

## Transport of waste: regulation of carriers, brokers and dealers

by [Practical Law Environment](#)

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*This note explains how carriers, brokers and dealers of waste are regulated in England and Wales.*

### Scope of this note

This note gives an overview of how carriers, brokers and dealers of waste are regulated in England and Wales.

In summary, waste carriers, brokers and dealers:

- Are subject to a duty of care if they handle controlled waste.
- Do not require an environmental permit.
- May need to be registered, either every three years or as a one-off registration.
- May benefit from exemptions from registration.

For more information on the:

- Transfrontier (international) shipment of waste, see [Practice note, Transport of waste: transfrontier](#).
- Other aspects of the waste regime, see [Waste regime toolkit](#).

### Waste Framework Directive registration requirements

The [Waste Framework Directive 2008](#) (2008/98/EC) is the key EU Directive relating to waste. For more information on the WFD 2008 generally, see [Practice note, EU Waste Framework Directive 2008](#).

Article 26 of the Waste Framework Directive 2008 requires member states to keep a register of organisations involved in transporting or handling waste that are not required to obtain a permit, including:

- Establishments or undertakings that collect or transport waste on a professional basis.
- Dealers or brokers.
- Establishments or undertakings that are exempt, under Article 24, from the permit requirements for waste management because their operation is limited to:
  - disposal of their own non-hazardous waste at the place of production; or
  - recovery of waste.

Article 3 of the WFD 2008 defines a:

- **Dealer** as any undertaking that acts in the role of principal to purchase and subsequently sell waste. This includes dealers who do not take physical possession of the waste.
- **Broker** as any undertaking arranging the recovery or disposal of waste on behalf of others. Again, this includes brokers who do not take physical possession of the waste.

**Carrier** is not defined.

## Registration requirements in England and Wales

### Principal legislation

The regime for the registration of waste carriers, dealers and brokers in England and Wales is contained primarily in the:

- [Control of Pollution \(Amendment\) Act 1989](#) (CPA 1989).
- [Waste \(England and Wales\) Regulations 2011 \(SI 2011/988\)](#) (Waste Regulations 2011), which came into force on 29 March 2011 and extend the provisions of the CPA 1989.

### Waste Regulations 2011 in brief

The [Waste Regulations 2011](#):

- Supplement registration provisions in the CPA 1989 regarding the registration of carriers, brokers and dealers (*Part 8*).
- Transpose provisions of the [WFD 2008](#) into law in England and Wales (see [Waste Framework Directive registration requirements](#) above).
- Extend existing requirements for registration of carriers and brokers of controlled waste to dealers (see [Who must be registered?](#) below).
- Introduce a two-tier system of registration (see [Two-tier system under Waste Regulations 2011](#) below).
- Require carriers, brokers and dealers to take reasonable measures to apply the waste hierarchy in the WFD 2008 (see [Waste hierarchy](#) below)
- Remove the provisions in the [Controlled Waste \(Registration of Carriers and Seizure of Vehicles\) Regulations 1991 \(SI 1991/1624\)](#) that relate to the registration of carriers ([paragraph 9](#), [Schedule 4](#)).
- Revoke the Waste Management Licensing Regulations 1994 ([SI 1994/1056](#)) (WMLR 1994), which implemented some of the previous provisions for carrier and broker registration ([Schedule 5](#)).

### Regulator

The regulator is:

- The Environment Agency (EA) for England.
- Natural Resources Wales (NRW) for Wales.

([Regulation 29](#), [Waste Regulations 2011](#).)

### Who must be registered?

The following must be registered with the relevant regulator:

- Carriers of controlled waste ([section 1](#), [CPA 1989](#)).
- Brokers of, or dealers in, controlled waste ([regulation 25](#), [Waste Regulations 2011](#)).

Brokers and dealers are defined in the [WFD 2008](#) (see [Waste Framework Directive registration requirements](#) above) but carrier is not defined. In practical terms, it is someone who transports waste.

### Two-tier system under Waste Regulations 2011

The [Waste Regulations 2011](#) introduced a two-tier registration system for waste carriers, brokers and dealers:

- **Upper tier.** Professional waste carriers, brokers and dealers must register every three years. Those who were previously registered and not professionally exempt were automatically transferred to the upper tier, and kept the same renewal date for their registration.
- **Lower tier.** "Specified persons" must carry out a one-off registration that lasts indefinitely (See [Who are specified persons?](#) below). Notably, this includes a carrier carrying waste from its own business. In practical terms, this means that organisations and businesses who were professionally exempt under the previous legislation and who normally and regularly carry waste were subject to registration for the first time. No fee is payable for lower tier registration, and the lower tier benefits from less strict enforcement.

([Regulation 31](#), *Waste Regulations 2011*.)

When the Waste Regulations 2011 came into force, the EA (at that time the only regulator), confirmed that organisations that were already registered as a:

- Waste carrier or broker did not need to re-register as a dealer. The EA automatically added the ability to be a dealer to their existing registration. When their existing waste carrier or broker certificate was due to be renewed, it would be replaced by an upper tier waste certificate.
- Professionally exempt (under the previous, simpler registration obligation contained in paragraph 12(2) of Schedule 4 to Waste Management Licensing Regulations 1994 (*SI 1994/1056*) (now repealed), did not need to do anything. The EA would automatically transfer them to being a lower tier carrier, broker or dealer.

For more information on registration, see [EA: Register as a waste carrier, broker or dealer \(England\)](#) and [NRW: Register as a Waste carrier, broker or dealer](#).

## Exemption from registration of certain carriers

The following are not required to register as a carrier of controlled waste (for the purposes of the [CPA 1989](#)):

- A carrier who:
  - is a specified person, such as charities and waste collection authorities (see [Who are specified persons?](#) below); and
  - does not normally and regularly transport controlled waste.
- An operator of marine shipping (that is, a vessel, aircraft, hovercraft, floating container or vehicle loaded with waste) that requires a marine licence under the [Food and Environment Protection Act 1985](#) or the [Marine and Coastal Access Act 2009](#) (or that is exempt from that requirement).

([Regulation 26](#), *Waste Regulations 2011*.)

## Transitional exemptions for two-tier system

Transitional exemptions applied for carriers and brokers that were exempt under the legislation in place before introduction of the [Waste Regulations 2011](#) ([regulation 27](#)). The transitional exemption meant that lower tier waste carriers and brokers who were companies that carry waste as part of their business had until the end of 2013 to register.

This provision gave effect to the European Court of Justice's decision in [Commission of the European Communities v Italian Republic \(Case C-270/03\) \[2005\] EUECJ C-270/03](#), that the registration of waste carriers must include all those who normally and regularly transport waste, whether this is their own waste or another's waste.

## Who are specified persons?

"Specified persons" are a:

- Charity or voluntary organisation.
- Waste collection authority (see [Practice note, Waste collection and disposal by local authorities](#)).
- Waste disposal authority (see [Practice note, Waste collection and disposal by local authorities](#)).
- Waste regulation authority (that is, the EA for England, and NRW for Wales).

- Carrier that only transports waste produced by the carrier itself, except where it is construction and demolition waste.
- Carrier, broker or dealer that (as relevant) only transports, arranges for the recovery or disposal or deals in animal by-products (ABPs), mining or quarrying waste or waste from agricultural premises.

([Regulation 24\(5\)](#), *Waste Regulations 2011*.)

## Registration procedure and refusal

A carrier, broker or dealer can apply to register in writing or online (see [EA: Waste carriers, brokers and dealers \(England\)](#) and [NRW: Register or renew as a waste carrier, broker or dealer \(Wales\)](#)).

The regulator has a duty, where possible, to use existing records held by it to obtain information for the registration process to reduce the administrative burden ([regulation 46](#), *Waste Regulations 2011*).

The regulator can refuse to register an application on one of the following grounds:

- Where the regulator considers it undesirable for the applicant to be authorised to transport controlled waste or to act as a broker or dealer.
- Where the applicant or other relevant person has committed an offence under the various environmental legislation listed in the [Waste Regulations 2011](#) (for example, where a carrier, broker or dealer has failed to register under the [CPA 1989](#) or [regulation 25](#) (as applicable), or has committed an offence under [section 33](#) of the *Environmental Protection Act 1990* (EPA 1990)). In relation to individuals, the [Rehabilitation of Offenders Act 1974](#) will result in convictions being spent after five years. There is no corresponding provision where an offence is committed by a body corporate. The [Waste \(England and Wales\) \(Amendment\) Regulations 2014 \(SI 2014/656\)](#) (Waste Amendment Regulations 2014) broaden the range of relevant convictions (see [Legal update, Waste regulations simplify waste transfer notes](#) and [Legal update, Government consults on simplifying waste transfer notes](#)). For more information on waste offences, see [Practice note, Waste offences](#)

([Regulation 29](#), *Waste Regulations 2011*.)

Carriers, brokers or dealers have 28 days to tell the regulator of any change in circumstances that will affect their registration ([regulation 30](#)).

[Regulation 32](#) of the *Waste Regulations 2011* sets out when a registration may be revoked.

Where a carrier is refused registration or its registration is revoked, it can appeal to the Secretary of State under [section 4](#) of the CPA 1989. An appeal must be lodged within 28 days of the refusal or revocation ([regulation 33](#), *Waste Regulations 2011*).

The regulator will undertake periodic inspections of carriers, brokers and dealers ([regulation 34](#)).

## Waste carriers' authority to transport waste

The [Waste Amendment Regulations 2014](#) insert a new Part 10A to the [Waste Regulations 2011](#), to re-introduce a provision explaining how a person transporting waste can comply with the requirement to produce its authority to do so. This provision was unintentionally missed out when the *Waste Regulations 2011* repealed the *Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 (SI 1991/1624)*.

The new provision differs very slightly by allowing a person to produce its authority to transport waste up to five working days after the request rather than seven calendar days.

The change follows a 2013 waste consultation (see [Legal update, Government consults on simplifying waste transfer notes](#)).

## Environment Bill 2019-20: reforms

Provisions in the [Environment Bill 2019-20](#) will help prevent waste crime by modernising the regulatory framework for waste management and carriers; deter waste crime by ensuring regulators can take effective enforcement action and detect waste crime by allowing for electronic waste tracking.

For more information, see [Practice note: overview, Environment Bill 2019-20: Part 3: Waste and resource efficiency](#).

## Waste hierarchy

[Regulation 12](#) of the *Waste Regulations 2011* requires any organisation involved in waste to take reasonable steps to apply the waste hierarchy when they transfer waste. This duty applies to anyone who imports, produces, collects, transports, recovers or disposes of waste, and to any dealer or

broker who has control over waste.

The waste hierarchy sets out the following priority order for waste management:

- Prevention.
- Re-use.
- Recycling.
- Recovery.
- Environmental disposal (as a last resort).

The EA has stated that it requires all waste transfer notes and hazardous waste consignment notes to include a declaration that the carrier, broker, or dealer has taken all reasonable measures to apply the waste hierarchy when waste is transferred.

For more information on the waste hierarchy:

- As implemented in England and Wales, see [Practice note, Waste overview, key concepts and definitions](#).
- Under the [WFD 2008](#), see [Practice note, EU Waste Framework Directive 2008](#).

## Waste duty of care

A duty of care applies to waste carriers, brokers and dealers (as it does to anyone else handling controlled waste) to take all reasonable steps to ensure that the waste:

- Is not disposed of unlawfully, without a permit or in breach of any permit, or treated, kept or disposed of in a way that causes pollution or harm.
- Does not escape from a person's control.
- Is only transferred to an authorised person and accompanied with a written description that enables the transferee to know enough about it to deal with it properly and avoid breaching their permit or [section 33\(1\)](#) of the EPA 1990

([Section 34](#), EPA 1990.)

For more information, see [Practice note, Waste overview, key concepts and definitions](#).

## Duties to keep different types of recyclates separate

From 1 January 2015, an establishment or undertaking that collects waste paper, metal, plastic or glass must do so by way of separate collection, provided this is:

- Necessary to ensure that the waste is recovered in accordance with relevant provisions of the [WFD 2008](#).
- Technically, environmentally and economically practicable.

([Regulation 13](#), [Waste Regulations 2011](#).)

For information on the judicial review challenge by the Campaign for Real Recycling that resulted in amendments to the requirement for separate collection of recyclates, see [Practice note, Waste collection and disposal by local authorities: Judicial review on co-mingling and Waste Amendment Regulations 2012](#).

Also from 1 January 2015, any establishment or undertaking that collects, transports or receives waste paper, metal, plastic or glass must take all reasonable measures to ensure that, where that waste has been separately collected, it is not mixed with other waste or other material with different properties ([regulation 14](#), [Waste Regulations 2011](#)).

## Enforcement

### Working with Driver and Vehicle Standards Agency

The EA and the Driver and Vehicle Standards Agency (DVSA) have signed a memorandum of understanding (MoU) formally agreeing to share intelligence and carry out operations to stop illegal waste carriers and improve road safety in England. It is particularly intended to ensure earlier and wider enforcement against seriously, and serially, non-compliant waste industry vehicles and carriers.

For more information, see [Legal update, EA signs MoU with Driver and Vehicle Standards Agency to clamp down on illegal waste carriers](#).

## Compliance notices

The regulator can serve a compliance notice requiring a person to take specific steps within a specific period to prevent the recurrence or continuation of a breach of:

- The waste hierarchy under [regulation 12](#) of the Waste Regulations 2011 (see [Waste hierarchy](#) above).
- The requirement to keep different recyclates separate under [regulations 13](#) and [14](#) of the Waste Regulations 2011 (see [Duties to keep different types of recyclates separate](#) above).
- The requirement to register as a waste broker or dealer under [regulation 25](#) of the Waste Regulations 2011 or as a waste carrier under [section 1](#) of the CPA 1989 (see [Who must be registered?](#) above).

([Regulation 38](#), *Waste Regulations 2011*.)

## Stop notices

The regulator can serve a stop notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice, if it considers that the person is acting in breach of:

- The waste hierarchy under [regulation 12](#) of the Waste Regulations 2011 (see [Waste hierarchy](#) above).
- The requirement to keep different recyclates separate under [regulations 13](#) and [14](#) of the Waste Regulations 2011 (see [Duties to keep different types of recyclates separate](#) above).
- The requirement to register as a waste broker or dealer under [regulation 25](#) of the Waste Regulations 2011 or as a waste carrier under [section 1](#) of the CPA 1989 (see [Who must be registered?](#) above).

([Regulation 39](#), *Waste Regulations 2011*.)

## Restoration notices

The regulator can serve a restoration notice requiring a person to take specific steps within a specific period to restore the position to what it would have been if there had been no breach of [regulation 14](#) of the Waste Regulations 2011 (see [Duties to keep different types of recyclates separate](#) above) ([regulation 40](#), *Waste Regulations 2011*).

## Offences

The enforcement regime for carriers, brokers or dealers registered in the lower tier is less strict than for those registered in the higher tier.

For carriers, brokers and dealers who should be registered in the higher tier, it is an offence to fail to register as a:

- Carrier of controlled waste ([section 1\(1\)](#), CPA 1989).
- Broker or dealer of controlled waste ([regulation 25](#) and [regulation 42\(1\)](#), *Waste Regulations 2011*).

For carriers, brokers and dealers who are specified persons and who should be registered in the lower tier, it is an offence to fail to:

- Register as a carrier of controlled waste under section 1 of the CPA 1989. However, the regulation authority can only issue proceedings if it has already served a compliance notice or stop notice and the offender has failed to comply with the notice ([regulation 45](#), *Waste Regulations 2011*).
- Comply with a compliance notice or stop notice for failing to register as a broker or dealer ([regulation 42\(1\)](#), *Waste Regulations 2011*).

It is an offence for anyone to fail to comply with a compliance notice, a stop notice or a restoration notice. Compliance notices and stop notices can be served for failure to register or for breach of the waste hierarchy (see [Compliance notices](#) and [Stop notices](#) above). Restoration notices can be served if recyclates that have been collected separately are then mixed (see [Restoration notices](#) above).

## Penalties

A person guilty of an offence of failing to register or failing to comply with a compliance notice or a stop notice in relation to registration is liable on summary conviction:

- For offences committed before 12 March 2015, to a fine not exceeding level 5 on the standard scale (£5,000); and
- For offences committed on or after 12 March 2015, to an unlimited fine.

([Section 1](#), CPA 1989 and [regulation 42\(2\)](#), Waste Regulations 2011.)

A person guilty of an offence of failing to comply with a compliance notice, stop notice or restoration notice for breach of [regulations 12](#), [13](#) or [14](#) is liable on:

- Summary conviction in the magistrates' court:
  - for offences committed before 12 March 2015, to a fine not exceeding level 5 on the standard scale (£5,000); and
  - for offences committed on or after 12 March 2015, to an unlimited fine.
- Conviction on indictment, to an unlimited fine.

([Regulation 42\(3\)](#), Waste Regulations 2011.)

## Scrap metal dealers

Scrap metal theft costs the UK economy an estimated £1 billion annually. Much of the trade was in cash, making it very difficult to catch offenders and led to pressure to change the law (see [Legal update, Legal Aid, Sentencing and Punishment of Offenders Act 2012: environmental implications](#)).

### Scrap Metal Dealers Act 2013

The [Scrap Metal Dealers Act 2013](#) (SMDA 2013) received Royal Assent on 28 February 2013 (see [Legal update, Scrap Metal Dealers Act 2013 receives Royal Assent](#)). It applies to England and Wales. The [Scrap Metal Dealers Act 2013 \(Commencement and Transitional Provisions\) Order 2013 \(SI 2013/1966\)](#) brought the key provisions of the SMDA 2013 into force between 1 September and 1 December 2013 (see [Legal update, Scrap Metal Dealers Act 2013: Commencement Order made](#)).

The [Scrap Metal Dealers Act 2013 \(Prescribed Relevant Offences and Relevant Enforcement Action\) Regulations 2013 \(SI 2013/2258\)](#) came into force on 1 October 2013. The Regulations set out relevant environmental and criminal offences and enforcement actions that a local authority should take into account when deciding whether an applicant for a scrap metal dealer licence is a suitable person under the new licensing regime.

The [Scrap Metal Dealers Act 2013 \(Prescribed Documents and Information for Verification of Name and Address\) Regulations 2013 \(SI 2013/2276\)](#) came into force on 2 October 2013. The Regulations set out the documents and information that are sufficient for a scrap dealer to verify the name and address of a person supplying them with scrap metal, for the purposes of section 11(3)(a) of the Act. These are principally a passport or photo-card driving licence.

(See [Legal update, Scrap Metal Dealers Act 2013: regulations on prescribed offences and identification to be considered](#).)

The SMDA 2013:

- Introduced a new regulatory regime for the scrap metal dealing industry ([sections 1-11](#)). Scrap metal dealers must hold and display a licence. Unlicensed sites may be shut down. Local authorities will continue to regulate the sector, but will have increased powers to refuse or revoke a licence, and will be able to charge a fee.
- Prohibits the purchase of scrap metal for cash ([section 12](#)). The offence will apply to all scrap metal dealers, including mobile scrap metal dealers and site managers. ([Section 146](#) of LASPO, which created an offence of purchasing scrap metal for cash, does not apply to mobile scrap dealers).
- Is intended to raise scrap metal trading standards by requiring that more detailed and accurate records of transactions and identities are kept ([sections 13-15](#)).
- Defines a "scrap metal dealer" and "scrap metal" ([section 21](#)).

- Repealed existing legislation on scrap metal dealing, including the [Scrap Metal Dealers Act 1964](#) and [sections 145 to 147](#) of [LASPO 2012](#).

## Definition of scrap metal dealer and scrap metal

A "scrap metal dealer" is a person who carries on a business:

- That consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought. This excludes manufacturers selling scrap metal only as a by-product of, or surplus to their processes.
- As a motor salvage operator (so far as that does not fall within the above category), that is someone who:
  - recovers salvageable parts from motor vehicles for re-use or sale and disposes of the rest of the vehicle for scrap;
  - buys written-off vehicles to repair and resell them; and
  - buying or selling motor vehicles are to be the subject (whether immediately or on a subsequent re-sale) of any of the activities above.

([Section 21\(2\)-\(4\)](#).)

"Scrap metal":

- Includes:
  - any old, waste or discarded metal or metallic material; and
  - any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.
- Excludes gold, silver, and any alloy of 2% or more by weight of gold or silver.

([Section 21\(7\)](#).)

## Review of SMDA 2013

In 2017, the Home Office published the results of its review of the SMDA 2013. The review was carried out in accordance with the statutory requirement under section 18 of the SMDA 2013 to conduct and publish a review within 5 years of it coming into force. It concluded that, despite specific criticisms, the overwhelming view was that the SMDA 2013 had improved regulation of the scrap metal industry and helped to achieve reductions in the level of metal theft (see [Legal update, Home Office reviews Scrap Metal Dealers Act 2013](#)).

## Guidance on scrap metal dealers

For more information on regulation of scrap metal dealers, see [Home Office: Scrap metal dealers](#).

### PRODUCTS

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