

Proposals for a new permitting regime for waste carriers, brokers and dealers

1. Objectives

- Increase the requirements and standards for becoming a carrier, broker or dealer to enable greater confidence in the credibility of the carrier, broker and dealer (CB&D) regime and to reduce opportunities for waste criminals to exploit the current weaknesses in the regime
- Strengthen the links in the relationship between the producer and the carrier and carrier (and any broker) and recovery or disposal site
- Optimise the role of the producer to retain their obligation while also placing more onus on CB&D as waste professionals
- Ensure CB&D are competent, that they understand their responsibilities and the role they need to play in securing compliance and preventing waste crime

2. Scope of coverage of proposals

2.1 The proposals are being initially developed for England only. However, the nature of carriers, brokers and dealers would lend itself to consideration of common application across the other Devolved Administrations.

2.2 The proposals are being developed to continue to fulfil current EU requirements. The proposals may be further developed or changed post Brexit, which may afford opportunities to improve upon the scope of the current EU requirements. Such opportunities would be considered in light of UK post-Brexit policy. The proposals must also respect that many waste managers operate across the four UK countries with differing requirements and/ or export to the EU and will still need to comply with European legislation.

2.3 While it is proposed to change the current registration regime to a permitting one, other provisions of the existing legislation under the Control of Pollution (Amendment) Act 1989 (as amended) should remain in place subject to any necessary amendments. These include statutory defences for the principal offences, maintenance of public registers, rights of appeal, fixed penalty notices, production of authority to transport waste and the search and seizure and of vehicles provisions.

3. Definition of carriers, brokers and dealers

3.1 It is proposed that the scope and definition of a carrier, broker and dealer remain unchanged and as given under existing legislation. The definitions are included in **Annex 1** for reference.

3.2 Noted however, that flexibility afforded post Brexit might allow either a change to the definition or more likely exemptions from the registration requirements for some carriers e.g. those carrying their own waste?

4. Separation of identity of carrier, broker and dealer

It is proposed to apply different requirements to waste carriers, brokers and dealers and therefore it is necessary that the registration process identify which category or combination of the three

categories is being registered. It may also be necessary to further differentiate different categories of waste carrier (see 6.1).

5. Permit rather than registration

5.1 It is proposed to replace the current ‘registration’ of carriers, brokers and dealers with a system of permitting of CB&Ds (more akin to the environmental permitting system for waste recovery and disposal operations). This would require applicants to provide information prescribed by the regulator and accompanied by a relevant fee. An application would be ‘duly made’ when the prescribed information and fee have been received and assessed as acceptable by the regulator. As now the determination period for applications would be two months. Applicants would have a right of appeal in the event of any failure to determine an application within the prescribed period.

5.2 CB&D permits may be subject to terms and conditions. The Republic of Ireland has in place a permitting system, the permits being subject to conditions. The nature of any conditions to be attached to permits would be a matter for further development and consultation. The policy aim would be to keep the conditions as simple and as standardised as possible, depending on the number of ‘tiers’ of permits needed to deliver proportionate regulation.

6. Permitting of waste carriers

The following proposals apply to the registration of professional collectors and carriers.

6.1 Tiers

To reflect the wide range of waste carriers it is proposed to adopt two or more tiers and/or charging bands. The aim would be to differentiate between those that carry small quantities of their own waste and those who are professional waste carriers or transporting waste is a major component of their business e.g excavation hauliers. Collectors and Carriers tiers might include the following for example:

	Lower tier	Upper tier (triggered by any of the below)
	Transports: <ul style="list-style-type: none"> • own business waste only (includes charities) • non-hazardous waste only • CD&E waste (subject to amount limit) • within UK only 	Transports: <ul style="list-style-type: none"> • other peoples’ waste • for profit, hire or reward • hazardous waste • animal by-products • liquid waste • CD& E waste • UK and abroad
	Amount transported: <ul style="list-style-type: none"> • < 100 tonnes pa (or more if waste from agricultural premises?) 	Amount transported: <ul style="list-style-type: none"> • 100 tonnes or more pa

<p>Uses:</p> <ul style="list-style-type: none"> • 1-3 vehicles • Vehicles registered to carrier only • Vehicles driven by carrier's employees only 	<p>Uses:</p> <ul style="list-style-type: none"> • 4 or more vehicles • hired or subcontracted vehicles • hired or subcontracted drivers (where not registered in their own right?) Vehicles driven by contracted individual drivers other than employees
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6.2 Application requirement – process

In addition to the general requirements for applications

6.2.1 In all cases evidence of the identity of a responsible individual acting on behalf of the operator shall be provided (passport / driving licence and copy of birth certificate).

6.2.2 Application shall include a principal place of business and the address(es) of all depots or operating centres where the operator's vehicles are normally kept when not in use).

6.3. Application requirement – operator competence

6.3.1 It is proposed that on application a prospective waste carrier will need to demonstrate their 'operator competence' in a similar way to those operating under an environmental permit. i.e. in respect of technical competence, past record of convictions and compliance and in some cases financial competence and/or liability insurance.

6.3.2 Operator competence may be applied differently to tiers or sub-categories therein. Technical competence should reflect evidence of relevant operations and underpinning legislation (see **Annex 2 - Operator Competence Framework**).

6.3.3 Competence would rest with the 'establishment or undertaking' but with an obligation that it is demonstrated by individuals acting on its behalf through verifiable training provision.

6.3.4 Technical competence would be required of upper tier carriers but not lower tier carriers. It should be demonstrated and maintained via an approved scheme of technical competence and subject to a continuing competence requirement. Technical competence should also take into account those carriers that are already demonstrating competence in other aspects of their operations e.g. through an environmental permit.

6.3.5 Applications may be refused on the grounds of an applicant's (or other relevant person's) relevant convictions subject to the limitation of Rehabilitation of offenders' legislation. Applications may also be refused on the basis of other specified enforcement action taken e.g. previous removal of registration, where the regulator deems it is desirable to do so.

6.3.6 It is not felt that any form of financial provision should apply generally to waste carriers. However, it shall be a requirement of upper tier carriers to hold and maintain adequate public liability insurance for foreseeable incidents or pollution events during collection/delivery and transport.

6.3.7 Higher tier carriers that carry waste abroad should make financial provision such as a bond that would allow for the repatriation of waste. Such a requirement would need to interface with any existing requirement under TFS regulations to provide for a single mechanism.

7. Application requirement – duration

7.1 A higher-tier carrier permit should be valid for a prescribed period (this is currently 3 years) or could be for 5 years to be consistent with *goods vehicles operator licences* administered by the DVLA on behalf of the traffic commissioners. Alternatively different periods may be prescribed for different classes of carrier? Lower tier carrier permits should be open-ended. The use of open-ended permits remains an option for higher tier carriers as well and this would be consistent with environmental permitting for waste recovery and disposal sites. Whatever option is adopted higher tier carriers would be required to pay an annual subsistence charge to cover the costs of compliance monitoring. Failure to pay annual subsistence charges could lead to revocation.

7.2 Anyone wishing to continue to operate will need to renew the permit within a defined period prior to its expiry. Renewal would be subject to the same criteria as a new application. If there is any savings in the regulator's requirements and costs, renewal may be offered at a lower fee (as it is now).

7.3 The permit may be suspended or revoked in the event of failure to meet other obligations arising from the permit. These would include;

- failure to pay an annual subsistence charge or renewal fee
- failure to comply with the conditions of a permit
- failure to maintain operator competence (technical competence, relevant offences, liability insurance cover)
- failure to keep or submit records

8. Obligation on carriers to confirm the fate of waste

8.1 Upper tier carriers would be subject to a new obligation to provide specified evidence to the producer or previous holder of the waste, of the fate of the waste and that it has been passed to another authorised person.

8.2 This would be achieved by requirement to furnish the previous holder of the waste with a documented or electronic record of the prescribed information and this may be combined

with any ticket, invoice and/or waste duty of care record. The prescribed information would include the date of transfer of the waste, the place of transfer of the load and the party to whom the waste was transferred. A coding system linked to the regulator's site identification codes could be used here to ensure commonality of description.

9. Obligation on carriers to keep and submit records

9.1 All carriers are required to keep Duty of Care (DoC) records for two years.

9.2 Carriers who only handle their own waste would rely on documented evidence under DoC and receipts from the site of deposit.

9.3 Carriers who collect waste from householders will be required to retain a record of copies of the evidence provided to producers as well as DoC records/ evidence of deposit at authorised facility. These records can be combined.

9.4 It is not proposed at this stage to require carriers to routinely submit records to the regulator. However, records must be kept and available for inspection.

10. Offences / enforcement

10.1 New or amended offences

- Offence of collecting or transporting waste or acting as a broker or dealer without a carrier permit.
- Offence of breach of a permit condition (if adopted)
- Offence of making a false or reckless statement or declaration in respect of any of the permitting requirements
- Offence of act or omission of an operator or other relevant person
- Offence of failing to keep / submit records
- Offence of failing to supply last holder with required information
- Right of an appeal in the event of failure to determine an application or impose a condition

10.2 Regulator powers and duties

- Power to refuse an application if not satisfied operator is a competent person
- Duty to determine an application within 2 months
- Power to suspend or revoke a permit
- FPN for failure to keep / submit record or supply information to previous holder

10.3 Revocation

The policy aim is to provide a power to allow for the revocation of a carrier permit on the following grounds;

- Failure to comply with a permit including any conditions
- Making a false or reckless statement or failure to disclose relevant information
- Ceasing to be competent e.g. through subsequent conviction for a relevant offence or being subject to other serious enforcement action or by failure to demonstrate continuing technical competence.
- No longer being an extant establishment or undertaking
- Failure by the operator to pay any fee or charge owing for which notice has been given
- Failure to keep /submit records or provide information to previous holder

11. Compliance monitoring

One of the key aims is to provide for greater scrutiny of waste carriers and ensuring they act as waste professionals. Carriers are subject to appropriate periodic inspections. It is envisaged that inspections and other compliance monitoring would be carried out primarily to check on operator competence and record-keeping and supporting evidence. The application fee (and annual subsistence charge) should allow for proportionate and risk-based approach inspection of upper-tier carriers. This should include inspection of carriers on the road as well as at waste management facilities. The number of registered waste carriers is of the order of 126,000. It will be necessary to decide whether all upper-tier carriers need an inspection or whether compliance can be prioritised taking a risk-based approach.

12. Brokers and dealers

12.1 Brokers and dealers operate in a different way to carriers and to an extent each other. Brokers never take possession or hold the waste and accordingly their activities are less transparent in the waste management chain. Through the use of contractors brokers may by-pass the duty of care and other regulatory roles totally. The only transaction to identify their involvement may be the existence of a contract or financial transaction.

12.2 Dealers are sometimes also operators or brokers. They own the waste and respond to market forces and may or may not hold the waste. The main evidence of their involvement will be financial records of transactions.

12.3 There is less knowledge about the variety of types of waste broker although it can include building or estate managers who act on behalf of a number of individual producers e.g. at a shopping centre. A working assumption is that there are about one-tenth the number of brokers and dealers than there are waste carriers. Also it is likely all waste exports involve a broker or a dealer.

12.4 It is generally proposed to apply the same controls to both brokers and dealers and the application requirements and compliance controls will be similar to those for upper tier carriers with some variation. It is also not yet decided whether brokers or dealers should themselves be sub-categorised into 'tiers'. If so this could be based on the amount of waste for which they have been responsible. It is likely those who bring about the import or export of waste would be subject to additional requirements. It is envisaged that all brokers and dealers should both keep records and submit an annual summary of the waste transactions (with some exemptions where these are already covered by site records).

12.5 Because compliance monitoring of brokers and dealers would largely necessitate examination of paper-based records and contracts, inspection would likely necessitate visits to their premises. Some brokers are based overseas in which case it would be necessary for them to provide a UK address where their records may be examined. As with carriers the cost of inspection will need to be reflected in the application fee and annual subsistence charge.

13. Linked and consequential proposals for carriers, brokers and dealers

Fees and charges

13.1 It may be necessary to apply different application fees to each of CB&D and sub classes of carrier depending on the regulator's costs of assessment. Similarly annual subsistence charges would need to reflect differences in inspection and other compliance assessment costs. The registration fees are currently enshrined in legislation and it is proposed that provision is made for fees and charges for waste carrier, broker or dealer permits through amendment to the Environment Act 1995 if possible, with subsistence charges being set out in a published scheme subject to SoS approval. This would mirror the permitting requirement and could be combined with it.

Duty of Care

13.2 It may be necessary to amend the DoC record-keeping requirements in respect of CB&D and this may in turn be affected by other changes envisaged in this area e.g mandatory electronic reporting.

13.3 In particular, there should be a requirement for waste carriers to check the description of waste where this has been provided by a holder (including any broker). Furthermore waste transfer documentation produced under DoC should also record the details of any broker responsible for the transaction who determines where a waste is being taken.

Records of relevant convictions

13.4 There would be a need to update the list of relevant convictions and other breaches of legislation that would be used by the regulator to determine operator competence.

13.5 The regulator needs to be able to search for extant relevant convictions for a range of prescribed offences including fly-tipping and scrap metal licensing or road transport offences. While not part of this project the success of checking past records is in part dependent on the need for an improved and more centralised record of convictions. the absence of which hinders assessment of operator competence.

Public register requirements

13.6 There would be a consequential need to amend the legislation to make publicly available the details of any new requirements for registration / permitting and the exercise of enforcement action taken and suspension or revocation of authority to transport waste.

Summary of proposals for permitting of waste carriers, brokers and dealers

Proposal	Lower carrier	Upper carrier	Broker	Dealer	Comment
Evidence of individual responsible person's identity	✓	✓	✓	✓	
Submission of prescribed information	✓	✓	✓	✓	
Payment of appropriate application fee	✗	✓	✓	✓	
Payment of annual subsistence charge	✗	✓	✓	✓	
Operator competence - Technical competence	✗	✓	✓	✓	Part of approved scheme
Operator competence - Past convictions record	✓	✓	✓	✓	Includes other specified enforcement action taken
Operator competence – financial provision	✗	✗*	✓	✓	*Fin prov needed for carriers exporting waste
Operator competence – liability insurance	✗	✓	✓	✓	Form to be determined
Duration of permit	Open-ended	3/5 years	3/5 years	3/5 years	To be subject to consultation
Right of appeal against refusal / failure to grant of permit (& conditions)	✓	✓	✓	✓	To be decided depending on basis of conditions
Obligation to confirm fate of waste to previous holder	✗	✓	✓	✓	
Obligation to keep records	✗	✓	✓	✓	
Obligation to submit summary of records	✗	✗	✓	✓	

Annex 1 - Definitions

Broker means any undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste

Carrier* means establishments or undertakings which collect or transport waste on a professional basis

Dealer means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste

Waste holder means the waste producer or the natural or legal person who is in possession of the waste

Waste producer means anyone whose activities produce waste (original waste producer) or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste

*NB the term carrier is not used in the Waste Framework Directive but the meaning is given in Article 26(a) reproduced above.

Annex 2 - Operator Competence Framework

Operator competence - carriers

Areas for technical competence assessment (NB may be 2 or more tiers) via approved scheme

- Duty of Care and record keeping
- the Waste Hierarchy
- TEEP
- Carrier, broker and dealer legislation
- Permits and exemptions
- Transport of waste and carriage of dangerous goods
- Transfrontier shipment of wastes (if waste exporter)
- Hazardous waste identification and movement
- Obligations in respect of different waste types e.g. packaging, WEEE, ELVs, batteries and accumulators

Financial provision

- Public liability insurance for harm or pollution for period of registration

Relevant conviction

- List of relevant offences and other breaches of legislation e.g. to comply with a notice that may be taken into consideration by the regulator.

Operator competence - brokers & dealers

As above plus:

- Transfrontier shipment (all cases) and import /export controls