

Controls on the handling, transfer and transportation of waste: A consultation

About us

EEF, the manufacturers' organisation, is a trusted partner to businesses across Britain. We have a membership of 6,000 manufacturing, engineering and technology-based businesses and represent the interests of manufacturing at all levels of government. Comprising 11 regional Associations, the Engineering Construction Industries Association (ECIA) and UK Steel, EEF is one of the UK's leading providers of business services in employment relations and employment law, health, safety and environment, manufacturing performance, and education and skills.

We welcome the opportunity to comment on this consultation on proposals for changes to the duty of care and waste registration systems, making them easier to use and comply with. The openness of approach by Defra which this represents is to be applauded.

Executive summary

- Historically, waste policy has worked largely by a series of “sticks”, with few incentives to encourage improved environmental behaviour. This review offers the opportunity to rethink current practice and look for more innovative measures which positively encourage companies to change. EEF supports the use of supply chain relationships to change behaviour.
- The Duty of Care regulations, when applied correctly, work well. However, there is a need for more information and awareness raising of the existing requirements, with special emphasis on SMEs. EEF would be keen to work with government on developing opportunities to reach companies within our large membership.
- EEF members take their duty of care very seriously. It is the illegal activity by unscrupulous companies that continues to undermine the activities of law-abiding companies. We therefore support a more pro-active regulatory effort to enforce the regulations, targeting those companies that pose the greatest risk to the environment.
- EEF is concerned about the potential administrative burden to business if all companies that carry waste had to register for a Waste Carrier License. We therefore support proposals for a tiered waste carrier registration system, which is fairer and more proportionate to risk. This needs to reflect the potential harmfulness of the waste they carry as well as the size of their operations.

The Duty of Care

Q1: What sort of incentives would promote better compliance with the duty of care? How effective would they be?

Current waste policy works largely by a series of 'sticks'. There is a need to for more measures which positively encourage companies to change. Positive incentives could include cheaper fees for consistent good behaviour, lower inspection frequencies, grants, new market opportunities and less bureaucracy. The consultation correctly states that the majority of businesses are not aware of their duty of care, so rather than changing the legal requirements of the duty of care there is a need for more information and awareness raising of the existing requirements.

There is a need for better partnership working between businesses within supply chains and between waste producers and the waste management industry. This should be based on voluntary agreements where supply chain pressures are used to change behaviour. Upstream this could include banks providing information on the duty of care as part of their financial services to start up companies. The duty of care would then become part of the company's risk management portfolio and act as an incentive to take greater care in managing their waste. This will then be passed on from suppliers to customer.

Q2: What could the government do to encourage greater use of such incentives?

Awareness raising and sharing of best practice through programmes such as Envirowise and NetRegs. In addition, trade exhibitions are a good way to raise awareness amongst business (see also responses to Questions 1 and 3).

Q3: What would be the most effective way of raising awareness of and compliance with the duty of care amongst waste producers and others covered by the legal requirement?

The consultation document rightly identifies that awareness of legal requirements is a pre-requisite to achieving compliance. At present a large number of businesses are not aware of their duty of care obligations. More efforts need to be made to reach the waste producer community, with special emphasis on SMEs. Any information needs to be concise, simple and easy to access. Instead of the myriad of advice programmes, a one-stop shop for business to access information and services from Government sponsored programmes would be useful. Most importantly, a more proactive approach is needed to raise the profile of these requirements amongst producers.

The recent NetRegs campaign on "Site Waste – It's Criminal" using Travis Perkins to disseminate flyers containing simple messages on SWPs to its customer base is a good example of innovative thinking by using existing supply chain relationships to get information to small companies. Similarly, roadshows are very effective in getting the message to the market and EEF would be keen to work with Government to develop opportunities for reaching companies within our membership.

Envirowise has been successful in providing hands-on advice to a number of companies but needs to be adequately funded to move past the "low hanging fruit" and engage with small companies that do not actively search for environmental information.

Another example would be asking financial institutions to provide basics information as part of any business start up advice. See also response to Question 1.

Q4: Should the government withdraw circular 19/91 and replace it with up-to-date, accurate guidance and advice that is tailored to individual business sectors?

See response to Question 5

Q5: Should the government withdraw the code of practice and replace it with up-to-date, accurate guidance and advice that is tailored to individual business sectors?

The current guidance documents are too long and complicated. There is a need for concise, simple and easy-to-read guidance, which clearly sets out where responsibilities lie. This could, where possible, include examples based on common supply chain relationships. The guidance should be made available on the internet but also pro-actively disseminated to smaller businesses e.g. via a mail shot from suppliers to customers or Local Authorities to local businesses.

Q6: Should the maximum fines available for cases heard in a magistrates' court be raised for an offence under the duty of care? If so, to what level?

A recent EEF study shows that our members take their duty of care very seriously and that it has had a positive impact on the way they deal with their waste. However, there are other companies that continue to act outside of the law who need to be targeted for stricter enforcement.

The fines imposed by the courts for environmental offences are frequently insufficient to act as a deterrent, sometimes being less than the costs of legal disposal for the waste. For example, the penalties for non-compliance under the packaging waste regime are roughly the same as what a company would have paid if it had joined a compliance scheme and legally fulfilled its obligations. This sends out the wrong message and puts companies that comply with environmental legislation at a competitive disadvantage compared to those that intentionally break the law.

Thus, fines under the duty of care need to be higher as the money saved by illegal activities and should cover the full cost of cleanup. Linking the fine to a company's turnover would be more effective in acting as a deterrent. In addition, sanctions need to be proportionate and reflect wider environmental performance, past or present, of the company in question. To this end, the penalty system should have some flexibility, without becoming too complicated, to differentiate between deliberate offenders which should be penalised heavily, and businesses with good environmental records which make a genuine mistake or administrative error. Interpretative guidance for the Magistrates is needed to allow for this flexibility.

Q7: What other penalties could ensure compliance with the duty of care? How would they work? Would these be an improvement on the current system? Would they provide further confusion?

Financial penalties are the most effective method for changing behaviours of those that intentionally break the law. For the worst offenders this should be backed by a threat of a custodial sentence. Reputational sanctions might work for large corporation in the public eye, but these are likely to be aware of their duty of care anyway. "Naming and shaming" will not change behaviours of smaller companies.

Q8: Should local authorities be given powers to issue fixed penalty notices of £100 to householders for offences under the duty of care?

EEF has no comments on this issue

Q9: Should a general duty of care be placed on those involved in the export of waste to ensure that they take all measures as are reasonably possible to prevent the contravention of TFS controls?

Yes, the duty of care should apply to those involved in the export of waste. However, producers should not be prosecuted for offences committed by waste carriers outside the

UK, where it can be demonstrated that 'reasonable steps' were taken to ensure compliance.

Q10: Should it be a specific offence to transfer waste where the person transferring it knows or ought to reasonably suspect that the waste is being, or will be illegally exported? If so, what should the penalties be? What are the costs and benefits of such a proposal?

It is not clear how this would be enforced. However, as outlined in Question 7 financial penalties are the most effective method for changing behaviours of those that intentionally break the law. Before introducing any additional penalties Government needs to make sure that companies are fully aware of their duty of care obligations and incentives are in place to aid compliance (see also answers to questions 1 and 3).

Q11: Should it be a specific offence to transfer waste where the person knows or ought to reasonably suspect that the waste has been illegally imported? If so, what should the penalties be? What are the costs and benefits of such a proposal?

See response to question 10.

Q12: Are there any other specific offences that need to be added to the duty of care legislation? If so, please provide details of what you think may be necessary. Or would guidance be helpful to clarify which practices fall within the current scope of the offence?

EEF is not aware of any other offences that need to be added to the duty of care legislation. It is important that we ensure we fully implement the current system before introducing any further revisions. Clarification of what falls within the scope of the offence in form of easy-to-understand practicable guidance would therefore be beneficial.

Q13: Should the duty of care continue to be a self-regulating system? Or should the environment agency and local authorities take a more proactive approach to enforcement? If so, how should their work be funded? How could it be effectively streamlined with other enforcement and inspection work?

Provided producers are made aware of their obligation, e.g. with regards to the need to produce and keep waste transfer notes, the system works well and should continue to be self-regulating. Better managed businesses should be able to earn an 'On Trust' status with the regulator, resulting in, for example, cheaper fees, lower inspections frequencies and less bureaucracy. A more pro-active approach to enforcement based on 'one-size-fits all', would lead to unnecessary additional costs to those companies that are compliant within the regulations. Instead any additional enforcement efforts should focus primarily on operators that have managed to escape the law so far. There needs to be stricter enforcing of the waste carrier licensing system to provide producers with the confidence that seeing a waste carriers license does mean that their waste will be transported safely and not subsequently fly-tipped (see response to consultation on "the registration of waste carriers")

EA needs adequate resources to do their job. The EEF does not agree with the use of BREW funding to increase targeted enforcement. BREW is funded by law abiding businesses that have paid to dispose of their waste in accordance with the law and it should therefore be used to help them improve resource efficiency. We would prefer to see the use of income from fines and penalties hypothecated to address enforcement.

Q14: Should the onus for recording basic characterisation and evidence of pre-treatment be targeted on the producer, subsequent holder or carriers? How can we

ensure that those who are best placed to provide the basic characterisation information do so at the time the information is needed?

It is true that producers are best placed to describe the waste they produce so, in theory, we have no issue with the onus for recording basic information being placed on the producer. However, this only works if the waste goes directly to landfill. A waste transfer note shows where the waste is coming from and who is transporting it but it does not always tell you where the waste will end up. Waste producers therefore have no control over what happens when the waste leaves their sites. For example, the waste might be subsequently mixed or treated elsewhere, e.g. at a waste transfer station. There needs to be requirement on the waste management industry to share this information. Use of e-commerce (Question 19) could improve the audit trail of waste between producers and its final destination.

Q15: Should the duty of care regime be used to deliver the basic characterisation requirement and evidence of pre-treatment? If so, how would this be best done and what issues need to be considered? What would be the benefits and possible burdens of such an approach?

We would want to see the administrative burden to compliant business minimised.

Q16: Are there other ways to deliver the basic characterisation and evidence of pre-treatment that might be more effective or lower cost? If so, what are these and how they might work?

EEF has no comments on this issue

Q17: What is the best way of enforcing the requirements of the WEEE directive with respect to non-household end users? What are the costs and benefits associated with each option?

EEF supports the second option. Clearly non-household end users have to comply with their duty of care. However, EEF opposes any attempt to require business end users to demonstrate recycling targets have been met. The best method would be to use the existing Waste Management Licensing process to prevent WEEE ending up in landfills and restrict its disposal options to sites that are suitable and licensed to recycle WEEE.

Q18: What would be the benefits or disadvantages of giving the enforcing authorities a power to request the production of waste transfer notes within 24 hours?

EEF members take their duty of care very seriously and we can see no real disadvantages in giving enforcing authorities a power to request waste transfer notes within 24 hours. However, the effectiveness of this should be monitored to ensure that higher enforcement costs lead to more prosecutions of those that intentionally break the law.

Q19: What could the government do to facilitate and encourage greater use of e-commerce in relation to the duty of care?

Government could raise awareness of such innovative approaches as part of its awareness programmes funded by BREW.

Q20: Would it be helpful for the government to clarify that the 'season ticket' arrangements remain valid for a maximum period of 12 months?

From our experience these arrangements are common practice and generally work well. However, there is a need to raise awareness amongst producers that tickets remain valid

for a maximum 12 months and also that they need to reapply for a ticket if the waste they transfer changes. This should be clearly set out in the guidance.

Q21: How should the duty of care apply to commercial waste produced by the growing number of home workers?

EEF would be interested to know if data exists that shows the scale of this problem. If the household has planning consent for a business then the duty of care should apply as it does to any other business. However, extending the duty of care to apply to all home workers alongside the duty of care requirements on householders would require huge bureaucratic efforts and should only be considered if environmental benefits exceed costs. In fact home working reduces carbon foot-prints, by reducing the need to travel, and cuts across family friendly policies, which are a significant plank of the sustainable development agenda. In addition, in the spirit of Government's intentions to achieve greater integration between the municipal and commercial waste streams, as highlighted in the recent waste strategy review, every effort should be made to avoid having two different systems that are designed to achieve the same outcomes.

Q22: How should waste collection authorities deal with this source of commercial waste? Should it be dealt with in the same way as household waste from the same property?

Waste from home workers should be dealt with the same way as household waste from the same property.

Q23: Should waste collection authorities charge for taking commercial waste produced by home workers?

This would depend on the scale of the problem. Local Authorities would have to set up a different administration system for home workers and provide separate bins. This might not be cost-effective for Local Authorities and impose undue burdens on council tax payers and businesses for little environmental gains.

Q24: Does the duty of care legislation need to be changed to deal with the fact that some waste management contractors and carriers complete waste transfer notes on behalf of waste producers?

Yes, as this would ensure a level playing field.

Q25: What would be the costs and benefits of introducing greater transparency?

We have no comment on this issue

Waste Carriers Registration

Q1: Comments are invited on the information and data presented in the Initial Regulatory Impact Assessment about the numbers of producers who might be affected by the ECJ judgement on the Italian case.

EEF has no information on this issue

Q2: What would be the benefits or disadvantages of combining the application and charging process for waste carrier registration with other applications for waste permits and licences issued by the Environment Agency?

EEF supports the proposal to combine the application and charging processes in order to simplify the system and reduce administrative burdens to business.

Q3: What would be the most effective way of raising awareness of the need to be registered amongst waste carriers, particularly small traders?

More efforts need to be made to reach the waste producer community, with special emphasis on SMEs. Any information needs to be concise, simple and easy to access. Instead of the myriad of advice programmes, a one-stop shop for business to access information and services from Government sponsored programmes would be useful. Most importantly, a more proactive approach is needed to raise the profile of these requirements amongst producers.

The recent NetRegs campaign on "Site Waste – It's Criminal" using Travis Perkins to disseminate flyers containing simple messages SWP to its customer base is a good example of innovative thinking by using existing supply chain relationships to get information to small companies. Envirowise has been successful in providing hands-on advice to a number of companies but needs to be adequately funded to move past the "low hanging fruit" and engage with small companies that do not actively search for environmental information.

Another example would be asking financial institutions to provide basics information as part of any business start up advice. This would then become part of the business' risk management portfolio.

Q4: Should there be a tiered system of registration? If so, what would be the most effective way of differentiating between carriers? What would the costs and benefits be?

EEF supports the proposal to have a tiered registration system which is fairer and more proportionate to risk in which those that present the lowest risk would pay less or nothing compared to those that pose a high risk to the environment. Distinguishing carriers primarily by the size of their operation does not take into account the potential harmfulness of the waste they might carry. For example, a company carrying small amounts of hazardous material for disposal presents a higher risk to the environment than a company transporting large volumes of old furniture for reuse or recycling.

It is important to make sure that the system does not become unmanageable by creating too many categories and/or tiers.

Q5: Should registered waste carriers handling waste tyres be subject to enhanced reporting requirements? What would the costs and benefits be?

EEF has no comments on this issue

Q6: If so, would there be benefit in having a de minimis threshold below which separate registration for tyres would not be required?

EEF has no comments on this issue

Q7: Are any additional registration requirements or checks that are needed to help enforce the waste carrier regime? What would be the costs and benefits of implementing any of these?

Waste carriers could be required to provide proof of professional competence and financial solvency. An agreed competency standard for the industry would help.

Q8: What form of guidance would be helpful to applications and in what format?

Concise, easy-to-read guidance which clearly sets out what a company needs to do to act within the law should be available as part of the registration process.

Q9: Do you have any comments and ideas about how local authorities, the Environment Agency and other enforcement authorities could share information?

EEF has no comments on this issue

Q10: Would it be helpful for carriers to have the option of including additional information on their application/renewal forms of the services they provide? If so, what type of information would it be helpful to include? What safeguards would need to be provided?

EEF has no comments on this issue

Q11: Comments are invited on whether it should be an annual requirement to renew a waste carrier registration, or whether it should be a 'registration for life' regime with annual subsistence charges? What would the costs and benefits be?

EEF opposes the proposal to change the registration requirements from annual to life. We have expressed concern in answers to other questions that the waste carrier system is not enforced strictly enough. At present it is too easy for a rogue company to obtain a waste carriers license and subsequently break the law. Having a 'registration for life' would make it even harder for the agency to identify these.

Q12: Would carriers find it helpful if their registration came with additional benefits? If so, what benefits would carriers want to have?

EEF has no comments on this issue

Q13: Should the Environment Agency carry out proactive site inspections of a sample of waste carriers? If so, how should these inspections be funded? What would the costs and benefits be?

The Environment Agency should take a more pro-active approach to the enforcement of the waste carrier licensing system. This approach should be proportionate to risk and focus in the first instance on bad performers and those that carry material posing the greatest risk to the environment.

Q14: How could the link between the commission of other waste crimes and the revocation of a waste carrier's registration be strengthened? What would be benefits and disadvantages of each option?

EEF has no comments on this issue

Q15: Are there other types of flexible penalties that could help to encourage minor offenders into compliance? How effective would they be?

Financial penalties, backed by the threat of a custodial sentence are the most effective methods for changing the behaviours of actors that intentionally break the law.

Q16: Should it be made a specific offence to intentionally provide false or misleading information on a waste carrier registration form, and/or to forge them? If so, what should the penalty be? What would the costs and benefits be?

EEF agrees this should be made a specific offence punishable by a high fine and revocation of licence. Waste producers need to be able to trust the system and should not fear being held responsible for illegal activity by a registered carrier.

Q17: Are there any other offences that are needed to help enforcement? If so, what should the penalties be?

EEF has no comments on this issue

Q18: The maximum penalty at the moment for transporting waste without being registered is liable on summary conviction only to a fine not exceeding level 5 (£5,000). Is this sufficient or should it be amended? If so, to what level?

Fines need to be higher as the money saved by non-compliance and should cover the full cost of cleanup. Linking the fine to a company's turnover would be more effective in acting as a deterrent than having a blanket fine. In addition, sanctions should be proportionate and reflect wider environmental performance, past or present, of the company in question. See also response to questions 6 in the duty of care section.

Q19: Are any additional requirements necessary to aid enforcement? If so, which would be the most effective and what would be the costs and benefits?

EEF has no comments on this issue

Waste Brokers Registration

EEF has no comments on this part of the consultation