
PRESENTATION TO WASTE ENFORCEMENT SCRUTINY INVESTIGATION ON LEGISLATION

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OVERVIEW

1. The purpose of this presentation is to give practical guidance to members of the Gwynedd Council scrutiny committee on the relevant legislation in relation to their investigation into waste enforcement.
2. The legislation on waste enforcement is included in the Environmental Protection Act 1990 (“the Act”). This Act contains a number of provisions of use to the Council in tackling problems of waste on land generally, including:
 - fly tipping (section 33)
 - breach of duty of care in relation to waste (section 34)
 - waste receptables (section 46, 47, 47ZA and 47ZB)
 - statutory nuisance (sections 79 and 80)
3. This note concentrates on the problem the committee is looking at, that is the disposal of waste on the wrong day or in the wrong manner. While it is possible in principle that some such incidents can lead to the commission of offences under sections 33 and 34, or be tantamount to statutory nuisance under section 79 in respect of which a prosecution can be brought under section 80, those sections are more generic and are outside the scope of this note. Rather, I will concentrate on those parts of the Act that have been tailored specifically to address the problem under consideration. Those parts of the Act deal with “waste receptables”, or in layman’s terms, the rubbish bins you and I leave out for the binman once a week/fortnight/three weeks, as the case may be.
4. Here are the sections of the Act which deal specifically with waste receptables and are therefore most relevant to disposing rubbish on the wrong day or in the wrong manner:
 - Section 46: household waste receptables
 - Section 47: commercial or industrial waste receptables
 - Section 47ZA: fixed penalty notices

- Section 47ZB: the sum of the FPN under section 47ZA

SECTION 46

5. Section 46 deals with household waste receptables.
6. Subsection (1) says that where the “waste collection authority” (i.e. the Council) has a duty to collect household waste, it can give the occupier a formal notice. That notice can require the occupier to put his waste out for collection in receptables. It can also specify the type and number of receptables which need to be used.
7. Subsection (2) says that the type and number of containers required under subsection (1) must not be more than what is reasonable. Even so, the law may make it necessary for the occupier to use separate receptables or separate compartments of the same receptable for waste which is to be recycled and waste which is not.
8. Subsection (3) says that the Council may, when imposing requirements under subsection (1), decide that the Council will provide the receptables (whether for free or on payment of a fee) or that the occupier provides his own receptable.
9. Subsection (4) provides that any notice under subsection (1) can include conditions regarding the following:
 - size, construction and maintenance of the receptables;
 - where the receptables should be kept for the purposes of emptying and access for that purpose;
 - the placing of receptables for that purpose on the highway;
 - the substances or articles which may or may not be put into the receptables or compartments of receptables, and the precautions to be taken where particular substances or articles are put in them;
 - the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptables.
10. Subsection (5) says that no requirement shall be made under subsection (1) for receptables to be placed on a highway, unless the “highway authority” (i.e. the Council again) has given consent, and that arrangements have been made as to the liability for any damage arising out of their being so placed.

11. Subsection (6) makes it an offence for a person, without reasonable excuse, to fail to comply with any one of the requirements set by the Council under subsection (1), (3) or (4). The maximum penalty for this offence is a fine not exceeding level 3 on the standard scale, i.e. £1000.
12. Subsection (7) says, where an occupier is required to provide receptacles under subsection (1) he may appeal against the requirements in the Magistrates' Court on the grounds that they are unreasonable, or that the receptacles he has are adequate.
13. Subsection (8) says that an appeal must be presented within 21 days.
14. Subsection (9) says:
 - the requirement which is the subject of an appeal is of no effect pending the determination of the appeal;
 - in an appeal hearing the Court may either quash the requirement, or vary it or dismiss the appeal (i.e. leave the requirement as it is);
 - the unreasonableness of a requirement cannot be raised as a defence to a prosecution for an offence under subsection (6).
15. Subsection (10) provides a definition for some terms included in section 46.
16. Finally, subsection (11) says that the Council is not obliged to collect household waste that is placed for collection in contravention of a requirement under section 46.

SECTION 47

17. Section 47 deals with waste receptacles for commercial or industrial waste.
18. Subsection (1) says that the Council, on the application of any person, may provide that person with receptacles for commercial or industrial waste which he has requested the authority to arrange to collect.
 - a. If the Council provides a container under this section then it must charge a fee (so long as it's reasonable) for any receptacle provided for industrial waste.
 - b. In the case of commercial waste, the authority may charge a fee in accordance according to its discretion.
19. Subsection (2) deals with a situation where it appears to the Council that industrial or commercial waste is stored on premises which, if not stored in particular receptacles, is

likely to cause a nuisance or is to be detrimental to the amenities of the locality. In these circumstances the Council can serve a notice on the premises occupier requiring that he provide receptables for the storage of waste.

20. Subsection (3) says that any requirement under subsection (2) regarding the type or number of receptables must be reasonable.

21. Subsection (4) provides that any notice under subsection (2) can include conditions regarding the following:

- size, construction and maintenance of the receptables;
- where the receptables should be kept for the purposes of emptying and access for that purpose;
- the placing of receptables for that purpose on the highway;
- the substances or articles which may or may not be put into the receptables or compartments of receptables, and the precautions to be taken where particular substances or articles are put in them;
- the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptables.

22. Subsection (5) says that no requirement shall be made under subsection (2) for receptables to be placed on a highway, unless the “highway authority” (i.e. the Council again) has given consent, and that arrangements have been made as to the liability for any damage arising out of their being so placed.

23. Subsection (6) makes it an offence for a person, without reasonable excuse, to fail to comply with any one of the requirements set by the Council under subsection (2) or (4). The maximum penalty for this offence is a fine not exceeding level 3 on the standard scale, i.e. £1000.

24. Subsection (7) says, where an occupier is required to provide receptables under subsection (2) he may appeal against the requirements in the Magistrates’ Court on the grounds that they are unreasonable, or that the receptables he has are adequate.

25. Subsection (8) says that an appeal must be presented within 21 days.

26. Subsection (9) says:

- the requirement which is the subject of an appeal is of no effect pending the determination of the appeal;
- in an appeal hearing the Court may either quash the requirement, or vary it or dismiss the appeal (i.e. leave the requirement as it is);
- the unreasonableness of a requirement cannot be raised as a defence to a prosecution for an offence under subsection (6).

27. Subsection (10) provides a definition for some terms included in section 47.

SECTION 47ZA

28. Section 47ZA deals with fixed penalty notices (FPNs) for offences under section 46 and 47.

29. Subsection (1) says that section 47ZA applies whenever an authorised officer has reason to believe that a person has committed an offence under section 46 or 47.

30. Subsection (2) says that the authorised officer may offer that person an opportunity to discharge any liability for conviction for the offence by payment of a fixed penalty to the Council.

31. Subsection (3) says the Council cannot bring a prosecution case against a person who has been offered a FPN until 14 days after the date of the notice, and that person cannot be convicted of that offence if he pays the FPN within that period.

32. Subsection (4) says that a FPN must include such details as necessary for giving reasonable information of the offence.

33. Subsection (5) says that the FPN must state the period when no court proceedings will be taken for the offence, the sum of the FPN, and the person to whom and the address at which the FPN may be paid.

34. Subsections (6) and (7) enable a person to pay the sum by sending payment by post.

35. Subsection (8) deals with the form of the FPN.

36. Subsection (9) enables the chief finance officer to prepare a certificate confirming if a person has not paid a FPN by a specified deadline.

37. Subsection (10) provides a definition for certain terms included in the section. These terms include what is an “authorised officer” for the purposes of issuing a FPN. In short, it can include an employee of the Council, or external agent, of an employee of that agent, provided that the employee/agent etc has the Council’s written authority to undertake the function of issuing FPNs.

SECTION 47ZB

38. Section 47ZB elaborates on the sum payable for a FPN. These are the two most important parts:

- a. Subsection (2) confirms that the sum of the FPN is whatever sum is specified by the Council, or if no sum is specified, £100.
- b. Subsection (3) permits the Council to treat a FPN as having been paid in full if a lesser amount is paid before the end of a period specified by the authority.

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