

**Department for Environment, Food and Rural Affairs**

# **Consultation on the proposed Transfrontier Shipment of Waste (Amendment) Regulations 2013**

**March 2013**

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## Part I – About this consultation

1.1 This is an explanatory document that provides an overview of the changes we want to make in the Transfrontier Shipment of Waste (Amendment) Regulations 2013 ('the 2013 Regulations'). These will update the existing Transfrontier Shipment of Waste Regulations 2007 SI 2007/1711 ('the 2007 Regulations').

1.2 The consultation package includes a draft of the proposed new 2013 Regulations and a partial Impact Assessment. The partial Impact Assessment provides further detail on the proposals in terms of their impact upon stakeholders.

1.3 We have invited a list of stakeholders to give their views. We have published this list with the consultation. Other interested parties are welcome to make comments on any aspect of the proposals.

1.4 All the consultation documents are available to view online at [www.defra.gov.uk/consult/](http://www.defra.gov.uk/consult/).

### Background

1.5 The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal sets down the worldwide notification requirements for the transboundary movement and disposal of hazardous and other wastes. Signatories to the Convention are also required to minimize the generation of such waste and ensure its environmentally sound management.

1.6 The Basel Convention is transposed in the European Union by Regulation EC/1013/2006 on shipments of waste ('the WSR'). The WSR applies directly within the UK and is supplemented by a set of domestic regulations - the Transfrontier Shipment of Waste Regulations 2007. The 2007 Regulations set out requirements relating to the enforcement of the WSR within the UK. They came into force on 12 July 2007.

### What we are consulting on

1.7 We are asking for your views on the proposed 2013 Regulations. These would update and amend the 2007 Regulations.

1.8 The proposed changes in the 2013 Regulations contribute to the Government's commitment to improve enforcement and control of the waste exports regime, in particular, to help combat illegal waste exports from the UK.

1.9 We provide further details of the proposed changes in Part II but the consultation is 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 will help CAs develop better intelligence on illegal waste exports.

- Clarifying the role of the CAs for the transit of waste and the marine area. Currently the Secretary of State fulfils this role which was 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. This will better reflect resources needed to enforce the Regulations and deliver the requirements of the WSR in Northern Ireland.

1.10 Changes are also needed as a consequence of the establishment of the new Welsh CA, Natural Resources Body for Wales (NRBW). (Establishing a new body for the management of Wales' natural resources was part of a separate consultation by the Welsh Government during 2012. Check the Welsh Government website to view the consultation for the new body at

[wales.gov.uk/consultations/environmentandcountryside/singlebody/;jsessionid=7F1178D6F5AC82813603852EC187A9B6?lang=en](http://wales.gov.uk/consultations/environmentandcountryside/singlebody/;jsessionid=7F1178D6F5AC82813603852EC187A9B6?lang=en)).

1.11 Enforcement functions for waste imported into Wales from outside the UK and for waste exported from Wales to outside the UK, therefore, need to be transferred to the new Welsh CA. We hope to make these changes alongside the other changes indicated in this document assuming legal technicalities are resolved in time. Otherwise the transfer of functions to the Welsh CA will be made in a further amendment to the 2007 Regulations as soon as possible thereafter.

1.12 We are seeking your views on the proposals described in Part II of this document. We have highlighted specific questions throughout Part II. Additionally all questions are listed in Annex A.

## **What this consultation means to you**

1.13 We think that this consultation will be of particular interest to members of:

- (i) The shipping sector principally shipping lines and shipping agents operating in the UK;
- (ii) Other businesses and trade associations principally engaged in the export of waste from the UK;
- (iii) Other industries operating in the UK marine area where disposal of waste may involve its export from the UK.

## **When and where the changes will apply**

1.14 We aim to bring the proposed 2013 Regulations into effect by the early summer of 2013.

1.15 The majority of the changes detailed in the 2013 Regulations will apply in England, Wales, Scotland and Northern Ireland. This is with the exception of the fee changes which will **only** apply in Northern Ireland.

## Part II – Proposed changes

2.1 This consultation is your opportunity to comment on the proposed 2013 Regulations.

2.2 We would like your views on the changes described below and your feedback on the specific questions.

### Sharing HMRC export data

2.3 As CAs, the Environment Agency, the Scottish Environment Protection Agency (SEPA) and the Department of the Environment in Northern Ireland (DOENI) carry out enforcement of the WSR for waste imported into and exported from the UK.

2.4 CAs in the UK use an intelligence-led approach to tackle the illegal export of waste. This is a high profile area with certain cases of illegal waste exports gaining significant media coverage and public concern that UK waste can be dumped in developing countries in contravention of the controls.

2.5 The changes proposed in the 2013 Regulations would provide the legal authority for HMRC to disclose relevant export data to the UK CAs (Environment Agency, SEPA, DOENI and the new NRBW).

2.6 With access to HMRC export data, CAs will be able to increase their intelligence base and help combat illegal waste exports from the UK. The CAs will only be able to use the data for this purpose. The proposed changes to the 2007 Regulations will also therefore include provisions specifically restricting the onward disclosure of HMRC information along with a criminal sanction to support any unlawful disclosures of this information.

**Proposed changes in 2013 Regulations:** Add new regulation 49A.

**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?

### Roles of CAs

2.7 CAs are responsible for enforcing the WSR. For most aspects of enforcement this currently means the Environment Agency for England and Wales; SEPA for Scotland and the DOENI for Northern Ireland.

2.8 However, the 2007 Regulations designate the Secretary of State as the CA for waste transiting the UK en-route for disposal or recovery elsewhere, and waste moved to or from the marine area. This arrangement was only ever intended to be a short term measure.

## **Transit of waste**

2.9 The WSR requires there can only be one CA for waste transiting the UK. It also allows CAs of transit to consent “tacitly” to movements of waste rather than sending formal approval. This means that the CA of transit is unlikely to need to play an active role unless something goes wrong while waste is in transit across the UK. However, for practical reasons it is preferable that any such action is carried out by the normal territorial CAs rather than the Secretary of State. The 2013 Regulations, therefore, propose that the CA of transit for the UK is the Environment Agency.

### **Proposed changes in 2013 Regulations:**

- amendment to regulation 7 - to reflect changes to the Environment Agency as the CA for the transit of waste
- amendment to regulation 50 - to reflect changes to enforcement bodies enforcing WSR and the 2007 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?

## **Marine area**

2.10 For the marine area, the 2007 Regulations require that those wishing to import or export waste into and from the UK must seek the consent of the Secretary of State. This requires a rather lengthy process whereby Department for Environment, Food and Rural Affairs (Defra) officials have to put a submission to Ministers seeking their agreement for CAs to process notifications for the movement of waste from these sources on behalf of the Secretary of State.

2.11 There is no limit to the number of CAs that may be designated for the marine area. It, therefore, makes sense to propose that the 2013 Regulations designate each territorial CA (Environment Agency, SEPA, DOENI and the new NRBW) as the CA for the marine area.

2.12 This requires some changes to the definition of the marine area. In particular to set out which part of the marine area each CA has responsibility for in enforcing the WSR and the 2007 Regulations.

2.13 In proposing a change to the CA for the UK marine area, we also propose a role for the Department of Energy and Climate Change (DECC) in relation to offshore installations in the marine area.

2.14 The UK CAs do not have the resources or experience necessary to inspect offshore installations. DECC inspectors visit offshore installations as part of their work to check operator compliance with the various legislative requirements of the Department’s offshore environmental regulatory regime. It is, therefore, proposed in the 2013 Regulations that DECC inspectors will undertake inspections and evidence gathering at offshore

installations under the WSR on behalf of the UK CAs. DECC will pass relevant information to the UK CAs who will continue to take the appropriate enforcement action.

### **Proposed changes in 2013 Regulations:**

- amendment of regulation 4 and addition OF new Schedule A1 - to reflect changes to definitions for dividing up the marine area
- substitution of regulation 6 - to reflect changes to the CA of destination and dispatch for the marine area
- amendment of regulation 50 - to reflect changes to enforcement bodies for the marine area
- addition of new regulation 50B and Part 2A, Schedule 5 - to authorise DECC to inspect offshore installations for the purposes of gathering evidence and information to support the UK CAs in enforcing the WSR and the 2007 Regulations.

**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?

**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?

### **Waste from offshore renewable energy sector**

2.15 Apart from the role proposed for DECC in paragraphs 2.13 and 2.14, the 2007 Regulations and the proposed 2013 Regulations do not specifically include provisions for the enforcement of the WSR in relation to the management of any wastes from the offshore renewable energy sector. As part of this consultation we want to understand the potential impact on this sector of the WSR regime.

2.16 We want to confirm if any waste generated from these operations is exported outside the UK for appropriate recycling, treatment or disposal. If waste is only sent to mainland UK for appropriate management it would not be subject to the requirements of the WSR although other regulatory requirements would apply.

2.17 Based on responses received on behalf of the offshore renewable energy sector we will consider if further provisions need to be made in the Regulations.

**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?

## Stopping suspect exports

2.18 Under the 2007 Regulations, BF can only stop and detain suspect containers at the request of a UK CA.

2.19 The changes proposed in the 2013 Regulations will remove this current anomaly and allow BF to stop suspect shipments and detain these at the port for up to five working days themselves, should the opportunity arise.

2.20 As BF operate on the front line, for example at ports, they may sometimes identify shipments that CAs may not be aware of through their intelligence. For example, there may be cause for suspicion from a visual perspective and/or with the paperwork accompanying the shipment.

**Proposed changes in 2013 Regulations:** Amendment of paragraph 8, Part 2, Schedule 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?

## Changing fees in Northern Ireland

2.21 The fees set out in the 2007 Regulations for Northern Ireland were based on the regime prior to the WSR.

2.22 The DOENI conducted a review of their fees as set out in the 2007 Regulations in May 2012. This identified that there are a number of areas where the original assumptions and projections failed to predict the impact, cost or resources associated with enforcing the Regulations. As such current fees in Northern Ireland do not reflect a realistic cost to effectively deliver all the requirements of the WSR by the DOENI.

2.23 Changing the fees payable for the notification of import and export of waste into and from Northern Ireland will better reflect resources needed to enforce the WSR and the 2007 Regulations and deliver the requirements of the WSR in Northern Ireland. They will also bring the fee structure more in line with the rest of the UK.

**Proposed changes in 2013 Regulations:** Amendment of Schedule 3.

**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?

## Submission of Annex VII forms to NRBW

2.24 The 2007 Regulations require the submission of completed Annex VII forms to SEPA and NIEA for waste exported from the UK from Scotland or Northern Ireland before

the waste is exported. Failure to meet this requirement is an offence. Welsh Government is considering a similar requirement for exports of green list waste from Wales.

2.25 Green list waste is non-hazardous waste, which can be exported from the UK to EU/OECD countries and to some non-OECD countries for recycling. The WSR requires movements of green list waste to be accompanied by a completed Annex VII form. The form gives details of the waste and the movement. SEPA and NIEA use the data on these forms to monitor the transfrontier shipment regime and to inform policy decisions on national waste issues.

2.26 Welsh Government would like to use this consultation to seek views on the possibility of extending the requirements for the submission of the Annex VII form to waste exported. It should be noted that it is not proposed that the change will be made as part of the current amendments of the 2007 Regulations. Welsh Government will consider how to proceed in the light of the responses received to the following question.

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

## Other technical changes

2.27 Some other technical changes are also proposed in the 2013 Regulations. These include:

- providing a definition of the Northern Irish border, Scottish border and Welsh border – new Regulation 4A
- providing a definition of offshore installations – addition of new regulation 4B
- providing for a standard review of the 2007 Regulations – addition of new regulation 59B
- removal of out of date transitional provisions – removal of paragraphs 1 and 3 of Schedule 1 and Schedule 2
- supporting CAs to be able to get illegal shipments returned to the site of loading – substitution of paragraph 5(2), Part 1, Schedule 5.

## Impact assessment

2.28 The consultation package includes a partial Impact Assessment for the proposed 2013 Regulations. This provides further detail on the proposals in terms of their impact upon stakeholders.

**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.



## **Part III – Responding to this consultation**

### **Key dates**

3.1 The closing date for comments on the proposals set out in this consultation is **10 May 2013**.

### **How to respond**

3.2 Please send your responses to either:

Transfrontier Shipment of Waste (Amendment) Regulations 2013 Consultation  
Department for Environment, Food and Rural Affairs  
Hazardous and International Waste Unit  
Area 6C, Ergon House  
Horseferry Road  
London SW1P 2AL

Or email: [HIWU@defra.gsi.gov.uk](mailto:HIWU@defra.gsi.gov.uk)

3.3 When responding, please state whether you are responding as a private individual or on behalf of an organisation or company.

### **How we will use your information**

3.4 We will consider all responses received by the closing date before finalising the 2013 Regulations.

### **Publishing our consultation responses**

3.5 Government will publish its response within 12 weeks of the closing date of the consultation. This may include copies of the responses we receive, unless you have specifically requested that we keep your response confidential. Please indicate in your response if you want us to treat it as confidential.

3.6 Respondents 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.

### **Compliance with the Consultation Principles**

3.7 This consultation complies with HM Government's Consultation Principles.

## Annex A – List of consultation questions

**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?

**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?

**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?

**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?

**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?

**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?

**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?

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

**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.

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