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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**

*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>F1</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>F2</sup> . . .
- (c) <sup>F2</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.

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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.

- 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 <sup>F3</sup>... 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;
- <sup>F4</sup>(d) .....
- (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 <sup>F5</sup>... 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—

- <sup>F6</sup>(a) .....
- (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 [<sup>F7</sup>paragraph (3)(c)] —

- <sup>F8</sup>(a) .....
- (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
  - (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.
- [<sup>F9</sup>(5A) Regulations under this Article may include provision for—
- (a) the registration of a person as a carrier of controlled waste to be subject to conditions relating to the vehicles used by him in transporting such waste; or
  - (b) the revocation by the Department of the registration of a carrier of controlled waste who has breached a condition imposed on him under sub-paragraph (a).
- (5B) Provision contained in any regulations under this Article by virtue of paragraph (5A) may, in particular, include provision—
- (a) for inspection by the Department of the vehicles of registered carriers of controlled waste for the purpose of ensuring compliance with conditions imposed under paragraph (5A)(a);
  - (b) for the Department to impose charges on registered carriers of controlled waste in respect of such inspections.]
- (6) Paragraphs (2) [<sup>F10</sup>to (5B)] 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.

<b>F3</b>	Words in art. 39(2)(c) repealed (11.3.2013) by <a href="#">The Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611)</a> , arts. 1(3), 14(2)(a), <b>Sch.</b> ; S.R. 2013/33, art. 2(c)(f)
<b>F4</b>	Art. 39(2)(d) repealed (11.3.2013) by <a href="#">The Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611)</a> , arts. 1(3), 14(2)(b), <b>Sch.</b> ; S.R. 2013/33, art. 2(c)(f)
<b>F5</b>	Words in art. 39(2)(e) repealed (11.3.2013) by <a href="#">The Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611)</a> , arts. 1(3), 14(2)(c), <b>Sch.</b> ; S.R. 2013/33, art. 2(c)(f)
<b>F6</b>	Art. 39(3)(a) repealed (11.3.2013) by <a href="#">The Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611)</a> , arts. 1(3), 14(3), <b>Sch.</b> ; S.R. 2013/33, art. 2(c)(f)
<b>F7</b>	Words in art. 39(4) substituted (11.3.2013) by <a href="#">The Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611)</a> , arts. 1(3), <b>14(4)(a)</b> ; S.R. 2013/33, art. 2(c)
<b>F8</b>	Art. 39(4)(a) repealed (11.3.2013) by <a href="#">The Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611)</a> , arts. 1(3), 14(4)(b), <b>Sch.</b> ; S.R. 2013/33, art. 2(c)(f)
<b>F9</b>	Art. 39(5A)(5B) inserted (11.3.2013) by <a href="#">The Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611)</a> , arts. 1(3), <b>14(5)</b> ; S.R. 2013/33, art. 2(c)
<b>F10</b>	Words in art. 39(6) substituted (11.3.2013) by <a href="#">The Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/611)</a> , arts. 1(3), <b>14(6)</b> ; S.R. 2013/33, art. 2(c)

### 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

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- (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 [<sup>F11</sup>in accordance with regulations under paragraph (5A) of that Article or] 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.

**F11** Words in art. 40(2) inserted (11.3.2013) by [The Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611\)](#), arts. 1(3), **14(7)**; S.R. 2013/33, art. 2(c)

### **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.

## **[<sup>F12</sup>Duty to produce authority to transport controlled waste**

**42.**—(1) This Article applies where an authorised officer or a constable reasonably believes that controlled waste has been, is being or is about to be transported in contravention of Article 38(1).

(2) The authorised officer or constable may—

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

(b) search any vehicle that appears to him to be a vehicle that has been, is being or is about to be used for transporting that waste;

(c) carry out tests on anything found in any such vehicle (including by taking away samples for testing of anything so found);

(d) seize any such vehicle and any of its contents.

(3) For the purposes of paragraph (2)(a), a person's authority for transporting controlled waste is—

(a) his certificate of registration as a carrier of controlled waste;

(b) such copy of that certificate as satisfies requirements prescribed in regulations made by the Department; or

(c) such evidence as may be so prescribed that he is not required to be registered as a carrier of controlled waste.

(4) Where an authorised officer or constable has required a person to produce an authority under paragraph (2)(a), the person must do so—

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- (a) by producing it forthwith to the authorised officer or constable;
  - (b) by producing it at a place and within a period specified in regulations made by the Department; or
  - (c) by sending it to that place and within that period.
- (5) In acting under paragraph (2) an authorised officer or constable may—
- (a) stop any vehicle as referred to in sub-paragraph (b) of that paragraph;
  - (b) enter any premises for the purpose specified in sub-paragraph (b) or (d) of that paragraph.
- (6) A vehicle or its contents seized under paragraph (2)(d) is seized on behalf of the Department.
- (7) A person commits an offence if—
- (a) he fails without reasonable excuse to comply with a requirement imposed under sub-paragraph (a) of paragraph (2);
  - (b) 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 that paragraph;
  - (c) he otherwise intentionally obstructs an authorised officer or constable in the exercise of a power under that paragraph .
- (8) A person is not guilty of an offence by virtue of paragraph (7)(a) unless it is shown—
- (a) that the waste in question was controlled waste; and
  - (b) that the waste was or was being transported to or from a place in Northern Ireland.
- (9) Where an authorised officer or constable has stopped a vehicle under paragraph (5), he may (in addition to any requirement that may be imposed under sub-paragraph (a) of paragraph (2)) 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.
- (10) A person commits an offence if—
- (a) he fails without reasonable excuse to comply with a requirement under paragraph (9);
  - (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.
- (11) 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.
- (12) In this Article and Articles 42A and 42B “authorised officer” means an officer of the Department who is authorised in writing by the Department for the purposes of those Articles.
- (13) Summary proceedings for an offence under paragraph (11) may be instituted at any time within 12 months after the commission of the offence.]

**F12** Arts. 42, 42A substituted (11.3.2013) for art. 42 by [The Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611\)](#), arts. 1(3), 15; S.R. 2013/33, art. 2(d)

### [<sup>F13</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.

<sup>F14</sup> (3A) Regulations making provision under paragraph (3)(b)—

- (a) must (subject to sub-paragraph (b)) provide for seized property to be returned as mentioned in paragraph (3)(b) before the expiry of a period specified in the regulations;
- (b) may provide for a magistrates' court, on an application by the Department, to authorise the Department to retain the seized property until such date or the happening of such event as the court may specify;
- (c) must, if they contain provision under sub-paragraph (b), provide for any person claiming to be entitled to the property to be afforded an opportunity to be heard by the court before it determines the application.]

(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.]

**F13** Arts. 42, 42A substituted (11.3.2013) for art. 42 by [The Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611\)](#), [arts. 1\(3\), 5](#); S.R. 2013/33, [art. 2\(d\)](#)

**F14** [Art. 42A\(3A\)](#) inserted (12.3.2013) by [Waste and Contaminated Land \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 5\)](#), [ss. 2\(2\), 12](#); S.R. 2013/34, [art. 2\(b\)](#)

#### <sup>F15</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—



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- (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).
- (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.]

**F15** Art. 42B inserted (11.3.2013) by [The Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611\)](#), [arts. 1\(3\), 16](#); [S.R. 2013/33](#), [art. 2\(e\)](#)

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

<sup>F16</sup>**43.** . . . . .

**F16** [Art. 43](#) repealed (11.3.2013) by [The Waste \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/611\)](#), [art. 1\(3\)](#), [Sch.](#); [S.R. 2013/33](#), [art. 2\(f\)](#)



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