

WASTE AND YOUR DUTY OF CARE

What it means

The duty of care is a law which says that you must take all reasonable steps to keep waste safe. If you give waste to someone else, you must be sure they are authorised to take it and can transport, recycle or dispose of it safely.

If you break this law, you can be fined an unlimited amount.

Does it affect me?

The duty of care applies to anyone who produces or imports, keeps or stores, transports, treats or disposes of waste. It also applies if you act as a broker and arrange these things.

What is waste?

It can be anything you own, or your business produces, and you want to get rid of. Advice to help you decide whether something is waste is in DOE Circular 11/94.

What is controlled waste?

It is household, commercial or industrial waste. It can be from a house, school, university, hospital, residential or nursing home, shop, office, factory or any other trade or business. It may be solid or liquid, scrap metal or a scrap car. It **does not** have to be hazardous or toxic to be a controlled waste.

What about household waste?

If the waste comes from your own home, the duty of care **does not** apply to you. But if the waste is not from the house you live in – for example if it is waste from your workplace or waste from someone else's house – the duty of care **does** apply.

Are there any other exceptions?

Animal waste collected and transported under the Animal By-Products Order 1992 is not subject to the duty of care.

How do I know what to do?

The law says you must take all reasonable steps to fulfil the duty and complete some paperwork. What is reasonable depends on what you do with the waste.

The Government has issued practical guidance on what is reasonable in different cases. This is in a Code of Practice (see 'Further advice').

Steps to take if the duty of care applies to you

When you have waste

The law says you must stop it escaping from your control. You must store it safely and securely. You must prevent it causing pollution or harming anyone.

First, make it secure. Keep it in a suitable container. If you put loose waste in a skip or on a lorry, cover it.

Second, if you give waste to someone else, check they have authority to take it. The law says the person to whom you give your waste must be authorised to take it. Box A explains who is allowed to take waste and how you can check.

Third, you must describe the waste in writing. You must fill in and sign a transfer note for it. You must keep a copy of the transfer note. To save on paperwork, you can write your description of the waste on the transfer note. See Box B.

When you take waste from someone else

First, you must be sure the law allows you to take it. Box A explains who is allowed to take waste.

Second, make sure the person giving you the waste describes it in writing. You must fill in and sign a transfer note. You must keep a copy of the transfer note. See Box B.

What to do if something is wrong

If you suspect that someone is breaking the law, do not give waste to them or take waste from them. Tell the Environment Agency (England and Wales) or the Scottish Environment Protection Agency (Scotland).

Further advice

This leaflet is only an introduction to the duty of care. It cannot be relied on as legal advice. Practical guidance for everyone who is under the duty is in *Waste Management, The Duty of Care, A Code of Practice*, ISBN 0-11-753210-X, published by TSO in March 1996 and available from HMSO bookshops or by telephoning 020 7873 9090.

Further free copies of this leaflet are available from:

Department of the Environment, Transport and the Regions.

DETR Free Literature

PO Box No 236

Wetherby LS23 7NB

Or by telephoning 0870 1226 236

Or faxing 0870 1226 237

Box A:

Who has authority to take waste?

Council waste collectors You don't have to do any checking, but if you are not a householder, you will have to complete some paperwork. This is explained in Box B.

Registered waste carriers Most carriers of waste have to be registered with the Environment Agency or the Scottish Environment Protection Agency. Look at the carrier's certificate of registration or check with the Agencies.

Exempt waste carriers The main people who are exempt are charities and voluntary organisations. Most exempt carriers need to register their exemption with the Environment Agency or the Scottish Environment Protection Agency. If someone tells you they are exempt, ask them why. You can also check with the Agencies that their exemption is registered.

Holders of waste management licences Some licences are valid only for certain kinds of waste or certain activities. Ask to see the licence. Check that it covers your kind of waste.

Businesses exempt from waste management licences There are exemptions from licensing for certain activities and kinds of waste. For example, the recycling of scrap metal or the dismantling of scrap cars. Most exempt businesses need to register their exemption with the Environment Agency or the Scottish Environment Protection Agency. You can check with the Agencies that their exemption is registered.

Authorised transport purposes You can also transfer waste to someone for "authorised transport purposes". This means:

- the transfer of controlled waste between different places within the same premises;
- the transport of controlled waste into Great Britain from outside Great Britain; and
- the transport by air or sea of controlled waste from a place in Great Britain to a place outside Great Britain.

Registered waste brokers Anyone who arranges the recycling or disposal of waste, on behalf of someone else, must be registered as a waste broker. You can check with the Environment Agency or the Scottish Environment Protection Agency that the broker is registered.

Exempt waste brokers Most exempt waste brokers need to register with the Environment Agency or the Scottish Environment Protection Agency. Those who are exempt are mainly charities and voluntary organisations. If someone tells you they are exempt, ask them why. You can check with the Environment Agencies that their exemption is registered.

Box B

Filling in paperwork

When waste is passed from one person to another the person taking the waste must have a written description of it. A transfer note must also be filled in and signed by both persons involved in the transfer.

You can write the description of the waste on the transfer note. Who provides the transfer note is not important as long as it contains the right information. The Government has published a model transfer note with the Code of Practice which you can use if you want.

Repeated transfers of the same kind of waste between the same parties can be covered by one transfer note for up to a year. For example, weekly collections from shops.

The transfer note The transfer note, to be completed and signed by both persons involved in the transfer, must include:

- What the waste is and how much there is.
- What sort of containers it is in.
- The time and date the waste was transferred.
- Where the transfer took place.
- The names and addresses of both persons involved in the transfer.
- Whether the person transferring the waste is the importer or the producer of the waste.
- Details of which category of authorised person each one is. If the waste is passed to someone for authorised transport purposes, you must say which of those purposes applies.
- If either or both persons is a registered waste carrier, the certificate number and the name of the Environment Agency which issued it.
- The reasons for any exemption from the requirement to register or have a licence.
- Where appropriate, the name and address of any broker involved in the transfer of waste.

The written description The written description must provide as much information as someone else might need to handle the waste safely.

Keeping the papers Both persons involved in the transfer must keep copies of the transfer note and the description of the waste for two years. They may have to prove in Court where waste came from and what they did with it. A copy of the transfer note must also be made available to the Environment Agency or the Scottish Environment Protection Agency if they ask to see it.