

## TREATING / KEEPING / DISPOSING OF WASTE IN MANNER LIKELY TO CAUSE POLLUTION

### Waste and Contaminated Land (NI) Order 1997

4. – (1) Subject to paragraphs (2) and (3) a person shall not-

...  
(c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

...  
(6) A person who contravenes paragraph (1) or any condition of a waste management licence shall be guilty of an offence.

...  
(10) In this Article "relevant offence" means an offence under this Article in respect of a contravention of paragraph (1)(c) consisting of the treatment, keeping or disposal within the curtilage of a domestic property of household waste from that property.

#### Maximum Sentence:

*Waste and Contaminated Land (NI) Order 1997, Art.4(8)-(9)*

(i) 'Relevant offence' committed by a person other than an 'establishment or undertaking':

*Indictment: Unlimited Fine*

*Summary: Statutory maximum fine (£5,000)*

(ii) Not a 'relevant offence', or a 'relevant offence' committed by an 'establishment or undertaking':

*Indictment: 5 years imprisonment and/or Unlimited Fine*

*Summary: 6 months imprisonment and/or £50,000 Fine*

#### Assessment of Offence

*(Starting points and ranges based on 1<sup>st</sup> time offender convicted following contest)*

| <u>Nature of Offence</u>  | <u>Starting Point</u>                         | <u>Sentencing Range</u>   |
|---|---|---|
| 'Relevant offence' committed by a person other than an 'establishment or undertaking'   | £1,000 Fine*<br>+<br>Compensation Order**     | £500 - £2,500 Fine*<br>+<br>Compensation Order**                  |
| 'Relevant offence' committed by an 'establishment or undertaking'<br><br>OR<br><br>Not a 'relevant offence' committed on non-commercial basis | £5,000 Fine*<br>+<br>Compensation Order**     | £1,000 Fine* to<br>3 months Custody<br>+<br>Compensation Order**  |
| Not a 'relevant offence' committed on commercial basis  | 2 months Custody<br>+<br>Compensation Order** | £20,000 Fine* to<br>6 months Custody<br>+<br>Compensation Order** |

**\* 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. – Art.4(11) of the 1997 Order.**

**\*\*** When determining the amount of any Compensation Order the loss or damage resulting from the offence includes costs incurred by the owner or occupier of the land, the Department of the Environment or a District Council in removing the waste and taking other steps to eliminate the consequences of the waste being deposited/disposed on the land. – Article 5C of the 1997 Order.

| <u>Examples of Possible Aggravating Factors of Offence</u>  | <u>Examples of Possible Mitigating Factor of Offence</u>   |
|---|--|
| <ol style="list-style-type: none"> <li>1. Quantity of waste involved</li> <li>2. Human health, animal health, or flora were adversely affected (especially where a protected species or a site designated for nature conservation)</li> <li>3. Extensive clean-up, site restoration or animal rehabilitation operations required</li> <li>4. Waste deposited near housing, children's play areas or schools, livestock or environmentally sensitive sites</li> <li>5. Offence was a deliberate or reckless breach of the law, rather than the result of carelessness</li> <li>6. Offender failed to respond to advice/caution/warning from the relevant regulatory authority or Department</li> <li>7. Offender ignored relevant concerns voiced by employees or others</li> <li>8. Offender's attitude towards the relevant authorities or Department was dismissive or obstructive</li> <li>9. Other lawful activities were prevented or significantly interfered with</li> <li>10. Waste has escaped into a watercourse or the atmosphere</li> </ol> | <ol style="list-style-type: none"> <li>1. Offender played a relatively minor role, or relatively little personal responsibility, in the commission or the offence</li> <li>2. Offender genuinely and reasonably lacked awareness or understanding of the regulations specific to the activity in which he was engaged</li> <li>3. Offence was an isolated lapse</li> <li>4. Offender's prompt reporting of the offence and ready co-operation with the relative authorities or Department</li> </ol> |

**Relevant Cases:**

*NI Cases:*

R v Allingham and Allingham; R v McKenna [2012] NICA 29  
R v Braniff [2016] NICA 9

*English Cases*

R v Thames Valley Utilities [2010] EWCA Crim 202  
R v Cemex Cement Ltd [2007] EWCA Crim 1759  
R v Anglian Water Services Ltd [2003] EWCA Crim 2243  
R v Milford Haven Port Authority [2000] 2 Cr App R(S) 423  
R v O'Brien and Enkel [2000] 1 Cr App R(S) 358  
R v F Howe and Son (Engineer) Ltd [1999] 2 Cr App R(S) 37  
R v Garrett [1997] 1 Cr App R(S) 109

**Notes:**

1. The court may order the forfeiture of any vehicle used in or for the purposes of the commission of the offence. – Art.5D of the 1997 Order.
2. The court may order the offender to pay to the Department of the Environment the costs of the investigation of the offence and the costs arising out of the seizure of any vehicle involved in the offence.