

# Waste Duty of Care Code of Practice

**March 2016**

Presented to Parliament and to the National Assembly for Wales pursuant to Section 34(9) of the Environmental Protection Act 1990

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# 1. Overview

The duty of care legislation makes provision for the safe management of waste to protect human health and the environment.

This code of practice (the Code) is issued under section 34 of the Environmental Protection Act 1990 (the EPA). It sets out practical guidance on how to meet your waste duty of care requirements, but following the guidance does not replace your obligation to comply with the duty of care itself.

This Code applies to you if you import, produce, carry, keep, treat, dispose of or, as a dealer or broker have control of, certain waste in England or Wales.

Failure to comply with the duty of care is an offence subject to an unlimited fine on conviction. In some instances a fixed penalty notice may be issued for failure to comply with the duty of care in place of prosecution. The Code is admissible as evidence in legal proceedings and its rules **must** be taken into account where relevant to questions raised in the case.

If your waste activities are authorised or registered in Scotland or Northern Ireland but you deal with waste in England or Wales, you need to follow this Code. You need to follow Scotland's and Northern Ireland's codes of practice if you operate across borders.

The regulators for the duty of care are the Environment Agency (EA) in England, Natural Resources Wales (NRW) in Wales and local authorities.

Householders have a separate duty of care for their household waste, also under section 34 of the Environmental Protection Act. Non-statutory guidance is included in the Code to help householders meet their duty of care.

## 2. Scope of the duty of care

### 2.1 Duty of care: who it applies to

The duty of care applies to anyone who imports, produces, carries, keeps, treats, disposes of, or are a dealer or broker that has control of, controlled waste (referred to below for the purpose of this Code as a “waste holder”).

Waste holders are a:

- **waste producer** – any person whose activities produce waste. This includes private sector businesses such as shops, offices, factories and tradespersons (e.g. electricians, builders, glaziers and plumbers) and public sector services such as schools, hospitals and prisons, as well as charities and voluntary and community groups. It also includes permitted operations or exempt facilities that produce waste as part of their activities. If you carry out a waste operation that changes the nature or composition of the waste, you are regarded as a producer of the waste
- **waste carrier** – any person, who normally and regularly collects, carries or transports waste in the course of any business or with a view to profit, including those that produce and transport their own waste e.g. builders and landscape gardeners
- **waste dealer** – any person, business or organisation that buys waste with the aim of subsequently selling it, including in circumstances where the dealer does not take physical possession of the waste
- **waste broker** – any person, business or organisation that arranges waste transportation and management of waste on behalf of another party, such as organisations contracting out waste collection services e.g. local authorities, supermarkets and producer responsibility compliance schemes
- **waste manager** – any person involved in the collection, transport, recovery or disposal of controlled waste, including the supervision of these operations, the after-care of disposal sites and actions taken as a dealer or broker

A separate duty of care applies to **householders** (occupiers of a domestic property), limited to taking all reasonable measures available to them to ensure their waste is only transferred to an authorised person.

**For the purposes of this Code, householders are not treated as a ‘waste holder’ as defined above.**

Separate guidance on householder duty of care requirements is set out in section 3.

## 2.2 Waste holders: what your duty of care applies to

The duty of care requirements apply to household, industrial and commercial waste, also known as **controlled waste**.

Waste is any substance or object that the holder discards, intends to discard or is required to discard. The meaning of “discard” applies to “disposal” and “recovery” operations and processes and can be intentional or unintentional on the part of the holder. Whether a substance or object is waste is determined on a case by case basis. If you are unsure you can use the ‘legal definition of waste guidance’ to check if something is classified as waste.

The following definitions describe common waste operations and processes:

“Recovery” is any operation which has the main result of waste serving a useful purpose by replacing non-waste materials that would otherwise have been used to fulfil a particular function. An example is incineration for energy recovery (for further examples see Annex II to the Waste Framework Directive). Preparing for re-use and recycling are both recovery operations.

“Preparing for re-use” is the operation or process of checking, cleaning or repairing products that have previously been discarded so that they can be re-used without any other pre-processing, for example repairing bicycles, furniture or electrical or electronic equipment which have been previously discarded by their owners.

“Recycling” is any operation by which waste is reprocessed into products, materials or substances, whether for its original or other purposes, for example crushed waste glass graded for blasting or playground surfaces from waste tyres. (It does not include energy recovery or reprocessing into materials to be used as fuels or for backfilling operations.)

“Disposal” is any operation which is not recovery (even where the operation has a secondary consequence of reclaiming substances or energy). An example is landfill (for further examples see Annex I to the Waste Framework Directive).

## 2.3 Waste holders: what your duty of care does not apply to

See Schedule 1 to the Controlled Waste (England and Wales) Regulations 2012 to check if your waste is controlled waste because of its source or type. Wastes not classed as controlled waste are:

- wastes listed in Article 2 of the Waste Framework Directive e.g. waste waters, decommissioned explosives, radioactive waste
- **waste containing animal by-products** where it is collected and transported in line with the Animal By-Products Regulation (see guidance for England and Wales)
- **sewage, sludge or septic tank sludge** where it is supplied, managed or used in the ways described in regulation 3 of the Controlled Waste (England and Wales) Regulations 2012.

This Code does not cover the extractive waste duty of care. If you are responsible for managing waste from prospecting, extraction, treatment and storage of mineral resources and working quarries (extractive waste) under the EPA you are subject to different duty of care requirements.

## 2.4 Waste holders: how long your duty of care lasts

You have a responsibility to take all reasonable steps to ensure that when you transfer waste to another waste holder that the waste is managed correctly throughout its complete journey to disposal or recovery.

You can do this by:

- checking the next waste holder is authorised to take the waste - see section 4.4 for examples of authorisation
- asking the next waste holder where they are going to take the waste, and checking that the intended destination is authorised to accept that waste.
- carrying out more detailed checks if you suspect the waste is not being handled in line with the duty of care, e.g. requesting evidence that your waste has arrived at the intended destination and that it has been accurately described

If you receive waste you should cooperate with the previous waste holders in any measures that they are taking to comply with their duty of care. This includes supplying evidence that previous holders may need to ascertain that their waste has reached its end of waste location. Each holder in the waste chain shares the duty of care obligations.

- If you use a waste dealer or broker, you each have a responsibility to comply with your duty of care obligations and to ensure that the waste is only transferred to an authorised person or establishment.
- If you transfer waste to a waste treatment facility for preliminary treatment, you will generally still be responsible for the complete recovery or disposal operation (in accordance with Article 15(2) of the Waste Framework Directive).

“Treatment” is a recovery or disposal operation, including preparation prior to recovery or disposal.

- If you carry out a waste operation that changes the nature or composition of the waste, you are regarded as a producer of the waste when it leaves your site.

## 3. Householders: waste duty of care requirements

As a householder, you have a duty to take all reasonable measures available to you in the circumstances to ensure that you only transfer household waste produced on your property to an authorised person. This section of the code of practice is non-statutory but provides useful information to help you meet your duty of care.

If you do not take all reasonable measures available to you in the circumstances to meet your duty of care, you could face a fixed penalty notice or prosecution and, on conviction, a fine.

If a fixed penalty notice is offered, you can pay this and discharge any liability for a breach of the duty of care in order to avoid being prosecuted for the offence. You can choose not to accept the penalty and can defend the prosecution through the courts or provide evidence that prosecution through the courts is not appropriate.

### 3.1 Who is a householder?

The householder duty of care applies to all occupiers of any domestic property.

### 3.2 What is household waste?

For the purpose of applying the householder duty of care requirements, household waste is generally considered to be any waste produced within a domestic property. For the waste duty of care this includes septic tank sludge which is not used on agricultural land within the meaning of the Sludge (Use in Agriculture) Regulations 1989, and construction and demolition waste.

If a tradesperson carries out work on your property, generally they are responsible for the waste they produce and must comply with their own waste duty of care obligations in relation to that waste.

Household waste does not generally include waste from a property or part of a property that is mainly used for commercial business.

### 3.3 How should you dispose of your waste?

If you have household waste which cannot be appropriately disposed of through your normal local authority waste collection service (or within the boundary of your home) you can:

- see if your local authority's household waste and recycling centre accepts the waste and take it yourself
- check if your local authority offers special collection services
- use a private business that provides a waste collection service
- take your waste to a site run by a private business with the appropriate authorisations

You should check whether a person or business is authorised to take waste before you transfer your waste to them. An authorised person includes:

- the local authority that provides your normal waste collection service

- someone who has a valid registration as a carrier, broker or dealer of waste
- an operator of a waste site with an appropriate environmental permit or exemption

### **3.4 What reasonable measures should you take when a private business takes your waste?**

If a private business takes away your waste rather than the local authority, you should check that they are an authorised carrier with up to date and valid registration. Each carrier should have a registration number starting either CBDL or CBDU, followed by a set of numbers.

In England you can check whether a waste carrier is registered on the [Environment Agency's online public register](#) of waste carriers, brokers and dealers using their registration number, business name, or postcode or call 03708 506 506.

In Wales you can check on the [Natural Resources Wales public register](#) of carriers, brokers and dealers or call 0300 065 3000.

Instances where a private business is exempt from registering are very rare in the context of handling household waste.

### **3.5 What reasonable measures should you take when taking your waste to a private waste site?**

If you take your waste to a site run by a private business you should similarly check that they have a permit or exemption.

In England you can check if a waste site has a permit or exemptions through the [Environment Agency's online public registers](#) for waste operations and waste exemptions using their registration number, business name, or postcode, or call 03708 506 506.

In Wales you can check on the [Natural Resources Wales public register](#) of waste, water quality, water resources and installation permits or call 0300 065 3000.

### **3.6 What evidence can you use to demonstrate you have met your duty of care?**

To demonstrate you've met your duty of care, you could do any of the following:

- Record any checks you make, including the operator's registration, permit or exemption number.
- Keep a receipt for the transaction which includes the business details of a registered operator.
- Ask for a copy of the carrier's waste licence or site's permit.
- Record details of the business and of any vehicle used (registration, make, model, colour), which can be linked back to an authorised operator.

These steps can help ensure your waste will be handled appropriately and not cause harm to others or the environment. These steps can also help enforcement officers catch those responsible if your waste is fly-tipped.

You should also give extra caution to offers to take your waste at a price significantly lower than other offers, where cash is the only accepted form of payment, or where a service can only be found informally through social media.

## 4. Waste holders: waste duty of care requirements

You **must** take all reasonable steps to:

1. prevent unauthorised or harmful deposit, treatment or disposal of waste (see section 4.1)
2. prevent a breach (failure) by any other person to meet the requirement to have an environmental permit, or a breach of a permit condition (see section 4.2)
3. prevent the escape of waste from your control (see section 4.3)
4. ensure that any person you transfer the waste to has the correct authorisation (see section 4.4)
5. provide an accurate description of the waste when it is transferred to another person (see sections 4.5 and 4.6)

Failure to comply with the duty of care requirements is a criminal offence and could lead to prosecution.

### 4.1 Prevent unauthorised or harmful deposit, treatment or disposal

It is illegal to deposit controlled waste except under and in accordance with an environmental permit or a registered waste exemption.

It is also illegal to treat, keep or dispose of controlled waste in a way that is likely to cause pollution of the environment or harm to human health.

Examples of unauthorised or harmful deposit, treatment or disposal include the following:

- **operating illegal waste sites** without the correct permit or appropriate exemption to accept or manage a particular waste
- **misclassification of waste** as a non-waste or a waste that does not fit the written description
- **fly-tipping** is the deliberate unlawful dumping of waste e.g. at the roadside or on privately owned land - the scale can vary from a single bin bag of waste to large quantities of waste dumped from trucks

If you suspect that someone is fly-tipping, illegally depositing, treating or disposing of waste, do not give your waste to them or take waste from them. If you suspect that you have unknowingly accepted misclassified waste, isolate the waste and report all the details to the regulator. You should report any suspected illegal activity to the EA or NRW.

## 4.2 Prevent a breach of an environmental permit or a breach of a permit condition

Normally the operator of a waste treatment or recovery or disposal activity needs an environmental permit or to register an exempt waste operation.

Environmental permits set out specific conditions on how a waste operation **must** be carried out. The conditions will include limits to the amount of waste that can be handled, restrictions to the types of waste that can be handled, and measures that need to be put in place to protect the environment and human health.

Some waste activities may qualify for a waste exemption rather than a permit. The exemption must be registered and these too are subject to strict conditions such as limits to the amount of waste that can be handled or how they are handled.

There are some operations which do not need to be registered. These relate to the temporary storage of waste pending collection. Although you do not have to register these operations, you must still comply with the conditions of the operation.

Examples of activity that would breach a permit condition or exemption limit include the transfer of waste:

- to a facility that does not have an appropriate permit or exemption to accept or manage that type of waste
- in a condition which means that it cannot be managed or stored safely pending removal e.g. waste being stored outside the confines of buildings or bunds
- in a quantity that causes a facility to exceed the limits allowed by its permit or exemption e.g. increasing or expanding piles of waste

If you suspect that someone does not have an appropriate environmental permit or registered exemption, or that they are breaching a condition of their permit or exemption, you **must not** give them your waste or take waste from them. You should report suspected illegal activity or breaches to permits or exemptions to the EA or NRW.

## 4.3 Prevent the escape of waste

To prevent waste from escaping from your control, or from your employees' or waste contractors' control, you **must** make sure it is handled and stored safely and securely.

You can do this by:

- using containers that are:
  - clearly and correctly labelled
  - suitable for the storage, transport and subsequent management activities by you and following waste holders
  - designed to prevent leakage, contamination or spoiling of waste (spoiled waste is waste that cannot be managed in the way intended)

- limiting access to the waste to only those that are authorised to handle it. This will help prevent accidents, pests, incidents of vandalism and theft. It will also stop unauthorised people adding to the waste and so invalidating the waste description (see section 4.5)
- ensuring vehicles are covered and waste is secured appropriately for transport purposes

Before your waste is collected and disposed of or recovered you **must** assess and classify waste as set out in the waste classification guidance. This identifies whether the waste is hazardous or not, and which controls apply to the movement of the waste to prevent harm to people and the environment.

## 4.4 Transfer waste to an authorised person

You should check whether a person or business is authorised to take waste before you transfer your waste to them. An authorised person is one of the following:

1. someone who has a valid registration as a carrier, broker or dealer of waste
2. a waste management operator who has an environmental permit or registered exemption to accept such waste

You can ask the person or business you transfer your waste to or who arranges the transfer for evidence of their authorisation, such as a copy of their permit or proof of their exemption registration.

You should also use the public register to check any evidence they provide. The register contains information on:

- waste carrier, broker and dealer registrations
- environmental permits for waste operations
- waste exemptions

In England, you can check registration on the EA's public register or call 03708 506 506. In Wales you can check on the NRW's public register or call 0300 065 3000.

The person receiving the waste must also check that the previous holder has complied with their duty of care. If you suspect that the previous waste holder has breached their duty of care (e.g. by misdescribing the waste or not properly storing it), do not accept the waste and report your suspicions to the EA or NRW.

Record any checks you make as you can use this as evidence that you have met your duty of care.

If you use a dealer or broker to manage your waste, they **must** be registered as a dealer or broker with their regulator, even if they do not take physical possession of the waste.

Where a dealer or broker is the transferor or transferee of the waste, their details (including their registration number) **must** be included in the waste transfer information.

Waste carriers, dealers and brokers **must** present evidence of registration if requested by a police constable, an authorised officer of the EA, NRW or local authority. It is an offence not to do so without reasonable excuse and you could be issued with a fixed penalty notice under section 5B of the Control of Pollution (Amendment) Act 1989. To register as a carrier, dealer or broker, contact the EA in England or NRW in Wales.

## 4.5 Provide an accurate description of waste

When you transfer waste to another person, you **must** ensure that:

1. a written description of the waste is agreed and signed by you and the next holder. The description is part of the waste information you must provide.

For non-hazardous waste you can do this by using:

- “edoc” – a free national electronic duty of care system that creates, shares, signs and stores waste transfer notes and season tickets for you online - see [www.edoconline.co.uk](http://www.edoconline.co.uk) for more information
- a paper “waste transfer note” – a form to fill in or you can use alternative documentation e.g. an invoice, as long as it contains all the required information
- a “season ticket” - a single waste transfer note that covers a series of non-hazardous waste transfers. The season ticket can last up to one year and be used for regular transfers of the same type of non-hazardous waste with the same carrier. If you have several sites serviced by the same carrier with the same types of waste collected, they can be listed in a schedule to the season ticket. You should keep a record of the collection times and the quantity of waste

A waste information note is not required for non-hazardous waste if the waste holder does not change on the transfer of waste e.g. the waste is moved to other premises belonging to the same business. However, it is best practice that the business understands who has responsibility for that waste and a record is kept of internal transfers for audit purposes.

For hazardous waste you need to use a:

- consignment note - this applies to all movements of hazardous waste including collections from businesses by registered waste carriers, movements from one premises to another within the same business and all movements from the waste producer’s premises. The only two exceptions where a consignment note is not needed are where domestic hazardous waste (other than asbestos waste) is removed from a domestic household or waste is imported or exported under international waste shipment controls (which uses an equivalent note)
2. the description contains a statement confirming that you have fulfilled your duty to apply the waste hierarchy as required by regulation 12 of the Waste (England and Wales) Regulations 2011 (see **Waste Hierarchy Guidance** for England and Wales)
  3. the description of the waste is accurate and contains all the information you are reasonably in a position to provide to ensure the lawful and safe handling, transport, treatment, recovery or disposal by subsequent holders, including:
    - classification of the waste by using the appropriate codes (referred to as the List of Wastes (LoW) or European Waste Catalogue (EWC)) - Appendix A of the Waste Classification Technical Guidance provides a list of the codes as well as advice on how to assess and classify waste
    - its quantity and nature and whether it is loose or in a container
    - if in a container, the type of container
    - the time and place of transfer
    - the SIC code of the transferor (current holder of the waste)

- the name and address of the transferor and transferee (person receiving the waste) and their signatures (the signature can be electronic as long as an enforcement officer can view it)
- the capacity in which the transferor and transferee are acting (e.g. as a producer, importer or registered waste carrier, broker or dealer) and their relevant authorisation to act in that capacity (e.g. their permit number or registration number)

You should also consider whether there are any problems associated with the waste that you need to describe so that subsequent users can handle it properly. Examples include whether the waste:

- needs a special container
- needs particular treatment or handling, for example batteries or waste electrical and electronic equipment (WEEE)
- can or cannot be mixed with other wastes
- could cause a problem during treatment or disposal (e.g. dusty, smelly or otherwise offensive waste)
- has been processed (e.g. undergone treatment) or had certain materials removed from it (e.g. packaging) to meet basic characterisation requirements of wastes destined for landfill
- displays a hazardous property (e.g. flammable) or presents a chemical hazard
- has other issues (e.g. risk of spillage or leakage of liquids)

If you receive waste, you **must** ensure the waste matches the written description and that your permit allows you to accept such waste.

If you are operating under a waste exemption, you **must** ensure that by accepting any waste you are not contravening the exemption criteria e.g. waste limits.

## 4.6 Retention of waste documentation

You **must** keep a copy of the waste description for waste you have transferred or received (either electronically or on paper format) for:

- two years for non-hazardous waste
- two years for season tickets
- three years for hazardous waste consignment notes (different retention periods apply for consignees (receivers) of hazardous waste; see further detail in the hazardous waste guidance)
- six years if you are a landfill operator for non-hazardous waste (for landfill tax purposes)
- the lifetime of your permit if you are a landfill operator for hazardous waste
- the lifetime of an environmental permit (when the permit is surrendered, the regulator often requires a history of the types of waste received)

If an authorised officer of the EA, NRW or local authority asks you to provide the written description of waste, or a copy of it, and you fail to do so, they can issue a fixed penalty notice. Where the waste is hazardous waste, a variable monetary penalty for breach of the requirements to supply information may be issued.

## 5. Other waste laws for waste holders

A number of other waste laws are relevant to waste holders in particular circumstances. Some of these are briefly described below.

### 5.1 Hazardous Waste

If you produce or deal with hazardous waste you **must**:

- comply with the Hazardous Waste Regulations
- follow specific requirements for consigning hazardous waste

### 5.2 Producer Responsibility Regulations

If you manufacture, import or sell packaging, electrical and electronic equipment (EEE), batteries, or end-of-life vehicles (ELVs) you **must** follow the Producer Responsibility Regulations in England and Wales.

### 5.3 Separate Collection

- If you **collect** waste paper, metal, plastic or glass you **must** comply with the rules on **separate collection** (see guidance for England and Wales). The rules require that you collect waste paper, plastic, metal and glass separately from each other and from other wastes where it is both:
  - necessary to comply with the waste hierarchy and for the protection of human health and the environment, and to facilitate or improve recovery (see the **Waste Hierarchy Guidance** for England and Wales)
  - technically, environmentally and economically practicable (TEEP) (see European Commission guidance (paragraphs 4.3.4 and 4.4) for guidance on TEEP practicability tests)

Where waste paper, metal, plastic or glass has been collected separately, all reasonable steps **must** be taken to keep them separate from other waste or materials.

- If you are a **materials facility** and receive household waste (or household waste like material) consisting of mixed glass, metal, paper or plastic for separating out you **must**:
  - sample and test the materials you receive and send out
  - record the information
  - report every three months to the regulator

See the **Materials Facilities Guidance** for England and Wales, for details on when, how and what should be recorded.

### 5.4 Landfill

If you send waste to landfill or operate a landfill site:

- you **must** comply with the relevant permitting requirements in England and Wales for the landfilling of waste

- you **must** comply with waste acceptance rules required by legislation - if you do not, the landfill operator will be unable to accept your waste
- the written description of waste **must** contain details of any pre-treatments or processes that have been applied to the waste
- you **must** comply with the rules regarding landfill tax in England, (see the [general guide to landfill tax](#)), and Landfill Disposals Tax in Wales, (see the [Welsh Revenue Authority guidance](#)).

If your waste is being disposed of at a landfill site in Wales, you can check on the Welsh Revenue Authority list of landfill site operators to see if the landfill site is an authorised landfill site.

In Wales you may become liable to Landfill Disposals Tax on an unauthorised disposal if you knowingly caused or knowingly permitted an unauthorised disposal to be made. In some circumstances, it will be presumed that a person knowingly caused or knowingly permitted an unauthorised disposal. This is where, at the time of the disposal:

- a person controlled or was in a position to control a motor vehicle or trailer from which the disposal was made, or
- a person was the owner, lessee or occupier of the land on which the disposal was made.

If HMRC find you have deliberately supplied false information or withheld information which causes another person to make an incorrect landfill tax declaration, you will be liable to a civil penalty. The maximum penalty for misrepresentation is equal to the amount of the under-declared landfill tax.

HMRC can also recover landfill tax from those who dispose of waste, or knowingly facilitate the disposal of waste, at sites without a permit. This also applies to material deposited at permitted sites if not expressly exempt.

The WRA is also able to charge unauthorised disposal rate (initially £133.45 per tonne) on disposals made outside of an authorised landfill site (an unauthorised disposal). A person may become liable to the unauthorised disposals rate on an unauthorised disposal either where they made the disposal, or where they knowingly caused or knowingly permitted the disposal to be made.

If you are a landfill site operator there are further details on the requirements you **must** follow.

In Wales you must be registered as an authorised landfill site with the Welsh Revenue Authority (WRA) and you must comply with the Landfill Disposals Tax (Wales) Act 2017 (and legislation made under it) which makes provision for tax to be charged on taxable disposals in Wales.

## 5.5 Importing or exporting waste

If you import or export waste, you **must** comply with the European and UK rules that govern how you can ship waste into or out of the country.