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CONSULTATION DRAFT

1 Overview

You should take account of this code of practice if you produce, carry, keep, dispose of, treat, import or have control of waste in England or Wales.

If you are authorised or registered in Scotland or Northern Ireland but you store, transport or transfer waste in England or Wales, you should also take account of this code. You should take account of [Scotland's](#) and [Northern Ireland's](#) codes of practice if you operate across borders.

The environmental regulators for the duty of care are the [Environment Agency](#) (EA) in England and [Natural Resources Wales](#) (NRW) in Wales.

This code is issued under [section 34 of the Environmental Protection Act 1990](#) (EPA). It is admissible as evidence in legal proceedings and its provisions **must** be taken into account, where relevant to questions raised in the case.

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2 Scope of the duty of care

2.1 Waste the duty applies to

Waste is any substance or object that the holder discards, intends to discard or is required to discard. You can use the [‘legal definition of waste guidance’](#) to check if something is classified as waste.

The duty of care requirements apply to all household, industrial and commercial waste, also known as **controlled waste**. This code of practice is for holders of controlled waste only.

You can check Schedule 1 to the [Controlled Waste Regulations](#) for detail on whether the waste is controlled waste because of its source or type. Under these Regulations the following wastes are not classed as controlled 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 Regulations

A separate duty of care applies to any person who is responsible for the management of waste from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries (**extractive waste**) under the [EPA](#).

2.2 Who the duty applies to

The duty of care applies to anyone who imports, produces, carries, keeps, treats or disposes of controlled waste, or has control of that waste (known as “a waste holder”).

Waste holders are a:

- **waste producer** - any person who produces waste, this includes both private sector businesses such as shops, offices and factories and public sector services such as schools, hospitals and prisons, as well as waste transfer or treatment facilities that change the nature or composition 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
- **dealer** - any person, business or organisation that has taken legal possession of waste as a result of buying and selling it or using an agent to do so
- **broker** - any person, business or organisation that arranges waste transportation and management of waste on behalf of another party (eg organisations contracting out waste collection services, for example local authorities, supermarkets and producer responsibility compliance schemes)

- **waste manager** - any person involved in the re-use, recycling, recovery, treatment and disposal of waste, including supervision of these operations, the after-care of disposal sites and any action a broker or dealer takes

Treatment is a method or process (physical, thermal, chemical or biological) to remove pollutants or change the characteristics of waste to reduce the risk of harm to people or the environment. This can mean preparing the waste for transport, recycling, recovery or disposal.

Recovery is an operation or process which has the main result of bringing waste back into use, replacing non-waste materials that would have been used. [See examples of recovery operations \(Annex II to the Waste Framework Directive\)](#).

A **Disposal** operation is treatment of waste where there is no recovery resulting in the waste being used for a useful purpose, eg by replacing other non-waste materials. [See examples of disposal operations \(Annex I to the Waste Framework Directive\)](#).

The duty of care does not apply to **households** (occupiers of domestic properties) as regards to waste produced on the property. But if you transfer waste produced on your **domestic property** to **someone** other than your local authority, you **need to** take measures to check that the person you are transferring waste to is authorised to take the waste.

You can check whether the person who takes waste from your domestic property is authorised to take it by searching for them on the public register of environmental permit holders and registered waste carriers in [England](#) and [Wales](#). If the person who takes the waste from you is not authorised to do so, you could be prosecuted and fined.

2.3 How long your duty of care lasts

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

You can do this by:

- checking the waste holder is authorised to take the waste
- carrying out more detailed checks if you suspect the waste is not being handled in line with the duty of care, eg requesting evidence that your waste has arrived at the intended destination and the waste has been accurately described

You should report any waste holder you think is failing to carry out their duty of care to the [EA in England](#) or [NRW in Wales](#).

3 Waste duty of care requirements

If you are a holder of controlled waste, you must take all reasonable steps in the circumstances to:

- prevent **unauthorised or harmful deposit, treatment or disposal of waste** (see 3.1)
- 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 0)
- **prevent the escape of waste** from your control (see 3.3)
- ensure that any person to whom you are transferring waste has the **correct authorisation** (see 3.4)
- **provide an accurate description** of the waste when it is transferred to another person (see 3.5)

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

3.1 Prevent unauthorised or harmful deposit, treatment or disposal

It is illegal to deposit controlled waste except as authorised under an [environmental permit](#). It is also illegal to treat, keep or dispose of controlled waste in a way that's 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 exemption to accept or manage a particular waste
- **fly-tipping**, the deliberate unlawful dumping of waste eg 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
- **importing or exporting waste** to other countries without applying the correct controls or in a manner that is prohibited

If you suspect that someone is illegally depositing, treating or disposing of waste, do not give your waste to them or take waste from them. You should report suspect illegal activity to your environmental regulator in [England](#) or [Wales](#).

3.2 Prevent a breach of an environmental permit, or a breach of a permit condition

Normally a waste treatment, recovery or disposal activity needs an environmental permit or a registered [waste exemption](#).

Environmental permits set out conditions on how a waste operation must be carried out. Conditions may set out 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, but these will still be subject to certain conditions such as limits to the amount of waste that can be handled.

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

- to a facility that does not have an appropriate permit to accept or manage that type of waste
- in a condition which means that it cannot be managed or stored safely pending removal
- in a quantity that causes a facility to exceed the limits allowed by its permit or exemption

If you suspect someone does not have an appropriate permit or 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](#) this to the relevant environmental regulator.

3.3 Prevent the escape of waste

To prevent waste from escaping from your control, or from your employees or contractors control, you need to 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 management activities you envisage the waste undergoing, by you and subsequent 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, incidents of vandalism and theft. It will also stop unauthorised people adding to the waste and so invalidating the waste description (see section 3.5)

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

3.4 Transfer waste to a person with the correct authorisation

You should check whether a person or business is authorised to take waste before you transfer your waste to them. Record any checks you make as you can use this as evidence you have met your duty of care.

The person or business that transfers your waste or arranges the transfer should be able to provide you with evidence of their authorisation on request.

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

If you are considering transferring your waste to a broker or dealer to manage, they **must** be [registered as a broker or dealer with their environmental regulator](#), even if they do not take physical possession of it.

Waste carriers, dealers and brokers **must** present evidence of registration if requested by a police constable or an authorised officer of the EA, NRW or a local authority. It is an offence not to do so without reasonable excuse. You could be issued a fixed penalty notice.

To register as a carrier, broker or dealer, contact the [EA in England](#) or [NRW in Wales](#).

3.5 Provide an accurate description of waste

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

- a written description of the waste is agreed and signed by you and the next holder
- the description is provided either electronically, eg through the electronic duty of care system (www.edoconline.co.uk), or on paper (such as in a waste transfer note)
- you comply with the separate requirements to keep a copy of the description for:
 - two years for [non-hazardous waste](#) (on paper or in electronic format)
 - three years for hazardous waste consignment notes (different retention periods apply for consignees of hazardous waste; see the detail in the [hazardous waste guidance](#))
 - six years if you are a landfill operator for non-hazardous waste (for landfill tax purposes); and for the lifetime of your permit for hazardous waste

- 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 the waste hierarchy guidance for [England](#) and [Wales](#))
- 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:
 - the [classification](#) that applies to the waste
 - a description of the waste
 - its quantity and nature and whether it is loose or in a container
 - if in a container, the kind 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 (eg as a producer, importer or registered waste carrier) and their relevant authorisation to act in that capacity (eg 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 of problems associated with the waste that you should describe 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 (eg dusty, smelly or otherwise offensive waste)
- has been processed (eg undergone treatment) or had certain materials removed from it (eg packaging) to meet [basic characterisation](#) requirements of wastes destined for landfill
- displays a hazardous property (eg flammable) or presents a chemical hazard
- has other issues (eg risk of spillage or leakage of liquids)

A season ticket can 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](#).

If an authorised officer of the EA or NRW 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, the EA or NRW can issue a variable monetary penalty for breach of the requirements to supply information.

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4 Other waste laws for waste holders

A number of other waste laws are relevant to holders of waste in particular circumstances.

- If you produce or deal with **hazardous waste**:
 - you must comply with the [Hazardous Waste Regulations](#)
 - there are [specific requirements for consigning hazardous waste](#) that must be followed
- 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](#)
- If you **collect waste paper, metal, plastic or glass**:
 - you must comply with the rules on **separate collection** – see the detailed guidance on separate collection of waste paper, plastic, metal and glass for [England](#) and separate guidance for [Wales](#). These rules require that you collect waste paper, metal, plastic or glass separately from each other and from other wastes where:
 - it is necessary to comply with the waste hierarchy and for the protection of human health and the environment, and to facilitate or improve recovery; and
 - it is technically, environmentally and economically practicable
 - 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 where this is necessary to comply with the waste hierarchy and for the protection of human health and the environment, and to facilitate or improve recovery
- 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 environmental regulator

See the materials facilities guidance, for [England](#) and for [Wales](#), for details on when, how and what should be recorded.

- 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, see the [general guide](#) to landfill tax

- If you **import or export waste**:
 - there are [European and UK rules](#) governing how you can ship waste into or out of the country

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