

ENFORCEMENT OF THE DUTY OF CARE

The Environment Agency is increasingly investigating businesses for so-called 'duty of care' offences. These often occur when a business pays someone to take their waste away and doesn't make the right checks to ensure these individuals are properly registered. When the waste is found dumped (fly-tipped or stored in rented business facilities), paperwork can lead back to the business rather than the contractor that was supposed to dispose of it. The producer of the waste will be liable for clean-up costs. (Source: EA website).

The image shows a 'Controlled Waste Transfer Note' form with three main sections: 1. Producer/Contract Holder of Waste, 2. Description of Waste, and 3. Collector/Receiver of Waste. Each section contains fields for name, address, and contact details, along with checkboxes for various regulatory requirements.

OTHER OFFENCES AND BREACHES OF THE DUTY OF CARE:

- *The use of containers or skips of other businesses (with or without their consent) to dispose of your waste (failure to conduct proper checks).*
- *Not adequately describing your waste (failure of proper documentation).*
- *Failure to prevent waste escaping from your control.*
- *The burning of any waste on-site (failure to prevent waste escaping your control).*
- *Employees taking waste home to dispose in domestic waste.*

OTHER RELEVANT REGULATIONS

- **Landfill Regulations (England & Wales) 2002 (Issues 1/Series 1)**
- **Hazardous Waste Regulations and the European Waste Catalogue - EWC (including the Hazardous Waste List) (Due 2005) (Issue 3/Series 1)**
- **Waste Acceptance Criteria (WACs) (Due 2005)**
- **WEEE Directive (August 2004)**

SOURCES OF INFORMATION

DEFRA Central Government

www.defra.gov.uk

Environment Agency Wales

www.environment-agency.gov.uk

NetRegs legislation explained

www.environment-agency.gov.uk/netregs

Waste Resources Action Plan

www.wrap.org.uk

Arena Network Business Support

www.arenanetwork.wales.org.uk

Letsrecycle

www.letsrecycle.com

N.B. BRASS is not responsible for the content of external internet sites

These notes will provide a series of guidance on current waste issues from regulation (series 1), specific industry sector waste problems (series 2) and finally specific individual problems waste streams (series 3).

Each week a different piece of legislation, industry sector or waste type will be discussed. All briefing notes can be downloaded from the website below.

N.B.: These notes are merely a guidance and should not be considered as advice from any of the parties contained within this leaflet.

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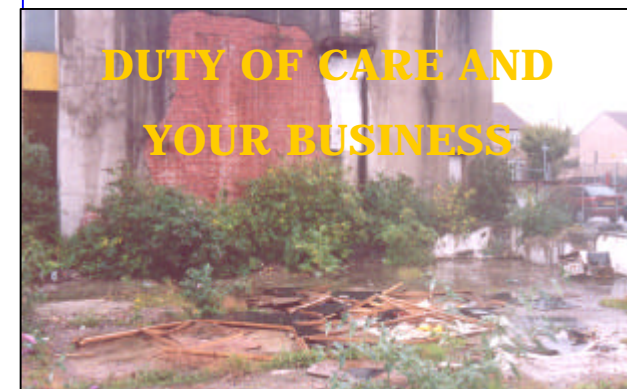


Do you know how the duty of care in relation to waste affects your business?

Will your company be classed as a producer of hazardous waste under new hazardous waste legislation?

Do you know how your waste is managed?

Do you know where your waste is disposed?



DUTY OF CARE AND YOUR BUSINESS

These are just a few of the many issues raised by companies during the National Waste Survey 2003.

This series of briefing notes aims to highlight the issues of waste management and how new regulations could impact on your company and what you have to do to comply, including some simple alterations in business practice. This series has been devised for you the producer to highlight the problems and provide some simple tips on how to help you manage waste.

Series 1/Issue 2



THE DUTY OF CARE

Do you know what to do with your waste and how to support the environment? First of all you have to ask yourself these questions.

DO YOU KNOW:

- How much waste your company generates?
- How much cost/income you generate from disposal of this waste?
- What types of waste your company produces?
- Who takes your waste away?
- Where your contractors take your waste?
- If your contractors are registered and/or licensed and if the waste you want to dispose of is covered by the licence?
- What to do to comply with the regulations?

If you have answered 'no' to any of these questions then reading this leaflet might help you to save you and your company money and help the environment by compliance with the current legislation.

DUTY OF CARE AND YOUR BUSINESS

The Duty Of Care (DoC) Regulations exist to ensure proper management and disposal of controlled waste (for example waste materials produced by you as part of your business). If you produce hazardous waste, you will in addition need to comply with the new proposed hazardous waste regulations. These regulations apply to **any holder** (including brokers) who produces, transfers or receives controlled waste as outlined in the Environment Protection Act 1990. Initially the responsibility lies with the producer (you), and then on anyone in the chain up until the final disposal facility. The DoC, when applied properly, will leave a paper trail 'from cradle to grave'.

It is an offence to keep, treat or dispose of waste except in accordance with a waste management licence. For example the burning of waste is an offence unless authorised by a waste management licence. It is your responsibility to ensure the safe and proper disposal or recovery of the waste your company produces even after it has been passed on to another party. The duty remains with you until the waste has either been finally and properly disposed or fully recovered.

WHAT IS WASTE?

'I get good money for this stuff, so it's not waste' or 'It's still worth a lot of money, so I would not call it waste' or 'It's still in perfect working order so it can't be waste'

Waste is difficult to define, but in general it is accepted that waste is:

'Any substance or object... which the producer or the person in possession of it discards or intends or is required to discard'.

For the purpose of the regulations 'to discard' means waste is 'no longer part of the normal commercial cycle or chain of utility' For example: if you or the transferee make garden planters or a bonfire out of old pallets then these pallets are taken out of the commercial cycle/chain of utility and the pallets are therefore considered to be waste. An old machine, no longer used for its' original purpose, is taken out of the chain of utility and is therefore considered to be waste, even though you may get a good scrap price.

HOW DOES IT EFFECT YOU AND YOUR BUSINESS?

All businesses will have to comply and take responsibility for their own waste. Employers are liable for the actions of employees and waste producers (company owners/management) could face financial penalties or imprisonment. You must ensure that waste is only transferred to an authorised person and that their waste management licence has not been suspended or expired.

Generally the DoC consists of four separate issues

- **Proper storage of the waste**
- **Description of waste and labelling of containers**
- **Checking of licenses and permits**
- **Documentation: transfer and consignment notes**

To find out in more detail what to do to comply, see flow chart:

