

WASTE AND CONTAMINATED LAND (NORTHERN IRELAND)
ORDER 1997

ARTICLE 5

WASTE MANAGEMENT

THE DUTY OF CARE

A CODE OF PRACTICE

NIA 19/02

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INTRODUCTION

- i. The code of practice consists of the guidance in Sections 1-7 together with their related Annexes. It is issued by the Department of the Environment (the Department) in accordance with Article 5(9) of the Waste and Contaminated Land (Northern Ireland) Order 1997¹ (the 1997 Order). This introduction is not part of the code of practice.
- ii. Article 5 of the 1997 Order imposes a new duty of care on persons concerned with **controlled waste**. The duty applies to any person who produces, imports, carries, keeps, treats or disposes of controlled waste, or, as a broker has control of such waste. Breach of the duty of care is an offence, which on summary conviction is liable to a fine not exceeding the statutory maximum or, an unlimited fine if convicted on indictment.
- iii. Waste poses a threat to the environment and to human health if it is not managed properly and recovered or disposed of safely. The duty of care is designed to be an essentially self-regulating system which is based on good business practice. It places a duty on anyone who in any way has a responsibility for controlled waste to ensure that it is managed properly and recovered or disposed of safely. The purpose of this code is to provide practical guidance for waste holders and brokers subject to the duty of care. It recommends a series of steps which should normally be enough to meet the duty. The code cannot cover every contingency. The legal obligation is to comply with the duty of care itself rather than with the code. Annex A gives a detailed explanation of the law.
- iv. The code is divided into: -
 - Sections 1-7: Step by step guidance on following the duty;
 - A summary check list; and

Annexes

 - A: the law on the duty of care;
 - B: responsibilities under the duty;

¹ S.I. 1997 No. 2778 (N.I.19)

- C: Regulations on keeping records;
- D: an outline of some other legal requirements; and
- E: a glossary of terms used in the code.

Is it "waste"?

v. The duty of care applies to waste which is controlled waste (see paragraphs 1. 1- 1. 2 below). The first question, therefore, is whether any particular substance is "waste". Since 1 December 1998 the common European definition of waste in the Waste Directive² has been in force. The definition is:-

“any substance or object ... which the producer³ or the person in possession of it discards or intends or is required to discard.”

vi. Whether or not a substance is waste must be determined on the facts of the case; and interpretation of the law is a matter for the Courts. In the Department’s view the purpose of the Waste Directive is to treat as waste, and accordingly to supervise the collection, transport, storage, recovery and disposal of, those substances or objects which fall out of the commercial cycle or out of the chain of utility. The Department would suggest, therefore, that to determine whether a substance or object has been discarded the following question may be asked:-

Has the substance or object been discarded so that it is no longer part of the normal commercial cycle or chain of utility?

vii. If the answer to this question is “no” it is a reasonable indication that the substance or object concerned is not waste. As indicated, however, the purpose of the Waste Directive is to supervise the collection, transport, storage, recovery and disposal of waste; and these are

² Council Directive 75/442/EEC as amended by Directives 91/156/EEC and 91/692/EEC.

³ "Producer" means anyone whose activities produce waste or who carries out preprocessing, mixing or other operations resulting in a change in its nature or composition.

activities which themselves may be of a commercial nature. A distinction must be drawn, therefore, between the normal commercial cycle and the commercial cycle which exists for the purpose of collecting, transporting, storing, recovering and disposing of waste. It is also essential to bear in mind that a substance or object does not cease to be waste as soon as it is transferred for collection, transport, storage, recovery or disposal. A substance or object, which is waste at the point of its original production, should be regarded as waste until it is recovered or disposed of.

STEP BY STEP GUIDANCE

SECTION 1

IDENTIFY AND DESCRIBE THE CONTROLLED WASTE

1.1 The duty of care applies to anyone who is the holder⁴ of controlled waste⁵. The only exception to this is for the occupiers of domestic property for the household waste which comes from their home. Anyone subject to the duty of care who has some "controlled waste" must identify and describe the kind of waste it is.

Is it "controlled waste"?

1.2 "Controlled waste" means waste from households⁶, commerce or industry. At present, the main kinds of waste that are not "controlled waste" are waste from agricultural premises, waste from mines and quarries, explosives and most radioactive waste. Unless the context indicates otherwise, subsequent references in the code to "waste" should be read as references to "controlled 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.

⁴ "Holder" means a person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of it.

⁵ Only waste which is "Directive waste" is treated as controlled waste – see the glossary of terms at **Annex E**.

⁶ Householders are exempt from the duty of care for their own household waste (**Annex A** paragraph A.8).

What are the problems of the waste?

1.3 Waste cannot be simply divided between the safe and the hazardous. There are safe ways of dealing with any waste. Equally, any waste can be hazardous to human health or the environment if it is wrongly managed. Deciding whether any waste poses a problem requires consideration not only of its composition but also of what will happen to it. For most waste it is not necessary to know more than what it is in very general terms. But subsequent holders must be provided with a description of the waste that is full enough to enable them to manage the waste properly. Even everyday items may cause problems in handling or treatment.

1.4 In looking for waste problems it may help to ask such questions as:-

- (a) does the waste need a special container to prevent its escape or to protect it from the elements;
- (b) what type of container suits it and what material can the container be made of;
- (c) can it safely be mixed with any other waste or are there wastes with which it should not be mixed;
- (d) can it safely be crushed and transferred from one vehicle to another;
- (e) can it safely be incinerated or are there special requirements for its incineration, such as minimum temperature and combustion time;
- (f) can it be disposed of safely in a landfill site with other waste; and
- (g) is it likely to change its physical state during storage or transport?

1.5 Anything unusual in waste can pose a problem. So can anything which is out of proportion. Ordinary household waste, and waste from shops or offices, often contains small amounts of potentially hazardous substances. This may not matter if they are mixed in a large quantity of other waste. What should be identified as potential problems in a consignment of waste, are significant quantities of an unexpected substance, or unusual amounts of an expected substance.

1.6 Note that certain particularly dangerous or difficult wastes (“special wastes”) are subject to strict legal controls quite apart from, and additional to, the requirements of the duty of care. The additional requirements are in the Special Waste Regulations (Northern Ireland) 1998 (S.R. 1998 No. 289). Special waste is subject to the duty of care, including the guidance in the code of practice and the requirements of the Controlled Waste (Duty of Care) Regulations 2002 (“the 2002 Regulations”)⁷, in the same way as other controlled waste.

Description of the Waste

1.7 There must also be a description of the waste. This may be provided separately or combined as a single document with the transfer note. The European Waste Catalogue (EWC)⁸ lists waste using a six-digit code system based loosely on the source of the waste. This scheme provides a comprehensive list of waste types, which may be generally accepted as the reference point for describing waste. The list will be periodically reviewed on the basis of new knowledge and, in particular, of research results, and if necessary revised in accordance with Article 18 of EC Directive 75/442/EEC. The description of waste therefore should refer to the appropriate entry in the EWC. It is good practice to label drums or similar closed containers with a description of the waste. Under the 2002 Regulations the parties must keep the transfer note and the description for two years. The description should always mention any special problems, requirements or knowledge. In addition it should include some combination of:-

- (a) the type of premises or business from which the waste comes;
- (b) the name of the substance or substances;
- (c) the process that produced the waste; and
- (d) a chemical and physical analysis.

⁷ The Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002 S.R. 2002 No. 271

⁸ EWC created by European Commission Decision 94/3/EC which was replaced by 2000/532/EC, as amended by 2001/118/EC and 2001/119/EC

1.8 The description must provide enough information to enable subsequent holders to avoid mismanaging the waste. When writing a description it is open to the holder to ask the manager who will handle the waste what he needs to know. Most wastes need only a simple description, in which case either 1.7 (a) or (b) above will do. However, in some cases it may not be enough simply to describe the waste as "household", "commercial" or "industrial" waste without providing a clearer idea of what the substance is or providing details about the premises from which it originated. Each element of the description is dealt with in paragraphs 1.11-1.17 below.

Transfer Note

1.9 A transfer note must be completed, signed and kept by the parties involved if waste is transferred. This is a requirement of the 2002 Regulations. Any breach of the 2002 Regulations is an offence (see **Annex C** on keeping records). Amongst other things, the transfer note must state:-

- (a) the quantity of waste transferred - most waste management companies, in particular landfill operators, receive quantities of waste by weight. Wherever possible, therefore, a transfer note should record the weight of waste transferred;
- (b) how it is packed - whether loose or in a container; and
- (c) if in a container, the kind of container.

Special problems

1.10 The description should always contain any information which might affect the handling of the waste. This should include:-

- (a) special problems identified under paragraphs 1.3 to 1.6 above;

- (b) any information, advice or instructions about the handling, recovery or disposal of the waste given to the holder by the Department's Environment and Heritage Service⁹ or the suppliers of material or equipment;
- (c) details of problems previously encountered with the waste;
- (d) changes to the description since a previous load.

A) Source of the waste: type of premises or business

1.11 It may sometimes be enough to describe the source of the waste by referring either to the use of the premises where the waste is produced or to the business of the waste producer.

1.12 Such a "source of waste" description is recommended as the common sense simple description where businesses produce a mixture of wastes none of which has special handling or disposal requirements; or where there are no special handling or disposal requirements which cannot be identified from such a simple description. Such a description must make it clear what type of wastes are produced and the contents of the wastes; and their proportions must be only such as might be expected.

B) Name of the substance

1.13 The waste may be described by saying what it is made of. This may be in physical and chemical terms or by the common name of the waste where this is equally helpful. Such a description by name is recommended for waste composed of a single simple material or a simple mixture.

C) Process producing the waste

1.14 The waste may be described by saying how it was produced. Such a description would include details of materials used or processed, the equipment used and the treatment

⁹ In the case of processes regulated under Integrated Pollution Control, the Environment and Heritage Service may give advice to the producer of waste that is relevant to its subsequent management prior to its final disposal or treatment. This advice should also be included in the description.

and changes that produced the waste. If necessary, this would include information obtained from the supplier of the materials and equipment.

1.15 This should form part of the description for most industrial wastes and some commercial wastes.

D) Chemical and physical analysis

1.16 A description based on the process producing the waste (C) will not go far enough where the holder does not know enough about the source of the waste. It will often not be adequate where:-

(a) wastes, especially industrial wastes, from different activities or processes are mixed; or

(b) the activity or process alters the properties or composition of the materials put in.

1.17 For such wastes an analysis will usually be needed. In cases of doubt, the holder may find it helpful to consult the intended waste manager as to whether he needs an analysis to manage the waste properly. Where it is necessary the holder should detail the physical and chemical composition of the waste itself including, where different substances are mixed, their dilutions or proportions. The holder might either provide this information himself or obtain a physical or chemical analysis from a laboratory or from a waste management contractor.

KEEP THE WASTE SAFELY

The problem

2.1 All waste holders must act to keep waste safe against:-

- (a) corrosion or wear of waste containers;
- (b) accidental spilling or leaking or inadvertent leaching from waste unprotected from rainfall;
- (c) accident or weather breaking contained waste open and allowing it to escape;
- (d) waste blowing away or falling while stored or transported;
- (e) odour emissions through correct storage provisions and maximum storage durations of organic waste, which is subject to biological decay; and
- (f) scavenging of waste by animals or humans.

2.2 Holders should protect waste against these risks while it is in their possession. They should also protect it for its future handling requirements. Waste should reach not only its next holder but also a licensed facility or other appropriate destination without escape. Where waste is to be mixed immediately, for example in a transfer station, a civic amenity site or a municipal collection vehicle, it only needs to be packed well enough to reach that immediate destination. Preventing its escape after that stage is up to the next holder. However, there are wastes that may need to reach a disposal or treatment site in their original containers, for example, drummed waste. In such cases, holders will need to know through how many subsequent hands; under what conditions; for how long; and to what ultimate treatment their waste will go in order to satisfy themselves that it is packed securely enough to reach its final destination intact. If an intermediate holder alters waste in any way, by

mixing, treating or repacking it, then he will be responsible for observing all this guidance on keeping waste safe.

Storing waste securely

2.3 Security precautions at sites where waste is stored should prevent theft, vandalism or scavenging of waste. Holders should take particular care to secure waste material attractive to scavengers, for example, building and demolition materials and scrap metal. Special care should also be taken to secure waste which has a serious risk attached to it, for example certain types of clinical waste. Waste holders should undertake regular reviews of the waste in their possession to ensure that it has not been disturbed or tampered with.

2.4 Segregation of different categories of waste where they are produced may be necessary to prevent the mixing of incompatible wastes. For example, avoiding reactions in mixtures. Segregation may assist the disposal of waste to specialist outlets. Where segregation is practised on sites, the waste holder should ensure that his employees and anyone else handling waste there are aware of the locations and uses of each segregated waste container.

Containers

2.5 Waste handed over to another person should be in some sort of container, which might include a skip. The only reasonable exception would be loose material loaded into a vehicle and then covered sufficiently to prevent escape before being moved. Waste containers should suit the material put in them.

2.6 It is good practice to label drums or similar closed containers with a note of the contents when stored or handed over. This could be a copy of the waste description. To avoid confusion, old labels should be removed from drums that are reused.

Waste left for collection

2.7 Waste left for collection outside premises should be in containers that are strong and secure enough to resist not only wind and rain but also animal disturbance, especially for food waste. All containers left outside for collection will therefore need to be secured or sealed. For example, drums with lids, bags tied up, skips covered. To minimise the risks, waste should not be left outside for collection longer than is necessary. Waste should only be put out for collection on or near the advertised collection times.

SECTION 3

TRANSFER TO THE RIGHT PERSON

3.1 Waste may be handed on only to authorised persons or to persons for authorised transport purposes. This section of the code advises on who these persons are; and what checks to carry out *before* making an arrangement or contract for transferring waste.

3.2 Article 5(3) of the 1997 Order sets out those who are authorised persons. The list of authorised persons is: -

- (f) any district council;
- (g) any 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 1978¹⁰ (“The 1978 Order”);
- (h) any person to whom Article 4(1) of the 1997 Order does not apply by virtue of regulations made under paragraph (3) of that Article;
- (i) any person registered as a carrier of controlled waste under Article 39 of the 1997 Order;
- (j) any person exempt from registration as a carrier of controlled waste under regulation 2 of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999¹¹.

3.3 The Department has discretion by virtue of Article 5(4) of the 1997 order to make regulations for the purpose of adding to the list of authorised persons specified in Article 5(3).

¹⁰ S.I. 1978/1049 (N.I.19)

¹¹ S.R. 1999 No.362

3.4 The list of authorised transport purposes is set out in section 5(5) of the 1997 Order, which is reproduced at the end of Annex A.

Public waste collection

3.5 District Councils collect waste from households and from some commercial premises. They do this either with their own labour or using private contractors who will be registered carriers (Annex D paragraphs D.6-D.8). If there is any doubt about whether or not a particular waste can go in the normal collection, the producer should ask the local council.

Using a waste carrier

3.6 A waste holder or broker may transfer waste to someone who transports it - a waste carrier - who may or may not also be a waste manager (Annex D paragraphs D.6-D.8). Subject to certain exemptions, anyone carrying waste in the course of their business, or in any other way for profit, must be registered with the Department. The Department's register of carriers is open to public inspection. For the purpose of the duty of care, holders may use this register as a reference list of carriers who are authorised to transport waste. However, inclusion on the Department's register is *not* a recommendation or guarantee of a carrier's suitability to accept any particular type of waste. The holder or broker should remain alert to any sign that the waste may not be legally dealt with by a particular carrier.

3.7 Anyone intending to transfer waste to a carrier will need to check that the carrier is registered or is exempt from registration. A registered carrier's authority for transporting waste is either his certificate of registration or a copy certificate *provided by the Department* both of which will show the date on which the carrier's registration expires. The certificate is printed on special paper and if photocopied, the word 'INVALID' will appear on the copy like a heavy watermark.

3.8 In all cases other than those involving repeated transfers of waste, the holder should check the details of the carrier's certificate or copy certificate of registration. In addition, before using any carrier for the first time, the holder should check with the Department that the carrier's registration is still valid, even if his certificate appears to be current. The holder should provide the Department with the carrier's name and registration number.

3.9 The following are exempt from registering as a waste carrier:-

- (a) a government department;
- (b) charities and voluntary organisations;
- (c) district councils collecting any waste themselves (though a council's contractors are not exempt);
- (d) the Northern Ireland Railways Company Limited when carrying waste by rail;
- (e) a ferry operator in relation to the carriage on the ferry of any vehicle carrying controlled waste;
- (f) ferry operators where waste is to be disposed of under licence at sea;
- (g) persons who are authorised under the Animal By-Products Regulations (Northern Ireland) 1993¹² to hold or deal with animal waste.

3.10 It should be noted that animal waste which is collected and transported in accordance with Schedule 2 to the Animal By- Products Regulations 1993 is not controlled waste for the purposes of the duty of care (see Annex A paragraph A. 9).

3.11 Any carrier who claims to be exempt from carrier registration should be asked to substantiate his claim.

Sending waste for disposal or treatment or recovery

3.12 A "waste manager" is anyone who stores waste or who processes it in some intermediate way or who reclaims waste or who disposes of it. All of these activities are currently licensed by district councils who issue "disposal licences" under the 1978 Order. When a new waste management licensing system is brought into operation under the 1997 Order¹³, waste management licences will progressively replace disposal licences. (In this code the term "waste management licence" is used to cover either licence). A licence

¹² S.R. 1993 No. 192 (as amended)

¹³ S.I. 1997 No. 2778 (N.I.19)

normally includes conditions as to the type and quantity of waste that may be dealt with, the way in which it is managed, operating hours and pollution control measures to be operated on site.

3.13 *Before* choosing a waste manager as the next person to take waste, a holder will need to:-

- (a) check that the manager has a licence; and
- (b) establish that the licence permits the manager to take the type and quantity of waste involved.

3.14 A waste holder should check this not merely by asking the waste manager but by examining his licence. The holder in turn should show the manager the description of the waste involved. If the holder doubts whether the licence covers his particular waste he can ask the waste manager or, if he is still not satisfied, the Council who issued the licence.

3.15 Some forms of waste disposal, treatment or recovery do not require a licence because the activity concerned has been exempted by regulations. If a selected waste manager claims he is exempt from being licensed, the holder has a duty to satisfy himself as to the validity of the exemption before handing over his waste. If in any doubt the holder should seek advice from the district council in whose area the activity takes place. (For more information on licensing and exemptions see Annex D paragraphs D.2-D.3).

3.16 A holder of waste should make these same checks on licences and exemptions wherever he delivers waste even if he is not the producer. A carrier should always check that the next holder he delivers to is an authorised person and that the description of the waste he carries is within the licence or exemption of any waste manager to whom he delivers, unless he is only providing the transport to a contract directly between the producer and the waste manager. In that case the producer should make all the checks on the waste manager.

3.17 Disposal sites operated by district councils are not licensed but operate under terms and conditions contained in resolutions passed by the Council and which are broadly similar to those in disposal licences. It is necessary to check that the local council operates such sites and to establish that the resolution permits the council to take the type and quantity of waste

involved. As indicated in Annex D.4 the licensing function will eventually transfer from district councils to the Department. Once this happens both publicly and privately owned disposal sites will be equally subject to licensing by the Department.

Responsibility of brokers

3.18 A broker, by arranging for the transfer of waste, shares responsibility for its proper transfer with the two holders directly involved. He should follow the relevant part of the guidance in paragraphs 3.6-3.17 above when undertaking checks in connection with arrangements he intends to make, or has made, for waste.

Checks on repetitive transfers

3.19 Full checks on carriers and waste managers do not need to be repeated if transfers of waste are repetitive - the same type of waste from the same origin to the same destination. However, it would be advisable to make occasional checks to ensure that the contents or composition of the waste that is being transferred under cover of a season ticket remains consistent with the waste description.

3.20 For a series of identical loads making up one transaction there is no need to see the licence of a waste manager, or a district council's resolution (see paragraph 3.17 above), or the registration certificate of a waste carrier, every time a load of waste is transferred. Although, as a matter of good practice, periodic checks should be carried out.

However, licences, resolutions, registration or evidence of exemption should be examined afresh in the following cases: -

- (a) whenever a new transaction is involved, that is if the description or destination of the waste has changed;
- (b) where several different carriers or disposers are collecting waste at one place and there might be a danger of an unauthorised carrier collecting a load. For example, a construction or demolition site from which several hauliers are taking waste away;

- (c) as a minimum precaution, the licence, resolution, certificate of registration or evidence of exemption should be seen and checked at least once a year even if nothing appears to have changed in a series of repeated transfers;
- (d) where there has been a change in the licence or resolution conditions of the destination; or
- (e) where there has been a change in the waste carrier.

RECEIVING WASTE

4.1 The previous three sections of this code look at transfers from the point of view of the person transferring the waste to someone else. This section offers guidance to persons receiving waste, whether at its ultimate destination or as an intermediate holder.

Checking on the source of waste

4.2 Checking is not only in one direction. No one should accept waste from a source that seems to be in breach of the duty of care. Waste may only come *either* from the person who first produces or imports it or from someone who has received it. The person who receives it must be one of the persons entitled to receive waste - that is an authorised person or a person for authorised transport purposes (Section 3). On the handover of waste, the previous holder and the recipient will complete a transfer note in which the previous holder will declare which category of person entitled to hold waste he is. The recipient should ensure that this is properly completed before accepting waste.

4.3 Recipients should not normally need to see any waste management licence of the previous holder; and there is no explicit requirement for a person receiving waste from a waste carrier to check on whether or not the carrier is registered. In the Department's view, it is not an offence under Article 5(1) of the 1997 Order for a recipient to accept waste from an unregistered carrier. However, offences might have been committed earlier in the chain, for example, by a waste producer who transfers waste to someone who is not authorised to accept it. This may be a carrier who was required to be registered but was not. The carrier himself would also be in breach of the carrier registration legislation if he were required to be registered but was not. Paragraphs 5.10-5.11 below provide guidance on reporting such incidents to the Department.

4.4 However, as a matter of good practice, the first time a carrier delivers waste, the recipient should satisfy himself that he is dealing with someone who is properly registered to

transport the waste. In this case, it would be reasonable to ask to see either the carrier's registration certificate or official copy certificate, or to request confirmation of the type of exemption under which the carrier is transporting the waste.

4.5 Before receiving any waste, a recipient should establish that it is contained in a manner suitable for its subsequent handling and final disposal or recovery. Where the recipient provides containers he should advise what waste may be placed in them.

4.6 The recipient should also look at the description and seek more information from the previous holder if this is necessary to manage the waste.

Co-operation with the previous holder

4.7 Anyone receiving waste should co-operate with the previous holder in any steps they are taking to comply with the duty. That means in particular supplying correct and adequate information that the previous holder may need.

4.8 The previous holder needs to know enough about the later handling of his waste - how it is likely to be carried, stored and treated - to pack and describe it properly. The recipient should give such information.

4.9 Under the 2002 Regulations (Annex C) anyone receiving waste must receive a description of the waste and complete a transfer note. The recipient must declare on the transfer note which category of authorised person he is, with details. Before making any arrangement to receive waste, a waste manager should show to the previous holder his waste management licence or a statement of the type of exemption from licensing under which he is operating; and a carrier should show his certificate of registration, an official copy of his certificate of registration or evidence of the type of exemption from registration under which he transports waste. It would be sensible for every waste management site office to hold a copy of the waste management licence or a statement of the type of exemption; and for every vehicle used by a carrier to carry an official copy of the carrier's certificate of registration or evidence of the type of exemption under which he transports waste.

4.10 A broker, by arranging for the transfer of waste, shares responsibility for its proper transfer with the two holders directly involved. To enable the broker and the other parties to the transfer to discharge their duty of care, information may need to be exchanged between the broker and the previous holder or recipient of the waste, in line with the guidance in this Section.

CHECKING UP

5.1 The previous sections describe normal procedures for transferring waste from the producer to its final destination. Most of the checking that is reasonable is already built into these procedures and the transfer note system (Annex C). This section gives guidance on what further checks are advisable and the action to take when checks show that something is wrong.

Checks after transfer

5.2 Most waste transfers require no further action from the person transferring waste after the waste has been transferred. A producer is under no specific duty to audit his waste's final destination. However, undertaking such an audit and subsequent periodic site visits would be a prudent means of protecting his position by being able to demonstrate the steps he had taken to prevent illegal treatment of his waste.

5.3 One exception is where a holder makes arrangements with more than one party. For example, a producer arranges two contracts, one for disposal and another for transport to the disposal site. In that case the producer should establish that he not only handed the waste to the carrier but that it reached the disposer. Similar considerations apply to a broker who may make arrangements on behalf of a waste producer with several parties (carrier, disposer etc.).

Checks after receipt

5.4 Any waste holder, but especially a waste manager receiving waste, has a strong practical interest in ensuring that the description of the waste is correct and contains adequate information. A waste management licence will control the quantities and types of waste that may be accepted and how they may be managed. Anyone receiving waste should make at least a quick visual check that it appears to match the description. For a waste manager it

would be good practice to go beyond this by fully checking the composition of samples of waste received.

Causes for concern

5.5 Every waste holder should be alert for any evidence that suggests that the duty of care is not being observed or that illegal waste handling is taking place. Obvious causes for concern that any holder should notice when he accepts or transfers waste include: -

- (a) waste that is wrongly or inadequately described being delivered to a waste management site;
- (b) waste being delivered or taken away without proper packing so that it is likely to escape;
- (c) failure of the person delivering or taking waste to complete a transfer note properly, or an apparent falsehood on the transfer note;
- (d) an unsupported claim of exemption from licensing or registration as a carrier; and
- (e) failure of waste consigned via a carrier to arrive at a destination with whom the transferring holder has an arrangement; or
- (f) damage to, or interference with containers.

5.6 Other causes of concern may come to light. Waste holders do not *have* to check up after waste is handed on, but they may become aware of where it is going, and should act on such information if it suggests illegal or careless waste management. Similarly, a broker who suspects mismanagement of waste for which he has made arrangements should take appropriate action. For instance, he may need to make further checks to establish the facts, or use different waste carriers and managers unless and until problems are remedied.

Paragraphs 5.10-5.11 give guidance on informing the Department.

Action to take with other holders

5.7 A holder who suspects that his waste is not being dealt with properly should check his facts, in the first instance with the next (or sometimes the previous) holder. This may involve asking that further details be added to a waste description, for more information about the exact status of the next holder for the purposes of waste management licensing or carrier registration, why they may be entitled to an exemption, or simply where waste went to or came from.

5.8 If a holder is not satisfied with any additional information provided or is certain that waste he handles is being wrongly managed by another person then his first action should normally be to refuse to transfer or accept further consignments of the waste in question to or from that person, unless and until the problem is remedied. Such a step may not be practicable in all cases, for example, to avoid breach of a contract to deliver or accept waste or because there is no other outlet immediately available for the waste. Steps should be taken to minimise such inflexibility. One possible measure would be for new waste contracts to provide for termination if a breach of the duty occurs and a notice to rectify is not complied with.

5.9 If an arrangement that has proved wrong in some respect has to continue temporarily then the holder should take stringent precautions. For example, where waste has been misdescribed he should analyse further consignments; where waste has been collected or delivered without being properly packed he should inspect each further load; and where it has not reached its legitimate destination he should check that each subsequent load arrives at the appointed place. He should also, if appropriate, bring the situation to the attention of the Department, which may be able to offer guidance.

Reporting to the Department

5.10 The Department's Environment and Heritage Service (EHS) is responsible for the registration of waste carriers and for waste management generally. It has a major interest in breaches of the duty and will carry out investigations of waste holders to check compliance. EHS is equipped with the powers and expertise to prevent or pursue offences and to advise on the legal and environmentally sound management of waste.

5.11 Any person who imports, produces, carries, keeps, treats or disposes of waste or who has control of it as a broker, is required to take all reasonable measures to prevent the unlawful deposit, recovery or disposal of the waste by themselves or another person. Holders should inform EHS where they know or suspect that:

- (a) there is a breach of the duty of care; or
- (b) waste is being carried illegally by an unregistered carrier; or
- (c) waste is stored, disposed of, treated or recovered:-
 - (i) without a licence or in a way not permitted by the licence (excluding fly tipping; see 5.12);
 - (ii) contrary to the terms and conditions of a licence exemption; or
 - (iii) contrary to the terms and conditions of a council's resolution.

Reporting to the Local Council

5.12 Fly tipping (i.e. disposing of waste without a waste management licence or an exemption) is one such issue. Fly tipping is a serious offence and the courts may impose fines and/or imprison those responsible. Following the introduction of the Landfill Tax (which applies throughout the United Kingdom) in October 1996 the Department is keen to ensure that fly tipping does not increase. The Department is, therefore, determined to give a high priority to the prevention of fly tipping and to draw the financial gains made by the perpetrators to the attention of the courts. Any incidences of fly tipping should be reported to the local council.

EXPERT HELP AND GUIDANCE

6.1 A waste holder may not always have the knowledge or expertise to discharge his duty of care and in that situation he should seek expert help and guidance. However, the holder is still the person responsible for discharging his own duty of care, a responsibility that cannot be transferred to an expert adviser.

Help with analysing, describing and handling waste

6.2 Where a waste holder is faced with an unknown substance or a known waste but no disposal outlet, he needs to establish not only what it is, but what special needs it has for storage, transport or treatment, and what the possible outlets for it may be, whether disposal or reclamation. Waste consultants and waste managers offer services to examine waste problems, identify wastes and recommend storage, handling and disposal or recovery methods. A waste holder may also use a laboratory to analyse unknown waste that he needs to describe.

Help with choosing a destination

6.3 A consultant may put a waste holder in touch with a legitimate outlet for his waste. Alternatively, waste managers or carriers themselves may offer expert advice on a destination for a waste. A large waste management organisation with a variety of disposal or recovery methods under its control may be able to provide all the waste management services a holder needs. Otherwise it may be necessary to ask several firms for advice on whether or not they would accept a waste. If a consultant arranges a waste transfer to such an extent that he controls what happens to the waste, he is a broker, and shares responsibility with the two holders directly involved for the proper transfer of the waste (Section 3 paragraph 3.18 and Annex B paragraph B.12).

6.4 If the next holder is himself a source of advice he may sometimes undertake the analysis and write the waste description on behalf of the current holder. What he may not do is to undertake the checks or complete a transfer note for which the current holder is responsible.

Help from relevant authorities

District Councils

6.5 The local district council will be able to tell a waste holder whether a particular type of waste may be collected as part of its normal waste collection.

6.6 District councils have expertise in the management of all types of controlled waste. Although they will help as far as possible, they are not in a position to offer advice to every waste holder on how he should deal with his waste. However, information that is currently held by district councils and available to any enquirer is the register of waste disposal licences which each council is required to maintain under Article 8(4) of the Pollution Control and Local Government (Northern Ireland) Order 1978¹⁴ and of resolutions passed by the council in accordance with Article 13. This provides particulars of all disposal licences issued by the council in respect of its area and should enable a waste holder to check on the waste that a site is entitled to take.

The Environment and Heritage Service

6.7 A public register of all carriers currently registered to carry waste within Northern Ireland is maintained by Environment and Heritage Service under regulation 3 of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999¹⁵. Registered carriers are authorised for the purpose of the duty of care.

¹⁴ SI 1978/1049 (N.I.19)

¹⁵ S.R. 1999 No. 362

Technical Guidance

6.8 Technical guidance and advice on good practice, including the handling, disposal, treatment and recovery of particular wastes will also be prepared and made available by the Department's Environment and Heritage Service.

SECTION 7

THE DUTY OF CARE AND SCRAP METAL

7.1 Scrap metal is excluded from the scope of controlled waste for the purpose of Article 5 of the 1997 Order by virtue of Regulations 4 and 8 of the Controlled Waste Regulations (Northern Ireland) 2002¹⁶ as amended by Regulation 5 of the 2002 Regulations.

7.2 Scrap metal and the various activities relating to scrap metal will form part of the wider consultation on the waste management licensing regime proposed under the 1997 Order¹⁷. Subsequently, in accordance with Article 5(10) of the 1997 Order this code will be revised to take account of its application to scrap metal and any other developments in waste management law.

7.3 Scrap metal dealers should currently be licensed by the District Councils under the 1978 Order. Many of the duty of care documentation requirements should therefore be already met by scrap metal dealers because of the records that they would be required to keep by condition of their licence. Detailed records must be kept in connection with all scrap metal received at the site and all scrap metal either processed or despatched from it. These records could help to fulfil the requirements of the duty of care transfer note.

¹⁶ S.R. 2002 No. 248

¹⁷ S.I. 1997 No.2778 (N.I.19)

SUMMARY CHECKLIST

This section draws together in one place a simple checklist of the main steps that are normally necessary to meet the duty of care. As with the code itself, *this does not mean that completing the steps listed here is all that needs to be done under the duty of care*. The checklist cross-refers to key sections of the code and to the introduction to the code for fuller guidance. It should be noted that the introduction to the code does not form part of the code of practice itself

	<i>Refer to paragraphs</i>
(a) is what you have waste? If yes,	Introduction
(b) is it controlled waste? If yes,	1.2
(c) is it special waste	1.6
(d) while you have it, protect and store it properly,	2.1-2.4
(e) write a proper description of the waste, covering: -	1.7-1.8
- any problems it poses:	1.3-1.6 & 1.10
and, <i>as necessary to others who might deal with it later</i> , one or more of: -	
- the type of premises the waste comes from;	1.11-1.12
- what the waste is called;	1.13
- the process that produced the waste; and	1.14-1.15
- a full analysis;	1.16-1.17
(f) select someone else to take the waste. They must be an authorised person or authorised for transport purposes. As such they should be one or more of the following and must prove that they are: -	
- a registered waste carrier;	3.6-3.8
- exempt from waste carrier registration;	3.9-3.11
- a waste manager licensed to accept the waste;	3.12-3.14

- exempt from waste management licensing; 3.15-3.16
 - a waste collection authority; or 3.5
 - a district council, as waste disposal authority operating under the terms of a resolution; 3.17
 - authorised transport purposes 3.4
- (g) pack the waste safely when transferring it and keep it in your possession until it is to be transferred. 2.5-2.7
- (h) check the next person's credentials when transferring waste to them; 3.7-3.11 and 3.13-3.18
- (i) complete and sign a transfer note; 1.9
Annex C, C.4-C.6
- (j) hand over the description and complete a transfer note when transferring the waste; 1.7-1.9
Annex C, C.4-C.6
- (k) keep a copy of the transfer note signed by the person the waste was given to, and a copy of the description, for two years; Annex C, C.5
- (l) is the waste to be transferred internationally?; Annex D, D14-D15
- (m) when *receiving* waste, check that the person who hands it over is one of those listed in (f), or the producer of the waste, obtain a description from them, complete a transfer note and keep the documents for two years; 4.2-4.10
5.4
- (n) whether transferring *or* receiving waste, be alert for any evidence or suspicion that the waste you handle is being dealt with illegally at any stage, in case of doubt question the person involved and if not satisfied, alert the Environment and Heritage Service. 5.5-5.11

THE LAW ON THE DUTY OF CARE

What the duty requires

A.1 The duty of care is set out in Article 5 of the 1997 Order (a copy is printed at the end of this Annex). Those subject to the duty must try to achieve the following four things:-

- (a) to prevent any other person committing the offences of depositing, disposing of or recovering controlled waste without a licence,¹⁸ contrary to the conditions of a licence,¹⁹ or in a manner likely to cause environmental pollution or harm to health;²⁰
- (b) to prevent the escape of waste, that is, to contain it;
- (c) to ensure that, if the waste is transferred, it goes only to an "authorised person" or to a person for "authorised transport purposes". A list of authorised persons is provided at paragraph 3.2. The list of authorised transport purposes is set out in Article 5(5) of the 1997 Order which is printed at the end of this Annex;
- (d) when waste is transferred, to make sure that there is also transferred a written description of the waste, a description good enough to enable each person receiving it to avoid committing any of the offences under (a) above; and to comply with the duty at (b) above to prevent the escape of waste.

A.2 Those subject to the duty must also comply with the 2002 Regulations, which require them to keep records and make them available to the Department. The Regulations are additional to the code of practice and are summarised at Annex C.

A.3 Failing to observe the duty of care or the 2002 Regulations is a criminal offence.

¹⁸ Article 5(1)(a) and (b) of the 1978 Order.

¹⁹ Article 5(2) of the 1978 Order.

²⁰ Article 5(3) of the 1978 Order.

Who is under the duty?

A.4 The duty and therefore this code apply to any person who:-

- (a) imports, produces or carries controlled waste;
- (b) keeps, treats or disposes of controlled waste (a “waste manager”); or
- (c) as a broker, has control of controlled waste.

A.5 In the code and its Annexes all the persons referred to in paragraph A.4 above are referred to as "holders" of waste. Brokers are included in this term for convenience. However, the description in paragraph A.6 below should be borne in mind by users of the code.

A.6 Article 5(14) of the 1997 Order defines “broker” for the purposes of the Duty of Care. A broker does not handle waste himself or have it in his own physical possession but he controls what happens to it.

A.7 Employers are responsible for the acts and omissions of their employees. They therefore should provide adequate equipment, training and supervision to ensure that their employees observe the duty of care.

Exemption for householders

A.8 The only exemption to the duty is for occupiers of domestic property for "household waste" (see entry for "controlled waste" in the Glossary of terms) from the property. Note that this does *not* exempt: -

- (a) a householder disposing of waste that is not from his property (for example, waste from his workplace; or waste from his neighbour’s property); or
- (b) someone who is not the occupier of the property (for example, a builder carrying out works to a house he does not occupy is subject to the duty for the waste he produces).

Exemption for animal by-products

A.9 Animal waste which is collected and transported in accordance with Schedule 2 to the Animal By-Products Regulations (Northern Ireland) 1993²¹ is not subject to the duty of care. Schedule 2 of the Animal By-Products Regulations contains a system of control on the transfer of waste, which broadly achieves the same objective as the duty of care.

What each waste holder has to do

A.10 A waste holder is not responsible for ensuring that all the aims of the duty of care (listed in paragraph A.1) are fulfilled. A holder is only expected to take measures that are:-

- (a) reasonable in the circumstances, and
- (b) applicable to him in his capacity.

A.11 The circumstances that affect what is reasonable include:-

- (a) what the waste is;
- (b) the dangers it presents in handling and treatment;
- (c) how it is dealt with; and
- (d) what the holder might reasonably be expected to know or foresee.

A.12 The capacity of the holder is who he is, how much control he has over what happens to the waste and in particular what his connection with the waste is. Different measures will be reasonable depending on whether his connection with the waste is as an importer, producer, carrier, keeper, treater, disposer, dealer or broker.

A.13 Waste holders can be responsible only for waste that is at some time under their control. It is not a breach of the duty to fail to take steps to prevent someone else from mishandling any other waste. However, a holder's responsibility for waste, which he at any

²¹ S.R. 1993 No. 192 (as amended)

stage controls extends to what happens to it at other times, insofar as he knows or might reasonably foresee. Further guidance on the reasonable limits of responsibilities is in Annex B.

Offences and penalties

A.14 Breach of the duty of care is a criminal offence. It is an offence irrespective of whether or not there has been any other breach of the law or any consequent environmental pollution or harm to human health. The offence is punishable by a fine of up to £5,000 on summary conviction or an unlimited fine on conviction on indictment.

The Code of Practice

A.15 The Department is obliged under Article 5 of the 1997 Order to issue practical guidance on how to discharge the duty. This code constitutes that guidance and is a statutory document. Article 5(13) of the 1997 Order provides that if a provision of the code appears to a court to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

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

S.I. No. 2778 (N.I.19) *The Waste and Contaminated Land (Northern Ireland) Order 1997*

Duty of care etc., as respects waste

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

SI 1978/1049 (N.I.19)

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 (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.

(6) 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 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).

RESPONSIBILITIES UNDER THE DUTY OF CARE

B.1 The main Sections of the code address all waste holders who are subject to the duty of care. In law all the responsibilities for waste under the duty are spread among all those who hold that waste at any stage. But responsibilities are not spread evenly. Some holders will have greater or less responsibility for some aspects of the duty, according to their connection with the waste (see Annex A paragraphs A.10-A.13). This Annex offers guidance for each category of waste holder on their particular responsibilities. This Annex is neither comprehensive nor self-contained guidance for particular categories of waste holder. It only draws out questions of the allocation of responsibility. All waste holders should follow the guidance in the main sections of the code of practice.

Waste producers

B.2 The duty of care applies to a person who "produces" waste. Article 5 of the 1997 Order²² does not define this term. However, in relation to the definition of waste, Article 2 of the 1997 Order provides that producer means any person whose activities produce waste or who carries out pre-processing, mixing or other operations resulting in a change in its nature or composition.

B.3 Waste producers are solely responsible for the care of their waste while they hold it. Waste producers are normally best placed to know what their waste is and to choose the disposal, treatment or recovery method, if necessary with expert help and advice. They bear the main responsibility for ensuring that the description of the waste which leaves them is accurate and contains all the information necessary for safe handling, disposal, treatment or recovery. If they also select a final disposal, treatment or recovery destination then they share with the waste manager of that destination responsibility for ensuring that the waste falls within the terms of any licence or exemption relevant to that final destination.

²² S.I. 1997 No.2778 (N.I.19)

B.4 Producers bear the main responsibility for packing waste to prevent its escape in transit. Waste leaving producers should be packed in a way that subsequent holders can rely on.

B.5 Using a registered or exempt carrier does not necessarily let a producer out of all responsibility for checking the later stages of the disposal of his waste. The producer and the disposer may sometimes make all the arrangements for the disposal or recovery of waste, and then contract with a carrier simply to convey the waste from one to the other. Such a case is very little different in practice from that where there is no intermediate carrier involved. If a producer arranges disposal or recovery then he should exercise the same care in selecting the disposer or recoverer as if he were delivering the waste himself.

B.6 It is not possible to draw a line at the gate of producers' premises and say that their responsibility for waste ends there. A producer is responsible according to what he knows or should have foreseen. So if he hands waste to a carrier, not only should it be properly packed when transferred, but also the producer should take account of anything he sees or learns about the way in which the carrier is subsequently handling it. The producer would not be expected to follow the carrier but he should be able to see whether the waste is loaded securely for transport when it leaves, and he may come to learn or suspect that it is not ending up at a legitimate destination. A producer may notice a carrier's lorries returning empty for further loads in a shorter time than they could possibly have taken to reach and return from the nearest lawful disposal site; or a producer may notice his carrier apparently engaged in the unlawful dumping of someone else's waste. These would be grounds for suspecting illegal disposal of his own waste. The same reasoning applies when a producer makes arrangements with a waste manager for the disposal, treatment or recovery of waste. The producer shares the blame for illegal treatment of his waste if he ignores evidence of mistreatment. A producer should act on knowledge to stop the illegal handling of waste (see paragraphs 5.5-5.12).

Waste importers

B.7 Revised legislative requirements mean that waste importers and exporters face stringent controls and in some cases, prohibitions on transfrontier shipments of waste.

Consent to movements of waste must be obtained from the competent authorities involved and full details about each shipment must be given on a consignment note (Annex D D.14-D.15).

Waste carriers

B.8 A waste carrier is responsible for the adequacy of packaging while waste is under his control. He should not rely totally on how it is packed or handed over by the previous holder. He should at least look at how it is contained to ensure that it is not obviously about to escape. His own handling in transferring and transporting waste should take account of how it is packed, or if necessary, he may need to repack it or have it repacked to withstand handling.

B.9 A waste carrier would not normally be expected to take particular measures to provide a new description of the waste he carried unless he altered it in some way. The description would normally be provided by the waste producer, unless the producer is a householder not subject to the duty, in which case the person first taking waste from the householder would have to ensure that a description was furnished to the next holder. When accepting any waste a carrier should make at least a quick visual inspection to see that it appears to match the description, but he need not analyse the waste unless there is reason to suspect an anomaly or the waste is to be treated in some way not foreseen by the producer.

B.10 If a carrier or any other intermediate holder does alter waste in any way, by mixing, treating or repacking it, he will need to consider whether a new description is necessary. The description received may continue to serve for waste that is merely compacted or mixed with similar waste, but if it has deteriorated or decomposed or if it has been altered in any way that matters for handling and disposal then a new description should be written.

B.11 Where there is a contract between the producer and the waste manager and a carrier is contracted solely to provide transport, he may rely on the producer checking the scope of the licence or exemption of the waste manager to whom the waste is delivered. In other cases the carrier should check this himself.

Waste brokers

B.12 A waste broker arranging the transfer of waste between a producer and a waste manager, to such an extent that he controls what happens to the waste, is taking responsibility for the legality of the arrangement. He should ensure that he is as well informed about the nature of the waste as if he were discharging the responsibilities of both producer and waste manager. He is as responsible as either for ensuring that a correct and adequate description is transferred, that the waste is within the scope of any waste licence or exemption, that it is carried only by a registered or exempt carrier and that documentation is properly completed. As he does not directly handle the waste, he cannot be held responsible for its packaging. However, he may be in a position to advise producers on appropriate methods of packaging or containment if he has greater knowledge of how the waste will be handled once it is removed from the producers' premises. He should also undertake the same level of checks after transfer, and the same action on any cause for suspicion, as a waste holder.

Waste managers

B.13 Waste managers, like waste carriers, should normally be able to rely on the description of waste supplied to them. However, in disposing, treating or recovering waste they are in a stronger position to notice discrepancies between the description and the waste and therefore bear a greater responsibility for checking descriptions of waste they receive. Sample checks on the composition of waste received would be good practice.

B.14 Waste managers are also in a good position to notice that waste has not been properly dealt with or falsely documented before it reaches them. For example, a waste manager may receive waste that is documented as coming directly from one producer but which shows signs of having been mixed or treated at some intermediate stage. A manager is to some extent responsible for following up evidence of previous misconduct just as he is for subsequent mismanagement of waste, that is to the extent that he knew or should have foreseen it and to the extent that he can control what happens.

REGULATIONS ON KEEPING RECORDS

C.1 The 2002 Regulations²³ are made under section 5(7) of the 1997 Order and require all those subject to the duty to make records of waste they receive and consign, to keep the records for at least 2 years and to make them available to the Department.

C.2 The 2002 Regulations require each party to any transfer to keep a copy of the description which is transferred. An individual holder might transfer onward the description of the waste that he received unchanged in which case it would be advisable for the sake of clarity to endorse the description for onward transfer to the effect that the waste was sent onwards as received. If a different description of waste is transferred onwards, whether or not this reflects any change in the nature or composition of the waste, then copies of both descriptions must be made. The holder making the copy need not be the author of the description, which will often be written only by the producer or broker and reused unchanged by each subsequent holder.

C.3 The Regulations also require the parties to complete sign and keep a transfer note. The transfer note contains information about the waste and about the parties to the transfer.

Season ticket provisions

C.4 While all transfers of waste must be documented, the 2002 Regulations do not require *each* individual transfer to be separately documented. Where a series of transfers of waste of the same description is being made between the same parties, provision is made for the parties to agree a "season ticket" – i.e., one transfer note covering a series of transfers. Article 5(6) of the 1997 Order provides that:-

- (a) a transfer of waste in stages shall be treated as taking place when the first stage of the transfer takes place; and

²³ The Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 271)

(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."

A season ticket might be used, for example, for the weekly or daily collections of waste from shops or commercial premises, or the removal of a large heap of waste by multiple lorry trips. In the Departments' view, however, a season ticket should not extend for a period of more than 12 months from the date on which the first of the transfers subject to the arrangements takes place.

Duty of care: Controlled waste transfer note

C.5 The 2002 Regulations require these records (both the descriptions and the transfer notes) to be kept for at least two years. Holders (which includes, where relevant, brokers) must provide copies of these records if requested by the Department.

C.6 One purpose of documentation is to create an information source of use to other holders. It is open to holders (including, where relevant, brokers) to ask each other for details from records, especially to check what happened to waste after it was consigned. A holder or broker might draw conclusions and alert the Department to any suspected breach of the duty if such a request were refused.

Format of the record

C.7 There is no compulsory form for keeping these records. It is recognised that a number of holders already keep records of waste in a manner that meets the requirements of the 2002 Regulations with little or no further adaptation. The consignment note for special waste can be properly completed so as to fulfil the duty of care requirements (Annex D paragraphs D.9-D.11). Similarly, the consignment note system for transfrontier shipments of waste which involves the use of movement and tracking forms should, if properly completed satisfy the duty of care arrangements (Annex D paragraphs D.14-D.15).

C.8 A suggested standard form for voluntary use is included in this Annex. It should be noted that the boxes on the model form are consistent with the requirements of Article 5(l) of the 1997 Order and with the requirements of the 2002 Regulations. This means that where existing documentation systems are adapted to meet the transfer note requirements of the duty of care, all of this information should be included.

C.9 Breach of any provision of the 2002 Regulations is an offence.

DUTY OF CARE: CONTROLLED WASTE TRANSFER NOTE

Section A – Description of Waste

1. Please describe the waste being transferred:
2. What is the European Waste Catalogue (EWC) Code:
3. How is the waste contained?
Loose Bags Skip Drum Other → please describe:
4. What is the quantity of waste (number of bags, weight, etc)

Section B – Current holder of the waste (Transferor)

1. Full Name (BLOCK CAPITALS):
2. Name and Address of Company:
3. Which of the following are you? (Please ✓ one or more boxes)

<i>producer of the waste</i> <input type="checkbox"/>	<i>holder of waste disposal or waste management licence</i> <input type="checkbox"/>	→	<i>Licence number: Issued by:</i>
<i>importer of the waste</i> <input type="checkbox"/>	<i>exempt from requirement to have a waste disposal or waste management licence</i> <input type="checkbox"/>	→	<i>Give reason:</i>
<i>District Council</i> <input type="checkbox"/>	<i>registered waste carrier</i> <input type="checkbox"/>	→	<i>Registration number:</i>
	<i>exempt from requirement to register</i> <input type="checkbox"/>	→	<i>Give reason:</i>

Section C – Person collecting the waste (Transferee)

1. Full Name (BLOCK CAPITALS):
2. Name and Address of Company:
3. Which of the following are you? (Please ✓ one or more boxes)

	<i>authorised for transport purposes</i> <input type="checkbox"/>	→	<i>Specify which of those purposes:</i>
<i>District Council</i> <input type="checkbox"/>	<i>holder of waste disposal or waste management licence</i> <input type="checkbox"/>	→	<i>Licence number: Issued by:</i>
	<i>exempt from requirement to have a waste management licence</i> <input type="checkbox"/>	→	<i>Give reason:</i>
	<i>registered waste carrier</i> <input type="checkbox"/>	→	<i>Registration number:</i>
	<i>exempt from requirement to register</i> <input type="checkbox"/>	→	<i>Give reason:</i>

Section D

1. Address of place of transfer/collection point:
2. Date of transfer:
3. Time(s) of transfer (for multiple consignments, give 'between' dates):
4. Name and address of broker who arranged this waste transfer (if applicable):
5. Signed:

Transferor	Transferee
Signed: Full Name: (BLOCK CAPITALS) Representing:	Signed: Full Name: (BLOCK CAPITALS) Representing:

OTHER LEGAL CONTROLS

D.1 This code offers guidance on the discharge of a waste holder's duty of care under Article 5 of the 1997 Order. Holders are also subject to other statutory requirements, some of the most important of which are set out here.

i. Waste management licensing

Current controls

D.2 Under the Pollution Control and Local Government (Northern Ireland) Order 1978²⁴ waste disposal licences, currently the responsibility of district councils, are required to authorise:-

- (a) deposit of controlled waste on land;
- (b) disposal of controlled waste by means of plant or equipment; and
- (c) use of plant or equipment to deal with controlled waste in one of the ways prescribed in Schedule 5 to the Waste Collection and Disposal Regulations (Northern Ireland) 1992²⁵ (SR 1992 No. 254, published by HMSO). Briefly, treating waste by baling, compacting, incinerating, pulverising, sorting, storing, processing, shredding, or composting may require a licence.

D.3 Exemptions from the requirement to have a waste disposal licence for any of the activities listed above are to be found in Schedule 6 to the Waste Collection and Disposal Regulations (Northern Ireland) 1992.

²⁴ S.I. 1978/1049 (N.I.19)

²⁵ As amended by S.R. 1997 No. 52 and S.R. 1998 No. 289

Future controls

D.4 The 1997 Order makes provision for a new system of waste management licensing and for the transfer of the licensing function from District Councils to the Department. Proposals for the new licensing system will be the subject of separate consultation. However, under the 1997 Order licences will be required to authorise:-

- (a) the deposit of controlled waste in or on land;
- (b) the disposal and treatment (including recovery) of controlled waste;
- (c) the use of certain mobile plant to dispose of or treat controlled waste.

D.5 Exemptions from these requirements are prescribed in regulation 10 of the Controlled Waste Regulations (Northern Ireland) 2002²⁶.

ii. The registration of waste carriers

D.6 Subject to certain exemptions, Article 38(1) of the 1997 Order makes it an offence to transport controlled waste without being registered with the Department as a waste carrier. The requirement to register applies to any person who transports controlled waste which that person has not produced themselves, to or from any place in Northern Ireland in the course of any business of his or otherwise with a view to profit. The exception to this is construction (which includes improvement, repair or alteration) and demolition contractors who are required to register even if they are transporting their own waste. For this purpose, "transport" includes the transport of waste by road, rail, air, sea or inland waterway. It should be noted that construction (which includes improvement, repair or alteration) and demolition contractors would have to be registered as carriers if they wished to transport such waste, even if they had produced it themselves, and the transport of such waste when not registered would constitute a breach of the duty of care.

²⁶ S.R. 2002 No. 248

The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999²⁷ require the Department to establish and maintain a register of waste carriers; and set out the basis on which the registration system operates. Guidance on registration can be obtained from the Department's Environment and Heritage Service, which has responsibility for the registration of carriers and enforcement of the scheme.

D.7 Anyone subject to the duty of care must ensure that, if waste is transferred, it is transferred only to an authorised person or to a person for authorised transport purposes. Among those who are "authorised persons" are:-

- (a) any person registered with the Department as a carrier of controlled waste; and
- (b) any person who is exempt from registration by virtue of regulations made under Article 38(3) of the 1997 Order. The exemptions at present in force are set out in regulation 2 of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999.

D.8 It is not an offence under Article 38(1) the 1997 Order to transport controlled waste without being registered in the circumstances set out in (a)-(c) below. The following are also "authorised transport purposes" for the duty of care:

- (a) the transport of controlled waste between different places within the same 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 and is not landed in Northern Ireland until it arrives at that place. This means that the requirement to register as a carrier applies only from the point at which imported waste is landed in Northern Ireland; and
- (c) the transport by air or sea of controlled waste being exported from Northern Ireland.

²⁷ S.R. 1999 No. 362

iii. Special waste

D.9 Certain particularly difficult or dangerous wastes ("special wastes") are subject to additional requirements in the Special Waste Regulations (Northern Ireland) 1998²⁸ made under the 1997 Order.

D.10 Special waste is subject to the duty of care, including the guidance in the code of practice and the requirements of the 2002 Regulations, in the same way as other controlled waste. Compliance with the duty of care does not in any way discharge the need also to comply with the Special Waste Regulations.

D.11 The consignment note (obtained from EHS) for special waste can be properly completed so as to fulfil the duty of care requirements; a separate transfer note is not then required.

iv. Road transport of dangerous substances

D.12 Waste holders have obligations in respect of the regulations and associated codes of practice concerned with the transport of dangerous substances. For national transport the primary regulations are:-

- (a) Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations (Northern Ireland) 1997 (SR 1997 No 247 as amended by SR 1997 No 360, SR 1998 No 438, SR 1998 No 448, SR 1999 No 150 and SR 2000 No 119).
- (b) Carriage of Dangerous Goods by Road Regulations (Northern Ireland) 1997 (SR 1997 No 248 as amended by SR 1998 No 448 and SR 1999 No 150).
- (c) Carriage of Dangerous Goods by Road (Driver Training) Regulations (Northern Ireland) 1997 (SR 1997 No 249 as amended by SR 1998 No 125, SR 1999 No 150 and SR 2000 No 119).

²⁸ S.R. 1998 No. 289

- (d) Carriage of Dangerous Goods by Rail Regulations (Northern Ireland) 1998 (SR 1998 No 131 as amended by SR 1998 No 448 and SR 1999 No 150).
- (e) Dangerous Substances in Harbour Areas Regulations (Northern Ireland) 1991 (S.R. 1991 No. 509 as amended by S.R. 1992 No. 260, S.R. 1993 No. 412, SR 1995 No 47, SR 1995 No 60, SR 1997 No 247, SR 1998 No 448 and SR 1999 No 150).

D.13 The Regulations listed above are supplemented by:-

The Approved Carriage List (3rd Edition)-Information approved for the carriage of dangerous goods by road and rail other than explosives and radioactive material (ISBN 0-7176-1681-9); and

The Approved Requirements and test methods for the classification and packaging of dangerous goods for carriage (ISBN 0-7176-1221-X).

Both these documents are published in Great Britain by the Health and Safety Executive, but have been approved by the Health and Safety Executive for Northern Ireland for use in Northern Ireland. They are available from HSE Books, PO Box 1999, Sudbury, Suffolk CO10 6FS; Tel: 01787 881165, Fax 01787 313995.

v. International waste transfers

D.14 Waste importers or exporters must act according to the requirements of the EC Waste Shipments Regulation (259/93/EEC) and the associated Transfrontier Shipment of Waste Regulations 1994 (S.I. 1994 No 1137).

D.15 The EC Regulation requires pre-notification of and consent to movements of waste, with the details of each shipment set out on a consignment note. (Non-hazardous waste moving for recovery does not need to be pre-notified). The consignment note adopted by the EC is the Organisation for Economic Co-operation and Development (OECD) notification and movement/tracking form. It is generally agreed in the UK that copies of both documents

should accompany each shipment. These two documents together should satisfy the duty of care requirements. Forms are issued by UK/EC competent authorities of dispatch or destination, except for imports of waste for recovery into the EC from an OECD country where they are issued by the competent authority of dispatch in that country.

vi. Health and safety

D.16 Waste holders have a duty to ensure, so far as is reasonably practicable, the health and safety of their employees and other persons who may be affected by their actions in connection with the use, handling, storage or transport of waste, by virtue of Articles 4 and 5 of the Health and Safety at Work (Northern Ireland) Order 1978²⁹.

D.17 Holders also have specific duties under health and safety regulations, including the Control of Substances Hazardous to Health Regulations (Northern Ireland) 2000 (SR 2000 No 120 and in particular the requirement to carry out an assessment of the risks of their activities as required by the Management of Health and Safety at Work Regulations (Northern Ireland) 2000 (S.R. 2000 No 388).

²⁹ S.I. 1978/1039 (N.I.9)

GLOSSARY OF TERMS USED IN THIS CODE OF PRACTICE

The 1997 Order: The Waste and Contaminated Land (Northern Ireland) Order 1997.

The 1978 Order: The Pollution Control and Local Government (Northern Ireland) Order 1978.

The 2002 Regulations: The Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 271).

Broker: a person who arranges for the disposal or recovery of controlled waste on behalf of another. Such arrangements will include those for the transfer of waste. He does not handle waste himself or have it in his own physical possession, but he controls what happens to it. However, for convenience, brokers are included within the term "waste holder" as it is used in the code of practice.

Carrier: a person who transports controlled waste.

A registered carrier is registered with the Department of the Environment under the 1997 Order to transfer controlled waste within Northern Ireland.

An exempt carrier is a waste carrier who is not required to register under the 1997 Order because:-

- (a) he is exempt from registration by virtue of regulation 2 of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999; or
- (b) he is transporting waste in the circumstances set out in Article 38(3) of the 1997 Order. These circumstances are also "authorised transport purposes" as defined in Article 5(5) of the 1997 Order.

Controlled waste: as defined in Article 36 of the 1978 Order, Article 2 of the 1997 Order and the Controlled Waste Regulations (Northern Ireland) S.R. 2002 No. 248. That is, household, commercial and industrial waste. Article 2, paragraph 6 and schedule 1 to the 1997 Order assigns to "waste" the meaning it has in the Waste Directive.

Directive waste: as defined in Article 2(6) and Schedule 1 to the 1997 Order. Directive waste is subject to control as household, industrial or commercial waste (i.e., as "controlled waste").

Disposal operation: "disposal" as defined in Article 2(2) of the 1997 Order.

Environment and Heritage Service (EHS): an Agency within the Department of the Environment. It is responsible for implementing the Government's environmental policy on waste management and provides detailed professional advice on related matters. It is located at Commonwealth House, 35 Castle Street, Belfast BT1 1GU. Telephone 028 9054 6450, Fax 028 9054 6404, E-mail – Website – <http://www.ehsni.gov.uk>

European Waste Catalogue: The European Waste Catalogue (EWC) was created by European Commission Decision 94/3/EC, which was replaced by 2000/532/EC, as amended by 2001/118/EC and 2001/119/EC. The EWC lists waste using a six-digit code system based loosely on the source of the waste.

Exempt waste manager is one exempted from licensing by regulations under Article 4(3) of the 1997 Order.

Holder: means a person who imports, produces, carries, keeps, treats, or disposes of controlled waste or, as a broker, has control of it.

Licensed waste manager is one in possession of a licence under Article 6 of the 1997 Order or, for a transitional period, under Article 7 of the 1978 Order.

Producer: means anyone whose activities produce [Directive] waste or who carries out pre-processing, mixing or other operations resulting in a change in its nature or composition.

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 tool tips or dies made of any of the materials commonly known as hard metal or of cemented or sintered metallic carbides. (The Waste Collection and Disposal Regulations (Northern Ireland) 1992 SR. 1992 No. 254).

Special Waste: has the meaning given by Regulation 2 of the Special Waste Regulations (Northern Ireland) 1998 SR 1998 No. 289

Transferee: The person to whom waste is transferred.

Transferor: The person transferring the waste to another person.

Waste collection authority: a district council responsible for collecting waste in accordance with Article 20 of the 1997 Order.

Waste Directive: Council Directive 75/442/EEC as amended by Directives 91/156/EEC and 91/692/EEC. The Directive provides a common European definition of waste; it requires the control through licensing of waste recovery and disposal operations; and defines the circumstances under which exemptions from licensing may be made.

Waste disposal authority: A district council responsible for arranging the disposal of waste in accordance with Article 25 of the 1997 Order.

Waste regulation authority: The Department of the Environment charged with the issue of waste management licences under Article 6(1) of the 1997 Order or, for a transitional period until Article 6 comes into operation, a district council charged with issuing waste disposal licences under Article 7(1) of the 1978 Order.