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STATUTORY INSTRUMENTS

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**1997 No. 2778**

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

**PART IV**

**GENERAL**

*Supervision and enforcement*

**Powers of enforcing authorities and persons authorised by them**

72.—(1) An authorised person may, on production (if so required) of his authority, exercise any of the powers in paragraph (2) for the purpose of—

- (a) determining whether any provisions of the pollution control statutory provisions in the case of an enforcing authority are being, or have been, complied with;
- (b) discharging one or more of the functions conferred or imposed on an enforcing authority by or under the pollution control statutory provisions; or
- (c) determining whether and, if so, how such a function should be discharged.

(2) The powers of an authorised person are—

- (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
- (b) on entering any premises by virtue of sub-paragraph (a), to take with him—
  - (i) any other person duly authorised by the enforcing authority and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
  - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may in any circumstances be necessary;
- (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
- (g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to

cause pollution of the environment or harm to human health, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);

- (h) in the case of any such article or substance as is mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
  - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which he has power to do under that sub-paragraph;
  - (ii) to ensure that it is not tampered with before examination of it is completed;
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under the pollution control statutory provisions in the case of the enforcing authority under whose authorisation he acts or in any other proceedings relating to a variation notice, enforcement notice or prohibition notice under those statutory provisions;
- (i) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
- (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records—
  - (i) which are required to be kept under the pollution control statutory provisions for the enforcing authority under whose authorisation he acts, or
  - (ii) which it is necessary for him to see for the purposes of an examination or investigation under sub-paragraph (c),and to inspect and take copies of, or of any entry in, the records;
- (k) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this Article;
- (l) any other power for a purpose mentioned in paragraph (1) which is conferred by regulations.

(3) The powers which under paragraphs (1) and (2) are conferred in relation to any premises for the purpose of enabling an enforcing authority to determine whether any provision of the pollution control statutory provisions in the case of that authority is being, or has been, complied with shall include power, in order to obtain the information on which that determination may be made,—

- (a) to carry out experimental borings or other works on those premises; and
- (b) to install, keep or maintain monitoring and other apparatus there.

(4) Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of this Article shall only be effected—

- (a) after the expiration of at least 7 days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question, and
- (b) either—
  - (i) with the consent of a person who is in occupation of those premises; or

(ii) under the authority of a warrant by virtue of Schedule 4.

(5) Except in an emergency, where an authorised person proposes to enter any premises and—

- (a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry, or
- (b) he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to those premises by virtue of this Article shall only be effected under the authority of a warrant by virtue of Schedule 4.

(6) Regulations may make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under paragraph (2)(f).

(7) Where an authorised person proposes to exercise the power conferred by paragraph (2)(g) in the case of an article or substance found on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(8) Before exercising the power conferred by paragraph (2)(g) in the case of any article or substance, an authorised person shall consult—

- (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test, and
- (b) such other persons,

as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do or cause to be done under the power.

(9) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(i) shall be admissible in evidence in Northern Ireland against that person in any proceedings.

(10) Nothing in this Article shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

(11) Schedule 4 shall have effect with respect to the powers of entry and related powers which are conferred by this Article.

(12) In this Article and Schedule 4—

“authorised person” means a person who is authorised in writing by an enforcing authority for the purposes of this Article;

“emergency” means a case in which it appears to the authorised person in question—

- (a) that there is an immediate risk of serious pollution of the environment or serious harm to human health, or
- (b) that circumstances exist which are likely to endanger life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy;

“enforcing authority” means—

- (a) the Department;
- (b) a district council in its capacity as an enforcing authority for the purposes of Part III;
- (c) a district council for the purposes of Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978;

“pollution control statutory provisions”—

- (a) in relation to the Department, means—
  - (i) this Order; and
  - (ii) regulations made under section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution;
- (b) in relation to a district council, means—
  - (i) Part III;
  - (ii) Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978; and
  - (iii) regulations made under section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution;

“premises” includes any land, vehicle, vessel or mobile plant.

(13) Nothing in section 98 of the Local Government Act (Northern Ireland) 1972 shall apply to functions conferred on a district council under this Order, other than functions under Article 28.

#### **Power to deal with cause of imminent danger of serious pollution etc.**

73.—(1) Where, in the case of any article or substance found by him on any premises which he has power to enter, an authorised person has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious pollution of the environment or serious harm to human health, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).

(2) As soon as may be after any article or substance has been seized and rendered harmless under this Article, the authorised person shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall—

- (a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and
- (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;

and if, where sub-paragraph (b) applies, the authorised person cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under sub-paragraph (a).

(3) In this Article, “authorised person” has the same meaning as in Article 72.

#### **Offences**

74.—(1) It is an offence for a person intentionally to obstruct an authorised person in the exercise or performance of his powers or duties.

- (2) It is an offence for a person, without reasonable excuse,—
  - (a) to fail to comply with any requirement imposed under Article 72;
  - (b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the discharge of his functions under that Article; or
  - (c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer under that Article.

(3) It is an offence for a person falsely to pretend to be an authorised person.

(4) A person guilty of an offence under paragraph (1) shall be liable—

- (a) in the case of an offence of obstructing an authorised person in the exercise of his powers under Article 73—
    - (i) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine or to both;
    - (ii) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) in any other case, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (5) A person guilty of an offence under paragraph (2) or (3) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) In this Article—
- “authorised person” has the same meaning as in Article 72;
  - “powers or duties” includes powers or duties exercisable by virtue of a warrant under Schedule 4.

### *Evidence*

#### **Evidence in connection with certain pollution offences**

**75.**—(1) Information provided or obtained pursuant to or under a condition of a relevant licence (including information so provided or obtained, or recorded, by means of any apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to the condition or any other person.

(2) For the purposes of paragraph (1), apparatus shall be presumed in any proceedings to register or record accurately, unless the contrary is shown or the relevant licence otherwise provides.

(3) Where—

- (a) under a condition of a relevant licence, an entry is required to be made in any record as to the observance of any condition of the relevant licence, and
- (b) the entry has not been made,

that fact shall be admissible in any proceedings as evidence that that condition has not been observed.

(4) In this Article—

“apparatus” includes any meter or other device for measuring, assessing, determining, recording or enabling to be recorded, the volume, temperature, radioactivity, rate, nature, origin, composition or effect of any substance, flow, discharge, emission, deposit or abstraction;

“condition of a relevant licence” includes any requirement to which a person is subject under or in consequence of a relevant licence;

“relevant licence” means—

- (a) a waste management licence under Article 6;
- (b) registration of a person as a carrier of controlled waste under Article 39.

### *Information*

#### **Disclosure of information**

**76.**—(1) Notwithstanding any prohibition or restriction imposed by or under any statutory provision or rule of law, information of any description may be disclosed—

- (a) by the Department to a district council; or
- (b) by a district council to the Department or to another district council,

for the purpose of facilitating the carrying out by the Department of any of its functions under this Order or by any district council of any of its functions under Part III; and no person shall be subject to any civil or criminal liability in consequence of any disclosure made by virtue of this paragraph.

(2) Nothing in this Article shall authorise the disclosure of information, disclosure of which would, in the opinion of the Secretary of State, be contrary to the interests of national security.

(3) No information disclosed to any person under this Article shall be disclosed by that person to any other person otherwise than in accordance with the provisions of this Article, or any other statutory provision which authorises or requires the disclosure, if that information is information—

- (a) which relates to a trade secret of any person or which otherwise is or might be commercially confidential in relation to any person; or
- (b) whose disclosure otherwise than under this Article would, in the opinion of the Secretary of State, be contrary to the interests of national security.

(4) Any authorisation by or under this Article of the disclosure of information by or to any person shall also be taken to authorise the disclosure of that information by or, as the case may be, to any officer of his who is authorised by him to make the disclosure or, as the case may be, to receive the information.

(5) Information is for the purposes of this Article commercially confidential in relation to any person if its disclosure would prejudice to an unreasonable degree the commercial interests of that person.

### *Supplemental*

#### **Power to give effect to Community and other international obligations, etc.**

77.—(1) Regulations may provide that the provisions of Part II shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom—

- (a) to give effect to any Community obligation or exercise any related right; or
- (b) to give effect to any obligation or exercise any related right under any international agreement to which the United Kingdom is for the time being a party.

(2) In this Article—

“regulations”—

- (a) in relation to any Community obligation, means regulations made by the Department; and
- (b) in relation to any international agreement, means regulations made by the Secretary of State;

“related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

(3) Regulations under this Article made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament in the like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

#### **Offences by bodies corporate**

78. For the purposes of this Order section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the

affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

### **Offences under this Order due to fault of others**

79. Where the commission by any person of an offence under this Order is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this Article whether or not proceedings for the offence are taken against the first-mentioned person.

### **Application to Crown**

80.—(1) Subject to the provisions of this Article, the provisions of this Order and of regulations and orders made under it shall bind the Crown including the Crown in right of Her Majesty's Government in the United Kingdom.

(2) No contravention by the Crown of any provision of this Order or of any regulations or order made under it shall make the Crown criminally liable; but the High Court may, on the application of the Department, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), the provisions of this Order and of regulations and orders made under it shall apply to persons in the public service of the Crown as they apply to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any power of entry exercisable in relation to them specified in the certificate that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises; and in this paragraph "Crown premises" means premises held or used by or on behalf of the Crown.

### **Financial provision**

81. Any fees or other sums received by the Department under any provisions of this Order shall be paid into the Consolidated Fund.

### **Orders, regulations and directions**

82.—(1) Orders and regulations made by the Department under this Order shall be subject to negative resolution.

(2) Any direction given under this Order shall be in writing and may be varied or revoked by subsequent directions.

(3) Paragraphs (4) and (5) apply to any direction given to any body or person under any provision of this Order being a direction to any extent so given for the purpose of implementing any obligations of the United Kingdom under the Community Treaties.

(4) A direction to which this paragraph applies shall not be varied or revoked unless, notwithstanding the variation or revocation, the obligations mentioned in paragraph (3), as they have effect for the time being, continue to be implemented, whether by directions or any other instrument or by any statutory provision.

(5) Any variation or revocation of a direction to which this paragraph applies shall be published in such manner as the Department considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—

(a) copies of the variation or revocation shall be made available to the public; and

- (b) notice of the variation or revocation, and of where a copy of the variation or revocation may be obtained, shall be given in the Belfast Gazette.

**Amendments and repeals**

**83.**—(1) The statutory provisions set out in Schedule 5 shall have effect subject to the amendments specified in that Schedule (being amendments consequential on this Order).

(2) The statutory provisions set out in Schedule 6 are hereby repealed to the extent specified in column 3 of that Schedule.