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Consultation on Transfrontier Shipments of Waste: Review of the Transfrontier Shipment of Waste Regulations 1994 and the UK Management Plan for Exports and Imports of Waste

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Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
London SW1P 3JR
Telephone 020 7238 6000
Website: www.defra.gov.uk

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Information about this publication and further copies are available from:

Defra
6/E5 Ashdown House
123 Victoria Street
London
SW1E 6DE
Tel: 0207 238 6000

Email: waste.management@defra.gsi.gov.uk

This document is also available on the Defra website.

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Contents

Executive Summary	3
1. Introduction	4
About this consultation and how to respond	4
Geographical coverage	5
Who will be affected by these proposals	5
Next steps.....	5
2. Background	6
Regulatory Framework	6
Revised Waste Shipments Regulation	6
Simplified control procedure	6
Changes in the waste codes	6
One waste code per notification	7
Procedures for green list waste	7
Environmental protection	7
Interim disposal / recovery	7
3. Transfrontier Shipment of Waste Regulations	8
Tackling Illegal Shipments.....	8
Enforcement of controls for shipments of green list waste	8
Duty of Care	9
Key Changes	9
Liability for non-compliance (regulation 5)	9
Competent authority for the offshore marine area (regulation 6)	10
Table 1 – proposed transitional charges for notified shipments of waste to and from Great Britain	13
Financial guarantees (regulations 47 & 48)	14
Role of HM Revenue and Customs (regulation 51)	15
Penalties (regulation 58)	16
Exports of recyclables – reporting information that accompanies shipments of ‘green list’ waste	16
Shipments of ‘green list’ waste to non-OECD countries	18
4. UK Plan for Shipments of Waste	20
Key Changes	20
Shipments in emergency situations	20
Shipments for trial runs	21
Shipments between Northern Ireland and the Republic of Ireland	21
Shipments to the UK from Member States, or EFTA countries, of hazardous waste produced in small quantities in the country of dispatch	22
Shipments from the UK to other Member States, or EFTA countries, of hazardous waste produced in small quantities	23
Enforcement of controls for shipments of green list waste	24
Shipments in emergency situations	25
Shipments for trial runs	25
Shipments between Northern Ireland and the Republic of Ireland	25
Shipments to the UK from Member States, or EFTA countries, of hazardous waste produced in small quantities in the country of dispatch	26

Executive Summary

What this consultation package covers

A revised Waste Shipments Regulation was adopted in the EU in June 2006. In order to ensure full implementation and enforcement of the Community Regulation in the UK it is necessary to revise and update the existing Transfrontier Shipment of Waste Regulations 1994 (S.I. 1137). This also provides an opportunity to review the policies set out in the UK Management Plan for Exports and Imports of Waste 1996.

What this consultation package contains

There are five main parts to this consultation package:

- This consultation document setting out proposals for:
 - new Transfrontier Shipment of Waste Regulations (the TFS Regulations)
 - a revised UK Plan for Shipments of Waste (“the UK Plan”)and including:
- the draft Regulations setting out the proposed legal framework;
- a partial Regulatory Impact Assessment which examines the costs and benefits associated with the draft Regulations;
- a draft revised UK Plan;
- a partial Regulatory Impact Assessment which examines the costs and benefits associated with the draft revised UK Plan.

Who should read this consultation package

This consultation package should be of interest to:

- **anyone who ships waste to and from the UK** – this includes anyone involved in any stage of the transport of such waste, such as:
 - **freight forwarders**
 - **waste brokers**
 - **shipping agents/companies**
 - **hauliers**
- **operators** of facilities generating, holding and/or processing waste which has been shipped into the UK or which will be shipped from the UK
- **local authorities**

1. Introduction

About this consultation and how to respond

The consultation will last 12 weeks. This consultation paper contains:

- a summary of questions raised in this paper (annex A)
- background information on the new control system for transfrontier shipments of waste
- the draft **Transfrontier Shipment of Waste Regulations** (annex B)
- a partial Regulatory Impact Assessment for the Regulations for the draft Transfrontier Shipment of Waste Regulations (annex C)
- the **draft UK Plan for Shipments of Waste** (annex D)
- a partial Regulatory Impact Assessment for the draft UK Plan for Shipments of Waste (annex E)

Please return comments to:

By email: waste.management@defra.gsi.gov.uk

By post to Defra: Gordon Wilson
TFS Consultation
Zone 6/E5 Ashdown House
123 Victoria Street
London
SW1E 6DE

If you have any enquiries regarding this consultation please call: 020 7082 8451.

Comments must be returned to Defra by 12 March 2007

1.1. In line with Defra's policy of openness, at the end of the consultation period copies of the responses we receive will be made publicly available through the Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR. The information they contain will also be published in a summary of responses.

1.2. If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request. You should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations.

1.3. The library will supply copies of consultation responses to personal callers or in response to telephone or e-mail requests (tel: 020 7238 6575, email: defra.library@defra.gsi.gov.uk). Wherever possible, personal callers should give the library at least 24 hour notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.

1.4. If you have any comments or complaints about the consultation process, as opposed to about the issue in the consultation paper, please address them to Marjorie Addo, Defra Consultation Co-ordinator, Area 7B Nobel House, 17 Smith Square, London SW1P 3JR, or email consultation.coordinator@defra.gsi.gov.uk.

Geographical coverage

1.5. This consultation covers the whole of the UK. Policy for shipments of waste to and from the UK is not a devolved matter. Nevertheless, this consultation package has been prepared in co-operation with the relevant authorities in Wales, Scotland and Northern Ireland.

Who will be affected by these proposals

1.6. This consultation paper is directed at those who ship waste into, out of or through the UK or anyone who produces waste which is shipped.

1.7. This paper is being sent to those organisations and individuals listed on the Defra website. If you are aware of others who might be interested in seeing the consultation paper but who are not listed please let Defra know and a copy will be sent to them.

Next steps

1.8. The responses to this consultation will be considered and any necessary changes to the Transfrontier Shipment of Waste Regulations and the UK Management Plan for Shipment of Waste will be made. It is intended that the Regulations will be laid in June 2007 coming into force on 12 July 2007. It is anticipated that the revised UK Plan will also be published to this timetable.

2. Background

2.1. This section provides background information the forthcoming changes to the control system for transfrontier shipments of waste.

Regulatory Framework

2.2. The UNEP Basel Convention on transboundary movements of waste and their disposal sets out the global control framework for the import and export of wastes. The related OECD decision C(92)39/FINAL also applies to the control of transboundary movements of waste destined for recovery operations between OECD countries. The provisions of the Convention and the OECD decision are currently implemented in the EU through Council Regulation (EEC) No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community (the Waste Shipments Regulation). The Waste Shipments Regulation is supplemented in the UK by the Transfrontier Shipment of Waste Regulations 1994 (SI No 1137) and the UK Management Plan for Exports and Imports of Waste.

2.3. Following changes to the Basel Convention and to the OECD decision the Waste Shipments Regulation was revised to ensure that the changes were implemented within the Community. The European Commission published their proposal for a revised Waste Shipments Regulation in 2003. In October 2005 an agreement was reached between the Council of the European Union and the European Parliament on the revised Regulation. Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste¹ was published in June 2006 and will apply from 12 July 2007.

Revised Waste Shipments Regulation

2.4. As part of the review process the procedures set out in the Waste Shipments Regulation (WSR) were simplified. The key changes to the Waste Shipments Regulation are as follows:

Simplified control procedure

2.5. The control procedures under the WSR have been simplified so that the same procedure of prior notification and written consent generally applies to all regulated (i.e. notifiable) shipments of waste, regardless of whether the shipment is for disposal or recovery and where it is destined. Title II of the WSR sets out the detail of the control procedure, subject to some minor modifications in respect of particular types of movements.

Changes in the waste codes

2.6. The waste lists of the revised WSR have been changed to bring them into line with the lists annexed to the Basel Convention and the revised OECD decision. The new waste codes are much more generic than the ones in the existing WSR, e.g. whereas scrap metals were once listed by individual metal type they now come under more general codes, e.g. B1010 metal and metal-alloy wastes. There will be a change for the majority of codes that are used to describe waste destined for a transboundary movement. Operators should familiarise themselves with the new codes.

¹ OJ L190/1

One waste code per notification

2.7. Only one waste code is allowed on each notification. The changes to the waste codes should minimise the impact of this on operators.

Procedures for green list waste

2.8. The movement of 'green list' wastes (those in annex III of the revised WSR) come within the scope of the WSR for the first time. Transboundary movements of such waste are subject to the procedural requirements of article 18. A movement form (set out in Annex VII of the revised WSR) must be completed for, and must accompany, each shipment of such waste. The form requires information on: the composition, quantity and destination of the waste, and a declaration that a contract with the consignee has been entered into. There is a similar requirement in the current WSR, but only for such shipments within the Community.

Environmental protection

2.9. There is an obligation on the producer, notifier and other undertakings involved in a shipment of waste, and /or its recovery or disposal, to take the necessary steps to ensure that any waste they ship is managed in an environmentally sound manner and without endangering human health throughout the shipment and during its recovery and disposal. This applies to both notifiable and non-notifiable shipments.

Interim disposal / recovery

2.10. Under the revised WSR where shipments are made initially for storage or other 'interim' recovery or disposal operations, as defined by the Community Regulation, controls will continue until the notified waste is subjected to a substantive recovery or disposal operation. Notifiers will be required to provide information on the proposed substantive operations at the time of notification.

3. Transfrontier Shipment of Waste Regulations

3.1. The EC Waste Shipments Regulation (WSR) is directly applicable in the UK – that is its provisions do not require transposition into national legislation. However, national legislation is required to give full effect to its provisions. In the UK, this is achieved through a Statutory Instrument, currently the Transfrontier Shipment of Waste Regulations 1994, as amended. These Regulations set out offences and penalties, and designate the competent authorities responsible for enforcing the WSR in the UK. The competent authorities in the UK are the Environment Agency for England and Wales; the Scottish Environment Protection Agency in Scotland; and the Department of the Environment in Northern Ireland. It is proposed that these will remain the UK TFS competent authorities in the new TFS Regulations.

3.2. These Regulations must be revised and updated to take into account the changes to the WSR. Draft revised Regulations are attached at annex B.

3.3. We have taken the opportunity of this review both to address areas where the present regulatory regime can be strengthened, in particular as regards to the detection and prevention of illegal shipments, and to reduce the regulatory burden on industry, particularly as regards to financial guarantees.

Tackling Illegal Shipments

3.4. Co-ordinated EU inspections in 2005 and 2006 identified a high proportion of illegal and potentially illegal shipments leaving EU ports. In England and Wales several of the major seaports were inspected during 2005 and early 2006 by a national team of enforcement officers. Approximately 400 shipping containers and lorries destined for export to India, China and Indonesia were inspected during the intelligence-led inspections. Over half of the shipments inspected were determined to be non-compliant with the requirements of the WSR.

3.5. Most of the breaches related to wastes such as municipal waste or poorly sorted/contaminated mixed recyclates collected from municipal waste streams. These mixed wastes should be notified by the exporter to the relevant UK competent authority, as their export requires consent by all competent authorities in the countries of dispatch, transit and destination. Frequently these mixed wastes are described by exporters as paper or plastic and exported as a 'green list' waste (i.e. non-notifiable) under normal commercial controls.

3.6. Other illegal shipments discovered included waste fridges/shredded fridge waste, computer parts, crushed and baled waste electrical items and tyres which were either being exported without notification or were being exported to countries which did not wish to accept that waste.

3.7. The inspections resulted in several investigations and prosecutions some of which are ongoing. It should be noted that while these high levels of non-compliance are, in part, a result of the targeted approach used for the inspections there is a clear need to improve compliance with the controls for 'green list' waste shipments. Experience from this work has been considered during the preparation of the draft Regulations.

Enforcement of controls for shipments of green list waste

3.8. Given the proposed changes to illegal shipments of waste, including those of 'green list' waste, this consultation provides an ideal and appropriate opportunity to consider how the enforcement of this work is funded. Ensuring compliance with the WSR requires the full range of enforcement action available to competent authorities is employed, where necessary, for all wastes that it covers and that the powers are seen to be used. Without this some operators may believe that they may gain advantage by seeking to escape their responsibilities unless or until they are caught.

3.9. While monitoring and enforcement of the controls for notified shipments is funded through the charges for such shipments there are no charging schemes for shipments of 'green list' waste. Recent 'green list' enforcement work by the Environment Agency has been undertaken through grant in aid from Defra. However, there are competing pressures on this aid set against an increasing volume of this waste being shipped overseas.

3.10. One option would be to include an element of the income from notified shipments to chase up illegal operators. However, this is not likely to be considered appealing from a competition perspective. Improved compliance with 'green list' waste controls will not deliver concomitant benefits to those paying charges for notified waste shipments. Notifiable waste movements also represent a small proportion of the total number and amount of waste shipped to and from the UK each year when compared to movements of 'green list' waste and so the burden on them to fund 'green list' waste enforcement might be considered to be disproportionate.

3.11. Views are invited from those who ship 'green list' waste, and others, as to how an appropriate and reliable funding based for enforcement work could best be achieved. One option could be a charge raised through an annual registration system for all those who ship waste to or from the UK. Any proposals on this issue would need to be developed and would be subject to a further consultation.

Q Do you think charges for notifiable shipments should be increased to include an element for enforcement activities for shipments of 'green list' waste?

Q Would a registration scheme be an equitable way of funding enforcement of these controls? Or are there other feasible options?

Duty of Care

3.12. The duty of care provides the first level of control for waste which is destined for shipment out of Great Britain, or in the case of imports, once it has arrived at a facility for a recovery or disposal operation. It is important that links between the duty of care and the transfrontier shipment of waste (TFS) controls are effective at deterring illegal activity, in particular as regards non-notifiable wastes. We have therefore proposed a number of changes to the duty of care, as part of its wider review in England and Wales, to tackle illegal TFS activity. The review of the duty of care is subject to a separate consultation exercise which was launched on 29 November. The relevant papers can be found on the Defra website at <http://www.defra.gov.uk/corporate/consult/current.htm>

Key Changes

Liability for non-compliance (regulation 5)

3.13. The offences in the draft Regulations have been drafted in such a way that they would affect “any person who ships waste”. Regulation 5 provides clarification of some of the people who are involved in the shipment of waste and under UK jurisdiction, providing the UK competent authorities with the mechanism to target a broader range of people when tackling illegal shipments. The list in regulation 5, although not exhaustive, is intended to clarify who is covered by the offence provisions.

3.14. The rationale for this is that it extends the range of persons upon whom the UK competent authorities can take enforcement action against when they intercept a shipment that is not in accordance with the requirements of the WSR. Under the present regime, this is restricted to either the notifier, or the person who should have notified the waste. However, in practice, the UK competent authorities have found it difficult to trace the person responsible for the waste in cases when there has been an illegal shipment.

3.15. This change will assist the competent authorities from an enforcement perspective and should also introduce a degree of self-regulation amongst those involved in shipments of waste. In effect, it will mean that anyone defined in regulation 5 will need to be satisfied that the shipment is compliant with the applicable controls (e.g. a relevant contract is in place) before moving the waste, or potentially face enforcement action.

Q Do you agree with this extension of liability for non-compliant shipments? If not, why not?

Q Although the list in regulation 5 is not exhaustive, are there any other people that should be included in the list for clarity?

Competent authority for the offshore marine area (regulation 6)

3.16. The current TFS Regulations do not designate a competent authority for movements of waste to and from the offshore marine area (territorial waters and the UK continental shelf). However, the WSR requires one to be designated. The jurisdiction of the UK competent authorities does not generally extend to the offshore marine areas and as such they cannot legally and in their own right, in these circumstances, act as competent authority for waste shipments that start or end in this area in their own right.

3.17. We propose to address this in the new TFS Regulations by designating the Secretary of State as the competent authority of dispatch and destination for the whole offshore marine area for all waste arising from the offshore marine area.

3.18. In practice we hope to use the expertise of the UK competent authorities by delegating the Secretary of State’s functions in the offshore marine area, to them through an agreement under section 38 of the Environment Act 1995 in respect of England, Wales and Scotland. We hope to enter into a similar agreement with Northern Ireland.

3.19. The Environmental Permitting Review is also seeking to extend the jurisdiction of the Environment Agency out to 12 nautical miles in England and Wales. If this change is approved then Defra will reconsider the SoS’s designation in the TFS Regulations, and any similar changes adopted in Scotland.

Q Do you agree with the proposed arrangements for a competent authority for the offshore marine area? If not, why not?

Q Do you have any information on the costs and benefits of making such movements and wastes subject to the requirements of the revised Waste Shipments Regulation?

Transitional charges / fees (regulation 45 & Schedules 2 and 3)

3.20. While the UK competent authorities already have powers to recover costs, these are limited. The draft Regulations seek to amend section 41 of the Environment Act 1995 to allow both the Environment Agency and the Scottish Environment Protection Agency to establish charging schemes as a means of recovering the costs they incur in performing their duties under the Regulations.

3.21. Current charges, including any changes coming into effect from 1 April 2007, are based on administering the existing WSR. Any changes to these charges would take time and the process could only start after the new powers are in place. It is therefore proposed to include transitional charges in a Schedule to the Regulations (see Schedule 2) which will come into force on 12 July 2007. The Agencies will have to consult stakeholders on the development of new charging schemes that build on experience of operating the new WSR and offer potential for more flexibility in the structure of the charges. The final schemes would need to be approved by HM Treasury, Defra and DTI. When approved, the charges in the Agencies schemes will replace the charges in the Regulations.

3.22. Charges for Northern Ireland are set out in a separate Schedule 3 to the draft Regulations. These charges are based on the existing charges in Northern Ireland, currently set out in separate Regulations², with a notification charge of £450 and a consignment (shipment) charge of £25. The TFS charges were set at this level by the Department of the Environment in Northern Ireland, when it assumed the responsibility of competent authority in 2005. The TFS charges, including their structure, in Northern Ireland will be reviewed at a later date once a comprehensive set of notification data is available and in light of experience of implementing the revised WSR.

3.23. Changes to the WSR will result in additional costs to the competent authorities in undertaking their duties. Changes to the procedures for general notifications, and for shipments of waste to interim recovery and disposal operations, may lead to an increase in notifications. Changes to the notification procedure for waste to pre-authorised sites may result in fewer notifications.

3.24. A number of the proposed changes to the work the Agencies undertake in connection with the WSR make the structure of the existing charges obsolete. Consequently they wish to introduce charges that properly reflect the revised regulatory requirements.

3.25. The Environment Agency is looking to simplify and standardise its charges. In line with this, it is suggested that there may be no refunds (except where the notification is actually objected to). This would save administrative costs, avoiding the difficulties refunds have caused in the past. (The proposed charges have passed these savings back to operators.)

² The Transfrontier Shipment of Waste (Fees) Regulations (Northern Ireland) 2005, S.I. No. 90

Also refunds can be given on anything up to three years later and this presents difficulties given the requirement to recover regulatory costs on a yearly basis. The Scottish Environment Protection Agency (SEPA) is also keen to explore removing refunds for TFS notifications (except where the notification is actually objected to).

3.26. Indicative charges to be included in the final Regulations are shown in Table 1. Charge levels and bands may be refined further as a result of responses to the consultation.

3.27. Further details on the predicted changes to notifications, and the structure and impacts of the proposed charges are provided in the partial Regulatory Impact Assessment (RIA) for the draft Regulations (annex C).

Table 1 – proposed transitional charges for notified shipments of waste to and from Great Britain

Notification Type	Single Shipment	General Notification - no. of shipments				
	1	2 to 5	6 to 20	21 to 100	101 to 500	500+
Notifications of waste from Great Britain for non-interim recovery	£1,510	£1,510	£2,740	£4,070	£7,920	£14,380
Notifications of waste from Great Britain which include interim recovery	£1,510	£1,510	£2,740	£4,070	£7,920	£14,380
Notifications of waste from Great Britain for non-interim disposal	£1,590	£1,590	£3,360	£5,570	£11,200	£20,270
Notifications of waste from Great Britain which include interim disposal	£1,740	£1,740	£3,370	£6,160	£13,300	£24,820
Notifications of waste to Great Britain for non-interim recovery	£1,330	£1,330	£2,770	£4,980	£10,610	£19,680
Notifications of waste to Great Britain which include interim recovery	£1,480	£1,480	£3,010	£5,800	£12,940	£24,460
Notifications of waste to Great Britain for non-interim disposal	£1,590	£1,590	£3,360	£5,570	£11,200	£20,270
Notifications of waste to Great Britain which include interim disposal	£1,740	£1,740	£3,370	£6,160	£13,300	£24,820
Notifications of waste to Great Britain to a pre-consented site	£1,040	£1,040	£2,140	£4,350	£9,980	£19,050
Notifications of waste transiting Great Britain	Nil	Nil	Nil	Nil	Nil	Nil

Q Do you agree with the proposed structure, based on banding by the number of shipments for the revised charges in Great Britain?

Q Do you agree with the proposed bands? Or should the system be simplified by merging some of the bands? If so, which?

Q Does the partial RIA correctly identify the impacts of the new WSR on notifications received in the UK?

Q Do you have any information on the likely impacts of the proposed transitional charges?

Q Does the proposed changed approach to refunds cause you any concern? If so, can you explain, given the wide bands proposed, why it is not possible to predict the approximate number of likely shipments on a notification at the time of notification?

Financial guarantees (regulations 47 & 48)

3.28. The current system requires details of the financial guarantee to be submitted to the appropriate UK competent authority for their scrutiny and certification before a shipment starts. Under the current TFS Regulations the competent authorities have between 30-70 days to determine an application for a 'certificate of satisfaction', depending on where the shipment is destined for/coming from. Given the time limits for determination of such applications in practice notifiers submit the application at the time of notification as a shipment cannot commence until a 'certificate of satisfaction' has been issued.

3.29. Under article 6(5) of the new WSR Member States are given flexibility to allow the financial guarantee or equivalent insurance to be in place after notification, provided that that point in time is prior to shipments on the notification commencing, and provided national legislation permits this. This appears to be an opportunity to reduce the regulatory burden on industry. Although this may place a higher administrative burden on competent authorities, as it is simpler for them to receive all the relevant paperwork at the same time, we propose to take advantage of this in regulation 48(2)(b).

3.30. In addition under the new WSR an assessing competent authority is permitted to accept a signed declaration that an adequate guarantee or equivalent insurance is in place of assessing the actual instrument constituting the provision made. Again such an approach is dependent upon the existence of national legislation that allows the competent authority to take such an approach. As this is likely to save the resources of competent authorities we propose to include these provisions in regulation 48(1)(b).

Q Do you agree with the proposed changes to the system for putting in place financial guarantees? Do they reduce the regulatory burden on industry in any way? If so, how?

Q Are the costs and benefits in the partial RIA for the draft Regulations an accurate reflection of the likely impacts of these proposed changes?

Powers of competent authorities (regulation 49, schedules 5 & 6)

3.31. The competent authorities' experiences in enforcing the current TFS Regulations have highlighted a number of areas where improved powers would assist them in their enforcement activities. In addition the revised WSR places specific obligations on competent authorities. In order to support effective implementation and enforcement of the WSR and the TFS Regulations it is proposed to strengthen the powers of the competent authorities and give them a wider range of enforcement tools.

3.32. Firstly, competent authorities will be given a power enabling them to serve a range of notices on operators in order to request compliance with the control framework. These notices could include an information notice requesting further information on the waste or destination of a shipment; an enforcement notice requesting compliance with the controls; or a prohibition notice prohibiting the movement of a shipment in breach of the controls. It will be an offence not to comply with any such notice served.

3.33. It is also proposed to give the competent authorities the power to seize waste. It is hoped that this power will only be used as a last resort in cases where there is an immediate risk to human health and/or the environment, and/or where an operator is in breach, or looks likely to breach a notice.

Q Do you agree with the proposed strengthening of competent authorities' powers for enforcing transfrontier shipment of waste controls? If not, why not?

Q Do you think their powers could be strengthened further? If so, how?

Role of HM Revenue and Customs (regulation 51)

3.34. We do not propose any significant change to the role of HM Revenue and Customs in the draft Regulations. It is envisaged that they will continue to have a supportive role working on behalf of UK competent authorities in detaining shipments on request for a period. Currently this is up to three working days.

3.35. However, we do see benefits in increasing the period of detainment to five working days. Experience in enforcing the current WSR has demonstrated difficulties for the UK competent authorities in identifying who is responsible for a particular shipment of waste, acquiring the necessary paperwork and undertaking the necessary checks within the three day period. An increase of two days would give the UK competent authorities more time for their investigations and assist them in tackling non-compliant shipments.

Q Do you support increasing the three day detention period of HMRC to five days? If not, why not?

Q Do you have information/data on the impacts that this proposal would result in?

Q Or do you think the detention period should be higher than five days? If so, why?

Penalties (regulation 58)

3.36. The penalties in the draft Regulations are consistent with those allowed under the European Communities Act 1972 (the legal base for the Regulations). The penalties for offences under the proposed Regulations will be a fine of up to £5000 on summary conviction (Magistrate's Court) and up to two years imprisonment or unlimited fines on indictment (Crown Court).

3.37. We have also introduced the option of fixed penalty notices of £300 which competent authorities may use at their discretion. However, it is envisaged that these would only be used for comparatively minor offences.

Exports of recyclables – reporting information that accompanies shipments of 'green list' waste

3.38. The recent consultation on the review of Waste Strategy 2000 highlighted the amount of non-hazardous recyclables which are being exported for recovery and recycling. Increased collection rates combined with limited domestic capacity and high demand for secondary resources overseas have driven the increase in exports although it is difficult to accurately estimate the precise volumes involved.

3.39. The WSR allows the export of properly sorted clean recyclables to non-OECD countries without prior written notification and consent, if the importing country has notified the European Commission that they are content for this to take place (see para 3.50). The controls do not permit the export of unsorted or contaminated recyclables, or municipal waste, as green list waste.

3.40. Since the shipments are not notified, the scale of this trade is difficult to estimate. Analysis of HM Revenue and Custom's trade database can provide an indication of scale although codes used for the purposes of customs do not always differentiate between products and wastes.

3.41. For the purposes of waste management planning, particularly for recyclables from households, it would be useful to know what wastes are being shipped overseas for recovery/recycling; in what quantities; where they are destined for; and what trends there are in such shipments over time.

3.42. Government's WasteDataFlow initiative requests local authorities to report where household recyclables have been sent for recycling. However, many local authorities are not currently reporting the final destination of

recyclate where this is outside the UK and it may be that they are not best-placed to report this information.

3.43. Article 18(1) of the revised WSR requires shipments of non-notifiable waste to be accompanied by a movement form, set out in Annex VII. This form includes information on the type and quantity of waste and where it is destined. Collection of this information could provide Government with the data it needs for planning purposes, e.g. domestic capacity and infrastructure. This information is also likely to be needed for the EC Waste Statistics Regulation which requires Member States to report on the amounts of waste they import and export, data which we only have for notifiable wastes at the moment.

3.44. Article 18(3) of the revised WSR allows Member States to require this information for inspection, enforcement, planning and statistical purposes provided that it is in accordance with national legislation. We therefore have an opportunity, through the TFS Regulations, to request copies of the Annex VII information in some shape or form. Three options for collecting the Annex VII information are explored in the partial RIA:

Option 1 - do nothing

3.45. Not requiring this information to be provided will do little to resolve the current position whereby there is limited knowledge of the types and quantities of green list wastes that are shipped from and to the UK. As a result, there would continue to be a real lack of reliable, consistent information about trends affecting these import and export markets. In addition to this, it will be difficult to monitor compliance with the applicable controls if the UK competent authorities have little knowledge of where the waste is coming to or going from.

Option 2 – require operators to submit copies of the Annex VII information to the relevant competent authority on a quarterly or annual basis

3.46. This option would place a statutory obligation, through a provision in the S.I., on those who are involved in the shipping of 'green list' waste, to and from the UK, to submit a copy of the Annex VII information to the relevant UK competent authority. This would enable the competent authorities to develop a statistical database for movements of non-notified 'green list' waste which will provide information on the types and quantities of the waste being exported and the destination of these wastes. The information would also be of use to Government in developing its waste strategies, in particular as regards the fate of household recyclables. It would also enable regulators to target enforcement action, promote better compliance with the WSR and assist them in tackling the illegal shipment of these wastes in and out of the UK.

Option 3 – requires operators to submit certain information from the Annex VII form to the relevant UK competent authority on a quarterly or annual basis

3.47. Not all of the information on the Annex VII form is relevant for waste planning purposes. Furthermore, the input of data from the forms onto a database is likely to be extremely resource intensive for the competent authorities. Rather than simply requesting a copy of the Annex VII form, operators could submit specified information from the form to the competent authorities. Ideally the submission of the information would be through electronic means. This would involve the establishment of an electronic reporting system whereby a format for the required information would be prescribed, possibly by the competent authorities, and operators would submit the necessary information on a quarterly basis to the competent authorities. This would be a longer term option as time would be needed to develop the detail of such a system. The quarterly reporting of the Hazardous Waste (England and Wales) Regulations 2005 (S.I. 894) might provide a basis for developing such a system. Such an option could become operational by April 2009.

3.48. The partial RIA for the Regulations (annex B) explores the impacts of these three options in more detail. Comments are invited on these impacts. No provisions have been included in the draft Regulations at this stage. Depending on the responses to the options above, relevant provisions might be included in the final Regulations.

Q How do you think Government can best obtain better data on the scale and trend of exports of non-notifiable wastes?

Q Do you support option 1, 2 or 3? Why?

Q Do you have any information on the costs and benefits associated with each of the options?

Shipments of 'green list' waste to non-OECD countries (regulations)

3.49. Shipments of 'green list' waste to non-OECD countries are currently controlled under Council Regulation 1420/1999 and Commission Regulation 1547/1999. As the waste code entries in the annexes to the revised WSR have changed the Regulations need revising. In accordance with Article 37 of the revised WSR, the European Commission have written to all non-OECD countries requesting advice on what control procedures they would like for each type of waste. Countries can request:

- A prohibition; or
- A procedure for prior written notification and consent as described in article 35; or
- No control in the country of destination.

3.50. Where no response is received the default position is that the procedure of prior written notification and consent will apply (article 37(2)). Where a country indicates that no control procedure is required such shipments will still be subject to article 18 requirements, i.e. it will have to be accompanied by specified information and a contract will have to be in place.

3.51. The responses will form the basis of a new Commission Regulation which should be adopted before 12 July 2007. Information on responses received to date can be found on the Commission's website, at:http://ec.europa.eu/trade/issues/global/environment/waste_leg_update_0706_en.htm

3.52. In the absence of a Commission Regulation, or a proposal for one, it is difficult to accurately reflect the likely requirements of such a Regulation. Relevant provisions will be inserted in the final Regulations to reflect the offences and penalties required to support enforcement of any such Commission Regulation.

4. UK Plan for Shipments of Waste

4.1. In addition to the Waste Shipments Regulation and the Transfrontier Shipment of Waste Regulations 1994, the UK has a statutory policy document, the United Kingdom Management Plan for Exports and Imports of Waste (the UK Plan). The Plan, which applies to the whole of the UK, sets out Government policy on exports out of and imports into the UK of waste for disposal and recovery. The Plan, which is legally binding, came into operation on 1 June 1996.

4.2. The UK Plan takes account of the UK's international obligations, in particular under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal. The UK Plan also incorporates technical guidance to assist UK competent authorities in taking decisions on proposed shipments notified under the WSR.

4.3. The UK Plan is a waste management plan helping the UK fulfil Articles 5 and 7, of the Waste Framework Directive. Regulation 10 of the draft TFS Regulations places an obligation on the Secretary of State to prepare a waste management plan, that contains his policies in relation to the shipment of waste for disposal into and out of the UK.

4.4. The main policy implications of the revised UK Plan are related to the general prohibition on this shipment of waste for disposal into and out of the UK, and the identification of circumstances where exceptions to this general prohibition are applicable.

Key Changes

4.5. The format of the UK Plan has been changed in order to distinguish between the parts that place legal obligations on UK competent authorities, requiring them to object to certain notified shipments (this forms the revised UK Plan), and the parts that set out Government policy or offer guidance to competent authorities and operators (this is set out in an explanatory note to the revised UK Plan).

4.6. Guidance on shipments for recovery has been removed from the Plan on the basis that the WSR clearly sets out the grounds upon which competent authorities must object to shipments of waste destined for recovery.

4.7. The WSR requires the prior notification of and written consent to any shipments destined for disposal before a shipment commences. It also provides competent authorities with a range of grounds under which they may object to such shipments. Key changes to the UK Plan are made without prejudice to the requirements of the WSR.

Shipments in emergency situations

4.8. The UK currently allows shipments of hazardous waste from any country into the UK in emergency situations, for disposal by high temperature incineration. Similar shipments out of the UK are not permitted.

4.9. It is proposed that the term 'emergency' be interpreted narrowly, in that the hazardous waste should present a 'clear and immediate' risk to human health and the environment in the country of dispatch, and that this exception would not apply if waste could be safely stored prior to disposal at a later date. It is further proposed that the disposal operation available in an emergency situation should not be limited, in order to enable the most environmentally suitable disposal operation to be selected.

4.10. Another significant change proposed regarding emergency situations is to provide for shipments out of the UK to other Member States or EFTA countries should this be necessary.

Q Is the definition of an emergency too narrowly drafted? If so, how should it be changed?

Q Should the UK permit shipments out of the UK in emergency situations or should the prohibition in the current Plan be maintained in support of UK self-sufficiency?

Shipments for trial runs

4.11. Shipments for trial runs are not provided for by the current UK Plan. However, trial runs allow waste producers and operators to sample and test specialised disposal technology. The purpose of the trial run might be for research purposes or for the commercial purposes of testing a technology before purchase. Such opportunities can encourage the dissemination of advances in disposal technology between Member States and help deliver self-sufficiency in waste disposal.

4.12. It is proposed that shipments for disposal be permitted for trial runs for waste coming into the UK from any country and out of the UK to other Member States, or EFTA countries, unless the technology being tested is available in the country of dispatch.

Q Do you agree with the proposal to allow shipments of waste, to and from the UK, for trial runs for specialised disposal technologies? What types of wastes and technologies might they be used for?

Q Do you think there should be any limitations placed on such shipments, e.g. tonnage?

Shipments between Northern Ireland and the Republic of Ireland

4.13. There are some hazardous wastes that require specialist disposal operations where it may not be economically viable for both Northern Ireland and the Republic of Ireland to have such facilities. Where this is the case, it is

proposed that shipments for disposal between Northern Ireland and the Republic of Ireland be allowed where they are destined for disposal by specially engineered landfill (D5), by incineration on land by high temperature incineration (D10), or for physico-chemical treatment (D9) prior to final disposal by D5 or D10. Any waste that enters Northern Ireland under this exception must not enter other parts of the UK for disposal. This proposal is in keeping with the recommendations of the Northern Ireland Hazardous Waste Forum.

Q Do you agree with the proposal to allow shipments of hazardous waste between Northern Ireland and the Republic of Ireland for the specialist disposal operations D5, D9 and D10 as outlined above?

Q Should this proposal be extended to include other disposal operations, such as biological treatment (D8) prior to D10?

Shipments to the UK from Member States, or EFTA countries, of hazardous waste produced in small quantities in the country of dispatch

4.14. The current UK Plan allows shipments of waste into the UK for disposal by high temperature incineration from the Republic of Ireland and Portugal, reflecting their limited capacity for managing certain hazardous wastes, at the time the current UK Plan was drafted.

4.15. Under the current and the revised WSR UK competent authorities are not allowed to raise objections to shipments for disposal based on the proximity nor the self-sufficiency principle where the hazardous waste produced in the Member State of dispatch is in such a small quantity overall per year that the provision of new specialised disposal installations would be uneconomic, except where the shipment would not be in accordance with a waste management plan, such as the UK Plan. As Member States have the ability to submit notifications on this basis it is not appropriate for the UK Plan to pre-empt consideration of any such notifications. As the arisings of hazardous waste in each Member State, and their economic status, is likely to change over time it does not seem desirable to limit which Member States we will accept wastes from in the UK Plan. Instead we propose to issue guidance to the UK competent authorities that they seek advice from Government on any such notifications to ensure that the notifications can be assessed on a case-by-case basis. In practice there will only be limited circumstances in which article 11(3) of the revised WSR will be fulfilled for shipments of waste into the UK for disposal.

4.16. As the arisings of hazardous waste in each Member State, and their economic status, is likely to change over time it does not seem desirable to identify which Member States we will accept wastes from in the UK Plan, but rather for this to be assessed on a case-by-case basis. This approach makes it easier to reflect the recent and future expansion of the EU and the economic status and hazardous waste generation and management capabilities of Member States.

4.17. In order to ensure the principles of proximity and self-sufficiency are safeguarded, the general prohibition on shipments from other Member States and EFTA countries would remain, and any exception would only apply where UK Government has agreed that it would be uneconomic for disposal capacity to be provided in the country of dispatch, and would be for specified hazardous wastes for a defined period of time. In practice there will only be limited circumstances in which article 11(3) of the revised WSR will be fulfilled for shipments of waste into the UK for disposal. It is also proposed to limit these shipments to those where the waste requires disposal in a facility which applies best available techniques as defined in article 9(4) of Directive 96/61/EC, but excluding disposal in specialist landfill (D5).

Q Do you agree with the proposal to better align exceptions from the general prohibition for shipments into the UK with the requirements of the Waste Shipments Regulation?

Q Should the disposal operations for which waste can enter the UK for disposal be limited within those that apply best available techniques, e.g. to high temperature incineration? If so, which disposal operations should be allowed?

Shipments from the UK to other Member States, or EFTA countries, of hazardous waste produced in small quantities

4.18. The UK has had a longstanding policy of self-sufficiency in waste disposal by prohibiting shipments of waste from the UK for disposal, and in general that principle still holds. More recent experience in implementing the Landfill Directive, in particular the requirement for hazardous waste to be either diverted from landfill or to be treated to meet waste acceptance criteria, has highlighted that the UK does not currently possess all the necessary waste management infrastructure in place for all hazardous waste streams. For a small number of such waste streams, treatment to meet the full waste acceptance criteria has not been possible, and whilst alternative treatment is developed, the blanket prohibition on exports for disposal has not always resulted in the environmentally preferable management option being pursued.

4.19. It is therefore proposed that while the UK maintains its general prohibition on exports for disposal that limited exceptions from the prohibition are permitted, in line with article 11(3) of the revised WSR.

4.20. This exception would only apply where UK Government has determined that such shipments provide the preferable environmental option, would be limited to shipments of hazardous waste that requires disposal in a facility which applies best available techniques as defined in article 9(4) of Directive 96/61/EC, but excluding disposal in specialist landfill. It would only apply to specific waste for a defined time period.

Q Do you agree with the proposal to better align exceptions from this general prohibition with the requirements of the Waste Shipments Regulation?

ANNEX A Summary of questions in the consultation paper

Transfrontier Shipment of Waste Regulations

Enforcement of controls for shipments of green list waste

Q Do you think charges for notifiable shipments should be increased to include an element for enforcement activities for shipments of 'green list' waste?

Q Would a registration scheme be an equitable way of funding enforcement of these controls? Or are there other feasible options?

Liability for non-compliance

Q Do you agree with this extension of liability for non-compliant shipments? If not, why not?

Q Although the list in regulation 5 is not exhaustive, are there any other people that should be included in the list for clarity?

Competent authority for the offshore marine area

Q Do you agree with the proposed arrangements for a competent authority for the offshore marine area? If not, why not?

Q Do you have any information on the costs and benefits of making such movements and wastes subject to the requirements of the revised Waste Shipments Regulation?

Transitional charges / fees

Q Do you agree with the proposed structure, based on banding by the number of shipments for the revised charges in Great Britain?

Q Do you agree with the proposed bands? Or should the system be simplified by merging some of the bands? If so, which?

Q Does the partial RIA correctly identify the impacts of the new WSR on notifications received in the UK?

Q Do you have any information on the likely impacts of the proposed transitional charges?

Q Does the proposed changed approach to refunds cause you any concern? If so, can you explain, given the wide bands proposed, why it is not possible to predict the approximate number of likely shipments on a notification at the time of notification?

Financial guarantees

Q Do you agree with the proposed changes to the system for putting in place financial guarantees? Do they reduce the regulatory burden on industry in any way? If so, how?

Q Are the costs and benefits in the partial RIA for the draft Regulations an accurate reflection of the likely impacts of these proposed changes?

Powers of competent authorities

Q Do you agree with the proposed strengthening of competent authorities' powers for enforcing transfrontier shipment of waste controls? If not, why not?

Q Do you think their powers could be strengthened further? If so, how?

Role of HM Revenue & Customs

Q Do you support increasing the three day detention period of HMRC to five days? If not, why not?

Q Do you have information/data on the impacts that this proposal would result in?

Q Or do you think the detention period should be higher than five days? If so, why?

Reporting information that accompanies shipments of 'green list' waste

Q How do you think Government can best obtain better data on the scale and trend of exports of non-notifiable wastes?

Q Do you support option 1, 2 or 3? Why?

Q Do you have any information on the costs and benefits associated with each of the options?

UK Plan for Shipments of Waste

Shipments in emergency situations

Q Is the definition of an emergency too narrowly drafted? If so, how should it be changed?

Q Should the UK permit shipments out of the UK in emergency situations or should the prohibition in the current Plan be maintained in support of UK self-sufficiency?

Shipments for trial runs

Q Do you agree with the proposal to allow shipments of waste, to and from the UK, for trial runs for specialised disposal technologies? What types of wastes and technologies might they be used for?

Q Do you think there should be any limitations placed on such shipments, e.g. tonnage?

Shipments between Northern Ireland and the Republic of Ireland

Q Do you agree with the proposal to allow shipments of hazardous waste between Northern Ireland and the Republic of Ireland for the specialist disposal operations D5, D9 and D10 as outlined above?

Q Should this proposal be extended to include other disposal operations, such as biological treatment (D8) prior to D10

Shipments to the UK from Member States, or EFTA countries, of hazardous waste produced in small quantities in the country of dispatch

Q Do you agree with the proposal to better align exceptions from the general prohibition for shipments into the UK with the requirements of the Waste Shipments Regulation?

Q Should the disposal operations for which waste can enter the UK for disposal be limited within those that apply best available techniques, e.g. to high temperature incineration? If so, which disposal operations should be allowed?

Shipments from the UK to other Member States, or EFTA countries, of hazardous waste produced in small quantities

Q Do you agree with the proposal to better align exceptions from this general prohibition with the requirements of the Waste Shipments Regulation?

ANNEX B Draft Transfrontier Shipment of Waste Regulations 2007

ANNEX C Partial Regulatory Impact Assessment for the draft TFS Regulations

ANNEX D Draft UK Plan for Shipments of Waste

ANNEX E Partial Regulatory Impact Assessment for the UK Plan for Shipments of Waste