

PUBLIC CONSULTATION DOCUMENT

**THE DRAFT WASTE (AMENDMENT)
(NORTHERN IRELAND)
ORDER 2006
AND
EXPLANATORY MEMORANDUM**



JULY 2006

THE WASTE (AMENDMENT)

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Introduction

The Department consulted on 31 August 2005 on policy proposals to amend the certain provisions in Waste and Contaminated Land (Northern Ireland) Order 1997 along the lines contained Part 5 of the Clean Neighbourhoods and Environment Act 2005 that received Royal Assent in April 2005. While the majority of the measures consulted upon maintain parity with England and Wales, the Department took the opportunity to amend some of the provisions in the 2005 Act to reflect the more serious situation here in Northern Ireland arising from the involvement of organised criminal gangs taking advantage of the increasing practice of illegal cross boundary transport and illegal management and deposit of waste. That public consultation closed on 14 November 2005.

The consultation paper generated 20 responses. The majority of these (13) were received from district councils or council representatives who have a particular interest in illegal waste disposal in terms of impact on amenity. While generally welcoming the proposals, their concerns were that they were focused too narrowly on the powers of the Department in dealing with waste management/disposal activities and did not provide a greater role for district councils to become involved in this important area.

The Department recognises that some of the comments received, such as a mandatory as opposed to discretionary role for courts in making an order or “ring-fencing” money generated from the sale of forfeited vehicles, are not, in the short term, within its power to grant. These issues will, however, be raised with the relevant authorities with a view to their possible inclusion in a future Waste Order.

In addition, while responses were received from only a small percentage of the total number of district councils in Northern Ireland, the Department is of the view that there is merit in the suggestion that district councils should have a more proactive role in policing illegal waste activities. The Department proposes, therefore, discussing further with district councils to ascertain whether there is widespread support for this proposal and the extent to which this might be achieved. However, so as not to jeopardise the timing of the current Order, and in light of anticipated infraction proceedings by the European Union, any new powers for district councils in this respect will be included in a future Waste Order.

The policy consultation paper along with a summary of the responses to the policy consultation can be found by following the *Public Consultation Documents* link on the Department of the Environment, Environmental Policy Division’s web site at www.doeni.gov.uk/epd/. Copies of all documents and copies in alternative formats, if desired, are available from the following address: -

THE WASTE (AMENDMENT)

Robert Gray
Department of the Environment
Environmental Policy Division
20-24 Donegall Street
BELFAST
BT1 2GP

Copies may also be requested by Telephone (028) 90544577 or Fax (028) 90544520.

Draft Order in Council

This draft Order sets out the Department's proposals for dealing with the illegal treating, keeping and deposit of waste, which creates major problems for landowners and managers across Northern Ireland. The illegal deposit of waste has netted large profits for illegal waste operators with the involvement of organised criminal gangs in waste transport and disposal. This has a negative impact, not only on the environment of Northern Ireland, but on the competitive status of legitimate waste businesses in Northern Ireland who have difficulty competing effectively against illegal activity.

The Department's current powers are not sufficient to deal with this growing problem. The large and increasing costs involved in cleaning up illegally deposited waste also provides a further reason to introduce new powers to address the growth of this unacceptable environmental and economic crime.

The measures contained in this draft Order will give the Department new powers covering the scope and penalties for the offence of the illegal disposal of waste, the cleaning-up of illegally disposed waste, the stop, search and seizure of vehicles used in committing offences and the duty of care as respects waste, including a new power to require registered waste carriers to display their authority to transport waste at a prominent position on their vehicles. The draft Order also includes a number of measures relating to district council powers to deal with waste receptacles and illegally deposited waste on land. The new powers would be stronger and more effective to use than existing legislation and should provide a more effective deterrent. They would also make use of fixed penalties, as a more practical alternative to prosecution, for a number of waste related offences, and help to strengthen the enforcement of the duty of care for waste.

Explanatory Memorandum

The Explanatory Memorandum, which accompanies the draft Order, is intended to explain and clarify what the Department's intentions are in relation to the draft Order.

Consultation

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The purpose of this consultation is to seek the views of interested parties on the draft Order and Explanatory Memorandum.

Please note that the consultation period will close at 4:00pm on **Tuesday 31 October 2006**

There are a number of ways you can respond: -

1. by post to: -
Robert Gray
Department of the Environment
Environmental Policy Division
20-24 Donegall Street
BELFAST
BT1 2GP
2. by Fax to: -
Fax number: (028) 90544520
3. by e-mail to: -
robert.gray@doeni.gov.uk

The consultation document can also be found by following the *Public Consultation Documents* link on the Department of the Environment, Environmental Policy Division's web site at www.doeni.gov.uk/epd/.

We look forward to receiving comments and views concerning the proposals in this consultation paper and if there are any other measures that you believe will help you participate in this consultation process please do not hesitate to contact us at the above address.

Freedom of Information Act 2000 – Confidentiality of Consultations

The Department will publish the responses following completion of the consultation process. Your response, and all other responses to the consultation, will be placed on the Departmental web site. The Department can only refuse to disclose information in exceptional circumstances. **Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.**

The Freedom of Information Act gives the public a right of access to any information held by a public authority, subject to specific exemptions. This

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right of access to information includes information provided to us in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential. If you do not wish information about your identity to be made public please include an explanation in your response.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except where one or more exemptions apply. The Lord Chancellor's Code of Practice on the Freedom of Information Act 2000 provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see web site at: www.informationcommissioner.gov.uk)

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Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2006 No. (N.I.)

NORTHERN IRELAND

The Waste (Amendment) (Northern Ireland) Order 2006

Made - - - - - 2006

Coming into operation in accordance with Article 1(2) to (4)

ARRANGEMENT OF ORDER

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Waste collection and disposal

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Repeals

21. Repeals

Schedule Repeals

At the Court at Buckingham Palace, the ** day of ** 2006

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Waste (Amendment) (Northern Ireland) Order 2006.

(2) This Article and Article 2 come into operation one week after the day on which this Order is made.

(3) The remaining provisions of this Order come into operation on such day or days as the Department may by order appoint.

(4) An order under paragraph (3) may contain such transitional or saving provisions as the Department thinks appropriate.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c.33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order “the 1997 Order” means the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19).

Offences relating to deposit, disposal, etc. of waste

Defence of acting under employer’s instructions

3.—(1) In Article 4 of the 1997 Order (offence of unauthorised or harmful deposit etc of controlled waste), omit paragraph (7)(b) (defence of acting on employer's instructions).

(2) This Article does not have effect in relation to an offence committed, or alleged to have been committed, before the coming into operation of this Article.

Penalties on conviction

4.—(1) Article 4 of the 1997 Order (offence of unauthorised or harmful deposit etc of waste) is amended as follows.

(2) For paragraphs (8) and (9) (penalties) substitute—

“(8) Except in a case falling within paragraph (10), a person who commits an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £50,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.”.

(3) At the end add—

“(12) In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.”.

(4) This Article does not have effect in relation to an offence committed before the coming into operation of this Article.

Failure to furnish documentation: fixed penalty notice

5. In the 1997 Order, after Article 5 insert—

“Fixed penalty notices for certain offences under Article 5(8)

5A.—(1) This Article applies where it appears to the Department that a person has failed to comply with a duty to furnish documents to the Department imposed under regulations made at any time under Article 5(7).

(2) The Department may serve on that person a notice offering him the opportunity of discharging any liability to conviction for an offence under Article 5(8) by payment of a fixed penalty.

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

- (a) no proceedings may be instituted for that offence before expiration of the period of 14 days following the date of the notice; and
- (b) he may not be convicted of that offence if he pays the fixed penalty before the expiration of the period.

(4) A notice under this Article must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(5) A notice under this Article must also state—

- (a) the period during which, by virtue of paragraph (3), proceedings will not be taken for the offence;
- (b) the amount of the fixed penalty; and

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(c) the person to whom and the address at which the fixed penalty may be paid.

(6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty to the person mentioned in paragraph (5)(c) at the address so mentioned.

(7) Where a letter is sent in accordance with paragraph (6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(8) The form of a notice under this Article is to be such as the Department may by order prescribe.

(9) The fixed penalty payable to the Department under this Article is, subject to paragraph (10), £300.

(10) The Department may by order substitute a different amount for the amount for the time being specified in paragraph (9).

(11) The Department may make provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the Department.

(12) In any proceedings a certificate which—

(a) purports to be signed by an authorised officer; and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(13) In this Article “authorised officer” means an officer of the Department who is authorised in writing by the Department for the purposes of this Article.”.

Investigation and enforcement costs

6.—(1) After Article 5A of the 1997 Order (inserted by Article 5) insert—

“Provisions relating to offences under Articles 4 and 5

Article 4 and 5 offences: investigation and enforcement costs

5B.—(1) This Article applies where a person is convicted of—

(a) an offence under Article 4 in respect of a contravention of paragraph (1) of that Article; or

(b) an offence under Article 5 in respect of a failure to comply with paragraph (1) of that Article.

(2) The court by or before which the offender is convicted may make an order requiring him to pay to the Department a sum which appears to the court not to exceed the costs arising from—

(a) investigations of the Department which resulted in the conviction; and

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(b) the seizure by the Department under Article 5E of a vehicle involved in the offence.

(3) The costs arising from the seizure of a vehicle as specified in paragraph (2)(b) may include the cost of disposing of the contents of the vehicle.

(4) The power of a court to make an order under this Article is in addition to its power to make an order under section 2 of the Costs in Criminal Cases Act (Northern Ireland) 1968 (award of costs against accused).”.

(2) This Article does not have effect in relation to an offence committed before the coming into operation of this Article.

Clean-up costs

7.—(1) After Article 5B of the 1997 Order (inserted by Article 6) insert—

“Article 4 offences: clean-up costs

5C.—(1) Paragraph (2) applies where a person is convicted of an offence under Article 4 in respect of a contravention of paragraph (1) of that Article consisting of the deposit or disposal of controlled waste.

(2) The reference in Article 14(1) of the Criminal Justice (Northern Ireland) Order 1994 (compensation orders) to loss or damage resulting from the offence includes costs incurred or to be incurred by the owner or occupier of the land or the Department in—

- (a) removing the waste deposited or disposed of in or on the land;
- (b) taking other steps to eliminate or reduce the consequences of the deposit or disposal; or
- (c) both.

(3) Subject to paragraph (4), in relation to the costs referred to in paragraph (2), the reference in Article 14(11) of the Criminal Justice (Northern Ireland) Order 1994 (limit on amount payable) to £5000 is instead to be construed as a reference to the amount of those costs (or, if the costs have not yet been incurred, the likely amount).

(4) Paragraph (3) does not apply where a person (other than an establishment or undertaking) is convicted of a relevant offence within the meaning of Article 4.”.

(2) This Article does not have effect in relation to an offence committed before the coming into operation of this Article.

Forfeiture of vehicles

8.—(1) In the 1997 Order, after Article 5C (inserted by Article 7) insert—

“Article 4 and 5 offences: forfeiture of vehicles

5D.—(1) Subject to paragraph (2), this Article applies where a person is convicted of—

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(a) an offence under Article 4 in respect of a contravention of paragraph (1) of that Article consisting of the deposit or disposal of controlled waste;

(b) an offence under Article 5 in respect of a failure to comply with paragraph (1) of that Article.

(2) This Article does not apply where a person (other than an establishment or undertaking) is convicted of a relevant offence within the meaning of Article 4.

(3) The court by or before which the offender is convicted may make an order under this Article if—

(a) the court is satisfied that a vehicle was used in or for the purposes of the commission of the offence; and

(b) at the time of his conviction the offender has rights in the vehicle.

(4) An order under this Article operates to deprive the offender of his rights in the vehicle (including its fuel) at the time of his conviction and to vest those rights in the Department.

(5) In a case where a vehicle has been seized under Article 5E and the offender retains rights in any of the vehicle's contents, an order under this Article may, if and to the extent that it so specifies, deprive the offender of those rights and vest them in the Department.

(6) Where an order under this Article is made, the Department may take possession of the vehicle (if it has not already done so under Article 5F).

(7) The court may make an order under this Article whether or not it also deals with the offender in any other way in respect of the offence of which he is convicted.

(8) In considering whether to make an order under this Article a court must in particular have regard to—

(a) the value of the vehicle;

(b) the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making);

(c) the offender's need to use the vehicle for lawful purposes;

(d) whether, in a case where it appears to the court that the offender is engaged in a business which consists wholly or partly in activities which are unlawful by virtue of Article 4, the making of the order is likely to inhibit the offender from engaging in further such activities.

(9) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (power to deprive offender of property) does not apply in any case where this Article applies.

(10) For the purposes of this Article, where a vehicle or its contents have been seized under Article 5E in connection with the offence referred to in paragraph (1), any transfer by the offender after the seizure and

before his conviction of any of his rights in the vehicle or its contents is of no effect.”.

(2) This Article does not have effect in relation to an offence committed before the coming into operation of this Article.

Power to search and seize vehicles

9.—(1) After Article 5D of the 1997 Order (inserted by Article 8), insert—

“Power to search and seize vehicles etc

5E.—(1) This Article applies where an authorised officer or a constable reasonably believes that the grounds in paragraph (2) or (3) exist.

(2) The grounds in this paragraph are that—

- (a) an offence under Article 4 or 5 has been committed,
- (b) a vehicle was used in the commission of the offence, and
- (c) proceedings for the offence have not yet been brought against any person.

(3) The grounds in this paragraph are that—

- (a) an offence under Article 4 or 5 is being or is about to be committed, and
- (b) a vehicle is being or is about to be used in the commission of the offence.

(4) The authorised officer or constable may—

- (a) search the vehicle;
- (b) seize the vehicle and any of its contents.

(5) In acting under paragraph (4) the authorised officer or constable may—

- (a) stop the vehicle;
- (b) enter any premises for the purpose of searching or seizing the vehicle.

(6) A vehicle or its contents seized under paragraph (4) are seized on behalf of the Department.

(7) A person commits an offence if—

- (a) 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 paragraph (4) or (5);
- (b) he otherwise intentionally obstructs an authorised officer or constable in exercising that power.

(8) Where an authorised officer or constable has stopped a vehicle under paragraph (5)(a), he may 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;

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(c) any other information he may reasonably request.

(9) A person commits an offence if—

(a) he fails without reasonable excuse to comply with a requirement under paragraph (8);

(b) he gives information required under that paragraph 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.

(10) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(11) In this Article and Article 5F “authorised officer” means an officer of the Department who is authorised in writing by the Department for the purposes of this Article”.

Seizure of vehicles etc: supplementary

5F—(1) Where under Article 5E an authorised officer or constable seizes a vehicle or its contents (“seized property”) on behalf of the Department, the Department may remove the seized property to such a place as it considers appropriate.

(2) The Department must deal with any seized property in accordance with regulations made by the Department.

(3) Regulations under paragraph (2) may in particular include provision as to—

(a) the duties of the Department in relation to the safe custody of seized property;

(b) the circumstances in which the Department 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 Department 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 paragraph (3)(d)—

(a) must (subject to sub-paragraph (c)) require the Department 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 sub-paragraph (c)) prohibit the Department 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 Department to return the property to any person;

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- (c) may allow for the requirements in sub-paragraphs (a) and (b) to be dispensed with if the condition of the seized property requires its disposal without delay.”.

Waste collection and disposal

Offences relating to waste receptacles: fixed penalty notices

10.—(1) In the 1997 Order after Article 22 (receptacles for commercial or industrial waste) insert—

“Fixed penalty notices for offences under Articles 21 and 22

22A.—(1) This Article applies where on any occasion an authorised officer of a district council has reason to believe that a person has committed an offence under Article 21 or 22 in the district of that council.

(2) The authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the council.

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

(a) no proceedings may be instituted for that offence before the expiration of the period of 14 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 that period.

(4) A notice under this Article must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(5) A notice under this Article must also state—

(a) the period during which, by virtue of paragraph (3), proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid.

(6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty to the person mentioned in paragraph (5)(c) at the address so mentioned.

(7) Where a letter is sent in accordance with paragraph (6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(8) The form of a notice under this Article is to be such as the Department may by order prescribe.

(9) In any proceedings a certificate which—

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- (a) purports to be signed on behalf of the chief finance officer of the council, 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.

(10) In this Article—

“authorised officer”, in relation to a council, means—

- (a) an employee of the council who is authorised in writing by the council for the purposes of giving notices under this Article;
- (b) any person who, in pursuance of arrangements made with the council, has the function of giving such notices and is authorised in writing by the council to perform that function;
- (c) any employee of such a person who is authorised in writing by the council for the purpose of giving such notices;

“chief finance officer”, in relation to a council, means the person having responsibility for the financial affairs of the council.

Amount of fixed penalty under Article 22A

22B—(1) This Article applies in relation to a fixed penalty payable to a district council in pursuance of a notice under Article 22A.

(2) The amount of the fixed penalty is £100.

(3) The council may make provision for treating the fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the council.

(4) The Department may by regulations make provision in connection with the power conferred on councils under paragraph (3) and such regulations may (in particular) restrict the extent to which, and the circumstances in which, a council can make provision under that paragraph.

(5) The Department may by order substitute a different amount for the amount for the time being specified in paragraph (2).

Use of fixed penalty receipts

22C.—(1) A district council may use amounts received by it under Article 22A (its “fixed penalty receipts”) only for the purposes of—

- (a) its functions under this Part (including functions relating to the enforcement of offences under this Part); and
- (b) such other of its functions as may be specified in regulations made by the Department.

(2) Regulations under paragraph (1) may (in particular) have the effect that a council may use its fixed penalty receipts for the purposes of any of its functions relating to waste.

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(3) A council must supply the Department with such information relating to its use of its fixed penalty receipts as the Department may require.

(4) The Department may by regulations—

(a) make provision for what a council is to do with its fixed penalty receipts—

(i) pending their being used for the purposes of functions of the council referred to in paragraph (1);

(ii) if they are not so used before such time after their receipt as may be specified by the regulations;

(b) make provision for accounting arrangements in respect of a council's fixed penalty receipts.

(5) The provision that may be made under paragraph (4)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the council.

(6) Before making regulations under this Article, the Department must consult—

(a) district councils; and

(b) such other persons as the Department thinks fit.”.

Daily fine for offence under Article 27 of 1997 Order

11.—(1) In Article 27 of the 1997 Order (directions requiring waste to be accepted, treated, disposed of or delivered) after paragraph (5) insert—

“(5A) If in the case of a continuing offence under paragraph (5) the offender continues to fail to comply with the direction he shall be guilty of a further offence and 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.”.

(2) This Article does not have effect in relation to an offence under Article 27(5) of the 1997 Order committed before the coming into operation of this Article.

Power to require owner of land to remove waste

12.—(1) In Article 28 of the 1997 Order (power to require removal of waste unlawfully deposited), in paragraph (8)(b) after “occupier of the land” insert “or the occupier cannot be found without the council incurring unreasonable expense”.

(2) After that Article insert—

“Article 28: supplementary power in relation to owner of land

28A.—(1) Where the grounds in paragraph (2), (3) or (4) are met, a district council may, by notice served on him, require the owner of any land in its district to comply with either or both of the requirements mentioned in paragraph (1)(a) and (b) of Article 28.

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(2) The grounds in this paragraph are that it appears to the council that waste has been deposited in or on the land in contravention of Article 4(1) and—

- (a) there is no occupier of the land, or
- (b) the occupier cannot be found without the council incurring unreasonable expense.

(3) The grounds in this paragraph are that—

- (a) the council has served a notice under paragraph (1) of Article 28 imposing a requirement on the occupier of the land,
- (b) the occupier of the land is not the same person as the owner of the land, and
- (c) the occupier has failed to comply with the requirement mentioned in sub-paragraph (a) within the period specified in the notice.

(4) The grounds in this paragraph are that—

- (a) the council has served a notice under paragraph (1) of Article 28 imposing a requirement on the occupier of the land,
- (b) the occupier of the land is not the same person as the owner of the land, and
- (c) the requirement mentioned in sub-paragraph (a) has been quashed on the ground specified in paragraph (3)(a) of that Article.

(5) Paragraphs (2) to (7) of Article 28 apply in relation to requirements imposed under this Article on the owner of the land as they apply in relation to requirements imposed under that Article on the occupier of the land but as if in paragraph (3) there were inserted after sub-paragraph (a)—

- “(aa) in order to comply with the requirement the appellant would be required to enter the land unlawfully; or”.

Transport of waste

Unregistered transport: defence of acting under employer’s instructions

13.—(1) In Article 38 of the 1997 Order (offence of transporting controlled waste without registering), in paragraph (4)—

- (a) at the end of sub-paragraph (a), insert “or”; and
- (b) omit sub-paragraph (c) (defence of acting under employer's instructions) and the preceding “or”.

(2) This Article does not have effect in relation to an offence committed, or alleged to have been committed, before the coming into operation of this Article.

Registration requirements and conditions

14.—(1) Article 39 of the 1997 Order (power to make regulations about registration of carriers) is amended as follows.

(2) In paragraph (2)—

- (a) in sub-paragraph (c), omit “free of charge”;
- (b) omit sub-paragraph (d);

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- (c) in sub-paragraph (e), omit “free of charge”.
- (3) In paragraph (3), omit sub-paragraph (a) (provision as to form of applications).
- (4) In paragraph (4)—
 - (a) for “paragraph (3)(a) and (c)” substitute “paragraph (3)(c)”; and
 - (b) omit sub-paragraph (a) (further provision as to form of application).
- (5) After paragraph (5) insert—
 - “(5A) Regulations under this Article 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 the Department of the registration of a carrier of controlled waste who has breached a condition imposed on him under sub-paragraph (a).
 - (5B) Provision contained in any regulations under this Article by virtue of paragraph (5A) may, in particular, include provision—
 - (a) for inspection by the Department of the vehicles of registered carriers of controlled waste for the purpose of ensuring compliance with conditions imposed under paragraph (5A)(a);
 - (b) for the Department to impose charges on registered carriers of controlled waste in respect of such inspections.”.
- (6) In paragraph (6), for “to (5)” substitute “to (5B)”.
- (7) In Article 40 of the 1997 Order (restrictions on power under Article 39), in paragraph (2), after “except” insert “in accordance with regulations under paragraph (5A) of that Article or”.

Enforcement powers

15.—(1) For Article 42 of the 1997 Order substitute—

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

42.—(1) This Article applies where an authorised officer or a constable reasonably believes that controlled waste has been, is being or is about to be transported in contravention of Article 38(1).

- (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.

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(3) For the purposes of paragraph (2)(a), a person's authority for transporting controlled waste is—

- (a) his certificate of registration as a carrier of controlled waste;
- (b) such copy of that certificate as satisfies requirements prescribed in regulations made by the Department; or
- (c) such evidence as may be so prescribed 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 paragraph (2)(a), 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 Department; or
- (c) by sending it to that place and within that period.

(5) In acting under paragraph (2) an authorised officer or constable may—

- (a) stop any vehicle as referred to in sub-paragraph (b) of that paragraph;
- (b) enter any premises for the purpose specified in sub-paragraph (b) or (d) of that paragraph.

(6) A vehicle or its contents seized under paragraph (2)(d) is seized on behalf of the Department.

(7) A person commits an offence if—

- (a) he fails without reasonable excuse to comply with a requirement imposed under sub-paragraph (a) of paragraph (2);
- (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 paragraph;
- (c) he otherwise intentionally obstructs an authorised officer or constable in the exercise of a power under that paragraph .

(8) A person is not guilty of an offence by virtue of paragraph (7)(a) 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 Northern Ireland.

(9) Where an authorised officer or constable has stopped a vehicle under paragraph (5), he may (in addition to any requirement that may be imposed under sub-paragraph (a) of paragraph (2)) 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—

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- (a) he fails without reasonable excuse to comply with a requirement under paragraph (9);
- (b) he gives information required under that paragraph 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 Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(12) In this Article and Articles 42A and 42B “authorised officer” means an officer of the Department who is authorised in writing by the Department for the purposes of those Articles.

(13) Summary proceedings for an offence under paragraph (11) may be instituted at any time within 12 months after the commission of the offence.”.

Seizure of vehicles etc: supplementary

42A.—(1) Where under Article 42 an authorised officer or a constable seizes a vehicle or its contents (“seized property”) on behalf of the Department, the Department may remove the seized property to such a place as the Department considers appropriate.

(2) The Department must deal with any seized property in accordance with regulations made by the Department.

(3) Regulations under paragraph (2) may in particular include provision as to—

- (a) the duties of the Department in relation to the safe custody of seized property;
- (b) the circumstances in which the Department 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 Department 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 paragraph (3)(d)—

- (a) must (subject to sub-paragraph (c)) require the Department 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 sub-paragraph (c)) prohibit the Department 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 Department to return the property to any person;

- (c) may allow for the requirements in sub-paragraphs (a) and (b) to be dispensed with if the condition of the seized property requires its disposal without delay.”.

Failure to produce authority: fixed penalty notice

16.—(1) In the 1997 Order, after Article 42A (inserted by Article 15) insert—

“Fixed penalty notices for offences under Article 42

42B.—(1) This Article applies where it appears to the Department that a person has failed without reasonable excuse to comply with a requirement under Article 42(2)(a) (requirement to produce authority to transport waste).

(2) The Department may give that person a notice offering him the opportunity of discharging any liability to conviction for an offence under Article 42(7)(a) by payment of a fixed penalty.

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

- (a) no proceedings may be instituted for that offence before expiration of the period of 14 days following the date of the notice; and
- (b) he may not be convicted of that offence if he pays the fixed penalty before the expiration of the period.

(4) A notice under this Article must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(5) A notice under this Article must also state—

- (a) the period during which, by virtue of paragraph (3), proceedings will not be taken for the offence;
- (b) the amount of the fixed penalty; and
- (c) the person to whom and the address at which the fixed penalty may be paid.

(6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty to the person mentioned in paragraph (5)(c) at the address so mentioned.

(7) Where a letter is sent in accordance with paragraph (6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(8) The form of a notice under this Article must be such as the Department may by order prescribe.

(9) The fixed penalty payable to the Department under this Article is, subject to paragraph (10), £300.

(10) The Department may by order substitute a different amount for the amount for the time being specified in paragraph (9).

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(11) The Department may make provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the Department.

(12) The Department may by regulations restrict the extent to which, and the circumstances in which, the Department may make provision under paragraph (11).

(13) In any proceedings a certificate which—

(a) purports to be signed by an authorised officer, and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.”.

Site waste management plans

Site waste management plans

17.—(1) The Department may by regulations make provision requiring persons of a prescribed description—

(a) to prepare plans for the management and disposal of waste created in the course of prescribed descriptions of works involving construction or demolition;

(b) to comply with such plans.

(2) Descriptions of works that may be prescribed under paragraph (1)(a) include in particular description by reference to the cost or likely cost of such works.

(3) Regulations under this Article may make supplementary and incidental provision, including in particular provision as to—

(a) the circumstances in which plans must be prepared;

(b) the contents of plans;

(c) enforcement authorities in relation to plans and the powers of such authorities;

(d) the keeping of plans and their production to enforcement authorities;

(e) offences in relation to a failure to comply with a requirement under the regulations;

(f) penalties for those offences;

(g) the discharging of liability for an offence under the regulations by the payment of a fixed penalty to an enforcement authority;

(h) the uses to which such payments may be put by enforcement authorities.”.

Enforcement

Powers of enforcing authorities

18.—(1) In Article 72 of the 1997 Order (powers of enforcement authorities)—

(a) in paragraph (2)(b)(i) (power of entry) for “duly authorised by the enforcing authority, and” insert “including,”;

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(b) in paragraph (2)(g) (powers in relation to articles or substances found) omit from “being an article” to “human health”;

(c) in paragraph (4)(a) (notice of entry) for “7 days” substitute “24 hours”.

(2) In Article 74 of the 1997 Order (offences of obstruction, etc) after paragraph (5) insert—

“(5A) Summary proceedings for an offence under paragraph (2) or (3) may be instituted at any time within 12 months after the commission of the offence.”.

Power to stop vehicles

19.—(1) In the 1997 Order, after Article 73 insert—

“Power of authorised officers of Department to stop vehicles

73A.—(1) An authorised officer may require any person driving a vehicle on a road or other public place to stop, and any person who fails to stop when he is so required shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) In this Article —

“authorised officer” means an officer of the Department who is authorised in writing for the purposes of this Article;

“public place” has the same meaning as in the Road Traffic (Northern Ireland) Order 1981 (NI 1).”.

Power of arrest for certain offences under Article 5 of 1997 Order

20. At the end of Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12) (arrestable offences) insert—

“(r) an offence under Article 5(8) of the Waste and Contaminated Land (Northern Ireland) Order 1997 in respect of a failure to comply with paragraph (1) of that Article.”.

Repeals

Repeals

21. The statutory provisions set out in the Schedule are repealed to the extent specified in the second column of the Schedule.

A.K.Galloway
Clerk of the Privy Council

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Article 21

SCHEDULE

REPEALS

Short Title	Extent of repeal
The Waste and Contaminated Land (Northern Ireland) order 1997 (NI 19)	Article 4(7)(b). Article 38(4)(c) and the preceding “or” In Article 39— (a) in paragraph 2(c) the words “free of charge”; (b) paragraph (2)(d); (c) in paragraph (2)(e) the words “free of charge”; (d) paragraph (3)(a); (e) paragraph (4)(a). Article 43. In Article 72(2)(g) the words from “being an article” to “human health”.

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**DRAFT WASTE (AMENDMENT) (NORTHERN IRELAND) ORDER
2006**

Explanatory memorandum

INTRODUCTION

1. The above Order is being made under the Northern Ireland Act 2000 and is subject to affirmative resolution.
2. This Explanatory Memorandum has been prepared by the Department of the Environment (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the draft Order.
3. The Order makes provision for the Department to update the current legislation governing the unlawful management and disposal of waste, as set out in the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”).

BACKGROUND AND POLICY OBJECTIVES

4. The Order includes a number of measures to increase the Department’s powers to stop, search and seize vehicles believed to be involved in illegal waste activities and, significantly increases the levels of fines and penalties that can be imposed by the courts on conviction of an offence. It also makes provision about the registration of carriers of particular kinds of waste and makes provision to deal with waste generated at construction sites.
5. The primary objectives are to maintain parity with the rest of the United Kingdom in the important area of waste management, while at the same time taking the opportunity to enhance Northern Ireland’s waste legislation to reflect the more serious situation here arising from the involvement of organized criminal gangs taking advantage of the increasing practice of illegal cross boundary transport and illegal management of waste.

CONSULTATION

6. On 31 August 2005, the Department published a Consultation Paper entitled “Consultation Paper on Proposed Amendments to the Waste and Contaminated

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Land (Northern Ireland) Order 1997” (“the 1997 Order”). The closing date for comments was 14th November 2005.

7. The consultation paper generated 20 responses, the majority of which (13) were received from district councils or council representatives who have a particular interest in illegal waste disposal in terms of impact on amenity. While generally welcoming the proposals, their concerns were that they were focused too narrowly on the powers of the Department in dealing with waste management/disposal activities and did not provide a greater role for district councils to become involved in this important area. The Department is of the view that there is merit in the suggestion that district councils should have a more proactive role in policing illegal waste activities. The Department proposes, therefore, engaging further with district councils to ascertain whether there is widespread support for this proposal and the extent to which this might be achieved.

OPTIONS CONSIDERED

FINANCIAL EFFECTS OF THE ORDER

8. Overall, the measures are not expected to impose any significant cost to the public or the Consolidated Fund.

HUMAN RIGHTS ISSUES

9. The provisions of the Order are compatible with the Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

10. The Department has carried out an equality screening exercise. No adverse impacts for any of the 9 section 75 categories were identified. A full Equality Impact Assessment was therefore not required

SUMMARY OF THE REGULATORY APPRAISAL

11. The Order will not impose any significant costs on businesses, voluntary sector or charities. The full regulatory impact assessment is available on the Department’s internet site at www.doeni.gov.uk/epd. *It has also been placed in the Libraries of the House of Commons and the House of Lords.*

MAIN ELEMENTS OF THE ORDER

12. The draft Order has 21 Articles and one Schedule. Articles 1 and 2 contain introductory provisions. Articles 3 – 9 deal with offences relating to the deposit, disposal, etc. of waste, which significantly increase the Department’s powers to tackle illegal waste activities, including powers to stop, search and seize vehicles. Articles 10 – 12 deal with waste collection and disposal, and enhance district councils’ powers to tackle those who fail to use waste receptacles correctly. They also gives district councils a new power to serve notice on the owner of land to take such steps as are necessary to remove waste illegally deposited from land. Articles 13 – 16 deal with the transport of waste and introduce new powers of inspection, including powers to stop, search and seize vehicles. Article 17 deals with site waste management plans and gives the Department new powers to specify in Regulations thresholds above which a site waste management plan must be completed. Articles 18 – 20 deal with enforcement and give the Department stronger powers of entry; a new power to stop a vehicle on a road; and, makes and offence under Article 5(8) of the 1997 Order an arrestable offence. Article 21 deals with minor repeals required as a result of the new provisions being introduced by this Order.

COMMENTARY ON ARTICLES

13. A commentary on the provisions follows below (comments are not given where the wording is self-explanatory).

INTRODUCTORY

14. Articles 1 and 2 are introductory provisions.

OFFENCES RELATION TO DEPOSIT, DISPOSAL ETC. OF WASTE

Article 3 – Defence of acting under employer’s instructions

15. Article 3 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 (at Article 4(7)(b)) of acting under ones employer’s instructions.

Article 4 – Penalties on conviction

16. Article 4 amends the penalties on summary conviction of an offence under Article 4 of the 1997 Order. Article 4(2) increases the maximum available fine on summary conviction for the illegal disposal of waste 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 (the same as is already applied for offences involving hazardous waste). By virtue of this increase in the maximum period of imprisonment on conviction to 5 years, an offence under Article 4(2) of the 1997 Order automatically becomes an arrestable offence under

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the Police and Criminal Evidence (Northern Ireland) Order 1989. Article 4(3) provides that in determining the amount of fine to be imposed on a person convicted of an offence under Article 4 of the 1997 Order, a court may have regard to any financial benefit that has accrued or is likely to accrue as a consequence of the offence.

17. This Article and Articles 6 and 7 anticipate changes to be made to the levels of fines and penalties specified in Article 4 of the 1997 Order by the draft Waste Management Regulations (Northern Ireland) 2006, which will come into operation prior to the coming into operation of this Order.

Article 5 – Failure to furnish documentation: fixed penalty notice

18. 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.
19. This Article inserts a new Article 5A into the 1997 Order. Article 5A empowers the Department to issue a fixed penalty notice to a person who has failed to comply with a duty to furnish documents to it under Regulations made under Article 5(7), offering him the opportunity to discharge any liability to conviction by payment of a fixed penalty.
20. The amount of the fixed penalty is set at £300, which may be substituted by a different amount by an order made by the Department. By Article 5A(11) the Department may 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

21. Article 6 inserts a new Article 5B into the 1997 Order. Article 5B applies where a person is convicted of an offence under Articles 4(1) or 5(1) 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

22. Article 7 inserts a new Article 5C into the 1997 Order. Article 5C applies where a person is 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 to either the Department or the occupier of land or the owner of land, any costs incurred by them in removing waste that has been illegally deposited or disposed of in or on land, or in taking such steps to eliminate or reduce the consequences of the deposit or both.

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Article 8 Forfeiture of vehicles

23. Article 8 inserts a new Article 5D into the 1997 Order. Article 5D applies where a person is convicted of an offence involving the contravention of Article 4(1) of the 1997 Order, or an offence under Article 5(1) of the 1997 Order. It enables the court to make an order to deprive the offender of his rights to a vehicle (and its contents) if the court is satisfied that the vehicle was used in or for the purpose of the commission of the offence.
24. The order by the court may give possession of the vehicle and its contents to the Department. The new Article 5D requires a court to take into account the value of the vehicle, the impact of forfeiture on the offender, the offender's need to use the vehicle lawfully, and, if it appears that the offender is engaged in a business that illegally disposes of waste, whether the order is likely to be dissuasive of further such activity.

Article 9 – Power to search and seize vehicles

25. Article 9 inserts new Articles 5E and 5F into the 1997 Order, conferring powers on 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. A vehicle or its contents seized by a constable are seized on behalf of the Department.
26. Article 5E(7) creates offences of failing to assist or otherwise intentionally obstructing an authorised officer or a constable. Article 5E(8) empowers an authorised officer or a constable to demand the name and address of any occupant of a vehicle he has stopped under this Article, the name and address of the registered owner of the vehicle, or any other information he may reasonably request. By Article 5E(9) it is an offence to fail without reasonable excuse to give this information, or to give information, which is knowingly or recklessly false or misleading. Any offence under Article 5E is punishable on summary conviction by a fine not exceeding level 5 on the standard scale (currently £5,000).
27. The new Article 5F empowers the Department to make regulations specifying how it must deal with any seized property

WASTE COLLECTION AND DISPOSAL

Article 10 – Offences relating to waste receptacles

28. Article 10 inserts new Articles 22A, 22B and 22C into the 1997 Order. Article 22A applies where an authorised officer of a district council has reason to believe that a person has committed an offence under Article 21 or Article 22 of the 1997 Order, and enables the officer to issue a notice to that person, offering him the opportunity to discharge any liability to conviction for that offence by payment of a fixed penalty.

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29. Article 22B fixes the amount of the fixed penalty at £100, which may be substituted by a different amount by an order made by the Department. The Department may make provision for treating the fixed penalty as being paid if a lesser amount is paid during such shorter period as it may specify.
30. Article 22C allows a district council to use amounts received by it under the new Article 22A only for the exercise of its functions under Part II of the 1997 Order, or such other purposes as may be specified in regulations made by the Department.

Article 11 – Daily fine for offence under Article 27 of the 1997 Order

31. Article 27 of the 1997 Order provides the Department with a power to direct the holder of any waste management licence, by way of a notice served on that person, to accept and keep, or accept and treat or dispose of, controlled waste at specified places on specified terms. Under Article 27(5) any person who fails, without reasonable excuse, to comply with such a direction is guilty on an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).
32. Article 11 inserts a new Article 27(5A) into the 1997 Order providing for a continuing daily offence, not exceeding one-tenth of level 5 of the standard scale, for any person who fails to comply with a notice served on him under Article 27.

Article 12 – Power to require owner of land to remove waste

33. Article 12 inserts Article 28A into the 1997 Order. Where controlled waste was deposited in or on any land in contravention of Article 4(1) of the 1997 Order, Article 28 previously enabled a notice to be served by a district council on only the *occupier* of land, requiring him to remove the waste or to take such specified steps with a view to eliminating or reducing its consequences.
34. Article 28A enables a notice to be served on the *owner* of the land requiring him to clear waste from it in circumstances where there is no occupier of the land or the occupier cannot be found without a district council incurring unreasonable expense or the occupier has successfully appealed against a notice served on him. An occupier or owner can appeal the notice if he neither deposited nor knowingly caused or knowingly permitted the deposit of the waste. If an occupier or owner fails to comply with the requirements in a notice, Article 28 enables a district council to enter the land, remove the waste or take such specified steps and recover the costs of doing so from the occupier or owner.

TRANSPORT OF WASTE

Article 13 – Unregistered transport: defence of acting under employer's instruction

35. Under Article 38 of the 1997 Order, it is an offence for anyone who is not a registered carrier of controlled waste to transport such waste within Northern

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Ireland in the course of any business of his or otherwise with a view to profit. Controlled waste is defined as household, industrial and commercial waste. Article 13 amends Article 38 of the 1997 Order so as to remove the defence (at Article 38(4)(c)) of acting under ones employer's instructions.

Article 14 – Registration requirements and conditions

36. Article 39 of the 1997 Order sets out provisions as to the registration of waste carriers. Article 14 amends the provisions in Article 39 relating to certificates of registration for carriers of controlled waste (in relation to which provision can be made in regulations under that Article). In particular, it removes the requirement that a certificate of registration, and copies of such a certificate, must be provided free of charge.
37. This Article also provides (by way of the new Article 39(5A) and (5B) of the 1997 Order) that regulations under this Article may include provision for the registration of carriers of controlled waste to be subject to conditions relating to the vehicles they use, as well as for the possible revocation of a registration in event of breach of such a condition. In support of this, the regulations may provide for inspections of such vehicles and charges for such inspections.

Article 15 – Enforcement powers

38. Article 15 substitutes Article 42 of the 1997 Order with new Articles 42 and 42A. The principal effect is to enable a constable or an authorised officer of the Department to stop, search and seize a vehicle that he reasonably believes is being used in the commission of an offence under Article 38 of that Order (transporting controlled waste without being registered).
39. The new Article 42 sets out the powers of an authorised officer or a constable in relation to such a vehicle and its contents. A vehicle or its contents, which are seized by a constable, are seized on behalf of the Department. Article 42(7) re-enacts the offence under the old Article 42 of failing to comply with a requirement to produce authority for transporting controlled waste; it also creates new offences of failing to assist or otherwise obstructing an authorised officer or a constable. Article 42(9) gives an authorised officer or a constable the power to require any occupant of the vehicle to give his name and address, or that of the registered owner of the vehicle, or any other information he may reasonably request. By Article 42(10) it is an offence to fail to give such information or to give information which is knowingly or recklessly false or misleading, punishable by a fine not exceeding level 5 on the standard scale (currently £5,000).
40. Article 42A empowers the Department to make regulations specifying how it must deal with vehicles or their contents seized under Article 42.

Article 16 – Failure to produce authority: fixed penalty notice

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41. Article 16 inserts a new Article 42B into the 1997 Order. Under Article 42B, where it appears to an authorised officer of the Department that a person has committed an offence under Article 42(7)(a) of the 1997 Order (failure to produce authority for transporting controlled waste) he may issue that person with a notice, offering him the opportunity to discharge by payment of a fixed penalty any liability to conviction for the offence.
42. By Article 42B(9) the fixed penalty is set at £300, though a different amount may be substituted by an order made by the Department under Article 42B(10). By Article 42B(11) the Department may make provision for treating the fixed penalty as having been paid if a lesser amount is paid within a shorter specified period, and by Article 42B(12) the extent and circumstances for doing so may be subject to restrictions made by the Department.

SITE WASTE MANAGEMENT PLANS

Article 17 – Site waste management plans

43. Article 17 provides powers for regulations to be made to require developers and contractors of construction and demolition projects to prepare site waste management plans. These plans must set out the arrangements for managing and disposing of waste created in the course of the project. The regulations may be restricted to projects over a specified value and may specify, for example, when plans must be prepared; the contents of such plans; enforcement arrangements; offences and their penalties; and the possibility for the discharge of liability for an offence by payment of a fixed penalty.

ENFORCEMENT

Article 18 – Powers of enforcing authorities

44. Article 18 makes a number of amendments to simplify the exercise of the Department's powers of entry under Article 72 of the 1997 Order. In particular, Article 18(1)(a) removes the requirement for an authorised person to be accompanied only by any other duly authorised person in exercising his power of entry; Article 18(1)(b) increases the scope of articles or substances that an authorised person can take possession of and detain for the purposes specified in Article 72(2)(h); and, Article 18(1)(c) reduces the period of notice from 7-days to 24 hours that must be given prior to exercising the power of entry under Article 72. Article 18(2) increases from 6 months to 12 months the period of time within which the Department can take a prosecution in a Magistrate's Court with respect to offences under Articles 74(2) or (3) of the 1997 Order.

Article 19 – Power to stop vehicles

45. Article 19 gives an authorised officer of the Department a new power to require any person driving a vehicle on a road or other public place to stop. Any person who fails to stop when so required is guilty of an offence and liable on summary

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conviction to a fine not exceeding level 5 on the standard scale (currently (£5,000)).

Article 20 – Power of arrest for certain offences under Article 5 of the 1997 Order

46. Article 20 adds an offence under Article 5(8) of the 1997 Order to the list of arrestable offences specified in Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989.

REPEALS

Article 21 and the Schedule

47. This Article introduces the Schedule, which makes a number of repeals to the 1997 Order as a consequence of the provisions being introduced by this Order.

COMMENCEMENT

48. Articles one and two come into operation one week after approval of the Order by the Privy Council. The remaining Articles of the Order will be brought into operation on a day or days to be appointed by commencement order.