

2007 No. 1711

ENVIRONMENTAL PROTECTION

The Transfrontier Shipment of Waste Regulations 2007

<i>Made</i> - - - -	<i>12th June 2007</i>
<i>Laid before Parliament</i>	<i>18th June 2007</i>
<i>Coming into force</i> - -	<i>12th July 2007</i>

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The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to the regulation and control of the transit, import and export of waste (including recyclable materials)(b) and in relation to the prevention, reduction and elimination of pollution caused by waste(c).

These Regulations make provision for a purpose mentioned in that section and it appears to the Secretary of State that it is expedient for the references to Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste(d) to be construed as references to that instrument as amended from time to time.

(a) 1972 c. 68.

(b) S.I. 1993/2661, to which there are amendments not relevant to these Regulations.

(c) S.I. 1992/2870, to which there are amendments not relevant to these Regulations.

(d) OJ No L 190, 12.7.2006, p.1.

The Secretary of State makes the following Regulations under the powers conferred on him by section 2(2) of, as read with paragraph 1A of Schedule 2 to, the European Communities Act 1972(a):

PART 1

Introduction

Title and commencement

1. These Regulations may be cited as the Transfrontier Shipment of Waste Regulations 2007 and come into force on 12th July 2007.

Application

2.—(1) For the purposes of these Regulations, the following (“the marine area”) shall be considered as part of the United Kingdom—

- (a) the territorial sea adjacent to the United Kingdom;
- (b) the area on the landward side of the baselines that is submerged at mean high water springs, including, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river;
- (c) the seabed and subsoil situated within the areas designated by Order in Council under section 1(7) of the Continental Shelf Act 1964(b); and
- (d) the waters superjacent to the seabed and the seabed and its subsoil situated within the areas designated by Order in Council under section 84(4) of the Energy Act 2004(c).

(2) In this regulation, “baselines” means the baselines from which the breadth of the territorial sea is measured for the purposes of the Territorial Sea Act 1987(d).

Scope of the Regulations

3. These Regulations do not apply to the transit of waste occurring only through the marine area.

Interpretation

4.—(1) In these Regulations—

“Annex VII document” means the document set out in Annex VII to the Community Regulation;

“authorised person” means a person authorised by a competent authority in accordance with regulation 50(2);

“the Community Regulation” means Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste;

“the marine area” has the meaning given by regulation 2(1);

“notifiable waste” means waste that is subject to the prior written notification and consent procedures of Title II of the Community Regulation, by virtue of any provision of that Regulation;

“waste vessel” means any vessel or any part of any vessel that is in itself waste within the meaning of the Community Regulation.

(a) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

(b) 1964 c. 29. Areas have been designated under section 1(7) by S.I. 1987/1265, 2000/3062 and 2001/3670. Section 1(7) was amended by paragraph 1 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c.23).

(c) 2004 c. 20. Areas have been designated under section 84(4) by S.I. 2004/2668.

(d) 1987 c. 49.

(2) Expressions used in these Regulations that are also used in the Community Regulation have the same meaning in these Regulations as they have in the Community Regulation.

(3) Any reference in these Regulations to—

- (a) an Article is, save where the context otherwise requires, a reference to an Article of the Community Regulation;
- (b) the Community Regulation is a reference to that Regulation as amended from time to time.

Meaning of transport and person who transports waste

5.—(1) Any reference in these Regulations to transport includes consigning for transport.

(2) Any reference in these Regulations to a person who transports waste includes the following persons—

- (a) the notifier;
- (b) any transporter of waste, by land or otherwise—
 - (i) into or in the United Kingdom; or
 - (ii) from the United Kingdom;
- (c) any freight-forwarder; or
- (d) any other person involved in the shipment of waste.

Competent authorities of destination and dispatch

6.—(1) The competent authorities of destination and dispatch for the purposes of the Community Regulation are—

- (a) in England and Wales, the Environment Agency;
- (b) in Scotland, the Scottish Environment Protection Agency;
- (c) in Northern Ireland, the Department of the Environment,

excluding in each case, subject to paragraph (2), the marine area.

(2) The Secretary of State is the competent authority of destination and dispatch for the marine area, except in the case of waste vessels in the area specified in regulation 2(1)(b), where the competent authority is the body in paragraph (1).

Competent authority of transit

7. The Secretary of State is the competent authority of transit for the United Kingdom for the purposes of the Community Regulation.

Correspondent

8. The Secretary of State is the correspondent for the United Kingdom for the purposes of Article 54.

Notices

9.—(1) Any notice under these Regulations must be in writing.

(2) A notice may be subject to conditions and may be amended, suspended or revoked by notice in writing at any time.

(3) A notice may be served on a person by—

- (a) delivering it to him in person;
- (b) leaving it at his proper address; or

(c) sending it by post or electronic means to him at his proper address.

(4) Any such notice may—

(a) in the case of a body corporate, be served on the secretary or clerk of that body;

(b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business.

(5) If the person to be served with any such notice has specified an address in the United Kingdom other than his proper address as the one at which he or someone on his behalf will accept notices of the same description as those notices, that address is also to be treated for the purposes of this regulation as his proper address.

(6) For the purposes of this regulation, “proper address” means a person’s last known address, which for the purposes of paragraph (3)(c) includes an e-mail address, except that—

(a) in the case of a body corporate or its secretary or clerk it is the address of the registered or principal office of that body;

(b) in the case of a partnership, partner or person having the control or management of the partnership business, it is the principal office of the partnership,

and for the purposes of this paragraph, the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

Transitional provisions

10. Schedule 1 (transitional provisions for shipments to Latvia, Poland, Slovakia, Bulgaria or Romania) has effect.

PART 2

Waste management plan

Waste management plan

11. The Secretary of State must prepare a waste management plan in accordance with Article 7 of Directive 2006/12/EC of the European Parliament and of the Council on waste^(a) containing his policies on the bringing into, or dispatch from, the United Kingdom of waste for disposal.

Public participation procedures

12.—(1) As soon as reasonably practicable after preparing proposals for a waste management plan, the Secretary of State must—

(a) take such steps as he considers appropriate to bring the proposals to the attention of the persons who in his opinion are affected or likely to be affected by, or have an interest in, the plan (in this Part, referred to as “public consultees”);

(b) inform public consultees of the address from which a copy of the proposals may be obtained;

(c) invite public consultees to express their opinions on the proposals, specifying the address to which, and the period within which, opinions must be sent.

(2) The period referred to in paragraph (1)(c) must be sufficient to ensure that public consultees are given an effective opportunity to express their opinions on the proposals.

(3) The Secretary of State must keep a copy of the proposals for inspection by the public at all reasonable times free of charge.

(a) OJ No L 114, 27.4.2006, p 9.

(4) The Secretary of State may make a reasonable charge for copies provided under paragraph (1)(b).

Procedures following public participation

13.—(1) Before decisions on a waste management plan are made, the Secretary of State must take account of any opinions expressed by public consultees in accordance with regulation 12.

(2) As soon as reasonably practicable after making decisions on a waste management plan, the Secretary of State must—

- (a) inform public consultees of the matters referred to in paragraph (3);
- (b) take such steps as he considers appropriate to bring those matters to the attention of the public;
- (c) if he has adopted the waste management plan, make a copy of it available for inspection at all reasonable times free of charge.

(3) The matters are—

- (a) the decisions made by the Secretary of State on the waste management plan;
- (b) the reasons and considerations upon which those decisions are based; and
- (c) information about the public participation procedure.

Provision of the plan to competent authorities

14. The Secretary of State must send a copy of the waste management plan to—

- (a) the Environment Agency;
- (b) the Scottish Environment Protection Agency; and
- (c) the Department of the Environment in Northern Ireland.

Objections to shipments of waste

15. For the purpose of preventing shipments of waste that are not in accordance with the waste management plan—

- (a) a competent authority of destination must object to any shipment notified in accordance with the Community Regulation which that plan indicates should not be brought into the United Kingdom; and
- (b) a competent authority of dispatch must object to any shipment notified in accordance with the Community Regulation which that plan indicates should not be dispatched from the United Kingdom.

Waste Management Licensing Regulations 1994 etc.

16. Paragraph 4(1)(b) of Schedule 4 to the Waste Management Licensing Regulations 1994^(a) and paragraph 4(1)(b) of Part 1 of Schedule 3 to the Waste Management Licensing Regulations (Northern Ireland) 2003^(b) have effect as if the references in those paragraphs to any plan made under the plan-making provisions include references to a waste management plan made under this Part.

(a) S.I. 1994/1056, to which there are amendments not relevant to these Regulations.
(b) S.R. (NI) 2003 No 493.

PART 3

General requirements for shipment of waste

Protection of the environment

17. A person commits an offence if he fails to comply with Article 49(1) (the management of shipments of waste in an environmentally sound manner and without endangering human health).

Compliance with notification etc.

18. A person commits an offence if he transports waste other than in accordance with—
- (a) the notification document or movement document, in the case of notifiable waste; or
 - (b) the Annex VII document, in the case of waste subject to the procedural requirements of Article 18(1).

PART 4

Shipment of waste within the Community

Requirements for shipments of notifiable waste

19.—(1) This regulation applies to waste specified in Article 3(1)(a) or (b) that originates in the Community and is either brought into the United Kingdom or destined for another member State, whether or not that waste passes through a third country.

- (2) A person who transports such waste commits an offence if he does so without—
- (a) the competent authority of dispatch having been notified in accordance with Article 4;
 - (b) a contract having been entered into or a declaration having been made in accordance with Article 5;
 - (c) a financial guarantee or equivalent insurance being in place and approved by the competent authority in accordance with Article 6;
 - (d) a consent issued by the competent authority of dispatch and destination in accordance with Article 9 and a consent issued by the competent authority of transit, unless there is tacit consent to the transit in accordance with Article 9(1);
 - (e) the movement document having been—
 - (i) completed in accordance with Article 16, first paragraph and Article 16(a); or
 - (ii) sent to the competent authorities concerned and the consignee in accordance with Article 16(b);
 - (f) the waste being accompanied by the movement document and notification document in accordance with Article 16(c); or
 - (g) the competent authorities and consignee having been notified of any change in the details or conditions of the shipment in accordance with Article 17 and, in such a case, a new notification having been submitted in accordance with that Article.
- (3) He commits an offence if—
- (a) he does so in breach of any condition imposed under Article 10;
 - (b) in the case of a shipment covered by a general notification, he does so without the competent authorities concerned having been notified of a change in route in accordance with Article 13(2);
 - (c) in the case of a shipment of waste destined for an interim recovery or disposal operation, he does so without the notification document having been completed in accordance with Article 15(a); or

- (d) he fails to comply with Article 19.

Requirements for shipment of waste specified in Article 3(2) and (4)

20.—(1) This regulation applies to waste specified in Article 3(2) or (4) that originates in the Community and is either brought into the United Kingdom or is destined for another member State, whether or not that waste passes through a third country.

- (2) A person who transports such waste commits an offence if—
 - (a) he does so without the waste being accompanied by a completed Annex VII document in accordance with Article 18(1)(a), that is signed in accordance with Article 18(1)(b);
 - (b) in the case of waste specified in Article 3(2), he does so without a contract as referred to in Article 18(2) having been entered into; or
 - (c) he fails to comply with Article 19.

PART 5

Export of waste to third countries

Prohibition on export of waste for disposal other than to EFTA countries

21. A person commits an offence if he transports waste destined for disposal in a third country in breach of Article 34 (prohibition on export except, in certain circumstances, to EFTA countries Parties to the Basel Convention).

Requirements for export of waste for disposal to EFTA countries

22.—(1) This regulation applies to waste destined for disposal in any EFTA country Party to the Basel Convention.

- (2) A person who transports such waste commits an offence if he does so—
 - (a) without the provisions of Article 35(1) having been complied with (procedural requirements for export to EFTA countries); or
 - (b) in breach of Article 35(5) (requirement for consignment only to facilities operating or authorised to operate under the applicable national law of the country of destination).

Prohibition on export of certain waste for recovery to non-OECD Decision countries

23. A person commits an offence if, in breach of Article 36(1), he transports waste specified in that Article that is destined for recovery in a country to which the OECD Decision does not apply.

Requirements for export of waste for recovery to OECD Decision countries

24.—(1) This regulation applies to waste specified in Article 38(1) destined for recovery in any country to which the OECD Decision applies (with or without transit through any country to which that Decision applies).

- (2) A person who transports such waste commits an offence if he does so—
 - (a) without the provisions of Article 38(1) having been complied with (procedural requirements for the export of waste listed in Annexes III, IIIA, IIIB, IV and IVA); or
 - (b) in breach of Article 38(6) (requirement for consignment only to facilities operating or authorised to operate under the applicable national law of the country of destination).

Miscellaneous prohibitions on export of waste

- 25.** A person commits an offence if—

- (a) he transports waste to the Antarctic;
- (b) he transports waste destined for disposal in an overseas country or territory in breach of Article 40(1);
- (c) he transports waste destined for recovery in an overseas country or territory in breach of Article 40(2)(prohibition on the export of certain waste); or
- (d) he transports waste specified in Article 40(3) destined for recovery in an overseas country or territory without the provisions of that Article having been complied with (procedural requirements for exports to overseas countries or territories).

PART 6

Import of waste from third countries

Prohibition on the import of waste for disposal

26. A person commits an offence if, in breach of Article 41(1), he transports waste destined for disposal that has come from a third country or area other than those specified in that Article.

Procedure for import of waste for disposal from a country Party to the Basel Convention

27.—(1) This regulation applies to waste destined for disposal that has come from a country Party to the Basel Convention.

(2) A person who transports such waste commits an offence if he does so without the provisions of Article 42(1) having been complied with (procedural requirements for the import of waste destined for disposal from countries Parties to the Basel Convention).

Prohibition on import of waste for recovery

28. A person commits an offence if, in breach of Article 43(1), he transports waste destined for recovery that has come from a third country or area other than specified in that Article.

Requirements for import of waste for recovery from or through an OECD Decision country

29.—(1) This regulation applies to waste destined for recovery that has come from or through a country to which the OECD Decision applies.

(2) A person who transports such waste commits an offence if he does so without the provisions of Article 44(1) having been complied with (procedural requirements for imports of waste destined for recovery from, or through, an OECD Decision country).

Requirements for import of waste for recovery from a non-OECD Decision country Party to the Basel Convention

30.—(1) This regulation applies to waste destined for recovery that has come —

- (a) from a country to which the OECD Decision does not apply; or
- (b) through a country to which the OECD Decision does not apply and that is Party to the Basel Convention.

(2) A person who transports such waste commits an offence if he does so without the provisions of Article 45 having been complied with (procedural requirements for imports from a non-OECD Decision country Party to the Basel Convention).

Requirements for import of waste from overseas countries or territories

31. A person who transports waste that has come from any overseas country or territory commits an offence if he does so without the provisions of Article 46(1) having been complied with (procedural requirements for the import of waste from overseas countries or territories).

PART 7

Transit of waste

Requirements for transit of waste for disposal

32.—(1) This regulation applies to waste destined for disposal that—

- (a) originates from, and is destined for, a third country; and
- (b) is transported through the United Kingdom.

(2) A person who transports such waste commits an offence if he does so without the provisions of Article 47 having been complied with (procedural requirements for shipments of waste destined for disposal from and to a third country).

Requirements for transit of waste for recovery: non-OECD Decision countries

33.—(1) This regulation applies to waste destined for recovery that—

- (a) originates from, and is destined for, a country to which the OECD Decision does not apply; and
- (b) is transported through the United Kingdom.

(2) A person who transports such waste commits an offence if he does so without the provisions of Article 48(1) having been complied with (procedural requirements for shipments of waste destined for recovery from and to a country to which the OECD Decision does not apply).

Requirements for transit of waste for recovery: OECD Decision countries

34.—(1) This regulation applies to waste destined for recovery that—

- (a) originates from, and is destined for, a country to which the OECD Decision applies; and
- (b) is transported through the United Kingdom.

(2) A person who transports such waste commits an offence if he does so without the provisions of Article 48(2) having been complied with (procedural requirements for shipments of waste destined for recovery from and to a country to which the OECD Decision applies).

Requirements for transit of waste between OECD Decision countries and non-OECD Decision countries

35.—(1) This regulation applies to waste destined for recovery that—

- (a) originates from a country to which the OECD Decision does not apply and is destined for a country to which the OECD Decision does apply; or
- (b) originates from a country to which the OECD Decision applies and is destined for a country to which the OECD Decision does not apply,

and is transported through the United Kingdom.

(2) A person who transports such waste commits an offence if he does so without the provisions of Article 48(3) having been complied with (procedural requirements for shipments of waste destined for recovery between OECD Decision and non-OECD Decision countries).

PART 8

Additional duties

Illegal shipments of waste brought to a facility

36. If the operator of a facility knows or has reasonable grounds to suspect that waste brought to that facility is an illegal shipment of waste, he must notify the competent authority immediately and comply with their instructions and failure to do so is an offence.

Duties on operators of facilities in respect of notifiable waste

- 37.**—(1) This regulation applies to the operator of a facility that receives notifiable waste.
- (2) He commits an offence if he fails to—
- (a) ensure that the recovery or disposal of such waste is completed within the time period in Article 9(7);
 - (b) comply with any condition of a consent imposed on him by the competent authority of destination in accordance with Article 10(1);
 - (c) comply with any condition, imposed by the competent authority of destination in accordance with Article 10(5), requiring him to keep records specified in that Article and send them to that competent authority in accordance with that Article;
 - (d) retain the movement document in accordance with Article 16(c);
 - (e) provide, in accordance with Article 16(d), confirmation that waste has been received;
 - (f) certify, in accordance with Article 16(e), that non-interim recovery or disposal has been completed;
 - (g) keep any document sent to or by the competent authorities in relation to a notified shipment in accordance with Article 20(1); or
 - (h) inform the competent authority of destination in accordance with Article 22(1) if a shipment of waste is rejected.

Interim recovery or disposal operations

38.—(1) This regulation applies to the operator of a facility that carries out interim recovery or disposal operations.

- (2) He commits an offence if he fails to—
- (a) provide confirmation to the notifier or competent authorities concerned of the receipt of waste for interim recovery or disposal operations in accordance with Article 15(c); or
 - (b) certify, in accordance with Article 15(d), that interim recovery or disposal has been completed.
- (3) He commits an offence if, in the case of waste sent to another facility for subsequent interim or non-interim recovery or disposal operation, he fails to—
- (a) obtain from that facility, in accordance with Article 15(e), first paragraph, a certificate that such operation has been completed; or
 - (b) transmit that certificate to the notifier and competent authorities concerned in accordance with Article 15(e), second paragraph.
- (4) He commits an offence if he delivers waste for subsequent interim or non-interim recovery or disposal operations in accordance with Article 15(f), without complying with the notification requirements of that Article.

Duties on operators of facilities in respect of waste subject to general information requirements

39.—(1) This regulation applies to the operator of a recovery facility that receives waste subject to the procedural requirements of Article 18(1).

(2) He commits an offence if he fails to—

- (a) sign the Annex VII document, in accordance with Article 18(1)(b); or
- (b) keep the information given pursuant to Article 18(1), in accordance with Article 20(2).

Duties on consignees in respect of notifiable waste

40.—(1) This regulation applies to a consignee of notifiable waste.

(2) He commits an offence if he fails to keep any document sent to or by the competent authorities in relation to a notified shipment in accordance with Article 20(1).

Duties on consignees in respect of waste subject to general information requirements

41.—(1) This regulation applies to a consignee of waste subject to the procedural requirements of Article 18(1).

(2) He commits an offence if he fails to—

- (a) sign the Annex VII document, in accordance with Article 18(1)(b);
- (b) provide a copy of the contract referred to in Article 18(2), second paragraph, to the competent authority upon request, in accordance with that Article; or
- (c) keep information given pursuant to Article 18(1), in accordance with Article 20(2).

Duties on laboratories

42.—(1) This regulation applies to the operator of a laboratory that receives waste subject to the procedural requirements of Article 18(1).

(2) He commits an offence if he fails to—

- (a) sign the Annex VII document, in accordance with Article 18(1)(b); or
- (b) keep the Annex VII document for three years from the date the shipment started.

Notifier's duty to keep documents

43. A notifier commits an offence if he fails to keep—

- (a) a copy of the movement document in accordance with Article 16(c); or
- (b) any document sent to or by the competent authorities in relation to a notified shipment in accordance with Article 20(1).

Duties on persons who arrange the shipment of waste

44.—(1) This regulation applies to a person who arranges the shipment of waste subject to the procedural requirements of Article 18(1).

(2) He commits an offence if he fails to—

- (a) provide the competent authority with a copy of the contract referred to in Article 18(2) upon request, in accordance with the second paragraph of that Article; or
- (b) keep the information given pursuant to Article 18(1), in accordance with Article 20(2).

Annex VII document

45.—(1) This regulation applies in Scotland and Northern Ireland only.

(2) A person who arranges the shipment of waste subject to the procedural requirements of Article 18(1) must ensure that a copy of the Annex VII document that he has signed in accordance with Article 18(1)(b) is received by the competent authority before the shipment takes place and failure to do so is an offence.

PART 9

Miscellaneous

Fees

46.—(1) Section 41(1) of the Environment Act 1995 (power to make schemes imposing charges)^(a) 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.

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,

(a) 1995 c. 25.

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(a),

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(b).

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.

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

(b) 1988 c. 36.

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(**a**);
- (b) the Transfrontier Shipment of Waste (Amendment) Regulations 2005(**b**); and
- (c) the Transfrontier Shipment of Waste (Fee) Regulations (Northern Ireland) 2005(**c**).

(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.

12th June 2007

Ben Bradshaw
Minister of State
Department for Environment, Food and Rural Affairs

(a) S.I. 1994/1137.
(b) S.I. 2005/187.
(c) S.R. (NI) 2005 No 90.

SCHEDULE 1

Regulation 10

Transitional provisions for shipments to Latvia, Poland, Slovakia, Bulgaria or Romania

Shipments of waste to Latvia

1. A person commits an offence if he transports waste specified in Article 63(1) to Latvia on or before 31st December 2010 without the provisions of that Article having been complied with (transitional arrangements for shipment of waste to Latvia).

Shipments of waste to Poland

2. A person commits an offence if he transports waste specified in Article 63(2) to Poland on or before 31st December 2012 without the provisions of that Article having been complied with (transitional arrangements for shipment of waste to Poland).

Shipments of waste to Slovakia

3. A person commits an offence if he transports waste specified in Article 63(3) to Slovakia on or before 31st December 2011 without the provisions of that Article having been complied with (transitional arrangements for shipment of waste to Slovakia).

Shipments of waste to Bulgaria

4. A person commits an offence if he transports waste specified in Article 63(4) to Bulgaria on or before 31st December 2014 without the provisions of that Article having been complied with (transitional arrangements for shipment of waste to Bulgaria).

Shipments of waste to Romania

5. A person commits an offence if he transports waste specified in Article 63(5) to Romania on or before 31st December 2015 without the provisions of that Article having been complied with (transitional arrangements for shipment of waste to Romania).

SCHEDULE 2

Regulation 46(2)(a)

Transitional fees in Great Britain

Transitional fees payable to the Environment Agency

1. The fees payable to the Environment Agency under regulation 46(2)(a) for shipments of waste are as follows—

<i>Notification type</i>	<i>Single shipment</i>	<i>General notification</i>				
		2 to 5 shipments	6 to 20 shipments	21 to 100 shipments	101 to 500 shipments	More than 500 shipments
Shipment from England or Wales for recovery (interim or non-	£1,510	£1,510	£2,740	£4,070	£7,920	£14,380

interim)						
Shipment from England or Wales for non-interim disposal	£1,590	£1,590	£3,360	£5,570	£11,200	£20,270
Shipment from England or Wales, including interim disposal	£1,740	£1,740	£3,370	£6,160	£13,300	£24,820
Shipment to England or Wales for non-interim recovery	£1,330	£1,330	£2,770	£4,980	£10,610	£19,680
Shipment to England or Wales, including interim recovery	£1,480	£1,480	£3,010	£5,800	£12,940	£24,460
Shipment to England or Wales for non-interim disposal	£1,590	£1,590	£3,360	£5,570	£11,200	£20,270
Shipment to England or Wales, including interim disposal	£1,740	£1,740	£3,370	£6,160	£13,300	£24,820

Transitional fees payable to the Scottish Environment Protection Agency

2. The fees payable to the Scottish Environment Protection Agency under regulation 46(2)(a) for shipments of waste are as follows—

Notification type	Single shipment	General notification				
		2 to 5 shipments	6 to 20 shipments	21 to 100 shipments	101 to 500 shipments	More than 500 shipments
Shipment from Scotland for recovery (interim or non-interim)	£1,510	£1,510	£2,740	£4,070	£7,920	£14,380
Shipment from Scotland for non-interim disposal	£1,590	£1,590	£3,360	£5,570	£11,200	£20,270
Shipment from Scotland, including interim disposal	£1,740	£1,740	£3,370	£6,160	£13,300	£24,820
Shipment to Scotland for non-interim recovery	£1,330	£1,330	£2,770	£4,980	£10,610	£19,680
Shipment to Scotland, including interim recovery	£1,480	£1,480	£3,010	£5,800	£12,940	£24,460

Shipment to Scotland for non-interim disposal	£1,590	£1,590	£3,360	£5,570	£11,200	£20,270
Shipment to Scotland including interim disposal	£1,740	£1,740	£3,370	£6,160	£13,300	£24,820

SCHEDULE 3

Regulation 46(2)(b)

Fees in Northern Ireland

Fees

1. The fees payable to the Department of the Environment in Northern Ireland under regulation 46(2)(b) are as follows.

Notification fee

2. A fee of £450 is payable in respect of each notification submitted in relation to any shipment into or from Northern Ireland.

Shipment fee

3. A fee of £25 is payable in respect of each shipment of waste to which that notification relates.

SCHEDULE 4

Regulation 48

Application for approval of a financial guarantee

Interpretation

1. In this Schedule, “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(a) in any part of the United Kingdom.

Shipment of waste from the United Kingdom

2.—(1) The following procedure applies to the application for an approval of a financial guarantee or equivalent insurance for the purposes of Article 6(4), first paragraph.

(2) Only the notifier may apply for approval of a financial guarantee or equivalent insurance.

(3) He must apply for approval to the competent authority of dispatch.

(4) The competent authority must ensure that its decision is issued in writing within 20 working days after the receipt of the application.

(a) 1971 c. 80.

Import of waste from third countries

3.—(1) The following procedure applies to the application for a review of the amount of cover of a financial guarantee or equivalent insurance and the approval of an additional financial guarantee or equivalent insurance in accordance with Article 6(4), second paragraph.

(2) Only the notifier (or the consignee, if authorised in writing by the notifier) may apply for a review of the amount of cover and approval of a financial guarantee or equivalent insurance.

(3) He must apply to the competent authority of destination.

(4) The competent authority must ensure that its decision is issued in writing within 20 working days after the receipt of the application.

SCHEDULE 5

Regulation 51

Enforcement powers

PART 1

Powers of authorised persons

Environment Act 1995 etc. powers

1. The enforcement powers of an authorised person under section 108 of the Environment Act 1995 and Article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997 are extended to waste vessels in the area specified in regulation 2(1)(b).

Information notice

2. An authorised person may, by notice served on any person, require that person to provide such information as is specified in the notice in such form and within such period following service of the notice or at such time as is so specified.

Enforcement and prohibition notices

3.—(1) An authorised person may serve a notice on any person who contravenes or who the authorised person has reasonable grounds to suspect may contravene these Regulations or the Community Regulation—

- (a) requiring him to act in accordance with the Regulations or the Community Regulation (in this Schedule referred to as an “enforcement notice”); or
- (b) prohibiting him from acting in breach of them (in this Schedule referred to as a “prohibition notice”).

(2) The notice must give reasons for serving it and, if appropriate, specify what action must be taken and give time limits.

Appeals against enforcement and prohibition notices

4.—(1) Any person who is aggrieved by an enforcement or prohibition notice may appeal to a magistrates’ court or, in Scotland, to the sheriff.

(2) The procedure on an appeal to a magistrates' court is by way of complaint, and the Magistrates' Courts Act 1980(a) or, in the case of Northern Ireland, the Magistrates' Court (Northern Ireland) Order 1981(b) applies to the proceedings.

(3) An appeal to the sheriff is by summary application.

(4) The period within which an appeal may be brought is 28 days or, in the case of an enforcement notice, the period specified in the notice, whichever ends earlier.

(5) An enforcement or prohibition notice must state—

- (a) the right of appeal to a magistrates' court or the sheriff;
- (b) the period in which such an appeal may be brought.

Powers to seize waste

5.—(1) This paragraph applies if an authorised person has reasonable grounds to suspect that—

- (a) the provisions of the Community Regulation or these Regulations are not being, have not been or are not likely to be complied with in respect of any waste; or
- (b) the shipment, recovery or disposal of any waste cannot be completed in accordance with the notification and movement documents or the contract between the notifier and consignee.

(2) The authorised person may do any of the following—

- (a) seize that waste;
- (b) serve a notice on any person who appears to him to be in control of such waste—
 - (i) requiring that person to send the waste to any place specified in the notice; or
 - (ii) prohibiting or restricting the movement of that waste.

(3) In this paragraph any reference to waste includes—

- (a) any thing that the authorised person has reasonable grounds to suspect is waste; and
- (b) the container in which the waste or thing is carried.

Seizure procedures

6.—(1) If an authorised person seizes any waste under paragraph 5, he must give to the person in control of it a notice (a "seizure notice")—

- (a) giving the grounds for seizing it; and
- (b) setting out the rights under this paragraph to make a claim, and the address for the service of the claim.

(2) If an authorised person is not immediately able to remove any waste seized under paragraph 5, he may mark it in any way he sees fit and serve a notice on the person in control of it, identifying it and prohibiting its removal from the premises until it is collected by, or under the direction of, an authorised person.

(3) Any person (other than an authorised person or a person acting under his direction) who removes waste referred to in sub-paragraph (2) from the premises is guilty of an offence.

(4) If it appears that the waste seized is—

- (a) waste from a shipment that cannot be completed as intended, as referred to in Article 22; or
- (b) an illegal shipment, as referred to in Article 23,

(a) 1980 c. 43; sections 51 and 52 have been substituted by section 47 of the Courts Act 2003 (c. 39).
(b) S.I. 1981/1675 (N.I. 26).

and it is seized in an area that is not under the jurisdiction of the competent authority with responsibility for take-back pursuant to those Articles, the competent authority that seizes it must store it pending action by the competent authority with such responsibility.

(5) If the owner of the waste claims that the waste was not liable to seizure he may, within 28 days of the seizure, notify his claim to the competent authority at the address specified in the seizure notice, setting out the grounds in full.

(6) If a notification of a claim is not received within 28 days, the competent authority must take such steps as it considers appropriate to ensure the recovery or disposal of the waste and for these purposes may serve a notice on the notifier requiring him to recover or dispose of the waste in the manner and within the time period specified in the notice.

(7) If a notification of a claim is received within 28 days, the competent authority must either return the waste or take proceedings for an order for the confirmation of the notice and the recovery or disposal of the waste in a magistrates' court (or, in Scotland, the sheriff) and if the court confirms the notice it must order its recovery or disposal.

Requests for assistance from other competent authorities

7. An authorised person may exercise any powers in this Schedule for the purposes of fulfilling any request from any competent authority to assist it in carrying out its functions under the Community Regulation.

PART 2

Her Majesty's Revenue and Customs

Powers of Her Majesty's Revenue and Customs

8.—(1) If he is requested to do so by any competent authority in the United Kingdom, an officer of Revenue and Customs may detain any waste that has been brought into the United Kingdom or is to be dispatched from the United Kingdom.

(2) Any thing detained under this paragraph may be detained for no longer than 5 working days and must be dealt with during the period of its detention in such manner as the Commissioners for Her Majesty's Revenue and Customs may direct.

(3) In this regulation "waste" includes—

- (a) any thing that the competent authority has reasonable grounds to suspect is waste; and
- (b) the container in which the waste or thing is carried.

PART 3

Take-back etc. of waste

Shipments of waste that cannot be completed

9. If a competent authority of dispatch receives notification from another competent authority under Article 22 (take-back when a shipment cannot be completed as intended), it may serve a notice on the notifier of the shipment requiring him to act in accordance with Article 22 within a specified time.

Illegal shipments of waste

10. If a competent authority of dispatch receives notification from another competent authority under Article 24 (take-back when a shipment is illegal), it may serve a notice on the notifier of the

shipment (or if it is not notifiable waste, the person who arranged the shipment) requiring him to act in accordance with Article 24 within a specified time.

Recovery or disposal of illegal shipment

11. If a competent authority of destination receives notification from another competent authority under Article 24 (take-back when a shipment is illegal), it may serve a notice on the consignee of the shipment requiring him to act in accordance with Article 24(3) within a specified time.

Take-back by the competent authority

12. If a competent authority, acting under the Community Regulation, brings back waste into its area of jurisdiction from outside that area, it may recover or dispose of it as it sees fit at the notifier's expense.

SCHEDULE 6

Regulation 59(3)(a)

Form of fixed penalty notices

The Transfrontier Shipment of Waste Regulations 2007

Notice number:

Name of alleged offender:

Address:

I, _____⁽¹⁾, an authorised person acting on behalf of⁽²⁾ _____, have reason to believe that on or between _____⁽³⁾ you committed an offence in breach of _____⁽⁴⁾.

This notice offers you the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

The circumstances alleged to constitute the offence are as follows:

No proceedings will be taken for this offence before the expiration of 28 days from the date of this notice. You will not be liable to conviction for the offence if you pay the fixed penalty during that period of 28 days.

The amount of the fixed penalty is £300.

It may be paid to _____⁽⁵⁾
at the following address⁽⁶⁾:

Payment may be made by cash or by cheque, postal or money order payable to _____⁽⁵⁾

If you are sending cash, you are advised to send it by registered post. Payment made in this way will be regarded as having been made at the time at which the letter would be delivered in the ordinary course of post.

Signature of authorised person: _____

Date of notice: _____

Notes:

- (1) Insert name of authorised person.
- (2) Insert the competent authority by whom the person is authorised.
- (3) Insert date or dates when the offence is alleged to have taken place.
- (4) Insert regulation of the Transfrontier Shipment of Waste Regulations 2007 that is alleged to have been contravened.
- (5) Insert title or name of person to whom the fixed penalty is to be paid.
- (6) Insert address at which payment is to be made.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations enforce 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 “Community Regulation”).

Regulations 6 and 7 set out the competent authorities for the purposes of the Community Regulation.

Regulation 11 requires the Secretary of State to implement a waste management plan that contains his policies on the bringing into, or dispatch from, the United Kingdom of waste for disposal. Regulations 12 and 13 require the Secretary of State to consult on that plan. Regulation 15 requires the competent authorities of dispatch and destination to object to shipments of waste that do not comply with that plan.

Regulation 17 creates an offence for shipping waste in breach of the requirements of the Community Regulation to manage shipments in an environmentally sound manner and without endangering human health.

Regulations 19 and 20 create offences for failure to comply with the procedural requirements in the Community Regulation that apply to shipments of waste to or from the United Kingdom to or from other member States.

Regulations 21 to 25 create offences for failure to comply with the prohibitions and procedural requirements in the Community Regulation that apply to exports of waste from the United Kingdom to third countries.

Regulations 26 to 31 create offences for failure to comply with the prohibitions and procedural requirements in the Community Regulation that apply to imports of waste into the United Kingdom from third countries.

Regulations 32 to 35 create offences for failure to comply with the procedural requirements in the Community Regulation that apply to the transit of waste through the United Kingdom to and from third countries.

Regulations 36 to 45 create offences for failure to comply with the additional duties in the Community Regulation of notifiers, persons who arrange shipments of waste subject to the general information requirements, operators of facilities, consignees and laboratories in respect of the shipment, recovery or disposal of waste in the United Kingdom.

Regulation 46 amends the Environment Act 1995 (c. 25) to enable the Environment Agency and the Scottish Environment Protection Agency to prescribe fees for the carrying out of their functions under the Community Regulation. Schedule 2 sets out the fees that will apply in England, Wales and Scotland until a charging scheme under that Act takes effect. Schedule 3 sets out the fees that will apply in Northern Ireland. Regulation 47 provides for competent authorities to recover the costs of take-back under Articles 22 and 24 of the Community Regulation.

Schedule 4 sets out the procedure applicable to the application for an approval of a financial guarantee or equivalent insurance.

Regulation 50 provides that the Regulations must be enforced by the competent authorities. Schedule 5 sets out the enforcement powers of competent authorities, authorised persons and officers of Revenue and Customs.

These Regulations were notified in draft to the European Commission in accordance with Directive 98/34/EC (OJ No L 204, 21.7.1988, p. 37), as amended by Directive 98/48/EC (OJ No L 217, 5.8.1998, p. 18).

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Environment, Food and

Rural Affairs, Hazardous Waste Unit, Ergon House, Horseferry Road, London SW1P 2AL and is annexed to the Explanatory Memorandum which is available alongside the instrument on the Office of Public Sector Information website.

£4.50

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Stationery Office and Queen's Printer of Acts of Parliament.

E0871 6/2007 170871T 19585

