

2010 – No. 45

**The Waste Control and Disposal (Duty of Care)
Regulations, 2010**

Made

11th May, 2010

Coming into Operation

1st June, 2010

Laid before the States

, 2010

THE DIRECTOR OF ENVIRONMENTAL HEALTH AND POLLUTION REGULATION, in exercise of the powers conferred on her by section 19 of the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010^a, section 72 of the Environmental Pollution (Guernsey) Law, 2004^b and of all other powers enabling her in that behalf, hereby orders:-

Interpretation.

1. (1) In these Regulations, unless the context otherwise requires-

"**contravention**" includes failure to comply,

"**the Director**" means the person appointed as Director of Environmental Health and Pollution Regulation under section 4 of the Law,

^a Approved by resolution of the States on 28th April, 2010.

^b Order in Council No. XIII of 2004.

"enactment" includes an instrument,

"Guernsey" includes the Islands of Guernsey, Herm and Jethou, all other islands, islets and rocks around the coasts of those Islands, whether or not attached at low water, and all of the territorial waters adjacent thereto,

"instrument" means any order (including an order of the Royal Court), regulations, rules or other subsidiary legislative instrument,

"the Law" means the Environmental Pollution (Guernsey) Law, 2004,

"licence" means a licence to carry on a prescribed operation granted under section 15 of the Law,

"the Ordinance" means the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010,

"person" includes any body or authority,

"premises" include buildings, structures and land in the open air,

"prescribed operation" : see section 13(1) of the Law and section 1 of the Ordinance,

"relevant person" means a person to whom the duties imposed by section 36(1) of the Law apply,

"specially controlled waste" means any description of waste identified by Ordinance under section 37 of the Law as so dangerous

or difficult to dispose of that special measures need to be taken in respect of it^c,

"transfer note": see regulation 2(3)(b),

"transferor" and **"transferee"** means respectively, in relation to a transfer of waste by a relevant person, the person who transfers the waste and the person who receives the waste,

"waste" has the meaning in the Law except that it does not include –

- (a) radioactive waste, and
- (b) any substance which is explosive within the meaning of the Explosives (Guernsey) Law, 1905^d,

and, unless the context otherwise requires, any other words or expressions shall have the same meaning as in the Ordinance.

(2) The Interpretation (Guernsey) Law, 1948^e applies to the interpretation of these Regulations.

(3) Any reference in these Regulations to an enactment is a reference to such enactment as from time to time amended, re-enacted (with or without modification), extended or applied.

^c See section 26 of the Ordinance and regulation 2 of the Waste Control and Disposal (Specially Controlled Waste) Regulations, 2010.

^d Ordres en Conseil Vol. III, p.414 and Vol. XXXIV, p.586.

^e Ordres en Conseil Vol. XIII p. 355.

**Measures and procedures to facilitate observance of the duty of care:
transfer notes.**

2. (1) This regulation and regulation 4 prescribe the measures and procedures that a relevant person must implement, adopt and follow to facilitate observance of a relevant person's duty to take all such measures as are reasonable in the circumstances to transfer waste only -

- (a) to a person who may lawfully handle the waste under the Law, and
- (b) with sufficient information about it to enable other persons to avoid a contravention of the Law and of any Ordinance or instrument made under it.

(2) Subject to regulation 3 and paragraph (6), a transferor may only transfer waste to a transferee if such transferor is satisfied that the steps set out in paragraph (3) have been taken in relation to the transfer of waste in question.

(3) The steps referred to in paragraph (2) are that -

- (a) sufficient written information about the waste has been transferred, including a written description of the waste, from the transferor to the transferee, which is of sufficient detail to enable other persons to avoid a contravention of-
 - (i) section 36 of the Law and section 21 of the Ordinance, and
 - (ii) the terms and conditions of any licence for an operation falling within section 1(1)(b) or (c) of the Ordinance, and

- (b) a note complying with paragraph (4) ("**transfer note**") has been completed and signed by the transferor and the transferee.
- (4) A transfer note must, subject to paragraph (6) -
- (a) identify the waste to which it relates and state -
 - (i) the quantity of the waste and whether it is loose or in a container,
 - (ii) where the waste is in a container, the kind of container, and
 - (iii) the time and place of the transfer,
 - (b) give the name and address of the transferor and the transferee,
 - (c) state whether or not the transferor is the producer or importer of the waste, and if so which,
 - (d) if the transfer of the waste is made to a person for authorised transport purposes, specify which of those purposes,
 - (e) state whether the transferor and the transferee fall within any of the categories of person shown in column 1 of the Table set out in the Schedule, and

- (f) if the transferor or the transferee fall within any of the categories of person shown in column 1 of the Table set out in the Schedule, provide the relevant additional information for that category specified in the corresponding entry in column 2 of that Table.

(5) The following are "**authorised transport purposes**" for the purposes of paragraph (4)(d) -

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

and in this paragraph "**transport**" includes the transport of that waste by road, rail, air or sea but does not include moving that waste from one place to another by means of any pipe or other apparatus that joins those two places.

(6) The same written information and the same transfer note may, subject to paragraph (7), be transferred in relation to more than one transfer of waste where -

- (a) the written information required under paragraph (3)(a), and

- (b) the matters required to be set out in a transfer note under paragraph (4), except for the time and place of the transfer,

are the same in relation to each transfer of the waste and such written information and transfer note may be used for up to 12 months from the date on which such written information and note is first transferred in relation to a transfer of waste.

(7) Where the same written information and transfer note may be transferred in relation to more than one transfer of waste in accordance with paragraph (6), paragraphs (3) and (4) (except for paragraph (4)(a)(iii)), shall apply as they apply to written information and a note transferred in relation to one transfer of waste, with the following modifications -

- (a) paragraphs (3) and (4) shall apply as if they also required the written information and transfer note to state, respectively -
 - (i) the date it was transferred, and
 - (ii) the 12 month period during which it may be used, and
- (b) paragraph (4) shall apply as if it also required the transfer note to state the frequency (for example, weekly, monthly or bi-monthly) of the proposed transfers of waste.

Exemption from regulations 2 and 4 in relation to consignments of specially controlled waste.

3. Where the Director has issued an approved consignment note under section 28 of the Ordinance in respect of any collection or transport to

effect a transfer of specially controlled waste, the requirements of regulations 2 and 4 shall not apply in relation to that transfer.

Measures and procedures to facilitate observance of the duty of care: requirement to keep copies of written information concerning the waste and transfer notes.

4. (1) The transferor and the transferee must, subject to regulation 3 each keep the following, or a copy thereof, for the period set out in paragraph (2), in relation to a transfer of waste made or accepted, as the case may be, by him -

- (a) the information concerning the waste provided in accordance with section 36(1)(c)(ii) of the Law and regulation 2(3)(a), and
- (b) the transfer note.

(2) The period referred to in paragraph (1) is -

- (a) where the information and transfer note were transferred in relation to only one transfer of waste, two years from the date of the transfer of the waste in question, or
- (b) where the information and note were transferred in relation to more than one transfer of waste, a period of three years starting from the date the information and note was first transferred.

Extent.

5. These Regulations shall have effect in Guernsey.

Citation.

6. These Regulations may be cited as the Waste Control and Disposal (Duty of Care) Regulations, 2010.

Commencement.

7. These Regulations shall come into force on the 1st day of June 2010.

Dated this 11th day of May, 2010

V. Cameron

V. Cameron

Director of Environmental Health and Pollution Regulation

SCHEDULE

regulation 2(4)(e) and (f)

1. Category of person.

2. Additional information for category.

The Douzaine of a parish, which is the transferor or transferee in relation to the carrying out of its functions relating to the collection, transfer and disposal of refuse under the Parochial Collection of Refuse (Guernsey) Law, 2001^f or a person who is a transferor or a transferee in relation to the carrying out of such functions for, or on behalf of, the Douzaine of a parish.

The holder of a licence who is the transferor or the transferee in relation to an operation falling within section 1(1)(b) or (c) of the Ordinance.

If the waste is to be sorted, processed, treated, stored or disposed of by that person, the relevant licence number for that operation.

A person who is a transferor or a transferee in relation to an operation which is exempt from the

^f Order in Council No. IX of 2002; amended by Order in Council No. XIII of 2004 and No. XXI of 2008 and by Recueils d'Ordonnances Tome XXIX, p. 93 and Ordinance No. XIX of 2008.

requirement for a licence under the Law by virtue of an exemption made under section 3 of the Ordinance.

A person who is a transferor or a transferee in relation to an operation falling within section 1(1)(a) of the Ordinance. The relevant licence number for that operation.

A person who is a transferor or a transferee in relation to an operation relating to the collection, removal, transportation or handling of waste which is not an operation for the carrying on of which a licence is required under Part III of the Law.

The Waste Disposal Authority^g.

^g The States of Guernsey Public Services Department is designated as the Waste Disposal Authority; see *Receuil d'Ordonnances* Tome XXXI, p. 540.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Persons who produce, keep, handle, sort, process, transport or dispose of waste ("relevant persons") must comply with the duties in section 36 of the Environmental Pollution (Guernsey) Law, 2004 (known as "the duty of care").

The duty of care does not apply to an occupier of a dwelling in respect of household waste (as defined in the 2004 Law) produced at that dwelling.

Regulations 2 and 4 set out measures and procedures that a relevant person must implement, adopt and follow to facilitate observance of part of the duty of care, that is, a relevant person's duty to take all such measures as are reasonable in the circumstances to transfer waste only -

- (a) to a person who may lawfully handle the waste under the 2004 Law, and
- (b) with sufficient information about it to enable other persons to avoid a contravention of the Law.

Regulation 2 provides that a person who transfers waste ("the transferor") may only transfer it to another person ("the transferee") if he is satisfied that the following steps have been taken in relation to a transfer of waste -

- (a) specified written information, including a written description of the waste, has been transferred to the transferee, and
- (b) the transferor and the transferee have signed a transfer note containing the information required

by the Regulations.

Regulation 2(6) contains provisions allowing for the same written information and transfer note to accompany multiple consignments of the same waste for a period of 12 months where the required information in relation to such transfers is the same.

Regulation 3 provides for an exemption from the requirements of regulations 2 and 4 for transfers of specially controlled waste, as defined in the Regulations, where the Director of Environmental Health and Pollution Regulation has issued an approved consignment note under the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010 in relation to a collection or transport to effect such transfer.

Regulation 4 provides for record keeping requirements in relation to the written information required to be transferred under regulation 2 and transfer notes.