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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**

**Meaning of “fit and proper person”**

**3.—(1)** The following provisions apply for the purposes of the discharge by the Department of any function under this Part which requires the Department to determine whether a person is or is not a fit and proper person to hold a waste management licence.

(2) Whether a person is or is not a fit and proper person to hold a licence is to be determined by reference to the carrying on by him of the activities which are or are to be authorised by the licence and the fulfilment of the requirements of the licence.

(3) Subject to paragraph (4), a person shall be treated as not being a fit and proper person if it appears to the Department—

- (a) that he or another relevant person has been convicted of a prescribed offence;
- (b) that the management of the activities which are or are to be authorised by the licence are not or will not be in the hands of a technically competent person; or
- (c) that the person who holds or is to hold the licence has not made and either has no intention of making or is in no position to make financial provision adequate to discharge the obligations arising from the licence.

(4) The Department may, if it considers it proper to do so in any particular case, treat a person as a fit and proper person notwithstanding that paragraph (3)(a) applies in his case.

(5) Regulations may prescribe the qualifications and experience required of a person for the purposes of paragraph (3)(b).

(6) For the purposes of paragraph (3)(a), another relevant person shall be treated, in relation to the licence holder or proposed licence holder, as the case may be, as having been convicted of a prescribed offence if—

- (a) any person has been convicted of a prescribed offence committed by him in the course of his employment by the holder or, as the case may be, the proposed holder of the licence or in the course of the carrying on of any business by 2 or more persons in partnership one of such persons was the holder or, as the case may be, the proposed holder of the licence;
- (b) a body corporate has been convicted of a prescribed offence committed when the holder or, as the case may be, the proposed holder of the licence was a director, manager, secretary or other similar officer of that body corporate; or
- (c) where the holder or, as the case may be, the proposed holder of the licence is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate—

- (i) has been convicted of a prescribed offence; or
- (ii) was a director, manager, secretary or other similar officer of another body corporate at a time when a prescribed offence for which that other body corporate has been convicted was committed.

*Prohibition on unauthorised or harmful depositing, treatment or disposal of waste*

**Prohibition on unauthorised or harmful deposit, treatment or disposal, etc., of waste**

- 4.—(1) Subject to paragraphs (2) and (3) a person shall not—
- (a) deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence;
  - (b) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of—
    - (i) in or on any land, or
    - (ii) by means of any mobile plant,except under and in accordance with a waste management licence;
  - (c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.
- (2) Paragraph (1) does not apply in relation to household waste from a domestic property which is treated, kept or disposed of within the curtilage of the dwelling by or with the permission of the occupier of the dwelling.
- (3) Paragraph (1)(a), (b) or (c) do not apply in prescribed cases.
- (4) When making regulations under paragraph (3) the Department shall have regard in particular to the expediency of excluding from the controls imposed by waste management licences—
- (a) any deposits which are small enough or of such a temporary nature that they may be so excluded;
  - (b) any means of treatment or disposal which are innocuous enough to be so excluded;
  - (c) cases for which adequate controls are provided by another statutory provision.
- (5) Where controlled waste is carried in and deposited from a vehicle, the person who controls or is in a position to control the use of the vehicle shall, for the purposes of paragraph (1)(a), be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done.
- (6) A person who contravenes paragraph (1) or any condition of a waste management licence shall be guilty of an offence.
- (7) It shall be a defence for a person charged with an offence under this Article to prove—
- (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or
  - (b) that he acted under instructions from his employer and neither knew nor had reason to suppose that the acts done by him constituted a contravention of paragraph (1); or
  - (c) that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—
    - (i) he took all such steps as were reasonably practicable in the circumstances for minimising pollution of the environment and harm to human health; and

(ii) particulars of the acts were furnished to the Department as soon as reasonably practicable after they were done.

(8) Except in a case falling within paragraph (9), a person guilty of an offence under this Article shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £20,000 or to both; and

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(9) A person guilty of an offence under this Article in relation to special waste shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £20,000 or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.

#### *Duty of care, etc., as respects waste*

#### **Duty of care, etc., as respects waste**

5.—(1) Subject to paragraph (2), any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, 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;

(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; and

(ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that Article and to comply with this paragraph as respects the escape of waste.

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

(3) The following are authorised persons for the purpose of paragraph (1)(c)—

(a) any district council;

(b) any person who is the holder of a waste management licence under Article 6 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; and

(e) any person who is not required to be so registered by virtue of regulations under Article 38(3).

(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).

(5) The following are authorised transport purposes for the purposes of paragraph (1)(c)—

- (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) 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).
- (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) In this Article “broker” means a person who has control of controlled waste for the purposes of having carried out on behalf of another person any of the activities mentioned in paragraph (1).

### *Waste Management Licences*

#### **Waste management licences: general**

6.—(1) A waste management licence is a licence granted by the Department authorising the treatment, keeping or disposal of any specified description of controlled waste in or on specified land or the treatment or disposal of any specified description of controlled waste by means of specified mobile plant.

(2) A licence shall be granted to the following person, that is to say—

(a) in the case of a licence relating to the treatment, keeping or disposal of waste in or on land, to the person who is in occupation of the land; and

(b) in the case of a licence relating to the treatment or disposal of waste by means of mobile plant, to the person who operates the plant.

(3) A licence shall be granted on such terms and subject to such conditions as appear to the Department to be appropriate and the conditions may relate—

(a) to the activities which the licence authorises, and

(b) to the precautions to be taken and works to be carried out in connection with or in consequence of those activities;

and accordingly requirements may be imposed in the licence which are to be complied with before the activities which the licence authorises have begun or after the activities which the licence authorises have ceased.

(4) Conditions may require the holder of a licence to carry out works or do other things notwithstanding that he is not entitled to carry out the works or do the thing and any person whose consent would be required shall grant, or join in granting, the holder of the licence such rights in relation to the land as will enable the holder of the licence to comply with any requirements imposed on him by the licence.

(5) Conditions may relate, where waste other than controlled waste is to be treated, kept or disposed of, to the treatment, keeping or disposal of that other waste.

(6) Regulations may make provision as to the conditions which are, or are not, to be included in a licence.

(7) Any person who—

(a) intentionally makes a false entry in any record required to be kept under any condition of a licence, or

(b) with intent to deceive, forges or uses a licence or makes or has in his possession a document so closely resembling a licence as to be likely to deceive,

shall be guilty of an offence and shall be liable—

(i) on summary conviction, to a fine not exceeding the statutory maximum;

(ii) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine or to both.

(8) A licence may not be surrendered by the holder except in accordance with Article 13.

(9) A licence is not transferable by the holder but the Department may transfer it to another person under Article 14.

(10) A licence shall continue in force until it is revoked entirely by the Department under Article 12 or it is surrendered or its surrender is accepted under Article 13.

### **Compensation where rights granted pursuant to Article 6(4) or 12(9)**

7.—(1) This Article applies in any case where—

(a) the holder of a licence is required—

(i) by the conditions of the licence; or

(ii) by a requirement imposed under Article 12(8),

to carry out any works or do any other thing which he is not entitled to carry out or do;

(b) a person whose consent would be required has, pursuant to the requirements of Article 6(4) or 12(9), granted, or joined in granting, to the holder of the licence any rights in relation to any land; and

- (c) those rights, or those rights together with other rights, are such as will enable the holder of the licence to comply with any requirements imposed on him by the licence or, as the case may be, under Article 12(8).
- (2) In a case where this Article applies, any person who has granted, or joined in granting, the rights in question shall be entitled to be paid compensation under this Article by the holder of the licence.
- (3) Regulations shall provide for the descriptions of loss and damage for which compensation is payable under this Article.
- (4) Regulations may—
  - (a) provide for the basis on which any amount to be paid by way of compensation under this Article is to be assessed;
  - (b) without prejudice to the generality of paragraph (3) and sub-paragraph (a), provide for compensation under this Article to be payable in respect of—
    - (i) any effect of any rights being granted, or
    - (ii) any consequence of the exercise of any rights which have been granted;
  - (c) provide for the times at which any entitlement to compensation under this Article is to arise or at which any such compensation is to become payable;
  - (d) provide for the persons or bodies by whom, and the manner in which, any dispute—
    - (i) as to whether any, and (if so) how much and when, compensation under this Article is payable; or
    - (ii) as to the person to or by whom it shall be paid, is to be determined;
  - (e) provide for when or how applications may be made for compensation under this Article;
  - (f) without prejudice to the generality of sub-paragraph (d), provide for when or how applications may be made for the determination of any such disputes as are mentioned in that sub-paragraph;
  - (g) without prejudice to the generality of sub-paragraphs (e) and (f), prescribe the form in which any such applications as are mentioned in those sub-paragraphs are to be made;
  - (h) make provision similar to any provision made by Article 18 of the Land Compensation (Northern Ireland) Order 1982;
  - (i) include such incidental, supplemental, consequential or transitional provision as the Department considers appropriate.

### **Grant of licences**

**8.—(1)** An application for a licence shall be made to the Department and shall be made on a form provided for the purpose by the Department and accompanied by such information as the Department reasonably requires and the fee payable under Article 15.

(2) Where an applicant for a licence fails to provide the Department with any information required under paragraph (1), the Department may refuse to proceed with the application, or refuse to proceed with it until the information is provided.

(3) A licence shall not be granted for a use of land, plant or equipment for which planning permission is required under the Planning (Northern Ireland) Order 1991 or consent under the Water Act (Northern Ireland) 1972 is required unless such planning permission is in force or such consent has been granted in relation to that use of the land.

(4) Subject to paragraphs (3) and (5), the Department shall not refuse an application for a licence which has been duly made if it is satisfied that the applicant is a fit and proper person unless it is satisfied that such refusal is necessary for the purpose of preventing—

- (a) pollution of the environment;
- (b) harm to human health; or
- (c) serious detriment to the amenities of the locality;

but sub-paragraph (c) is inapplicable where planning permission is in force in relation to the use to which the land will be put under the licence.

(5) Where the Department proposes to grant a licence, the Department shall, before it does so,—

- (a) refer the proposal to such body or person as the Department considers appropriate; and
- (b) consider any representations about the proposal which any such body or person makes to it during the allowed period.

(6) If within the period of 4 months from the date on which the Department received an application for the grant of a licence, or within such longer period as the Department and the applicant may at any time agree in writing, the Department has neither granted the licence in consequence of the application nor given notice to the applicant that the Department has refused the application, the Department shall be deemed to have refused the application.

(7) Paragraph (6)—

- (a) shall not have effect in any case where, under paragraph (2), the Department refuses to proceed with the application in question, and
- (b) shall have effect in any case where, under paragraph (2), the Department refuses to proceed with it until the required information is provided, with the substitution for the period of 4 months there mentioned of the period of 4 months from the date on which the Department received the information.

(8) The period allowed to any body or person for the making of representations under paragraph (5) about a proposal is the period of 28 days from the date on which the proposal is received by the body or, as the case may be, the person, or such longer period as the Department and the body or, as the case may be, the person, agree in writing.

(9) This Article shall have effect subject to Article 9.

### **Consultation before the grant of certain licences**

9.—(1) This Article applies where an application for a licence has been duly made to the Department, and the Department proposes to issue a licence subject (by virtue of Article 6(4)) to any condition which might require the holder of the licence to—

- (a) carry out any works, or
- (b) do any other thing,

which he might not be entitled to carry out or do.

(2) Before issuing the licence, the Department shall serve on every person appearing to the Department to be a person falling within paragraph (3) a notice which complies with the requirements set out in paragraph (4).

(3) A person falls within this paragraph if—

- (a) he is the owner, lessee or occupier of any land; and
- (b) that land is land in relation to which it is likely that, as a consequence of the licence being issued subject to the condition in question, rights will have to be granted by virtue of Article 6(4) to the holder of the licence.

- (4) A notice served under paragraph (2) shall—
- (a) set out the condition in question;
  - (b) indicate the nature of the works or other things which that condition might require the holder of the licence to carry out or do; and
  - (c) specify the date by which, and the manner in which, any representation relating to the condition or its possible effects are to be made to the Department by the person on whom the notice is served.
- (5) The date which, pursuant to paragraph (4)(c), is specified in a notice shall be a date not earlier than the date on which expires the period—
- (a) beginning with the date on which the notice is served, and
  - (b) of such length as may be prescribed.
- (6) Before the Department issues the licence it shall, subject to paragraph (7), consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under paragraph (2).
- (7) Paragraph (6) does not require the Department to consider any representations made by a person after the date specified in the notice served on him under paragraph (2) as the date by which his representations in relation to the condition or its possible effects are to be made.

#### **Variation of licences**

- 10.**—(1) While a licence is in force, the Department may, subject to regulations under Article 6(6),—
- (a) on its own initiative, modify the conditions of the licence to any extent which, in the opinion of the Department, is desirable and is unlikely to require unreasonable expense on the part of the holder; and
  - (b) on the application of the licence holder accompanied by the fee payable under Article 15, modify the conditions of his licence to the extent requested in the application.
- (2) While a licence is in force, the Department shall, except where it revokes the licence entirely under Article 12, modify the conditions of the licence—
- (a) to the extent which in the opinion of the Department is required for the purpose of ensuring that the activities authorised by the licence do not cause pollution of the environment or harm to human health or become seriously detrimental to the amenities of the locality affected by the activities; and
  - (b) to the extent required by any regulations in force under Article 6(6).
- (3) Any modification of a licence under this Article shall be effected by notice served on the holder of the licence and the notice shall state the time at which the modification is to take effect.
- (4) Article 8(5) and (8) shall with the necessary modifications apply to a proposal by the Department to modify a licence under paragraph (1) or (2)(a) as they apply to a proposal to grant a licence, except that—
- (a) the Department may postpone the reference so far as the Department considers that by reason of an emergency it is appropriate to do so; and
  - (b) the Department need not consider any representations as respects a modification which, in the opinion of the Department, will not affect any body or person mentioned in the paragraphs so applied.
- (5) If within the period of 2 months from the date on which the Department received an application by the holder of a licence for a modification of it, or within such longer period as the Department and the applicant may at any time agree in writing, the Department has neither granted a modification of



the licence in consequence of the application nor given notice to the applicant that the Department has refused the application, the Department shall be deemed to have refused the application.

(6) This Article shall have effect subject to Article 11.

#### **Consultation before certain variations**

**11.**—(1) This Article applies where—

- (a) the Department proposes to modify a licence under Article 10(1) or (2)(a); and
- (b) the licence, if modified as proposed, would be subject to a relevant new condition.

(2) For the purposes of this Article, a “relevant new condition” is any condition by virtue of which the holder of the licence might be required to carry out any works or do any other thing—

- (a) which he might not be entitled to carry out or do, and
- (b) which he could not be required to carry out or do by virtue of the conditions to which, prior to the modification, the licence is subject.

(3) Before modifying the licence, the Department shall serve on every person appearing to the Department to be a person falling within paragraph (4) a notice which complies with the requirements set out in paragraph (5).

(4) A person falls within this paragraph if—

- (a) he is the owner, lessee or occupier of any land; and
- (b) that land is land in relation to which it is likely that, as a consequence of the licence being modified so as to be subject to the relevant new condition in question, rights will have to be granted by virtue of Article 6(4) to the holder of the licence.

(5) A notice served under paragraph (3) shall—

- (a) set out the relevant new condition in question;
- (b) indicate the nature of the works or other things which that condition might require the holder of the licence to carry out or do but which he could not be required to carry out or do by virtue of the conditions (if any) to which, prior to the modification, the licence is subject; and
- (c) specify the date by which, and the manner in which, any representations relating to the condition or its possible effects are to be made to the Department by the person on whom the notice is served.

(6) The date which, pursuant to paragraph (5)(c), is specified in a notice shall be a date not earlier than the date on which expires the period—

- (a) beginning with the date on which the notice is served, and
- (b) of such length as may be prescribed.

(7) Before the Department issues the licence it shall, subject to paragraph (8), consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under paragraph (3).

(8) Paragraph (7) does not require the Department to consider any representations made by a person after the date specified in the notice served on him under paragraph (3) as the date by which his representations in relation to the condition or its possible effects are to be made.

(9) The Department may postpone the service of any notice or the consideration of any representations required under this Article so far as the Department considers that by reason of an emergency it is appropriate to do so.

**Revocation and suspension of licences**

12.—(1) Where a licence is in force and it appears to the Department—

- (a) that the holder of the licence has ceased to be a fit and proper person by reason of his having been convicted of a prescribed offence; or
- (b) that—
  - (i) the continuation of the activities authorised by the licence would cause pollution of the environment or harm to human health or would be seriously detrimental to the amenities of the locality affected; and
  - (ii) the pollution, harm or detriment cannot be avoided by modifying the conditions of the licence;

the Department may exercise, as it thinks fit, either of the powers conferred by paragraphs (3) and (4).

(2) Where a licence is in force and it appears to the Department that the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person, the Department may exercise the power conferred by paragraph (3).

(3) The Department may, under this paragraph, revoke the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the Department specifies in revoking the licence.

(4) The Department may, under this paragraph, revoke the licence entirely.

(5) A licence revoked under paragraph (3) shall cease to have effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the Department in revoking the licence but shall not affect the requirements imposed by the licence which the Department, in revoking the licence, specify as requirements which are to continue to bind the licence holder.

(6) Where a licence is in force and it appears to the Department—

- (a) that the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person; or
- (b) that—
  - (i) serious pollution of the environment or serious harm to human health has resulted from, or is about to be caused by, the activities to which the licence relates or the happening or threatened happening of an event affecting those activities; and
  - (ii) the continuing to carry on those activities, or any of those activities, in the circumstances will continue or, as the case may be, cause serious pollution of the environment or serious harm to human health;

the Department may suspend the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the Department specifies in suspending the licence.

(7) A licence suspended under paragraph (6) shall, while the suspension has effect, be of no effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the Department in suspending the licence.

(8) Where a licence is suspended under paragraph (6), the Department, in suspending it or at any time while it is suspended, may require the holder of the licence to take such measures to deal with or avert the pollution or harm as the Department considers necessary.

(9) A requirement imposed under paragraph (8) may require the holder of a licence to carry out works or do other things notwithstanding that he is not entitled to carry out the works or do the thing and any person whose consent would be required shall grant, or join in granting, the holder of the licence such rights in relation to the land as will enable the holder of the licence to comply with any requirements imposed on him under that paragraph.

(10) Paragraphs (2) to (7) of Article 9 shall, with the necessary modifications, apply where the Department proposes to impose a requirement under paragraph (8) which may require the holder of a licence to carry out any such works or do any such thing as is mentioned in paragraph (9) as they apply where the Department proposes to issue a licence subject to any such condition as is mentioned in paragraph (1) of that Article, but as if—

- (a) the reference in paragraph (3) of that Article to Article 6(4) were a reference to paragraph (9); and
- (b) any reference in those paragraphs—
  - (i) to the condition, or the condition in question, were a reference to the requirement; and
  - (ii) to issuing a licence were a reference to serving a notice, under paragraph (14), effecting the requirement.

(11) The Department may postpone the service of any notice or the consideration of any representations required under Article 9, as applied by paragraph (10), so far as the Department considers that by reason of an emergency it is appropriate to do so.

(12) , without reasonable excuse, fails to comply with any requirement imposed under paragraph (8) otherwise than in relation to special waste 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 imprisonment for a term not exceeding 2 years or to a fine or to both.

(13) A person who, without reasonable excuse, fails to comply with any requirement imposed under paragraph (8) in relation to special waste shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.

(14) Any revocation or suspension of a licence or requirement imposed during the suspension of a licence under this Article shall be effected by notice served on the holder of the licence and the notice shall state the time at which the revocation or suspension or the requirement is to take effect and, in the case of suspension, the period at the end of which, or the event on the occurrence of which, the suspension is to cease.

(15) If the Department is of the opinion that proceedings for an offence under paragraph (12) or (13) would afford an ineffectual remedy against a person who has failed to comply with any requirement imposed under paragraph (8), the Department may take proceedings in the High Court for the purpose of securing compliance with the requirement.

### **Surrender of licences**

**13.—**(1) A licence may be surrendered by its holder to the Department but, in the case of a site licence, only if the Department accepts the surrender.

(2) The following provisions apply to the surrender and acceptance of the surrender of a site licence.

(3) The holder of a site licence who desires to surrender it shall make an application for that purpose to the Department on a form provided by the Department for the purpose, giving such information and accompanied by such evidence as the Department reasonably requires and accompanied by the fee payable under Article 15.

(4) On receiving an application for the surrender of a site licence the Department—

- (a) shall inspect the land to which the licence relates, and
- (b) may require the holder of the licence to furnish to it further information or further evidence.

(5) The Department shall determine whether it is likely or unlikely that the condition of the land, so far as that condition is the result of the use of the land for the treatment, keeping or disposal of waste (whether or not in pursuance of the licence), will cause pollution of the environment or harm to human health.

(6) In determining the matters referred to in paragraph (5) the Department shall—

- (a) consult with such body or person as the Department considers appropriate; and
- (b) consider any representations which any such body or person makes to it during a period of 28 days from the date of the consultation or such longer period as the Department and the body or person agree in writing.

(7) If the Department is satisfied that the condition of the land is unlikely to cause the pollution or harm mentioned in paragraph (5), the Department shall accept the surrender of the licence; but otherwise the Department shall refuse to accept it.

(8) Where the surrender of a licence is accepted under this Article the Department shall issue to the applicant, with the notice of its determination, a certificate (a “certificate of completion”) stating that it is satisfied as mentioned in paragraph (7) and, on the issue of that certificate, the licence shall cease to have effect.

(9) If within the period of 3 months from the date on which the Department receives an application to surrender a licence, or within such longer period as the Department and the applicant may at any time agree in writing, the Department has neither issued a certificate of completion nor given notice to the applicant that the Department has refused the application, the Department shall be deemed to have refused the application.

### **Transfer of licences**

**14.—**(1) A licence may be transferred to another person in accordance with paragraphs (2) to (6) and may be so transferred whether or not the licence is partly revoked or suspended under any provision of this Order.

(2) Where the holder of a licence desires that the licence be transferred to another person (“the proposed transferee”) the licence holder and the proposed transferee shall jointly make an application to the Department for a transfer of the licence.

(3) An application under paragraph (2) for the transfer of a licence shall be made on a form provided by the Department for the purpose, accompanied by such information as the Department may reasonably require and the fee payable under Article 15 and the licence.

(4) If, on such an application, the Department is satisfied that the proposed transferee is a fit and proper person the Department shall effect a transfer of the licence to the proposed transferee.

(5) The Department shall effect a transfer of a licence under this Article by causing the licence to be endorsed with the name and other particulars of the proposed transferee as the holder of the licence from such date specified in the endorsement as may be agreed with the applicants.

(6) If within the period of 2 months from the date on which the Department receives an application for the transfer of a licence, or within such longer period as the Department and the applicants may at any time agree in writing, the Department has neither effected a transfer of the licence nor given

notice to the applicants that the Department has refused the application, the Department shall be deemed to have refused the application.

### **Fees and charges for licences**

**15.**—(1) There shall be charged by and paid to the Department, in respect of applications for licences or relevant applications in respect of licences, and in respect of the holding of licences, such fees and charges as may be provided for by a scheme under paragraph (2).

(2) The Department may make, and from time to time revise, a scheme specifying—

- (a) fees payable in respect of applications for licences or relevant applications in respect of licences, and
- (b) charges payable in respect of the subsistence of licences,

to the Department by persons making applications for or in respect of licences, or holding licences, as the case may be.

(3) The applications in respect of licences which are relevant for the purposes of this Article are—

- (a) applications for a modification of the conditions of a licence;
- (b) applications to surrender a licence; and
- (c) applications for the transfer of a licence.

(4) A copy of the scheme or of the modifications made in the scheme shall be laid before the Assembly.

(5) A scheme under paragraph (2) may in particular—

- (a) provide for different fees or charges to be payable according to the description of activities authorised by licences and the descriptions and amounts of controlled waste to which those activities relate;
- (b) provide for the times at which and manner in which payments of fees or charges are to be made; and
- (c) make such incidental, supplementary and transitional provision as appears to the Department to be appropriate.

(6) If it appears to the Department that the holder of a licence has failed to pay a charge due in consideration of the subsistence of the licence, the Department may, by notice in writing served on the holder, revoke the licence so far as it authorises the carrying on of the activities specified in the licence.

(7) Article 12(5) applies for the purposes of paragraph (6) as it applies for the purposes of paragraph (3) of that Article.

### **Supervision of licensed activities**

**16.**—(1) While a licence is in force the Department shall ensure—

- (a) that the activities authorised by the licence do not cause pollution of the environment or harm to human health or become seriously detrimental to the amenities of the locality affected by the activities; and
- (b) that the conditions of the licence are complied with.

(2) For the purpose of paragraph (1), an officer of the Department who is authorised in writing may, if it appears to him that by reason of an emergency it is necessary to do so, carry out work on the land or in relation to plant or equipment on the land to which the licence relates or, as the case may be, in relation to the mobile plant to which the licence relates.

(3) Where the Department incurs any expenditure under paragraph (2), the Department may recover the amount of the expenditure from the holder or, as the case may be, the former holder of the licence, except where the holder or former holder of the licence shows that there was no emergency requiring any work or except such of the expenditure as he shows was unnecessary.

(4) Where it appears to the Department that a condition of a licence is not being complied with or is likely not to be complied with, then, without prejudice to any proceedings under Article 4(6), the Department may—

- (a) serve on the holder of the licence a notice—
  - (i) stating that the Department is of the opinion that a condition of the licence is not being complied with or, as the case may be, is likely not to be complied with;
  - (ii) specifying the matters which constitute the non-compliance or, as the case may be, which make the anticipated non-compliance likely;
  - (iii) specifying the steps which must be taken to remedy the non-compliance or, as the case may be, to prevent the anticipated non-compliance from occurring; and
  - (iv) specifying the period within which those steps must be taken; and
- (b) if in the opinion of the Department the licence holder has not taken the steps specified in the notice within the period so specified, exercise any of the powers specified in paragraph (5).

(5) The powers referred to in paragraph (4)(b) are the following—

- (a) to revoke the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the Department specifies in revoking the licence;
- (b) to revoke the licence entirely; and
- (c) to suspend the licence so far as it authorises the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the Department in suspending the licence.

(6) If the Department is of the opinion that revocation or suspension of the licence, whether entirely or to any extent, under paragraph (5) would afford an ineffectual remedy against a person who has failed to comply with any requirement imposed under paragraph (4)(a), the Department may take proceedings in the High Court for the purpose of securing compliance with the requirement.

(7) Where a licence is revoked or suspended under paragraph (5), paragraphs (5) and (14) or, as the case may be, paragraphs (7) to (14) of Article 12 shall apply with the necessary modifications as they respectively apply to revocations or suspensions of licences under that Article.

### **Appeals from decisions with respect to licences**

17.—(1) Where—

- (a) an application for a licence or a modification of the conditions of a licence is refused;
- (b) a licence is granted subject to conditions;
- (c) the conditions of a licence are modified;
- (d) a licence is suspended;
- (e) a licence is revoked under Article 12 or 16;
- (f) an application to surrender a licence is refused; or
- (g) an application for the transfer of a licence is refused;

then, except in the case of an application for a transfer, the applicant for the licence or, as the case may be, the holder or former holder of it may appeal from the decision to the Planning Appeals Commission and, in the case of an application for a transfer, the proposed transferee may do so.

(2) Part I of Schedule 2 shall have effect with respect to appeals under paragraph (1).

(3) On receipt of an appeal under paragraph (1) the Planning Appeals Commission shall give notice of the appeal to the Department.

(4) Where, on such an appeal, the Planning Appeals Commission determines that the decision of the Department shall be altered the Department shall give effect to the determination.

(5) While an appeal is pending in a case falling within paragraph (1)(c) or (e), the decision in question shall, subject to paragraph (7), be ineffective; and if the decision in question is confirmed or the appeal is withdrawn the decision shall become effective from the end of the day on which the decision is confirmed or the appeal is withdrawn.

(6) Where an appeal is made in a case falling within paragraph (1)(d), the bringing of the appeal shall have no effect on the decision in question.

(7) Paragraph (5) shall not apply to a decision modifying the conditions of a licence under Article 10 or revoking a licence under Article 12 or 16 in the case of which the notice effecting the modification or revocation includes a statement that in the opinion of the Department it is necessary for the purpose of preventing or, where that is not practicable, minimising pollution of the environment or harm to human health that that paragraph should not apply.

(8) Where the decision under appeal is one falling within paragraph (7) or is a decision to suspend a licence, if, on the application of the holder or former holder of the licence, the Planning Appeals Commission determines that the Department acted unreasonably in excluding the application of paragraph (5) or, as the case may be, in suspending the licence, then—

- (a) if the appeal is still pending at the end of the day on which the determination is made, paragraph (5) shall apply to the decision from the end of that day; and
- (b) the holder or former holder of the licence shall be entitled to recover compensation from the Department in respect of any loss suffered by him in consequence of the exclusion of the application of that paragraph or the suspension of the licence;

and any dispute as to a person's entitlement to such compensation or as to the amount of it shall be determined by arbitration.

(9) 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.

### **Offences of making false or misleading statements or false entries**

**18.—**(1) A person who—

- (a) in purported compliance with a requirement to furnish any information imposed by or under any provision of this Part, or
- (b) for the purpose of obtaining for himself or another any grant of a licence, any modification of the conditions of a licence, any acceptance of the surrender of a licence or any transfer of a licence,

makes a statement which he knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, shall be guilty of an offence.

(2) A person who intentionally makes a false entry in any record required to be kept by virtue of a licence shall be guilty of an offence.

(3) A person guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

*Collection, disposal or treatment of controlled waste***Waste strategy**

**19.**—(1) The Department shall as soon as possible prepare a statement (“the strategy”) containing its policies in relation to the recovery and disposal of waste in Northern Ireland.

- (2) The Department may from time to time modify the strategy.
- (3) In addition to the generality of what may be included in the strategy, the strategy shall include—
  - (a) a statement of the Department’s policies for attaining the objectives specified in Schedule 3;
  - (b) provisions relating to each of the following, that is to say—
    - (i) the type, quantity and origin of waste to be recovered or disposed of;
    - (ii) general technical requirements; and
    - (iii) any special requirements for particular wastes.
- (4) In preparing the strategy or any modification of it 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 may consider 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 or any modifications of it.
- (5) Before carrying out a survey or investigation under paragraph (4)(b), the Department shall—
  - (a) consult—
    - (i) such bodies or persons appearing to it to be representative of the interests of industry,
    - (ii) such other bodies or persons,
 as it may consider appropriate; and
  - (b) make its findings available to those bodies or persons.
- (6) This Article makes provision for the purpose of implementing Article 7 of the Waste Directive.

**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; and
  - (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.



(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).

(6) Articles 13 to 16 of the Water and Sewerage Services (Northern Ireland) Order 1973 (which relate to the execution of works, etc.) shall apply in relation to pipes and associated works provided or to be provided under paragraph (5)(a) as those Articles apply in relation to works for the purpose of that Order but as if for any reference to the Department 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.

### **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 sub-paragraph (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;
  - (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).

### **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 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; 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 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.

### **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.

(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 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.

(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).

### **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; 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.

### **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.

### *Special waste and non-controlled waste*

### **Special provision with respect to certain dangerous or intractable waste**

**30.**—(1) If the Department considers that controlled waste of any kind is or may be so dangerous or difficult to treat, keep or dispose of that special provision is required for dealing with it, regulations shall make provision for the treatment, keeping or disposal of waste of that kind (in this Article referred to as “special waste”).

(2) Without prejudice to the generality of paragraph (1), the regulations may include provision—

- (a) for the giving of directions by the Department with respect to matters connected with the treatment, keeping or disposal of special waste;

- (b) for securing that special waste is not, while awaiting treatment or disposal in pursuance of the regulations, kept at any one place in quantities greater than those which are prescribed and in circumstances which differ from those which are prescribed;
  - (c) in connection with requirements imposed on consignors or consignees of special waste, imposing, in the event of non-compliance, requirements on any person carrying the consignment to re-deliver it as directed;
  - (d) for requiring the occupier of premises on which special waste is situated to give notice of that fact and other prescribed information to a prescribed body;
  - (e) for the making and retention of records by the Department and by persons who import, export, carry, produce, keep, treat or dispose of special waste, either directly or as a broker, or deliver it to another person for keeping, treatment or disposal, for the inspection of the records and for the furnishing by such persons to the Department of copies of or information derived from the records;
  - (f) for the keeping in the register under Article 34(1) of copies of such of those records, or such information derived from those records, as may be prescribed;
  - (g) providing that a contravention of the regulations shall be an offence and prescribing the maximum penalty for the offence, which shall not exceed, on summary conviction, a fine at level 5 on the standard scale and, on conviction on indictment, imprisonment for a term of 2 years or a fine or both.
- (3) Without prejudice to the generality of paragraph (1), the regulations may include provision—
- (a) for the supervision by the Department—
    - (i) of activities authorised under the regulations or of activities by virtue of carrying on which persons are subject to provisions of the regulations, or
    - (ii) of persons who carry on activities authorised by virtue of the regulations or who are subject to provisions of the regulations,
 and for the recovery from persons falling within head (ii) of the costs incurred by the Department in performing functions conferred upon the Department by the regulations;
  - (b) as to the recovery of expenses or other charges for the treatment, keeping or disposal or the re-delivery of special waste under the regulations;
  - (c) as to appeals from decisions of the Department under the regulations to the Planning Appeals Commission for determination.
- (4) In this Article “broker” has the same meaning as in Article 5.

### **Waste other than controlled waste**

**31.—**(1) Regulations made after consultation with such bodies as the Department considers appropriate may provide that prescribed provisions of this Part shall have effect in a prescribed area—

- (a) as if references in those provisions to controlled waste or controlled waste of a kind specified in the regulations included references to such waste as is mentioned in subparagraph (c) of the definition of “commercial waste” in Article 2(2) which is of a kind so specified; and
- (b) with such modifications as may be prescribed;

and the regulations may make such modifications of any statutory provision (other than the prescribed provisions mentioned in paragraph (1)), as the Department considers appropriate.

- (2) A person who deposits, or knowingly causes or knowingly permits the deposit of, any waste—
- (a) which is not controlled waste, but

(b) which, if it were controlled waste, would be special waste, in a case where he would be guilty of an offence under Article 4 if the waste were special waste and any management licence were not in force, shall, subject to paragraph (3), be guilty of that offence and punishable as if the waste were special waste.

(3) No offence is committed under paragraph (2) if the act charged was done under and in accordance with any consent, licence, approval or authority granted under any statutory provision (excluding any planning permission under the Planning (Northern Ireland) Order 1991.)

(4) Article 20(2) and Article 22(1) shall apply to waste other than controlled waste as they apply to controlled waste.

*Other controls on substances, articles or waste*

**Power to prohibit or restrict the use, supply or storage of injurious substances or articles**

**32.—**(1) Regulations may prohibit or restrict—

- (a) the use for any purpose,
- (b) the supply for any purpose, and
- (c) the storage,

of any specified substance or article if the Department considers it appropriate to do so for the purpose of preventing the substance or article from causing pollution of the environment or harm to human health or to the health of animals or plants.

(2) Regulations under this Article may—

- (a) enable the Department to direct that any substance or article whose use, supply or storage is prohibited or restricted is to be treated as waste or controlled waste of any description and in relation to any such substance or article—
  - (i) to apply, with or without modification, prescribed provisions of this Part; or
  - (ii) to direct that it be disposed of or treated in accordance with the direction;
- (b) confer powers corresponding to those conferred by Article 44 on persons authorised for any purpose of the regulations by the Department or on any district council; and
- (c) include such other incidental and supplemental, and such transitional provisions, as the Department considers appropriate.

(3) Subject to paragraph (4), before it makes any regulations under this Article the Department shall—

- (a) publish in the Belfast Gazette and in any other publication which the Department considers appropriate, a notice indicating the effect of the proposed regulations and specifying—
  - (i) the date on which it is proposed that the regulations will come into operation;
  - (ii) a place where a draft of the proposed regulations may be inspected free of charge by members of the public during office hours; and
  - (iii) a period of not less than 14 days from the date on which the notice is first published during which representations in writing may be made to the Department about the proposed regulations; and
- (b) consider any representations which are made in accordance with the notice.

(4) Regulations may be made under this Article in relation to any substance or article without observing the requirements of paragraph (3) where it appears to the Department that there is an imminent risk, if those requirements are observed, that serious pollution of the environment will be caused.

(5) After complying with paragraph (3) with respect to any proposed regulations, the regulations may be made either—

- (a) in the form of the draft mentioned in paragraph (3)(a), or
- (b) in that form with such modifications as the Department considers appropriate;

but regulations incorporating modifications shall not be made unless the Department is of the opinion that it is appropriate for the requirements of paragraph (3) to be disregarded.

(6) Regulations under this Article may provide that a person who contravenes a specified provision of the regulations or causes or permits another person to contravene a specified provision of the regulations commits an offence and may prescribe the maximum penalty for the offence.

(7) No offence under the regulations shall be made punishable with imprisonment for more than 2 years or punishable on summary conviction with a fine exceeding level 5 on the standard scale (if not calculated on a daily basis) or, in the case of a continuing offence, exceeding one-tenth of the level on the standard scale specified as the maximum penalty for the original offence.

(8) In this Article—

“the environment” includes the air within buildings and the air within other natural or man-made structures above or below ground; and

“substance” includes mixtures of substances.

### **Power to obtain information about potentially hazardous substances**

**33.**—(1) For the purpose of assessing their potential for causing pollution of the environment or harm to human health, regulations may make provision for and in connection with the obtaining of relevant information relating to substances which may be specified by the Department by order for the purposes of this Article.

(2) The Department shall not make an order under paragraph (1) specifying any substance—

- (a) which was first supplied in any member State on or after 18th September 1981; or
- (b) in so far as it is a regulated substance for the purposes of any relevant statutory provision.

(3) Regulations under this Article may—

- (a) prescribe the descriptions of relevant information which are to be furnished under this Article in relation to specified substances;
- (b) impose requirements on manufacturers or suppliers generally to furnish information prescribed under sub-paragraph (a);
- (c) provide for the imposition of requirements on manufacturers or suppliers generally to furnish relevant information relating to products or articles containing specified substances in relation to which information has been furnished in pursuance of sub-paragraph (b);
- (d) provide for the imposition of requirements on particular manufacturers or suppliers to furnish further information relating to specified substances in relation to which information has been furnished in pursuance of sub-paragraph (b);
- (e) provide for the imposition of requirements on particular manufacturers to carry out tests of specified substances and to furnish information of the results of the tests;
- (f) authorise persons to comply with requirements to furnish information imposed on them under the regulations by means of representative persons or bodies;
- (g) impose restrictions on the disclosure of information obtained under this Article and provide for determining what information is, and what information is not, to be treated as furnished in confidence;

- (h) create offences, subject to the limitation that no offence shall be punishable with imprisonment or punishable on summary conviction with a fine exceeding level 5 on the standard scale;
  - (i) make any district council or other body designated by the regulations responsible for the enforcement of the regulations to such extent as may be specified in the regulations;
  - (j) include such other incidental and supplemental, and such transitional, provisions as the Department considers appropriate.
- (4) The Department shall have regard, in imposing or providing for the imposition of any requirement under paragraph (3)(b), (c), (d) or (e), to the cost likely to be involved in complying with the requirement.

(5) In this Article—

“relevant information”, in relation to substances, products or articles, means information relating to their properties, production, distribution or use or intended use and, in relation to products or articles, to their disposal as waste;

“substance” includes mixtures of substances.

(6) The statutory provisions which are relevant for the purposes of paragraph (2)(b) are the following—

the Explosives Act 1875;

Parts II, III and VIII of the Medicines Act 1968;

Part IV of the Agriculture Act 1970;

the Misuse of Drugs Act 1971;

Part III of the Food and Environment Protection Act 1985;

the Food Safety (Northern Ireland) Order 1991; and

the Radioactive Substances Act 1993 ;

and a substance is a regulated substance for the purposes of any such statutory provision in so far as any prohibition, restriction or requirement is imposed in relation to it under the statutory provision for the purposes of that statutory provision.

### *Publicity*

#### **Public registers**

**34.**—(1) Subject to Articles 35 and 36, the Department shall maintain a register containing prescribed particulars of or relating to—

- (a) current or recently current licences (“licences”) granted by the Department;
- (b) current or recently current applications to the Department for licences;
- (c) applications made to the Department under Article 10 for the modification of licences;
- (d) notices issued by the Department under Article 10 effecting the modification of licences;
- (e) notices issued by the Department under Article 12 effecting the revocation or suspension of licences or imposing requirements on the holders of licences;
- (f) appeals under Article 17 relating to decisions of the Department;
- (g) certificates of completion issued by the Department under Article 13(8);
- (h) notices issued by the Department imposing requirements on the holders of licences under Article 16(4);

- (i) convictions of the holders of licences granted by the Department for any offence under this Part (whether in relation to a licence so granted or not);
- (j) the occasions on which the Department has discharged any function under Article 16;
- (k) such matters relating to the treatment, keeping or disposal of waste or any pollution of the environment caused thereby as may be prescribed;

and any other document or information required to be kept in the register under any provision of this Part.

(2) Where information of any description is excluded from any register under Article 36, a statement shall be entered in the register indicating the existence of information of that description.

(3) For the purposes of paragraph (1) licences are “recently” current for the period of 12 months after they cease to be in force and applications for licences are “recently” current if they relate to a licence which is current or recently current or, in the case of an application which is refused, for the period of 12 months from the date on which the Department gives notice of refusal or, as the case may be, on which the application is deemed by Article 8(6) to have been refused.

(4) Each district council shall maintain a register containing prescribed particulars of such information contained in any register maintained under paragraph (1) as relates to the treatment, keeping or disposal of controlled waste in the district of the council.

(5) The Department shall furnish district councils with the particulars necessary to enable them to comply with paragraph (4).

(6) The Department and each district council—

- (a) shall secure that any register maintained under this Article is open to inspection by members of the public free of charge at all reasonable hours; and
- (b) shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register;

and, for the purposes of this paragraph, places may be prescribed at which any such registers or facilities as are mentioned in sub-paragraphs (a) or (b) are to be available or afforded to the public in pursuance of the sub-paragraph in question.

(7) Registers under this Article may be kept in any form.

### **Exclusion from registers of information affecting national security**

**35.**—(1) No information shall be included in a register maintained under Article 34 (a “register”) if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which paragraph (1) applies, give to the Department directions—

- (a) specifying information, or descriptions of information, to be excluded from its register; or
- (b) specifying descriptions of information to be referred to the Secretary of State for his determination;

and no information referred to the Secretary of State in pursuance of sub-paragraph (b) shall be included in any such register until the Secretary of State determines that it should be so included.

(3) The Department shall notify the Secretary of State of any information it excludes from the register in pursuance of directions under paragraph (2).

(4) A person may, as respects any information which appears to him to be information to which paragraph (1) may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—

- (a) he shall notify the Department that he has done so; and

- (b) no information so notified to the Secretary of State shall be included in the register until the Secretary of State has determined that it should be so included.

### **Exclusion from registers of certain confidential information**

**36.**—(1) No information relating to the affairs of any individual or business shall be included in a register maintained under Article 34 (a “register”), without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—

- (a) is, in relation to him, commercially confidential; and
- (b) is not required to be included in the register in pursuance of directions under paragraph (9);

but information is not commercially confidential for the purposes of this Article unless it is determined under this Article to be so by the Department or, on appeal, by the Planning Appeals Commission.

(2) Where information is furnished to the Department for the purpose of—

- (a) an application for, or for the modification of, a licence;
- (b) complying with any condition of a licence; or
- (c) complying with a notice under Article 44(1);

then, if the person furnishing it applies to the Department to have the information excluded from the register on the ground that it is commercially confidential (as regards himself or another person), the Department shall determine whether the information is or is not commercially confidential.

(3) A determination under paragraph (2) shall be made within the period of 14 days from the date of the application and if the Department fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.

(4) Where it appears to the Department that any information (other than information furnished in circumstances within paragraph (2)) which has been obtained by the Department under any provision of this Part might be commercially confidential, the Department shall—

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register unless excluded under this Article; and
- (b) give him a reasonable opportunity—
  - (i) of objecting to the inclusion of the information on the grounds that it is commercially confidential; and
  - (ii) of making representations to the Department for the purpose of justifying any such objection;

and, if any representations are made, the Department shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(5) Where, under paragraph (2) or (4), the Department determines that information is not commercially confidential—

- (a) the information shall not be entered in the register until the end of the period of 21 days from the date on which the determination is notified to the person concerned;
- (b) that person may appeal to the Planning Appeals Commission against the decision;

and, where an appeal is brought in respect of any information, the information shall not be entered in the register until the end of the period of 7 days from the day on which the appeal is finally determined or withdrawn.

(6) Part II of Schedule 2 shall have effect with respect to appeals under paragraph (5).

(7) On receipt of an appeal under paragraph (5) the Planning Appeals Commission shall give notice of the appeal to the Department.

(8) 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.

(9) The Department may specify information, or descriptions of information, which the public interest requires to be included in the registers notwithstanding that the information may be commercially confidential.

(10) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this Article at the expiry of the period of 4 years from the date of the determination under which it was excluded; but the person who furnished it may apply to the Department for the information to remain excluded from the register on the ground that it is still commercially confidential and the Department shall determine whether or not that is the case.

(11) Paragraphs (5) to (7) shall apply in relation to a determination under paragraph (10) as they apply in relation to a determination under paragraph (2) or (4).

(12) The Department may, by order, substitute for the period for the time being specified in paragraph (3) such other period as the Department considers appropriate.

(13) Information is, for the purposes of any determination under this Article, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interest of that individual or person.

### **Annual reports**

**37.**—(1) The Department shall, for each financial year, prepare and publish a report on the discharge by the Department of its functions under this Part or under any relevant instrument.

(2) A report under paragraph (1) shall include information as respects—

- (a) the licences respectively applied for, granted, in force, modified, revoked, suspended, surrendered or transferred during the year and the appeals made against decisions taken in respect of them;
- (b) the exercise by the Department of its powers under Article 16 or 30 or any relevant instrument;
- (c) the implementation by district councils of plans under Article 23, with particular reference to recycling waste;
- (d) the number and description of prosecutions brought under this Part; and
- (e) the cost incurred, and the sums received, by the Department in discharging its functions under this Part.

(3) The Department may require district councils to furnish the Department with the particulars necessary to enable it to comply with paragraphs (1) and (2).

(4) The Department shall arrange for the report for any year under paragraph (1) to be published not later than the end of the period of 6 months following the end of the year to which the report relates.

(5) In paragraphs (1) and (2) “relevant instrument” means any instrument under section 2(2) of the European Communities Act 1972 under which the Department has functions with respect to waste.



### *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;
- (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; or
- (c) that he acted under instructions from his employer.

(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.

(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.

#### **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—
- (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 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—

- (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.

### **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 or under Article 5 of the Pollution Control and Local Government (Northern Ireland) Order 1978 (prohibition on unlicensed disposal of waste) 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
- (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.

### *Miscellaneous*

#### **Obtaining of information**

**44.—**(1) For the purpose of the discharge of its functions under this Part the Department or a district council may, by notice in writing served on him, require any person to furnish such information specified in the notice as the Department or, as the case may be, the council reasonably considers it needs, in such form and within such period following service of the notice, or at such time, as is so specified.

(2) A person who fails, without reasonable excuse, to comply with a requirement to provide information imposed under paragraph (1) shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine or to both.

#### **Provisions relating to legal proceedings and civil liability**

**45.—**(1) Where a person appeals against a decision of a court of summary jurisdiction dismissing an appeal against any requirement imposed under this Part which was suspended pending determination of that appeal, the requirement shall again be suspended pending the determination of the appeal.

(2) Where an appeal against a decision of a district council lies to a court of summary jurisdiction under any provision of this Part, the council shall include in any document by which it notifies the decision to the person concerned a statement indicating that such an appeal lies and specifying the time within which it must be brought.

(3) Where on an appeal to any court against or arising out of a decision of a district council under this Part the court varies or reverses the decision the council shall act in accordance with the court's decision.

(4) Where any damage is caused by waste which has been deposited in or on land, any person who deposited it, or knowingly caused or knowingly permitted it to be deposited, in either case so as to commit an offence under Article 4(1) or 31(2), is liable for the damage except where the damage—

(a) was due wholly to the fault of the person who suffered it; or

(b) was suffered by a person who voluntarily accepted the risk of the damage being caused; but without prejudice to any liability arising otherwise than under this paragraph.

(5) The matters which may be proved by way of defence under Article 4(7) may be proved also by way of defence to an action brought under paragraph (4).

(6) In paragraph (4)—

“damage” includes the death of, or injury to, any person (including any disease and any impairment of physical or mental condition); and

“fault” has the same meaning as in the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948.

(7) For the purposes of the following statutory provisions—

(a) the Fatal Accidents (Northern Ireland) Order 1977,

(b) the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948; and

(c) the Limitation (Northern Ireland) Order 1989,

any damage for which a person is liable under paragraph (4) shall be treated as due to his fault.

### **Supplementary provisions relating to pipes**

**46.**—(1) Where a district council provides pipes under Article 20(6) or 25(3), the council shall prepare a map showing the location of the pipes and shall secure that a copy of the map is available at its principal offices for inspection by the public free of charge at all reasonable hours.

(2) Section 29 of the Public Health (Ireland) Act 1878 (under which the erection of buildings over a sewer may be prevented or controlled by the Department) shall have effect as if the reference to a sewer included any pipe provided as mentioned in paragraph (1).

(3) References to pipes in this Article include associated works.

### **Transitional provisions with respect to licences**

**47.**—(1) This Article has effect for the purposes of the transition from the provisions of Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978 (“the 1978 Order”) to the corresponding provisions of this Part and in this Article—

“existing disposal licence” means a disposal licence under Article 7 of the 1978 Order subsisting on the day appointed under Article 1(2) for the repeal of Articles 5 to 12 of the 1978 Order and “relevant appointed day for licences” shall be construed accordingly;

“existing disposal plan” means a plan under Article 4 of the 1978 Order subsisting on the day appointed under Article 1(2) for the repeal of that Article and “relevant appointed day for plans” shall be construed accordingly;

“existing resolution of a district council” means a resolution under Article 13 of the 1978 Order in force on the day appointed under Article 1(2) for the repeal of that Article and “relevant appointed day for resolutions” shall be construed accordingly.

(2) An existing disposal licence shall, on and after the relevant appointed day for licences, be treated as a site licence and shall continue in force for a period of 3 years from the relevant appointed day for licences; and accordingly it shall be variable and subject to revocation or suspension under this Part and may not be surrendered or transferred except under this Part.

(3) An existing resolution of a district council shall, on and after the relevant appointed day for resolutions, have effect as if it were a waste management licence subject to the conditions specified in the resolution pursuant to Article 13(3)(d) of the 1978 Order and shall continue in force for a period of 3 years from the relevant appointed day for resolutions; and accordingly it shall be variable and subject to revocation or suspension under this Part and may not be surrendered or transferred except under this Part.

(4) An existing disposal plan of a district council shall, on and after the relevant appointed day for plans, be treated as the plan of that council under Article 23 and shall continue in force for a period of 3 years from the relevant appointed day for plans; and accordingly that Article shall have effect as if references in it to “the plan” included the existing disposal plan of that council.

#### **This Part and radioactive substances**

**48.** Except as provided by regulations under this Article, nothing in this Part applies to radioactive waste within the meaning of the Radioactive Substances Act 1993; but regulations may—

- (a) provide for prescribed provisions of this Part to have effect with such modifications as the Department considers appropriate for the purposes of dealing with such radioactive waste;
- (b) make such modifications of the Radioactive Substances Act 1993 and any other statutory provision as the Department considers appropriate.