
STATUTORY INSTRUMENTS

1997 No. 2778

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

PART II

WASTE ON LAND

Duty of care, etc., as respects waste

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5.—(1) Subject to paragraph (2), any person who imports, produces, [^{F1}collects,] carries, keeps, treats or disposes of controlled waste or, as a broker [^{F2}or dealer], 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;
- [^{F3}(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; ^{F4} . . .
 - (ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that Article [^{F3} or any condition of a permit granted under regulation 10 of those Regulations] and to comply with this paragraph as respects the escape of waste. [^{F5}and]
 - [^{F6}(iii) that any waste oils are separately collected where technically feasible.]

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

[^{F7}(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) [^{F8}or paragraph (2A)]—

- (a) any district council;

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- (b) any person who is the holder of a waste management licence under Article 6^{F9} 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;^{F10} . . .
 - (e) any person who is not required to be so registered by virtue of regulations under Article 38(3).
 - [^{F10}(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) [^{F11}or paragraph (2A)] .
- (5) The following are authorised transport purposes for the purposes of paragraph (1)(c) [^{F11}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.
- (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) [^{F12}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).

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(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) ^{F13}

F1	Word in art. 5(1) inserted (8.4.2011) by Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127) , regs. 1(1), 4(1)(a) (with reg. 9(2))
F2	Words in art. 5(1) inserted (8.4.2011) by Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127) , regs. 1(1), 4(1)(a) (with reg. 9(2))
F3	SR 2003/46
F4	Word in art. 5(1)(c)(i) deleted (8.4.2011) by Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127) , regs. 1(1), 4(1)(b) (with reg. 9(2))
F5	Word in art. 5(1)(c)(ii) inserted (8.4.2011) by Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127) , regs. 1(1), 4(1)(c) (with reg. 9(2))
F6	Art. 5(1)(c)(iii) inserted (8.4.2011) by Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127) , regs. 1(1), 4(1)(d) (with reg. 9(2))
F7	Art. 5(2A) inserted (31.7.2006) by S.R. 2006/280 , reg. 2(4)
F8	Words in art. 5(3) inserted (31.7.2006) by S.R. 2006/280 , reg. 2(5)
F9	prosp. rep. by 1997 NI 19
F10	SR 2004/277
F11	Words in art. 5(4)(5) inserted (31.7.2006) by S.R. 2006/280 , reg. 2(6)
F12	Words in art. 5(8) inserted (31.7.2006) by S.R. 2006/280 , reg. 2(7)
F13	Art. 5(14) omitted (8.4.2011) by virtue of Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127) , regs. 1(1), 4(2) (with reg. 9(2))

[^{F14}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
- (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—

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- (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.]

F14 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)**

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