



Department
for Environment
Food & Rural Affairs

Consultation on the revised Waste Duty of Care Code of Practice

Summary of responses and Government response

March 2016



Llywodraeth Cymru
Welsh Government



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Introduction

We all depend on the services the waste management industry provides. It has a vital role to play in this Government's work to secure a strong, growing economy that flourishes alongside a healthy natural environment. We want to support the great companies in this industry that operate to the highest standards.

In July 2015, the UK Government and the Welsh Government (the Government¹) ran a joint consultation seeking views on a revised Waste Duty of Care Code of Practice. The purpose of the duty of care requirements is to ensure that waste is dealt with responsibly and described and treated correctly.

The publication of a revised Code of Practice is one way the Government is raising awareness of waste duty of care requirements and how they apply to those who produce waste or are subsequently in possession of it.

Raising awareness of the duty of care requirements is important because it helps 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 (ESAET) to cost the UK economy £568m per annum.

The UK Government is also working with industry stakeholders to deliver the '[Right Waste, Right Place](#)' campaign. The 'Right Waste, Right Place' is a joint industry led campaign with Environmental Services Association (ESA), Chartered Institute of Wastes Management (CIWM), Environment Agency (EA), ESAET, Suez, Veolia and other industry stakeholders working together to raise the profile and awareness of 'Duty of Care' requirements amongst the SME waste producing business sectors on an industry wide basis.

The campaign includes the development of a website that will contain best practice guidance, fact sheets, case studies, videos infographics, interviews with practitioners, glossary of terms, Q&A as well as downloadable information cards for treatment of specific types of waste e.g. light bulbs. The campaign will launch in March 2016.

¹ Unless otherwise stated, references to "the Government" are references to both the UK Government and the Welsh Government.

The Environment Agency and Natural Resources Wales are also actively engaging with local councils, businesses and trade bodies at local and national business events, to provide advice and guidance and improve duty of care awareness.

Summary of the Consultation

The consultation on the revised Waste Duty of Care Code of Practice received a total of 117 responses. The majority of respondents supported the proposed revisions to the Code of Practice:

- 77 per cent agreed that it clearly set out the scope of the duty of care requirements under Section 34 of the EPA
- 72 per cent agreed that it helped the user understand how long their duty of care applies for
- 64 per cent agreed that it clearly explained the legislative requirements of the duty of care
- 71 per cent agreed that it helped the user to understand what actions they needed to take to meet their duty of care; and
- 86 per cent found the signposting of other relevant legislative requirements useful.

A number of respondents provided comments on how the revised Code of Practice could be improved. In response we have made a number of changes including:

- a separate section for householders
- clarifying and expanding on requirements, terminology and responsibilities
- clarification and separation on hazardous waste requirements (where appropriate)
- providing reasonable steps a waste holder can take to ensure their waste is managed correctly

There were some consultation suggestions received that Government are unable to take forward in the Waste Duty of Care Code of Practice but we are working with partners such as the EA, ESA, CIWM and other industry stakeholders through the Right Waste, Right Place campaign to address these points. These include:

- list of Frequently Asked Questions (FAQs)
- glossary and definitions of waste terminology
- case studies and best practice guidance
- promotion and advice on duty of care for local authorities and businesses

The Waste Duty of Care Code of Practice has been published on [GOV.UK](https://www.gov.uk).

Background

Last year, the Government consulted on the revised Waste Duty of Care Code of Practice and invited comments on whether it offered clear, fit for purpose and practical guidance to holders of waste. The consultation opened on 27th July 2015 and closed on 21st September 2015.

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 or commercial waste, also known as controlled waste. It 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.

A 'code of practice' is an authoritative statement of practice and differs from legislation in that it offers guidance rather than imposing requirements. The Waste Duty of Care 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.

The revised Code of Practice provides guidance only in relation to current legislation; it does not amend the duty of care itself.

The current Code of Practice² 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. The Government considered it necessary to revise the Code of Practice to reflect these changes and promote awareness of the duty of care requirements.

Overview of the responses

In the consultation, we sought the views from respondents on whether the draft revised Code of Practice met our criteria 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.

Nearly 2000 organisations in England and Wales were contacted directly by email to alert them to the revised Waste Duty of Care Code of Practice Consultation. The consultation was also promoted on GOV.UK, Welsh Government's webpages and via Twitter.

² "Waste Management, The Duty of Care, A Code of Practice", ISBN 0-11-753210-X

A total of 117 responses were received: 40 from local authorities; 38 from private businesses; 16 from trade associations; 7 from private individuals; 5 responses from non-governmental organisations (NGOs); 5 responses from consultants; 4 responses from other public bodies (this included fire and rescue services and an NHS trust); and 2 responses from professional bodies.

Of the 117 responses received, 70 were from organisations or individuals based in or have an interest in England only, 15 were from organisations or individuals based in or have an interest in Wales only and 32 were from organisations or individuals that have an interest in both England and Wales.

Summary of responses

a) Explaining the legislative requirements

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. Questions 1 to 4 of the consultation covered how the revised Code of Practice explained the legislative requirements.

Responses by Question

Question 1 asked if the revised Code of Practice clearly set out the scope of the duty of care requirements under Section 34 of the EPA. We wanted to know if the revised Code of Practice made clear what waste the duty of care applied to and who it applied to.

77 per cent of the respondents agreed that the revised Code of Practice set out the scope of the duty of care requirements as set out under section 34 of the EPA. Private businesses, trade associations and local authorities were the main sectors that overwhelmingly agreed that the scope of the duty of care was clearly set out in the Code of Practice.

Many Respondents commented that the simple format and layout of the code would help users understand the scope of requirements: A local authority commented:

“The Code of Practice has set out the scope in a useful format in that it enables ‘users’ to efficiently identify the waste types and the parties (with helpful definitions) to which it applies.”

Of those that disagreed that the scope of the duty of care requirements was clear, the most common reason given was that the Code of Practice is too brief and does not adequately explain how the duty of care applies to households and the roles and responsibilities of those who generate waste within the householders’ environment (e.g. plumbers, electricians etc.). A professional body commented *“Whilst the COP does set out in simple terms the scope of Duty of Care requirements, it is questionable as to whether it adds a great deal more information than that contained in the regulations themselves.”*

Question 2 asked if the revised Code of Practice helped the user understand how long the duty of care applies for. This is because the duty of care still applies to a producer or other holder of waste once they have transferred the waste to another person but the waste chain can be long and complex.

72 per cent agreed that the revised Code of Practice helped them understand how long their duty of care applied. Private individuals, professional bodies, local authorities, other public bodies, and private businesses were the main sectors that agreed that the revised Code of Practice helped the user to understand how long their duty of care applied for.

A trade association commented: “Section 2.3 deals with the length of time the DoC applies for. It makes clear that the DoC applies throughout the entire ‘lifecycle’ of the waste being managed”.

A number of respondents raised practical problems with the Code of Practice’s guidance on taking reasonable steps to ensure that waste is managed correctly throughout its complete journey to disposal or recovery. Examples of problems raised included:

- If waste is processed through a transfer station but does not undergo any treatment or recovery then the Code of Practice suggests that there is still a requirement to check the onward transfer of waste and this can be difficult.
- The use of subcontractors and insistence on commercial confidentiality regarding onwards destinations by those who take waste make it difficult to track.
- The code of practice suggests using the public register to check whether a waste holder is authorised but the updated register lacks detail. For example it does not identify the expiry date for a registered waste holder nor if the registration has been revoked.

Question 3 asked if the revised Code of Practice clearly explained the legislative requirements of the duty of care. One reason for this question was that there have been changes to domestic and EU regulation since the original Code of Practice was published in 1996 and it is important that the revised Code of Practice reflects these accurately.

64 per cent of the respondents thought that the revised Code of Practice clearly explained the legislative requirements of the duty of care. 100 per cent of other public bodies, professional bodies and NGOs as well as a large proportion of trade associations and local authorities agreed that the revised Code of Practice clearly explained the legislative requirements of the duty of care. However 33 per cent of respondents overall felt further clarification was required.

The respondents that responded positively found the explanation of legislative requirements to be clear and concise with good links to related legislation and other guidance. A local authority commented “*We welcome the introduction of the revised code of practice as it will better reflect all of the legislative changes that have taken place since 1996 and consolidates previous guidance from various sources.*”

Many of those that did not think the revised Code of Practice clearly explained the legislative requirements of the duty of care thought the brevity of the document meant that the detail of legislative requirements had been lost. Some respondents suggested that the abbreviated format presupposes a degree of knowledge on the part of the reader. Others wanted the requirements to be set out more clearly for different types of users such as waste carriers and waste producers.

Other points raised included requests for greater clarity on the timescales that apply for the retention of waste documentation and requests for a template to use for the written description of waste

Government Response

We note that the majority of respondents thought that the legislative requirements of the duty of care were set out clearly in the revised Code of Practice. In response to the comments made under questions 1 to 4, we have made a number of changes to the revised Code of Practice that is intended to improve it further. In particular, we have:

- More clearly distinguished the household duty of care requirements from those that apply to other waste holders
- Made clear the duty of care responsibilities of the householder as regards waste generated within a household by visiting tradesmen and professionals
- Clarified 'how long the duty of care lasts' for a waste holder by providing examples on reasonable steps that can be taken
- Included links to a waste information and consignment note template
- Separated the requirements for non-hazardous and hazardous waste
- Specified the period that waste documentation must be retained

We acknowledge the comments raised on the limited information provided by the public register. The Environment Agency and Natural Resources Wales are working to update the register and this will include an improved search facility that provides more details about individual carrier, broker and dealer registrations. The improvements to the information on carriers, brokers and dealers will be available at the end of 2016.

Whilst some respondents challenged the abbreviated format of the Code of Practice, others supported it and on balance we consider we have got the level of detail right. In explaining the legislative requirements, we think it is important to make clear that they do not differ across the waste sectors. As an example the duty to prevent the escape of waste applies equally to waste producers and waste carriers and it is important to make this clear and avoid unnecessary duplication. What each participant in the waste chain can do to meet this requirement will depend on the circumstances but trade bodies and others are best placed to provide expertise on this matter within the general framework set out by the Code of Practice.

b) Providing guidance on how to demonstrate compliance

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.

Question 5 and 6 of the consultation queried if the revised Code of Practice helped the user understand what actions they should take to meet their duty of care, following the new approach to government guidance.

71 per cent of the respondents agreed that the revised Code of Practice helped them to understand what actions they needed to take to meet their duty of care. A private business stated *"The revised Code of Practice is well laid out. It explains clearly and concisely, using simple language, what the obligations are and how to fulfil them. Where different circumstances require additional activity this is clearly explained and further resources easily accessed by the in-text links."* Another private business found the guidance to be *"a useful consolidation of waste obligations that are held in disparate locations, with advice on how best to comply."*

Professional bodies, local authorities, trade associations, other public bodies, private individuals and private businesses were the main sectors that overwhelmingly agreed that the revised Code of Practice helped them to understand the actions required. Consultants were the only sector where the majority disagreed (60 per cent).

The key issue raised by respondents were similar to those raised in the previous questions, these included requests for further clarification on householder guidance, and comments that the Code is too brief or lacks detail. Further detail was specifically requested on waste transfer notes/consignment notes and environmental permits and exemptions.

Respondents also suggested that practical examples and guidance, particularly for householders and businesses, is required to ensure compliance. Some respondents also requested the addition of a glossary and a list of Frequently Asked Questions (FAQs).

Government Response

Respondents requested a number of changes and clarifications within the Code of Practice. Where applicable we have tried to address all these suggestions such as providing additional information but avoiding duplication; and clearly highlighting the 'must' do (legal requirement) from the 'should' do (best practice).

We noted that 71 per cent of private individuals and 62 per cent of private businesses agreed the Code of Practice helped them to understand what actions they needed to take

to meet their duty of care. Working with industry and regulators, Government is striving to promote waste duty of care to all industry sectors, specifically small businesses.

Whilst the Code of Practice does not include best practice examples, these are being developed through other means. The '[Right Waste, Right Place](#)' campaign is targeting businesses in the construction, agricultural and retail sectors to increase awareness of their duty of care requirements. The campaign will include presenting at events and creating a website that will include best practice guidance, case studies, videos, fact sheets, Frequently Asked Questions (FAQs), glossaries and other sector specific material. The campaign will launch in March 2016.

The Environment Agency and Natural Resources Wales are also actively engaging with local councils, businesses and trade bodies at local and national business events, to provide advice and guidance and improve duty of care awareness.

c) Signposting other relevant legislative requirements

The duty of care is part of a wider regulatory framework for waste. The Code of Practice signposts other current guidance on waste management legislative requirements that must be complied with alongside the duty of care in particular circumstances.

Question 7 and 8 of the consultation asked if the signposting of other relevant legislative requirements in section 4 was useful.

86 per cent agreed that the signposting was useful. Professional bodies, private businesses, local authorities, consultants, trade associations and other public bodies were the sectors that strongly agreed that the signposting was useful. NGOs and private individuals had a lower percent, compared to the other sectors that agreed that the signposting was useful.

There were many responses that were extremely positive about the signposting. A private business found the signposting useful and stated *“Good to have links to relevant legislation for further reading if required and to understand the legislative background.”*

A local authority commented *“The current Code of Practice consists of 66 pages and the revised version is only 11 pages which is a fundamental improvement. The revised version proposed is preferred and easier to understand. The links are extremely useful for signposting purposes.”*

A trade association found that *“The signposting is essential in making the guide user friendly and easy to follow.”*

A professional body commented *“We are pleased to note that the draft guidance contains references to the requirements for separate collections and materials facilities; and a trade association stated “The document provides clarity as to whom the Duty of Care applies to and what their legal responsibilities are [and] makes easy reading for those who are not familiar with the subject.”*

Others gave qualified support. A private individual commented *“Useful to include yes, but much of the content contained within the links is not easy to access or understand for the layman”.*

An NGO commented that *“The signposting is useful to the extent that it directs users to certain documents that they will find useful but it should be made clear that it is not a complete list”.*

The 11 per cent of respondents that responded negatively wanted additional guidance included in the section e.g. the Technical Guidance WM3, UN Packaging specs, EA position statements and interpretation of case law, CL:AIRE Code of Practice, TEEP guidance (published by Welsh Government), Regulatory Reform (Fire Safety) Order 2005.

Some observed that the use of hyperlinks would make the Code of Practice only usable in a digital format. A private business commented that *“Whilst the signposting is useful it is questionable whether this defeats the object of streamlining the guidance, as the user will have to read more than one document to obtain all the information required...If the document is printed people may never refer to the additional legislative requirements.”*

Some respondents were concerned that the use of hyperlinks would need to be continuously monitored to ensure they were maintained, but others were aware that the use of hyperlinks could also ensure that the Code of Practice would remain current for a longer period. A private business commented *“it allows other guidance to be updated without the need to change the code, provided the hyperlinks in the code are regularly checked for currency, and are maintained and updated accordingly. Signposting allows one easily to locate the relevant regulations and EA guidance without having to search for them and to risk finding the wrong document, or being unable to find it at all.”*

Government Response

We note that respondents overwhelmingly agreed that the signposting was useful in the “Other waste laws for waste holders” section and the reasoning for those that disagreed was due to the majority wanting more guidance to be included.

Some of the guidance that respondents asked us to include were already set out in the revised Code of Practice but may not have been easily located by the user (this included links to Waste Hierarchy guidance and the List of Waste). To address this, we have structured the links to these guidance documents by thematic heading. We have decided not to add further links to sector specific guidance as we want to keep the links high level rather than attempt an exhaustive list. Some of the sector specific guidance for construction and agricultural waste will be included in the industry guidance produced by the [‘Right Waste Right Place’](#) project.

A large number of respondents mentioned their concern that the links within the document would need to be maintained for the Code of Practice to continue to be current. During the process of updating guidance within Government, there may be occasions where the link ceases to be operational, if the related content is changed or withdrawn, the existing hyperlinks will redirect customers to replacement content either directly (with a redirect link) or via a ‘withdrawn notice’ which will explain where to find the updated guidance.

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

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.

Question 9 of the consultation asked users how they planned to use the revised Code of Practice e.g. would they use it as a hardcopy or were they more likely to access it online?

Question 10 of the consultation asked if respondents had any suggestions on how to ensure the format of the revised Code of Practice best meets their needs.

51 per cent of the respondents plan to use the Code of Practice in both formats (hardcopy and online). 43 per cent of the respondents plan to use the Code of Practice online only and only 5 per cent of respondents plan to use it as a hardcopy only.

A local Authority stated that *“As long as it is available online - this would provide sufficient accessibility for our purposes.”*

A large private business commented *“they would primarily use it online – it is easily accessed, it works well with the embedded direct links to further information and legislation. This is useful for those not fully aware of the depth of legislation and indicates further sources of information. We would also send it as a reference document for those in the company that deal with waste management infrequently - or we’d use it to support training packages.”*

The overall majority of users plan to use the Code of Practice online, but would also like the option of being able to print a hardcopy version. A local authority commented that they needed the Code of Practice in both formats *“Hard copy very useful for office base admin staff who have to answer general enquirers from the public, and online by the technical staff who just need to refer to now and again”.*

A trade association had a similar view *“...the document should be available in PDF format rather than just HTML. Not all parts of England and Wales are served by reliable or fast internet connections and therefore users may prefer to download the document, either to view it electronically offline, or to print it. A PDF document can also be annotated electronically, or printed and marked up as required by the user.”*

A local authority commented *“both Online and Hardcopy format are critical, in particular to dealing with Household / Domestic waste concerns. Online links will be built in to the Authorities corporate web pages, and any documentation / correspondence sent out to householders in relation to Duty of Care enquiries will have a link to the online code of practice. We would need to accommodate the needs of the individuals that don't have access to the web, hence the use of Hard Copies of the Code of Practice.”*

Respondents also wanted the Code of Practice to be easily accessible via GOV.UK, industry and local authority websites. Concern was again raised on the reliability of hyperlinks.

Government Response

All government guidance and content must now be published online because users increasingly access the information on computers, tablets and smartphones. The GOV.UK content directly addresses users and only tells them what they need to know from government. Research shows that this makes it simpler, clearer and faster to understand and act on.

The consultation revealed that majority of the respondents plan to use the Code of Practice online as well as print a hardcopy, with many users requesting that a .pdf version is made available. HTML printing is actually better for users when printed onto a hardcopy because the printed version shows the hyperlink address. In a PDF format, printed copies do not show this. However, because a large proportion of responses requested that we provide the Waste Duty of Care Code of Practice in as many formats as possible, we will publish the document in both a HTML and a PDF format. We will assess the usage of each format and review which best meets the user need in the following months.

Annex A: List of respondents (organisations)

360 Environmental
Amberley Consulting
BAM Nuttall Ltd
Bedford Borough Council
British Glass Manufacturers' Confederation
British Metals Recycling Association
BuroHappold Engineering
Business Sustain, Coventry City Council
Cambridgeshire County Council
Canal and River Trust
Canal Trust
Carmarthenshire County Council
City of Westminster
CIWM
CIWM (Wales)
CLA
Confederation of Paper Industries
Constructing Excellence in Wales
Conwy County Borough Council
Cory Environmental
Derbyshire County Council
Devon County Council
DS Smith
East Cambridgeshire District Council
East Sussex Waste Collection Partnership
Ecosurety
EDF Energy
Electrical Waste Recycling Group Ltd
Elmbridge Borough Council
Environmental Services Association

Estuary Housing Association
Fareham Borough Council
FirstGroup PLC
Freight Transport Association
Galliford Try Plc
Hampshire County Council
Hampshire's Waste Partnership - Project Integra (PI)
Hochiki Europe (UK) Limited
Ian McQuaid
Institution of Civil Engineers (ICE) - Wales
ISG PLC
Jackson Civil Engineering
John Sisk and Sons Ltd
Keep Wales Tidy
Kent County Council
Kier Group
Lancashire Waste Partnership
LARAC
Leppitt Associates
Lincolnshire Waste Partnership
London Borough of Brent
London Borough of Camden
London Borough of Southwark
Mace
Merseyside Recycling and Waste Authority (responding on behalf of Merseyside and Halton Waste Partnership)
Met Office
Mike Tobin Consultancy Ltd
Milton Keynes Council
National Farmers Union
National Farmers Union (Wales)
National Trust
Non-Ferrous Alliance

Norfolk County Council
North Devon District Council
North East Lincolnshire Council
North Tyneside Council
North Yorkshire County Council
Northampton Borough Council
O'donovan Waste Disposal Limited
Oil Recycling Association (ORA)
Peterborough City Council
Plymouth City Council
Resource Futures
Sims Group UK
Sita UK
Skanska Construction UK Ltd
Somerset Waste Partnership
South Gloucestershire Council
South Holland District Council and Breckland Council
South Wales Fire and Rescue Service
South West Water Ltd
Southern Water Services Ltd
SPELTHORNE BOROUGH COUNCIL
Stafford Borough Council
Stobart Biomass Products Limited
Studsvik
Sweeptech Environmental Services
TATA Steel
Tata Steel Europe
The Driver and Vehicle Licensing Agency
The Renewable Energy Association
The Vale of Glamorgan Council
Torfaen County Borough Council
UK Environmental Law Association
UPS

Urenco UK

Valpak Ltd

VBRA

Velindre NHS Trust

Veolia

Wakefield Council

Wandsworth Borough Council

Wartsila Uk Limited

Warwickshire County Council

Waste Dynamics Ltd

Wastesavers

West London Waste Authority

Willmott Dixon Holdings