

**WASTE MANAGEMENT**

**THE DUTY OF CARE**

**A CODE OF PRACTICE**

**FOR NORTHERN IRELAND**

Issued under Article 5 of the  
WASTE AND CONTAMINATED LAND (NORTHERN  
IRELAND) ORDER 1997



Department of the  
**Environment**  
[www.doeni.gov.uk](http://www.doeni.gov.uk)

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## Waste Management: The Duty of Care A Code of Practice

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## INTRODUCTION

Everyone produces waste. This waste can pose a threat to the environment and human health if it is not managed properly and recovered or disposed of safely. Article 5 of the Waste and Contaminated Land (Northern Ireland) Order 1997 **imposes** a duty of care on anyone who handles controlled waste. In other words it applies to anyone who imports, produces, collects, carries, keeps, treats or disposes of controlled waste, or, who, as a broker or dealer, has control of such waste. It says you **must** take all reasonable steps to keep your waste safe and if you give your waste to someone else you **must** be sure they are authorised to take it and can deal with it or dispose of it safely.

An effective duty of care can help to ensure that waste is dealt with properly and can lead to a reduction in waste crime such as fly-tipping.

The purpose of this code of practice is to provide practical guidance for everyone subject to the Duty of Care. As well as setting out the general requirements of the Duty of Care, the code is split into a series of sections covering waste producers, carriers, managers, brokers/dealers and householders, to help you find the guidance relevant to you. Please note that you may need to refer to more than one section of the guidance depending on your role(s).

Throughout the code of practice, where there is a legal obligation to do something the guidance will state that you '**must**' carry out the relevant action. Where a course of action is not a legal requirement but is recommended as good waste management practice the guidance will state that these actions 'should' be carried out.

## SECTION 1 - Duty of Care with respect to waste

“Waste Management: The Duty of Care – A Code of Practice for Northern Ireland 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 1997<sup>1</sup> (the 1997 Order) and replaces all previous versions applicable to Northern Ireland.

The Code is required by law under Article 5 of the 1997 Order. Breach of the Duty of Care is an offence, which, ultimately, may result in prosecution which on summary conviction is liable to a fine not exceeding the statutory maximum or, an unlimited fine if convicted on indictment. In such cases, the Code is admissible as evidence in court and the court shall take it into account in determining any question to which it appears to be relevant. The intention is that the Code will assist the courts, when hearing cases under Article 5 of the 1997 Order, in determining whether persons subject to the Duty took reasonable measures to comply with it.

As stated in the introduction, the actions contained in this document that are preceded by ‘**must**’, form the statutory sections of the Code.

### 1.1 Key Principles

The “Duty of Care” enshrines in law the requirement for all who import, produce, collect, carry, keep, treat, dispose of, broker in, deal in and process controlled waste, to manage that waste correctly by storing it properly, transferring it only to the appropriate people and ensuring that when it is transferred it is sufficiently well described to enable its safe recovery or disposal without endangering human health or harming the environment.

In general terms ‘waste’ means any substance or object which the holder discards or intends or is required to discard. The Duty of Care concerns those wastes defined as controlled waste, which, for the most part, will be produced by businesses. It is designed, essentially, to be a self-regulating system which is based on good business practice. Therefore, anyone who imports, produces, collects, carries, keeps, treats, disposes of, brokers or deals in controlled waste has a role to play in policing the Duty of Care, ensuring all other parties comply with the requirements. Failure to comply may lead to enforcement action under the 1997 Order.

If the waste comes from your own home, the Duty of Care does apply to you in certain circumstances. If you are a householder and you are passing waste onto someone who is not your district council waste collector you **must** check that the person you are handing your waste to is authorised to take it. You can check this with the Northern Ireland Environment Agency (NIEA) or online at [http://www.doeni.gov.uk/niea/waste-home/public\\_reg.htm](http://www.doeni.gov.uk/niea/waste-home/public_reg.htm).

If you are a householder please see Section 4.5 on your obligations as a householder for details of what to do. If the waste is not from the house you live in – for example, if it is waste from your workplace, waste from someone else’s house or from your or someone else’s business the Duty of Care will apply to you entirely.

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<sup>1</sup> S.I. 1997 No. 2778 (N.I.19)

To comply with the Duty of Care you **must** take reasonable steps, based on the way in which you hold waste, to:

- prevent the escape of waste while you hold it and whilst it is being held by others after being transferred;
- provide written information which describes the waste, when you transfer it to another person, sufficiently well to allow them to comply with their duties;
- ensure that you only transfer waste to a person authorised to receive it;
- prevent waste causing pollution or harm, both when it is under your control and, subsequently, when it is under the control of those to whom the waste is transferred;
- demonstrate that you have taken into account the Waste Hierarchy when making decisions on the management of your waste; and
- prevent contravention by other persons of duties they may have under environmental permitting legislation.

This Code covers the Duty of Care relevant to all aspects of waste management. To make the process of using it easier, the sections have been determined by roles. To assist readers in determining their role within the Duty of Care, a flowchart (page 15) has been developed to lead the reader to the relevant guidance.

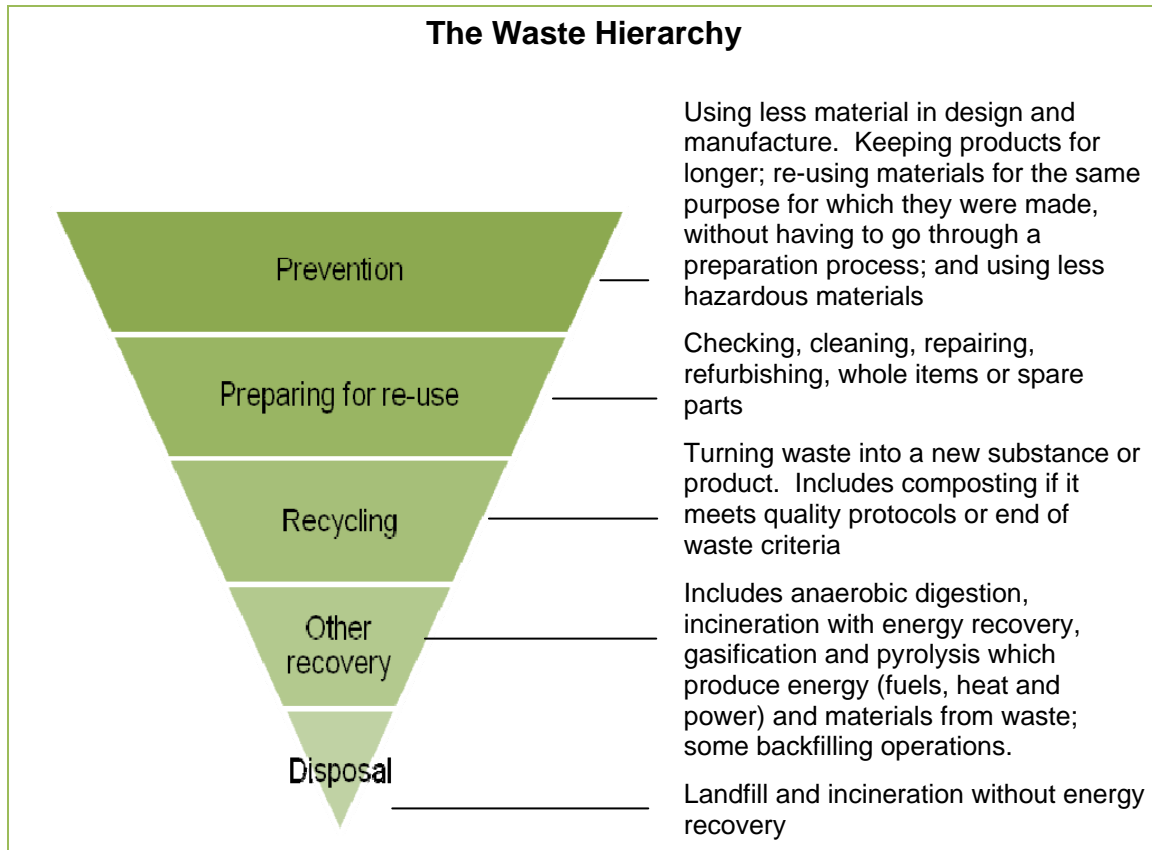
Some readers may need to read more than one section of guidance, depending on their role(s) within the Duty of Care. For example, if you are a waste producer and carrying your own waste, you will need to read the sections on both waste producer and waste carrier responsibilities.

Where the waste is described as hazardous then you will need to refer to the Hazardous Waste Regulations and supporting guidance which can be found at [http://www.doeni.gov.uk/niea/waste-home/regulation/regulations\\_hw/further\\_information.htm](http://www.doeni.gov.uk/niea/waste-home/regulation/regulations_hw/further_information.htm).

## **1.2 Waste Hierarchy**

Waste is more than just waste. It can also be a valuable resource. Many of the items we use can be re-used, recycled or even used to produce energy (known as recovery) and all of these options should be considered before we resort to the last option for our waste – disposal (eg landfill). However, before we do any of these we should find ways to reduce the amount of waste we produce in the first place.

To help achieve this, the revised Waste Framework Directive (WFD) introduced a “Waste Hierarchy” which ranks waste management options according to what is best for the environment. In transposing the requirements of the Waste Framework Directive, the Waste Regulations (Northern Ireland) 2011 (the 2011 Regulations) introduce a requirement for waste holders to take all such measures available as are reasonable in the circumstances to apply the Waste Hierarchy as a priority order.



This Code outlines what the waste hierarchy means for holders of waste, depending on their role(s). Separate guidance is available on the application of the Waste Hierarchy, which waste holders are expected to demonstrate compliance with (where possible) when making decisions about the management of waste. This can be viewed on the DOE website at:

[http://www.doeni.gov.uk/index/protect\\_the\\_environment/waste.htm](http://www.doeni.gov.uk/index/protect_the_environment/waste.htm)

### 1.3 Key Terms

**Broker** - A person, establishment or undertaking arranging the recovery or disposal of controlled waste on behalf of others, including brokers who do not take physical possession of waste.

**Carrier** - A person who transports controlled waste in the course of their business and who is required to be registered with NIEA as a carrier of controlled waste under Regulation 6 of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999 (as amended).

**Dealer** - A person, establishment or undertaking which purchases and subsequently sells controlled waste, including those dealers who do not take physical possession of that waste.

**Normally and Regularly** – Those who do not normally and regularly transport controlled waste do not need to register as a carrier of waste.

Normally and regularly is perhaps best defined by example - if a small retailer normally and regularly produces waste and this waste is normally taken away by a waste contractor or district council then the retailer does not normally carry that waste – no need to register.

If the waste contractor for some reason does not collect the waste on an occasion and the retailer is therefore obliged to take their own waste for treatment or disposal on that occasion, then they are not undertaking that activity regularly – no need to register.

If, however, the retailer decides that taking their own waste is cheaper or more convenient and they continue to carry their own waste, then they will be doing so normally and regularly and would need to register as a carrier.

**Specified Persons** - Anyone who normally and regularly carries waste must register as a waste carrier with NIEA. There are fees and charges for such registration, except in the case of those 'specified in regulation 1(2) of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999 (the 1999 Regulations) as amended by regulation 28 of the 2011 Regulations, who are required to register but who are exempted from the fees and charges.

Until 2006, most of those now listed as 'specified persons' in the 2011 Regulations were exempted from the requirement to register as a waste carrier. However, in 2005, the then European Court of Justice found that this was in breach of the WFD. Accordingly, this situation was amended by way of an amendment to paragraph 12 of Part 1, Schedule 3 to the Waste Management Licensing Regulations (Northern Ireland) 2003 (the 2003 Regulations), via the Waste Management Licensing Regulations (NI) 2006, which required those who were previously exempted, to register by 31 January 2007, if they collect or transport waste on a professional basis.

The revised WFD now states that anyone who 'normally and regularly' transports waste must register. This means that anyone who carries, deals or brokers in controlled waste as part of their business but who up until the introduction of the 2011 Regulations were exempt from the need to register should do so before 31 December 2013 (see Transitional Exemption below).

**Transfer Note** - A note which **must** be created for any transfer of controlled waste. The exception to this is householders, who are not required to produce transfer notes.

The note **must** be signed by both parties and **must** contain certain information about the waste to be transferred as required by regulation 2 of the Duty of Care Regulations (Northern Ireland) 2002 (the 2002 Regulations), as amended. It **must** contain a written description of the waste and any further information required for the next and subsequent holders of the waste to manage it without causing pollution of the environment or harm. The transferor and transferee must also indicate that they have applied the Waste Hierarchy as required via regulation 17(1) of Part 3 of the 2011 Regulations. An illustrative controlled waste note is provided in Annex 2 of this guidance.

Under UK waste legislation, all businesses have a duty of care to ensure they produce, store, transport and dispose of their waste without harming the environment. One of their responsibilities is to complete Waste Transfer Notes (WTN) and keep them as a record for at least two years.

In the United Kingdom, the current system is paper-based and it results in at least 25 million WTN's being produced a year with around 50 million pieces of paper being stored in filing cabinets, boxes, etc, at any one time.

With a paper-based system, it is very difficult for businesses to track their waste to ensure it is disposed of properly and for regulators to gain an understanding of waste production and disposal. According to the CBI, there is a lack of good quality data for commercial and industrial waste, which means it is difficult to identify opportunities for recycling and recovery.

Building on the experiences and lessons learned from the pilot project run by Defra, the national electronic duty of care (edoc) programme will modernise the way waste data is collected in the UK and greatly enhance the ability to extract good quality data for businesses, regulators and government.

With the support of EU LIFE+ funding, the edoc programme aims to create a national, internet-based system to monitor the waste journey from production to collection, transportation, treatment and disposal.

The Department intends to Consult early next year on the Introduction of the EDOC system in Northern Ireland.

When transporting hazardous waste instead of completing a transfer note under the Duty of Care regime, you should complete a form of consignment note as shown in Schedule 4 of the Hazardous Waste Regulations (Northern Ireland) 2005, as amended by the 2011 Regulations. As for transfer notes, those signing consignment notes must also indicate compliance with the Waste Hierarchy.

Transfer notes and other associated information may be retained in hard copy or in electronic form and must be retained for a minimum of two years. Hazardous Waste consignment notes must be retained for a minimum of three years.

**Transitional Exemption (from registration as carrier, broker or dealer)** - Until the end of 2013, a transitionally exempt carrier, broker or dealer is not required to be registered as a carrier, broker or dealer of controlled waste under the 1999 Regulations, the 2003 Regulations (as amended) or the 2011 Regulations, as applicable. This does not mean that you have to wait until December 2013 to register but that you **must** be registered by 31 December 2013.

**Waste Producer** - Any person (or establishment or undertaking including householders) whose activities produce controlled waste or anyone who carries out pre-processing, mixing or other operations which result in a change in the nature or composition of this waste. The Duty of Care does not apply in its entirety to householders; separate guidance for Householders is also contained in this Code of Practice in Section 4.5.

**Waste Manager** - Anyone who prepares for re-use, treats, recycles, recovers or disposes of controlled waste, including the supervision of such operations and the after-care of disposal sites and includes any actions taken as a broker or dealer.

#### **1.4 What is waste and do I produce any?**

If you run a business, you are almost certain to be a producer of waste. Waste is defined in the Waste Framework Directive as:-

“any substance or object which the holder discards or intends or is required to discard”.

It includes anything you throw away or send for recycling or other recovery.

The first question you need to ask, therefore, is whether any particular substance is "waste".

Whether or not a substance is waste must be determined on the facts of the case and interpretation of the law (which is a matter for the Courts). In the Department's view, the purpose of the Waste Framework Directive is to treat as waste those substances or objects which are viewed as no longer serving a useful purpose, either as a commercial product or by-product. It also ensures that its collection, transport, storage, treatment, recovery and disposal is carried out in such a way that it poses no threat or harm to the environment or human health. 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?”

If the answer to this question is “no” it is a reasonable assumption that the substance or object concerned is not waste. However, as stated above the purpose of the WFD is to ensure that waste is properly managed, and as a result , waste management itself is an industry, with waste having a commercial value.

A distinction must be drawn, therefore, between the normal commercial cycle and the waste commercial cycle. It is also essential to bear in mind that a substance or object does not cease to be waste until it is recycled, that is, that it meets end of waste criteria (or quality protocols), is recovered (such as is spread to land as a fertiliser or is incinerated for the purpose of recovering energy) or is disposed of (eg via landfill or incineration without recovery).

A link to separate, more detailed guidance on the definition of waste will be added to this document when available.

#### **1.5 What are the problems of waste?**

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. However, 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.

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

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

Anything unusual in waste can pose a problem. So can disproportionate quantities of any substance or material. Ordinary household waste and waste from shops or offices often contain small amounts of potentially hazardous substances. This may not cause specific problems if they are mixed in a large quantity of other waste. However, 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.

Certain particularly dangerous or difficult wastes (“hazardous wastes”) are 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 (Northern Ireland) 2002 (“the 2002 Regulations”), in the same way as other controlled waste. However, in addition to the requirements of the Duty of Care, anyone managing hazardous waste must comply with the strict legal controls contained in the Hazardous Waste Regulations (Northern Ireland) 2005 (S.R. 2005 No. 300), as amended by the 2011 Regulations.

## **1.6 Transfer Notes (non-hazardous waste) and Consignment Notes (hazardous waste)**

When waste transfers from one person to another a transfer note or consignment note must be completed, signed and kept by the parties involved. This is a requirement of the 2002/2005 Regulations. Any breach of the Regulations is an offence. Amongst other things, the transfer note must state:-

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

- that the duty to comply with the Waste Hierarchy has been fulfilled.

## **1.7 Description of the Waste**

To facilitate identification, there must also be a description of the waste. This may be provided separately or combined as a single document with the transfer note or consignment note for hazardous waste. The European Waste Catalogue (EWC) 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 7 of EC Directive 2008/98/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:312:0003:0030:en:PDF>

The description of waste should, therefore, 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/consignment note and the description for two years/three years. The description should always mention any special problems, requirements or knowledge. In addition, it should include some combination of:-

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

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 person who will manage the waste what he needs to know. Most wastes need only a simple description, as indicated above. 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 the paragraphs below.

## **1.8 Source of the waste: Type of premises or business**

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.

## **1.9 Name of the substance**

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.

## **1.10 Process producing the waste**

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

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

### **1.11 Physical and chemical analysis**

A description based on the process producing the waste 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:-

- wastes, especially industrial wastes, from different activities or processes are mixed; or
- the activity or process alters the properties or composition of the materials put in.

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.

## **SECTION 2 - Keep the Waste Safely**

### **2.1 The problem**

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

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

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.

### **2.2 Storing waste securely**

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.

### **2.3 Segregation of different categories of waste**

Segregation of different categories of waste where they are produced may be necessary to prevent the mixing of incompatible wastes. Segregation may also 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.

Under the revised Waste Framework Directive as implemented by regulations 18 to 21 of the Waste Regulations (Northern Ireland) 2011 all waste collectors when collecting waste paper, metal, plastic or glass **must**, from 1 January 2015 ensure that those wastes are collected separately (see Glossary of terms). To enable this to take place efficiently and effectively, that waste producers, where feasible, should take all measures possible to segregate their wastes.

Anyone handling Hazardous Waste should already be aware of the ban on mixing hazardous waste. However, Article 18(2) of the WFD introduces an additional condition that must be met to allow a derogation from the ban on mixing hazardous waste, which is that the mixing operation must conform to best available techniques. The WFD also provides that the reclassification of hazardous waste as non-hazardous waste may not be achieved by diluting or mixing the waste with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous. However, Part 4 of the Hazardous Waste (Northern Ireland) Regulations 2005, as originally drafted, bans the mixing of hazardous waste unless it is permitted as part of a disposal or recovery operation, it does not account for diluting waste with the intention of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous. Therefore, the 2005 Regulations have been amended by regulations 52 and 53 of the 2011 Regulations to transpose the new dilution requirements.

## **2.4 Containers**

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 be appropriate for the material put in them.

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 re-used.

## **2.5 Waste left for collection**

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**

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.

The list of those who are authorised persons as well as authorised transport purposes is set out in Article 5(5) of the 1997 Order, which is reproduced in Annex 1.

### **3.1 Public waste collection**

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. 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.

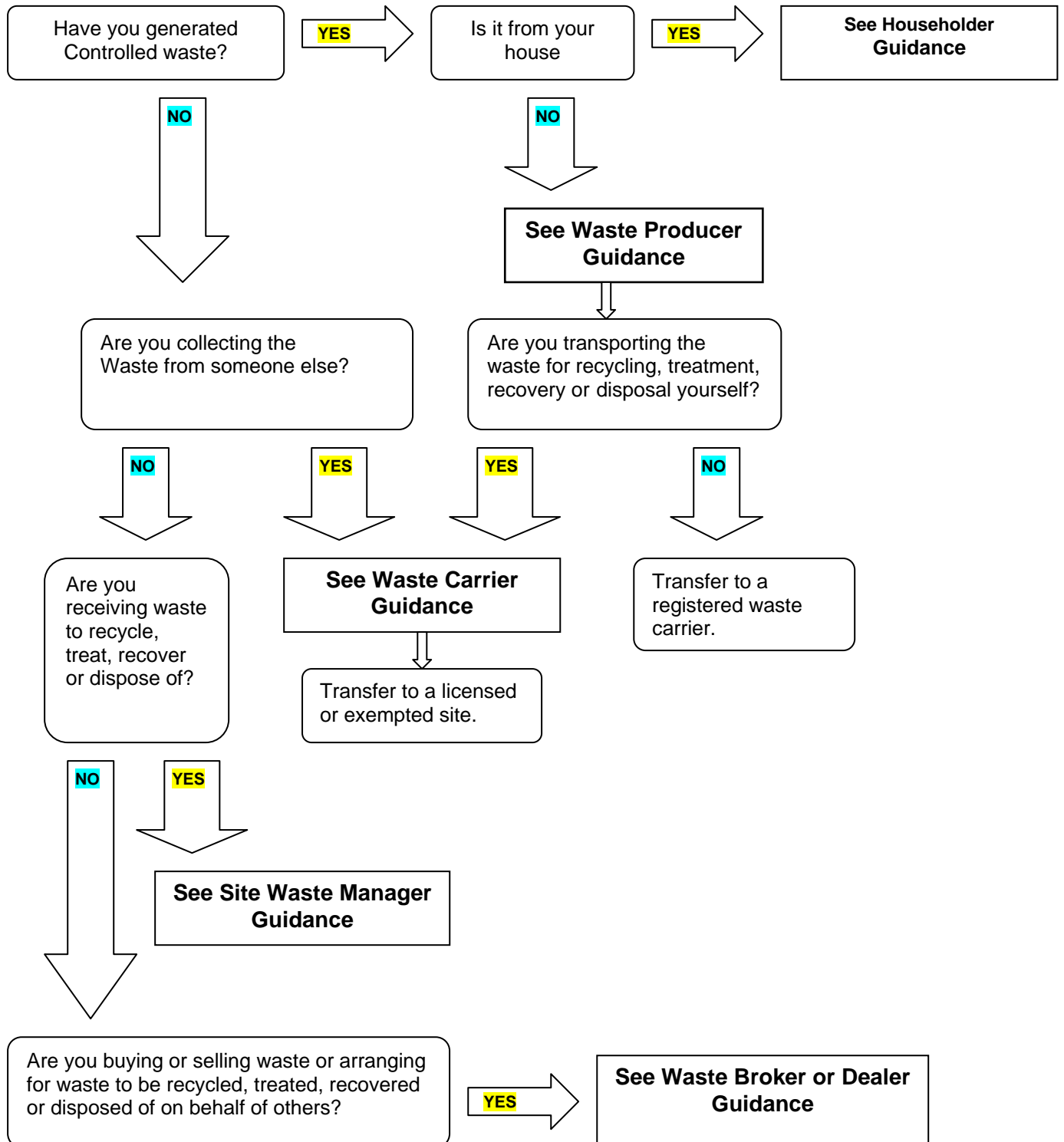
### **3.2 Using a waste carrier**

A waste holder, broker or dealer may transfer waste to someone who transports it - a waste carrier - who may or may not also be a waste manager. Subject to certain exemptions, anyone who regularly and normally carries waste 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, broker or dealer should remain alert to any sign that the waste may not be legally dealt with by a particular carrier.

Further information on what to do if you are a waste carrier can be found in Section 4.2 below.

## Section 4 – Guidance Specific to each type of Waste Holder

### DUTY OF CARE FLOWCHART



**Note:** you also need to be aware of separate guidance on the application of the waste hierarchy when choosing a destination or waste management option for the waste you are holding

## 4.1 Duty of Care – Your Obligations as a Waste Producer

### What are my responsibilities?

As a producer, how you manage waste when it is in your possession will impact on the way it might, subsequently, be managed by others. You, therefore, have the primary role under the Duty of Care. This section offers guidance to ensure that the objectives of the Duty of Care are achieved.

**If the waste is produced on your domestic property you should refer to the guidance given in the householder section of this code of practice. However, some people also produce some commercial waste at their home location, for example if they have a workshop at home. In such instances the Duty of Care that applies is that of a waste producer – as outlined in this section.**

You **must** satisfy yourself that you can transfer the waste in a condition that does not present difficulties to others in complying with their obligations and that the waste is only transferred to an authorised person.

If you operate a waste transfer or treatment facility that changes the composition of the waste, you will be regarded as the producer of the waste subsequently leaving your site. You should, therefore, refer to this producer guidance and comply with the producer obligations. You are also obliged to ensure that your waste is managed in accordance with the Waste Hierarchy.

**In summary, as a waste producer, you must:**

- *ensure that any waste you produce is handled and stored safely, without causing harm or pollution of the environment by you or those who subsequently handle your waste;*
- *take care of the waste while you hold it so that it does not escape from your control;*
- *ensure that the transfer of waste is covered by a waste transfer note including an adequate description of the waste and the signatures of both yourself and the previous holder, or, if appropriate, a Hazardous Waste Consignment note;*
- *ensure that the description of the waste is accurate and contains all the information you are reasonably in a position to give for safe handling, transport, treatment, recovery or disposal by subsequent holders;*
- *ensure your waste is transferred to someone who is authorised to receive it, for example, a waste carrier or waste manager with the relevant waste management licence;*
- *ensure if you are transporting your own waste that you are appropriately registered with the NIEA; and*

- *ensure that copies of all these transfer notes are kept for a minimum of two years or three years in the case of Hazardous Waste consignment notes.*

Where you use a waste broker or dealer, then you both have responsibilities under the Duty of Care. Using a waste broker or dealer does not lessen or remove any of these responsibilities from you in your role as waste producer.

The terms waste, broker, dealer and waste producer are explained in the glossary.

### **What does this mean?**

You and/or your business **must** take all reasonable measures to comply with the Duty of Care whilst the waste is in your possession and when you transfer your waste to somebody else. This means that you **must** take the following steps:

#### **Step 1 - Prevent the Escape of Waste**

You **must not** allow any waste materials to escape from your control and that of your employees.

Containers **must** be suitable for holding the waste so that it does not escape during transport and management, eg, do not place loose powder materials or waste paper in an open builders skip as they are likely to blow away. Such materials **must** be securely contained or bagged.

#### **What must I do when storing waste?**

When waste is being stored at your premises you **must** make sure that waste is stored in:

- A secure location where access to it is limited to persons you have identified. If waste is kept in a less secure location, loose materials or specific objects may be blown or washed away or even stolen. Less secure storage may also attract others to mix their waste with your own. If this occurs it could invalidate the details of your transfer note or season ticket or, in the case of hazardous waste, consignment note and the waste carrier or contractor may charge you more or refuse to accept the waste at their site.
- A location which will prevent vandalism of the containers, for example setting the waste on fire, puncturing of drums containing liquid.
- Containers that are clearly labelled with their contents so that people know what can and cannot be placed in them and the next holder of the waste can clearly see what the containers hold.
- Containers that are stored safely and leakage prevented and controlled.

#### **Where can I get advice about packaging for transport?**

Your waste contractor (waste carrier) should be able to advise you on the packaging requirements for safe transport. If you are employing a waste broker or dealer then you might also be able to obtain such advice from them.

## **Step 2 - Describe Your Waste**

You **must** ensure that any waste being transferred is covered by a waste transfer note/consignment note including an adequate written description that will enable anyone receiving it to manage it in accordance with their own Duty of Care.

If you have not described the waste properly or not passed this description onto the next holder, then you may still be liable if something goes wrong after the waste is transferred.

If you move or receive hazardous waste you need to record this and maintain a register of your records.

### **What information must I provide?**

The transfer note is your evidence of the transfer of waste including the information that was passed on. You **must** produce it when asked by a regulatory officer.

The transfer note **must** contain the following prescribed information:

- An adequate description of the waste.
- Information on the quantity and nature of the waste and how it is contained.
- The appropriate code and description from the List of Wastes Regulations for the waste (commonly referred to as the EWC code).
- Where the waste originated.
- Names and addresses of the transferor (you) and the transferee (eg usually either a waste carrier or a waste licence holder (waste manager)).
- The place, date and time of transfer of the waste. If you are using a season ticket the period for which it is valid (ie valid from dd/mm/yyyy to dd/mm/yyyy).
- If your waste is going to landfill the transfer note **must** contain details of any treatments or processes that have already been applied to the waste. Best practice suggests that all transfer notes **should** contain this information regardless of their destination.
- The signatures of both the transferor and transferee (electronic signatures are acceptable).

Other types of information may be required via transfer notes, such as, where the waste originated.

### **Hazardous Waste**

When hazardous waste is collected from a producer or holder and transferred to another person for them to do something with, that person is a **consignee**.

The Hazardous Waste Regulations state that a consignee must send a completed copy of each consignment note to the NIEA 'forthwith'. They are also required to send the producer/holder/consignor either a completed copy of the consignment note or a prescribed return within 30 days of accepting the hazardous waste.

### **What is an adequate description?**

An adequate description will depend upon the nature of the waste and any treatment or sorting processes that it has already been through. As waste producer you are best placed to describe your waste, especially if it originates from your processes. However, in other cases, for example, for out of date or unused raw materials, it may be sufficient to also include safety data sheets provided by the supplier of such materials.

The description **must** include any special problems associated with the waste in order for subsequent holders to handle the waste properly. In looking for "special problems" it may help to ask yourself and record answers to such questions as:

- Does the waste need a special container to prevent its escape or to protect it from the elements, eg, loose waste?
- Does the waste require particular treatment or separate handling, eg, batteries or WEEE?
- Are the containers robust and suitable, eg, containers in good condition, suitable for the physical nature of the waste?
- Are the containers correctly labelled, with old labels removed to avoid confusion?
- Can it safely be mixed with any other waste or are there wastes with which it should not be mixed, for example, might there be problems with other wastes at a waste transfer station?
- Can it be disposed of safely in a landfill site with other waste?
- What processes have they applied to this waste (segregation, composting, treatment etc)?
- Does it comply with the priority order as set out by the Waste Hierarchy?
- What materials have been removed from this waste (metals, plastics, paper, glass etc)?

- Is it likely to change its physical state during storage or transport, eg, might it give off gas or become liquid, in which case sufficient headspace will need to be provided in containers?
- Are there any other issues with the waste which others should be aware of (smell, liquids leaching from the waste, etc)?

Waste described as “general rubbish” or “muck” would not constitute an adequate description.

### **Hazardous waste.**

If you think you may be producing hazardous waste, or you carry or collect hazardous waste, you should consult NIEA’s guidance to find out if it is hazardous. The guidance can be accessed at: [http://www.doeni.gov.uk/niea/waste-home/regulation/regulations\\_hw.htm](http://www.doeni.gov.uk/niea/waste-home/regulation/regulations_hw.htm)

NIEA also has a detailed technical guidance document called “Hazardous waste: Interpretation of the definition and classification of hazardous waste”, also known as Technical Guidance WM2, which you will need if you are dealing with more complex hazardous waste assessment issues. WM2 can be accessed at [http://www.doeni.gov.uk/niea/wm2\\_interpretation\\_of\\_the\\_definition\\_classification\\_of\\_hazardous\\_waste.pdf](http://www.doeni.gov.uk/niea/wm2_interpretation_of_the_definition_classification_of_hazardous_waste.pdf) and gives comprehensive information to decide if waste is hazardous or not.

### **What else should I do?**

Best practice suggests that you **should** know where and to what type of facility your waste is going. Notably, if your waste is to be:

- Landfilled: Then you should record how you have pre-treated your waste and if not you should record the reason why pre-treatment was not necessary. You will need to determine the waste’s properties by carrying out a basic characterisation. This consists of a three point test which your contractor can help you with (refer to glossary for details of the three point test). If the waste is destined for England, Scotland or Wales, producers will need to comply with the requirements of those jurisdictions.
- Transported to a transfer station where it will be mixed with other wastes: Then you may need to consider if it might be incompatible with other wastes which might react with it or cause problems for subsequent holders.
- Exported: Then you should establish whether the waste is of sufficient quality to meet the criteria for recycling or recovery in the receiving country. Waste should be appropriately segregated, it is illegal to export waste for disposal unless specific arrangements are in place, such as those which allow the movement of certain Hazardous Waste between Ireland and Northern Ireland. See the ***Responsibilities in the Event of Waste Export*** section.

Non-hazardous waste destined for recycling in another country may be referred to as Green List (or in some cases Amber List) Waste. When sending or receiving any waste outside the UK, the Transfrontier Shipment Regulations must be adhered to. For further details refer to NIEA's website

[http://www.doeni.gov.uk/niea/waste-home/regulation/transfrontier\\_shipment\\_of\\_waste.htm](http://www.doeni.gov.uk/niea/waste-home/regulation/transfrontier_shipment_of_waste.htm)

You **must** keep a copy of the transfer note signed by yourself and the person you transfer waste to for at least **two** years. This can be an electronic copy, including electronic signatures, provided an enforcement officer can view it. You also need to keep any additional information with this note such as any analysis results.

You **should** also keep a log of individual loads collected from you under season ticket arrangements. For example, you could request weighbridge tickets from your waste carrier.

If the waste you transfer is hazardous waste, you **must** use consignment notes. Guidance on how to use consignment notes when moving hazardous waste can be found on the NIEA website:

[http://www.doeni.gov.uk/niea/guide\\_to\\_consignment\\_hazardous\\_waste.pdf](http://www.doeni.gov.uk/niea/guide_to_consignment_hazardous_waste.pdf)

Hazardous Waste consignment notes **must** be retained for **three** years.

### **Step 3 - Waste must only be Transferred to an Authorised Person**

You **must** ensure that any person or business you are transferring waste to or who is organising waste transfers for you are registered to do so with NIEA. If they are not registered with the Agency you **must** confirm whether they need to be before they take the waste. If they are not registered appropriately, **do not** give them your waste.

#### **What should I do to check authorised persons details?**

The detail of the checking required will depend on the quantity or nature of the waste you produce. For example, if you produce large quantities of waste or waste which is of an inconsistent or hazardous nature, you might satisfy yourself that the waste manager can accept your waste.

As a minimum you **must** ask for:

- the waste carrier's registration certificate. You can also check if the carrier is registered against the NIEA's public registers [http://www.doeni.gov.uk/niea/waste-home/public\\_reg.htm](http://www.doeni.gov.uk/niea/waste-home/public_reg.htm) to confirm that it is genuine and valid.
- If you are using a broker or dealer you must get confirmation of the broker/dealers registration and check this against the Agency's public register [http://www.doeni.gov.uk/niea/waste-home/authorisation/regulations\\_carrier.htm](http://www.doeni.gov.uk/niea/waste-home/authorisation/regulations_carrier.htm)

- Or if you are carrying the waste yourself: the licence or exemption reference number of the site you are transferring your waste to, so that you can check this against the NIEA's public registers at [http://www.doeni.gov.uk/niea/waste-home/public\\_reg.htm](http://www.doeni.gov.uk/niea/waste-home/public_reg.htm) to confirm that it is genuine and allows for the deposit of your type of waste.

### Where waste might be exported

You **should** also, where waste is to be exported, make checks that the facility identified for processing the waste in the country of receipt is suitable. Further guidance on this can be provided by your waste contractor or [at http://www.doeni.gov.uk/niea/waste-home/regulation/transfrontier\\_shipment\\_of\\_waste.htm](http://www.doeni.gov.uk/niea/waste-home/regulation/transfrontier_shipment_of_waste.htm)

Waste dealers or brokers are often involved where waste is exported.

Waste brokers or dealers **must** be registered in that capacity by NIEA.

Both you and any broker or dealer involved **must** retain documents including any waste description with any additional information for at least **two** years.

### Step 4 - Prevent Your Waste Causing Harm

The term 'harm' is explained in the glossary. It is caused by the unauthorised or inappropriate deposit, treatment, recovery or disposal, etc, of waste, usually at a site which does not have a licence or permit to accept waste or who does not have appropriate licence/permit conditions to accept or manage particular wastes, eg, those who might be fly-tipping or operating illegal waste sites.

#### What do I need to do to prevent harm?

It is not possible to draw a line at the gate of the waste producers' premises and say that your responsibility for waste ends there. A producer remains responsible according to what he 'knows or should have foreseen'.

So, if you hand waste to a waste carrier, not only **must** it be properly packaged when transferred, but you **should** take account of anything you see or learn about the way in which the waste carrier is subsequently handling it. For example, you:

- **Should** be able to see whether the waste is loaded securely for transport when it leaves your premises. If it subsequently falls off the vehicle you could share liability with the waste carrier.
- May notice a waste carrier apparently engaged in the unlawful deposit ("fly-tipping" or "dumping") of someone else's waste.
- May be quoted an unusually cheap price for the transport or management of your waste

These would be grounds for suspecting the illegal handling of your waste by the waste carrier.

The same reasoning applies even when you make arrangements directly (or through a broker) with a waste manager for the treatment, recovery or disposal of your waste. You may share liability with the waste carrier for any harm caused by your waste if you ignore evidence of mistreatment.

A producer should act on any knowledge to stop the illegal handling of waste. Whenever you become aware that your waste is being illegally dealt with you should tell NIEA immediately.

### **What if my waste is hazardous waste?**

Some types of waste are harmful to human health, or to the environment, either immediately or over an extended period of time. These are called hazardous wastes.

Wastes will fall into one of three categories, those that are:

- **Always hazardous**, for example lead acid batteries or fluorescent tubes.
- **Never hazardous**, for example edible oil
- **May, or may not, be hazardous and need to be assessed**, for example, ink or paint

NIEA has put together the following documents to help you determine if your waste is hazardous or not.

[http://www.doeni.gov.uk/niea/classification\\_of\\_hazardous\\_waste\\_17.6.2011.pdf](http://www.doeni.gov.uk/niea/classification_of_hazardous_waste_17.6.2011.pdf) and [http://www.doeni.gov.uk/niea/wm2\\_appendixa2005.pdf](http://www.doeni.gov.uk/niea/wm2_appendixa2005.pdf).

### **When do my obligations as a Producer end?**

Your obligations described above do not end when your waste leaves your premises or is handed over to a waste carrier but may extend further down the waste chain depending upon the nature of your waste (for example, if it is hazardous, presents special problems or is produced in large quantities). It might have properties which might conflict with other wastes received at the site of destination and thereby cause harm or it might be fly-tipped and, subsequently, traced back to you.

If your waste goes to a transfer station or materials recovery facility then your obligations would cease at this point because those facilities carry out activities which change the nature of the waste. That facility would then be the producer of any waste subsequently produced.

To alleviate these problems you should keep records of questions you asked or enquiries you made, such as with NIEA on whether your carrier, broker or dealer was still registered. If something does go wrong with the subsequent management of your

waste then records you have kept are likely to be viewed favourably by the regulator or the courts.

If you move or receive hazardous waste you need to record this and maintain a register of your records, including a copy of the consignment note.

You **must** also maintain records where hazardous waste is disposed, or recovered, at the same site as its production or storage.

As a producer, consignor, holder, carrier, broker, dealer or consignee of hazardous waste you need to:

- keep records in a register of hazardous waste movements; and
- supply specified information to us, or emergency services, as required.

If you are a consignee (you receive hazardous waste) you **must** also:

- keep records (showing waste locations on your site); and
- provide returns to producers, holders or consignors.

All records relating to Hazardous Waste must be retained for a minimum of three years.

## 4.2 Duty of Care – Your Obligations as a Waste Carrier

### What are my responsibilities?

Waste carriers have an important role to play in ensuring that waste is stored, transported, treated and managed correctly. Further guidance on the registration of waste carriers can be found at [http://www.doeni.gov.uk/niea/waste-home/authorisation/regulations\\_carrier.htm](http://www.doeni.gov.uk/niea/waste-home/authorisation/regulations_carrier.htm)

### In summary, as a waste carrier, *you must*:

- *Ensure that any waste that you carry is transported safely without causing harm or pollution to the environment by you or those who subsequently handle your waste.*
- *Take care of the waste while you hold it so that it does not escape from your control (for example waste falling from the vehicle).*
- *Ensure that the transfer of waste is covered by a waste transfer note (or consignment note in the case of hazardous waste) including an adequate description of the waste and the signatures of both yourself and the previous holder.*
- *Ensure that the description of the waste that you receive is accurate and contains all the information necessary for safe handling, transport, treatment, recovery or disposal by subsequent holders.*
- *Ensure that you are appropriately registered with the NIEA.*
- *Ensure that you only transfer the waste to someone who is authorised to receive it, for example, a site with a relevant waste management licence.*
- *Ensure that the transfer of waste from you is covered by a new waste transfer note including an adequate description of the waste (this duty may be shared with the next holder in some circumstances).*
- *Ensure that copies of these transfer notes are kept for a minimum of two years, or three years for consignment notes.*

### What does this mean?

You and/or your business **must** take all reasonable measures whilst the waste is in your possession and when you pass waste on (transfer) to somebody else.

This means that you **must** take the following steps:

#### Step 1 - Prevent the Escape of Waste

You **must not** allow any waste materials to escape from your control during transport.

Vehicles and containers **must**, therefore, be suitable for holding the waste so that it does not escape during transport and management, eg, open builders skips **should not** be overloaded and **should** be netted or covered in some way to prevent wastes falling out.

### **What should I look out for when I come to collect waste?**

When you collect waste from any premises you **should** make sure that:

- The waste is being stored in a secure location and in suitable containers for transport. If waste is kept in a less secure location, other parties may have mixed their waste with that which you are contracted to collect meaning that the waste will not correspond to the description that you have been given, in which case you may need to agree different arrangements.
- Where waste is stored in containers, that these are clearly labelled with their contents so that you know what the wastes are and can confirm that you are collecting the correct waste. Those containers are stored safely and leakage prevented and controlled.
- Containers clearly describe the properties of the waste so that you and the next holder of the waste can clearly see what the containers hold. If you feel that the containers being used are in a poor or unsafe condition you **must not** carry them. You may need to re-pack or have it re-packaged before you feel the waste can withstand transport.
- Open containers such as skips, which have been left in the open for some time may well contain significant amounts of water which may not only have become contaminated, or leak out on the roadway ('escape') but may make the load unstable for transport and may not be acceptable for the site you are taking the waste to.

### **Step 2 – Description of the Waste**

Any waste that you collect **must** be covered by a completed transfer note including an adequate written description that will enable you and the next holder to transport, store or manage it in accordance with the Duty of Care.

#### **What is the Waste Transfer Note?**

The waste transfer note is your evidence of a waste transfer and of the information that was passed on. You **must** produce it when asked to by an enforcement officer.

The transfer note **must** contain the following prescribed information.

- An adequate description of the waste

- Information on the quantity and nature of the waste and how it is contained (eg, does the waste contain batteries or WEEE).
- The appropriate code and description for the waste from the List of Wastes Regulations (commonly referred to as the EWC code).
- Names and addresses of the transferor (the person you have collected waste from) and the transferee (you). When you deposit waste you will then become the transferor.
- The place, date and time of transfer. If you are using a season ticket the period for which it is valid (ie, valid from dd/mm/yyyy to dd/mm/yyyy).
- If the waste is being taken to landfill the transfer note **must** also contain details of any treatments or processes that have already been applied to the waste. Best practice suggests that all transfer notes **should** contain this information regardless of their destination.
- The note **must** be completed and signed by both parties (electronically is acceptable).
- Where applicable, eg, if you are a waste producer who carries his own waste, you must indicate that you have complied with the Waste Hierarchy.

In the case of Hazardous Waste a consignment note must be completed. Additional information, such as the Standard Industry Classification (SIC) code of the business that you have received the waste from (2007 code or 2003 code if it is hazardous waste) should be included in the consignment note.

You **must** keep a copy of the transfer note signed by yourself and the person you have collected waste from and transferred waste to for at least **two** years, or in the case of a Hazardous Waste consignment note, **three** years. This can be an electronic copy, including electronic signatures, provided the enforcement officer can view it. A copy of the transfer note should, in normal circumstances, accompany the waste during transport.

### **What is an adequate description?**

An adequate description will depend upon the nature of the waste and any treatment or sorting process that it has already been through. The waste producer **must** be able to adequately describe waste that has arisen from their processes. They may also be able to provide detailed safety information about specific waste materials.

The description they provide **must** include details such as:

- Does the waste need a special container to prevent its escape or to protect it from the elements?
- Can it be disposed of safely in a landfill site with other wastes?

- Is it likely to change its physical state during storage or transport, eg might it give off a gas or become liquid?

Waste described as “general rubbish” or “muck” would not constitute an adequate description.

You **should** know what and how much waste you are contracted to collect, so that when you arrive to collect any waste you **should**, as a minimum be able to inspect the waste to ensure that it corresponds to the description given to you. It is particularly important to note any waste that may require separate handling or particular treatment (eg, batteries, WEEE).

You **should** also be able to check that there are no items which obviously do not correspond to the description. For example containers, such as paint tins, where you may not be able to determine if they are empty, batteries or WEEE that **must** be managed separately.

The person you are collecting the waste from should be able to provide you with the information you need but you need to confirm that it is correct and that you can meet your own obligations by asking yourself such questions as:

- Is the container overloaded or unsafe to transport?
- Are containers correctly labelled with old labels removed?
- Will I be able to safely cover the container for transport?
- Does the waste match the description I have been given?
- Can the waste be accepted at the intended waste management site?
- Might there be any problems in mixing the waste with others wastes at the transfer station?
- Can it be disposed of safely in a landfill site with other waste?
- Is it likely to change its physical state during storage or transport, eg, might it give off gas or become liquid?

You may need to get advice from the site waste manager to answer some of these.

### **Step 3 - Waste Must be Transferred Only to an Authorised Person**

The person from whom you are collecting waste is expected to check that you are appropriately registered with NIEA.

An enforcement officer may demand that you produce evidence that your waste carrier registration is valid and the details correct.

#### **What should I do to check authorised persons details?**

If you have determined the nature of the next holder (eg, waste management site), then you **must** make sure that any person or business you are carrying the waste to is authorised to accept it. This means that the site has a PPC permit, a waste management licence or an exemption enabling it to accept this waste. As a minimum you **must** check the waste management licence, exemption certificate or PPC permit. This can be checked against the NIEA public registers [http://www.doeni.gov.uk/niea/waste-home/public\\_reg.htm](http://www.doeni.gov.uk/niea/waste-home/public_reg.htm) to confirm that it is genuine.

### **Who needs to register as a waste carrier?**

All people who normally and regularly carry waste in the course of their day-to-day business or with a view to profit and some who carry specific waste types, especially construction and demolition waste, should be registered as a waste carrier. Guidance on who should register is available from [http://www.doeni.gov.uk/niea/waste-home/authorisation/regulations\\_carrier.htm](http://www.doeni.gov.uk/niea/waste-home/authorisation/regulations_carrier.htm)

From the end of 2013 anyone who normally and regularly carries waste, including a 'specified person' such as a carrier of their own waste, a registered charity, someone carrying animal by-products only or carrying agricultural waste only, will be required to complete a one-off registration with the NIEA. If you are not certain whether you should be registered NIEA can guide you.

### **Step 4 – Separate Collection of certain wastes**

As a waste carrier, from 1<sup>st</sup> January 2015, you will be obliged, under regulations 18 and 20 of the 2011 Regulations, to, when collecting waste paper, metal, plastics and glass, take all measures to ensure that these materials are collected separately from other wastes. If it is not possible to collect separately all of these materials on an individual basis, co-mingled collection of these streams may be acceptable. However, as the intention of this provision is to ensure that recyclates meet the necessary quality standards for the relevant recycling sectors, co-mingling should only take place where it is not technically, environmentally and economically practicable to do otherwise.

Where waste is collected separately for the purposes of improving recovery, (including recycling) it **must** not be re-mixed with other waste materials with different properties. To do so could result in the Department issuing a compliance or enforcement notice. Failure to comply with such a notice is an offence and is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to an unlimited fine.

### **Step 5 - Prevent Your Waste Causing Harm**

The term 'harm' is explained in the glossary. It may be caused by the unauthorised or inappropriate deposit, treatment, recovery or disposal etc, of waste, eg, flytipping.

### **What do I need to do to prevent harm?**

When you have collected waste from a waste producer you will then share responsibility for the waste with them (and any broker or dealer involved).

If you transfer waste to a waste manager you **should** take account of anything you see or learn about the way in which the waste manager is subsequently handling it, to ensure that no illegal activity is taking place and that no harm is being caused either to human health or to the environment.

You must also ensure that any person carrying out a treatment or disposal process on the waste **must** hold an appropriate licence, permit or exemption.

You **must** also comply with any other legislation that applies to the movement of the waste, for example, the legislation regulating the carriage of dangerous goods.

### 4.3 Duty of Care – Your Obligations as a Waste Manager

The term ‘waste manager’ is explained in the glossary and includes the operator of a transfer station, recycling site, waste treatment facility, landfill, etc.

This section offers guidance to persons receiving waste for the purposes of re-use, recycling, recovery, treatment or disposal.

#### What are my responsibilities?

As a waste manager how you manage the waste when it is in your possession will impact on the way it might subsequently be managed by others.

You **must** satisfy yourself that you can accept the waste and manage it in the appropriate way. If you operate a waste transfer or treatment facility which changes the physical characteristics of the waste then you will be regarded as the producer of the waste subsequently leaving the site. You should, therefore, also refer to the producer guidance and comply with the producer obligations.

#### As a waste manager, you **must**:

- *ensure that any waste you manage is handled, stored and treated safely, without causing harm to the environment and in accordance with the Waste Hierarchy as well as with the conditions of your licence, permit or exemption;*
- *take care of the waste while you hold it so that it does not escape from your control;*
- *ensure that the transfer of waste both into and out of your site is covered by a waste transfer note including an adequate description of the waste and signatures of those transferring the waste to you or receiving waste from you;*
- *ensure that the description of the waste that you receive is accurate and contains all the information necessary for safe handling, treatment, recovery or disposal;*
- *ensure that you hold an appropriate licence, permit or exemption which allows you to accept the waste at your site; or*
- *ensure that copies of these transfer notes are kept for a minimum of two years (six years if you operate a landfill site under landfill tax legislation).*

#### What does this mean?

You and/or your business **must** take all reasonable measures whilst the waste is in your possession and when you pass your waste (transfer) to someone else. This

means that you **must**, in addition to complying with the conditions of your environmental permit or exemption take the following steps:

### **Step 1 - Prevent the Escape of Waste**

You **must not** allow any waste materials to escape from your control and that of your employees or the control of others during subsequent transport.

When waste is being managed at your premises you **must** make sure that waste:

- is stored in a secure location where access to it is limited only to persons allowed to have contact with it. If waste is kept in a less secure location, loose materials or specific objects may be blown or washed away or even stolen. It should also prevent vandalism of the containers, for example setting the waste on fire;
- containers are clearly labelled with their contents so that people can clearly see what the containers should hold;
- containers are stored safely and leakage prevented and controlled; and
- is managed in accordance with the Waste Hierarchy and your licence/permit conditions or the terms of your exemption.

### **Step 2 - Description of the Waste**

You **must** ensure that any waste that you receive is covered by a completed transfer note/consignment note including an adequate written description that will enable you to manage it in accordance with your obligations under the Duty of Care and your licence, permit or exemption. It should also give you information that you may need to pass on to a subsequent holder of the waste.

The transfer note/consignment note **must** contain certain prescribed information.

- An adequate description of the waste.
- Information on the quantity and nature of the waste and how it is contained. .
- The appropriate code and description for the waste from the List of Wastes Regulations (commonly referred to as the EWC code).
- Names and addresses of the transferor (the person you have received waste from) and the transferee (you). If you subsequently transfer waste from your premises you will then become the transferor.
- The place, date and time of transfer of the waste. If you are using a season ticket the period for which it is valid (ie, valid from dd/mm/yyyy to dd/mm/yyyy).
- The signatures of both transferor and transferee (electronically is acceptable).

- You **must** also include the Standard Industry Classification (SIC) code (2007 or 2003 for hazardous waste only) of the business that you have received the waste from.

The transfer note is your evidence of a transfer of waste, including the information that was passed on. You will have to produce it when asked by a regulatory officer. You **must** keep a copy of the transfer note/consignment note signed by yourself and the person from whom you accepted the waste or transferred the waste to, for at least **two** years. This can be an electronic copy, provided the regulatory officer can view it.

If you are operating a landfill site you **must** keep copies of your transfer notes for **six** years to comply with landfill tax requirements.

Transfer notes may be provided on a 'season ticket' basis in which case the 'season ticket' applies to the same holder (a registered waste carrier) bringing the same waste to you from the same place.

### **What is an adequate description?**

An adequate description will depend upon the nature of the waste and any treatment or sorting processes that it has already been through. The transferor of the waste **must** provide information in order to help you to answer such questions as:

- Does the waste need a special container to prevent its escape or to protect it from the elements?
- Does the waste require particular treatment or separate handling?
- Can it be disposed of safely in a landfill site with other wastes?
- Is it likely to change its physical state during storage or transport, eg, might it give off a gas or become liquid?
- Can it be mixed safely with any other waste or are there wastes with which it should not be mixed, for example, at a waste transfer station?
- What procedure do you have in place if problems arise with waste once it has been unloaded from the vehicle?

Best practise suggests that all transfer notes **should** contain information on any treatment processes the waste that they are covering has been through.

### **What if my site is a landfill site?**

If your site is a landfill site the transfer note should contain information on the pre-treatment processes the waste has gone through prior to you receiving it. If it has not been pre-treated the transfer note **should** state why pre-treatment was not necessary.

There are certain waste acceptance criteria (WAC) which have to be met before landfilling is allowed. You should be talking to your customers to ensure basic characterisation is being carried out including any testing that may be required before you can accept some wastes.

Other wastes such as liquids, infectious clinical wastes and tyres, are banned from landfill and you will need to ensure that these are not part of the waste.

### **Step 3 - Waste Must Only be Transferred to an Authorised Person**

Make sure that your site has the appropriate licence, permit or exemption to accept the waste and in the quantities and types envisaged. In order to confirm this you may need to check with previous holders in the chain in order to confirm the nature and properties of the waste you are about to receive.

You **must** also:

- as a minimum, make a visual inspection of the waste; and
- sample and analyse the waste to ensure that it meets your waste acceptance criteria.

This means that:

- where you make all the arrangements for the management of waste direct with the producer and then merely contract with a registered waste carrier to convey the waste from one to the other, you may wish to liaise closely with the producer to get an understanding of the processes from which the wastes originate;
- if a waste broker or dealer is involved you may wish also to liaise with them regarding the nature and properties of the waste;
- you **must** ensure that any brokers or dealers you use are appropriately registered; and
- if you treat the waste in any way, for example, mix or bulk up the waste with other waste, then you will be regarded as the producer of any of this waste subsequently leaving the site. In this case you need also to refer to the waste producer's section in this guidance.

### **Step 4 - Prevent Waste in Your Keeping from Causing Harm**

The term 'harm' is explained in the glossary. Harm can result from the way in which you manage waste whilst you hold it, for example, could include:

- Escape of waste as litter.
- Burning of waste.
- Leakage of waste during storage.
- Accepting too much waste.

**How can I prevent Harm?**

You **must**:

- Satisfy yourself that you can accept the waste in terms of your licence, permit or exemption, for example, that by accepting the waste you do not exceed the amount of waste you can manage at the site at that time.
- Ensure that the waste carrier has taken reasonable control of the waste during transport, for example, netting skips, restraining of containers?
- If your site is a landfill, determine whether basic characterisation has been carried out and whether the waste will meet any waste acceptance criteria for your type of landfill. What pre-treatment has been carried out on the waste, for example; segregation of recycled materials, or removal of hazardous materials such as from waste electrical and electronic equipment?

A waste manager should act on any knowledge to stop the illegal handling of waste. If you become aware that your waste is being illegally dealt with you should tell the NIEA.

If someone arrives at your site and they are not carrying a waste transfer note or consignment note you **must** ensure that one is completed and signed immediately to enable both you and the waste carrier to meet your obligations.

#### 4.4 Duty of Care – Your Obligations as a Waste Broker or Dealer

##### What are my responsibilities?

Where you make arrangements for the management of waste on behalf of another party you are deemed to be acting as a **broker**. You are, therefore, also classified as having control of that waste, even though you may not physically hold the waste you control.

Where you buy or sell waste you are deemed to be acting as a **dealer**. You are also classified as controlling that waste and **must** be registered with the NIEA.

Waste brokers and dealers may also import or export waste. For further guidance please refer to the section on waste exports or contact the NIEA Waste Shipments Team at [http://www.doeni.gov.uk/niea/waste-home/regulation/transfrontier\\_shipment\\_of\\_waste.htm](http://www.doeni.gov.uk/niea/waste-home/regulation/transfrontier_shipment_of_waste.htm)

In any of these capacities, by arranging for the transfer of waste, you jointly hold responsibility for its proper transfer and management with the holders directly involved (producer, waste carrier, exporter or waste manager). You should, therefore, also be familiar with the responsibilities of the other holders described in this guidance.

District councils often act in the capacity of a waste broker. Where district councils are acting in the capacity of broker they have the same responsibilities under the Duty of Care as any other party. If you are running a WEEE compliance scheme you are acting as a broker and **must** register.

**In summary, as a waste broker or dealer you jointly hold responsibilities with the waste producer.**

You **must**:

- *ensure that any waste in your control is handled and stored safely, without causing harm to the environment;*
- *know the nature of the waste you are in control of, for example, if it is process waste to know its constituents and properties;*
- *ensure care of the waste while it is stored, so it does not escape;*
- *ensure that the waste description is accurate and contains all the information necessary for safe handling, transport, treatment, recovery or disposal (especially by landfill) by subsequent holders;*
- *ensure that you have a valid registration with NIEA;*
- *ensure the waste is transferred to someone who is authorised to receive it, for example, a registered waste carrier, or waste manager;*

- *ensure that the transfer of waste is covered by a waste transfer note including a full description of the waste and retain the transfer note and waste details for two years, or, if the waste is Hazardous Waste, a consignment note, which must be retained for at least three years;*
- *ensure that the site of destination holds the appropriate licence, permit or exemption to accept the waste. This responsibility extends to destinations in other countries.*

As a broker or dealer you **should** retain, for two years, a copy of the transfer notes used in any transfers of waste that you have arranged as evidence of your compliance with the Duty of Care.

### **What does this mean?**

You and/or your business **must** take all reasonable measures whilst the waste is in your control. This includes while the waste is physically with the producer, waste carrier or waste manager. This means that you **must** ensure the following steps:

#### **Step 1 - Prevent the Escape of Waste**

Although as a broker or dealer you may not physically hold the waste you are regarded by the law as having control of that waste. However, you **must** still ensure that the physical holder of the waste under your direction manages it in order to prevent any waste materials escaping from their control or the control of others, for example, during storage or transport.

#### **What must I do during waste storage?**

In your capacity as broker you **must** ensure that, when waste is being stored at premises that waste is:

- stored in a secure location where access to it is limited only to authorised persons. If waste is kept in a less secure location, loose materials or specific objects may be blown or washed away or even stolen. Less secure storage may also attract others to mix their waste with that of your client. If this occurs then the waste carrier or contractor may charge more or refuse to accept the waste at their site;
- stored in locations which will prevent vandalism of the containers, for example, setting the waste on fire;
- segregated, especially to avoid incompatibility problems and so that waste which can be easily recycled or re-used is kept separate from other wastes (See Step 4 of Section 4.2). Segregation may also help in reducing costs to your client.

#### **Step 2 - Describe Your Waste**

You **must** ensure that the waste being transferred is covered by a completed transfer note/consignment note which **must** include an adequate written

description that will enable anyone receiving it to manage it in accordance with their own Duty of Care. If something goes wrong and the waste is not described properly or you have not told the next holder the properties of the waste, then you may be held responsible together with the waste producer.

### **What information must I provide?**

You **must** ensure that a transfer note/consignment note and waste description are produced covering yourself and the party(ies) you are brokering between/dealing with.

The transfer note/consignment note is your evidence of proper transfer of waste including the information that was passed on. You **must** produce it when asked by a regulatory officer. The transfer note **must**:

- contain an adequate description of the waste;
- be completed and signed by both parties (electronically is acceptable);
- contain information on the quantity and nature of the waste;
- record the place, date and time of transfer. If you are using a season ticket the period for which it is valid (ie, valid from dd/mm/yyyy to dd/mm/yyyy);
- contain details of transferor (you) and transferee (usually either a registered waste carrier or a licensed or permitted site); and
- contain the appropriate code and description from the List of Wastes Regulations.
- The transfer note **should** also include the Standard Industrial Classification (SIC) code (2007 or 2003 for hazardous waste only) for the transferor.

### **What is an adequate description?**

An adequate description will depend upon the nature of the waste. It **must**, however, include mention of any particular issues associated with the waste.

### **What else must I do?**

You **should** know where the waste is going and to what type of facility. Notably, if the waste is to be:

- Landfilled - then you **must** determine the waste's properties by carrying out a basic characterisation. This consists of a three point test (see glossary). As a broker you need to understand the principles of these requirements but a waste contractor can also help to advise them on their particular requirements.

- Going to a transfer station - where it will be mixed with other wastes then you may need to consider if it might be incompatible with other wastes.

As a waste broker or dealer you **should** keep a copy of the transfer note signed by yourself or your client (as transferor) and the person to whom the waste is transferred for **two** years. This can be an electronic copy, including electronic signatures, provided the enforcement officer can view it. You also need to keep any additional information with this note.

### **Step 3 - Waste Must only be Transferred to an Authorised Person**

Make sure that any person or business you are transferring waste to or that you are organising to collect waste from someone else is authorised to accept it. In order to confirm this you **must** check the registration of the person you are going to transfer your waste to, notably the details of the waste carrier and the PPC permit, waste management licence or exemption details of the waste manager.

#### **What should I do to check authorised persons details?**

The detail of the checking required will depend on the waste you hold but as a minimum you should ask for:

- a copy of the waste carrier's certificate of registration and check this against the NIEA public registers [http://www.doeni.gov.uk/niea/waste-home/public\\_reg.htm](http://www.doeni.gov.uk/niea/waste-home/public_reg.htm) to confirm that it is genuine and up to date;
- evidence that the licence, permit or registered exemption allows for the deposit of that type of waste, especially where you have directed waste toward particular waste managers or facilities;
- the reference number of the licence or permit so that you can check this against NIEA public registers [http://www.doeni.gov.uk/niea/waste-home/public\\_reg.htm](http://www.doeni.gov.uk/niea/waste-home/public_reg.htm) to confirm that it is genuine and valid.

If large amounts of waste are involved or waste which can be difficult to manage, it might then be appropriate to visit the site where the waste is disposed, recycled or recovered. This might be part of an environmental management system.

This means that:

- any company who collects the waste **must** be a registered waste carrier and **must** be able to provide evidence to prove this. You should be able to show that you have checked this periodically, as most waste carrier registrations are annually renewable;
- using a registered waste carrier does not necessarily discharge you from all responsibility for checking the later stages of the disposal of the waste;
- if you use a waste broker you **must** check their registration details; and
- you **should** retain documents including any waste description for two years.

## Step 4 - Prevent Your Waste Causing Harm

### What is meant by harm?

The term 'harm' is explained in the glossary. It is caused by the unauthorised or inappropriate deposit, treatment or disposal etc of waste.

However, the burning of waste such as packaging will result in harm. It is illegal to burn waste (except in very restricted circumstances) and therefore **must not** take place. In most cases such waste can be recycled or recovered and this **must** always take place in accordance with the Waste Hierarchy before the burning of waste, even with energy recovery, should be considered.

Also, allowing waste to escape from your control, such as causing litter, allowing liquids to leak from containers and so on are other examples of where harm can be caused whilst you hold the waste.

### What can I do to check that my waste is correctly managed?

If you are acting on behalf of an original producer, it is not possible to draw a line at the gate of that person's premises and say that your and their responsibility for the waste ends there. You will have directed waste toward other holders and share with the producer all responsibilities required by the Duty of Care.

A broker or dealer remains responsible according to what he 'knows or should have foreseen'.

You should take account of anything you see or learn about the way in which any party is subsequently handling it. For example:

- You **must** ensure that waste is packaged correctly and that the vehicle is suitable for transport, as if it subsequently falls off the vehicle you could be deemed liable.
- You may wish to determine that waste has subsequently arrived at its intended destination especially if the waste has particular problematic properties. You could do this by requesting weighbridge or tip ticket.
- You may notice a waste carrier apparently engaged in the unlawful dumping of someone else's waste.

These would be grounds for suspecting illegal handling of your waste by the waste carrier. Should you become aware that your waste is being illegally dealt with you should notify NIEA immediately.

## 4.5 Duty of Care – Your Obligations as a Householder

### What are my responsibilities?

#### In summary, as a householder you must:

- ensure that any household waste produced on your property is only transferred to an authorised person, such as your district council waste collectors or their contracted collectors, a registered waste carrier or a waste site that is appropriately licensed with NIEA.

### What does this mean?

When your waste is collected by your district council or their contractor they will already be registered as a waste carrier, you do not, therefore, need to check their details. You are also not required to exchange paperwork with them.

It is **your** responsibility to ensure that any waste produced on your property (eg, building work, garden waste/trees cut down) is only given to someone who is authorised to take that waste.

In order to do this you **must** check that the person/company are appropriately registered as a waste carrier or if you are transferring that waste yourself you **must** ensure that it is taken to an appropriately licensed/permitted/exempted waste site. You **should** confirm that the registration or permit or exemption is valid by checking the NIEA public register on its' website [http://www.doeni.gov.uk/niea/waste-home/public\\_reg.htm](http://www.doeni.gov.uk/niea/waste-home/public_reg.htm) or by contacting the NIEA.

Only after you have confirmed such proof should you give your waste to them.

You **should** store your waste safely, without causing harm or pollution to the environment while it is awaiting collection.

If you give your waste to a friend or neighbour to dispose of then you need to ensure that they will be taking the waste to a site with a waste management licence or exemption, for example, a local civic amenity site. Provided they are not carrying your waste with a view to profit they do not need to be registered as waste carrier in order to carry it.

Civic amenity sites are provided by district councils only for householders to deposit their own household waste.

However, if you contract a builder or tradesperson such as a landscape gardener, plumber, kitchen contractor, glazier, carpet fitter etc, to undertake work that results in the production of waste then they will normally be considered to be producing that waste. However, as it has been produced on your property **you** have a responsibility to check that the waste will be carried by appropriately registered people.

If they carry this waste away from your home themselves, then it is likely that they will need to be registered with NIEA as a waste carrier. You **must** ask them for evidence of their registration as a waste carrier with NIEA. You can also check with NIEA that their registration is valid via their website at [http://www.doeni.gov.uk/niea/waste-home/public\\_reg.htm](http://www.doeni.gov.uk/niea/waste-home/public_reg.htm).

If they say that they are not registered to carry that waste you should check with NIEA whether they are required to be.

In some circumstances a tradesperson may take waste away under your direction, for example, replacement of an old washing machine. As it is you that decided that you do not want the items the tradesperson is considered to be taking away **your** waste and it is likely they will be required to be a registered waste carrier.

You **must** check whether they are registered to carry the waste that they are removing, and if they are not you can check whether they should be registered to carry your waste with NIEA.

## Responsibilities in the Event of Waste Export

If the waste that you hold is going to be exported the Duty of Care still applies to the storage, transfer and carriage of that waste before it is exported. You should refer to the guidance in this document for producers, waste carriers or managers as is appropriate to your role.

Export of Waste is covered by the EU Waste Shipments Regulation (1013/2006) and the UK Transfrontier Shipment of Waste Regulations 2007. You, therefore, need to ensure that the person to whom you are transferring waste will not export it in breach of the rules set out in this legislation.

If waste is to be exported or a holder suspects that their waste may be exported then they need to ensure that:

- they have asked whether their waste is likely to be reprocessed in another country and that it is not destined for disposal;
- the country of destination is identified;
- the NIEA have given their approval that it can be exported;
- the country of destination has given approval to accept it; and
- the necessary documentation and authorisations are in place.

You should be alert for any signs that waste might be exported. Indications that waste might be exported include:

- Is waste being transported directly to a port?
- Was the transport arranged by a freight forwarder?
- Were the arrangements made by a waste carrier, broker or dealer operating outside UK jurisdiction?
- Have registration details of the broker or dealer been difficult to establish?
- Has HM Revenue & Customs clearance been applied for and obtained?
- Are transport routes to the final country of destination identified?
- Have you been asked to provide or sign a note for the international carriage of goods by road (CMR note)?
- Is the destination of the waste unclear?

Export of Waste can be a complex process as countries of destination can change their approvals or specific requirements quite regularly. You should be familiar with all of the requirements and understand that certain countries do not accept any imports of waste.

For guidance refer to the NIEA [http://www.doeni.gov.uk/niea/waste-home/regulation/transfrontier\\_shipment\\_of\\_waste.htm](http://www.doeni.gov.uk/niea/waste-home/regulation/transfrontier_shipment_of_waste.htm) or contact NIEA's International Waste Shipments team at [tfs@doeni.gov.uk](mailto:tfs@doeni.gov.uk).

## [Annex 1](#)

### **Key Legislation and other Guidance**

#### The law on the Duty of Care

The waste Duty of Care is set out in Article 5 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (the 1997 Order).

The legislation has been amended a number of times, however, the most recent amendments may not yet be reflected on the version available from the UK legislation website ([www.legislation.gov.uk](http://www.legislation.gov.uk)).

#### *Article 5*

Article 5, as it stands, is set out below.

#### **Duty of care, etc., as respects waste**

**5.** — (1) Subject to paragraph (2), any person who imports, produces, collects, carries, keeps, treats or disposes of controlled waste or, as a broker or dealer, 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;

(aa) to prevent any contravention by any other person of regulation 9 of the Pollution Prevention and Control Regulations (Northern Ireland) 2003 or of a condition of a permit granted under regulation 10 of those Regulations;

(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;

(ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that Article or any condition of a permit granted under regulation 10 of those Regulations and to comply with this paragraph as respects the escape of waste; and

(iii) that any waste oils are separately collected where technically feasible.

(2) Paragraph (1) does not apply to an occupier of domestic property as respects the household waste produced on the property.

(2A) It shall be the duty of the occupier of any domestic property to take all such measures available to him as are reasonable to take all such circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.

(3) The following are authorised persons for the purpose of paragraph (1)(c) or paragraph (2A) —

(a) any district council;

(b) any person who is the holder of a waste management licence under Article 6 <sup>F5</sup> or of a disposal licence under Article 7 of the 1978 NI 19 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;<sup>F6</sup>...
- (e) any person who is not required to be so registered by virtue of regulations under Article 38(3).
- (f) any person who is the holder of an authorisation under Article 6 of the Industrial Pollution Control (Northern Ireland) Order 1997 in so far as such authorisation concerns controlled waste for the purposes of this Article; and
- (g) any person who is the holder of a permit under regulation 10 of the Pollution Prevention and Control Regulations (Northern Ireland) 2003 which authorises the carrying out of a specified waste management activity within the meaning of those Regulations.
- (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) or paragraph (2A).
- (5) The following are authorised transport purposes for the purposes of paragraph (1)(c) or paragraph (2A)
- 
- (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 may make provision imposing requirements on any person who is subject to the duty imposed by paragraph (1) as respects the making and retention of documents and the furnishing of documents or copies of documents.
- (8) Any person who fails to comply with paragraph (1) or paragraph (2A) 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.

The written description of waste mentioned in subsection (1)(c)(ii) is the transfer note required under regulation 2 of the Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002 (the 2002 Regulations).

Article 4 of the 1997 Order makes it an offence for anyone to carry out waste activities without a licence to do so or to breach any condition of a licence.

Article 5 refers to contraventions of Article 4 of the 1997 Order. This Article has also been amended since it first came into operation but the main duties in the context of the Duty of Care are summarised below.

Persons are generally prohibited from:

- depositing controlled waste, or knowingly causing or knowingly permitting the deposit of controlled waste except where authorised by a waste management licence or PPC permit;
- submitting controlled waste, or knowingly causing or knowingly permitting controlled waste to an operation that requires a waste management licence or PPC permit but is not carried out under and in accordance with that licence/permit;
- treating, keeping or disposing of controlled waste in a manner likely to cause pollution to the environment or harm to human health.

There are exclusions from these prohibitions. These include the following.

- The first two prohibitions do not apply to:
  - exempt waste operations;
  - the deposit or keeping of waste portable batteries or accumulators at collection points;
- The prohibitions do not apply to:
  - waste operations covered by a marine licence or something excluded from the requirement to hold a marine licence ;
  - the treatment, keeping or disposal of household waste within the curtilage of the property by persons other than establishments or undertakings; or
  - the temporary storage of waste at the place of production, at a place controlled by the producer or at a collection point for the purpose of recovering or disposing of the waste elsewhere, in accordance with the conditions in Schedule 2 to the Waste Management Licensing Regulations (Northern Ireland) 2003 (the 2003 Regulations) – see below.

*The Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002 (the 2002 Regulations)*

The 2002 Regulations require the transferor and the transferee of waste to complete and sign a transfer note, which includes a written description of the waste, at the time of transfer. The transfer note must identify the waste in question and state its quantity, how it is stored, the time and place of transfer, the name and address of the transferor and the transferee, whether the transferor is the producer or importer of the waste, which (if any) authorised transport purpose applies, in which category of person the transferor and the transferee are, that they have complied with the Waste Hierarchy, that, where appropriate, certain wastes (at least waste paper, metals, plastics or glass from 1 January 2015) have been collected separately and any other additional information.

Both the transferor and the transferee must keep the written description of the waste and the transfer note or copies of them for two years from the transfer and these documents must be available to NIEA.

Failure to comply with these requirements is a criminal offence under Article 5 of the 1997 Order.

The 2002 Regulations also disappplies the requirement to complete a transfer note for waste which is Hazardous Waste. In such cases a consignment note should be completed in accordance with the Hazardous Waste (Northern Ireland) Regulations 2005. Consignment notes must be retained for at least three years.

### *The Waste Management Licensing Regulations (Northern Ireland) 2003*

The 2003 Regulations regulate the management of waste in Northern Ireland through a system of licences and registered exemptions, depending on the type of activity being carried out. These Regulations are made under Article 4 of the 1997 Order which requires those carrying out waste operations to hold and act in accordance with a waste management licence.

### *The 2011 Regulations*

These regulations amend all of the above pieces of legislation to reflect the requirements of the revised WFD. They include provisions for waste carriers, the registration of waste dealers as well as brokers, the requirement to segregate recyclates - at least waste paper, metals, plastics or glass, duties in relation to the Waste Hierarchy and the requirements for waste transfer notes or consignment notes.

### Exemption for animal by-products

[Waste which comprises animal by-products which is collected and transported in accordance with Article 21(1) to (3) of the Animal By-Products Regulation (Regulation (EC) No. 1069/2009) is not subject to the Duty of Care. The provisions in the EU Regulation include a system for the control of the transfer for this type of waste.]

### Offences and penalties

Failure to comply with the Duty of Care is a criminal offence, punishable on conviction by a fine of up to the statutory maximum and on conviction on indictment by an unlimited fine.

### Key Legislation

The entries below provide brief summaries of the legislation mentioned in this Code and how they are relevant to the Duty of Care.

- *The Waste and Contaminated Land (Northern Ireland) Order 1997*

The Duty of Care is set out in Article 5. Provisions on unauthorised or harmful depositing, treatment or disposal of waste are included in Article 4.

- *Control of Pollution (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999*

Set out the registration requirements for waste carriers.

- *The Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002*

Set out the requirement to complete transfer notes for waste movements.

- *The Waste Management Licensing Regulations (Northern Ireland) 2003*

These regulate the waste management operations, providing a system of licences and registered exemptions for those carrying out such activities.

- *The Hazardous Waste Regulations (Northern Ireland) 2005*

These Regulations define hazardous waste and set out the requirements for the transfer (consignment) of hazardous waste, including the necessary documentation.

- *The List of Wastes Regulations (Northern Ireland) 2005*

These regulations provide codes (as reflected in the European Waste Catalogue) for different types of waste. These codes are needed for completing waste transfer notes and waste consignment notes.

- *The Waste Regulations (Northern Ireland) 2011*

Transpose the revised Waste Framework Directive (Directive 2008/98/EC)



### Section C – Waste Hierarchy Declaration

I confirm that I have fulfilled my duty to apply the Waste Hierarchy as a priority order as required by regulation 17 of the Waste Regulations (Northern Ireland) 2011

I confirm that I have departed from the Waste Hierarchy priority order to achieve the best overall environmental outcome, due to the following:

### Section D – Person collecting the waste (Transferee)

1. Full Name (BLOCK CAPITALS)

2. Name and Address of the Company:

3. Which of the following are you? (please x one or more boxes)

Authorised for transport purposes  Specify which purpose:

District Council  Holder of permit  Permit number: Issued by:

Registered waste carrier  Registration number:

Exempt from requirement to register  Give reason:

Exempt from requirement to have a permit  Give reason:

### Section E

1. Address of place of transfer/collection point:

2. Date of transfer: 3. Time(s) of transfer (for multiple consignment, give “between” date):

4. Name and address of broker who arranged this waste transfer (if applicable):

5. Signatures:

#### Transferor

Full Name:  
(BLOCK CAPITALS)  
Representing:

#### Transferee

Full Name:  
(BLOCK CAPITALS)  
Representing:

A transfer note needs to be provided for all transfers of waste between holders for example between a waste producer and waste carrier, then subsequently, between a waste carrier and a waste manager. In between these transfers there may be a broker or a dealer involved and these holders **must** also ensure that a transfer note is produced.

A transfer note **must** include certain information. It **must**:

- contain an adequate description of the waste;
- be completed and signed by both parties (electronically is acceptable);
- contain information on the quantity and nature of the waste and how it is contained (eg, does the waste contain batteries or WEEE);
- record the place, date and time of transfer. If you are using a season ticket the period for which it is valid (ie, valid from dd/mm/yyyy to dd/mm/yyyy);
- record the names and addresses of the transferor (the person currently in control of the waste) and transferee (usually either a registered waste carrier or waste management site with a waste management licence);
- record the appropriate code and description from the List of Wastes Regulations for the waste;
- Indicate compliance with the Waste Hierarchy priority order; and
- Indicate which wastes, if any, have been segregated.

Best practise suggests that you **should** also include the additional “pre-treatment” information (Section D) to enable future holders and managers of the waste to manage it effectively and to meet their own obligations.

Transfer notes and additional information should in most circumstances accompany the load of waste.

### **Season Tickets**

Where there are repetitive transfers of the same waste from the same place, by the same company to the same waste management site then a ‘season ticket’ can be used. A season ticket **must** contain all the information specified for a “one-off” transfer but can be used for multiple transfers. This reduces the need to produce individual transfer notes, although a log should be kept of individual transfers.

Best practise requires that a season ticket should not last for longer than 12 months without being reviewed and having its details confirmed.

## GLOSSARY of Key Terms

### Authorised Person

- 1) A district council.
- 2) Any person who is the holder of a licence in relation to a waste operation.
- 3) Any person who is carrying on an exempt waste operation.
- 4) Any person to whom Article 4 of the 1997 Order does not apply by virtue of regulations under subsection (3) of that section or by virtue of regulations under section 2 of the Pollution Prevention and Control Act 1999.
- 5) Any person registered as a carrier of controlled waste under regulation 2 of the 1999 Regulations; and
- 6) Any person who is not required to be so registered by virtue of regulations under section 1(2) of the 1999 Regulations;

### Basic Characterisation

The Landfill Directive (1999/31/EC) and Council Decision (2003/33/EC) establish criteria and procedures for the acceptance of waste at landfills including a requirement for their basic characterisation. This includes the following information:

- 1) Source and origin of the waste,
- 2) Information on the process producing the waste (description and characteristics of raw materials and products),
- 3) Description of the treatment applied in compliance with Article 6(a) of the Landfill Directive or a statement of reasons why such treatment is not considered necessary,
- 4) Data on the composition of the waste and the leaching behaviour where relevant,
- 5) Appearance of the waste (smell, colour, physical form),
- 6) Code according to the European Waste Catalogue (see List of Wastes Regulations),
- 7) For hazardous wastes in case of mirror entries: the relevant properties according to Annex 3 to the Waste Framework Directive (2008/98/EC),
- 8) Information to prove that the waste does not fall under the exclusions of Article 5(3) of the Landfill Directive,
- 9) The landfill class at which the waste may be accepted,
- 10) If necessary additional precautions to be taken at the landfill, and
- 11) If the waste can be recycled or recovered.

### Broker

A person (or establishment or undertaking) who arranges for the recovery or disposal of controlled waste on behalf of another including those brokers who do not take physical possession of the waste but who control what happens to it.

### Carrier

A person who normally and regularly transports controlled waste.

**A registered Carrier** – is registered with the Department of the Environment under the 1997 Order.

**An exempt Carrier** – is a person who does not normally or regularly transport controlled waste: or the operator of a vessel, aircraft, hovercraft, floating container or vehicle, in relation to its use, after it has been loaded with waste in circumstances in which a marine licence is required or would be required but for a marine exemption order for transporting the waste in order to carry out a specified marine operation.

### **Consignment note**

With very few exceptions, a consignment note **must** be completed to accompany hazardous waste when it is moved from any premises. This includes premises that are exempt from registration and movements between premises belonging to the same company. A hazardous waste consignment note is required even if the holder of the waste does not change, unlike a controlled waste transfer note. A consignment note can be used as a Waste Transfer Note but not vice versa.

### **Construction and Demolition**

The carrying out of any building, civil engineering or engineering construction work and includes—

- (a) the construction, alteration, conversion, fitting out, commissioning, renovation, repair, upkeep, redecoration or other maintenance (including cleaning which involves the use of water or an abrasive at high pressure or the use of corrosive or toxic substances), de-commissioning, demolition or dismantling of a structure;
- (b) the preparation for an intended structure, including site clearance, exploration, investigation (but not site survey) and excavation, and the clearance or preparation of the site or structure for use or occupation at its conclusion;
- (c) the assembly on site of prefabricated elements to form a structure or the disassembly on site of prefabricated elements which, immediately before such disassembly, formed a structure;
- (d) the removal of a structure or of any product or waste resulting from demolition or dismantling of a structure or from disassembly of prefabricated elements which immediately before such disassembly formed such a structure; and
- (e) the installation, commissioning, maintenance, repair or removal of mechanical, electrical, gas, compressed air, hydraulic, telecommunications, computer or similar services which are normally fixed within or to a structure,

but does not include the exploration for or extraction of mineral resources or activities preparatory thereto carried out at a place where such exploration or extraction is carried out;

### **Controlled Waste**

Article 2 of the 1997 Order defines controlled waste as “household, industrial and commercial waste or any such waste”.

### **Dealer**

Is any person (or establishment or undertaking) who acts in the role of principal to purchase and subsequently sell controlled waste, including dealers who do not take physical possession of that waste.

**Directive Waste**

Is anything that, subject to paragraph 38(a) of Schedule 2 to the 2003 Regulations, is waste within the meaning of Article 3(1) of the WFD, as read with Articles 5 and 6 and which is not excluded from the scope of the Directive by Article 2(1),(2) or (3).

**Enforcement Notice**

Means a notice served under regulation 22 of the 2011 Regulations where a waste carrier fails to comply with the Duty of Care, particularly the requirement to separately collect certain waste streams and ensure that such wastes, where separately collected, are not subsequently re-mixed with other waste streams.

**Enforcement Officer**

An officer of the Department, who has powers in connection with the investigation of suspected offences, the detection and apprehension of offenders and granted powers to act in respect of environmental offences.

**Exemption from a Waste Management Licence**

Part 1 of Schedule 2 to the 2003 Regulations, lists and describes the waste operations which do not require a waste management licence, providing that the establishment or undertaking carrying them out has registered that exemption where required.

These Regulations also specify the requirements that an exempt waste operation **must** meet.

**Establishment or Undertaking**

Includes any organisation, whether a company, partnership, authority, society, trust, club, charity or other organisation, but not private individuals.

**European Waste Catalogue**

Means the list of wastes set out in the annex to Commission Decision 2000/532/EC as amended and as reflected in the List of Waste Regulations (Northern Ireland) 2005.

**Green List Waste**

Waste which is not, for the purposes of import or export for recovery, regarded as hazardous. Green list controls apply to some (but not all) imports or exports. Contact the NIEA's Waste Shipments team at [tfs@doeni.gov.uk](mailto:tfs@doeni.gov.uk) for more details.

**Hazardous Waste**

Is any waste as defined in regulation 6 of the Hazardous Waste Regulations (Northern Ireland) 2005.

**Householder**

Is the occupier of any domestic property. Article 2A of the 1997 Order (see above) states that:

*It shall be the duty of the occupier of any domestic property to take all such measures available to him as are reasonable to take all such circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.*

### **Holder of Waste**

The producer of the waste or the person, establishment or undertaking that is in possession of it or who, as a broker or dealer, has control of it.

### **List of Wastes (EWC)**

The list of wastes consists of more than 800 codes describing hazardous and non-hazardous wastes. The List of Wastes Regulations (Northern Ireland) transpose the European Waste Catalogue (EWC) into Northern Ireland law.

There is a requirement to include the appropriate List of Wastes code as part of the description of the waste on all controlled waste transfer notes and Hazardous Waste consignment notes.

The NIEA provides information on how to interpret the List of Wastes to help anyone producing, carrying or managing waste in Northern Ireland and on how to code waste correctly.

### **Normally and Regularly**

There is an exemption from the requirement to register as a carrier applicable to all 'specified persons' (those who would be required to register in the lower tier) who do not normally and regularly transport controlled waste.

Normally and regularly is perhaps best defined, by example:

If a small retailer normally and regularly produces waste and this waste is normally taken away by a waste contractor or district council then the retailer does not normally carry that waste – no need to register.

If the waste contractor for some reason does not collect the waste on an occasion and the retailer is therefore obliged to take their own waste one time for treatment or disposal, then they are not also undertaking that activity regularly – no need to register.

If, however, the retailer decides that taking their own waste is cheaper or more convenient and therefore continues to carry their own waste, then they will be doing so normally and regularly so would need to register as a lower tier carrier.

### **Pre-treatment of Waste (for the purposes of Article 6 of the Landfill Directive (1999/31/EC))**

The legal definition of treatment requires three things (the 'three-point test'):

1. It **must** be a physical, thermal, chemical or biological process including sorting.
2. It **must** change the characteristics of the waste.
3. It **must** do so in order to:

- (a) reduce its volume, or
- (b) reduce its hazardous nature, or
- (c) facilitate its handling, or
- (d) enhance its recovery.

With certain exceptions, only wastes that have been subject to such 'treatment' may be landfilled, treatment is intended to encourage more recycling and reduce the impact of the wastes that are landfilled.

### **Professional Collectors**

Any person who collects waste either as their main business or incidental to their business or as part of a service for which a fee is charged.

### **Pollution of the Environment**

Contamination due to the release or escape (into any environmental medium):

- (a) from the land on which controlled waste is treated,
- (b) from the land on which controlled waste is kept,
- (c) from the land in or on which controlled waste is deposited,
- (d) from fixed plant by means of which controlled waste is treated, kept or disposed of,
- (e) of substances or articles constituting or resulting from the waste and capable (by reason of the quantity or concentrations involved) of causing harm to man or any other living organisms supported by the environment.

### **Public Registers**

A register maintained by NIEA of all registered waste management activities including all waste carriers or those exempt from waste carrier registration, waste brokers and dealers, those with a PPC permit, a waste management licence or those sites registered as operating under an exemption from licensing.

Public registers can be accessed on the NIEA website at [http://www.doeni.gov.uk/niea/waste-home/public\\_reg.htm](http://www.doeni.gov.uk/niea/waste-home/public_reg.htm)

### **Separate Collection**

The separate collection from other wastes of materials for the purposes of recycling. This must take place for at least waste paper, metal, plastics or glass. If it is not possible to collect separately all of these materials on an individual basis, co-mingled collection of these streams may be acceptable.

### **Season Ticket**

A waste transfer note **must** be created for each load of waste that leaves your site. However, for repetitive transfers there is provision to use one transfer note which will cover multiple transfers of the same material between the same sites by the same people or businesses. This is called a "season ticket". This "season ticket" should contain the same information as contained on the transfer note but **must** include the dates between which the transfer will occur. One transfer note can be used for multiple collections for a time period that **should not** be longer than 12 months; it should then be renewed if required.

A season ticket can only be used if:

- the waste carrier remains the same
- the producer and collection premises remain the same and
- the description of waste remains the same.

If any of this information changes, then an individual transfer note **must** be used. A log **should** be kept of the date and weight (or volume where relevant) of loads of waste leaving and arriving at sites under a season ticket.

### **SIC Codes**

The UK Standard Industrial Classification of Economic Activities (2007).

The SIC code is used to classify business establishments and other statistical units by the type of economic activities they are engaged in. You are required to record the appropriate SIC code of the transferor on all controlled waste transfer notes.

Relevant codes can be determined from the Office of National Statistics (ONS) or their website:

[http://www.statistics.gov.uk/methods\\_quality/sic/downloads/SIC2007explanatorynotes.pdf](http://www.statistics.gov.uk/methods_quality/sic/downloads/SIC2007explanatorynotes.pdf)

### **Specified Persons**

Persons subject to lower tier registration (defined as specified persons in the 2011 Regulations) and who are required to register as waste carriers by 31 December 2013 (see Transitional Exemption below).

A specified person means anyone who carries, deals in or brokers controlled waste as part of their business but who up until the 2011 Regulations would have been exempt from the need to register under the 1989 Act, such as a registered charity, someone who carries their own waste (other than construction and demolition), or who carries only animal by-products or agricultural waste from agricultural premises.

### **Three Point Test**

See Pre-treatment of Waste (for 3 point test for landfill).

### **Transfer Note**

A note (paper or electronic) which **must** be created for any transfer of controlled waste. The note **must** be signed by both parties and **must** contain certain prescribed information about the waste to be transferred as set out in the Duty of Care Regulations (Northern Ireland) 2002. It **must** contain a written description of the waste and any further information required for the next and subsequent holders of the waste to manage it without causing pollution of the environment or harm. It also contains a declaration of compliance with the Waste Hierarchy as a priority order in waste treatment. An illustrative controlled waste note is provided in Annex 2 of this guidance.

Transfer notes and other associated information may be retained in hard copy or in electronic form.

Householders are not required to produce transfer notes.

**Transferee**

The person (or establishment or undertaking) receiving the waste.

**Transferor**

The person (or establishment or undertaking, including householders) holding the waste and who transfers it to another (different) person (or establishment or undertaking).

**Transitional Exemption (from registration as carrier, broker or dealer)**

A transitionally exempt carrier, broker or dealer is not required to be registered as a carrier, broker or dealer of controlled waste until 31 December 2013.

**Waste**

In general terms, any substance or object which the holder discards or intends or is required to discard.

**Waste Collection Authority**

In Northern Ireland the Waste Collection Authorities are the 26 district councils.

**Waste Export**

Waste being removed from the United Kingdom.

Any waste to be exported (or imported) is subject to a range of regulatory controls (see also Green List Waste above). Anyone that is planning to export waste needs to be familiar with these controls. Contact the Environment Agency's International Waste Shipments Team at [http://www.doeni.gov.uk/niea/waste-home/regulation/transfrontier\\_shipment\\_of\\_waste.htm](http://www.doeni.gov.uk/niea/waste-home/regulation/transfrontier_shipment_of_waste.htm) for more details.

Where controlled waste is held, transferred or carried in Northern Ireland prior to being exported, the person (or establishment or undertaking) that holds or has control of that waste is still subject to the Duty of Care.

**Waste Manager**

Anyone who re-uses, recycles, recovers or disposes of controlled waste, including the supervision of such operations and the after-care of disposal sites, and includes any actions taken as a broker or dealer.

**Waste Producer**

Any person (or establishment or undertaking including householders) whose activities produce controlled waste or anyone who carries out pre-processing, mixing or other operations which result in a change in the nature or composition of this waste. The Duty of Care does not apply in its entirety to householders; separate guidance for Householders is also contained in this Code of Practice (Section 4.5).

**WEEE**

Waste Electrical and Electronic Equipment that is defined by the Waste Electrical and Electronic Equipment Regulations 2006 (as amended).

[http://www.doeni.gov.uk/niea/waste-home/regulation/regulations\\_weee.htm](http://www.doeni.gov.uk/niea/waste-home/regulation/regulations_weee.htm)

**Written Description**

Information required on the transfer note identifying the nature and characteristics of the waste. This should help subsequent holders to manage the waste correctly and to meet their requirements under the Landfill Directive.

The description **must** from 8 October 2011 also include reference to compliance with the Waste Hierarchy.