

EXPLANATORY MEMORANDUM TO
THE INTERNATIONAL WASTE SHIPMENTS (AMENDMENT OF REGULATION
(EC) NO 1013/2006) REGULATIONS 2020

2020 No. 1455

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument implements changes made to the annexes of the Basel Convention¹ by amending Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, also known as the Waste Shipment Regulations (“the WSR”). The amendments made to the Convention enhance controls on transboundary shipments of plastic waste, and clarify the scope of the Convention as it applies to such waste.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is England, Wales and Scotland.

5. European Convention on Human Rights

5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument amends Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste as it forms part of domestic law on and after IP completion day.

1 The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

7. Policy background

What is being done and why?

- 7.1 It is the Government's ambition to leave the environment in a better state for the next generation. The Government's 25 Year Environment Plan, published in January 2018, outlines the steps that will be undertaken to achieve that ambition, it included new measures to eliminate all avoidable plastic waste and action to improve and develop our regulatory framework so that it provides strong environmental protection and standards and ensures the UK is not simply exporting waste to other countries. The Government's Resources & Waste Strategy, published in December 2018, further committed to improve the quality of plastics exported for recycling through the Basel Convention.
- 7.2 The United Kingdom is a Party to the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal ("the Basel Convention"), which was adopted on 22 March 1989 and entered into force in 1992. The Basel Convention now binds 187 Parties.
- 7.3 The Conference of the Parties of the Basel Convention decided at its fourteenth meeting on 10 May 2019 to include certain plastic waste under the control mechanisms of the Convention. These types of waste are included in additions to Annexes II and VIII of the Convention. The only types of plastic waste excluded from these obligations are those which are destined for recycling and are, due to their composition, easier to recycle. This waste is included in Annex IX of the Convention.
- 7.4 Annex II to the Basel Convention was amended to include a new code for contaminated and highly mixed plastic wastes (referred to as "Y48"). Shipments of this type of plastic waste will require prior informed consent ("PIC") to be obtained from regulators in the countries of dispatch, transit and destination, and exporters will have to obtain a financial guarantee to provide for the costs of returning the waste to the UK if it cannot be recycled in the destination country. Annex VII to the Convention was amended to include a new category of hazardous plastic waste (referred to as "A3210") which will also be subject to the same controls as Y48.
- 7.5 It is common practice for contaminated and mixed plastic waste to be shipped to countries with emerging economies in pursuit of lower treatment cost. These transboundary movements are often to countries which do not have the capacity to manage the waste effectively resulting in dumping and incineration of waste contributing to significant pollution. Incinerating contaminated plastic waste, for instance, releases toxic pollutants which are harmful to human health. Where waste is dumped, costs of marine plastic pollution alone is estimated at US\$13bn of environmental damage to ecosystems per year. At present, waste managers face no incentives to improve this situation as they do not directly bear the costs of the pollution generated if the waste is not managed effectively. In addition, they may avoid the costs associated with transferring waste to be appropriately dealt with (repatriation) if they cannot be traced. These represent negative externalities with costs borne by wider society. The Parties to the Basel Convention agreed that intervention was necessary to correct this externality and to place greater controls on exports of plastic wastes to mitigate adverse effects and more effectively enforce the polluter pays principle.
- 7.6 The changes agreed by the Conferences of the Parties will improve controls of transboundary shipments of plastic waste, thereby encouraging their environmentally

sound management and contributing to measures to reduce illegal cross-border movement of waste plastics. These changes will become effective on 1 January 2021.

- 7.7 The United Kingdom is a member of the Organisation for Economic Cooperation and Development (“OECD”). The OECD Decision on Transboundary Movements of Waste destined for Recovery Operations has a legally binding nature. The Environment Policy Committee to the OECD adopted changes to Appendix 4 of the OECD Decision related to hazardous plastic waste and clarifications in Appendices 3 and 4 of the OECD Decision through written procedure on 7 September 2020. These changes will become effective on 1 January 2021.
- 7.8 This instrument has been developed to implement the aforementioned changes to the Basel Convention’s annexes it also implements the changes to the Appendices of the OECD Decision on which agreement has been reached.
- 7.9 These changes in this instrument are designed to:
- incorporate a new entry on hazardous plastic waste (A3210) agreed under the Basel Convention into the WSR (Annex V), as well as incorporate a new entry on hazardous plastic waste (“AC300”) agreed under the OECD Decision into Annex IV of the WSR;
 - incorporate new entries on non-hazardous plastic waste (“B3011” and Y48) agreed under the Basel Convention into the WSR (Annex V and Annex IV), as far as export and import from the United Kingdom to third countries are concerned.
- 7.10 Regulation (EC) No 1013/2006 will continue to apply in Northern Ireland, pursuant to the terms of the Northern Ireland Protocol. Retained regulation 1013/2006, in its entirety, extends to England and Wales, Scotland and Northern Ireland. That is to say it forms part of each of the three jurisdictions. Parts of it apply to England and Wales, Scotland and Northern Ireland and other parts only apply to England and Wales and Scotland. Through this instrument we are amending the parts which apply to England and Wales and Scotland. This instrument does not therefore implement the amendments to the Basel Convention in Northern Ireland. The European Commission has adopted a delegated act through article 58 of the WSR to amend the annexes of the Regulation to take account of changes and reflect decisions agreed under the Basel Convention and to take account of changes agreed under the OECD Decision.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union nor does it trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 Defra has no plans to consolidate the WSR at this time, but will keep the matter under review.

10. Consultation outcome

10.1 This instrument has been developed to implement the changes to the Basel Convention's annexes and the changes to the Appendices of the OECD Decision.

10.2 There was substantial consultations with stakeholders on the proposed changes to the Basel Convention prior to the fourteenth meeting of the Conference of the Parties of the Basel Convention (29 April 2019 – 10 May 2019).

10.3 Defra officials started engaging with industry stakeholders in January 2019. This included representatives from the British Plastics Federation, the Environmental Services Association, the Industry Council for Electronic Equipment Recycling, the Resource Association, RPC bpi recycled products, the Recycling Association and the Chartered Institution of Wastes Management. The views of these stakeholders were helpful in developing the UK position on the proposal from the government of Norway to amend the Basel Convention to introduce tighter controls on exports of plastic waste and ultimately influenced the negotiating position adopted by the European Commission prior to the Conference of the Parties.

10.4 This instrument implements the amendments to the Basel Convention and nothing more. It does not go beyond the changes necessary to give effect to the amendments made by the Conferences of the Parties in May 2019. A consultation on implementing the amendments to the Basel Convention was not undertaken as any views expressed during such a consultation would not have materially affected the obligation of the government of United Kingdom to implement these amendments as a Party to the Basel Convention.

10.5 The Devolved Administrations were consulted on the approach taken during the drafting of this instrument and were given the opportunity to propose amendments to the text.

11. Guidance

11.1 This instrument will be enforced by the Environment Agency, the Scottish Environment Protection Agency and Natural Resources Wales. Guidance developed by the regulators has been circulated to businesses engaged in plastic wastes shipments. The legislation will be enforced in accordance with this guidance. The guidance will be published in January 2021 by the three regulators. The guidance will assist exporters of waste understand the new requirements and understand the enforcement and sanctions regime. Defra officials have raised awareness of the new legislation by meeting with representatives from industry and providing explanation of the new requirements.

12. Impact

- 12.1 There is no anticipated impact from this instrument on charities or voluntary bodies, with the exception of those charities or voluntary bodies engaged in the export of plastic wastes. The best estimate for the impact on businesses is £175.9m. The largest component of this is £102.8m for notification fee costs to inform the regulators of shipments of contaminated and mixed plastic waste exports. There are also costs for obtaining a financial guarantee in case exports are repatriated (£28.6m) and other administrative costs (£44.5m). Of the 208 GB businesses that export plastic waste, we have assumed that all businesses will be impacted by this instrument. These businesses are of varying sizes, including waste brokers who export waste and larger businesses who deal with waste up the hierarchy. We would expect these costs to fall significantly should businesses opt to clean and sort their waste so that it is no longer within scope of the Y48 code and as a result no longer subject to the Basel Convention control procedure.
- 12.2 The impacts on GB exports of plastic waste after the introduction of the Basel amendments is dependent on whether the alternative of cleaning and sorting waste and selling recycled material domestically is more attractive than exporting Y48 with the associated new costs. Our assessment of the costs for cleaning and sorting Y48 plastic waste so that it is no longer subject to Basel Convention controls range from -£30 to £254 in comparison to costs ranging from -£139 to £176 for adherence to the Basel control procedure for exporting Y48 plastic waste. This demonstrates that exporting plastic waste under Basel controls is less favourable than cleaning and sorting, on average. Our analysis demonstrates most businesses would opt for cleaning and sorting, should they have capacity. The possible reasons why businesses are not currently cleaning and sorting could be due to the cost of infrastructure investment needed to meet capacity and because there may not be demand for cleaned and sorted material in some countries, who would prefer to buy unsorted waste and clean and sort it cheaper than GB businesses. This means we may expect businesses to invest in building cleaning and sorting infrastructure over the long term, although this depends on the precise level of investment needed.
- 12.3 Infrastructure investments can also support the transition to a circular economy. This involves reducing waste to a minimum and recycling existing products as much as possible. Facilitating this transition is important, given an increasing population and finite supply of resources. As well as reducing pressure on the environment, the transition to a circular economy approach can help to extract more economic value from the recycled plastics. These benefits will support a step change to further ambitious proposals such as the Government's manifesto commitment to ban the export of plastic waste to non-OECD countries, a more ambitious measure than the Basel Convention amendment.
- 12.4 Defra is planning to consult on the Government's manifesto commitment and as part of this, Defra will be seeking to gather more information on the impacts of the Basel amendments. We will be collecting information from businesses on how the amendments have impacted them and the costs they've faced as result. We will also be looking to assess if businesses have changed their behaviour as a result of the regulation by changing their operations to cleaning and sorting plastics waste.
- 12.5 The impact on the public sector constitutes additional regulatory burden with respect to inspection and enforcement of the new requirements as outlined in this instrument. A small amount of additional burden is anticipated in the form of time; time spent

assessing applications from exporters to transport the new types of plastic waste added to Annexes II and VIII of the Convention which will become subject to the control mechanisms of the Convention from the 1 January 2021. In addition, a small amount of additional burden in the form of inspections and enforcement is expected, to ensure compliance with the new requirements.

- 12.6 A full Impact Assessment is submitted with this memorandum and published alongside this Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 No specific action has been taken to minimise regulatory burdens on small businesses (employing up to 50 people).
- 13.3 This instrument gives effect to amendments to the Basel Convention. It is not possible for small businesses to be exempt from the measures in this instrument as doing so would result in the UK contravening the Basel Convention.

14. Monitoring & review

- 14.1 The effectiveness of this legislation will be monitored closely, and any amendments made if necessary.

- 14.2 The Regulations do not include a statutory review clause, and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Minister Pow, Parliamentary Under Secretary of State at the Department of the Environment, Food and Rural Affairs, has made the following statement:

“I consider a review provision would be disproportionate and undesirable for the following policy reasons, the Regulations are required to implement our international obligations under the Basel Convention and they provide certainty to businesses on the international regulatory framework in respect of shipments of plastic waste.”

15. Contact

- 15.1 Patrick McKell at the Department for Environment, Food and Rural Affairs, Telephone: 03459 335577 or email: Patrick.mckell@defra.gov.uk, can be contacted with any queries regarding this instrument.
- 15.2 Kay Williams, Acting Deputy Director for Chemicals, Pesticides & Hazardous Waste at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rebecca Pow MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.