



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Consultation on the revised Waste Duty of Care Code of Practice

July 2015



Llywodraeth Cymru
Welsh Government



© Crown copyright 2015

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.3. To view this licence visit [Open Government Licence](#) or email PSI@nationalarchives.gsi.gov.uk

This publication is available at www.gov.uk/government/publications and www.wales.gov.uk

This publication is also available on the consultation tab on the Government websites at: www.gov.uk/defra and <http://gov.wales/consultations/?lang=en>

Any enquiries regarding this document/publication should be sent to:

England

Defra

Waste Regulation and Crime

Area 2B

Nobel House

17 Smith Square, London

SW1P 3JR

wastedutyofcare@defra.gsi.gov.uk

Or

Wales

Department for Natural Resources

Waste & Resource Efficiency Division

Welsh Government

Cathays Park

Cardiff

CF10 3NQ

waste@wales.gsi.gov.uk

Contents

| | | |
|---|--|----|
| 1 | Introduction..... | 4 |
| 2 | Responding to this consultation..... | 5 |
| 3 | Confidentiality and data protection | 6 |
| 4 | Background | 7 |
| 5 | The proposed Code of Practice..... | 8 |
| | a) Explaining the legislative requirements..... | 8 |
| | b) Providing guidance on how to demonstrate compliance | 10 |
| | c) Signposting other relevant legislative requirements | 11 |
| | d) Publishing in a format that meets the needs of the user | 11 |
| 6 | Consultation questions..... | 12 |
| | Annex A - Duty of Care Code of Practice..... | 13 |

1 Introduction

- 1.1 The UK and Welsh Governments are seeking views, through this consultation, on the revised duty of care Code of Practice and invite comments on whether it offers clear, fit for purpose and practical guidance to holders of waste. The Code of Practice can be found at **Annex A**.
- 1.2 The Duty of Care is a legal requirement for those dealing with certain kinds of waste to take all reasonable steps to keep it safe and is set out in [section 34 of the Environmental Protection Act 1990](#) (EPA). It applies to anyone who is a holder of household, industrial and commercial waste, also known as controlled waste.
- 1.3 A 'code of practice' is an authoritative statement of practice and differs from legislation in that it offers guidance rather than imposing requirements.
- 1.4 The Code of Practice is admissible in evidence and courts must take it into account in legal proceedings where it is relevant to issues in the case.
- 1.5 The Code of Practice provides guidance only in relation to current legislation; there are no plans to amend the duty of care itself and the revised guidance will have no new impact on businesses so an impact assessment is not required.
- 1.6 Section 34(7) of the EPA requires the Government to consult with persons and bodies, representative of the interests concerned, before issuing a Code of Practice.
- 1.7 Groups expected to have an interest in this consultation are: waste producers, waste managers, waste carriers, waste brokers, waste dealers, regulators, local authorities, professional and membership organisations, agencies/public bodies, the business/private sector, consultants and charity/voluntary organisations.
- 1.8 This consultation and descriptions of law relate to England and Wales only.

2 Responding to this consultation

2.1 This consultation will run for 8 weeks from 27th July 2015 to 21st September 2015.

Please respond to this consultation using the [citizen space](https://consult.defra.gov.uk/waste/the-revised-waste-duty-of-care-code-of-practice) consultation system (<https://consult.defra.gov.uk/waste/the-revised-waste-duty-of-care-code-of-practice>).

2.2 If you wish to respond to the consultation by email or in writing:

Please send responses for England:

By email to: wastedutyofcare@defra.gsi.gov.uk

Waste Regulation and Crime
Defra
Area 2B, Nobel House
17 Smith Square
London
SW1P 3JR

Please send responses for Wales:

By email to: waste@wales.gsi.gov.uk

Waste & Resource Efficiency Division
Department for Natural Resources
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

3 Confidentiality and data protection

- 3.1 A summary of the responses to this consultation will be published and placed on the Government websites at www.gov.uk/defra and www.wales.gov.uk.
- 3.2 The summary will include a list of names and organisations that responded but not personal names, addresses or other contact details. Information provided in response to this consultation document, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes e.g. Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998.
- 3.3 If you want information, including personal data, that you provide to be treated as confidential, please say so clearly in writing when you send your response to the consultation why you need to keep these details confidential. If we receive a request for disclosure under the FOIA, we will take full account of your explanation, but we cannot provide an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as a confidentiality request.
- 3.4 This consultation is being conducted in line with the “Consultation Principles” as set out in the Better Regulation Executive guidance which can be found at <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments or complaints about the consultation process, please address them to:

Consultation Co-ordinator
Room 629
9 Millbank
17 Smith square
London
SW1P 3JR

Or e-mail: consultation.coordinator@defra.gsi.gov.uk

4 Background

- 4.1 The duty of care was established by [Section 34 of the EPA](#). This enshrines in law a set of requirements intended to ensure the safe management of controlled waste by those who produce or are subsequently in legal or physical possession of it.
- 4.2 The purpose of the duty of care requirements is to ensure that waste is dealt with responsibly and described and treated correctly. Compliance with the duty of care helps to prevent waste crime and fly-tipping, which blights the areas where it occurs, can pose a risk to the environment and human health, and affects the livelihoods of those involved in the legitimate waste management industry. Waste crime has been estimated by the Environmental Services Association Education Trust to cost the UK economy £568m per annum.
- 4.3 The current Code of Practice¹ was published in March 1996 and does not reflect a number of important legislative changes relating to the duty of care that have been introduced since then. It is necessary to revise the Code of Practice to reflect these changes and promote awareness of the duty of care requirements.

¹Waste Management, The Duty of Care, A Code of Practice”, ISBN 0-11-753210-X

5 The proposed Code of Practice

- 5.1 The purpose of the Code of Practice is to give simple, clear and practical guidance on what those who import, produce, carry, keep, treat or dispose of controlled waste have to do to fulfil their legal duty of care obligations.
- 5.2 In revising the Code of Practice we have tried to:
- a) explain the legislative requirements of the duty of care, and make clear who and what they apply to;
 - b) provide guidance so that each user understands how to demonstrate compliance with the duty of care;
 - c) signpost other legislative requirements that apply to the management of waste and must be complied with alongside the duty of care in particular circumstances; and
 - d) publish in a format that meets the needs of the user.

a) Explaining the legislative requirements

- 5.3 The Code of Practice sets out the scope of the duty of care in terms of what waste it covers and whom it applies to. Under section 34 of the EPA, the Code of Practice concerns the duty of care for controlled waste only. It does not deal with the duty of care for extractive waste which is similar in many respects but does have some differences.
- 5.4 The Code of Practice deals with whether the duty of care still applies to a waste producer or other waste holder once they have transferred the waste to another person. Article 15 of the Waste Framework Directive² requires waste producers' and other waste holders' to take responsibility for managing waste. The Code of Practice outlines how to demonstrate compliance with this aspect of the duty of care.
- 5.5 The duty of care places five distinct requirements on those who manage controlled waste. Section 3 of the Code of Practice is structured to follow the order of the requirements as they are set out in the EPA.
- 5.6 Since the current Code of Practice was published in 1996, there have been a number of changes to both domestic and European legislation that relate to the duty of care. The Code of Practice reflects these changes including:
- **the waste hierarchy** - Article 4 of the Waste Framework Directive sets out five ways of dealing with waste, ranked according to environmental impact. Waste holders are required to take all reasonable measures to apply the waste hierarchy as a priority order when waste is transferred to another person. A declaration is

² Directive 2008/98/EC of the European Parliament and of the Council on waste

required on your waste transfer information or hazardous waste consignment notes that you have complied with this duty.

- **basic characterisation requirements** – If waste must be disposed of in a landfill it has to be characterised in accordance with the Landfill Directive³ and Council Decision⁴ to ensure that waste management operators fully understand the nature of the wastes they will be receiving.
- **waste transfer information** – Those who transfer and handle waste now have the ability to record waste transfer information on alternative documents such as invoices, orders or receipts; or electronically, for example through the electronic duty of care system (www.edoconline.co.uk).
- **Household waste duty of care** – Section 34 of the EPA imposes a duty of care on householders, in line with the requirements of the Waste Framework Directive for waste producers to have their waste handled by an authorised person. This is a more limited duty compared to that placed on businesses. It requires householders to ensure they pass their domestic waste to someone authorised to take it (e.g. the Council's waste collection service) but does not require them to complete waste transfer notes.

- Q1.** Does the revised Code of Practice clearly set out the scope of the duty of care requirements under Section 34 of the EPA? (Yes/No)
- Q2.** Does the revised Code of Practice help you to understand how long the duty of care applies for? (Yes/No)
- Q3.** Does the revised Code of Practice clearly explain what the legislative requirements of the duty of care are? (Yes/No)
- Q4.** Do you have any comments to support your answer to questions 1-3?

³ The Council Directive 1999/31/EC on the landfill of waste

⁴ The Council Decision establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 and Annex II to Directive 1999/31/EC

b) Providing guidance on how to demonstrate compliance

- 5.7 The revised Code of Practice reflects the UK Government's smarter guidance policy. This means minimising the length of guidance, removing best practice examples (as government is rarely uniquely placed to do this) and removing duplication within and across documents. The new approach to government guidance is intended to make it simpler, quicker and clearer for users to know what they need to do.
- 5.8 We have, as far as possible, tried to accommodate views expressed by respondents in response to previous consultations on the Code of Practice in 2008⁵ and the revised Code of Practice in 2009.
- 5.9 Responses to those consultations indicated that each group affected by the Code of Practice (householders, waste carriers and brokers, etc.) wanted to be clear on what their obligations were without having to read about requirements that did not affect them.
- 5.10 Having reviewed different ways of structuring and presenting the Code of Practice, we have concluded that setting out the requirements of the duty of care as they apply to each type of waste holder introduces significant duplication of material. It also risks diluting the message that all the requirements of the duty of care apply to all waste holders. For these reasons, we have concluded that the revised Code of Practice should be concise, providing a single and consistent point of reference for all waste holders.
- 5.11 The revised Code of Practice provides some general and high level guidance on the types of actions that waste producers and other waste holders can take to help demonstrate that they are complying with their duty of care.
- 5.12 We recognise that this guidance is a starting point only and there is considerable room for waste holders to take other steps to demonstrate that they are complying with their duty of care. If you think there is further simple, short and clear guidance material that could be added to the revised Code of Practice, please let us know in your response to this consultation.

Q5. Does the revised Code of Practice help you to understand what actions you need to take to meet your duty of care? (Yes/No)

Q6. Do you have any comments to support your answer to question 5?

⁵ <http://webarchive.nationalarchives.gov.uk/20081023131051/http://defra.gov.uk/corporate/consult/waste-controls/>

c) Signposting other relevant legislative requirements

5.13 The duty of care is part of a wider regulatory framework for waste. We have signposted to other current guidance on waste management legislative requirements that must be complied with alongside the duty of care in particular circumstances. This is set out in section 4 of the revised Code of Practice.

Q7. Is the signposting of other relevant legislative requirements in section 4 useful?
(Yes/No)

Q8. Do you have any comments to support your answer to question 7?

d) Publishing in a format that meets the needs of the user

5.14 Government guidance is accessed from the Gov.UK website. Users are increasingly accessing guidance on computers, tablets and smartphones so it is designed to be read online. To meet this standard, the Code of Practice will be published in html (web format) and will link to other relevant information and guidance. The html format is printable if required; see the [biodiesel quality protocol](#) as an example.

Q9. How do you plan to use the revised Code of Practice - will you print it as a hardcopy or are you more likely to access it online?

Q10. Do you have any suggestions regarding how to ensure the format of the revised Code of Practice best meets your needs?

6 Consultation questions

- Q1.** Does the revised Code of Practice clearly set out the scope of the duty of care requirements under Section 34 of the EPA? (Yes/No)
- Q2.** Does the revised Code of Practice help you to understand how long the duty of care applies for? (Yes/No)
- Q3.** Does the revised Code of Practice clearly explain the legislative requirements of the duty of care? (Yes/No)
- Q4.** Do you have any comments to support your answer to questions 1-3?
- Q5.** Does the revised Code of Practice help you to understand what actions you need to take to meet your duty of care? (Yes/No)
- Q6.** Do you have any comments to support your answer to question 5?
- Q7.** Is the signposting of other relevant legislative requirements in section 4 useful? (Yes/No)
- Q8.** Do you have any comments to support your answer to question 7?
- Q9.** How do you plan to use the revised Code of Practice - will you print it as a hardcopy or are you more likely to access it online?
- Q10.** Do you have any suggestions regarding how to ensure the format of the revised Code of Practice best meets your needs?

Annex A - Duty of Care Code of Practice