



Department
for Environment
Food & Rural Affairs

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Alternatives to Waste Transfer Notes and other aspects of waste regulation

Summary of responses and Government response

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Llywodraeth Cymru
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Purpose of the consultation

Every time controlled waste¹ is transferred from one party to another, certain information (the 'written description') must be recorded. What comprises the written description is set out in Regulation 35 of the Waste (England and Wales) Regulations 2011 (the 2011 Regulations). A Waste Transfer Note (WTN) is a standalone document that records the written description; it is the most common way most waste transfers are recorded.

The written description is required to ensure holders of controlled waste comply with their waste 'Duty of Care'.

The Environmental Protection Act 1990 places a duty of care on anyone who in any way has a responsibility for controlled waste to ensure it is managed properly or transferred to an authorised person and recovered / disposed of safely.

In April 2011 the Government launched the Red Tape Challenge, an initiative to review and remove unnecessary regulation which potentially restricts business growth. The Red Tape Challenge stated that it is burdensome for some small businesses to fill in WTNs.

In response to the Red Tape Challenge, Defra and Welsh Government launched a joint consultation to seek views on proposals to provide greater flexibility as to the types of information that can be used as an alternative to a WTN. By amending Regulation 35 of the 2011 Regulations, Defra and Welsh Government proposed to clarify that those who transfer and handle waste should have the ability to record the written description on alternative documentation such as invoices, orders or receipts should they wish to do so.

At the same time, views were sought on other possible revisions to Regulation 35 of the 2011 Regulations, in terms of the written description that is required to be recorded, as well as other reforms in respect of waste carrier registration and enforcement.

The consultation ran for a 6 week period from 9 December 2013 to 20 January 2014. This document summarises the responses to the consultation and details how Defra and Welsh Government has taken them into account in establishing their policy decision.

¹ Section 75(4) of the Environmental Protection Act 1990 defines controlled waste as household, industrial and commercial waste or any such waste.

Overview of the respondents

There were **67** responses to the consultation (61 for England and 6 for Wales); **35** from local authorities, **15** from trade associations, **13** from private businesses, **2** individual persons, **1** charity and **1** Governmental Department.

Local Authorities – 35

Most responses to the consultation came from local authorities and local authority waste partnerships. On the main questions regarding clarifying the use of alternative documentation instead of WTNs (questions 1a – 1c), of the 35 responses received from local authorities and local authority waste partnerships, 23 were against, 10 were in favour and 2 authorities had no strong opinion either way.

Trade Associations - 15

There were 15 responses from trade associations with a mixture of those campaigning on waste and recycling issues and those representing businesses. The group were more evenly split on the main question of alternative documentation than the local authorities with 6 were in favour, 8 against and 1 with no strong opinion either way.

Private Businesses - 13

Private businesses were the third largest stakeholder group to respond to the consultation. 4 were in favour of alternative documentation, 6 against and 3 had no strong opinion. Those who were in favour all agreed the greatest benefit would be the reduction in paperwork.

Other responses - 4

2 individuals, 1 charity and 1 Governmental department made up the other responses. The group were mainly against the proposed clarification to alternative documentation with 3 against and 1 in support. The main theme was the potential for a loss in the audit trail of waste and therefore difficulties for regulators² ascertaining the correct information.

² The Environment Agency, Natural Resources Wales and relevant Local Authorities

Summary of questions

Defra and Welsh Government directly contacted over 700 key stakeholders inviting their views on the consultation. The consultation was available to view on the Citizen Space and Welsh Government websites and anyone with an interest had the opportunity to respond. The consultation was divided into 7 questions. These were:

Question 1a Please state whether clarifying in Regulation 35 of the Waste (England and Wales) Regulations 2011 that the written description of waste can be recorded on documentation other than a WTN will provide any benefits and why?

Question 1b Provide any additional benefits not stated in the consultation where alternative documentation will help businesses comply with their waste Duty of Care?

Question 1c Please provide estimated cost savings from the use of alternative documentation to record the written description of waste. This additional information will help establish additional monetary benefits or costs for this proposed amendment

Question 2a What are your views on the current information currently required to be recorded under regulation 35(2) of the Waste (England and Wales) Regulations 2011 and how helpful or necessary is this information to adequately meet the waste Duty of Care? Please provide specific examples of where changes may be made

Question 2b The introduction of EDoC³ will provide a quick, efficient and cheaper way of recording the transfer of controlled waste. What would encourage you to use an electronic waste recording system such as EDoC?

Question 3 Can you provide any reasons why reinstating the provisions regarding how a waste carrier presents their authority to carry waste may have a negative effect?

Question 4 Please give your views on the proposed additional relevant offences being taken into consideration when the Agencies⁴ exercise their power to refuse registration of a waste carrier, broker or dealer or revoke an existing registration?

³ <http://edoconline.co.uk/>

⁴ The Environment Agency and Natural Resources Wales

Question 1a - Please state whether clarifying in Regulation 35 of the Waste (England and Wales) Regulations 2011 that the written description of waste can be recorded on documentation other than a WTN will provide any benefits and why?

Unattributed quotations have been added to illustrate the views expressed.

Key statistics

- 66 respondents answered this question.
- 40 (60.6%) of the respondents were against the proposal to clarify that the written description of waste can be recorded on documentation other than WTNs.
- 21 (31.8%) of the respondents were in support of clarifying that the written description of waste can be recorded on documentation other than WTNs.
- 5 (7.6%) of the respondents had no strong views either in support or against the proposal.

Key themes

- Many of the respondents were concerned that the proposal could undermine the current legislation and create confusion for regulators when checking compliance.

'We envisage that a relaxation such as this could be exploited by businesses wishing to operate outside of the law and may hamper investigations by the relevant authority.'

- Some respondents mentioned that with the impending release of the Electronic Duty of Care (EDoC), the proposal could undermine its release and may deter some organisations from signing up to it.
- Several responses stated their preference that the written description of waste should be in one standardised format (i.e. the WTN) and that season tickets already satisfied the goal of the Red Tape Challenge by offering flexibility to businesses.

'The flexibility currently offered by the 'season ticket' would satisfy the goals outlined in the Red Tape Challenge. It is (our) opinion that there should continue be a simple, standardised method for those businesses who choose to complete paper WTNs.'

- Most respondents in support of the proposal commented that alternative documentation could help to reduce costs and administrative time when recording the written description of waste.

'We believe this could help reduce the administrative burden for small firms whilst posing no threat to the environment.'

- Some respondents stated that alternative documentation will allow businesses to record the written description on information they are using already thus reducing paper waste.
- A number of respondents (in support, against and neutral) commented that if alternative documentation was to be used the written description must be recorded logically on any documentation.

Question 1b – Provide any additional benefits not stated in the consultation where alternative documentation will help businesses comply with their Waste Duty of Care?

Key statistics

- 19 of the 67 respondents replied directly to this question.
- 12 of the 19 (63.2%) respondents believe there will be no additional benefit.

Key themes

- Of those that did respond comments were markedly dependent if the respondent is in support of the proposal for alternative documentation or against it.
- Only 2 respondents provided any additional benefits that were not already stated in the consultation. These were;

'Alternative documentation allows waste to become part of the business process as an everyday transaction... This can increase the ability of businesses to manage waste more cost effectively as a resource with consequent benefits for resource efficiency.' And;

'Use of alternative documentation will improve the likelihood that... (the) document (will be) typically travelling with the load (invoice etc).'

- Across the range of responses (in support of alternative documentation, against and neutral) many respondents commented that the proposal for alternative documentation is unlikely to help businesses comply with their waste Duty of Care.

Question 1c - Please provide estimated cost savings from the use of alternative documentation to record the written description of waste. This additional information will help establish additional monetary benefits or costs for this proposed amendment

During the consultation we invited stakeholders to suggest estimated cost savings that alternative documentation will provide as potential savings were unclear before the consultation was launched.

Key statistics

- The question received 32 responses.
- Only 1 respondent provided a specific cost saving for alternative documentation.

Key themes

- The majority of respondents commented that it was impossible or very difficult to provide any estimated figures either for potential savings or additional costs.
- A number of respondents stated that it was likely that alternative documentation would result in additional costs to their business rather than saving any costs although no estimated figures were provided.
- Some respondents also noted that alternative documentation would result in greater costs for businesses and taxpayers due to non-compliant businesses.

'If there are any cost savings these must be balanced against the increased possibility of breaches in legislation and damage to the environment that may arise from multiple options for recording details of waste.'

- 1 respondent provided an estimated cost saving to their business, which was £650 in staff costs and £730 in postage costs. The respondent does not go into detail regarding how these figures were calculated.

Defra and Welsh Government response to questions 1a, 1b and 1c

In response to the main question regarding clarifying that the written description can be recorded using documentation other than WTNs (such as invoices, receipts, orders etc.), responses were almost 2 to 1 against.

We recognise that there is concern from regulators that alternative forms of documentation could make it more difficult for regulators to check compliance concerning waste transfers. There is also concern that alternative documentation could be seen as a relaxation of the rules and allow some unscrupulous businesses to bypass their waste Duty of Care requirements.

Ultimately, while we can understand these concerns the information requirements for alternative documentation will remain the same as on a WTN and businesses / persons will continue to be required to retain that information for 2 years and make it available to the regulator on request. If they do not, they will be liable to prosecution. We stated that the proposal for alternatives to WTNs will increase flexibility in how businesses record the written description of waste. Defra and Welsh Government are not removing the ability to continue to use WTNs. The responses to the consultation reflect some concern that alternatives to WTNs may have limited benefit or savings for businesses. Therefore, if businesses find that alternative forms of documentation will cost more they will naturally choose to continue to use existing WTNs or will migrate to using EDoC.

Given the strong Government commitment in response to the Red Tape Challenge to provide for alternatives to WTNs and the support of businesses including key stakeholders such as the Federation of Small Businesses and the National Farmers Union, Defra and Welsh Government intend to proceed with the proposed amendments to the 2011 Regulations and, from April 2014, allow alternative documentation to be used to record the written description of waste.

Finally there was some concern that clarifying alternative documentation could detract from some businesses using EDoC, which was launched on 29 January 2014. While, on balance, this is difficult to measure, the Environment Agency estimates that up to 80% of waste transfers will ultimately be made through EDoC, saving businesses over £8 million a year. Therefore the proposal for alternative documentation may provide greater flexibility for the remaining 20% who wish to continue with a paper based system.

Question 2a - What are your views on the current information currently required to be recorded under Regulation 35(2) of the Waste (England and Wales) Regulations 2011 and how helpful or necessary is this information to adequately meet the waste Duty of Care? Please provide specific examples of where changes may be made

Key statistics

- 52 respondents answered this question.
- Of the 52 respondents who answered, 32 (61.5%) were generally content with the current information that makes up the description of waste.
- 30 (57.7%) respondents gave suggestions of information that could be removed from the written description.
- 7 (13.4%) respondents gave suggestions of additional information that could be included.

Key themes

- The majority of respondents were content with the current information.
- A number of respondents stated that Standard Industrial Classification and European Waste Catalogue codes are unclear and further information is required in order to complete them correctly.
- 8 respondents went further and suggested there was no requirement for Standard Industrial Classification codes at all.
- 5 respondents commented that it would be useful if the destination of the waste was included on any transfer note.
- A few respondents also commented that it was unnecessary to include the description of the container, the deceleration to apply the waste hierarchy and whether the waste was loose or contained.

Defra and Welsh Government response

There are certain requirements in the written description that are set out in the EU Waste Framework Directive and therefore we are unable to remove them. This includes;

- Quantity of waste
- Nature of waste
- Origin of waste
- Destination of waste (where relevant)
- Frequency of collection (where relevant)
- Mode of transport
- Treatment method foreseen
- Declaration to apply waste hierarchy

We recognise there is some difficulty around certain aspects of the written description such as identifying and recording the Standard Industrial Classification of the business and European Waste Catalogue codes.

We are encouraged that the majority of respondents are content that the current information is necessary and satisfies the waste Duty of Care. With this in mind it would seem there is no significant call to change the current information required to be recorded. Furthermore the adoption of EDoC will make recording such information easier. Defra and Welsh Government therefore do not propose at this stage to amend the requirements surrounding the information required to be recorded under the description of waste.

Question 2b - The introduction of EDoC will provide a quick, efficient and cheaper way of recording the transfer of controlled waste. What would encourage you to use an electronic waste recording system such as EDoC?

Key statistics

- 57 respondents answered this question
- 41 respondents provided their views of what would encourage them to use electronic systems such as EDoC.
- 11 of the 57 (19.3%) respondents stated that they did not believe EDoC would provide a better system than what is already in place, and that it would prove more costly.

Key themes

- Many respondents stated that cost is the biggest factor for them to use electronic systems. A number mentioned that EDoC should remain free, while one respondent was concerned with the long term plan for EDoC.

'It needs to be free, easy to install and use with free training sessions for those who will be using it. There needs to be people willing to go out and visit small business to get them set up/established on the system.'

- Several respondents commented that EDoC may not necessarily provide a cheaper alternative to the current system, while several respondents stated that they were unable to answer the question as they had not had access to use EDoC.

'We do not agree that EDoC will provide a quicker or cheaper way of recording waste transfers than our existing electronic based systems. In many respects because it is not integrated into our current electronic systems it would provide additional cost of double handling data.'

- A number of respondents have expressed concern at the potential that accessibility may be a detrimental factor to using EDoC. Some waste sites are in remote areas with little network coverage.
- Some respondents cited accessibility and ease of use as the main driving factors to using electronic waste systems such as EDoC.

- A few respondents suggested EDoC should be made mandatory, while some suggested that they will only use EDoC if their waste contractor implemented it.

'Where we see a problem is, if some of our waste contractors choose to opt for the EDOC system and some for the alternative documentation approach. This is a concern because... (We) will have to collate monthly waste data from two different systems which will be a burden on time and resource.'

- Finally a number of respondents commented that for EDoC to obtain maximum potential required a comprehensive communications campaign from Government. There is some concern that without this many businesses will remain using WTNs.

Defra and Welsh Government response

It is pleasing to see the number of respondents who are in support of EDoC. It is clear from the response that cost, accessibility and ease of use are the main incentives for organisations looking to migrate to electronic recording systems such as EDoC.

It is clear there is some concern from stakeholders that EDoC will not provide an upgrade from their current recording system, or from WTNs, however Defra and Welsh Government are confident that for the majority of organisations, they will find EDoC quicker, more efficient and cheaper than their current recording methods.

Question 3 - Can you provide any reasons why reinstating the provisions regarding how a waste carrier presents their authority to carry waste may have a negative effect?

Key statistics

- 51 respondents answered this question
- 49 (96.1%) were in support of reinstating the provisions
- 2 (3.9%) were against the proposal

Key themes

- The majority of respondents simply answered that they could not provide any reasons why reinstating the provisions would have a negative effect and were supportive of the proposal although some gave legitimate reasons for their support.

'We would support this to deal with the links that exist between waste carriers and scrap metal dealers...

(We) believe that the proposed changes to waste carrier registration and relevant offences are a pragmatic response to recent legislative changes. We agree with the proposed.'

Defra and Welsh Government response

There was almost unanimous support to the proposal to reinstate provisions relating to how waste carriers can present their authority to carry waste when they are unable to do this at the time required.

Taking into account all responses it is desirable that clear procedures are in place that allow those stopped or required to produce evidence of their status to carry waste to be able to do so and so avoid enforcement action. The procedures also set clear requirements for how and where such evidence shall be produced and this will make the regulators task easier as well. As a result of the strength of support, Defra and Welsh Government intend to proceed with implementing the proposed amendment to the Regulations.

Question 4 - Please give your views on the proposed additional relevant offences being taken into consideration when the Agencies exercise their power to refuse registration of a waste carrier, broker or dealer or revoke an existing registration?

Key statistics

- 54 respondents answered this question
- 51 (94.4%) respondents were in support of the proposals
- 3 (5.6%) respondents were against the proposals

Key themes

- There was very strong support from the majority of respondents to introduce the proposed additional offences relating to metal theft.
- Stakeholders who were in support believed that by introducing the proposal it would strengthen the waste permit system.

'From experience there is strong links between non-compliance of the Scrap Metal Dealers Act and failing to register as a waste carrier'.

- The respondents who were not in support of the proposal stated that it may have adverse effects on the environment.

Defra and Welsh Government response

There has been overwhelming support for the proposal to add to the list of relevant offences that the Environment Agency and Natural Resources Wales can take into consideration when registering a waste carrier, broker or dealer. Furthermore the proposed changes will provide a consistent approach across environmental permitting, scrap metal dealer licensing and waste carrier legislation in the range of circumstances where relevant offences are considered.

With this in mind Defra and Welsh Government intend to proceed with implementing the proposed amendment to the Regulations.