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*Status: Point in time view as at 01/04/2018.*

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## STATUTORY INSTRUMENTS

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# 1997 No. 2778

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

### PART II

#### WASTE ON LAND

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

#### **Waste management strategy**

[<sup>F1</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.

[<sup>F2</sup>(2) The Department—

- (a) shall review the waste management strategy at least every sixth year;
- (b) may from time to time modify the waste management strategy;

but this paragraph shall not apply to so much of a waste management strategy as relates to the matters mentioned in paragraphs 7(b), (c), (d) and 8 of Part 2 of Schedule 3.]

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

[<sup>F3</sup>(4) The waste management strategy:-

- (a) shall include a statement of the Department's policies for attaining the objectives set out in Part 1 Schedule 3;
- (b) shall include the matters set out in Part 2 of that Schedule; and
- (c) may include the matters set out in Part 3 of that Schedule.]

[<sup>F4</sup>(4A) Steps taken before the coming into operation of this paragraph in relation to the waste management strategy may be steps for the purposes of Articles 19, 19A, 19B and 19C.]

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

- (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.

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(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).

[<sup>F5</sup>(8) The Department shall ensure that the waste management strategy conforms to the strategy for the reduction of biodegradable waste going to landfill required by section 20(1) of the Waste and Emissions Trading Act 2003.]

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| <b>F1</b> | Art. 19 substituted (1.7.2009) by <a href="#">Waste Management Strategy Regulations (Northern Ireland) 2009 (S.R. 2009/178)</a> , <b>reg. 2(4)</b>                            |
| <b>F2</b> | Art. 19(2) substituted (8.4.2011) by <a href="#">Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127)</a> , regs. 1(1), <b>5(1)(a)</b> (with <a href="#">reg. 9(2)</a> ) |
| <b>F3</b> | Art. 19(4) substituted (8.4.2011) by <a href="#">Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127)</a> , regs. 1(1), <b>5(1)(b)</b> (with <a href="#">reg. 9(2)</a> ) |
| <b>F4</b> | Art. 19(4A) inserted (8.4.2011) by <a href="#">Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127)</a> , regs. 1(1), <b>5(1)(c)</b> (with <a href="#">reg. 9(2)</a> )   |
| <b>F5</b> | Art. 19(8) inserted (8.4.2011) by <a href="#">Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127)</a> , regs. 1(1), <b>5(1)(d)</b> (with <a href="#">reg. 9(2)</a> )    |

#### [<sup>F6</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.

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| <b>F6</b> | Arts. 19A-19C inserted (1.7.2009) by <a href="#">Waste Management Strategy Regulations (Northern Ireland) 2009 (S.R. 2009/178)</a> , <b>reg. 2(5)</b> |
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#### 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.

**F6** 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—
- (a) inform the persons or bodies mentioned in Article 19(5)(a) and the public consultees of the matters set out in paragraph (4);
  - (b) take such steps as it considers appropriate to bring the matters in paragraph (4) to the attention of the public;
  - (c) 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—
- (a) the decisions made by the Department on the waste management strategy;
  - (b) the reasons and considerations upon which those decisions are based; and
  - (c) information about the public participation procedures under Article 19B.]

**F6** 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—
- (a) arrange for the collection of household waste in its district except waste—
    - (i) 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
    - (ii) 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;

**F7**  
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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<sup>F8</sup>...<sup>F9</sup>; and
- (c) if requested by the occupier of premises in its district to collect any food waste from the premises presented for collection in accordance with Article 5(2B), to arrange for the collection of the food waste.]

[<sup>F10</sup>(1A) In sub-paragraph (1)(c), the reference to “food waste” does not include waste from an occupier of a domestic property as respects the household waste produced on the property.]

(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>F11</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.

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| <b>F7</b>  | Word in art. 20(1)(a) omitted (14.2.2015) by virtue of <a href="#">The Food Waste Regulations (Northern Ireland) 2015 (S.R. 2015/14)</a> , regs. 1(1), <b>2(4)(a)(i)</b>  |
| <b>F8</b>  | Full stop in art. 20(1)(b) omitted (14.2.2015) by virtue of <a href="#">The Food Waste Regulations (Northern Ireland) 2015 (S.R. 2015/14)</a> , regs. 1(1), <b>2(4)(a)(ii)</b>  |
| <b>F9</b>  | Art. 20(1)(c) and word inserted (14.2.2015) by <a href="#">The Food Waste Regulations (Northern Ireland) 2015 (S.R. 2015/14)</a> , regs. 1(1), <b>2(4)(a)(ii)</b>   |
| <b>F10</b> | Art. 20(1A) inserted (14.2.2015) by <a href="#">The Food Waste Regulations (Northern Ireland) 2015 (S.R. 2015/14)</a> , regs. 1(1), <b>2(4)(b)</b>  |
| <b>F11</b> | Art. 20(6) substituted (1.4.2007) by <a href="#">Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21))</a> , arts. 1(2), 308(1), <b>Sch. 12 para. 39(1)</b> (with arts. 8(8), 121(3), 307); <a href="#">S.R. 2007/194</a> , <b>art. 2(2)</b> , Sch. 1 Pt. II (with art. 3, Sch. 2) |

## [<sup>F12</sup>Separate collection of food waste

**20A.**—(1) This Article applies when a district council is making an arrangement in accordance with Article 20(1)(a).

(2) A district council shall, from 1st April 2015, take such steps as the council considers reasonable to promote separate collection of food waste (including the making of arrangements for the provision of a receptacle which enables the separate collection of food waste from every domestic property in its area).

(3) A district council shall, from 1st April 2017, arrange for there to be provided to the occupier of every domestic property in its area—

- (a) a receptacle which enables the separate collection of food waste from the property; or
- (b) where a district council is satisfied that the amount of food waste that will be collected is not substantially less than would be collected in a receptacle provided under paragraph (a), a receptacle which enables the occupier to present food waste and other bio-waste for separate collection.

(4) In this Article—

“domestic property” means a building or self-contained part of a building which is used wholly for the purposes of living accommodation;

“receptacle” has the same meaning as in Article 21(10).]

**F12** Art. 20A inserted (14.2.2015) by [The Food Waste Regulations \(Northern Ireland\) 2015 \(S.R. 2015/14\)](#), regs. 1(1), **2(5)**

## 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;
- (c) require the occupier to provide them if he does not enter into an agreement under subparagraph (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;

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- (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).

### **[<sup>F13</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—

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- (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.

**F13** 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**

### **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.



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(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).

**F13** 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.]

**F13** 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**

### <sup>F14</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

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- 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;
    - (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;

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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.

(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

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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.

**F14** 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.

(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.

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(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.

(2) The Department may, by notice, direct any person who is keeping controlled waste [<sup>F15</sup>in or] 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>F16</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

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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).

**F15** Words in art. 27(2) inserted (17.10.2011) by [Waste and Contaminated Land \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 5\)](#), ss. 11(1), 12(1), **Sch. 1 para. 1**; S.R. 2011/312, **art. 2**, Sch.

**F16** 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.

(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>F17</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.

**F17** 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>F18</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—

- (a) the council has served a notice under paragraph (1) of Article 28 imposing a requirement on the occupier of the land,
- (b) the occupier of the land is not the same person as the owner of the land, and
- (c) the occupier has failed to comply with the requirement mentioned in sub-paragraph (a) within the period specified in the notice.

(4) The grounds in this paragraph are that—

- (a) the council has served a notice under paragraph (1) of Article 28 imposing a requirement on the occupier of the land,
- (b) the occupier of the land is not the same person as the owner of the land, and
- (c) the requirement mentioned in sub-paragraph (a) has been quashed on the ground specified in paragraph (3)(a) of that Article.

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(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

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**F18** 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.



**Status:**

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