
STATUTORY INSTRUMENTS

2007 No. 1711

The Transfrontier Shipment of Waste Regulations 2007

PART 9

Miscellaneous

Fees

46.—(1) Section 41(1) of the Environment Act 1995 (power to make schemes imposing charges)⁽¹⁾ is amended as follows—

(a) omit the word “and” at the end of paragraph (b);

(b) after paragraph (c), insert—

“and

(d) as a means of recovering costs incurred by it in performing functions conferred by Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste, as amended from time to time, each of the new Agencies may require the payment to it of such charges as may from time to time be prescribed;”.

(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—

(a) the Environment Agency and the Scottish Environment Protection Agency may charge the fees in Schedule 2 until a charging scheme under section 41 of the Environment Act 1995 to recover such costs takes effect or until 1st April 2011, whichever is earlier; and

(b) the Department of the Environment 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.

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.

(1) 1995 c. 25.

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.

Enforcement bodies

50.—(1) These Regulations must be enforced by the competent authorities in regulation 6(1) and (2).

(2) The competent authorities may authorise in writing persons to act for the purposes of these Regulations.

(3) An authorisation under—

- (a) section 108 of the Environment Act 1995; or
- (b) Article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997(2),

is an authorisation for the purposes of these Regulations.

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(3).

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.

(2) S.I. 1997/ 2778 (N.I. 19).

(3) 1988 c. 36.

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.

(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, 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.
- (6) The amount of fixed penalty payable in pursuance of a notice under this regulation is £300 which is to be paid—
- (a) to the Secretary of State; or
 - (b) in the case of a notice served by an authorised person from the Department of the Environment 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, 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.

Revocations

- 60.**—(1) The following are revoked—
- (a) the Transfrontier Shipment of Waste Regulations 1994(4);
 - (b) the Transfrontier Shipment of Waste (Amendment) Regulations 2005(5); and
 - (c) the Transfrontier Shipment of Waste (Fee) Regulations (Northern Ireland) 2005(6).

(4) S.I. 1994/1137.

(5) S.I. 2005/187.

(6) S.R. (NI) 2005 No 90.

(2) Notwithstanding the revocation of the Transfrontier Shipment of Waste Regulations 1994, shipments to which Article 62 (transition rules) applies are subject to the provisions of those Regulations.