

## The Waste (Amendment) (Northern Ireland) Order 2007

### **BACKGROUND**

The Waste (Amendment) (Northern Ireland) Order 2007 (“the Order”) was made on 6 March 2007. The Order updates the legislation governing the management and disposal of waste, as set out in the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”).

Illegal waste activity is a major problem in Northern Ireland. Such activity has netted large profits for unauthorised waste operators, including organised criminal gangs. It has a negative impact not only in terms of damage to the environment and risk to public health, but also on the competitive status of legitimate waste businesses. The costs involved in cleaning up illegally deposited waste are also significant.

The powers contained in the 1997 Order were not considered sufficient to deal with this growing problem. The new Order therefore provides stronger powers for enforcement officers and additional powers for the courts to impose wider ranging and more significant financial penalties in order to combat and deter illegal waste activity.

The new powers largely replicate those in the rest of the United Kingdom as set out in Part 5 of the Clean Neighbourhoods and Environment Act 2005. However the Order does include some

unique provisions because of the nature and extent of the problems faced in Northern Ireland.

A brief overview of the main provisions in the Order follows below. The Order itself, and an Explanatory Memorandum which sets out the contents of the Order in more detail, can be viewed on the website of the Office of Public Sector Information:

<http://www.opsi.gov.uk/si/si2007/20070611.htm>

<http://www.opsi.gov.uk/si/si2007/07em0611.htm>

## **MAIN PROVISIONS**

### **Limitations on defences in relation to waste offences (Articles 3 and 13)**

For both waste disposal and waste transport offences, the Order removes the defence of acting under an employer's instructions.

### **Stronger powers for the Courts in relation to waste offences (Articles 4 and 6-8)**

Key features include:

- (i) maximum fine in Magistrates Court increased from £20K to £50K;
- (ii) maximum prison sentence in Crown Court increased from 2 years to 5 years;

- (iii) powers for courts to require convicted persons to pay investigation, enforcement and clean-up costs;
- (iv) powers for courts to award possession of vehicles used in the commission of offences to the Department.

### **Enhanced Enforcement Powers (Articles 9, 15, 18, 19)**

The Order gives Departmental officials the powers to stop vehicles on a public road without a police presence. Such powers are not available to officials elsewhere in GB.

It also empowers the police and Departmental officials to search and seize vehicles, without a court warrant, where they have reasonable grounds to suspect a waste offence. Failure to co-operate with officials or constables exercising these powers will constitute an offence. Subordinate legislation will be required before the new seizure powers can be exercised.

The Order strengthens the Department's current powers of entry to premises for the purpose of investigating possible waste offences.

### **Daily Fine for Offence under Article 27 of the 1997 Order (Article 11)**

The Order creates a continuing daily offence of failure to comply with a direction from the Department concerning the management of controlled waste.

### **More Flexible Penalties (Article 5 and 16)**

The Order allows the Department to impose fixed penalties for waste offences related to failures to produce the appropriate documentation for the transfer or transport of waste. This offers a practical alternative to formal court proceedings. These powers can only be exercised after the introduction of new subordinate legislation.

### **More Powers for District Councils (Articles 10 and 12)**

The Order enables district councils, after the introduction of appropriate subordinate legislation, to impose fixed penalties for waste offences related to the misuse of waste receptacles, as an alternative to formal court proceedings.

Councils can also now, in certain circumstances, require landowners to take action to remove illegal waste from their land, or to pay the costs of clearance. Until the introduction of the 2007 Order, the Council could only require this of occupiers of land.

### **Registration of Waste Carriers (Article 14)**

The Order allows the Department to make certain changes regarding the registration of registered waste carriers. The most significant of these enable the Department (through regulations) to impose conditions regarding the vehicles to be used when transporting waste, to provide for vehicle compliance inspections and where necessary to revoke waste registrations.

### **Site Waste Management Plans (Article 17)**

The Order gives the Department the power to make regulations requiring developers and contractors of construction and demolition projects to prepare site waste management plans. Such plans will contain arrangements for the management and disposal of waste created as a result of the project. Precise requirements will be set out in regulations.

## **IMPLEMENTATION ARRANGEMENTS**

The Department plans to bring in the following Articles of the Order in June 2007:

**Article 3** – Unlawful deposit, disposal etc of waste: defence of acting under employer's instructions;

**Article 4** – Penalties on conviction;

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

**Article 7** – Clean-up costs;

**Article 8** – Forfeiture of vehicles;

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

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

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

**Article 18** – Powers of enforcing authorities;

**Article 19** – Power to stop vehicles;

**Article 20 and the Schedule** (partial introduction) - repeals to 1997 Order.

Subordinate legislation will be required before the remaining Articles in the Order can be introduced. A programme of subordinate legislation is likely to be taken forward over a period of several years.

## **CONTACT DETAILS**

If you have any questions on the legislation or on how it could affect your business, you can contact the Department as follows:

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