

2013 No. 260

ENVIRONMENTAL PROTECTION

**The Controlled Waste (Seizure of Property) Regulations
(Northern Ireland) 2013**

Made - - - - *8th November 2013*

Coming into operation - *6th December 2013*

The Department of the Environment, in exercise of the powers conferred on it by Articles 2(4), 5F(2) and 42A(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997(a), and Article 76 of the Magistrates' Court (Northern Ireland) Order 1981(b) makes the following Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Controlled Waste (Seizure of Property) Regulations (Northern Ireland) 2013 and shall come into operation on 6th December 2013.

(2) In these Regulations—

“authorised officer” means a person authorised by the Department for the purposes of these Regulations;

“the 1997 Order” means the Waste and Contaminated Land (Northern Ireland) Order 1997;

“mobile plant” means plant used for any operation involved in treating, keeping or disposing of controlled waste designed to move or be moved from place to place with a view to being used at such a place or, if not so designed, is readily capable of so moving or being moved;

“owner” in the case of a vehicle registered under the Vehicle Excise and Registration Act 1994(c) is presumed (unless the contrary is proved) to be the person in whose name the vehicle is registered;

“seized property” means the property seized in accordance with Article 5E of the Waste and Contaminated Land (Northern Ireland) Order 1997;

“vehicle” includes mobile plant.

Immediate disposal

2. The Department may dispose of or destroy seized property immediately if its condition is such that its disposal without delay is required in order to protect human health or the environment.

(a) S.I. 1997/2778 (N.I. 19) as amended by S.I. 2007/611 (N.I.3)
(b) S.I. 1981/1675 (N.I. 26)
(c) 1994 c 22

Removal and safe custody of seized property

3.—(1) The Department may remove seized property from the location at which it was seized and deliver to any place which the Department considers appropriate for searching or keeping seized property.

(2) Seized property may be removed by such means as are reasonable in the circumstances and, in the case of a seized vehicle, this may include the separation of a trailer from the remainder of the vehicle.

(3) Property seized in accordance with these Regulations shall remain in the custody of the Department until—

- (a) it has been returned to the owner in accordance with these Regulations; or
- (b) it has been sold, disposed of or destroyed in accordance with these Regulations.

(4) The Department shall take such steps as are reasonably required to ensure the safe custody of seized property, which may include the fixing of an immobilisation device to a seized vehicle.

Identifying the owner of the seized property

4.—(1) As soon as possible after seizure, the Department shall take reasonable steps to identify the owner of the seized property.

(2) In the case of a seized vehicle the Department shall—

- (a) check to whom the vehicle is registered in Northern Ireland or, if the vehicle is not registered in Northern Ireland, consult the appropriate authority in the jurisdiction shown on the vehicle's number plate; and
- (b) take all reasonable steps to ascertain whether the vehicle is subject to any hire purchase agreement.

Notice of Seizure

5.—(1) The Department shall, within 48 hours of seizure where practicable, issue a written notice giving details of the seized property to the owner of the seized property and may issue a further such notice to any other person with a legal interest in that property.

(2) If it has been unable to trace the owner of the seized property, the Department shall publish a notice giving details of the seized property either on its website, or in a newspaper in circulation in the area in which the property was seized.

(3) The details referred to in paragraph (1) and (2) shall include—

- (a) the registration mark and make of the seized vehicle, if applicable, and, where appropriate, a description of the seized property;
- (b) the date and place of seizure;
- (c) the powers under which the property was seized;
- (d) the reason that the property was seized;
- (e) how and by what date the owner of the seized property must claim entitlement to the seized property;
- (f) the information that will be required to establish entitlement to the seized property; and
- (g) how the seized property will be dealt with if contact is not made on or before the date specified on the notice.

(4) This regulation shall not apply where seized property has been returned to the owner before a notice in accordance with paragraph (1) could be issued.

Keeping seized property

6.—(1) If entitlement to the seized property is established within 14 days of the date of seizure, the Department shall—

- (a) return the seized property as soon as possible to the owner; or
- (b) continue to keep the seized property for a maximum of 28 days from the date of seizure to enable investigations to be carried out to ascertain whether or not a criminal offence involving the seized property may have been committed or whether further enquiries are necessary to ascertain whether such an offence has been committed.

(2) If the Department has kept seized property in accordance with paragraph (1)(b), it must—

- (a) return the seized property at the end of the 28-day period; or
- (b) apply to a magistrates' court by notice in accordance with Article 76(1)(b) of the Magistrates' Court (Northern Ireland) Order 1981 for authorisation to keep the seized property pending further consideration of enforcement action relating to the seized property.

(3) A notice under sub-paragraph 2(b) shall be served upon the Clerk of the Petty Sessions and upon any person claiming entitlement to the property.

(4) If entitlement to the seized property is established later than 14 days from the date of seizure, the Department shall—

- (a) return the seized property as soon as possible to the owner;
- (b) continue to keep the seized property for a maximum of 28 days from the date of seizure to enable investigations to be carried out to ascertain whether or not a criminal offence involving the seized property may have been committed or whether further enquiries are necessary to ascertain whether such an offence has been committed.
- (c) apply to a magistrates' court in accordance with Article 76(1)(b) of the Magistrates' Court (Northern Ireland) Order 1981 for authorisation to keep the seized property pending further consideration of enforcement action relating to the seized property; or
- (d) if appropriate, advise the owner that the seized property has been sold, destroyed or otherwise disposed of in accordance with paragraph (6).

(5) A notice under sub-paragraph 4(c) shall be served upon the Clerk of the Petty Sessions and upon any person claiming to be entitled to the property.

(6) If entitlement to the seized property has not been established within 28 days from the date of seizure, the Department may sell, destroy or otherwise dispose of it.

(7) If, in accordance with paragraph 2(b) or paragraph 4(c), the Department has applied to a magistrates' court for authorisation to keep the seized property for an extended period, it may retain the seized property until the Magistrates' decision is known.

Returning seized property

7.—(1) Where the Department has advised the owner that the seized property may be returned, the owner shall arrange to collect the seized property on the date specified by the Department.

(2) When returning seized property to the owner, the Department may arrange to deliver the seized property to a place of its choice for collection by the owner.

(3) If the seized property is not collected within 21 days of the date specified by the Department in accordance with paragraph (1), the Department may sell, dispose of or destroy it.

Application of proceeds of sale

8. Where seized property is sold in accordance with these Regulations, any proceeds from the sale of property shall be applied towards recovery of expenses incurred by the Department in exercising functions under these Regulations.

Revocation

9. Regulations 18 to 24 of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999(a) are revoked.

Sealed with the Official Seal of the Department of the Environment on 8th November 2013.



Wesley Shannon
A senior officer of the Department of the Environment

(a) S.R. 1999 No. 362

EXPLANATORY NOTE

(This note is not part of the Regulations)

Articles 9 and 15 of the Waste (Amendment) (Northern Ireland) Order 2007^(a) (“the 2007 Order”) provide for the seizure and disposal of property suspected of being used, or about to be used, in illegal waste activity.

The Regulations prescribe the procedures to be followed by the Department of the Environment in seizing property under the powers provided by the 2007 Order.

Regulations 18 to 24 of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999 are revoked by these Regulations.

Regulation 2 sets out the circumstances in which property seized by the Department may be disposed of immediately.

Regulation 3 specifies how seized property may be moved from the place of seizure and sets out the Department’s duties in relation to the safe custody of the seized property.

Regulation 4 sets out what steps the Department must take in attempting to identify the owner of the seized property.

Regulation 5 specifies what must be included in a notification of seizure to be sent to the owner of the seized property and prescribes that the Department must publish this notice if it has been unable to trace the owner of the property.

Regulation 6 sets out the circumstances in which the Department will be able to retain seized property and what will happen to unclaimed seized property.

Regulation 7 provides for the collection of seized property.

Regulation 8 provides for the application of the proceeds of any sale of the seized property.

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^(a) S.I. 2007 No. 611 (N.I.3) relevant amendment Article 2 of 2011 c 5

STATUTORY RULES OF NORTHERN IRELAND

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