

# WASTE (AMENDMENT) (NORTHERN IRELAND) ORDER 2007

S.I. 2007 No. 611 (N.I. 3)

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## EXPLANATORY MEMORANDUM

### OFFENCES RELATING TO DEPOSIT, DISPOSAL ETC. OF WASTE

#### *Article 3 – Defence of acting under employer’s instructions*

This Article amends Article 4 of the 1997 Order (under which it is an offence to make an unauthorised or harmful deposit etc. of waste) so as to remove the defence of acting under one’s employer’s instructions.

#### *Article 4 – Penalties on conviction*

This Article amends the penalties on conviction of an offence under Article 4 of the 1997 Order. It increases the maximum available fine on summary conviction from £20,000 to £50,000 and raises the maximum term of imprisonment (on conviction on indictment) for non hazardous waste offences from 2 years to 5 years. It also requires a court, in determining the fine for specific offences under Article 4 of the 1997 Order, to take account of any financial benefit that an offender has accrued, or is likely to accrue, as a consequence of the offence. These changes effectively remove the distinction between hazardous and non-hazardous waste for offences under Article 4 of the 1997 Order.

#### *Article 5 – Failure to furnish documentation: fixed penalty notice*

Article 5 of the 1997 Order places a duty on any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, to secure a written description of the waste whenever it is transferred. Article 5(7) provides for regulations to be made to require such documents to be retained and furnished.

This Article inserts a new Article 5A into the 1997 Order. The new Article empowers the Department to issue a fixed penalty notice to a person who has failed to comply with a requirement to furnish documents under the regulations, offering him the opportunity to discharge any liability to conviction by payment of a fixed penalty.

The amount of the fixed penalty is set at £300, which may be amended by an order made by the Department. The Department may also make provision for treating the fixed penalty as being paid if a lesser amount is paid during such shorter period as it may specify.

#### *Article 6 – Investigation and enforcement costs*

This Article inserts a new Article 5B into the 1997 Order. Article 5B applies where a person is convicted for an offence under Articles 4 or 5 of the 1997 Order and enables the court to make an order requiring the offender to pay the Department’s investigation and enforcement costs, and any costs associated with the seizure of vehicles involved in the offence.

#### *Article 7 – Clean-up costs*

This Article inserts a new Article 5C into the 1997 Order. Article 5C applies where a person has been convicted of an offence under Article 4(1) of the 1997 Order consisting of the deposit or disposal of controlled waste. It enables the court to make an order requiring the offender to pay any costs incurred by district councils, the Department or the occupier or owner of the land in removing, or otherwise dealing with, waste that has been illegally disposed of or deposited.

*This Explanatory Memorandum refers to the Waste  
(Amendment) (Northern Ireland) Order 2007No. 611 (N.I. 3)*

***Article 8 – Forfeiture of vehicles***

This Article inserts a new Article 5D into the 1997 Order. Article 5D applies where a person has been convicted of an offence involving a contravention of Articles 4 or 5 of the 1997 Order consisting of the deposit or disposal of controlled waste. It enables the court to make an order depriving the offender of his rights to a vehicle (and its contents) and vesting those rights in the Department. The court must be satisfied that the vehicle was used in connection with the offence, and the Article specifies a number of factors which must be considered in deciding whether to make such an order.

***Article 9 – Power to search and seize vehicles***

This Article inserts new Articles 5E and 5F into the 1997 Order. The new Articles empower an authorised officer or a constable to stop, search and seize a vehicle (and its contents) where it is reasonably believed that the vehicle has been, is being, or is about to be, used in the commission of an offence under Articles 4 or 5 of the 1997 Order. A vehicle or its contents seized by a constable are seized on behalf of the Department.

The Article also creates two new offences. Firstly, intentionally obstructing, or otherwise failing to assist, an authorised officer or a constable. Secondly, failure, without reasonable excuse, to provide accurate information about the owner of the vehicle, or any other information that may reasonably be requested. Any such offence is punishable on summary conviction by a fine not exceeding level 5 on the standard scale (currently £5,000).

The Article also requires the Department to make regulations specifying how it must deal with any seized property.