

Handy Guide No. 1 Duty of Care for Waste

What is directive waste?

The duty of care applies to directive waste. In the UK at this time, directive waste is waste arising from households, commerce and industry. Householders dealing with their own directive waste are not subject to the duty of care. Since 1st May 1994, the common definition of waste in Europe has been that of Directive waste as defined under the Framework Directive on Waste (75/442/EEC as amended by 91/156/EEC and 91/692/EEC):-

“any substance or object ... which the producer or the person in possession of it discards or intends to discard or is required to discard”.

In practical terms, this is interpreted by the Government to mean any substance or object which has fallen outside of the commercial cycle or chain of utility. Substances or objects meeting this test are probably waste and are now referred to as directive waste, a term which supersedes the older references to controlled waste. Specific guidance on the definition of what is and what is not waste is contained in DOE Circular 11/94.

The duty of care applies to all directive waste, irrespective of whether other statutory classifications apply. Holders of waste classified under other regulations must ensure that they comply with their duty of care in addition to any other requirements that they may be applied under, for example:

- The Special Waste Regulations 1996 (as amended)
- Transfrontier Shipment of Waste Regulations 1994

What is the duty of care?

Those persons to whom the duty of care applies (holders of directive waste) must take all such measures as are reasonable in the circumstances to:

- Prevent any other person from committing offences under the **Environmental Protection Act 1990** or in any manner likely to cause environmental pollution or harm to health;
- Prevent the escape of waste, in other words, to contain waste;
- Ensure that if the waste is transferred, it goes only to an *authorised person* or to a *person authorised for transport purposes*;
- When transferring waste, to make sure that a written description (transfer note) is also transferred to the new holder that gives a description of the waste sufficient for the new holder and each person receiving it thereafter to be able to comply with their duty to prevent the escape of waste. Records of waste transfers and associated transfer notes must be kept for at least two years in the case of waste and three years where the consignment involves special waste.

There is a statutory Code of Practice on the Duty of Care made under s.37 of the Environmental Protection Act 1990. Contravention of its provisions is not in itself a

criminal offence but could be taken into account in deciding whether the duty had been breached and setting penalties.

Authorised persons are:

- A waste collection authority.
- A person who is the holder of a waste management licence
- Any person who is exempt from holding a waste management licence
- A person who is the holder of a registration certificate as a carrier of waste.
- Any person who is exempt from holding a registration certificate for carrying waste, principally charities and voluntary organisations, waste collection and disposal authorities.

Authorised transport purposes are:

- Transporting waste within the same premises between different places on those premises.
- Transporting waste to a place in Great Britain which has been brought from a country or territory outside Great Britain not having been landed in Great Britain until it arrives at that place.
- Transporting waste by air or sea from a place in Great Britain to a place outside Great Britain.

To whom does the duty of care apply?

Any person who imports, produces, carries, keeps, treats or disposes of waste or who has control over it as a broker. Such persons are subject to the duty of care in so far as they hold the waste or control what happens to the waste.

Employers are vicariously liable for the acts and omissions of their employees in respect of the duty of care.

Brokers making arrangements for waste on behalf of another person must be registered as waste brokers under Reg. 20 of the Waste Management Licensing Regulations 1994 except where they are exempt from registration. Any person who breaches this requirement is liable to a maximum fine of £5,000.

Record Keeping

The Environmental Protection (Duty of Care) Regulations 1991 require that all those subject to the duty of care keep adequate records of waste that they receive or consign. Records must be made available for inspection by the EHS Northern Ireland. Records must include a copy of the description of waste. This description is normally part of the transfer note. In situations where the waste is of a complex nature or possesses specific hazardous properties, a detailed technical description may be written. Descriptions of waste should refer to any special problems in handling the waste; any unusual properties; what the waste contains or consist of; the quantity and how it is contained. In addition, descriptions should also include: the type of premises or business from which the waste originates; the names of the substance or waste; the process that produced the waste and a chemical and physical analysis (where appropriate).

Transfer notes must also be produced along with a description of the waste. The transfer note must be completed when waste is transferred from one holder to another. The note should specify details of both the current holder (transferor) and the person

receiving the waste (transferee). Additional information must also be provided to show the place of transfer, the date and time of transfer and the details of any broker who may be involved. **The transfer note must be signed by the transferor and the transferee.**

There are provisions under the Deregulation and Contracting Out Act 1994 to allow for multiple consignments (season tickets) to be covered by a single transfer note. Persons taking advantage of this relaxation in the record keeping requirements must ensure that the waste description is relevant to all consignments (the waste is consistent) and the transfers of waste takes place between the same parties and at the same place. Season tickets should be extended no longer than 12 months.