



Department
for Environment
Food & Rural Affairs

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Summary of responses to the Consultation on the proposed Transfrontier Shipment of Waste (Amendment) Regulations 2014

(March 2013 - May 2013)

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Contents

Background.....	1
Responses to public consultation	2
Transfrontier Shipment of Waste (Amendment) Regulations.....	3
Question 1: Do you agree with the proposal that will enable HMRC to disclose relevant export data to UK CAs to help combat illegal waste exports? If not, why not?	3
Question 2: Do you agree with the proposal to change the CA to the Environment Agency for the transit of waste in the UK? If not, why not?	3
Question 3: Do you agree with the proposal to change the CA for the shipment of waste in the marine area? If not, why not?	4
Question 4: Do you agree with the proposal that DECC will be involved with inspections and evidence gathering for offshore installations for the purposes of supporting the UK CAs enforcing the WSR and the 2007 Regulations? If not, how might inspections of offshore installations be carried out and evidence gathered?	4
Question 5: Do you have any information on the impacts that this proposal would result in for the offshore renewable energy sector? If so, can you explain:.....	5
5a. the types and quantities of wastes generated by the sector 5b. if any waste is likely to be exported outside the UK mainland for recycling, treatment or disposal. If so, how much?	5
Question 6: Do you agree with the proposal that BF can stop and detain suspect shipments themselves? If not, why not? What (if any) do you consider will be the impacts of this proposal on your business?.....	5
Question 7: Do you agree with the proposal to change the fees payable for the import and export of waste into and from Northern Ireland, and with the level of fee proposed? If not, why not?	6
Question 8: What is your view on a future amendment to the regulations to require submission of Annex VII forms to NRW? What impact do you consider this will have on your business?	7
Question 9: Are the costs and benefits in the partial Impact Assessment an accurate reflection of the likely impacts upon stakeholders resulting from all the proposed changes? If not, please explain and provide evidence for why you think costs and benefits might be different.	8
Next steps.....	9

Background

1. The purpose of the consultation was to give stakeholders the opportunity to comment on proposed amendments to the Transfrontier Shipments of Waste Regulations (TFS Regulations).

2. The consultation ran from 18 March to 10 May 2013. The consultation document was issued by email to relevant stakeholders. The consultation documents were placed on the Gov.UK website.

3. The amendments to the TFS Regulations are intended to contribute to the Government's commitment to improve enforcement and control of the waste exports regime and in particular, to help combat illegal waste exports from the UK.

4. The consultation was primarily about the following key changes:

- Setting up the required legal gateway to allow Her Majesty's Revenue and Customs (HMRC) to disclose relevant export data to competent authorities (CAs) in the UK. This would help CAs develop better intelligence on illegal waste exports.
- Clarifying the role of the CAs for the transit of waste and the marine area. The Secretary of State has been fulfilling this role as a short term measure.
- Allowing the Border Force (BF) to stop and detain suspect containers should the opportunity arise.
- Changing the fees payable for the import and export of waste into and from Northern Ireland to better reflect resources needed to enforce the Regulations and deliver the requirements of the WSR in Northern Ireland.

5. Changes were also needed as a consequence of the establishment of the new Welsh CA, Natural Resources Wales (NRW). Enforcement functions for waste imported into Wales from outside the UK and for waste exported from Wales to outside the UK needed to be transferred to the Welsh CA.

6. The proposals in the consultation document apply to England, Scotland, Wales and Northern Ireland.

7. Defra received 25 responses to the public consultation; the types of respondents break down as follows:

Responses to public consultation

Responses to Public Consultation		
Organisation Type	Number of Respondents	%
Local authorities and planning-related bodies (e.g. Infrastructure Planning Commission)	2	8
Waste Management Companies & Re-processors	12	48
Public bodies	2	8
Environment-related bodies (e.g. Environment Agency)	1	4
Trade Associations	5	20
Shipping Lines/Logistics Companies	2	8
Other	1	4
Total	25	100

8. A full list of respondents is attached at Annex 1

Transfrontier Shipment of Waste (Amendment) Regulations

9. The consultation asked specific questions on the proposed amendments to the Transfrontier Shipment of Waste Regulations. A summary of the main points raised against each question and the Government's response is detailed below. Occasionally, where it is appropriate to do so, responses are treated under a different question from the one under which they were made.

Question 1: Do you agree with the proposal that will enable HMRC to disclose relevant export data to UK CAs to help combat illegal waste exports? If not, why not?

Consultee responses

All responses were in agreement with the principle of enabling the HMRC to disclose relevant export data to the UK CAs, with some emphasising that access to further information would enhance the detection of criminals who are exporting waste illegally. There were some questions about exactly how this would work on the ground and exactly which data would be disclosed.

Government response

The changes to the TFS Regulations will provide the legal gateway for HMRC to disclose relevant export data to the UK CAs. The detailed arrangements for the disclosure, including the type and frequency of the data disclosed, will be established in a Memorandum of Understanding between Defra, HMRC and the CAs. This Memorandum can only be drawn up once the legal gateway has been provided by the Regulations.

Question 2: Do you agree with the proposal to change the CA to the Environment Agency for the transit of waste in the UK? If not, why not?

Consultee responses

The majority of those consulted agreed with this proposal, although there were a few concerns over how the Environment Agency would work with the normal territorial competent authorities

Government response

Article 53 of the Waste Shipments Regulation states that Member States may only specify one competent authority of transit. We believe that EA is best placed to take on this role. However, EA will need to work closely with the relevant territorial competent authorities. We will be discussing practical working arrangements with all the competent authorities concerned.

Question 3: Do you agree with the proposal to change the CA for the shipment of waste in the marine area? If not, why not?

Consultee responses

The majority of consultees agree with the proposal to change the CA for the shipment of waste in the marine area from the Secretary of State to the normal territorial competent authorities.

Government response

We will be proceeding with this change.

Question 4: Do you agree with the proposal that DECC will be involved with inspections and evidence gathering for offshore installations for the purposes of supporting the UK CAs enforcing the WSR and the 2007 Regulations? If not, how might inspections of offshore installations be carried out and evidence gathered?

Consultee responses

All agree with this proposal.

Government response

This is another logical development – DECC inspectors visit offshore installations as part of their work, whereas the CAs do not have the resources or experience required to carry out offshore installations inspections. It therefore makes sense for DECC to be involved with the inspections and report back to the CAs, who can then take action.

Question 5: Do you have any information on the impacts that this proposal would result in for the offshore renewable energy sector? If so, can you explain:

5a. the types and quantities of wastes generated by the sector

5b. if any waste is likely to be exported outside the UK mainland for recycling, treatment or disposal. If so, how much?

Consultee responses

No consultee was able to offer any information in response to this question.

Government response

We will discuss this issue further with DECC. Given that there is little evidence that significant quantities of waste are exported from the UK offshore renewable energy sector, we do not propose to make further changes to the TFS Regulations at this stage, but will keep this under review.

Question 6: Do you agree with the proposal that BF can stop and detain suspect shipments themselves? If not, why not? What (if any) do you consider will be the impacts of this proposal on your business?

Consultee responses

All are in agreement with this proposal, which was seen as helping to prevent illegal shipments, but there were some reservations over the negative impacts upon business if legitimate shipments were detained. It was suggested the BF must be provided with necessary training in order to ensure legitimate containers were not detained. There were also queries on why 5 days had been proposed for the maximum period of detention.

Government response

The 2007 TFS Regulations allowed BF to detain suspect containers only at the request of the competent authority. However, BF officers may potentially find other suspect containers and it makes sense that they can detain these themselves, while alerting the competent authority as soon as possible. Five days is the period already allowed in the 2007 Regulations for the detention of containers at the request of the competent authority and is thought to be sufficiently long for competent authorities to carry out preliminary investigations. We will be working with BF and CAs to devise practical working arrangements and ensure BF understands their role. The expectation is that BF will only detain containers where there is a very strong suspicion that they contain an illegal shipment of waste and therefore the risk to legitimate business should be minimal.

Question 7: Do you agree with the proposal to change the fees payable for the import and export of waste into and from Northern Ireland, and with the level of fee proposed? If not, why not?

Consultee responses

Some consultees expressed concern about the changes proposed for fees for notifications for imports and exports of waste to/from Northern Ireland. These concerns centred around:

- (a) the likely cost to businesses:
- (b) whether the proposed changes might mean an end to the policy of refunds in Northern Ireland;
- (c) the level of transparency in the review carried out by NIEA.

Government response

International waste shipments is not a devolved issue. The Transfrontier Shipment of Waste Regulations therefore apply to the whole of the UK. However, the changes proposed to NI fees are a result of a review carried out in Northern Ireland and are being made at the request of the Department of Environment in Northern Ireland (DOENI).

NIEA has discussed the concerns raised directly with consultees and has explained that this is the first revision of the fee structure since it was introduced in 2005, and previous assumptions used to develop the original fees did not adequately predict the costs or resources necessary to carry out all required aspects of work. Full cost recovery is essential to maintain the effectiveness of compliance and to realise the benefits of the

legislation in reducing the number of illegal shipments that may pass unnoticed and hence protect legitimate businesses. The new fee structure brings NI into line with the rest of the UK, although the NI fees will on average be at least 25% less.

Businesses have been advised by NIEA how they may best utilise the general notification system to reduce the number of smaller movements and hence reduce the cost impact of the new banding structure.

NIEA recognises that the proposed fee structure could lead companies to believe that refunds would cease. The purpose of fees in Northern Ireland is to ensure full cost recovery to the Agency in their administration and compliance of the notification system and also to more closely align with the fee structure in the rest of the United Kingdom. The NIEA have confirmed that should the new fee structure be introduced a refund policy will be developed to ensure the Agency returns monies for activities which have not happened thus ensuring that full cost recovery by the NIEA is not exceeded.

On the issue of the need for more transparency in the development of fees policy, NIEA considers it would be beneficial to conduct a further review three years after implementing the changes to be made in the TFS Regulations.

DOENI has confirmed that in its view the concerns raised by consultees have been addressed and that the potential impacts set out in the draft impact assessment remain accurate. It confirms that it is content for these changes to be made.

Question 8: What is your view on a future amendment to the regulations to require submission of Annex VII forms to NRW? What impact do you consider this will have on your business?

Consultee responses

Many consultees considered this proposal would increase administrative requirements. However, most do not see it as excessive and consider there would be benefits in helping CAs tackle illegal shipments of green list waste. There were also suggestions to extend the submission of Annex VII forms to the EA.

Government response

Article 18 of the Waste Shipments Regulation requires that all movements of green list waste must be accompanied by a completed Annex VII form. The Waste Shipments Regulation does not **require** the submission of these forms to CAs, but does allow CAs to

request this information for inspection, enforcement, planning and statistical purposes if specified in national legislation. In 2007 only Scotland and Northern Ireland wanted to avail themselves of this information and the 2007 TFS Regulations therefore only require the submission of Annex VII forms in Northern Ireland and Scotland. CAs there have benefited from the information the forms provide.

The purpose of asking the question now in connection with the NRW was simply to get a preliminary idea of the views of stakeholders. The responses received on the submission of Annex VII forms to NRW have been passed to the Welsh Government who will consider whether a further change should be made to the TFS Regulations in due course. This would be subject to further consultation. Similarly, we have advised the EA that some consultees see benefit in extending the requirement to England. They will consider this further. Again any change to the Regulations would be subject to further consultation.

Question 9: Are the costs and benefits in the partial Impact Assessment an accurate reflection of the likely impacts upon stakeholders resulting from all the proposed changes? If not, please explain and provide evidence for why you think costs and benefits might be different.

Consultee responses

Very few consultees commented on the impact assessment. Those that did had few concerns apart from some worry over whether the impacts of the Northern Ireland fee increase had been properly addressed. Those consultees offering general comment felt that the Government should take a holistic view of the costs and benefits and take account of the fact that illegal exports can distort domestic markets and result in a loss of jobs and lower investments

Government response

DOENI has spoken to those who expressed concern over the proposed increase of fees in Northern Ireland. Following these discussions, it remains of the view that the potential impacts set out in the draft impact assessment remain accurate.

We agree that illegal exports create an uneven playing field for domestic businesses. These amendments to the TFS Regulations are one of the actions we are taking to try to address this.

Next steps

10. Having considered the responses to consultation, the Government intends to proceed with the proposed amendments. We also intend to include the changes necessary to transfer the competent authority and enforcement functions for transboundary movements of waste starting and finishing in Wales to NRW from the Environment Agency. We intend to lay the amended Regulations in Parliament on 3 April 2014 to come into force from 1 May 2014.

11. We will work with the CAs and other Governments with responsibilities under the Regulations (i.e. Border Force, HMRC and DECC) to prepare detailed working arrangements. These are likely to be set out in a Memorandum of Understanding between the affected Departments.

Annex 1 – List of Respondents

Arc 21
Brother Industries (UK) Ltd
Chartered Institution of Waste Management (CIWM)
Chartered Institution of Waste Management (CIWM) Northern Ireland
Closed Loop Recycling Ltd
Confederation of Paper Industries (CPI)
DS Smith Recycling
Eco Plastics Ltd
Environmental Services Association (ESA)
Hull & Goole Port Health Authority
Indaver Ireland
Lisburn City Council
Maersk
Northern Ireland Association of Independent Recyclers
OOCL (UK)
Re Gen
Resource Association
Scottish Environment Protection Agency (SEPA)
SITA
Smurfit Kappa UK
Social Democratic and Labour Party (SDLP)
Southern Waste Management Partnership (SWaMP)
Valpak Ltd
Veolia Environment Services
Wastebeater