



Environmental Protection Act 1990

1990 CHAPTER 43

PART II

WASTE ON LAND

Duty of care etc. as respects waste

34 Duty of care etc. as respects waste. **E+W**

(1) Subject to subsection (2) below, it shall be the duty of any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, [^{F1}as a dealer or broker], has control of such waste, to 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 section 33 above;
- [^{F2} [^{F3}(aa) to prevent any contravention by any other person of regulation 12 of [^{F4}the Environmental Permitting Regulations] or of a condition of an environmental permit;]]
- (b) to prevent the escape of the waste from his control or that of any other person; and
- (c) on the transfer of the waste, to secure—
 - (i) that the transfer is only to an authorised person or to a person for authorised transport purposes; and
 - (ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that section [^{F5}or regulation 12 of [^{F6}the Environmental Permitting Regulations], or a contravention of a condition of an environmental permit,] and to comply with the duty under this subsection as respects the escape of waste.

[^{F7}(1A) It shall be the duty of any person who is responsible for the management of extractive waste to 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 section 33 above;

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- (b) to prevent any contravention by another person of regulation 12 of [^{F8}the Environmental Permitting Regulations] or of a condition of an environmental permit; and
 - (c) to prevent the escape of the waste from his control or that of any other person.]
- (2) The duty imposed by subsection (1) above does not apply to an occupier of domestic property as respects the household waste produced on the property.
- [^{F9}(2A) It shall be the duty of the occupier of any domestic property in England [^{F10}or Wales] to take all such measures available to him as are reasonable in the 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 [^{F11}purposes of subsections (1)(c) and (2A)] above—
 - (a) any authority which is a waste collection authority for the purposes of this Part;
 - (b) any person who is the holder of a waste management licence under section 35 below or of a disposal licence under section 5 of the Control ^{M1}of Pollution Act 1974;
 - (c) any person to whom section 33(1) above does not apply by virtue of regulations under subsection (3) of that section [^{F12}or by virtue of regulations under section 2 of the Pollution Prevention and Control Act 1999] ;
 - (d) any person registered as a carrier of controlled waste under section 2 of ^{M2}the Control of Pollution (Amendment) Act 1989;
 - (e) any person who is not required to be so registered by virtue of regulations under section 1(3) of that Act; and
 - (f) a waste disposal authority in Scotland.
- ^{F13}[(3A) The Secretary of State may by regulations amend subsection (3) above so as to add, whether generally or in such circumstances as may be prescribed in the regulations, any person specified in the regulations, or any description of person so specified, to the persons who are authorised persons for the purposes of [^{F14}subsections (1)(c) and (2A)] above.]
- (4) The following are authorised transport purposes for the purposes of [^{F15}subsections (1)(c) and (2A)] above—
 - (a) the transport of controlled waste within the same premises between different places in those premises;
 - (b) the transport to a place in Great Britain of controlled waste which has been brought from a country or territory outside Great Britain not having been landed in Great Britain until it arrives at that place; and
 - (c) the transport by air or sea of controlled waste from a place in Great Britain to a place outside Great Britain;
 and “transport” has the same meaning in this subsection as in the Control of Pollution (Amendment) Act 1989.
- ^{F16}[(4A) For the purposes of subsection (1)(c)(ii) above—
 - (a) a transfer of waste in stages shall be treated as taking place when the first stage of the transfer takes place, and

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- (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.]
- (5) The Secretary of State may, by regulations, make provision imposing requirements on any person who is subject to the duty imposed by subsection (1) above as respects the making and retention of documents and the furnishing of documents or copies of documents.
- (6) Any person who fails to comply with the duty imposed by subsection (1) [^{F17}, (1A)] [^{F18} or (2A)] above or with any requirement imposed under subsection (5) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
 - (b) on conviction on indictment, to a fine.
- (7) The Secretary of State shall, after consultation with such persons or bodies as appear to him 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 subsection (1) above.
- (8) The Secretary of State may from time to time revise a code of practice issued under subsection (7) above by revoking, amending or adding to the provisions of the code.
- (9) [^{F19}A] code of practice prepared in pursuance of subsection (7) above shall be laid
- [^{F20}(a)] before both Houses of Parliament [^{F21}; or
 - (b) if it relates only to Scotland before the Scottish Parliament.]
- (10) A code of practice issued under subsection (7) above 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.
- (11) Different codes of practice may be prepared and issued under subsection (7) above for different areas.

Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

- F1** Words in s. 34(1) substituted (E.W.) (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011 \(S.I. 2011/988\)](#), [reg. 1\(2\)](#), [Sch. 4 para. 3\(3\)](#) (with [regs. 2, 47\(2\)](#))
- F2** S. 34(1)(aa) inserted (E.W.) (1.8.2000) by [S.I. 2000/1973](#), [reg. 39](#), [Sch. 10 Pt. 1 para. 4\(a\)](#)
- F3** S. 34(1)(aa) substituted (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), [reg. 73](#), Sch. 21, para. 8(2) (with [reg. 72](#), Sch. 4)
- F4** Words in s. 34(1)(aa) substituted (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), [regs. 1\(1\)\(b\), 107](#), [Sch. 26 para. 5\(4\)\(b\)](#) (with Sch. 4)
- F5** Words in s. 34(1)(c)(ii) substituted (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), [reg. 73](#), Sch. 21, para. 8(3) (with [reg. 72](#), Sch. 4)
- F6** Words in s. 34(1)(c)(ii) substituted (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), [regs. 1\(1\)\(b\), 107](#), [Sch. 26 para. 5\(4\)\(b\)](#) (with Sch. 4)
- F7** S. 34(1A) inserted (E.W.) (7.7.2009) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations \(S.I. 2009/1799\)](#), [reg. 28](#), Sch. 2 para. 1(6)(a)

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- F8** Words in s. 34(1A)(b) substituted (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), regs. 1(1)(b), 107, **Sch. 26 para. 5(4)(b)** (with Sch. 4)
- F9** S. 34(2A) inserted (E.W.) (21.11.2005) by [The Waste \(Household Waste Duty of Care\) \(England and Wales\) Regulations 2005 \(S.I. 2005/2900\)](#), **reg. 2(2)**
- F10** Words in s. 34(2A) inserted (26.1.2006) by [The Waste \(Household Waste Duty of Care\) \(Wales\) Regulations 2006 \(S.I. 2006/123\)](#), **reg. 2(1)**
- F11** Words in s. 34(3) substituted (E.W.) (21.11.2005) by [The Waste \(Household Waste Duty of Care\) \(England and Wales\) Regulations 2005 \(S.I. 2005/2900\)](#), **reg. 2(3)**
- F12** Words in s. 34(3)(c) inserted (E.W.) (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011 \(S.I. 2011/988\)](#), **reg. 1(2)**, **Sch. 4 para. 3(4)** (with regs. 2, 47(2))
- F13** S. 34(3A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 65** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F14** Words in s. 34(3A) substituted (E.W.) (21.11.2005) by [The Waste \(Household Waste Duty of Care\) \(England and Wales\) Regulations 2005 \(S.I. 2005/2900\)](#), **reg. 2(4)**
- F15** Words in s. 34(4) substituted (E.W.) (21.11.2005) by [The Waste \(Household Waste Duty of Care\) \(England and Wales\) Regulations 2005 \(S.I. 2005/2900\)](#), **reg. 2(5)**
- F16** S. 34(4A) inserted (*retrospectively*) by 1994 c. 40, **s. 33(1)** (with s. 33(2))
- F17** Words in s. 34(6) inserted (E.W.) (7.7.2009) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations \(S.I. 2009/1799\)](#), **reg. 28**, Sch. 2 para. 1(6)(b)
- F18** Words in s. 34(6) inserted (E.W.) (21.11.2005) by [The Waste \(Household Waste Duty of Care\) \(England and Wales\) Regulations 2005 \(S.I. 2005/2900\)](#), **reg. 2(6)**
- F19** Word in s. 34(9) substituted (1.7.1999) by S.I. 1999/1820, **art. 4**, **Sch. 2 Pt. I para. 102(2)(a)**
- F20** S. 34(9): “(a)” inserted (1.7.1999) by S.I. 1999/1820, **art. 4**, **Sch. 2 Pt. I para. 102(2)(b)**
- F21** S. 34(9)(b) and the word “or” immediately preceding it inserted (1.7.1999) by S.I. 1999/1820, **art. 4**, **Sch. 2 Pt. I para. 102(2)(c)**

Modifications etc. (not altering text)

- C4** S. 34 restricted (E.) (13.4.2001) by S.I. 2001/1478, **reg. 3(b)**
- C5** Ss. 33-34C applied (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011 \(S.I. 2011/988\)](#), **regs. 1(2)**, **47(3)** (with **regs. 2**, 47(2))
- C6** S. 34(1)(c) extended (27.7.1999) by 1999 c. 24, **s. 4(6)(e)(8)**

Commencement Information

- I2** S. 34 wholly in force at 1.4.1992; s.34 not in force at Royal Assent see s. 164(3); s. 34(5)(7)-(9)(11) in force at 13.12.1991; s. 34(1)-(4)(6)(10) in force at 1.4.1992 by S.I. 1991/2829, **arts. 2**, 4

Marginal Citations

- M1** 1974 c. 40.
- M2** 1989 c. 14.

34 Duty of care etc. as respects waste. **S**

- (1) Subject to subsection (2) below, it shall be the duty of any person who imports, produces, [^{F29}keeps or manages] controlled waste or, as a broker [^{F30}or dealer] , has control of such waste, to 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 section 33 above;
- [^{F31}(aa) to prevent a contravention by any other person of regulation 11 of the Pollution Prevention and Control (Scotland) Regulations 2012, or of a condition of a permit granted under those Regulations;]

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- [^{F32}(ab) to prevent any contravention by any other person of subsection (2A), (2E), (2F), (2I) or (2K);]
 - (b) to prevent the escape of the waste from his control or that of any other person;
^{F33}...
 - [^{F34}(ba) on the transfer of any waste oil, to ensure that [^{F35}it is collected separately from other types of waste so as to facilitate a specific treatment,][^{F36}unless doing so is not technically feasible, taking into account good practices]; and]
 - (c) on the transfer of the waste, to secure—
 - (i) that the transfer is only to an authorised person or to a person for authorised transport purposes; and
 - (ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that section [^{F37}or any condition of a permit granted under regulation 7 of those Regulations]and to comply with the duty under this subsection as respects the escape of waste.
- [^{F38}(2) An occupier of domestic property—
- (a) shall, as respects the household waste produced on the property, take reasonable steps to secure that any transfer of waste is only to an authorised person or to a person for authorised transport purposes; and
 - (b) shall not otherwise be subject to the duty imposed by subsection (1) above.]
- [^{F39}(2A) It shall be the duty of any person who produces, keeps or manages controlled waste, or as a broker or dealer has control of such waste, to take all such measures available to that person as are reasonable in the circumstances to apply the waste hierarchy set out in Article 4(1) of the [^{F40}Waste Framework Directive].
- (2B) The duty in subsection (2A)—
- (a) may be departed from where this is justified having regard to the overall impacts of the generation and management of such waste; and
 - (b) does not apply to an occupier of domestic property as respects the household waste produced on the property.
- (2C) The Scottish Ministers may give guidance on the discharge of the duty in subsection (2A), including the circumstances in which that duty may be departed from under subsection (2B)(a).
- (2D) A person seeking to discharge the duty in subsection (2A) must, in doing so, have regard to any guidance given under subsection (2C).]
- [^{F41}(2E) It shall, from 1st January 2014, be the duty of any person who produces controlled waste (other than an occupier of domestic property as respects household waste produced on the property) to take all reasonable steps to ensure the separate collection of dry recyclable waste.
- (2F) It shall, from 1st January 2014, be the duty of any person who controls or manages a food business that produces controlled waste to take all reasonable steps to ensure the separate collection of food waste produced by the business.
- (2G) The duty in subsection (2F) does not apply to food waste—
- (a) produced on premises in a rural area;
 - (b) produced in the period beginning on 1st January 2014 and ending on 31st December 2015—

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- (i) on premises in use as a hospital (as defined in section 108 of the National Health Service (Scotland) Act 1978); or
 - (ii) by a business that produces less than 50 kilograms of food waste a week;
 - (c) produced, on or after 1st January 2016, by a business that produces less than 5 kilograms of food waste a week;
 - (d) that includes catering waste that originates from means of transport operating internationally.
- (2H) The duty in subsection (2F) may be departed from where food waste is mixed with other biodegradable waste to the extent that the mixed waste is presented for collection in a manner that ensures that the amount of food waste collected is not significantly less than would be the case were the wastes not mixed.
- (2I) It shall be the duty of any person who transports controlled waste to collect and transport separately from other waste any waste presented—
- (a) for collection in accordance with subsection (2E) or (2F);
 - (b) for collection in a receptacle provided under an arrangement made in accordance with section 45C(2) or (5).
- (2J) The duties in subsection (2E) or (2I) may be departed from where dry recyclable waste is managed in such a manner as will ensure that—
- ^{F42}[the output is of comparable quantity and quality to that achieved through separate collection, and]
 - (b) the waste is not mixed with other waste that cannot be recycled.
- (2K) It shall, from 1st January 2016, be the duty of any person who produces food waste (other than an occupier of domestic property as respects household waste, or an occupier of property in a rural area as respects food waste, produced on such properties) to ensure that food waste is not deposited in a public drain or sewer, or in a drain or sewer that connects to a public drain or sewer.
- (2L) It shall be the duty of any person who produces or manages controlled waste, or who as a broker or dealer has control of such waste, to take all reasonable steps to—
- (a) ensure that the waste meets any quality standard for the management of material included in the waste;
 - (b) ensure that the waste is managed in a manner that promotes high quality recycling; and
 - (c) prevent any contravention by another person of this subsection.]
- (3) The following are authorised persons for the purpose of subsection (1)(c) above—
- (a) any authority which is a waste collection authority for the purposes of this Part;
 - (b) any person who is the holder of a waste management licence under section 35 below ^{F43}...;
 - (c) any person to whom section 33(1) above does not apply by virtue of regulations under subsection (3) of that section;
 - (d) any person registered as a carrier of controlled waste under section 2 of ^{M2} the Control of Pollution (Amendment) Act 1989;
 - (e) any person who is not required to be so registered by virtue of regulations under section 1(3) of that Act; and
 - (f) a waste disposal authority in Scotland.

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^{F13}[(3A) The Secretary of State may by regulations amend subsection (3) above so as to add, whether generally or in such circumstances as may be prescribed in the regulations, any person specified in the regulations, or any description of person so specified, to the persons who are authorised persons for the purposes of subsection (1)(c) above.]

(4) The following are authorised transport purposes for the purposes of subsection (1)(c) above—

- (a) the transport of controlled waste within the same premises between different places in those premises;
- (b) the transport to a place in Great Britain of controlled waste which has been brought from a country or territory outside Great Britain not having been landed in Great Britain until it arrives at that place; and
- (c) the transport by air or sea of controlled waste from a place in Great Britain to a place outside Great Britain;

and “transport” has the same meaning in this subsection as in the Control of Pollution (Amendment) Act 1989.

^{F44}[(4A) For the purposes of subsection (1)(c)(ii) above—

- (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.]

^{F45}[(4AB) In subsection (1)(c), a reference to a written description of the waste includes a description that is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.]

^{F46}[(4B) In this section—

^{F47}“business” includes the undertaking of a canteen, club, school, hospital or institution, whether carried on for profit or not, and any undertaking or activity carried on by a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 or any other public authority;

“drain”, “public drain”, “public sewer” and “sewer” have the same meanings as in section 59 of the Sewerage (Scotland) Act 1968;

“food business” means an undertaking, whether for profit or not, and whether public or private, carrying out any activity related to the processing, distribution, preparation or sale of food;

“rural area” means a remote small town, accessible rural area or remote rural area as described by reference to postcode units in table 2 of “Defining Rural Areas and Non-Rural Areas to support Zero Waste Policies”, published by the Scottish Government on 13th March 2012;]

“waste oil” means any mineral or synthetic lubrication or industrial oil which has become unfit for the use for which it was originally intended, such as used combustion engine oil and gearbox oil, lubricating oil, oil for turbines and hydraulic oil.]

(5) The Secretary of State may, by regulations, make provision imposing requirements on any person who is subject to ^{F48}a duty imposed by subsection (1), (2E), (2F), (2I), (2K)

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- or (2L)] above as respects the making and retention of documents and the furnishing of documents or copies of documents.
- (6) Any person who fails [^{F49}without reasonable excuse] to comply with the [^{F50}duties imposed by subsections (1) [^{F51}, (2A), (2E), (2F), (2I), (2K) or (2L)] above or with any requirement imposed under subsection (5) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
 - (b) on conviction on indictment, to a fine.
- (7) The Secretary of State shall, after consultation with such persons or bodies as appear to him 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 [^{F52}duty imposed on them by subsection (1), (2E), (2F), (2I), (2K) or (2L)].
- (8) The Secretary of State may from time to time revise a code of practice issued under subsection (7) above by revoking, amending or adding to the provisions of the code.
- (9) [^{F19}A] code of practice prepared in pursuance of subsection (7) above shall be laid
- [^{F20}(a)] before both Houses of Parliament [^{F21}; or
 - (b) if it relates only to Scotland before the Scottish Parliament.]
- (10) A code of practice issued under subsection (7) above 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.
- (11) Different codes of practice may be prepared and issued under subsection (7) above for different areas.

Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

- F13** S. 34(3A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 65** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F19** Word in s. 34(9) substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(2)(a)**
- F20** S. 34(9): “(a)” inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(2)(b)**
- F21** S. 34(9)(b) and the word “or” immediately preceding it inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 102(2)(c)**
- F29** Words in s. 34(1) substituted (S.) (17.5.2012) by The Waste (Scotland) Regulations 2012 (S.S.I. 2012/148), **regs. 1(1), 2(3)(a)(i)**
- F30** Words in s. 34(1) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), **regs. 1(1), 2(4)(a)(i)**
- F31** S. 34(1)(aa) substituted (S.) (7.1.2013) by The Pollution Prevention and Control (Scotland) Regulations 2012 (S.S.I. 2012/360), **reg. 1(2), sch. 11 para. 1(3)** (with reg. 71)
- F32** S. 34(1)(ab) inserted (S.) (17.5.2012) by The Waste (Scotland) Regulations 2012 (S.S.I. 2012/148), **regs. 1(1), 2(3)(a)(ii)**
- F33** Word in s. 34(1) omitted (S.) (27.3.2011) by virtue of The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), **regs. 1(1), 2(4)(a)(ii)**
- F34** S. 34(1)(ba) inserted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), **regs. 1(1), 2(4)(a)(ii)**
- F35** Words in s. 34(1)(ba) substituted (S.) (17.5.2012) by The Waste (Scotland) Regulations 2012 (S.S.I. 2012/148), **regs. 1(1), 2(3)(a)(iii)**

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- F36** Words in s. 34(1)(ba) substituted (S.) (4.12.2020) by [The Waste \(Miscellaneous Amendments\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/314\)](#), regs. 1(1), **2(3)(a)**
- F37** Words in s. 34(1)(c)(ii) inserted after the words “that section” (S.) (28.9.2000) by [S.S.I. 2000/323](#), reg. **36**, [Sch. 10 Pt. 1 para. 3\(3\)\(b\)](#)
- F38** S. 34(2) substituted (S.) (21.1.2005) by [The Waste \(Scotland\) Regulations 2005 \(S.S.I. 2005/22\)](#), regs. 1, **3(3)**
- F39** S. 34(2A)-(2D) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. 1(1), **2(4)(b)**
- F40** Words in s. 34(2A) substituted (S.) (20.3.2019) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(a), **2(3)**
- F41** S. 34(2E)-(2L) inserted (S.) (17.5.2012) by [The Waste \(Scotland\) Regulations 2012 \(S.S.I. 2012/148\)](#), regs. 1(1), **2(3)(b)**
- F42** S. 34(2J)(a) substituted (S.) (4.12.2020) by [The Waste \(Miscellaneous Amendments\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/314\)](#), regs. 1(1), **2(3)(b)**
- F43** Words in s. 34(3)(b) repealed (1.4.2015 for S.) by [Environmental Protection Act 1990 \(c. 43\)](#), s. 164(3), [Sch. 16 Pt. II](#); [S.S.I. 2015/72](#), art. 2(2)(e)
- F44** S. 34(4A) inserted (retrospectively) by [1994 c. 40](#), **s. 33(1)** (with s. 33(2))
- F45** S. 34(4AB) inserted (S.) (17.5.2012) by [The Waste \(Scotland\) Regulations 2012 \(S.S.I. 2012/148\)](#), regs. 1(1), **2(3)(c)**
- F46** S. 34(4B) inserted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. 1(1), **2(4)(c)**
- F47** Words in s. 34(4B) substituted (S.) (17.5.2012) by [The Waste \(Scotland\) Regulations 2012 \(S.S.I. 2012/148\)](#), regs. 1(1), **2(3)(d)**
- F48** Words in s. 34(5) substituted (S.) (17.5.2012) by [The Waste \(Scotland\) Regulations 2012 \(S.S.I. 2012/148\)](#), regs. 1(1), **2(3)(e)**
- F49** Words in s. 34(6) inserted (S.) (17.5.2012) by [The Waste \(Scotland\) Regulations 2012 \(S.S.I. 2012/148\)](#), regs. 1(1), **2(3)(f)(i)**
- F50** Words in s. 34(6) substituted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), regs. 1(1), **2(4)(d)**
- F51** Words in s. 34(6) substituted (S.) (17.5.2012) by [The Waste \(Scotland\) Regulations 2012 \(S.S.I. 2012/148\)](#), regs. 1(1), **2(3)(f)(ii)**
- F52** Words in s. 34(7) substituted (S.) (17.5.2012) by [The Waste \(Scotland\) Regulations 2012 \(S.S.I. 2012/148\)](#), regs. 1(1), **2(3)(g)**

Modifications etc. (not altering text)

- C6** S. 34(1)(c) extended (27.7.1999) by [1999 c. 24](#), **s. 4(6)(e)(8)**

Commencement Information

- I2** S. 34 wholly in force at 1.4.1992; s.34 not in force at Royal Assent see s. 164(3); s. 34(5)(7)-(9)(11) in force at 13.12.1991; s. 34(1)-(4)(6)(10) in force at 1.4.1992 by [S.I. 1991/2829](#), **arts. 2, 4**

Marginal Citations

- M2** [1989 c. 14](#).

[^{F22}34ZAFixed penalty notices: offences under section 34(6) relating to section 34(2A): England

- (1) This section applies where it appears to an enforcement authority in England that a person has failed to comply with the duty relating to the transfer of household waste in section 34(2A) in England.

Changes to legislation: Environmental Protection Act 1990, Cross Heading: Duty of care etc. as respects waste is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (2) The authority may give to that person a notice offering the opportunity of discharging any liability to conviction for an offence under section 34(6) by payment of a fixed penalty.
 - (3) An authority may not give a person a notice under subsection (2) if such a notice has already been given to that person (whether by the same or another authority) in respect of the same offence.
 - (4) Where a waste collection authority (A) gives a notice to a person under subsection (2), A must, at the time of giving the notice—
 - (a) give the Environment Agency a copy of the notice; and
 - (b) where it appears to A that the failure to comply with the duty in section 34(2A) took place in the area of another waste collection authority (B), give B a copy of the notice.
 - (5) Where the Environment Agency gives a notice to a person under subsection (2), the Agency must, at the time of giving the notice, give a copy of the notice to the waste collection authority in whose area the failure to comply with the duty in section 34(2A) took place.
 - (6) Where a person is given a notice under subsection (2) in respect of an offence—
 - (a) no proceedings may be instituted for that offence before the end of the period of 14 days following the date of the notice; and
 - (b) the person may not be convicted of the offence if the fixed penalty is paid before the end of that period.
 - (7) The fixed penalty payable to an enforcement authority under this section is—
 - (a) the amount specified by the authority in respect of the offence; or
 - (b) if no amount is specified by the authority, £200.
 - (8) The amount specified by an authority in respect of the offence under subsection (7)(a) must not be less than £150 or more than [F23£600].
 - (9) The enforcement authority to which a fixed penalty is payable under this section may make provision for treating it as having been paid if a lesser amount of not less than £120 is paid [F24before the end of a period specified by the authority.]
- [The Secretary of State may by regulations substitute different amounts for the amounts
- ^{F25}(9A) for the time being specified in subsections (7)(b), (8) and (9).]
- (10) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.
 - (11) A notice under this section must also—
 - (a) state the period during which, by virtue of subsection (6)(a), proceedings will not be instituted for the offence under section 34(6);
 - (b) state the period during which, by virtue of subsection (6)(b), payment of the fixed penalty will discharge any liability to conviction for the offence;
 - (c) state the amount of the fixed penalty;
 - (d) state any lesser amount payment of which, by virtue of subsection (9), is treated as payment of the fixed penalty, and the period for payment of the lesser amount;
 - (e) state the permissible methods of payment;

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- (f) explain that—
 - (i) the notice contains an offer to discharge liability to conviction for the offence by payment of a fixed penalty and that the person is not required to accept that offer; and
 - (ii) the person is entitled to make representations to the authority about the allegations contained in the notice;
 - (g) state the address to which the person may send any representations;
 - (h) explain that, by virtue of subsection (3), an authority may not give a person a notice under this section if such a notice has already been given to that person (whether by the same or another authority) in respect of the same offence;
 - (i) state which other enforcement authorities the authority has sent a copy of the notice to in accordance with subsections (4) and (5).
- (12) An enforcement authority may authorise in writing a person (an “authorised officer”) to give a notice under this section on its behalf.
- (13) An authorised officer may require an occupier of domestic property to give the occupier’s name and address if the officer proposes to give the occupier a fixed penalty notice.
- (14) A person commits an offence if the person—
- (a) fails to give a name or address when required to do so under subsection (13), or
 - (b) gives a false or inaccurate name or address in response to a requirement under that subsection.
- (15) A person guilty of an offence under subsection (14) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (16) In any proceedings a certificate which—
- (a) purports to be signed on behalf of the chief finance officer of the enforcement authority; and
 - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
- is evidence of the facts stated.
- (17) In this section—
- “chief finance officer”, in relation to an enforcement authority, means the person having responsibility for the financial affairs of the authority;
 - “enforcement authority in England” means the Environment Agency or a waste collection authority in England.]

Textual Amendments

- F22** S. 34ZA inserted (E.W.) (7.1.2019) by [The Environmental Protection \(Miscellaneous Amendments\) \(England and Wales\) Regulations 2018 \(S.I. 2018/1227\)](#), regs. 2(1), **3(2)**
- F23** Sum in s. 34ZA(8) substituted (31.7.2023) by [The Environmental Offences \(Fixed Penalties\) \(Amendment\) \(England\) Regulations 2023 \(S.I. 2023/770\)](#), regs. 1(1), **3(3)**
- F24** Words in s. 34ZA(9) substituted (1.4.2023) by [Environment Act 2021 \(c. 30\)](#), **ss. 69(4)(a)**, 147(3)(4) (with s. 144); [S.I. 2023/381](#), reg. 2(b)
- F25** [S. 34ZA\(9A\)](#) inserted (1.4.2023) by [Environment Act 2021 \(c. 30\)](#), **ss. 69(4)(b)**, 147(3)(4) (with s. 144); [S.I. 2023/381](#), reg. 2(b)

Changes to legislation: Environmental Protection Act 1990, Cross Heading: Duty of care etc. as respects waste is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

[^{F26}34ZB] Fixed penalty notices: offences under section 34(6) relating to section 34(2A): Wales

- (1) This section applies where it appears to an enforcement authority in Wales that a person has failed to comply with the duty relating to the transfer of household waste in section 34(2A) in Wales.
- (2) The authority may give to that person a notice offering the opportunity of discharging any liability to conviction for an offence under section 34(6) by payment of a fixed penalty.
- (3) An authority may not give a person a notice under subsection (2) if such a notice has already been given to that person (whether by the same or another authority) in respect of the same offence.
- (4) Where a waste collection authority (A) gives a notice to a person under subsection (2) in relation to a failure to comply with the duty in section 34(2A) that took place in the area of another waste collection authority (B), A must, at the time of giving the notice, give a copy of the notice to B.
- (5) Where the Natural Resources Body for Wales gives a notice to a person under subsection (2), the Body must, at the time of giving the notice, give a copy of the notice to the waste collection authority in whose area the failure to comply with the duty in section 34(2A) took place.
- (6) Where a person is given a notice under subsection (2) in respect of an offence—
 - (a) no proceedings may be instituted for that offence before the end of the period of 14 days following the date of the notice; and
 - (b) the person may not be convicted of the offence if the fixed penalty is paid before the end of that period.
- (7) The fixed penalty payable to an enforcement authority under this section is £300.
- (8) An enforcement authority may make provision in a notice given under subsection (2) for treating the fixed penalty as having been paid if a lesser amount of £150 is paid before the end of the period of 10 days following the date of the notice.
- (9) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.
- (10) A notice under this section must also—
 - (a) state the period during which, by virtue of subsection (6)(a), proceedings will not be instituted for the offence under section 34(6);
 - (b) state the date on or before which, by virtue of subsection (6)(b), payment of the fixed penalty must be made in order to discharge any liability to conviction for the offence;
 - (c) state the amount of the fixed penalty;
 - (d) if the enforcement authority makes provision under subsection (8)—
 - (i) state the lesser amount, the payment of which is treated, by virtue of that subsection, as payment of the fixed penalty, and
 - (ii) state the date on or before which payment of the lesser amount must be made for it to be so treated;
 - (e) state the permissible methods of payment;

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- (f) state the person to whom, and the address at which, payment may be made;
 - (g) explain that—
 - (i) the notice contains an offer to discharge liability to conviction for the offence by payment of a fixed penalty and that the person is not required to accept that offer, and
 - (ii) the person is entitled to make representations to the authority about the allegations contained in the notice;
 - (h) state the address to which the person may send any representations;
 - (i) explain that, by virtue of subsection (3), an authority may not give a person a notice under this section if such a notice has already been given to that person (whether by the same or another authority) in respect of the same offence;
 - (j) state the other enforcement authorities to which the authority has sent a copy of the notice in accordance with subsections (4) and (5).
- (11) An enforcement authority may authorise in writing a person (an “authorised officer”) to give a notice under this section on its behalf.
- (12) Where an authorised officer proposes to give a person a notice under subsection (2), the officer may require that person to give their name and address.
- (13) A person commits an offence if the person—
- (a) fails to give a name or address when required to do so under subsection (12), or
 - (b) gives a false or inaccurate name or address in response to a requirement under that subsection.
- (14) A person guilty of an offence under subsection (13) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (15) In any proceedings a certificate which—
- (a) purports to be signed by or on behalf of the chief finance officer of an enforcement authority to whom a fixed penalty is payable pursuant to a notice under this section; and
 - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
- is evidence of the facts stated.
- (16) In this section—
- “chief finance officer”, in relation to an enforcement authority, means the person having responsibility for the financial affairs of the authority;
 - “enforcement authority in Wales” means the Natural Resources Body for Wales or a waste collection authority in Wales.]

Textual Amendments

F26 S. 34ZB inserted (E.W.) (21.2.2019) by [The Household Waste Duty of Care \(Fixed Penalties\) \(Wales\) Regulations 2019 \(S.I. 2019/331\)](#), regs. 1(2), 2(2)

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[^{F27}34A Fixed penalty notices for certain offences under section 34

- (1) This section applies where it appears to an enforcement authority that a person has failed to comply with a duty to furnish documents to that authority imposed under regulations made at any time under section 34(5) above.
- (2) The authority may serve on that person a notice offering him the opportunity of discharging any liability to conviction for an offence under section 34(6) above by payment of a fixed penalty.
- (3) Where a person is given a notice under this section in respect of an offence—
 - (a) no proceedings may be instituted for that offence before expiration of the period of fourteen days following the date of the notice; and
 - (b) he may not be convicted of that offence if he pays the fixed penalty before the expiration of the period.
- (4) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.
- (5) A notice under this section must also state—
 - (a) the period during which, by virtue of subsection (3) above, proceedings will not be taken for the offence;
 - (b) the amount of the fixed penalty; and
 - (c) the person to whom and the address at which the fixed penalty may be paid.
- (6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (5)(c) above at the address so mentioned.
- (7) Where a letter is sent in accordance with subsection (6) above payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (8) The form of a notice under this section is to be such as the appropriate person may by order prescribe.
- (9) The fixed penalty payable to an enforcement authority under this section is, subject to subsection (10) below, £300.
- (10) The appropriate person may by order substitute a different amount for the amount for the time being specified in subsection (9) above.
- (11) The enforcement authority to which a fixed penalty is payable under this section may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority.
- (12) The appropriate person may by regulations restrict the extent to which, and the circumstances in which, an enforcement authority may make provision under subsection (11) above.
- (13) In any proceedings a certificate which—
 - (a) purports to be signed on behalf of the chief finance officer of the enforcement authority, and

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(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
is evidence of the facts stated.

(14) In this section—

“chief finance officer”, in relation to an enforcement authority, means the person having responsibility for the financial affairs of the authority;

“enforcement authority” means the Environment Agency [^{F28}, the Natural Resources Body for Wales] or a waste collection authority.]

Textual Amendments

F27 S. 34A inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by [Clean Neighbourhoods and Environment Act 2005](#) (c. 16), **ss. 45, 108**; [S.I. 2006/768](#), **art. 3**; [S.I. 2006/795](#), **art. 2(3)**, Sch. 2; [S.I. 2006/2797](#), **art. 4**

F28 Words in s. 34A(14) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013](#) (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 212** (with Sch. 7)

Modifications etc. (not altering text)

C5 Ss. 33-34C applied (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011](#) (S.I. 2011/988), **regs. 1(2), 47(3)** (with **regs. 2, 47(2)**)

Changes to legislation:

Environmental Protection Act 1990, Cross Heading: Duty of care etc. as respects waste is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 30(4A) inserted by [2021 c. 30 s. 57\(2\)](#)
- s. 33ZB(10A) inserted by [2021 c. 30 s. 69\(3\)\(b\)](#)
- s. 34ZB(8A) inserted by [2021 c. 30 s. 69\(5\)\(b\)](#)
- s. 45A-45AZG substituted for s. 45A by [2021 c. 30 s. 57\(4\)](#)
- s. 46(2)(a)(b) substituted for words by [2021 c. 30 s. 57\(5\)](#)
- s. 106A inserted by [2023 c. 6 s. 41\(2\)](#)
- s. 161(2AA)(2AB) inserted by [2016 anaw 3 s. 69\(4\)](#)