or as not being “significant”) in relation to different descriptions of significant harm.

(4) Waterways or underground strata are “affected by” contaminated land if (and only if) it appears to the enforcing authority that the contaminated land in question is, for the purposes of paragraph (1), in such a condition, by reason of substances in, on or under the land, that significant harm to, or pollution of, those waterways or underground strata is being, or is likely to be caused.

**F54** 1999 NI 6

### **Identification of contaminated land**

**50.**—(1) Every district council shall cause its district to be inspected for the purpose—

- (a) of identifying contaminated land; and
- (b) of enabling the council to decide whether any such land is land which is required to be designated as a special site.

(2) In performing its functions under paragraph (1) a district council shall act in accordance with any guidance issued for the purpose by the Department in accordance with Article 69.

(3) If a district council identifies any contaminated land in its district, it shall give notice of that fact to—

- (a) the Department;
- (b) the owner of the land;
- (c) on who appears to the council to be in occupation of the whole or any part of the land; and
- (d) each person who appears to the council to be an appropriate person;

and any notice given under this paragraph shall state by virtue of which sub-paragraph (a) to (d) it is given.

(4) If, at any time after a district council has given any person a notice under paragraph (3)(d) in respect of any land, it appears to the enforcing authority that another person is an appropriate person, the enforcing authority shall give notice to that other person—

- (a) of the fact that the district council has identified the land in question as contaminated land; and
- (b) that he appears to the enforcing authority to be an appropriate person.

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## Identification and designation of special sites

**51.**—(1) If at any time it appears to a district council that any contaminated land in its district might be land which is required to be designated as a special site, the council—

- (a) shall decide whether or not the land is land which is required to be so designated; and
- (b) if the council decides that the land is land which is required to be so designated, shall—
  - (i) give notice of that decision to the Department and to the relevant persons; and
  - (ii) send to the Department a statement of its reasons for reaching the decision.

(2) For the purposes of this Article, “the relevant persons” at any time in the case of any land are the persons who at that time fall within sub-paragraphs (a) to (c), that is to say—

- (a) the owner of the land;
- (b) any person who appears to the district council concerned to be in occupation of the whole or any part of the land; and
- (c) each person who appears to the council to be an appropriate person.

(3) Before making a decision under paragraph (1)(a) in any particular case, a district council shall request the advice of the Department, and in making its decision shall have regard to any advice given by the Department in response to the request.

(4) If at any time the Department considers that any contaminated land is land which is required to be designated as a special site, the Department may give notice of that fact to the district council in whose district the land is situated.

(5) Where notice under paragraph (4) is given to a district council, the council shall decide whether the land in question—

- (a) is land which is required to be designated as a special site, or
- (b) is not land which is required to be so designated,

and shall give notice of that decision to the Department and to the relevant persons and shall send to the Department a statement of its reasons for reaching the decision.

(6) Where a district council makes a decision falling within paragraph (1)(b) or (5)(a), the decision shall, subject to Article 52, take effect from—

- (a) the expiration of the period of 21 days from the day on which the notice required by virtue of paragraph (1)(b)(i) or, as the case may be, (5)(a) is given to the Department;
- (b) if the Department gives notice to the district council in question that it agrees with the decision, the date of the giving of that notice;

whichever first occurs, and where a decision takes effect under this paragraph, the council shall give notice of that fact to the relevant persons.

(7) Where a decision that any land is land which is required to be designated as a special site takes effect in accordance with paragraph (6), the notice given under paragraph (1)(b)(i) or, as the case may be, (5)(a) shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.

(8) For the purposes of this Part, land is required to be designated as a special site if, and only if, it is land of a description prescribed for the purposes of this paragraph.

(9) Without prejudice to the generality of the power to prescribe any description of land for the purposes of paragraph (8), the Department, in deciding whether to prescribe a particular description of contaminated land for those purposes, may, in particular, have regard to—

- (a) whether land of the description in question appears to the Department to be land which is likely to be in such a condition, by reason of substances in, on or under the land that—
  - (i) serious harm would or might be caused, or

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- (ii) serious pollution of waterways or underground strata would be, or would be likely to be, caused; or
- (b) whether the district council is likely to have expertise in dealing with the kind of significant harm, or pollution of waterways or underground strata, by reason of which land of the description in question is contaminated land.

### **Referral of special site decisions to the Planning Appeals Commission**

**52.**—(1) In any case where—

- (a) a district council gives notice of a decision to the Department under Article 51(1)(b)(i) or (5)(b), but
- (b) before the expiration of the period of 21 days from the day on which that notice is so given, the Department gives the council notice that it disagrees with the decision, together with a statement of its reasons for disagreeing,

the council shall refer the decision to the Planning Appeals Commission.

(2) Part III of Schedule 2 shall have effect where a decision is referred to the Planning Appeals Commission under paragraph (1).

(3) Where a decision is referred to the Planning Appeals Commission under paragraph (1)—

- (a) the council shall give notice of that referral to the Department and to the relevant persons;
- (b) the Planning Appeals Commission shall confirm or reverse the decision with respect to the whole or any part of the land to which it relates;
- (c) the council shall give notice of the decision of the Planning Appeals Commission on the referral to the Department and to the relevant persons; and
- (d) the decision shall not take effect until the day after that on which the notice required by sub-paragraph (c) has been given to the persons there mentioned and shall then take effect as confirmed or reversed by the Planning Appeals Commission.

(4) Where a decision which takes effect in accordance with paragraph (3)(d) is to the effect that at least some land is land which is required to be designated as a special site, the notice given under paragraph (3)(c) shall have effect, as from the time when the decision takes effect, as the designation of that land as such a site.

(5) In this Article “the relevant persons” has the same meaning as in Article 51.

### **Duty of enforcing authority to require remediation of contaminated land, etc.**

**53.**—(1) In any case where—

- (a) any land has been designated as a special site under Article 51(7) or 52(4), or
- (b) a district council has identified any contaminated land (other than a special site) in its district,

the enforcing authority shall, in accordance with such procedure as may be prescribed and subject to the following provisions of this Part, serve on each person who is an appropriate person a notice (a “remediation notice”) specifying what that person is to do by way of remediation and the periods within which he is required to do each of the things so specified.

(2) Different remediation notices requiring the doing of different things by way of remediation may be served on different persons in consequence of the presence of different substances in, on or under any land or waters.

(3) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, the remediation notice served on each of them shall state

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the proportion, determined under Article 54(7), of the cost of doing that thing which each of them respectively is liable to bear.

(4) The only things by way of remediation which the enforcing authority may do, or require to be done, under this Part are things which it considers reasonable, having regard to—

- (a) the cost which is likely to be involved; and
- (b) the seriousness of the harm, or pollution of waterways or underground strata, in question.

(5) In determining for any purpose of this Part—

- (a) what is to be done (whether by an appropriate person, a district council or any other person) by way of remediation in any particular case,
- (b) the standard to which any land is, or waterways or underground strata are, to be remediated pursuant to the notice, or
- (c) what is, or is not, to be regarded as reasonable for the purposes of paragraph (4),

a district council shall have regard to any guidance issued for the purpose by the Department.

(6) Regulations may make provision for or in connection with—

- (a) the form or content of remediation notices; or
- (b) any steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a remediation notice.

#### **Determination of the appropriate person to bear responsibility for remediation**

54.—(1) This Article has effect for the purpose of determining who is the appropriate person to bear responsibility for any particular thing which the enforcing authority determines is to be done by way of remediation in any particular case.

(2) Subject to the following provisions of this Article, any person, or any of the persons, who caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is such land to be in, on or under that land is an appropriate person.

(3) A person shall only be an appropriate person under paragraph (2) in relation to things which are to be done by way of remediation which are to any extent referable to substances which he caused or knowingly permitted to be present in, on or under the contaminated land in question.

(4) If no person has, after reasonable inquiry, been found who is under paragraph (2) an appropriate person to bear responsibility for the things which are to be done by way of remediation, the owner or occupier for the time being of the contaminated land in question is an appropriate person.

(5) If, in consequence of paragraph (3), there are things which are to be done by way of remediation in relation to which no person has, after reasonable inquiry, been found who is an appropriate person under paragraph (2), the owner or occupier for the time being of the contaminated land in question is an appropriate person in relation to those things.

(6) Where two or more persons would, apart from this paragraph, be appropriate persons in relation to any particular thing which is to be done by way of remediation, the enforcing authority shall determine whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing.

(7) Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, they shall be liable to bear the cost of doing that thing in proportions determined by the enforcing authority.

(8) For the purposes of paragraphs (6) or (7), where the enforcing authority is a district council, any determination made by the council shall be in accordance with guidance issued for the purposes of those paragraphs which shall be issued in accordance with Article 69.

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(9) A person who has caused or knowingly permitted any substance (“substance A”) to be in, on or under any land shall also be taken for the purposes of this Article to have caused or knowingly permitted there to be in, on or under that land any substance which is there as a result of a chemical reaction or biological process affecting substance A.

(10) A thing which is to be done by way of remediation may be regarded for the purposes of this Part as referable to the presence of any substance notwithstanding that the thing in question would not have to be done—

- (a) in consequence only of the presence of that substance in any quantity; or
- (b) in consequence only of the quantity of that substance which any particular person caused or knowingly permitted to be present.

### **Grant of, and compensation for, rights of entry, etc.**

**55.**—(1) A remediation notice may require an appropriate person to do things by way of remediation, notwithstanding that he is not entitled to do those things.

(2) Any person whose consent is required before any thing required by a remediation notice may be done shall grant, or join in granting, such rights in relation to any of the relevant land or waters as will enable the appropriate person to comply with any requirements imposed by the remediation notice.

(3) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult every person who appears to the authority—

- (a) to be the owner or occupier of any of the relevant land or waters, and
- (b) to be a person who might be required by paragraph (2) to grant, or join in granting, any rights,

concerning the rights which that person may be so required to grant.

(4) Paragraph (3) shall not preclude the service of a remediation notice in any case where it appears to the enforcing authority that the contaminated land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of waterways or underground strata, being caused.

(5) A person who grants, or joins in granting, any rights under paragraph (2) shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the appropriate person compensation of such amount as may be determined in such manner as may be prescribed.

(6) Without prejudice to the generality of the regulations that may be made under paragraph (5), regulations by virtue of that paragraph may make such provision in relation to compensation under this Article as may be made by regulations under paragraph (4) of Article 7 in relation to compensation under that Article.

(7) In this Article, “relevant land or waters” means—

- (a) the contaminated land in question;
- (b) any waterways or underground strata affected by that land; or
- (c) any land adjoining or adjacent to that land or those waterways or underground strata.

### **Restrictions and prohibitions on serving remediation notices**

**56.**—(1) Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult—

- (a) the person on whom the notice is to be served,

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- (b) the owner of any land to which the notice relates,
  - (c) any person who appears to that authority to be in occupation of the whole or any part of the land, and
  - (d) any person of such other description as may be prescribed,
- concerning what is to be done by way of remediation.

(2) Regulations may make provision for, or in connection with, steps to be taken for the purposes of paragraph (1).

(3) No remediation notice shall be served on any person by reference to any contaminated land during any of the following periods, that is to say—

- (a) the period—
  - (i) beginning with the identification of the contaminated land in question under Article 50(1); and
  - (ii) ending with the expiration of the period of 3 months from the day on which the notice required by paragraph (3)(d) or, as the case may be, paragraph (4) of Article 50 is given to that person in respect of that land;
- (b) if a decision falling within sub-paragraph (b) of Article 51(1) is made in relation to the contaminated land in question, the period beginning with the making of the decision and ending with the expiration of the period of 3 months beginning with—
  - (i) in a case where the decision is not referred to the Planning Appeals Commission under Article 52, the day on which the notice required by Article 51(6) is given, or
  - (ii) in a case where the decision is referred to the Planning Appeals Commission under Article 52, the day on which the district council gives the notice required by paragraph (3)(c) of that Article;
- (c) if the Department gives a notice under paragraph (4) of Article 51 to a district council in relation to the contaminated land in question, the period beginning with the day on which that notice is given and ending with the expiration of the period of 3 months beginning with—
  - (i) in a case where notice is given under paragraph (6) of that Article, the day on which that notice is given;
  - (ii) in a case where the council makes a decision falling within paragraph (5)(b) of that Article and the Department fails to give notice under sub-paragraph (b) of Article 52(1), the day following the expiration of the period of 21 days mentioned in that sub-paragraph; or
  - (iii) in a case where the council makes a decision falling within Article 51(5)(b) which is referred under Article 52 to the Planning Appeals Commission, the day on which the council gives the notice required by paragraph (3)(c) of that Article.

(4) Neither paragraph (1) nor paragraph (3) shall preclude the service of a remediation notice in any case where it appears to the enforcing authority that the land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of waterways or underground strata, being caused.

(5) The enforcing authority shall not serve a remediation notice on a person if and so long as any one or more of the following conditions is for the time being satisfied in the particular case, that is to say—

- (a) the authority is satisfied, in consequence of Article 53(4) and (5), that there is nothing by way of remediation which could be specified in a remediation notice served on that person;



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- (b) the authority is satisfied that appropriate things are being, or will be, done by way of remediation without the service of a remediation notice on that person;
  - (c) it appears to the authority that the person on whom the notice would be served is the authority itself; or
  - (d) the authority is satisfied that the powers conferred on it by Article 60 to do what is appropriate by way of remediation are exercisable.
- (6) Where the enforcing authority is precluded under Article 53(4) or (5) from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice, the authority shall prepare and publish a document (a “remediation declaration”) which shall record—
- (a) the reasons why the authority would have specified that thing; and
  - (b) the grounds on which the authority is satisfied that it is precluded from specifying that thing in such a notice.
- (7) In any case where the enforcing authority is precluded, by virtue of sub-paragraph (b), (c) or (d) of paragraph (5), from serving a remediation notice, the responsible person shall prepare and publish a document (a “remediation statement”) which shall record—
- (a) the things which are being, have been, or are expected to be, done by way of remediation in the particular case;
  - (b) the name and address of the person who is doing, has done, or is expected to do, each of those things; and
  - (c) the periods within which each of those things is being, or is expected to be, done.
- (8) For the purposes of paragraph (7), the “responsible person” is—
- (a) in a case where the condition in sub-paragraph (b) of paragraph (5) is satisfied, the person who is doing or has done, or who the enforcing authority is satisfied will do, the things there mentioned; or
  - (b) in a case where the condition in sub-paragraph (c) or (d) of that paragraph is satisfied, the enforcing authority.
- (9) If a person who is required under paragraph (8)(a) to prepare and publish a remediation statement fails to do so within a reasonable time after the date on which a remediation notice specifying the things there mentioned could, apart from paragraph (5), have been served, the enforcing authority may itself prepare and publish the statement and may recover its reasonable costs of doing so from that person.
- (10) Where the enforcing authority has been precluded by virtue only of paragraph (5) from serving a remediation notice on an appropriate person but—
- (a) none of the conditions in that paragraph is for the time being satisfied in the particular case, and
  - (b) the authority is not precluded by any other provision of this Part from serving a remediation notice on the appropriate person,
- the authority shall serve a remediation notice on that person; and any such notice may be so served without any further endeavours by the authority to consult persons under paragraph (1), if and to the extent that that person has been consulted under that paragraph concerning the things which will be specified in the notice.

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### **[<sup>F55</sup>Restrictions on liability relating to the pollution of waterways and underground strata**

**56A.**—(1) This Article applies where any land is contaminated land by virtue of paragraph (b) of the definition of “contaminated land” in Article 49(1) (whether or not the land is also contaminated land by virtue of paragraph (a) of that definition).

(2) Where this Article applies, no remediation notice given in consequence of the land in question being contaminated land shall require a person who is an appropriate person by virtue of Article 54(4) or (5) to do anything by way of remediation to that or any other land, or any waterway or underground strata, which he could not have been required to do by such a notice had paragraph (b) of the definition of “contaminated land” in Article 49(1) (and all other references to pollution of waterways and underground strata) been omitted from this Part.

(3) Nothing in paragraph (2) prevents the enforcing authority from doing anything by way of remediation under Article 60 which it could have done apart from that paragraph, but the authority shall not be entitled under Article 61 to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by paragraph (2) from requiring that person to do.]

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### **[<sup>F56</sup>Liability in respect of contaminating substances which escape to other land**

**57.**—(1) A person who has caused or knowingly permitted any substances to be in, on or under any land shall also be taken for the purposes of this Part to have caused or, as the case may be, knowingly permitted those substances to be in, on or under any other land to which they appear to have escaped.

(2) Paragraphs (3) and (4) apply in any case where it appears that any substances are or have been in, on or under any land (in this Article referred to as “land A”) as a result of their escape, whether directly or indirectly, from other land in, on or under which a person caused or knowingly permitted them to be.

(3) Where this paragraph applies, no remediation notice shall require a person—

- (a) who is the owner or occupier of land A, and
- (b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation to any land or waters (other than land or waters of which he is the owner or occupier) in consequence of land A appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of waterways or underground strata is being, or is likely to be caused.

(4) Where this paragraph applies, no remediation notice shall require a person—

- (a) who is the owner or occupier of land A, and
- (b) who has not caused or knowingly permitted the substances in question to be in, on or under that land,

to do anything by way of remediation in consequence of any further land in, on or under which those substances or any of them appear to be or to have been present as a result of their escape from land A (“land B”) appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of waterways or underground strata is being, or is likely to be caused, unless he is also the owner or occupier of land B.

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(5) In any case where—

- (a) a person ( “person A”) has caused or knowingly permitted any substances to be in, on, or under any land,
- (b) another person ( “person B”) who has not caused or knowingly permitted those substances to be in, on or under that land becomes the owner or occupier of that land, and
- (c) the substances, or any of the substances, mentioned in sub-paragraph (a) appear to have escaped to other land,

no remediation notice shall require person B to do anything by way of remediation to that other land in consequence of the apparent acts or omissions of person A, except to the extent that person B caused or knowingly permitted the escape.

(6) Nothing in paragraph (3), (4) or (5) prevents the enforcing authority from doing anything by way of remediation under Article 60 which it could have done apart from that paragraph, but the authority may not under Article 61 recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by paragraph (3), (4) or (5) from requiring that person to do.

(7) In this Article, “appear” means appear to the enforcing authority.

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### **Appeals against remediation notices**

**58.**—(1) A person on whom a remediation notice is served may, within the period of 21 days from the day on which the notice is served, appeal against the notice—

- (a) if it was served by a district council, to a court of summary jurisdiction; or
- (b) if it was served by the Department, to the Planning Appeals Commission;

and in the following provisions of this Article “the appellate authority” means the court of summary jurisdiction or, as the case may be, the Planning Appeals Commission.

(2) Part I of Schedule 2 shall have effect with respect to appeals to the Planning Appeals Commission under paragraph (1).

(3) On receipt of an appeal under paragraph (1) the Planning Appeals Commission shall give notice of the appeal to the Department.

(4) On any appeal under paragraph (1) the appellate authority—

- (a) shall quash the notice, if it is satisfied that there is a material defect in the notice; but
- (b) subject to that, may confirm the remediation notice, with or without modification, or quash it.

(5) Where an appellate authority confirms a remediation notice, with or without modification, it may extend the period specified in the notice for doing what the notice requires to be done.

(6) Regulations may—

- (a) make provision with respect to appeals under this Article and in particular as to the period within which and the manner in which appeals are to be brought;
- (b) prescribe the cases in which a remediation notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
- (c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the remediation notice against which he is appealing;

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- (d) prescribe the cases in which the appellant may claim that a remediation notice should have been served on some other person and prescribe the procedure to be followed in those cases.

### **Offences of not complying with a remediation notice**

**59.**—(1) If a person on whom an enforcing authority serves a remediation notice fails, without reasonable excuse, to comply with any of the requirements of the notice, he shall be guilty of an offence.

(2) Where the remediation notice in question is one which was required by Article 53(3) to state, in relation to the requirement which has not been complied with, the proportion of the cost involved which the person charged with the offence is liable to bear, it shall be a defence for that person to prove that the only reason why he has not complied with the requirement is that one or more of the other persons who are liable to bear a proportion of that cost refused, or was not able, to comply with the requirement.

(3) Except in a case falling within paragraph (4), a person who commits an offence under paragraph (1) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale and if, in the case of a continuing offence under paragraph (1), the offender continues to fail to comply with any of the requirements of the notice he 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 and before the enforcing authority has begun to exercise its powers under Article 60(3)(c).

(4) A person who commits an offence under paragraph (1) in a case where the contaminated land to which the remediation notice relates is industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £20,000 or such greater sum as the Secretary of State may, by order, substitute and if, in the case of a continuing offence under paragraph (1) in relation to such contaminated land, the offender continues to fail to comply with any requirements of the notice he shall be guilty of a further offence and shall be liable to an additional fine not exceeding one-tenth of that sum for each day on which the offence is continued and before the enforcing authority has begun to exercise its powers by virtue of Article 60(3)(c).

(5) If the enforcing authority is of the opinion that proceedings for an offence under this Article would afford an ineffectual remedy against a person who has failed to comply with any of the requirements of a remediation notice which that authority has served on him, that authority may take proceedings in the High Court for the purpose of securing compliance with the remediation notice.

(6) In this Article, “industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purpose of manufacturing.

(7) An order under paragraph (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

### **Powers of the enforcing authority to carry out remediation**

**60.**—(1) Where this Article applies, the enforcing authority may, in a case falling within subparagraph (a) or (b) of Article 53(1), do what is appropriate by way of remediation to the relevant land or waters.

(2) Paragraph (1) shall not confer power on the enforcing authority to do anything by way of remediation if the authority would, in the particular case, be precluded by Article 70 from serving a remediation notice requiring that thing to be done.

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- (3) This Article applies in each of the following cases, that is to say—
- (a) where the enforcing authority considers it necessary to do anything itself by way of remediation for the purpose of preventing the occurrence of any serious harm, or serious pollution of waterways or underground strata, of which there is imminent danger;
  - (b) where an appropriate person has entered into a written agreement with the enforcing authority for that authority to do, at the cost of that person, that which he would otherwise be required to do under this Part by way of remediation;
  - (c) where a person on whom the enforcing authority serves a remediation notice fails to comply with any of the requirements of the notice;
  - (d) where the enforcing authority is precluded by<sup>F57</sup> Article 56A or 57] from including something by way of remediation in a remediation notice;
  - (e) where the enforcing authority considers that, were it to do some particular thing by way of remediation, it would decide under paragraph (2) of Article 61 or any guidance issued under that paragraph,—
    - (i) not to seek to recover under paragraph (1) of that Article any of the reasonable cost incurred by it in doing that thing; or
    - (ii) to seek so to recover only a portion of that cost;
  - (f) where no person has, after reasonable inquiry, been found who is an appropriate person in relation to any particular thing.
- (4) Subject to Article 53(4) and (5), for the purposes of this Article, the things which it is appropriate for the enforcing authority to do by way of remediation are—
- (a) in a case falling within sub-paragraph (a) of paragraph (3), anything by way of remediation which the enforcing authority considers necessary for the purpose mentioned in that sub-paragraph;
  - (b) in a case falling within sub-paragraph (b) of that paragraph, anything specified in, or determined under, the agreement mentioned in that sub-paragraph;
  - (c) in a case falling within sub-paragraph (c) of that paragraph, anything which the person mentioned in that sub-paragraph was required to do under the remediation notice;
  - (d) in a case falling within sub-paragraph (d) of that paragraph, anything by way of remediation which the enforcing authority is precluded by<sup>F57</sup> Article 56A or 57] from including in a remediation notice;
  - (e) in a case falling within sub-paragraph (e) or (f) of that paragraph, the particular thing mentioned in the sub-paragraph in question.
- (5) In this Article “the relevant land or waters” means—
- (a) the contaminated land in question;
  - (b) any waterways or underground strata affected by that land; or
  - (c) any land adjoining or adjacent to that land or those waterways or underground strata.

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### **Recovery of, and security for, the cost of remediation by the enforcing authority**

**61.**—(1) Where, under Article 60(3)(a), (c), (e) or (f), the enforcing authority does any particular thing by way of remediation, it may, subject to<sup>F58</sup> Article 56A(3) or 57(6)], recover the reasonable cost incurred in doing it from the appropriate person or, if there are two or more appropriate persons

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in relation to the thing in question, from those persons in proportions determined pursuant to Article 54(7).

(2) In deciding whether to recover the cost, and, if so, how much of the cost, which it may recover under paragraph (1), the enforcing authority shall have regard—

- (a) to any hardship which the recovery may cause to the person from whom the cost is recoverable; and
- (b) where the enforcing authority is a district council, to any guidance issued by the Department for the purposes of this paragraph.

(3) Paragraph (4) shall apply in any case where—

- (a) any cost is recoverable under paragraph (1) from a person—
  - (i) who is the owner of any premises which consist of or include the contaminated land in question; and
  - (ii) who caused or knowingly permitted the substances, or any of the substances, by reason of which the land is contaminated land to be in, on or under the land; and
- (b) the enforcing authority serves a notice under this paragraph (a “charging notice”) on that person.

(4) Where this paragraph applies—

- (a) the cost shall carry interest, at such reasonable rate as the enforcing authority may determine, from the date of service of the notice until the whole amount is paid; and
- (b) subject to the following provisions of this Article, the cost and accrued interest shall be a charge on the premises mentioned in paragraph (3)(a)(i).

(5) A charging notice shall—

- (a) specify the amount of the cost which the enforcing authority claims is recoverable;
- (b) state the effect of paragraph (4) and the rate of interest determined by the authority under that paragraph; and
- (c) state the effect of paragraphs (7) and (8).

(6) On the date on which an enforcing authority serves a charging notice on a person, the authority shall also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.

(7) Subject to any order under paragraph (9)(b) or (c), the amount of any cost specified in a charging notice and the accrued interest shall be a charge on the estate in the premises—

- (a) as from the end of the period of 21 days from the service of the charging notice, or
- (b) where an appeal is brought under paragraph (8), as from the final determination or (as the case may be) the withdrawal, of the appeal,

until the cost and interest are recovered.

(8) A person served with a charging notice or a copy of a charging notice may appeal against the notice to a county court within the period of 21 days beginning with the date of service.

(9) On an appeal under paragraph (8), the court may—

- (a) confirm the notice without modification;
- (b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it; or
- (c) order that the notice is to be of no effect.

(10) Regulations may make provision with respect to—

- (a) the grounds on which appeals under this Article may be made; or

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(b) the procedure on any such appeal.

(11) A charge under this Article may be recovered by the same means and in the like manner in all respects as if it were a mortgage by deed created by the owner of the estate in favour of the enforcing authority and, for the recovery thereof, the enforcing authority may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgages by deed.

(12) Where any cost is a charge on premises under this Article, the enforcing authority may by order declare the cost to be payable with interest by instalments within the specified period until the whole amount is paid.

(13) In paragraph (12)—

“interest” means interest at the rate determined by the enforcing authority under paragraph (4); and

“the specified period” means such period of 30 years or less from the date of service of the charging notice as is specified in the order.

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### Special sites

**62.**—(1) If, in a case where a district council has served a remediation notice, the contaminated land in question becomes a special site, the Department may adopt the remediation notice and, if it does so,—

- (a) it shall give notice of its decision to adopt the remediation notice to the appropriate person and to the district council;
- (b) the remediation notice shall have effect, as from the time at which the Department decides to adopt it, as a remediation notice given by the Department; and
- (c) the validity of the remediation notice shall not be affected by—
  - (i) the contaminated land having become a special site;
  - (ii) the adoption of the remediation notice by the Department; or
  - (iii) anything in sub-paragraph (b).

(2) Where a district council has, by virtue of Article 60, begun to do any thing, or any series of things, by way of remediation—

- (a) the council may continue doing that thing, or that series of things, by virtue of that Article, notwithstanding that the contaminated land in question becomes a special site; and
- (b) Article 61 shall apply in relation to the reasonable cost incurred by the council in doing that thing or those things as if that council were the enforcing authority.

(3) If and so long as any land is a special site, the Department may from time to time inspect that land for the purpose of keeping its condition under review.

(4) If it appears to the Department that a special site is no longer land which is required to be designated as such a site, the Department may give notice to the district council in whose district the site is situated, terminating the designation of the land in question as a special site as from such date as may be specified in the notice.

### Registers

**63.**—(1) Every enforcing authority shall maintain a register containing prescribed particulars of or relating to—

- (a) remediation notices served by that authority;

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- (b) appeals against any such remediation notices;
  - (c) remediation statements or remediation declarations prepared and published under Article 56;
  - (d) appeals against charging notices served by that authority;
  - (e) notices under paragraph (1)(b)(i) or (5)(a) of Article 51 which have effect by virtue of paragraph (7) of that Article as the designation of any land as a special site;
  - (f) notices under paragraph (3)(c) of Article 52 which have effect by virtue of paragraph (4) of that Article as the designation of any land as a special site;
  - (g) notices given by or to the enforcing authority under Article 62(4) terminating the designation of any land as a special site;
  - (h) notices given to that authority by persons—
    - (i) on whom a remediation notice has been served, or
    - (ii) who are or were required by virtue of Article 56(8)(a) to prepare and publish a remediation statement,
 of what they claim has been done by them by way of remediation;
  - (j) notices given to that authority by owners or occupiers of land—
    - (i) in respect of which a remediation notice has been served, or
    - (ii) in respect of which a remediation statement has been prepared and published,
 of what they claim has been done on the land in question by way of remediation;
  - (k) convictions for such offences under Article 59 as may be prescribed;
  - (l) such other matters relating to contaminated land as may be prescribed;
- but that duty is subject to Articles 64 and 65.
- (2) The form of, and the descriptions of information to be contained in, notices for the purposes of paragraph (1)(h) or (j) may be prescribed.
- (3) No entry made in a register under paragraph (1)(h) or (j) constitutes a representation by the body maintaining the register or, in a case where the entry is made under paragraph (6), the authority which sent the copy of the particulars in question under paragraph (4) or (5)—
- (a) that what is stated in the entry to have been done has in fact been done; or
  - (b) as to the manner in which it has been done.
- (4) Where any particulars are entered on a register maintained under this Article by the Department, the Department shall send a copy of those particulars to the district council in whose district is situated the land to which the particulars relate.
- (5) In any case where—
- (a) any land is treated under Article 68(2) as situated in the district of a district council other than the district council in whose district it is in fact situated, and
  - (b) any particulars relating to that land are entered on the register maintained under this Article by the district council in whose district the land is so treated as situated,
- that council shall send a copy of those particulars to the district council in whose district the land is in fact situated.
- (6) Where a district council receives a copy of any particulars sent to it under paragraph (4) or (5), it shall enter those particulars on the register maintained by it under this Article.
- (7) Where information of any description is excluded by virtue of Article 65 from any register maintained under this Article, a statement shall be entered in the register indicating the existence of information of that description.



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(8) Each enforcing authority shall—

- (a) secure that the registers maintained by it under this Article are available, at all reasonable times, for inspection by the public free of charge; and
- (b) afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges;

and, for the purposes of this paragraph, places may be prescribed at which any such registers or facilities as are mentioned in sub-paragraph (a) or (b) are to be available or afforded to the public under the sub-paragraph in question.

(9) Registers under this Article may be kept in any form.

### **Exclusion from registers of information affecting national security**

**64.**—(1) No information shall be included in a register maintained under Article 63 if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which paragraph (1) applies, give to enforcing authorities directions—

- (a) specifying information, or descriptions of information, to be excluded from their registers; or
- (b) specifying descriptions of information to be referred to the Secretary of State for his determination;

and no information referred to the Secretary of State in pursuance of sub-paragraph (b) shall be included in any such register until the Secretary of State determines that it should be so included.

(3) The enforcing authority shall notify the Secretary of State of any information which it excludes from the register in pursuance of directions under paragraph (2).

(4) A person may, as respects any information which appears to him to be information to which paragraph (1) may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—

- (a) he shall notify the enforcing authority that he has done so; and
- (b) no information so notified to the Secretary of State shall be included in any such register until the Secretary of State has determined that it should be so included.

### **Exclusion from registers of certain confidential information**

**65.**—(1) No information relating to the affairs of any individual or business shall be included in a register maintained under Article 63, without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—

- (a) is, in relation to him, commercially confidential; and
- (b) is not required to be included in the register in pursuance of directions under paragraph (5);

but information is not commercially confidential for the purposes of this Article unless it is determined under this Article to be so by the enforcing authority or, on appeal, by the Planning Appeals Commission.

(2) Where it appears to an enforcing authority that any information which has been obtained by the authority under any provision of this Part might be commercially confidential, the authority shall—

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register unless excluded under this Article; and

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- (b) give him a reasonable opportunity—
- (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
  - (ii) of making representations to the authority for the purpose of justifying any such objection;

and, if any representations are made, the enforcing authority shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(3) Where, under paragraph (2), an authority determines that information is not commercially confidential—

- (a) the information shall not be entered in the register until the end of the period of 21 days from the date on which the determination is notified to the person concerned;
- (b) that person may appeal to the Planning Appeals Commission against the decision;

and, where an appeal is brought in respect of any information, the information shall not be entered in the register until the end of the period of 7 days from the day on which the appeal is finally determined or withdrawn.

(4) Paragraphs (6) to (8) of Article 36 shall apply in relation to appeals under paragraph (3) as they apply in relation to appeals under paragraph (5) of that Article.

(5) The Department may give to enforcing authorities which are district councils directions as to specified information, or descriptions of information, which the public interest requires to be included in registers maintained under Article 63 notwithstanding that the information may be commercially confidential.

(6) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purpose of this Article at the expiry of the period of 4 years from the date of the determination by virtue of which it was excluded; but the person who furnished it may appeal to the authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the authority shall determine whether or not that is the case.

(7) Paragraphs (3) and (4) shall apply in relation to a determination under paragraph (6) as they apply in relation to a determination under paragraph (2).

(8) Information is, for the purposes of any determination under this Article, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.

(9) For the purposes of paragraph (8), there shall be disregarded any prejudice to the commercial interests of any individual or person so far as relating only to the value of the contaminated land in question or otherwise to the ownership or occupation of that land.

### **Reports by the Department on the state of contaminated land**

**66.**—(1) The Department shall, from time to time, prepare and publish a report on the state of contaminated land in Northern Ireland.

(2) A district council shall, at the written request of the Department, furnish the Department with such information to which this paragraph applies as the Department may require for the purpose of enabling it to perform its functions under paragraph (1).

(3) The information to which paragraph (2) applies is such information as the district council may have, or may reasonably be expected to obtain, with respect to the condition of contaminated land in its district, being information which the council has acquired or may acquire in the exercise of its functions under this Part.

## **Guidance by the Department concerning contaminated land**

**67.**—(1) The Department may issue guidance to any district council with respect to the exercise or the performance of the council's functions under this Part in relation to any particular contaminated land; and in exercising or performing those functions in relation to that land the council shall have regard to any such guidance so issued.

(2) A district council shall, at the written request of the Department, furnish the Department with such information to which this paragraph applies as the Department may require for the purpose of enabling it to issue guidance for the purposes of paragraph (1).

(3) The information to which paragraph (2) applies is such information as the district council may have, or may reasonably be expected to obtain, with respect to any contaminated land in its district, being information which the council has acquired, or may acquire, in the exercise of its functions under this Part.

## **Supplementary provisions**

**68.**—(1) Where it appears to a district council that two or more different sites, when considered together, are in such a condition, by reason of substances in, on or under the land, that—

- (a) significant harm is being caused or there is a significant possibility of such harm being caused, or
- (b) pollution of waterways or underground strata is being, or is likely to be, caused,

this Part shall apply in relation to each of those sites, whether or not the condition of the land at any of them, when considered alone, appears to the council to be such that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of waterways or underground strata is being or is likely to be caused.

(2) Where it appears to a district council that any land outside, but adjoining or adjacent to, its district is in such a condition, by reason of substances in, on or under the land, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of waterways or underground strata is being, or is likely to be, caused within its district—

- (a) the council may, in exercising its functions under this Part, treat that land as if it were land situated within its district; and
- (b) except in this paragraph, any reference—
  - (i) to land within the district of a district council, or
  - (ii) to the district council in whose district any land is situated,shall be construed accordingly;

but this paragraph is without prejudice to the functions of the district council in whose district the land is in fact situated.

(3) A person acting in a relevant capacity—

- (a) shall not thereby be personally liable, under this Part, to bear the whole or any part of the cost of doing any thing by way of remediation, unless that thing is to any extent referable to substances whose presence in, on or under the contaminated land in question is a result of any act done or omission made by him which it was unreasonable for a person acting in that capacity to do or make; and
- (b) shall not thereby be guilty of an offence under or by virtue of Article 59 unless the requirement which has not been complied with is a requirement to do some particular thing for which he is personally liable to bear the whole or any part of the cost.

(4) In paragraph (3), “person acting in a relevant capacity” means—

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- (a) a person acting as an insolvency practitioner, within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989 (including that Article as it applies in relation to an insolvent partnership by virtue of any order made under Article 365 of that Order);
- (b) the official receiver acting in a capacity in which he would be regarded as acting as an insolvency practitioner within the meaning of Article 3 of the Insolvency (Northern Ireland) Order 1989 if paragraph (5) of that Article were disregarded;
- (c) the official receiver acting as a receiver or manager;
- (d) a person acting as a special manager under Article 151 or 341 of the Insolvency (Northern Ireland) Order 1989;
- (e) a person acting as a receiver or receiver and manager—
  - (i) under any statutory provision; or
  - (ii) by virtue of his appointment as such by an order of a court or by any other instrument.

### **Supplementary provisions with respect to guidance by the Department**

**69.**—(1) Any power of the Department to issue guidance under this Part shall only be exercisable after consultation with such bodies or persons as the Department may consider it appropriate to consult in relation to the guidance in question.

(2) A draft of any guidance proposed to be issued under Article 49(1) or (2), 50(2) or 54(6) or (7) shall be laid before the Assembly.

(3) If within the statutory period beginning with the day on which a copy of the guidance is laid before the Assembly the Assembly so resolves, no further proceedings shall be taken thereon but without prejudice to the laying before the Assembly of a new draft.

(4) The Department shall arrange for any guidance issued by it under this Part to be published in such manner as the Department considers appropriate.

### **Interaction of this Part with other statutory provisions**

**70.**—(1) A remediation notice shall not be served if and to the extent that it appears to the enforcing authority that the powers of the chief inspector under Article 27 of the Industrial Pollution Control (Northern Ireland) Order 1997 (power of chief inspector to remedy harm) may be exercised in relation to—

- (a) the significant harm (if any), and
- (b) the pollution of waterways and underground strata (if any),

by reason of which the contaminated land in question is such land.

(2) Nothing in this Part shall apply in relation to any land in respect of which there is for the time being in force a site licence under Part II, except to the extent that any significant harm, or pollution of waterways or underground strata, by reason of which that land would otherwise fall to be regarded as contaminated land is attributable to causes other than—

- (a) breach of the conditions of the licence; or
- (b) the carrying on, in accordance with the conditions of the licence, of any activity authorised by the licence.

(3) If, in a case falling within paragraph (1) or (8) of Article 28, the land in question is contaminated land, or becomes such land by reason of the deposit of the controlled waste in question, a remediation notice shall not be served in respect of that land by reason of that waste or any consequences of its deposit, if and to the extent that the powers of a district council under that Article may be exercised in relation to that waste or the consequences of its deposit.

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(4) No remediation notice shall require a person to do anything the effect of which would be to impede or prevent the making of a discharge<sup>F59</sup> in pursuance of—

- (a) a discharge consent under Article 7A of the Water (Northern Ireland) Order 1999; or
- (b) a consent under Chapter III of Part VI of the Water and Sewerage Services (Northern Ireland) Order 2006 (trade effluent)]

**F59** Words in art. 70(4) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 39(4)** (with arts. 8(8), 121(3), 307); [S.R. 2007/194, art. 2\(2\)](#), Sch. 1 Pt. II (with art. 3, Sch. 2)

### **This Part and radioactivity**

**71.** Except as provided by regulations, nothing in this Part applies in relation to harm, or pollution of waterways or underground strata, so far as attributable to any radioactivity possessed by any substance; but regulations may—

- (a) provide for prescribed provisions of this Part to have effect with such modifications as the Department considers appropriate for the purpose of dealing with harm, or pollution of waterways or underground strata, so far as attributable to any radioactivity possessed by any substances; or
- (b) make such modifications of the Radioactive Substances Act 1993 or any other statutory provision as the Department considers appropriate.

## PART IV GENERAL

### *Supervision and enforcement*

#### **Powers of enforcing authorities and persons authorised by them**

**72.—(1)** An authorised person may, on production (if so required) of his authority, exercise any of the powers in paragraph (2) for the purpose of—

- (a) determining whether any provisions of the pollution control statutory provisions in the case of an enforcing authority are being, or have been, complied with;
- (b) discharging one or more of the functions conferred or imposed on an enforcing authority by or under the pollution control statutory provisions; or
- (c) determining whether and, if so, how such a function should be discharged.

**(2)** The powers of an authorised person are—

- (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
- (b) on entering any premises by virtue of sub-paragraph (a), to take with him—
  - (i) any other person <sup>F60</sup>including, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
  - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;

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- (c) to make such examination and investigation as may in any circumstances be necessary;
  - (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
  - (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
  - (f) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
  - (g) in the case of any article or substance found in or on any premises which he has power to enter, <sup>F61</sup> . . . , to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);
  - (h) in the case of any such article or substance as is mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
    - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which he has power to do under that sub-paragraph;
    - (ii) to ensure that it is not tampered with before examination of it is completed;
    - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under the pollution control statutory provisions in the case of the enforcing authority under whose authorisation he acts or in any other proceedings relating to a variation notice, enforcement notice or prohibition notice under those statutory provisions;
  - (i) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
  - (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records—
    - (i) which are required to be kept under the pollution control statutory provisions for the enforcing authority under whose authorisation he acts, or
    - (ii) which it is necessary for him to see for the purposes of an examination or investigation under sub-paragraph (c),
 and to inspect and take copies of, or of any entry in, the records;
  - (k) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this Article;
  - (l) any other power for a purpose mentioned in paragraph (1) which is conferred by regulations.
- (3) The powers which under paragraphs (1) and (2) are conferred in relation to any premises for the purpose of enabling an enforcing authority to determine whether any provision of the pollution control statutory provisions in the case of that authority is being, or has been, complied with shall include power, in order to obtain the information on which that determination may be made,—
- (a) to carry out experimental borings or other works on those premises; and

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(b) to install, keep or maintain monitoring and other apparatus there.

(4) Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of this Article shall only be effected—

(a) after the expiration of at least [<sup>F62</sup>24 hours]' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question, and

(b) either—

(i) with the consent of a person who is in occupation of those premises; or

(ii) under the authority of a warrant by virtue of Schedule 4.

(5) Except in an emergency, where an authorised person proposes to enter any premises and—

(a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry, or

(b) he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to those premises by virtue of this Article shall only be effected under the authority of a warrant by virtue of Schedule 4.

(6) Regulations may make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under paragraph (2)(f).

(7) Where an authorised person proposes to exercise the power conferred by paragraph (2)(g) in the case of an article or substance found on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(8) Before exercising the power conferred by paragraph (2)(g) in the case of any article or substance, an authorised person shall consult—

(a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test, and

(b) such other persons,

as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do or cause to be done under the power.

(9) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(i) shall be admissible in evidence in Northern Ireland against that person in any proceedings.

(10) Nothing in this Article shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

(11) Schedule 4 shall have effect with respect to the powers of entry and related powers which are conferred by this Article.

(12) In this Article and Schedule 4—

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

“emergency” means a case in which it appears to the authorised person in question—

(a) that there is an immediate risk of serious pollution of the environment or serious harm to human health, or

(b) that circumstances exist which are likely to endanger life or health,

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and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy;

“enforcing authority” means—

- (a) the Department;
- (b) a district council in its capacity as an enforcing authority for the purposes of Part III; *Sub-para. (c) rep. by 1997 NI 19*

“pollution control statutory provisions”

- (a) in relation to the Department, means—
  - (i) this Order; and
  - (ii) regulations made under section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution;
- (b) in relation to a district council, means—
  - (i) Part III; *Sub-para. (b)(ii) rep. by 1997 NI 19*
  - (iii) regulations made under section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution;

“premises” includes any land, vehicle, vessel or mobile plant.

(13) Nothing in section 98 of the Local Government Act (Northern Ireland) 1972 shall apply to functions conferred on a district council under this Order, other than functions under Article 28.

- F60** Words in art. 72(2)(b)(i) substituted (25.6.2007) by virtue of [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), **18(1)(a)**; S.R. 2007/294, **art. 2**, Sch.
- F61** Words in art. 72(2)(g) repealed (25.6.2007) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), 18(1)(b), 20, **Sch.**; S.R. 2007/294, **art. 2**, Sch.
- F62** Words in art. 72(4)(a) substituted (25.6.2007) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), **18(1)(c)**; S.R. 2007/294, **art. 2**, Sch.

**Modifications etc. (not altering text)**

- C7** Art. 72 modified (12.7.2007) by [Transfrontier Shipment of Waste Regulations 2007 \(S.I. 2007/1711\)](#), reg. 51, **Sch. 5 para. 1** (with regs. 3, 10, Sch. 1)
- C8** Art. 72 applied (24.3.2012) by [Quality of Bathing Water Regulations \(Northern Ireland\) 2008 \(S.R. 2008/231\)](#), regs. 1(4), **18**
- C9** Art. 72 applied (31.7.2011) by [Controls on Ozone-Depleting Substances Regulations \(Northern Ireland\) 2011 \(S.R. 2011/239\)](#), **reg. 14(4)** (with reg. 15)
- C10** Art. 72 extended (31.7.2011) by [Controls on Ozone-Depleting Substances Regulations \(Northern Ireland\) 2011 \(S.R. 2011/239\)](#), **reg. 14(6)** (with reg. 15)
- C11** Art. 72 applied (31.7.2011) by [Ozone-Depleting Substances \(Qualifications\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/240\)](#), **reg. 7(3)** (with reg. 15)

**Power to deal with cause of imminent danger of serious pollution etc.**

**73.**—(1) Where, in the case of any article or substance found by him on any premises which he has power to enter, an authorised person has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious pollution of the environment or serious harm to human health, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).



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(2) As soon as may be after any article or substance has been seized and rendered harmless under this Article, the authorised person shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall—

- (a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and
- (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;

and if, where sub-paragraph (b) applies, the authorised person cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under sub-paragraph (a).

(3) In this Article, “authorised person” has the same meaning as in Article 72.

### [<sup>F63</sup>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).]

**F63** Art. 73A inserted (25.6.2007) by Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611 (N.I. 3)), arts. 1(3), 19; S.R. 2007/294, art. 2, Sch.

### Offences

**74.**—(1) It is an offence for a person intentionally to obstruct an authorised person in the exercise or performance of his powers or duties.

(2) It is an offence for a person, without reasonable excuse,—

- (a) to fail to comply with any requirement imposed under Article 72;
- (b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the discharge of his functions under that Article; or
- (c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer under that Article.

(3) It is an offence for a person falsely to pretend to be an authorised person.

(4) A person guilty of an offence under paragraph (1) shall be liable—

- (a) in the case of an offence of obstructing an authorised person in the exercise of his powers under Article 73—
  - (i) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine or to both;
  - (ii) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) in any other case, on summary conviction, to a fine not exceeding level 5 on the standard scale.

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(5) A person guilty of an offence under paragraph (2) or (3) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

[<sup>F64</sup>(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.]

(6) In this Article—

“authorised person” has the same meaning as in Article 72;

“powers or duties” includes powers or duties exercisable by virtue of a warrant under Schedule 4.

**F64** Art. 74(5A) inserted (25.6.2007) by [Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611 \(N.I. 3\)\)](#), arts. 1(3), **18(2)**; S.R. 2007/294, **art. 2**, Sch.

## *Evidence*

### **Evidence in connection with certain pollution offences**

**75.**—(1) Information provided or obtained pursuant to or under a condition of a relevant licence (including information so provided or obtained, or recorded, by means of any apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to the condition or any other person.

(2) For the purposes of paragraph (1), apparatus shall be presumed in any proceedings to register or record accurately, unless the contrary is shown or the relevant licence otherwise provides.

(3) Where—

(a) under a condition of a relevant licence, an entry is required to be made in any record as to the observance of any condition of the relevant licence, and

(b) the entry has not been made,

that fact shall be admissible in any proceedings as evidence that that condition has not been observed.

(4) In this Article—

“apparatus” includes any meter or other device for measuring, assessing, determining, recording or enabling to be recorded, the volume, temperature, radioactivity, rate, nature, origin, composition or effect of any substance, flow, discharge, emission, deposit or abstraction;

“condition of a relevant licence” includes any requirement to which a person is subject under or in consequence of a relevant licence;

“relevant licence” means—

(a) a waste management licence under Article 6;

(b) registration of a person as a carrier of controlled waste under Article 39.

## *Information*

### **Disclosure of information**

**76.**—(1) Notwithstanding any prohibition or restriction imposed by or under any statutory provision or rule of law, information of any description may be disclosed—

(a) by the Department to a district council; or

(b) by a district council to the Department or to another district council,

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for the purpose of facilitating the carrying out by the Department of any of its functions under this Order or by any district council of any of its functions under Part III; and no person shall be subject to any civil or criminal liability in consequence of any disclosure made by virtue of this paragraph.

(2) Nothing in this Article shall authorise the disclosure of information, disclosure of which would, in the opinion of the Secretary of State, be contrary to the interests of national security.

(3) No information disclosed to any person under this Article shall be disclosed by that person to any other person otherwise than in accordance with the provisions of this Article, or any other statutory provision which authorises or requires the disclosure, if that information is information—

- (a) which relates to a trade secret of any person or which otherwise is or might be commercially confidential in relation to any person; or
- (b) whose disclosure otherwise than under this Article would, in the opinion of the Secretary of State, be contrary to the interests of national security.

(4) Any authorisation by or under this Article of the disclosure of information by or to any person shall also be taken to authorise the disclosure of that information by or, as the case may be, to any officer of his who is authorised by him to make the disclosure or, as the case may be, to receive the information.

(5) Information is for the purposes of this Article commercially confidential in relation to any person if its disclosure would prejudice to an unreasonable degree the commercial interests of that person.

### *Supplemental*

#### **Power to give effect to Community and other international obligations, etc.**

77.—(1) Regulations may provide that the provisions of Part II shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom—

- (a) to give effect to any Community obligation or exercise any related right; or
- (b) to give effect to any obligation or exercise any related right under any international agreement to which the United Kingdom is for the time being a party.

(2) In this Article—

“regulations”

- (a) in relation to any Community obligation, means regulations made by the Department; and
- (b) in relation to any international agreement, means regulations made by the Secretary of State;

“related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

(3) Regulations under this Article made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament in the like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

#### **Offences by bodies corporate**

78. For the purposes of this Order section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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## **Offences under this Order due to fault of others**

**79.** Where the commission by any person of an offence under this Order is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this Article whether or not proceedings for the offence are taken against the first-mentioned person.

## **Application to Crown**

**80.**—(1) Subject to the provisions of this Article, the provisions of this Order and of regulations and orders made under it shall bind the Crown including the Crown in right of Her Majesty's Government in the United Kingdom.

(2) No contravention by the Crown of any provision of this Order or of any regulations or order made under it shall make the Crown criminally liable; but the High Court may, on the application of the Department, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), the provisions of this Order and of regulations and orders made under it shall apply to persons in the public service of the Crown as they apply to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any power of entry exercisable in relation to them specified in the certificate that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises; and in this paragraph "Crown premises" means premises held or used by or on behalf of the Crown.

## **Financial provision**

**81.** Any fees or other sums received by the Department under any provisions of this Order shall be paid into the Consolidated Fund.

## **Orders, regulations and directions**

**82.**—(1) Orders and regulations made by the Department under this Order shall be subject to negative resolution.

(2) Any direction given under this Order shall be in writing and may be varied or revoked by subsequent directions.

(3) Paragraphs (4) and (5) apply to any direction given to any body or person under any provision of this Order being a direction to any extent so given for the purpose of implementing any obligations of the United Kingdom under the Community Treaties.

(4) A direction to which this paragraph applies shall not be varied or revoked unless, notwithstanding the variation or revocation, the obligations mentioned in paragraph (3), as they have effect for the time being, continue to be implemented, whether by directions or any other instrument or by any statutory provision.

(5) Any variation or revocation of a direction to which this paragraph applies shall be published in such manner as the Department considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—

- (a) copies of the variation or revocation shall be made available to the public; and
- (b) notice of the variation or revocation, and of where a copy of the variation or revocation may be obtained, shall be given in the Belfast Gazette.

*Article 83—Amendments and repeals*

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## SCHEDULES

### SCHEDULE 1

Article 2(2) and (6).

#### CATEGORIES OF WASTE

1. Production or consumption residues not otherwise specified below.
2. Off-specification products.
3. Products whose date for appropriate use has expired.
4. Materials spilled, lost or having undergone other mishap, including any materials, equipment, etc., contaminated as a result of the mishap.
5. Materials contaminated or soiled as a result of planned actions (e.g. residues from cleaning operations, packing materials, containers, etc.).
6. Unusable parts (e.g. reject batteries, exhausted catalysts, etc.).
7. Substances which no longer perform satisfactorily (e.g. contaminated acids, contaminated solvents, exhausted tempering salts, etc.).
8. Residues of industrial processes (e.g. slags, still bottoms, etc.).
9. Residues from pollution abatement processes (e.g. scrubber sludges, baghouse dusts, spent filters, etc.).
10. Machining or finishing residues (e.g. lathe turnings, mill scales, etc.).
11. Residues from raw materials extraction and processing (e.g. mining residues, oil field slops, etc.).
12. Adulterated materials (e.g. oils contaminated with PCBs, etc.).
13. Any materials, substances or products whose use has been banned by law.

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**14.** Products for which the holder has no further use (e.g. agricultural, household, office, commercial and shop discards, etc.).

**15.** Contaminated materials, substances or products resulting from remedial action with respect to land.

**16.** Any materials, substances or products which are not contained in the above categories.

SCHEDULE 2

Articles 17(2), 36(6), 41(3), 52(2), 58(2),  
65(4).

APPEALS AND DECISIONS REFERRED TO THE PLANNING APPEALS COMMISSION

PART I

APPEALS UNDER ARTICLE 17, 41 OR 58

**1.—(1)** This paragraph applies to an appeal to the Planning Appeals Commission ( “the Commission”) under Article 17, 41 or 58.

(2) The Commission shall determine the appeal and paragraphs (1), (3) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991 shall apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.

(3) If either party to the appeal so requests, the Commission shall afford to each of them an opportunity of appearing before and being heard by the Commission.

PART II

APPEALS UNDER ARTICLE 36 OR 65

**2.—(1)** This paragraph applies to an appeal to the Planning Appeals Commission under Article 36(5) or 65(3).

(2) The Commission shall determine the appeal and paragraphs (1), (3) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991 shall apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.

(3) If either party to the appeal so requests, the Commission shall afford to each of them an opportunity of appearing before and being heard by the Commission.

(4) Any hearing in connection with the appeal must be held in private.

PART III

DECISIONS REFERRED UNDER ARTICLE 52

**4.—(1)** This paragraph applies where, in accordance with paragraph (1) of Article 52, a district council refers a decision under that Article to the Planning Appeals Commission.

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(2) The Commission shall consider the decision and paragraphs (2), (3) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991 shall apply in relation to the consideration of the decision as they apply in relation to an inquiry or hearing under that Order.

### F65 SCHEDULE 3

Article 19(3)(a).

#### OBJECTIVES FOR THE PURPOSES OF THE WASTE STRATEGY

**F65** Sch. 3 substituted (8.4.2011) by [Waste Regulations \(Northern Ireland\) 2011 \(S.R. 2011/127\)](#), regs. 1(1), 8 (with reg. 9(2))

1. Ensuring that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and, in particular, without—
  - (a) risk to water, air, soil, plants or animals;
  - (b) causing nuisance through noise or odours; or
  - (c) adversely affecting the countryside or places of special interest.
2. Establishing an integrated and adequate network of waste disposal installations, taking account of the best available technology not involving excessive costs.
3. Ensuring that the network referred to in paragraph 2 enables—
  - (a) the European Community as a whole to become self-sufficient in waste disposal, and the Member States individually to move towards that aim, taking into account geographical circumstances or the need for specialised installations for certain types of waste; and
  - (b) waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.
4. Encouraging the prevention or reduction of waste production and its harmfulness, in particular by—
  - (a) the development of clean technologies more sparing in their use of natural resources;
  - (b) the technical development and marketing of products designed so as to make no contribution or to make the smallest possible contribution, by the nature of their manufacture, use or final disposal, to increasing the amount or harmfulness of waste and pollution hazards; and
  - (c) the development of appropriate techniques for the final disposal of dangerous substances contained in waste destined for recovery.
5. Encouraging—
  - (a) the recovery of waste by means of recycling, reuse or reclamation or any other process with a view to extracting secondary raw materials; and
  - (b) the use of waste as a source of energy.

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## SCHEDULE 4

Article 72.

### SUPPLEMENTAL PROVISIONS WITH RESPECT TO POWERS OF ENTRY

#### *Interpretation*

1. In this Schedule “relevant power” means a power conferred by Article 72, including a power exercisable by virtue of a warrant under this Schedule.

#### *Issue of warrants*

- 2.—(1) If it is shown to the satisfaction of a justice of the peace on complaint on oath—
- (a) that there are reasonable grounds for the exercise in relation to any premises of a relevant power; and
  - (b) that one or more of the conditions specified in sub-paragraph (2) is fulfilled in relation to those premises,

the justice may by warrant authorise an authorised person to exercise the power in relation to those premises, in accordance with the warrant and, if need be, by force.

- (2) The conditions mentioned in sub-paragraph (1)(b) are—
- (a) that the exercise of the power in relation to the premises has been refused;
  - (b) that such a refusal is reasonably apprehended;
  - (c) that the premises are unoccupied;
  - (d) that the occupier is temporarily absent from the premises and the case is one of urgency; or
  - (e) that an application for admission to the premises would defeat the object of the proposed entry.

(3) In a case where paragraph (4) of Article 72 applies, a justice of the peace shall not issue a warrant under this Schedule by virtue only of being satisfied that the exercise of a power in relation to any premises has been refused, or that a refusal is reasonably apprehended, unless he is also satisfied that the notice required by that paragraph has been given and that the period of that notice has expired.

(4) Every warrant under this Schedule shall continue in force until the purposes for which the warrant was issued have been fulfilled.

#### *Information obtained to be admissible in evidence*

3.—(1) Subject to Article 72(9), information obtained in consequence of the exercise of a relevant power, with or without the consent of any person, shall be admissible in evidence against that or any other person.

(2) Without prejudice to the generality of sub-paragraph (1), information obtained by means of monitoring or other apparatus installed on any premises in the exercise of a relevant power, with or without the consent of any person in occupation of the premises, shall be admissible in evidence in any proceedings against that or any other person.



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#### *Duty to secure premises*

4. An authorised person who, in the exercise of a relevant power, enters on any premises which are unoccupied or whose occupier is temporarily absent shall leave the premises as effectually secured against trespassers as he found them.

#### *Compensation*

5.—(1) Where an authorised person exercises any power conferred by Article 72(2)(a) or (b) or (3), the enforcing authority under whose authorisation he acts shall make full compensation to any person who has sustained loss or damage by reason of—

- (a) the exercise by the authorised person of that power; or
- (b) the performance of, or the failure of the authorised person to perform, the duty imposed by paragraph 4.

(2) Compensation shall not be payable by virtue of sub-paragraph (1) in respect of any loss or damage if the loss or damage—

- (a) is attributable to the default of the person who sustained it; or
- (b) is loss or damage in respect of which compensation is payable under any other provision of the pollution control statutory provisions.

(3) Any dispute as to a person's entitlement to compensation under this paragraph, or as to the amount of any such compensation, shall be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 shall apply to any such determination.

#### *Schedule 5—Amendments*

#### *Schedule 6—Repeals*

**Status:**

Point in time view as at 01/10/2009. This version of this Order contains provisions that are not valid for this point in time.

**Changes to legislation:**

The Waste and Contaminated Land (Northern Ireland) Order 1997 is up to date with all changes known to be in force on or before 05 July 2024. 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.