

The new Waste Duty of Care Code of Practice



In July, a consultation was launched on replacing Defra's Waste Duty of Care Code of Practice, which was last updated almost 20 years ago. **Nick Churchward**, a partner at law firm Burges Salmon, explains some of the proposed changes

Defra last consulted on revising the Waste Duty of Care Code of Practice in 2009, but decided to wait until the legal changes brought in under the Waste Framework Directive 2008 had come into effect.

Many in the industry will be familiar with the current draft of the code – the purpose of which is to provide an authoritative statement of practice in relation to the Waste Duty of Care.

No date has been published for the revised code to come into effect; however, with the latest consultation closing on 21 September, it is essential reading for anyone involved in waste and recycling, and the new format seems to have been designed with a wider and less specialist audience in mind.

The code represents statutory guidance, issued under section 34 of the Environmental Protection Act 1990 (EPA). Although the revised code will not be 'law', like its predecessor it can be referred to in criminal and regulatory proceedings as evidence of compliance with the law.

The Waste Duty of Care is a key legal duty established in section 34 of the EPA.

It is intended to ensure the safe management of controlled waste and applies to anyone who imports, produces, carries, keeps, treats or disposes of controlled waste, is a waste dealer or a waste broker.



The Code of Practice aims to tackle crime

“The revised code does not provide full guidance on all aspects of the Waste Duty of Care such as permitting”

The Duty of Care requires the person in control of the waste to take all measures as are reasonable in the circumstances to:

- Prevent the unauthorised or harmful deposit, treatment or disposal of waste (such as fly-tipping)
- Prevent the escape of waste (such as leakage of liquid waste into a watercourse)
- Ensure waste is only transferred to an authorised person (by verifying that the person has the required licences and registrations)
- Provide sufficient information on the point of transfer of waste to enable the next person in the chain to comply with their Waste Duty of Care (through the Waste Transfer Notes system).

The Waste Duty of Care also applies in a more limited form to householders, to ensure their domestic waste is transferred to someone who is properly authorised to take it.

The consultation can be seen as part of the Government's renewed focus over recent months on combating waste offences and waste crime which, according to Defra, costs the economy £568 million a year. Recent other measures have included:

- The extension of enforcement undertaking civil sanctions to environmental permitting offences
- The removal of the cap on fines that can be imposed by a magistrates' court for most environmental offences (it had previously been set at between £5,000 and £50,000, depending on the offence)
- New sentencing guidelines for environmental offences
- A Defra consultation on enhancing enforcement powers and other measures to tackle waste crime in England and Wales, which proposed solutions such as further scrutiny of operators and wider powers to

undertake anti-pollution works and recover the costs from the operator.

The revised code will take into account a number of important legal developments, including the creation of the waste hierarchy (under the Waste Framework Directive 2008) and changes to the Waste Transfer Notes regime, which will see the introduction of the electronic duty of care system, e-doc.

In a change to the original format, the revised code does not provide full guidance on all aspects of the Waste Duty of Care such as permitting, waste exemptions and descriptions of waste and container requirements. Instead, it provides links to other guidance on the Defra website and legislation.

In line with the Government's 'smarter guidance policy', the revised code is intended to be "simpler, quicker and clearer for users".

With only 11 pages, it is notably shorter than the existing code's 66 pages.

For anyone who is new to the industry, the revised code provides a useful summary of the Duty of Care requirements.

On the downside, it omits much of the detail provided in the existing code and does not include any best practice examples or any information on determining when something is 'waste'. Users who are looking for an in-depth and comprehensive guide to their duties in relation to the Waste Duty of Care may be disappointed by its brevity.

However, the revised code does succeed in communicating the key requirements for compliance with the Duty of Care and is user-friendly, easy to navigate and up to date.

In its proposed form, the draft code seems likely to reach and inform a wider audience on the key principles of the Duty of Care and how it applies to individuals and organisations that deal with waste.

The consultation questions and draft revised code can be viewed at <https://consult.defra.gov.uk/waste/the-revised-waste-duty-of-care-code-of-practice>. **RWW**

If you have any questions on how the Waste Duty of Care may apply to you, contact Nick Churchward (nick.churchward@burges-salmon.com) or Ella Curnow (ella.curnow@burges-salmon.com) at Burges Salmon