



# Clean Neighbourhoods and Environment Act 2005

## 2005 CHAPTER 16

### PART 5

#### WASTE

### CHAPTER 1

#### TRANSPORT OF WASTE

#### **35 Unregistered transport: defence of acting under employer's instructions**

- (1) In section 1 of the Control of Pollution (Amendment) Act 1989 (c. 14) (offence of transporting controlled waste without registering), in subsection (4)—
  - (a) at the end of paragraph (a), insert “ or ”;
  - (b) omit paragraph (c) (defence of acting under employer's instructions) and the preceding “or”.
- (2) This section does not have effect in relation to an offence committed, or alleged to have been committed, before the commencement of this section.

#### **36 Registration requirements and conditions**

- (1) Section 2 of the Control of Pollution (Amendment) Act 1989 (c. 14) (power to make regulations about registration of carriers) is amended as follows.
- (2) In subsection (2)—
  - (a) in paragraph (c), omit “free of charge”;
  - (b) omit paragraph (d);
  - (c) in paragraph (e), omit “free of charge”.
- (3) In subsection (3), omit paragraph (b) (provision as to form of applications).

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- (4) In subsection (3A)—
- (a) for “paragraphs (b) and (d)” substitute “ paragraph (d) ”; and
  - (b) omit paragraph (a) (further provision as to form of application).
- (5) After subsection (4) insert—
- “(4A) Regulations under this section may include provision for—
- (a) the registration of a person as a carrier of controlled waste to be subject to conditions relating to the vehicles used by him in transporting such waste; or
  - (b) the revocation by a regulation authority of the registration of a carrier of controlled waste who has breached a condition imposed on him under paragraph (a) above.
- (4B) Provision contained in any regulations under this section by virtue of subsection (4A) above may, in particular, include provision—
- (a) for inspection by a regulation authority of the vehicles of registered carriers of controlled waste for the purpose of ensuring compliance with conditions imposed under subsection (4A)(a) above;
  - (b) for a regulation authority to impose charges on registered carriers of controlled waste in respect of such inspections.”

(6) In subsection (5), for “to (4)” substitute “ to (4B) ”.

(7) In section 3 of that Act (restrictions on power under section 2), in subsection (2), after “except” insert “ in accordance with regulations under subsection (4A) of that section or ”.

### 37 Enforcement powers

For section 5 of the Control of Pollution (Amendment) Act 1989 substitute—

#### “5 Power to require production of authority, stop and search etc

- (1) This section applies where an authorised officer of a regulation authority or a constable reasonably believes that controlled waste has been, is being or is about to be transported in contravention of section 1(1) above.
- (2) The authorised officer or constable may—
  - (a) require any person appearing to him to be or to have been engaged in transporting that waste to produce his (or, as the case may be, his employer's) authority to do so;
  - (b) search any vehicle that appears to him to be a vehicle that has been, is being or is about to be used for transporting that waste;
  - (c) carry out tests on anything found in any such vehicle (including by taking away samples for testing of anything so found);
  - (d) seize any such vehicle and any of its contents.
- (3) For the purposes of subsection (2)(a) above, a person's authority for transporting controlled waste is—
  - (a) his certificate of registration as a carrier of controlled waste;

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- (b) such copy of that certificate as satisfies requirements specified in regulations made by the appropriate person; or
  - (c) such evidence as may be so specified that he is not required to be registered as a carrier of controlled waste.
- (4) Where an authorised officer or constable has required a person to produce an authority under subsection (2)(a) above, the person must do so—
  - (a) by producing it forthwith to the authorised officer or constable;
  - (b) by producing it at a place and within a period specified in regulations made by the appropriate person; or
  - (c) by sending it to that place and within that period.
- (5) In acting under subsection (2) above an authorised officer or constable may—
  - (a) stop any vehicle as referred to in paragraph (b) of that subsection (but only a constable in uniform may stop a vehicle on any road);
  - (b) enter any premises for the purpose specified in paragraph (b) or (d) of that subsection.
- (6) A vehicle or its contents seized under subsection (2)(d) above—
  - (a) by an authorised officer of a regulation authority, are seized on behalf of that authority;
  - (b) by a constable in the presence of an authorised officer of a regulation authority, are seized on behalf of that authority;
  - (c) by a constable without such an officer present, are seized on behalf of the waste collection authority in whose area the seizure takes place.
- (7) A person commits an offence if—
  - (a) he fails without reasonable excuse to comply with a requirement imposed under paragraph (a) of subsection (2) above;
  - (b) he fails without reasonable excuse to give any assistance that an authorised officer or constable may reasonably request in the exercise of a power under that subsection;
  - (c) he otherwise intentionally obstructs an authorised officer or constable in the exercise of a power under that subsection.
- (8) A person is not guilty of an offence by virtue of subsection (7)(a) above unless it is shown—
  - (a) that the waste in question was controlled waste; and
  - (b) that the waste was or was being transported to or from a place in Great Britain.
- (9) Where an authorised officer or constable has stopped a vehicle under subsection (5) above, he may (in addition to any requirement that may be imposed under paragraph (a) of subsection (2) above) require any occupant of the vehicle to give him—
  - (a) the occupant's name and address;
  - (b) the name and address of the registered owner of the vehicle;
  - (c) any other information he may reasonably request.
- (10) A person commits an offence if—
  - (a) he fails without reasonable excuse to comply with a requirement under subsection (9) above;

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- (b) he gives information required under that subsection that is—
    - (i) to his knowledge false or misleading in a material way, or
    - (ii) given recklessly and is false or misleading in a material way.
- (11) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### 5A Seizure of vehicles etc: supplementary

- (1) Where under section 5 above an authorised officer of a regulation authority or a constable seizes a vehicle or its contents (“seized property”) on behalf of a regulation authority, the authority may remove the seized property to such a place as the authority consider appropriate.
- (2) A regulation authority must deal with any seized property in accordance with regulations made by the appropriate person.
- (3) Regulations under subsection (2) above may in particular include provision as to—
  - (a) the duties of a regulation authority in relation to the safe custody of seized property;
  - (b) the circumstances in which the authority must return any such property to a person claiming entitlement to it;
  - (c) the manner in which such persons, and the seized property to which they are entitled, may be determined;
  - (d) the circumstances in which the authority may sell, destroy or otherwise dispose of seized property;
  - (e) the uses to which the proceeds of any such sale may be put.
- (4) Regulations making provision under subsection (3)(d) above—
  - (a) must (subject to paragraph (c) below) require the regulation authority to publish a notice in such form, and to take any other steps, as may be specified in the regulations for informing persons who may be entitled to the seized property that it has been seized and is available to be claimed;
  - (b) must (subject to paragraph (c) below) prohibit the authority from selling, destroying or otherwise disposing of any seized property unless a period specified in the regulations has expired without any obligation arising under the regulations for the authority to return the property to any person;
  - (c) may allow for the requirements in paragraphs (a) and (b) above to be dispensed with if the condition of the seized property requires its disposal without delay.
- (5) The appropriate person may issue guidance to regulation authorities in relation to the performance of their functions under regulations under subsection (2) above.”

#### Commencement Information

- I1** S. 37 in force at 16.3.2006 for specified purposes for W. by S.I. 2006/768, art. 3
- I2** S. 37 in force at 6.4.2006 for specified purposes for E. by S.I. 2006/795, art. 2(3), Sch. 2

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| <b>I3</b> | S. 37 in force at 27.10.2006 for specified purposes for W. by S.I. 2006/2797, <b>art. 2(h)</b>     |
| <b>I4</b> | S. 37 in force at 3.3.2015 for specified purposes for E. by S.I. 2015/425, <b>art. 2(a)</b>        |
| <b>I5</b> | S. 37 in force at 6.4.2015 in so far as not already in force by S.I. 2015/425, <b>art. 4(1)(a)</b> |

### 38 Failure to produce authority: fixed penalty notices

- (1) In the Control of Pollution (Amendment) Act 1989 (c. 14), after section 5A (as inserted by section 37 above) insert—

#### “5B Fixed penalty notices for offences under section 5

- (1) This section applies where it appears to a regulation authority that a person has failed without reasonable excuse to comply with a requirement under section 5(2)(a) above (requirement to produce authority to transport waste).
- (2) The regulation authority may give that person a notice offering him the opportunity of discharging any liability to conviction for an offence under section 5(7)(a) above by payment of a fixed penalty.
- (3) Where a person is given a notice under this section in respect of an offence—
  - (a) no proceedings may be instituted for that offence before expiration of the period of fourteen days following the date of the notice; and
  - (b) he may not be convicted of that offence if he pays the fixed penalty before the expiration of the period.
- (4) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.
- (5) A notice under this section must also state—
  - (a) the period during which, by virtue of subsection (3) above, proceedings will not be taken for the offence;
  - (b) the amount of the fixed penalty; and
  - (c) the person to whom and the address at which the fixed penalty may be paid.
- (6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (5) (c) above at the address so mentioned.
- (7) Where a letter is sent in accordance with subsection (6) above payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (8) The form of a notice under this section must be such as the appropriate person may by order prescribe.
- (9) The fixed penalty payable to a regulation authority under this section is, subject to subsection (10) below, £300.
- (10) The appropriate person may by order substitute a different amount for the amount for the time being specified in subsection (9) above.

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- (11) The regulation authority to which a fixed penalty is payable under this section may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority.
- (12) The appropriate person may by regulations restrict the extent to which, and the circumstances in which, a regulation authority may make provision under subsection (11) above.
- (13) In any proceedings a certificate which—
  - (a) purports to be signed on behalf of the chief finance officer of the regulation authority, and
  - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
 is evidence of the facts stated.
- (14) In this section “chief finance officer”, in relation to a regulation authority, means the person having responsibility for the financial affairs of the authority.

### **5C Use of fixed penalties under section 5B**

- (1) This section applies in relation to amounts paid to a regulation authority in pursuance of notices under section 5B above (its “fixed penalty receipts”).
- (2) Fixed penalty receipts—
  - (a) where received by the Environment Agency, must be paid to the Secretary of State;
  - (b) where received by a waste collection authority, must be used in accordance with the following provisions of this section.
- (3) A waste collection authority may use its fixed penalty receipts only for the purposes of—
  - (a) its functions under section 5 above (including functions relating to the enforcement of offences under that section);
  - (b) such other of its functions as may be specified in regulations made by the appropriate person.
- (4) Regulations under subsection (3)(b) above may in particular have the effect that an authority may use its fixed penalty receipts for the purposes of any of its functions.
- (5) A waste collection authority must supply the appropriate person with such information relating to its use of its fixed penalty receipts as the appropriate person may require.
- (6) The appropriate person may by regulations—
  - (a) make provision for what a waste collection authority is to do with its fixed penalty receipts—
    - (i) pending their being used for the purposes of functions of the authority referred to in subsection (3) above;
    - (ii) if they are not so used before such time after their receipt as may be specified by the order;

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- (b) make provision for accounting arrangements in respect of a waste collection authority's fixed penalty receipts.
- (7) The provision that may be made under subsection (6)(a)(ii) above includes (in particular) provision for the payment of sums to a person (including the appropriate person) other than the authority.
- (8) Before making regulations under this section, the appropriate person must consult—
  - (a) the authorities to which the regulations are to apply;
  - (b) such other persons as the appropriate person thinks fit.
- (9) The powers to make regulations conferred by this section are, for the purposes of subsection (1) of section 100 of the Local Government Act 2003, to be regarded as included among the powers mentioned in subsection (2) of that section.”

#### Commencement Information

- I6** S. 38 in force at 16.3.2006 for specified purposes for W. by S.I. 2006/768, art. 3
- I7** S. 38 in force at 6.4.2006 for E. by S.I. 2006/795, art. 2(3), Sch. 2
- I8** S. 38 in force at 15.3.2007 (being the date on which S.I. 2007/739 came into force) for W. in so far as not already in force by S.I. 2006/2797, art. 4(q)

## 39 Interpretation

- (1) Section 9 of the Control of Pollution (Amendment) Act 1989 (c. 14) (interpretation) is amended as follows.
- (2) In subsection (1), at the appropriate place insert—
  - ““appropriate person” means—
  - (a) the Secretary of State, in relation to England;
  - (b) the National Assembly for Wales, in relation to Wales.”
- (3) After subsection (1A) insert—
  - “(1B) For the purposes of any provision of this Act, “authorised officer” in relation to any authority means an officer of the authority who is authorised in writing by the authority for the purposes of that provision.”

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**Commencement Orders yet to be applied to the Clean Neighbourhoods and Environment Act 2005**

Commencement Orders bringing provisions within this Act into force:

- [S.I. 2007/120 art. 3](#) Amendment to earlier commencing S.I. 2006/2797