
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;]
- [^{F4}(ab) to prevent any contravention by any other person of paragraph (2B), (2E) or (2F);]
- (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; ^{F5} . . .
 - (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. [^{F6}and]
 - [^{F7}(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.

[^{F8}(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.]

[^{F9}(2B) It shall, from 1st April 2016, be the duty of any person who controls or manages a food business that produces controlled waste to take all such measures available as are reasonable in the circumstances to secure the separate collection of food waste produced by that food business.

(2C) The duty in paragraph (2B) does not apply to—

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- (a) food waste produced by a food business that produces less than 5 kilograms of food waste per week; or
 - (b) food waste that includes catering waste that originates from means of transport operating internationally; or
 - (c) food waste produced in the period beginning on 1st April 2016 and ending on 31st March 2017—
 - (i) by Health and Social Care trusts (as established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991); or
 - (ii) by a food business that produces 5 kilograms or more, and less than 50 kilograms of food waste per week.
- (2D) The duty in paragraph (2B) is deemed to be satisfied where—
- (a) the food waste produced by the food business is recovered at the premises of the food business, and “recovery” in this paragraph has the same meaning as in the Waste Management Licensing Regulations (Northern Ireland) 2003; or
 - (b) the food waste is mixed with other bio-waste to the extent that the resultant mixed waste is presented for collection in a manner that ensures that the amount of food waste collected is not substantially less than would be the case were the wastes not mixed.
- (2E) It shall, from 1st April 2015, be the duty of any person who transports controlled waste to collect and transport separately from other waste any waste presented for collection—
- (a) in accordance with paragraph (2B);
 - (b) in a receptacle provided in accordance with Article 20A(3).
- (2F) It shall, from 1st April 2017, be the duty of any person who produces food waste (other than an occupier of a domestic property as respects the household waste produced on that property) to ensure that food waste is not deposited in a lateral drain or public sewer, or in a drain or sewer that connects to a lateral drain or public sewer.]
- (3) The following are authorised persons for the purpose of paragraph (1)(c) [^{F10}or paragraph (2A)]—
- (a) any district council;
 - (b) any person who is the holder of a waste management licence under Article 6^{F11} 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;^{F12} . . .
 - (e) any person who is not required to be so registered by virtue of regulations under Article 38(3).
 - [^{F12}(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) [^{F13}or paragraph (2A)] .

(5) The following are authorised transport purposes for the purposes of paragraph (1)(c) [F13] 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 [F14] a duty imposed by paragraphs (1), (2B), (2E) or (2F)] as respects the making and retention of documents and the furnishing of documents or copies of documents.

(8) Any person who fails [F15] without reasonable excuse] to comply with [F16] paragraphs (1), (2A), (2B), (2E) or (2F)] 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 [F17] a duty imposed on them by paragraphs (1), (2B), (2E) or (2F)] .

(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.

[F18](14) In this Article—

“business” includes the undertaking of a canteen, club, school, hospital or institution, whether carried on for profit or not, and any undertaking or activity carried on by a district council;

“catering waste” means all waste food, including used cooking oil, originating in restaurants, catering facilities and kitchens, including central kitchens and household kitchens;

“drain”, “lateral drain”, “public sewer” and “sewer” have the same meanings as in Article 2 of the Water and Sewerage Services (Northern Ireland) Order 2006;

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“food business” means an undertaking, whether carried on for profit or not, and whether public or private, carrying out any activity related to the processing, distribution, preparation or sale of food.]

(14) ^{F19}.....

- 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** [Art. 5\(1\)\(ab\)](#) inserted (14.2.2015) by [The Food Waste Regulations \(Northern Ireland\) 2015 \(S.R. 2015/14\)](#), regs. 1(1), **2(3)(a)**
- F5** 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\(2\)](#))
- F6** 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\(2\)](#))
- F7** [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\(2\)](#))
- F8** [Art. 5\(2A\)](#) inserted (31.7.2006) by [S.R. 2006/280](#), **reg. 2(4)**
- F9** [Art. 5\(2B\)-\(2F\)](#) inserted (14.2.2015) by [The Food Waste Regulations \(Northern Ireland\) 2015 \(S.R. 2015/14\)](#), regs. 1(1), **2(3)(b)**
- F10** Words in art. 5(3) inserted (31.7.2006) by [S.R. 2006/280](#), **reg. 2(5)**
- F11** prosp. rep. by 1997 NI 19
- F12** SR 2004/277
- F13** Words in art. 5(4)(5) inserted (31.7.2006) by [S.R. 2006/280](#), **reg. 2(6)**
- F14** Words in [art. 5\(7\)](#) substituted (14.2.2015) by [The Food Waste Regulations \(Northern Ireland\) 2015 \(S.R. 2015/14\)](#), regs. 1(1), **2(3)(c)**
- F15** Words in [art. 5\(8\)](#) inserted (14.2.2015) by [The Food Waste Regulations \(Northern Ireland\) 2015 \(S.R. 2015/14\)](#), regs. 1(1), **2(3)(d)(i)**
- F16** Words in [art. 5\(8\)](#) substituted (14.2.2015) by [The Food Waste Regulations \(Northern Ireland\) 2015 \(S.R. 2015/14\)](#), regs. 1(1), **2(3)(d)(ii)**
- F17** Words in [art. 5\(9\)](#) substituted (14.2.2015) by [The Food Waste Regulations \(Northern Ireland\) 2015 \(S.R. 2015/14\)](#), regs. 1(1), **2(3)(e)**
- F18** [Art. 5\(14\)](#) inserted (14.2.2015) by [The Food Waste Regulations \(Northern Ireland\) 2015 \(S.R. 2015/14\)](#), regs. 1(1), **2(3)(f)**
- F19** [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\(2\)](#))

[^{F20}Fixed penalty notices for certain offences under Article 5(8)]

5A.—(1) This Article applies where it appears to [^{F21}an authorised officer of an enforcing authority] that a person has failed to comply with a duty to furnish documents [^{F21}to the enforcing authority] imposed under regulations made at any time under Article 5(7).

(2) The [^{F22}authorised officer] may serve on that person a notice offering him the opportunity of discharging any liability to conviction for an offence under Article 5(8) by payment of a fixed penalty.

(3) Where a person is given a notice under this Article in respect of an offence—

- (a) no proceedings may be instituted for that offence before expiration of the period of 14 days following the date of the notice; and

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- (b) he may not be convicted of that offence if he pays the fixed penalty before the expiration of the period.
- (4) A notice under this Article must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.
- (5) A notice under this Article must also state—
- (a) the period during which, by virtue of paragraph (3), proceedings will not be taken for the offence;
 - (b) the amount of the fixed penalty; and
 - (c) the person to whom and the address at which the fixed penalty may be paid.
- (6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty to the person mentioned in paragraph (5)(c) at the address so mentioned.
- (7) Where a letter is sent in accordance with paragraph (6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (8) The form of a notice under this Article is to be such as the Department may by order prescribe.
- (9) The fixed penalty payable to [^{F23}an enforcing authority] 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) [^{F24}An enforcing authority 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 [^{F24}by the enforcing authority] .
- (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.
- [^{F25}(12A) Article 22C (use of fixed penalty receipts by a district council) applies in relation to amounts received by a council under this Article as it applies in relation to amounts received under Article 22A.
- (13) In this Article—
- “authorised officer” means an officer of the enforcing authority who is authorised in writing by the enforcing authority for the purposes of this Article;
- “enforcing authority” means—
- (a) the Department; and
 - (b) in relation to an offence committed within its district, a district council.]]

F20 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\(a\)](#)

F21 Words in [art. 5A\(1\)](#) substituted (2.1.2023) by [Waste and Contaminated Land \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 5\)](#), [ss. 5\(2\)\(a\)](#), 12; S.R. 2022/289, [art. 2\(b\)](#)

F22 Words in [art. 5A\(2\)](#) substituted (2.1.2023) by [Waste and Contaminated Land \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 5\)](#), [ss. 5\(2\)\(b\)](#), 12; S.R. 2022/289, [art. 2\(b\)](#)

F23 Words in [art. 5A\(9\)](#) substituted (2.1.2023) by [Waste and Contaminated Land \(Amendment\) Act \(Northern Ireland\) 2011 \(c. 5\)](#), [ss. 5\(2\)\(c\)](#), 12; S.R. 2022/289, [art. 2\(b\)](#)

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- F24** Words in art. 5A(11) substituted (2.1.2023) by Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011 (c. 5), **ss. 5(2)(d)**, 12; S.R. 2022/289, art. 2(b)
- F25** Art. 5A(12A)(13) substituted for art. 5A(13) (2.1.2023) by Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011 (c. 5), **ss. 5(2)(e)**, 12; S.R. 2022/289, art. 2(b)

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Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- [art. 58\(1A\)](#) inserted by [2011 c. 5 \(N.I.\) s. 8\(3\)](#)
- [art. 70\(2A\)-\(2C\)](#) inserted by [2011 c. 5 \(N.I.\) s. 9](#)