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STATUTORY INSTRUMENTS

1997 No. 2778

The Waste and Contaminated Land (Northern Ireland) Order 1997

PART II

WASTE ON LAND

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; ^{F1}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; ^{F2} . . .
- (c) ^{F2}

(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.

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(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.

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| F1 | 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. |
| F2 | 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—

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- (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
 - (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

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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
- (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—

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- (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 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

[F3] 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;

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- (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.]

F3 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

[^{F4}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.

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(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).

(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.]

F4 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^{F5} . . . 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

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- (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
- (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.

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