

EXPLANATORY MEMORANDUM TO
THE TRANSFRONTIER SHIPMENT OF WASTE (AMENDMENT) REGULATIONS
2014

2014 No. 861

1. This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

These Regulations, which amend the Transfrontier Shipment of Waste Regulations 2007 (SI 2007/1711) (“the 2007 Regulations”), are needed to redefine the competent authorities and transfer certain competent authority responsibilities from the Secretary of State to the Environment Agency, Scottish Environment Protection Agency and Department of the Environment in Northern Ireland and from the Secretary of State and Environment Agency to the Natural Resources Body for Wales; to provide a power for HM Revenue and Customs to disclose certain information to competent authorities for enforcement purposes; to allow Border Force to stop and detain waste for up to five working days in certain prescribed circumstances; and to make changes to the fees for notification of waste shipments starting or finishing in Northern Ireland.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The fees payable to the competent authority in Northern Ireland under the 2007 Regulations for processing notifications for the shipment of waste to and from Northern Ireland have not been increased since those Regulations were made and are now inadequate. These Regulations revise the fee structure with the effect that the fees are generally being increased by more than the rate of inflation.
- 3.2 The 2007 Regulations make the provisions needed to enforce in the UK Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste (OJ No. L 190, 12.7.2006, p.1) (“the EU Regulation”). When the 2007 Regulations were made, it was difficult to accurately predict the costs to competent authorities. Estimates for Northern Ireland were made on the basis of the previous regime. This did not accurately predict the likely costs or resources needed to carry out work under the EU Regulation. The EU Regulation has now been in force for over six years and it is now clear that costs are considerably greater. The reasons are:

Compliance: More stringent and time-consuming compliance requirements eg relating to the assessment of financial guarantees, adopting a risk-based approach and carrying out

full audits.” The auditing process also includes sampling and analysis, which had previously not been accounted for through fees.

- .
- 3.3 The competent authority will not be able to maintain their current level of activity without an overall increase in fee revenue. Without the increases, compliance activity would be less effective in Northern Ireland. This might allow a greater number of illegal shipments to pass unnoticed and, by creating a “weak link” in the UK’s enforcement, might make Northern Ireland a magnet for illegal activity.

4. Legislative Context

- 4.1 The Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal (OJ No. L 39. 16.2.1993, p. 3) (“the Basel Convention”) sets down worldwide requirements for the movement of hazardous waste between countries. Signatories to the Basel Convention are also required to minimise the generation of such waste and ensure its environmentally sound management.
- 4.2 The European Union transposes the requirements of the Basel Convention by the EU Regulation. The 2007 Regulations provide for the enforcement of the EU Regulation within the UK and designate the relevant competent authorities.
- 4.3 As competent authorities, the Environment Agency, the Scottish Environment Protection Agency (SEPA) and the Department of the Environment in Northern Ireland have been carrying out enforcement of the 2007 Regulations for waste imported into (destination) and waste exported from (dispatch) the UK on a territorial basis. Under these Regulations, the Environment Agency’s enforcement functions in relation to Wales and the Welsh marine area, and the Secretary of State’s enforcement functions in relation to the Welsh marine area, are transferred to the Natural Resources Body for Wales which was established on 19th July 2012 by the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903 (W. 230)).

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Dan Rogerson, Parliamentary Under Secretary of State for water, forestry, rural affairs and resource management has made the following statement regarding Human Rights:

In my view, the provisions of the Transfrontier Shipment of Waste (Amendment) Regulations 2014 are compatible with the Convention rights.

7. Policy background

- 7.1 The EU Regulation aims to control the transboundary movement of waste to ensure that waste is only moved where it can be managed in an environmentally sound manner at destination. Over 15 million tonnes of waste are exported from the UK each year. This makes enforcement challenging, so it is important that the 2007 Regulations, which set out provisions relating to the enforcement of the EU Regulation, provide for a system that allocates competent authority and enforcement functions to those best placed to carry out the work and facilitate cooperative arrangements with others involved such as HM Revenue and Customs and Border Force. It is also important that competent authorities are able to charge fees that reflect the costs they incur so that their activity is not compromised.
- 7.2 When the 2007 Regulations were made, the Secretary of State was given UK-wide competent authority responsibilities for the outer marine area and for waste transiting the UK. The EU Regulation requires only one competent authority of transit for each Member State. It also requires the designation of competent authorities for the marine area. In the relatively short time allowed for member State implementation of the EU Regulation, it had not proved possible to find a more permanent solution. The Secretary of State was therefore given these responsibilities as a temporary measure. Furthermore, since the 2007 Regulations were made, the Natural Resources Body for Wales has been established and competent authority functions need to be transferred to that Body. These Regulations provide for:
- (a) the transfer of the UK competent authority for waste shipments transiting the UK from the Secretary of State to the Environment Agency, reflecting the requirement of the EU Regulation that there be only one competent authority of transit in each member State;
 - (b) the transfer of the competent authority of destination and dispatch i.e. for waste shipments destined for or dispatched from Wales and its inner marine area from the Environment Agency to the Natural Resources Body for Wales which, as a more local body, is better placed to carry out enforcement in Wales; and
 - (c) the transfer of the competent authority of destination and dispatch in relation to each territory's outer marine area from the Secretary of State to the competent authority for the equivalent inner marine and territorial area (e.g., in relation to Scotland, the Scottish Environment Protection Agency).
- 7.3 The territorial competent authorities are not equipped to undertake compliance checks at offshore installations. These Regulations therefore also provide for a role for the Department of Energy and Climate Change to include checks on compliance with the EU Regulation when undertaking their own regular inspections of offshore structures, passing on information to the competent authorities for action as appropriate.

7.4 In its third Report of the Session 2009-10 (volume 1), the Environment, Food and Rural Affairs Committee urged the Government to seek the first available opportunity to remove legal impediments to full information sharing between the Environment Agency and others monitoring exports, including the police, HM Revenue and Customs and Border Force.

These Regulations provide a power for HM Revenue and Customs to disclose certain information to competent authorities for enforcement purposes which will enable better targeting of enforcement work and so improve the detection of illegal shipments. Similarly, these Regulations will confer powers on general customs officials in Border Force to stop and detain waste shipments for up to five working days in certain prescribed circumstances. This provides another useful tool to prevent illegal shipments leaving the UK.

7.5 The amendments made by these Regulations include changes to fees for the notification of imports to/exports from Northern Ireland. When notified of such movements, the Northern Ireland Environment Agency has to evaluate the information provided to establish whether the movement would meet the requirements of the EU Regulation. The fees currently charged in Northern Ireland are not sufficient to meet this purpose and need to be increased overall to enable the appropriate level of scrutiny to continue.

7.6 There is limited public interest. The changes will only affect the limited numbers engaged in the import and export of waste. Over 140 stakeholders were consulted and 25 responses were received.

8. Consultation outcome

The consultation ran from 18 March to 10 May 2013 and focused on stakeholders involved in the import and export of waste. Seventeen of the 25 consultees who responded were broadly supportive, seeing these amendments as an opportunity to improve compliance and tackle illegal operators, so creating a more level playing field for legitimate business. Five of the remainder commented only on the proposed fee increases in Northern Ireland. Eight consultees expressed concerns centering around the proposed fee increases and the fact that they assumed refunds for unused notifications would disappear. The Department of the Environment in Northern Ireland has discussed these matters directly with the relevant consultees. Businesses have been advised how they might best utilise the notification system to reduce the number of smaller transboundary movements and hence reduce the cost impact of the new banding structure. They have also been reassured that a refund policy will be in place. Two consultees expressed concern that allowing Border Force to detain containers might impact adversely on legitimate business. However, Defra has responded by stating that the expectation is for Border Force to only detain containers where there is a very strong suspicion that they contain an illegal shipment of waste and that the risk to legitimate business should therefore be minimal.

9. Guidance

Defra will work with the competent authorities and other Government departments and agencies with responsibilities under the 2007 Regulations (i.e. Border Force, HM Revenue and Customs and the Department of Energy and Climate Change) to prepare detailed cooperative working arrangements. These are likely to be set out in Memoranda of Understanding or guidance which will be in place as soon as possible after the Regulations come into force.

10. Impact

- 10.1 The direct cost to business is estimated to be around £0.1m per annum. In more general terms, the proposed adjustments facilitate effective enforcement and therefore support legitimate business and reduce adverse environmental consequences.
- 10.2 The impact on the public sector is to provide greater efficiency in the enforcement process through powers for information sharing, allowing Border Force to play a greater role and through cooperative working arrangements with the Department of Energy and Climate Change.
- 10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 Most of the amendments made by these Regulations are expected to have no impact on legitimate business. The exception is the fee changes for Northern Ireland. The cost to the competent authority of processing notifications for movements of waste to and from Northern Ireland is the same, irrespective of the size of the business submitting the notification. The exemption for micro-businesses does not need to be applied to these amendments. The fee changes in Northern Ireland are outside the scope of the exemption because they are simply changes in fees rather than any change to activities and will bring the Northern Ireland fee structure more in line with the rest of the UK.

12. Monitoring & review

- 12.1 The criteria for the success of these Regulations will be better detection of illegal shipments, better use of competent authority resources and the creation of a more level playing field for legitimate business.

12.2 These Regulations require the Secretary of State to review them and set out conclusions in a report which must be published. The report must set out the objectives of the Regulations and assess the extent to which these have been met, the extent to which they remain appropriate and the extent to which they could be achieved in a less burdensome way. The first report must be published within five years of these Regulations coming into force and further reports must be published subsequently at intervals not exceeding five years.

13. Contact

Jaymini Majithia at the Department for Environment, Food and Rural Affairs Tel: 020 7238 4826 or email: Jaymini.Majithia@defra.gsi.gov.uk can answer any queries regarding the instrument.