

Duty of care obligations between Local Authorities and Waste Treatment Facilities

This document describes in practical terms how the Duty of Care law applies to organic waste collections (garden waste, food waste and mixed garden and food waste) by Local Authorities or their contractors.

The [Environmental Protection Act](#) (1990) (EPA), section 34(7), sets out the duties which applies to all those producing, carrying, keeping, disposing, treating, importing, or disposing of controlled waste (or as a dealer or broker) in England and Wales. The [code of practice](#) sets out practical guidance on how to meet waste duty of care requirements. The duty of care legislation (section 34(1) of the EPA requires that anyone dealing with waste keeps it safe and deals with it responsibly, including by only giving waste to those authorised to take it.

Failures by any of the waste holders to comply with their duty of care requirements is a criminal offence that could face prosecution, with fines facing no upper limits in courts.

Who duty of care applies to

The duty of care applies to anyone who imports, produces, carries, keeps, treats, disposes of, or are a dealer or broker that has control of, controlled waste (referred to in the Code of Practice as a 'waste holder')

Domestic households are not bound by the Code to the same extent as other waste stakeholders, instead only requiring that they ensure that all reasonable measures are taken to ensure waste is transferred to an authorised person (usually, the Local Authority (LA)).

Duty of care obligations for waste holders

The Waste Duty of Care Code of Practice states that there is a requirement that the waste holder (the local authority or waste holder) must take all reasonable steps to:

- Prevent unauthorised or harmful deposit, treatment or disposal of waste (see [code of practice](#) section 3.1). *Contaminated waste shall be prevented as there is risk to the environment.*
- Prevent a breach (failure) by any other person to meet the requirement to have an environmental permit, or a breach of a permit condition (see code of practice section 3.2). *That is that they must present waste that does not cause a site operator to breach their permit - see below.*
- Ensure that any person you transfer the waste to has the correct authorisation (see code of practice section 3.4). *If a permit states that there is a level of contamination that is permitted and a waste holder deposits waste with in breach of the permit condition then waste may be deposited at a site without the right permission.*
- Provide an accurate description of the waste when it is transferred to another person (see code of practice sections 3.5 and 3.6). *If the waste is heavily contaminated it may not meet the description of source segregated biodegradable waste.*

Prevent a breach of an environmental permit or breach of a permit condition

Environmental permits set out specific conditions on how a waste operation must be carried out. The conditions will include limits to the amount of waste that can be handled, restrictions to the types of waste that can be handled, and measures that need to be put in place to protect the environment and human health.

Examples of activity that would breach a permit condition or exemption limit include the transfer of waste:

- to a facility that does not have an appropriate permit or exemption to accept or manage that type of waste
- in a condition which means that it cannot be managed or stored safely pending removal - for example, waste being stored outside the confines of buildings or bunds or with a level of contamination that exceeds what is allowed in the permit.
- in a quantity that causes a facility to exceed the limits allowed by its permit or exemption - for example, increasing or expanding piles of waste

Frequently asked questions

Q - Is a local authority collecting waste from householders classed as a waste holder in terms of their duty of care obligations?

A - Yes. All those covered by the duty of care (ie. imports, produces, carries, keeps, treats, disposes of, or control waste) are referred to as waste holders. Local Authorities collecting waste directly from householders will be waste holders. If they use a contractor for waste collection, they may be a broker.

Q - Is there a difference for Local Authorities who charge for garden waste collections?

A - No, charging is a separate decision and doesn't affect the duty of care obligations.

Q - At what point is a local authority responsible for the waste they collect from a household and when does their duty of care cease?

A - It applies when they collect the waste up to the point that the duty of care is transferred to the waste treatment provider - i.e. acceptance of the waste for treatment. Failure to comply with the duty of care requirements is a criminal offence and could lead to prosecution.

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