

S.I. No. 419/2007 — Waste Management (Shipments of Waste) Regulations 2007

S.I. No. 419 of 2007

WASTE MANAGEMENT (SHIPMENTS OF WASTE) REGULATIONS 2007

INDEX

1. Citation and commencement
2. Purpose of Regulations
3. Interpretation generally
4. Designation of competent authority
5. Powers of the competent authority to implement the TFS Regulation and these Regulations
6. Other competent authority duties
7. General provisions and duties on notifiers, consignees and other persons
8. Illegal waste shipments under Council Regulation (EEC) No. 259/93
9. Offences
10. Legal proceedings
11. Prosecutions and penalties
12. Revocations

S.I. No. 419 of 2007

WASTE MANAGEMENT (SHIPMENTS OF WASTE) REGULATIONS 2007

Notice of the making of this Statutory Instrument was published in

“Iris Oifigiúil” of 10th July, 2007.

WHEREAS, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, having regard to section 3(3) of the European Communities Act, 1972 (No. 27 of 1972) (as inserted by section 2 of the European Communities Act 2007) (No. 18 of 2007) (hereinafter referred to as the Act of 1972), consider it necessary for the purpose of giving full effect to the provisions of Regulation (EC) No. 1013 of the European Parliament and of the Council of 14 June 2006 on shipments of waste¹ to make provision for offences under the following regulations to be prosecuted on indictment:

AND WHEREAS, I consider that it is necessary, having further regard to section 3(3) of the Act of 1972, and for the purpose of ensuring that penalties in respect of an offence prosecuted in that manner under the following regulations are effective, proportionate and have a deterrent effect, having regard to the acts or omissions of which the offence consists, to make such provision in the following regulations:

NOW THEREFORE, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972) as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007) and for the purpose of giving effect to Regulation (EC) No. 1013 of the European Parliament and of the Council of 14 June 2006 on shipments of waste¹ hereby makes the following Regulations:

Citation and commencement.

1. (1) These Regulations may be cited as the Waste Management (Shipments of Waste) Regulations 2007.

(2) These Regulations shall come into effect on 12 July 2007.

Purpose of Regulations.

2. The purposes for which these Regulations are made includes the purpose of giving effect to provisions of Regulation (EC) No. 1013 of the European Parliament and of the Council of 14 June 2006 on shipments of waste¹ (in these Regulations referred to as the TFS Regulation).

Interpretation generally.

3. (1) A word or expression that is used in these Regulations and is also used in the TFS Regulation has, unless the contrary intention appears, the meaning in these Regulations that it has in the TFS Regulation.

(2) In these Regulations—

(a) any reference to a Regulation or paragraph which is not otherwise identified, is a reference to respectively a Regulation of these Regulations or to a paragraph of the provision in which the reference occurs;

(b) “Act” means the Waste Management Acts 1996 to 2007;

(c) “Agency” means the Environmental Protection Agency established under section 19 of the Environmental Protection Agency Act, 1992 (No. 7 of 1992);

(d) “authorised officer” means a person who is appointed in writing to be an authorised officer for the purposes of the TFS Regulation and these Regulations;

(e) “competent authority” means that body designated as such pursuant to Regulation 4;

(f) “Waste Management Acts 1996 to 2007” mean the Waste Management Act, 1996 (No. 10 of 1996) as amended by the Waste Management (Amendment) Act, 2001 (No. 36 of 2001), Part 3 of the Protection of the Environment Act 2003 (No. 27 of 2003), Part 2 of the Waste Management (Electrical and Electronic Equipment) Regulations 2005 (S.I. No. 290 of 2005) and the Waste Management (Environmental Levy) (Plastic Bag) Order 2007 (S.I. No. 62 of 2007).

Designation of competent authority.

4. (1) Dublin City Council is designated as the competent authority under article 53 of the TFS Regulation, hereafter referred to as the competent authority. It shall be the competent authority of dispatch in respect of the export of waste from the State, the competent authority of destination and the competent authority of transit in respect of the import of waste into, or passage of waste in transit, through the State. It may for the purposes of the enforcement of the TFS Regulation and these Regulations operate both within and outside its functional area.

(2) The competent authority may, for the purposes of paragraph 1, appoint authorised officers.

(3) Without prejudice to the powers conferred on the competent authority or its authorised officers by the TFS Regulation and these Regulations it is declared that the provisions of section 14 of the Act, subject to any modifications or adaptations as may be required, shall apply in relation to these Regulations.

Powers of the competent authority to implement the TFS Regulation and these Regulations.

5. (1) In carrying out its functions under the TFS Regulation and these Regulations, the competent authority shall have the power to do any of the following—

(a) direct that a prior written notification for consent be sent to and through it for any shipment of waste, including shipments of waste which do not require prior written notification and consent under the TFS Regulation where it considers it necessary to prevent illegal shipments occurring or to undertake its duties under article 49 of the TFS Regulation in particular as regards exports from the Community and may attach conditions to any such consent issued to those ends,

(b) direct that shipments of waste may enter or leave the State at a specified port or place within the State,

(c) direct a person who undertakes the shipment of waste to effect and maintain a financial guarantee,

(d) direct that an agreement or agreements be entered into with one or more appropriate persons by a person undertaking a waste shipment whereby the first-mentioned person or persons agree or agrees to recover or dispose of the waste,

(e) seize, take in charge, recover or dispose of a consignment of waste or a part thereof where it has reasonable grounds to suspect that any provision of these Regulations or the TFS Regulation has not been complied with as respects the consignment or a part thereof, as the case may be,

(f) request any local authority to cooperate in enforcement activities for the purposes of the TFS Regulation and these Regulations and the local authority so requested shall cooperate with such a request,

(g) direct the keeping of records by a specified person of the source of, and particulars concerning the transport, delivery and receipt of, waste and, as the case may be, the recovery or disposal thereof, and the persons to whom such records shall be made available,

(h) direct the prevention and control of litter and nuisance from odours and any other environmental impacts that may arise from the transport of waste and generally with respect to the handling of waste whilst it is being moved,

(i) impose on a person undertaking the shipment of waste such charges as are necessary to defray any costs reasonably incurred by it in performing any function under these Regulations with respect to the waste, including enforcement requirements and charges for consignment forms,

(j) direct a person to give such security to it for the payment of any charge he or she may be liable to pay to it pursuant to these Regulations,

(k) direct a person who undertakes the shipment of waste to give security of a specified nature to the competent authority or any other specified person in respect of costs which may be incurred by it in taking steps in relation to the waste in the event of a contravention by the first-mentioned person of any provision of these Regulations as respects that waste,

(l) direct a person who undertakes the shipment of waste or who is the consignee of waste imported into the State, to return the waste to its place of origin or to such other place as may be specified in the direction and to take such measures as may be so specified in relation to the waste, including the recovery or disposal of the waste in such manner or at such facility as may be so specified,

(m) designate customs offices in accordance with article 55 of the TFS Regulation,

(n) enter into a memorandum of understanding with the customs service for the purposes of the implementation of the TFS Regulation,

(o) prohibit the import or export of any shipment of waste, or of a class or classes of waste, or of any shipment, class or classes of waste intended for any specified purpose, either generally or for such periods as may be specified for the purposes of the TFS Regulation (and in order to comply in particular with articles 12, 13 and 49 thereof), or to comply with recommendations or provisions of the hazardous waste management plan made under section 26 of the Act,

(p) carry out inspections on board trains, ships, or aircraft for the purposes of article 50 of the TFS Regulation,

(q) direct any establishment or undertaking to provide particular information in relation to a shipment of waste,

(r) invoke a financial guarantee so as to effect the return of the waste and its disposal or recovery thereafter where take-back is required under Chapter 4 of the TFS Regulation.

(2) The powers and functions conferred on the competent authority pursuant to the TFS Regulation and these Regulations may be performed on its behalf by any authorised officer duly appointed in writing by it pursuant to Regulation 4(2).

(3) The competent authority may revoke or modify any prohibition made under this Regulation. Notice of any prohibition under this paragraph, or of any revocation or modification of such prohibition, shall be published in *An Iris Oifigiúil* and in one or more national daily newspapers not less than fourteen days before such prohibition, revocation or modification shall take effect.

Other competent authority duties.

6. In carrying out its duties under these Regulations the competent authority shall—

(1) be responsible for State input to IMPEL projects carried out in respect of the TFS Regulation,

(2) be responsible for enforcement and shall undertake such actions, as appropriate, in cooperation with other competent authorities,

(3) retain all documents sent to it or by it in relation to a notified shipment for at least three years from the date of the shipment,

(4) furnish to the Agency such information derived from the records referred to in paragraph (3), in such form and at such frequency, as may be specified by the Agency. In these Regulations IMPEL means the Network of enforcement authorities dealing with Transfrontier Shipment of Waste matters.

General provisions and duties on notifiers, consignees and other persons.

7. (1) The producer, the notifier, and other undertakings involved in a shipment of waste and its recovery or disposal shall take the necessary steps to ensure that any waste shipped and which is the subject of the TFS Regulation and these Regulations is managed without endangering human health and in an environmentally sound manner throughout the period of shipment and during its recovery or disposal.

(2) Where a consignee in the State refuses to receive a shipment the subject of the TFS Regulation and these Regulations he or she shall within three days furnish a report to the competent authority detailing the reasons why the shipment was not accepted.

(3) A person on whom a direction is served by the competent authority under Regulation 5 shall comply with the requirements of the direction, which shall be in writing, within such period, being a period of not less than three weeks, or as may be specified in the direction in cases of urgency.

(4) A direction served by the competent authority pursuant to Regulation 5 may state a sum to be paid to the competent authority towards the costs reasonably incurred by it in the performance of its functions under these Regulations or the TFS Regulation (and including the costs of enforcement) and may provide for a specified time period in which to make such payment which may not be less than three weeks from the issue of said direction and where the person to whom the said direction is served fails to pay a sum in respect of costs in accordance with a requirement made therein, the competent authority may recover the sum as a simple contract debt in any court of competent jurisdiction.

(5) Where a notifier or producer fails to comply with a direction, the competent authority shall itself take such steps, including the seizure or taking in charge, recovery or disposal of the waste in question as it considers necessary to ensure that the waste is recovered or disposed of in an environmentally sound manner.

The competent authority may, in addition,

(a) seize any vehicle or container and detain it until such time as it is satisfied that the requirements of the TFS Regulation or these Regulations are complied with, or

(b) impose charges for the detention of the waste or the vehicle or container and the recovery or disposal of the waste.

(6) A shipment of waste shall not enter or transit the State unless there is in force in relation to the shipment a certificate issued under this Regulation by the competent authority.

(7) An application for a certificate shall be made to the competent authority which shall issue the certificate requested if it is satisfied that there is in force in respect of the shipment, or will be in force at the time the shipment enters or leaves the State, as the case may be, a financial guarantee or other equivalent security satisfying the requirements of article 6 of the TFS Regulation or as directed by the competent authority under these Regulations, and such certificate shall certify that the competent authority is so satisfied.

Illegal waste shipments under Council Regulation (EEC) No. 259/93.

8. The competent authority pursuant to Regulation 4 of these Regulations shall be notified of all duly motivated requests for take-back of illegal waste shipments governed by Council Regulation (EEC) No. 259/93².

Any responsibility for take-back of such waste shall rest with the relevant competent authority as designated in accordance with Council Regulation (EEC) No. 259/93.

Offences.

9. (1) Any person who contravenes any provision of the TFS Regulation shall be guilty of an offence.

(2) Any person who contravenes any provision of these Regulations shall be guilty of an offence.

(3) Any person who fails to comply with a requirement, obligation or condition imposed by the competent authority by way of a direction under the TFS Regulation and these Regulations shall be guilty of an offence.

Legal proceedings.

10. Copies of all notification and movement documents, consents, certificates, or contracts required by the TFS Regulations and these Regulations and purporting to be certified by an officer of the competent authority to be true copies without proof of signature of the person purporting so to certify shall be received in evidence in any legal proceedings, and be admissible in evidence and shall, until the contrary is proved, be deemed to be a true copy of the entry and to be evidence of the terms of the entry and in particular that information contained in those documents shall be admissible in any criminal proceedings as evidence of any fact therein of which direct oral evidence would be admissible.

Prosecutions and penalties.

11. (1) A prosecution for a summary offence under these Regulations may be taken by the competent authority.

(2) A person guilty of an offence under these Regulations is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or imprisonment for a term not exceeding 3 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000, or imprisonment for a term not exceeding 3 years, or both.

Revocations.

12. The Waste Management (Transfrontier Shipment of Waste) Regulations, 1998 (S.I. No. 149 of 1998) are revoked.

GIVEN under my Official Seal,

5 July 2007

JOHN GORMLEY.

Minister for the Environment, Heritage and Local Government.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal

interpretation.)

The purpose of these Regulations is to streamline the administration of the Transfrontier Shipment of Waste legislation in Ireland so as to provide a better and more consistent level of implementation generally. They provide for the designation of Dublin City Council as the sole competent authority responsible for the implementation of the Waste Shipments Regulation (EC) No. 1013/2006 in Ireland with effect from 12 July 2007. Prior to this Regulation, the competent authorities for exports of waste were 34 local authorities, with the competent authority for imports and movements through the State being the Environmental Protection Agency.

The Regulations also revoke the Waste Management (Transfrontier Shipment of Waste) Regulations, 1998.

1 OJ No. L 190, 12.7.2006 p.1

2 OJ L 30, 6.2.1993, p.1. Regulation as last amended by Commission Regulation (EC) No. 2557/2001 (OJ L 349, 31.12.2001, p.1)

© Government of Ireland. Oireachtas Copyright Material is reproduced with the permission of the House of the Oireachtas