



Subject:	Implementation of new powers for District Councils under the Waste and Contaminated (Northern Ireland) Order 1997
Date:	9th January 2024
Reporting Officer:	Siobhan Toland, Director of City Services
Contact Officer:	Helen Morrissey, City Protection Manager

Restricted Reports

Is this report restricted? Yes No

Please indicate the description, as listed in Schedule 6, of the exempt information by virtue of which the council has deemed this report restricted.

Insert number

1. Information relating to any individual
2. Information likely to reveal the identity of an individual
3. Information relating to the financial or business affairs of any particular person (including the council holding that information)
4. Information in connection with any labour relations matter
5. Information in relation to which a claim to legal professional privilege could be maintained
6. Information showing that the council proposes to (a) to give a notice imposing restrictions on a person; or (b) to make an order or direction
7. Information on any action in relation to the prevention, investigation or prosecution of crime

If Yes, when will the report become unrestricted?

After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Sometime in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

Call-in

Is the decision eligible for Call-in? Yes No

1.0	Purpose of Report/Summary of Main Issues
	<p>To make members of the People and Communities Committee aware that The Waste and Contaminated Land (Amendment) (2011 Act) (Commencement No. 3) Order (Northern Ireland) 2022, which came into force in January 2023, gives councils a joint responsibility with the Northern Ireland Environment Agency (NIEA) for certain matters under the aforementioned legislation including, but not limited to the offence of fly-tipping.</p> <p>No additional funding has been provided to councils by the Department for Agriculture, Environment and Rural Affairs (DAERA) to support the implementation of the new powers under Article 4 and 5 of the Waste and Contaminated (Northern Ireland) Order 1997. These powers are discretionary for councils to use in circumstances where they chose to do so.</p> <p>Council officers have been involved in discussions with officers from other councils in Northern Ireland in order to agree a consistent and proportionate approach, as these matters may involve operations and offences which extend beyond Belfast City Council area.</p> <p>The NIEA is the waste licensing authority for NI and it obtains the fees associated with legitimate waste operators. NIEA has been the sole enforcing authority under Article 4 and 5 for the previous 25 years. It is therefore unlikely that councils will seek to use their discretionary powers under Article 4 or 5 where the NIEA should be seeking to regulate the matter using its licensing powers.</p>
2.0	Recommendation
2.1	<p>The Committee is asked to:</p> <ul style="list-style-type: none"> • Note the report; • Agree the Fixed Penalty Rate for Article 4 offences to be set at £400. • Agree a discounted rate of £300 if an Article 4 or an Article 5 FPN is paid within 10 days.
3.0	Main Report
	<p><i>New Enforcement Powers</i></p> <p>Article 4</p> <p>Power to enforce against the Unauthorised or Harmful Deposit, Treatment or Disposal of Waste under the Waste and Contaminated Land (NI) Order 1997.</p> <p>Under Article 4 of the Order, <i>a person shall not (a) deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste</i></p>

management licence authorising the deposit is in force and the deposit is in accordance with the licence; or (b) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of (i) in or on any land (ii) by means of any mobile plant, except under and in accordance with a waste management licence; (c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to health.

The offence under Article 4 is commonly referred to as fly-tipping. If a fly-tipping offence, under Article 4, is detected by an Authorised Officer the Officer may give to that person, Notice offering them the opportunity of discharging any liability to conviction for the offence by payment of a Fixed Penalty Notice. The amount of the Fixed Penalty Notice cannot be less than £100 and not more than £400.

Prior to the implementation of these new powers, NIEA previously drafted a Fly-tipping Protocol which outlined its criteria for the determination of responsibility for waste crime incidents between the NIEA and local councils in respect to the volume of waste deposited.

Local Councils responsible for:

- All non-hazardous waste deposits under 20m³ in volume or accumulations of several small scale fly-tipping incidents.

NIEA responsible for:

- All waste deposits over 20m³ in volume regardless of the classification of waste; and
- All hazardous waste.

Photo of waste emptied from a bin lorry = 18.5m³



Our officers are currently dealing with fly-tipping offences under the Litter (Northern Ireland) Order 1994 with a Fixed Penalty Rate of £80, reduced to £60, if paid within 10 days. However, the offence of fly-tipping has been described by the former Department of the Environment as

a premeditated act involving more than a single item of waste collected together and moved to a location without any regard to its final legitimate disposal. On the contrary, littering tends to involve smaller quantities of material which are dropped or disposed of shortly after the item has become of no further use to the offender.

Officers from councils in NI set up a working group to try to agree a consistent and proportionate approach to the enforcement of Article 4. **It is proposed that all councils set the Fixed Penalty Rate for this offence at £400. If an early payment discount is to be offered it is proposed that this should be a discounted amount of £300 if paid within 10 days of the date of the notice.**

Article 5

Article 5 of the Order imposes a “duty of care” on any person who imports, produces, collects, carries, treats, or disposes of controlled waste or, as a broker or dealer has control of such waste, shall take all such measures applicable to them in that capacity as are reasonable in the circumstances to prevent any contravention by any other person of Article 4 of the Order.

Powers available under Article 5 are much broader and are likely to involve illicit waste operations and other commercial and industrial entities. There is an extensive list of offences included in Article 5 of the Order, which would impact the volume of work and officer involvement and will require more consideration on resources needed and operability. It is more likely if Council were to exercise these discretionary powers it would be done so in partnership with relevant bodies including NIEA.

Article 5 powers can be used to assist with enforcement matters in relation to commercial waste. Officers are aware of the impact of additional financial burdens on the business community which is already under significant financial strain following the pandemic and the current cost of living crisis. It is anticipated that officers will use a graduated approach when dealing with potential offences under Article 5. However, there could still be situations where there are no other means of resolving an issue other than to use Article 5 powers. An offence under Article 5 has a set Fixed Penalty of £400. **Councils can decide to offer an early payment discount. If an early discounted rate is to be offered it is proposed that it be £300 if paid within 10 days of the date of the notice.**

It is proposed that Members would agree that Article 5 of the Waste and Contaminated Land (NI) Order 1997, should only be implemented when there is a significant possibility of significant harm to the environment or where conditions are prejudicial to health or when there are no other means of resolving an issue other than to use Article 5 powers.

We have a small team of authorised officers working in this area where the key role is detecting littering and fly tipping offences. This team already works closely with colleagues in our OSSS function. These powers came into effect on 2 January 2023 and are a useful additional regulatory tool. However we will need to continue to assess and monitor the impacts on resources and budgets. Therefore depending on the impact of application of these discretionary powers it may be necessary to bring a further report back to committee. We will avail of additional training to support implementation.

Finance and Resource Implications

Budget within the City Services will be utilised to train staff to enforce the new powers. NI councils hope to source this training jointly in order to reduce the costs. There will be some additional income from the service of Fixed Penalty Notices. The impacts of these new powers on budgets and resources will be monitored.

Equality or Good Relations Implications/Rural Needs Assessment

None