STATUTORY INSTRUMENTS

2007 No. 1711

The Transfrontier Shipment of Waste Regulations 2007

PART 9

Miscellaneous

Fees

46.—[F1](1) . . . . . .

(2) In order to meet any administrative costs incurred by them in implementing the notification and supervision procedures of the Community Regulation and of any costs of any analyses or inspections undertaken for the purpose of carrying out their functions under that Regulation—

[F2](a) . . . . . .

(b) the Department of **[**[F3]Agriculture, Environment and Rural Affairs**]** in Northern Ireland may charge the fees in Schedule 3.

(3) Fees must be paid by the notifier when he submits a notification and the competent authorities may refuse to proceed with a notification unless the required fee is submitted.

Textual Amendments

F1 Reg. 46(1) omitted (24.1.2022) by virtue of Environment Act 2021 (c. 30), **ss. 62(11)**, 147(3) (with s. 144); S.I. 2022/48, reg. 2(k)

F2 Reg. 46(2)(a) omitted (1.5.2014) by virtue of The Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861), regs. 1, **10** (with reg. 23)

F3 Words in reg. 46(2)(b) substituted (15.3.2019) by The International Waste Shipments (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/590), regs. 2(1), **8**

Costs of take-back etc.

47. A competent authority may charge fees to meet any costs arising from—

(a) the return of waste from a shipment that cannot be completed (including costs of transport, recovery, disposal and storage) in accordance with Article 23; and

(b) the take-back, recovery or disposal of waste from an illegal shipment (including costs of transport and storage) in accordance with Article 25.

Approval of a financial guarantee

48. Schedule 4 (application for approval of a financial guarantee) has effect.

Supply of the financial guarantee

49. For the purposes of Article 4(5), third paragraph, the notifier must supply—

(a) the financial guarantee or equivalent insurance; or

(b) evidence of that guarantee or insurance or a declaration certifying its existence,

as part of the notification document at the time of notification or, with the consent of the competent authority, at any other time before the waste is shipped.

[[F4]Power to share information

49A.—(1) Officers of Revenue and Customs may disclose any information in their possession to the following for the purposes of the enforcement of the Community Regulation or these Regulations—

(a) the Environment Agency;

(b) the Natural Resources Body for Wales;

(c) the Scottish Environment Protection Agency; and

(d) the Department of **[**[F5]Agriculture, Environment and Rural Affairs**]** in Northern Ireland.

(2) Paragraph (1) is without prejudice to any other power of officers of Revenue and Customs to disclose information.

(3) Nothing in paragraph (1) authorises the making of a disclosure which contravenes the Data Protection Act 1998.

(4) Paragraph (5) applies to information—

(a) which was obtained by means of a disclosure authorised by paragraph (1); and

(b) which relates to a person whose identity is specified in the disclosure or can be deduced from it.

(5) No person, including a servant of the Crown, may disclose any information to which this paragraph applies unless—

(a) the disclosure is for a purpose specified in paragraph (1); and

(b) the Commissioners for Her Majesty's Revenue and Customs have given their consent to the disclosure.

(6) Consent for the purposes of paragraph (5)(b) may be given in relation to a particular disclosure or in relation to disclosures made in such circumstances as may be specified or described in the consent.

(7) A person who breaches paragraph (5) is guilty of an offence.

(8) It is a defence for a person charged with an offence under paragraph (7) to prove a reasonable belief—

(a) that the disclosure was lawful; or

(b) that the information had previously been made available to the public lawfully.**]**

Textual Amendments

F4 Reg. 49A inserted (1.5.2014) by The Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861), regs. 1, **11** (with reg. 23)

F5 Words in reg. 49A(1)(d) substituted (15.3.2019) by The International Waste Shipments (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/590), regs. 2(1), **9**

Enforcement bodies

[[F6]**50.**—(1) The Community Regulation and these Regulations are enforced by—

(a) in relation to England and the English area, the Environment Agency;

(b) in relation to Wales and the Welsh area, the Natural Resources Body for Wales;

(c) in relation to Scotland and the Scottish area, the Scottish Environment Protection Agency;

(d) in relation to Northern Ireland and the Northern Irish area, the Department of **[**[F7]Agriculture, Environment and Rural Affairs**]** in Northern Ireland.

(2) Nothing in this regulation authorises a competent authority to bring proceedings in Scotland for an offence.

Textual Amendments

F6 Regs. 50-50B substituted for reg. 50 (1.5.2014) by The Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861), regs. 1, **12** (with reg. 23)

F7 Words in reg. 50(1)(d) substituted (15.3.2019) by The International Waste Shipments (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/590), regs. 2(1), **10**

Authorised persons

50A.—(1) A competent authority may authorise persons in writing for the purposes of enforcing the Community Regulation and these Regulations.

(2) An authorisation under either of the following is an authorisation for the purposes of paragraph (1), unless the body which issued the authorisation specifies to the contrary—

(a) section 108 of the Environment Act 1995;

(b) Article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997.

Textual Amendments

F6 Regs. 50-50B substituted for reg. 50 (1.5.2014) by The Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861), regs. 1, **12** (with reg. 23)

Assistance by the Secretary of State in relation to offshore installations

50B.—(1) The Secretary of State may assist a competent authority in its enforcement of the Community Regulation and these Regulations on or in relation to offshore installations, in particular by inspecting such installations and providing a competent authority with information to facilitate the effective enforcement of the Community Regulation and these Regulations.

(2) The Secretary of State may authorise persons in writing for the purposes of exercising the function described in paragraph (1).

(3) An authorisation under either of the following is an authorisation for the purposes of paragraph (2), unless the Secretary of State specifies to the contrary—

(a) regulation 16 of the Offshore Chemicals Regulations 2002;

(b) regulation 12 of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005.**]**

Textual Amendments

F6 Regs. 50-50B substituted for reg. 50 (1.5.2014) by The Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861), regs. 1, **12** (with reg. 23)

Enforcement powers

51. Schedule 5 (enforcement powers) has effect.

Compliance with notices

52.—(1) A person on whom a notice is served under these Regulations commits an offence if he fails to comply with the provisions of that notice.

(2) Such a notice must be complied with at the expense of the person on whom it is served and, if it is not complied with, the competent authority may arrange for it to be complied with at the expense of that person.

(3) A competent authority may enforce compliance with a notice by way of an injunction or, in Scotland, by way of an order under section 45(b) of the Court of Session Act 1988(**1**).

Obstruction

53. A person commits an offence if he—

(a) intentionally obstructs any person acting in the execution of these Regulations;

(b) gives any information which he knows to be false or misleading to any person acting in the execution of these Regulations; or

(c) fails, without reasonable excuse—

(i) to give any assistance or information that any person acting in the execution of these Regulations may require him to give; or

(ii) to produce any record that any person acting in the execution of these Regulations may require him to produce,

for the performance of that person's functions under these Regulations.

Falsely obtaining consent etc.

54. A person commits an offence if, for the purpose of obtaining consent to a shipment or approval of a financial guarantee or equivalent insurance, he—

(a) makes any statement or declaration that he knows to be false or misleading; or

(b) endeavours to obtain such consent or approval by deception.

Offences by bodies corporate

55.—(1) If an offence under these Regulations committed by a body corporate is shown—

(a) to have been committed with the consent or connivance of an officer; or

(b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(**1**) 1988 c. 36.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) "Officer", in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Offences by Scottish partnerships

56. Where a Scottish partnership commits an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

(a) any of the partners; or

(b) any person who was purporting to act in such capacity,

he, as well as the partnership, is guilty of the offence and is liable to be proceeded against and punished accordingly.

Acts of third parties

57. Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person is guilty of the offence and a person may be charged with and convicted of an offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

Penalties

58. A person guilty of an offence under these Regulations is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment not exceeding three months or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

Fixed penalties

59.—(1) If an authorised person has reason to believe that a person has committed an offence under these Regulations **[**[F8](except an offence under regulation 49A(7))**]**, he may give that person a notice (a "fixed penalty notice") offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

(2) Where a person is given a fixed penalty notice in respect of an offence—

(a) no proceedings may be instituted for that offence before the expiry of 28 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 expiry of that period.

(3) A fixed penalty notice must—

(a) be in the form set out in Schedule 6;

(b) give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence; and

(c) state—

(i) the period during which, by virtue of paragraph (2), proceedings will not be taken for the offence;

(ii) the amount of the fixed penalty; and

(iii) the name of the person to whom and the address at which the fixed penalty may be paid.

(4) Payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of penalty.

(5) Where a letter is sent in accordance with paragraph (4), payment is deemed to be made at the time at which that letter would be delivered in the ordinary course of post.

[[F9](6) The amount of fixed penalty payable in pursuance of a notice under this regulation is £300 which is to be paid in the case of a notice served by an authorised person from—

(a) the Environment Agency or the Scottish Environment Protection Agency, to the Secretary of State;

(b) the Natural Resources Body for Wales, to the Welsh Ministers;

(c) the Department of **[**[F10]Agriculture, Environment and Rural Affairs**]** in Northern Ireland, to that Department.**]**

(7) In any proceedings, a certificate which—

(a) purports to be signed by or on behalf of the chief finance officer **[**[F11]in England and Scotland, in Wales the principal accounting officer**]** , or in Northern Ireland an authorised person; 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.

Textual Amendments

F8 Words in reg. 59(1) inserted (1.5.2014) by The Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861), regs. 1, **13(a)** (with reg. 23)

F9 Reg. 59(6) substituted (1.5.2014) by The Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861), regs. 1, **13(b)** (with reg. 23)

F10 Words in reg. 59(6)(c) substituted (15.3.2019) by The International Waste Shipments (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/590), regs. 2(1), **11**

F11 Words in reg. 59(7)(a) inserted (1.5.2014) by The Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861), regs. 1, **13(c)** (with reg. 23)

[[F12]Civil sanctions [[F13], England]**

59A.—(1) The Environment Agency may impose a variable monetary penalty, or accept an enforcement undertaking, in relation to an offence specified in the following Table of civil sanctions, as indicated in that Table, as if it were an offence under a provision specified in relation to that sanction in Schedule 5 to the Environmental Civil Sanctions (England) Order 2010.

Table of civil sanctions

Offence under these Regulations	*Variable monetary penalty*	*Enforcement undertaking*
regulation 17	Yes	Yes
regulation 18	Yes	Yes
regulation 19(2)	Yes	Yes
regulation 19(3)	Yes	Yes
regulation 20(2)	Yes	Yes
regulation 21	Yes	Yes
regulation 22(2)	Yes	Yes
regulation 23	Yes	Yes
regulation 24(2)	Yes	Yes
regulation 25	Yes	Yes
regulation 26	Yes	Yes
regulation 27(2)	Yes	Yes
regulation 28	Yes	Yes
regulation 29(2)	Yes	Yes
regulation 30(2)	Yes	Yes
regulation 31	Yes	Yes
regulation 32(2)	Yes	Yes
regulation 33(2)	Yes	Yes
regulation 34(2)	Yes	Yes
regulation 35(2)	Yes	Yes
regulation 36	Yes	Yes
regulation 37(2)	Yes	Yes
regulation 38(2)	Yes	Yes
regulation 38(3)	Yes	Yes
regulation 38(4)	Yes	Yes
regulation 39(2)	Yes	Yes
regulation 40(2)	Yes	Yes
regulation 41(2)	Yes	Yes
regulation 42(2)	Yes	Yes
regulation 43	Yes	Yes
regulation 44(2)	Yes	Yes
regulation 52(1)	Yes	No

Offence under these Regulations	*Variable monetary penalty*	*Enforcement undertaking*
regulation 53(a)	Yes	No
regulation 53(b)	Yes	No
regulation 53(c)	Yes	No
regulation 54(a)	Yes	No
regulation 54(b)	Yes	No

(2) The terms used in this regulation have the same meaning as in that Order.

(3) The provisions of that Order in relation to those sanctions apply as if they were provisions of these Regulations.

(4) This regulation applies only in England and the **[**[F14]English area**].]**

Textual Amendments

F12 Reg. 59A inserted (E.) (6.4.2010) by The Environmental Civil Sanctions (Miscellaneous Amendments) (England) Regulations 2010 (S.I. 2010/1159), regs. 1, **9**

F13 Word in reg. 59A inserted (1.5.2014) by The Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861), regs. 1, **14(1)** (with reg. 23)

F14 Words in reg. 59A(4) substituted (1.5.2014) by The Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861), regs. 1, **14(2)** (with reg. 23)

[[F15]**Civil sanctions, Wales**

59B.—(1) The Natural Resources Body for Wales may impose a variable monetary penalty, or accept an enforcement undertaking, in relation to an offence specified in the following Table of civil sanctions, as indicated in that Table, as if it were an offence under a provision specified in relation to that sanction in Schedule 5 to the Environmental Civil Sanctions (Wales) Order 2010.

Table of civil sanctions

Offence under these Regulations	*Variable monetary penalty*	*Enforcement undertaking*
regulation 17	Yes	Yes
regulation 18	Yes	Yes
regulation 19(2)	Yes	Yes
regulation 19(3)	Yes	Yes
regulation 20(2)	Yes	Yes
regulation 21	Yes	Yes
regulation 22(2)	Yes	Yes
regulation 23	Yes	Yes
regulation 24(2)	Yes	Yes
regulation 25	Yes	Yes

Offence under these Regulations	*Variable monetary penalty*	*Enforcement undertaking*
regulation 26	Yes	Yes
regulation 27(2)	Yes	Yes
regulation 28	Yes	Yes
regulation 29(2)	Yes	Yes
regulation 30(2)	Yes	Yes
regulation 31	Yes	Yes
regulation 32(2)	Yes	Yes
regulation 33(2)	Yes	Yes
regulation 34(2)	Yes	Yes
regulation 35(2)	Yes	Yes
regulation 36	Yes	Yes
regulation 37(2)	Yes	Yes
regulation 38(2)	Yes	Yes
regulation 38(3)	Yes	Yes
regulation 38(4)	Yes	Yes
regulation 39(2)	Yes	Yes
regulation 40(2)	Yes	Yes
regulation 41(2)	Yes	Yes
regulation 42(2)	Yes	Yes
regulation 43	Yes	Yes
regulation 44(2)	Yes	Yes
regulation 52(1)	Yes	No
regulation 53(a)	Yes	No
regulation 53(b)	Yes	No
regulation 53(c)	Yes	No
regulation 54(a)	Yes	No
regulation 54(b)	Yes	No

(2) The terms used in this regulation have the same meaning as in that Order.

(3) The provisions of that Order in relation to those sanctions apply as if they were provisions of these Regulations.

(4) This regulation applies only in Wales and the Welsh area.

Textual Amendments

F15 Reg. 59B, 59C inserted (1.5.2014) by The Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861), regs. 1, **15** (with reg. 23)

Review

59C.—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by these Regulations;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.

(3) The first report under this regulation must be published before the end of the period of five years beginning with 1st May 2014.

(4) Reports under this regulation are afterwards to be published at intervals not exceeding five years.**]**

Textual Amendments

F15 Reg. 59B, 59C inserted (1.5.2014) by The Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861), regs. 1, **15** (with reg. 23)

Revocations

[F16]60. . . . . . .

Textual Amendments

F16 Reg. 60 omitted (31.12.2020) by virtue of The International Waste Shipments (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/590), regs. 2(2), **42**; 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:
There are currently no known outstanding effects for the The Transfrontier Shipment of Waste Regulations 2007, PART 9.