



WASTE MANAGEMENT

THE DUTY OF CARE

A Consultation Paper, Draft Regulations and Draft Code of Practice under the Waste and Contaminated Land (Northern Ireland) Order 1997

November 2001

1. INTRODUCTION

- 1.1 Article 5 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the Order”), introduces a new statutory duty of care on persons concerned with controlled waste (copy attached as Appendix A). Those subject to the duty of care will also be bound to comply with regulations made under Article 5(7) of the Order. Under the terms of Article 5(7), regulations may make provision imposing requirements on any waste holder “as respects the making and retention of documents and the furnishing of documents or copies of documents”. In effect, such regulations may require persons to whom the duty applies to keep records and to make them available to the Department. The Order also requires the Department, after consultation, to issue a Code of Practice providing practical guidance on how to discharge the duty.
- 1.2 The purpose of this paper is to consult on the Regulations that the Department proposes to make under Article 5 of the Order (see Appendix B) and on the draft Code of Practice (see separate enclosed document).

2. PROVISIONS OF THE WASTE AND CONTAMINATED LAND (NORTHERN IRELAND) ORDER 1997

- 2.1 The application and elements of the duty of care as set out in Article 5 of the Order are summarised in Annex A of the draft Code.
- 2.2 Persons subject to the duty are those who import, produce, carry, keep, treat or dispose of controlled waste or, as brokers, have control of such waste. All these persons are referred to here as “holders”. The responsibility of each is to take only measures “applicable to them in that capacity” as importer, producer or whatever. Guidance on the allocation of such responsibilities is in Annex B of the Code.
- 2.3 The duty of care will involve producers and other holders of waste in shared responsibility for ensuring that controlled waste is not illegally managed, that it does not escape from control, that it is transferred only to an authorised person and that it is adequately described to enable proper handling and treatment. Breach of the duty will be an offence. The duty only applies to controlled waste, as defined in Article 2(2) of the Order as household, industrial and commercial waste or any such waste. Other wastes which are presently subject to other control regimes (for example mine, quarry and certain agricultural wastes) may in future (and after due consultation with interested bodies/persons) be brought into the controlled waste category by means of Article 31(1) of the Order.
- 2.4 The duty of holders of waste is limited to taking all such measures as are reasonable in their particular circumstances. The duty of care does not apply strict liability to waste producers. The Department does not consider it to be reasonable to hold a person liable for defaults by subsequent holders which are outside their control. Furthermore, the Department believes that the duty should lie on all holders of the waste at every stage in its history. Each person in the chain will be responsible for his own actions and may be guided by the advice of the Code of Practice in exercising his duty of care.

- 2.5 Under Article 5(2) of the Order, the duty of care will not apply to an occupier of domestic property in respect of waste arising in the dwelling that he occupies. The Department believes that it is unreasonable to place this burden on private householders and to expect them to discharge the duty or the procedures set out in the Code. This exemption does not extend to non-household waste once it is being dealt with by anyone other than the occupier. Anyone accepting waste from a private householder or anyone other than the householder who produces waste at the dwelling (such as a building contractor) will be bound by the duty of care. In addition, any private householder flytipping or otherwise contravening the other waste controls of the Order or its regulations will be committing offences and therefore liable to prosecution.
- 2.6 The categories of authorised persons to whom waste may be consigned are set out in Article 5(3). They include the district councils with powers to take waste (the waste collection and disposal authorities). Alternatively, waste may be consigned to a carrier (who, unless exempted, must be registered under the Order) or to a licensed waste manager (or to one exempted from licensing by regulations).

3. DRAFT REGULATIONS

Purpose and general outline of the Regulations

- 3.1 The purpose of the Regulations is to require records of waste transfers to be prepared and retained to assist waste holders and the Department in tracing waste from its origin to its destination. The duty of care and the documents to be required by the Regulations will create an audit trail that the Department will be able to follow to ensure the security of the waste stream.
- 3.2 This proposed record system is similar to that of the special waste consignment note system, in regulations made under Article 30 of the Order. However, to apply the special waste system of pre-notification and consignment notes to all controlled waste would be too onerous and therefore the records system proposed in the draft Duty of Care Regulations is simpler.

Information to be recorded

- 3.3 Article 5(1) of the Order places specific duties on those subject to the duty when waste is transferred. Discharging the duty will necessarily involve the holder knowing:
- what the waste is (its description);
 - who was the preceding holder (the transferor);
 - who is the next holder (the transferee); and
 - in what way each of those other holders meets the test of being either an authorised person or a person taking the waste for authorised transport purposes (or the producer or importer of the waste).

This list is the basis of the records that the Regulations would require holders to make and retain.

Transfer Notes and Descriptions of Waste

- 3.4 Article 5(1)(c)(ii) of the Order requires persons subject to the duty to ensure that, when waste is transferred, there is also transferred a description adequate to enable other persons to avoid a contravention of Article 4 of the Order and to prevent the escape of waste.
- 3.5 **Regulation 2** requires both parties to a transfer, at the same time as the written description of the waste is provided, to complete and sign a transfer note. It is proposed that this note should identify the waste and give information about its quantity, containment and the time and place of transfer. It should also record the names and addresses of the parties to the transfer and any broker and indicate to which of the categories in Article 5(3) or (5) of the Order they belong. It is proposed that where parties are holders of waste disposal licences or waste management licences, the licence number and the name of the licensing authority should be recorded. Similarly in the case of registered carriers of controlled waste, the registration number should be recorded.

Retention of Copies of Descriptions of Waste and Transfer Notes

- 3.6 **Regulation 3** requires each party to the transfer to retain a written description of the waste and the transfer note (or copies thereof) for at least two years from the date of the transfer of the waste. This is intended to be a long enough period to facilitate any likely enforcement activities but not so long as to impose an unreasonable burden. Copies must be true copies but may be in any form.

Furnishing documents

- 3.7 **Regulation 4** provides that a holder must furnish copies of documents, within seven days of the request, if asked by the Department.

Amendment of the Controlled Waste Regulations

- 3.8 The proposed Controlled Waste Regulations (Northern Ireland) 2002 will extend and refine the definition of controlled waste as set out in the Order. The Regulations will prescribe that certain descriptions of waste are to be treated as being, or not being, household, industrial or commercial waste for the purposes of prescribed provisions of Part II of the Order. **Regulation 5** will amend these Regulations to bring certain wastes within the scope of the duty of care.

Commencement

- 3.9 The Regulations will come into operation at the same time as Article 5 of the Order. It is intended that this will be in May 2002.

4. THE CODE OF PRACTICE

Status of the Code

- 4.1 The Code provides practical guidance on the steps that might be taken to discharge the duty of care, although there may be alternative steps that might be taken to meet the duty equally adequately. Breach of the Code will not be an offence, but breach of the duty will be. The Code is framed very broadly, and in the vast majority of cases compliance will be a reliable test of whether or not the duty of care has been fulfilled. It cannot, however, cover every contingency and there may be circumstances in which discharging the duty of care either requires reasonable steps beyond the steps suggested in the Code or may be achieved by taking lesser but equally effective measures of care.
- 4.2 The Order provides that the Code will be admissible as evidence in court. Where any provision of the Code appears to the court to be relevant to any question arising in the proceedings it must be taken into account in determining that question. The court will be able to attach due weight to any failure to observe a provision of the Code. On the other hand, where a defendant can demonstrate that he did comply with the Code, this will not be an absolute defence against prosecution for breach of the duty of care. It will always be necessary for a prosecution to prove that the defendant did not comply with the duty notwithstanding his observance of the Code.

Purpose and Scope

- 4.3 In preparing the Code, the Department has borne in mind the need to minimise the burden on individual waste holders and therefore the advice contained in it is designed, where possible, to be consistent with existing good practice in both industry and commerce. There are, however, certain basic procedures which must be carried out in order to demonstrate that the duty has been accomplished.
- 4.4 The Code consists of a single set of provisions, which will apply, with the exception of domestic property, to all categories of controlled waste and waste

holder. Through this straightforward approach, the Department anticipates the system will be more user friendly thereby encouraging consistent environmental standards.

- 4.5 Where a small or inexperienced holder of waste finds the duty or recommended steps under the Code difficult to understand or implement, he may seek advice from the Department or commission the assistance of specialist consultants or contractors. In particular, any firm doubtful about the difficulties posed by their waste should commission an analysis of it before consigning it for disposal or reclamation. A holder doing so will retain responsibility for complying with the duty which may not be delegated.
- 4.6 The Department considers that the procedures set out in the Code are sufficient to guide large firms as well as small ones and individuals. Inspections by holders of subsequent stages in the waste chain have been omitted from the steps recommended, except where there are particular reasons to believe that such checks are needed. Many companies already do check with their contractors that the services they are paying for are being delivered. This is good business practice and there is every reason why it should continue. However, the Department does not see a need legally to require certain firms to duplicate the work of the councils in inspection of disposal facilities. The Special Waste Regulations (Northern Ireland) 1998 provide a tighter consignment procedure than the Code for the most difficult wastes.

Contents of the Code

- 4.7 The Code contains guidance on each of the four things required of all waste producers by the duty:
- preventing breaches of Article 4 of the Order;
 - preventing the escape of waste;

- transfer to an authorised person; and
- description of the waste transferred.

4.8 The advice on preventing a breach of Article 4 is broad and general, as this statutory requirement is by way of a general provision guiding circumstances not covered otherwise. The more specific provisions on preventing escape, transferring to authorised persons and providing a written description should go a long way in preventing the unlawful deposit or treatment of waste.

4.9 The provisions on preventing the escape of waste are intended to prevent the unauthorised removal or inadvertent escape of waste while in a holder's custody or in transit.

4.10 The guidance on transfer to an authorised person should be sufficient for a holder to establish that the person to whom he consigns waste is indeed an authorised person. When waste is transferred to such another person, they will then become subject to the duty of care and required to carry out the same responsibilities of preventing a breach of Article 4, preventing the escape of waste, transfer and description as the producer.

4.11 The provisions on describing waste make allowance for different levels of detail being required for more, or less, difficult or complex wastes. The overwhelming majority of wastes, including any household wastes not covered by the householder exemption and most commercial wastes, should merit only the very simplest description under the Code. The more detailed provisions for full description of the process or antecedents of the waste and for chemical and physical analysis are directed at more complex and hazardous wastes.

5. OTHER MEASURES ON WASTE

Related Controls on Waste

- 5.1 Neither the duty of care nor the Code of Practice addresses other legal responsibilities. The regulatory regimes for waste in Part II of the Order and elsewhere will also continue to apply in full to producers and holders of waste. Anyone illegally depositing or managing waste will be guilty of an offence under Article 4 of the Order and it remains the responsibility of licence holders to discharge their obligations under the Order and their site licences. Requirements in respect of special waste under the Special Waste Regulations (Northern Ireland) 1998 will continue to apply and other regulatory regimes under the Health and Safety at Work (Northern Ireland) Order 1978 or other legislation are also independent of the duty.
- 5.2 In 1999, Articles 38 to 43 of the 1997 Order introduced the compulsory registration of waste carriers in prescribed circumstances. The legislation relating to the registration of carriers is closely related to the duty of care, notably because the latter will prohibit the consignment of waste to an unregistered carrier who is not exempt under the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999.

Recycling and waste minimisation

- 5.3 The Code of Practice does not deal with recycling and waste minimisation. The Department is anxious to encourage both waste minimisation and recycling where it is economically viable. However, before waste is recycled or reclaimed, it remains waste and is a potential source of abuse or pollution. The control regime under the duty of care should therefore apply equally to such waste as it applies to waste destined for disposal. The strengthening of the waste regulatory regime by the duty of care and other measures should force producers to meet the full costs of the lawful disposal of their waste, and do much to assist the economic viability of waste minimisation and recycling at source as alternatives.

6. COSTS AND RESOURCES

6.1 A Regulatory Impact Assessment is attached as Appendix C.

7. EQUALITY ISSUES

7.1 Under section 75 of the Northern Ireland Act 1998, public authorities have a statutory duty to promote equality of opportunity. The Department has completed an equality screening of the draft Regulations and Code of Practice and has concluded that neither impacts on equality of opportunity of any of the groups specified in section 75. A copy of the screening paper is attached as Appendix D.

**Article 5 of the Waste and Contaminated Land Order
(Northern Ireland) 1997**

Duty of care, etc., as respects waste

5.-(1) Subject to paragraph (2), any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, shall 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 Article 4;
- (b) to prevent the escape of the waste from his control or that of any other person;
and
- (c) on the transfer of the 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 Article and to comply with this paragraph as respects the escape of waste.

(2) Paragraph (1) 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 paragraph (1)(c) –

- (a) any district council;
- (b) any person who is the holder of a waste management licence under Article 6 or of a disposal licence under Article 7 of the Pollution Control and Local Government (Northern Ireland) Order 1978;
- (c) any person to whom Article 4(1) does not apply by virtue of regulations under paragraph (3) of that Article;
- (d) any person registered as a carrier of controlled waste under Article 39; and
- (e) any person who is not required to be so registered by virtue of regulations under Article 38(3).

(4) Regulations may amend paragraph (3) so as to add, whether generally or in such circumstances as may be prescribed, any person specified in the regulations, or any description of person so specified, to the persons who are authorised persons for the purposes of paragraph (1)(c).

(5) The following are authorised transport purposes for the purposes of paragraph (6) (1)(c) –

- (a) the transport of controlled waste within the same premises between different places in those premises;
 - (b) the transport to a place in Northern Ireland of controlled waste which has been brought from a country or territory outside Northern Ireland not having been landed in Northern Ireland until it arrives at that place; and
 - (c) the transport by air or sea of controlled waste from a place in Northern Ireland to a place outside Northern Ireland.
- (7) For the purposes of paragraph (1)(c)(ii) –
- (a) a transfer of waste in stages shall be treated as taking place when the first stage of the transfer takes place, and
 - (b) a series of transfers between the same parties of waste of the same description shall be treated as a single transfer taking place when the first of the transfers in the series takes place.
- (7) Regulations may make provision imposing requirements on any person who is subject to the duty imposed by paragraph (1) as respects the making and retention of documents and the furnishing of documents or copies of documents.
- (8) Any person who fails to comply with paragraph (1) or with any requirement imposed under paragraph (7) shall be guilty of an offence and shall be liable -
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
 - (b) on conviction on indictment, to a fine.
- (9) The Department shall, after consultation with such persons or bodies as appear to the Department 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 paragraph (1).
- (10) The Department may issue modifications of, or withdraw, a code of practice issued under paragraph (9); but where a code is withdrawn, the Department shall prepare and issue a new code under that paragraph in substitution for it.
- (11) The draft of the code prepared under paragraph (9) shall be laid before the Assembly.
- (12) If within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon but without prejudice to the laying before the Assembly of a new draft.

(13) A code of practice issued under paragraph (9) 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.

(14) In this Article “broker” means a person who has control of controlled waste for the purposes of having carried out on behalf of another person any of the activities mentioned in paragraph (1).

 STATUTORY RULES OF NORTHERN IRELAND

2002 No

ENVIRONMENTAL PROTECTION

**The Environmental Protection (Duty of Care)
Regulations (Northern Ireland) 2002**

Made 2002

Coming into operation..... 2002

The Department of the Environment, in exercise of the powers conferred on it by Articles 2(3) and 5(7) of the Waste and Contaminated Land (Northern Ireland) Order 1997^(a) and of all other powers enabling it in that behalf, hereby makes the following regulations:-

Citation, commencement and interpretation

1.-(1) These Regulations may be cited as the Environmental Protection (Duty of Care) Regulations (Northern Ireland) 2002 and shall come into operation on 2002.

(2) In these Regulations -

“the 1997 Order” means the Waste and Contaminated Land (Northern Ireland) Order 1997;

“European Waste Catalogue” means the list of waste belonging to the categories listed in Commission Decision 2000/532/EC(b), as amended by Commission Decision 2001/118/EC(c) and Commission Decision 2001/119/EC(d);

“scrap metal” means any old metal, and any broken, worn out, defaced or partly manufactured articles made wholly or partly of metal and any metallic wastes, and also includes old, broken, worn out or defaced tooltips or dies made of any of the

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- (a) S.I. 1997/2778 (N.I. 19)
 (b) O.J. No. L226, 6.9.2000, p.3
 (c) O.J. No. L047, 16.2.2001, p.1
 (d) O.J. No. L047, 16.2.2001, p.32

materials commonly known as hard metal or of cemented or sintered metallic carbides;

“transferor” and “transferee” mean respectively, in relation to a transfer of controlled waste by a person who is subject to the duty imposed by Article 5(1) of the 1997 Order, the person who in compliance with that Article transfers a written description of the waste and the person who receives that description.

Transfer Notes

2.-(1) Subject to paragraph (3), the transferor and the transferee shall, at the same time as the written description of the waste is transferred, ensure that such a document as is described in paragraph (2) (“a transfer note”) is completed and signed on their behalf.

(2) A transfer note shall -

(a) identify the waste to which it relates by reference to the appropriate categories in the European Waste Catalogue and state -

- (i) its quantity and whether on transfer it is loose or in a container;
- (ii) if in a container, the kind of container; and
- (iii) the time and place of transfer;

(b) give the name and address of the transferor and the transferee;

(c) state whether or not the transferor is the producer or importer of the waste and, if so, which;

(d) if the transfer is to a person for authorised transport purposes, specify which of those purposes; and

(e) state as respects the transferor and the transferee which, if any, of the categories of person shown in column 1 of the following Table describes him, and provide any relevant additional information specified in column 2 of the Table.

(3) Paragraph (1) shall not apply where the waste transferred is special waste within the meaning of the Special Waste Regulations (Northern Ireland) 1998(a) and the consignment note and, where appropriate, schedule required by those Regulations are completed and dealt with in accordance with those Regulations.

(a) S.R. 1998 No. 289

TABLE

Category of Person	Additional Information
A district council as waste collection and disposal authority for the purposes of Part II of the 1997 Order.	
A person who is the holder of a waste management licence under Article 6 of the 1997 Order or of a disposal licence under Article 7 of the Pollution Control and Local Government (Northern Ireland) Order 1978(a).	If the waste is to be kept, treated or disposed of by that person, the relevant licence number and the name of the licensing authority.
A person to whom Article 4(1) of the 1997 Order does not apply by virtue of regulations under paragraph (3) of that Article.	
A person registered as a carrier of controlled waste under Article 39 of the 1997 Order.	His registration number.
A person who is not required to be so registered by virtue of regulations under Article 38(3) of the 1997 Order.	

Duty to keep copies of written descriptions of waste and transfer notes

3. The transferor and the transferee shall each keep the written description of the waste and the transfer note or copies thereof for a period of two years from the transfer of the controlled waste.

Duty to furnish documents

4. A person who has been served by the Department with a notice in writing specifying or describing any document and requiring its production shall, if the document is one which at that time he is under a duty to keep under regulation 3, furnish the Department with a copy of it within the period (not being less than 7 days) specified in the notice.

(a) S.I. 1978/1049 (N.I. 19)

Amendment of the Controlled Waste Regulations (Northern Ireland) 2002

5. The Controlled Waste Regulations (Northern Ireland) 2002(a) shall be amended as follows.

(a) At the end of regulation 3 there shall be added-

“(2) Waste of the following descriptions shall be treated as household waste for the purposes only of Article 5(2) (household waste produced on domestic property) –

- (a) waste arising from works of construction or demolition, including waste arising from work preparatory thereto; and
- (b) septic tank sludge.”.

(b) At the end of each of regulations 4 and 8 there shall be added-

“(2) Scrap metal shall not be treated as household or, as the case may be, industrial or commercial waste, for the purposes of Article 5 at any time before the day appointed under Article 1(2) of the Order for the repeal of Articles 5 to 12 of the 1978 Order in relation to controlled waste which is scrap metal.”.

(c) In regulation 6 -

- (i) for “Subject to regulation 8” there shall be substituted “subject to paragraph (2) and regulation 8”; and
- (ii) at the end there shall be added-

“(2) Waste described in paragraphs 7 and 8 of Schedule 3 shall not be treated as industrial waste for the purposes of Article 5(2) of the Order.”.

(d) At the end of regulation 8 there shall be added-

“(3) Animal by-products which are collected and transported in accordance with Schedule 2 to the Animal-By Products Regulations (Northern Ireland) 1993 shall not be treated as industrial waste or commercial waste for the purpose of Article 5 (duty of care etc as respects waste).

(4) In this regulation “animal by-products” has the same meaning as in regulation 2(1) of the Animal By-Products Regulations (Northern Ireland) 1993.”.

(a) S.R. 2002 No. []

(e) In Schedule 3 paragraph 17(1) for “Waste oil or waste solvent” there shall be substituted “Waste oil, waste solvent or (subject to regulation 8(2)) scrap metal.”.

Sealed with the Official Seal of the Department of the Environment on

2002.

(L.S.)

Minister of the
Environment/Senior Officer of
the Department of the
Environment

EXPLANATORY NOTE

(This note is not part of the Regulations.)

Regulation 2 (1) and (2) requires the transferor and the transferee to complete and sign a transfer note at the same time as the written description of the waste is transferred. The transfer note must identify the waste in question and state its quantity, how it is stored, the time and place of transfer, the name and address of the transferor and the transferee, whether the transferor is the producer or importer of the waste, which (if any) authorised transport purpose applies, in which category of person the transferor and the transferee are and certain additional information.

Regulation 2(3) disapplies regulation 2(1) and (2) where special waste (within the meaning of the Special Waste Regulations (NI) 1998 is transferred and a consignment note and (where appropriate) the Schedule are completed and dealt with in accordance with those Regulations.

Regulation 3 requires the transferor and the transferee to keep the written description of the waste and the transfer note or copies of them for two years from the transfer.

Regulation 4 imposes a duty on a person who is under a duty to keep any document by virtue of regulation 3, to furnish a copy of that document to the Department if he is required by notice to do so by the Department. The document must be furnished to the Department within the period specified in the notice (not being less than 7 days).

Regulation 5 amends the Controlled Waste Regulations (Northern Ireland) 2002 to bring certain wastes within the scope of the duty of care.

Copies of the Commission Decisions referred to in these Regulations can be obtained from The Stationery Office Bookshop, 16 Arthur Street, Belfast, BT1 4GD.

REGULATORY IMPACT ASSESSMENT
The Environmental Protection (Duty of Care) Regulations
(Northern Ireland) 2002

I. Introduction and Summary

1. A proposal to safeguard the environment through the introduction of a new and tighter system of waste management control was initially set out in the Department's consultative document, Future Strategy for Waste Management in Northern Ireland, published in March 1993.
2. The broad terms of the proposals announced included a duty of care on holders of waste to ensure its satisfactory disposal. The legislation necessary to implement these proposals is contained in the Waste and Contaminated Land (Northern Ireland) Order 1997 (the 1997 Order). This will provide, for Northern Ireland, parity with the rest of the United Kingdom and, in a wider context, ensure compliance with the EC Waste Framework Directive which requires waste holders to take certain steps to ensure their waste is dealt with properly.
3. The provisions to be introduced are broadly similar to those already operating in Great Britain under the Environmental Protection Act 1990 and implemented by the Environmental Protection (Duty of Care) Regulations 1991.

II. Purpose & Intended Effects of the Measures

4. Article 5 of the 1997 Order imposes a duty of care on any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste. The duty requires such persons:-
 - to ensure that there is no unauthorised or harmful deposit treatment or disposal of the waste;
 - to prevent the escape of the waste from their control or that of any other person;and to ensure that on the transfer of the waste:-
 - that the transfer is only to authorised person or to a person authorised for transport purposes; and
 - that a written description of the waste is also transferred.
5. The effect of the proposed Regulations will be to require any person who is subject to the duty of care to make and keep records of the waste they receive and consign and to make the records available to the Department on request.

III. Risk Assessment

6. The unauthorised disposal of waste has the potential to create a wide range of risks and impacts, including:
 - Surface and groundwater pollution, contamination of land
 - Nuisance from odours, and human health impacts from trace gases, fumes and spores

- Vermin and litter
- Noise from heavy vehicular traffic
- Loss of amenity and blight

The impacts of many of these risks are not readily quantifiable, and even where they are, tend to be prone to significant uncertainty.

IV. Identify Options

7. Two options have been identified:-

Option 1: Do nothing

8. This means, in effect, that the proposed Regulations are not introduced and the Waste Framework Directive is not fully implemented. Such non-compliance would cause the EC to proceed with infraction proceedings against the UK and ultimately impose a fine of tens of thousands of Euros per day until compliance is achieved.

Option 2: Introduce the proposed Regulations

9. Article 5(7) of the 1997 Order states that regulations may make provision imposing requirements on any person who is subject to the duty of care as respects the making and retention of documents and the furnishing of them. The proposed Regulations require waste holders to describe and quantify the type of waste they have in their possession and to complete transfer notes when passing the waste to another party. They are also required to retain copies of documentation for a period of two years and to make them available to the Department on request. Introduction of the proposed Regulations will partially implement the Waste Framework Directive and contribute to improving the security of the waste stream.

V. Issues of Equity or Fairness

10. All industries, firms and establishments of any size and kind who produce or handle controlled waste will be equally subject to the duty of care. However, most of the additional cost of waste management resulting from implementation of the Regulations will normally fall to the waste producer because it will be his responsibility to provide the initial description of the waste (including analysis where appropriate). This correctly reflects the Polluter Pays Principle.
11. Failure to introduce the proposed Regulations will increase the potential for unscrupulous waste producers and waste management contractors to dispose of waste through unregulated/illegal routes, particularly in view of the increasing cost of waste disposal. Responsibility and costs for removing such tipped wastes generally falls on the district councils as an inequitable burden. The principal means for countering this is stricter monitoring and inspection of waste arisings and disposals by the Environment and Heritage Service as regulator. This will increase manpower requirements and regulation costs.

VI. Identify the Benefits

12. The introduction of the duty of care is part of a package of measures designed to ensure the integrity of the waste stream from the point of its origin to the point at which the waste is disposed of. The principal benefits accrue to health and the environment by reducing risks such as those identified above and by promoting improved standards in the management and disposal of waste.
13. Under current provisions, there is no statutory obligation on producers or intermediate holders of waste to deal with it in a responsible manner. To a significant extent current controls are focused on the actual disposal of waste and on those who operate waste disposal facilities. It was in recognition of the need to widen the responsibility for waste and improve the security of the waste stream that the Department announced its intention to introduce the duty of care which has now been enacted in Part II of the 1997 Order.
14. Implementation of the duty of care will ensure that each person involved in importing, production, carriage, keeping, treating and disposal of controlled waste is clearly aware of his responsibilities for the waste in his care. The proposed Regulations will ensure that all waste holders will have access to an adequate description of the waste they are handling to enable them to deal with it appropriately. In addition, the completion and retention of transfer notes will provide a clear audit trail which will enable the Department to more effectively pursue any possible breaches of the duty of care.
15. It is the Department's view that these measures will enhance public confidence in the waste industry and it is to the benefit of that industry, the environment and the economy as a whole that these measures are taken. Successful implementation of the proposed measures will strengthen the security of the waste stream and is expected to achieve a significant reduction in the incidents of illegal or illicit dumping (fly-tipping).

VII. Compliance Costs

Business Sectors Affected

16. The Regulations will impact on waste producers, waste management contractors, landfill operators and the Environment and Heritage Service as regulator.
17. It is very difficult to estimate the costs faced by a typical business or by individual activity. However, records from a number of producer responsibility site inspections undertaken by the Environment and Heritage Service indicate that the majority of producers already manage their waste in a responsible manner. This suggests that for the majority of industry and commerce, the new obligations will be no greater than those already accepted by responsible waste producers in ensuring that their waste is handled by reputable and competent people. This would confirm the view that the additional administrative burden imposed by the proposals would be slight and that the RIA cost estimates are reasonable.

Waste Producers

18. Generally speaking, producers of waste will have to do no more than seek a waste carrier, check initially with the Department that the carrier they are proposing to use is registered, write a simple description of the waste, complete a transfer note when the waste is being passed to another party and keep copies of the description and transfer note available for inspection on request.
19. Some additional costs to business will arise in relation to the check which should be made on a registered carrier, ascertaining the nature of the waste and completing other details on a controlled waste transfer note. Generally these costs will be no more than the cost of a telephone call or electronically checking the Department's register and the staff time to do this and complete the documentation. The Department has considered this aspect and while it is not possible to be precise, it would be reasonable to expect an annual average cost of £20 per company.
20. Northern Ireland is a small business economy, with 52,955 vat-based businesses. A number of businesses already use some sort of transfer note and know the credentials of the carrier they use. However, on the assumption that all businesses would have to perform the tasks and undertake the checks outlined in paragraph 19, the average cost for the local business community is estimated at £1.1M each year.
21. The proposed Regulations will introduce simple documentation as a record of the transfer of controlled waste. The Department estimates that around 10% of businesses will probably already be keeping records of their receipts and transfers of waste. The remaining 90%, that is 47,700 businesses, will incur an additional burden of approximately £477,000 to set up a simple manual system for keeping the necessary records.
22. Producers will also be responsible for ensuring that the description of the waste that leaves them is accurate and contains all the information necessary for safe handling, disposal, treatment or recovery. In most cases, a simple description using the common names of the substances and a description of the process that produced them will suffice.
23. In a small number of cases where there is insufficient knowledge of the production process to determine the character of the waste, physical or chemical analysis will be required. The Department estimates that only 10-15% of the 11,000 businesses with the potential to produce difficult/special waste will require one or more analyses in a year and of this percentage, many already routinely undertake analysis testing as part of their waste production/management process. The costs of testing will vary between £100 and £300 depending on the type of analysis required. The additional compliance costs to industry of this requirement are therefore estimated to be between £110,000 and £495,000 per annum.

24. Accordingly the total costs of duty of care to industry are estimated to be as follows:
- Initial setting up costs of approximately £477,000
 - Annual costs of between £1.2M and £1.6M.

Waste Managers

25. Waste managers have a responsibility for checking descriptions of waste they receive and are to some extent responsible for following up evidence of mismanagement.

District Councils

26. District councils as waste collectors, carriers and disposers will be subject to the duty of care. The duty represents good practice which district councils should already be following in making sure their waste is disposed of legally. There should therefore be no extra burdens on district councils from their compliance with the duty of care, except for those arising from the regulations on documentation.
27. District councils as regulators already have duties to apply and enforce provisions to prevent illegal management of waste. The documentation required by the proposed Regulations will provide a more efficient means of pursuing offenders and therefore should not add to the costs of district councils as waste regulators.

Impact on Small Businesses

28. The likely burden on small businesses is not considered to be any more onerous, in relation to size, than it would be for larger businesses, although it is recognised that the former are likely to have less administrative capacity.

VIII. Securing Compliance

29. The duty of care is intended to be essentially a self-regulating system with each waste holder carrying out checks on the holder he received the waste from or is passing the waste to. Whilst the Environment and Heritage Service does not have a specific duty to enforce the duty of care, it does, however, have a major interest in breaches of the duty which might contribute to illegal waste movement.

IX. Consultations

30. In considering proposals for new legislation, the Department places great importance on giving due weight to the likely impact on business. On 17 March 1993, the Department announced its intention to introduce a new system of waste management in Northern Ireland. A consultation paper was published which included detailed proposals for a system of registration and invited the views of industry. Consultees were given the opportunity to identify and quantify any direct or indirect costs (recurring and non-recurring) or savings likely to arise from the proposals. However, except for a general view that the new

arrangements would add to the burden on industry, no tangible costs were identified.

31. Following consideration of the comments received in response to that consultation paper, on 14 February 1996 the Department published for consultation its proposal for a Waste and Contaminated Land Order (the 1997 Order) which made legislative provision for the phased introduction of the proposals. The outcome of that consultation was announced on 26 November 1997. Consultation was also carried out on the Registration of Carriers Regulations in 1999. The present consultation exercise invites comments on the draft Duty of Care regulations and on the associated Code of Practice.

X. Summary and Recommendation

32. It is recommended that Option 2 be implemented. The introduction of the Regulations will be an important step in the implementation of the UK's obligations under the Waste Framework Directive and the costs to business are estimated to be minimal.

**The Environmental Protection (Duty of Care) Regulations (Northern Ireland)
2002 and the Duty of Care Code of Practice**

Screening for Equality Impact Assessment

Northern Ireland Act 1998 (Section 75) - Statutory Equality Obligations

1. Introduction

Section 75 of the Northern Ireland Act 1998 requires all public authorities in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity between:

- persons of different religious beliefs;
- persons of different political opinions;
- persons of different racial groups;
- persons of different ages;
- persons of different marital status;
- persons of different sexual orientation;
- men and women generally;
- persons with a disability and persons without; and
- persons with dependants and persons without.

To satisfy this requirement, government departments carry out Equality Impact Assessments of policies and legislation to test whether they could have an adverse impact on equality of opportunity between any of the nine groups listed above. While it is acknowledged that Section 75 puts a duty on public authorities to look at all its policy areas and not just those relating to equality issues, it is accepted that not all policies need to be assessed to the same extent. Screening aims to identify those policies that are likely to have the greatest impact on equality of opportunity and therefore should be subject to a full Equality Impact Assessment.

2. Brief summary of the Regulations and Code of Practice

Article 5 of the Waste and Contaminated Land (Northern Ireland) Order 1997 imposes a duty of care on persons concerned with controlled waste. The draft regulations require any person who is subject to the duty of care to make and retain documents in respect of the waste and furnish copies of them to the Department. The Code of Practice provides detailed guidance to those who handle controlled waste on the practical steps they may adopt to discharge the duty.

3. Aims of the Regulations and Codes of Practice

The duty of care is part of the new system of waste management controls to be introduced under the Waste and Contaminated Land (NI) Order 1997. The purpose of the new controls is to improve standards in the management and disposal of controlled waste. Successful implementation of the proposals will strengthen the security of the waste stream and is expected to achieve a significant reduction in the incidence of illegal or illicit dumping (fly tipping). The introduction of the duty of care is a key element of the new system in that it will impose a new level of responsibility on producers and other holders of waste for ensuring that waste is not illegally managed. The duty does not, in any way, direct the location of disposal sites.

4. Screening Analysis

4.1 Is there any evidence of higher or lower participation or uptake by different groups within any of the nine categories?

YES	
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NO	✓
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4.2 Is there any evidence that particular groups have different needs, experiences, issues and priorities in relation to the particular main policy area?

YES	
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NO	✓
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The Duty of Care Regulations and Code of Practice relate to improving standards in waste management and disposal for the benefit of the environment. There is no evidence that particular groups have different needs, experiences, issues and priorities in relation to this topic.

4.3 Is there an opportunity to better promote equality of opportunity or good community relations by altering policy or working with others in Government or the community at large?

YES	
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NO	✓
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4.4 Have consultations in the past with relevant groups, organisations or individuals indicated that particular policies create problems which are specific to them?

YES	
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NO	✓
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In March 1993, the Department issued a consultation paper on proposals for the new system of waste management in Northern Ireland. Comments received on that paper indicated wide acceptance of the principles of the proposed changes.

5. Equality Impact Assessment Decision

Full Equality Impact Assessment procedure is confined to those policies considered likely to have significant implications for equality of opportunity. As a result of the screening analysis in Section 4, it is considered that there will be no significant implications for equality of opportunity as a result of the legislation and policy contained in the draft Duty of Care Regulations and Code of Practice. They do not, therefore, need to be submitted for a full Equality Impact Assessment.