

ENVIRONMENTAL PROTECTION ACT 1990

Duty of care etc. as respects waste

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1 Subject to subsection (2) below, it shall be the duty of any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, to take all such measures applicable to him in that capacity as are reasonable in the circumstances.
- a) To prevent any contravention by any other person of section 33.
b) To prevent the escape of waste from his control or that of any other person: and
c) On the transfer of waste to secure –
i) That the transfer is only to an authorised person or to a person for authorised transport purposes: and
ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that section and to comply with the duty under this subsection as respects the escape of waste.
- 2 The duty imposed by subsection (1) above does not apply to an occupier of domestic property as respects the household waste produced on the property.
- 3 The following are authorised persons for the purpose of subsection (1) (c) above –
a) Any authority which is a waste collection authority for the purpose of this Part;
b) Any person who is the holder of a waste management licence under section 35 or of a disposal licence under section 5 of the Control of Pollution Act 1974.
c) Any person to whom section 33(1) above does not apply by virtue of regulations under section (3) of that section;
d) Any person registered as a carrier of controlled waste under section 2 of the Control of Pollution (Amendment) Act 1989;
e) Any person who is not required to be so registered by virtue of regulations under section 1(3) of that Act; and
f) A waste disposal authority in Scotland.
- 4 The following are authorised transport purposes for the purposes of subsection (1) (c) above –
a) The transport of controlled waste within the same premises between places in those premises;
b) the transport to a place in Great Britain of controlled waste 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; and
c) the transport by air or sea of controlled waste from a place in great Britain to a place outside of Great Britain; and “transport” has the same meaning in this subsection as in the Control of Pollution (Amendment) Act 1989.
- 5 The Secretary of State may, by regulations, make provision imposing requirements on any person who is subject to the duty imposed by subsection (1) above as respects the making and retention of documents and the furnishing of documents or copies of documents.
- 6 Any person who fails to comply with the duty imposed by subsection (1) or with any requirements imposed under subsection (5) above shall be liable –
a) On summary conviction, to a fine not exceeding the statutory maximum; and
b) On conviction on indictment, to a fine.
- 7 The Secretary of State shall, after consultation with such persons or bodies as appear to him representative of the interests concerned, prepare and issue a code of practice for the purpose of providing to persons practical guidance on how to discharge the duty imposed on them by subsection (1) above.
- 8 The Secretary of State may from time to time revise a code of practice issued under subsection (7) above by revoking, amending or adding to the provisions of the code.
- 9 The code of practice prepared in pursuance of subsection (7) above shall be laid before both Houses of Parliament
- 10 A code of practice issued under subsection (7) above shall be admissible in evidence and if any provision of such a code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.
- 11 Different codes of practice may be prepared and issued under subsection (7) above for different areas.

ANNEX REGULATION ON KEEPING RECORDS

- C1 The Environmental Protection (Duty of Care) Regulations 1991 (made under section 34(5) of the ACT) require all those subject to the duty to make records of waste they receive and consign, keep the records and make them available to waste regulation authorities.
- C2 The regulations require each party to any transfer to keep a copy of the description, which is transferred. An individual holder might transfer onward the description of the waste that he received unchanged in which case it would be advisable for the sake of clarity to endorse the description for onward transfer to the effect that the waste was sent onwards as received. If a

different description of waste is transferred onwards, whether or not this reflects any change in the nature or composition of the waste, then copies of both descriptions must be made. The holder making the copy need not be the author of the description, which will often be written only by the producer and reused unchanged by each subsequent holder.

- C3 The regulations also require the parties to complete, sign and keep a transfer note. The transfer note contains information about the waste and about the parties to the transfer.
- C4 While all transfer of waste must be documented, nothing in the regulations requires each individual transfer to be separately documented. In the case of, for example, weekly or daily collections of waste from outside shops or commercial premises, of the removal of a large heap of waste by multiple lorry trips this would be unrealistic because of the number of individual loads and the absence of any necessary contact between the parties to the transfer. It would be reasonable for a single transfer note to cover multiple consignments of waste transferred at the same time or over a period (not exceeding a year) provided that the description and all the other details of the transfer note (who and what the parties are) are the same for all consignments covered by the note. A single transfer note could not cover a series of transfers between different holders nor transfers of waste of different descriptions.
- C5 The regulations require these records (both the descriptions and the transfer notes) to be kept for at least two years. Holders must provide copies of these records if requested by any waste regulation authority.
- C6 One purpose of documentation is to create an information source of use to other holders. It is open to holders to ask each other for details from records; especially to check what happened to waste after it was consigned. A holder might draw conclusions and alert the waste regulation authority to any suspected breach of the duty if such a request were refused.
- C7 There is no compulsory form for keeping these records. It is recognised that a number of holders already keep records of waste in a manner that meets the requirements of the regulations with little or no further adaptation. A suggested form for voluntary use is included in the Annex.
- C8 **Breach of any provision of the regulation is an offence.**

CONDITIONS FOR HIRE OF BUILDERS' SKIPS

The owner enters into agreement for the hire of skips and disposal of contents upon the following conditions.

- 1 No agent or employee of the owner is permitted to alter or to vary these conditions in any way or to give any consent thereunder unless he is authorised in writing by the owner to do so.
- 2 The owner will use his best endeavours to comply with the hirers' requirements but can accept no responsibility for failure to supply or for any delay in supplying skips which may be caused directly or indirectly by any circumstances beyond the owners' control or any unforeseen or abnormal conditions or by any act or neglect on the part of the hirer.
- 3 a) Except as specifically otherwise agreed in writing the owner shall be under no obligation to deposit the skip elsewhere than on a highway
b) The hirer shall save harmless and keep the owner indemnified against any claim, demand or penalty arising out of the presence of the skip on site and which could not have been made or inflicted had the skip not been in place on the site.
- 4 The hirer shall direct the driver where to deposit or pick up the skip.
- 5 Where the driver is directed to deposit or pick up the skip on or from a site which is off a highway the owner shall be under no liability whatsoever to the hirer for any damage howsoever caused whilst the vehicle is off the highway. Without prejudice to the generality of condition 3(b) the hirer shall subject as above save harmless and keep the owner indemnified against any claim or demand which could not have been made had the driver not been so directed. The hirer will compensate the owner for any damage to the vehicle or the skip, which could not have occurred had the driver not been so directed and which is not due to any negligent driving on the part of the driver.
- 6 The time allowed for depositing or picking up a skip is ten minutes. If a vehicle is kept waiting longer than this after arrival the hirer shall be liable for reasonable demurrage.
- 7 The hirer shall ensure that all permissions required before skips can lawfully be deposited on the site, including the permission required under the Highways Act (1971) have been or will be obtained before he directs the driver to deposit the skip.
- 8 The hirer shall not move the skip from the site without the consent of the owner.
- 9 The hirer shall ensure that no waste to which Section 3(1) or the Deposit of Poisonous Waste Act 1972 applies will be placed in the skip without the written consent of the owner
- 10 The hirer shall ensure that from the time that the skip is deposited until it is picked up again by the owner:-
a) It is properly sited in accordance with the permission given
b) It is properly lighted during the hours of darkness
c) No fires are lit in it
d) It is filled no higher than the top of its sides
e) It suffers no damage except fair wear and tear
- 11 Notwithstanding the terms of Condition 10 it shall be the owners' responsibility to ensure compliance with any conditions imposed by a highway authority relating to the marking of the skip with reflective paint.
- 12 Except as specifically otherwise agreed in writing the hirer shall fill the skip within the period of hire and shall inform the owner in good time of its readiness for collection or replacement.

- 13 The owner shall ensure that the skip is clearly and indelibly marked with his name and telephone number or address.
- 14 The owner will remove or reposition the skip if required at any time to do so by a highway authority or a constable in uniform under section 32 of the Highways Act 1971.
- 15 Except as specifically otherwise agreed in writing the owner agrees to dispose of the contents of the skip.
- 16 Customers shall reimburse us in respect of any losses or damage to the containers whilst on hire to them from whatsoever cause the same may arise (fair wear and tear accepted). They shall also fully indemnify us in respect of any claims for injury to persons or property arising out of the use of the containers whilst on hire to them howsoever the same may be caused or arise.