

**EXPLANATORY MEMORANDUM TO
THE TRANSFRONTIER SHIPMENT OF WASTE (AMENDMENT)
REGULATIONS 2008**

2008 No. 9

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 These Regulations make minor amendments to the Transfrontier Shipment of Waste Regulations to ensure full implementation and enforcement of Article 37 of Regulation No 1013/2006 of the European Parliament and of the Council on shipments of waste (“the Waste Shipments Regulation” and the related and recently adopted Commission Regulation (EC) No 1418/2007 on the export for recovery of certain waste to certain countries to which OECD Decision C(2001)107 Final on control of transboundary movements of waste destined for recovery does not apply.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 The Regulations are made under section 2(2) of the European Communities Act 1972.
 - 4.2 The Regulations are made for the purpose of making minor amendments to the Transfrontier Shipment of Waste Regulations 2007 to fully implement and enforce the provisions of Article 37 of the Waste Shipments Regulation and the recently adopted Commission Regulation (EC No 1418/2007).
 - 4.3 The Waste Shipments Regulation sets out procedures for the supervision and control of shipments of waste within, into and out of the European Community. Article 37 sets out procedures for waste exported to countries not covered by OECD Decision C(2001)107 Final on control of transboundary movements of waste destined for recovery. These include a requirement on the Commission to write to such countries to ask about the control procedures (if any) that they wish to adopt in relation to waste exported to them and to subsequently issue Regulations setting out these controls.
 - 4.4 On 29 November 2007, the Commission adopted Commission Regulation EC No 1418/2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control

of transboundary movements of waste does not apply. This came into force on 18 December 2007.

- 4.5 The Transfrontier Shipment of Waste (Amendment) Regulations 2008 create offences for failure to comply with the requirements of the new EC Regulation. They also make it an offence to fail to comply with the requirements of Article 37(4) of the Waste Shipments Regulation, which requires that waste must be sent to a facility authorised to operate under national law; and for failure to comply with Article 37(5), which requires a procedure of prior notification and consent prior to shipments of waste not classified under one single entry in Annex III to the Waste Shipments Regulation, or under a single entry in Annex III or IIIA or that are classified in Annex IIIB. They also create an offence for failure to comply with the requirements of Article 3(5) of that Regulation. Article 3(5) requires that shipments of mixed municipal waste are subject to the same provisions as shipments of waste destined for disposal.

5. Territorial Extent and Application

- 5.1 The Transfrontier Shipment of Waste Regulations apply to all of the United Kingdom and the territorial sea adjacent to the United Kingdom, the area on the landward side of the baselines submerged at mean high water springs, the seabed and subsoil situated within the areas designated by Order in Council under section 1(7) of the Continental Shelf Act 1964 and the waters superjacent to the seabed and the seabed and its subsoil situated within the area designated by Order in Council under section 84(4) of the Energy Act 2004.

6. European Convention on Human Rights

The Minister for Climate Change, Biodiversity and Waste has made the following statement regarding Human Rights:

In my view the provisions of the Transfrontier Shipment of Waste Regulations 2007 are compatible with the Convention rights.

7. Policy background

- 7.1 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 (2001)107 Final sets out controls for the transboundary movements of wastes destined for recovery operations. These requirements are reflected in the EC's Waste Shipments Regulation. They are given full effect in the UK by the Transfrontier Shipment of Waste Regulations 2007, which set out offences and penalties and designate the competent authorities for enforcing the Waste Shipments Regulation in the UK.

7.2 Article 37 of the Waste Shipments Regulation sets out procedures for waste exported to countries not covered by the OECD Decision. These include a requirement on the Commission to write to such countries to ask about the control procedures (if any) that they wish to adopt and to subsequently issue a Regulation setting out these controls. Each non-OECD country was invited to select from the following controls:

(a) a prohibition on export to them;

(b) a procedure of prior notification and consent as described in Article 35 of the Waste Shipment Regulations; or

(c) no control. (Where recipient countries chose this operation, the requirements of Article 18 of the Waste Shipments Regulation for waste to be accompanied by certain information would apply.)

Where countries do not express a preference Article 37 (2) (second indent) of the Waste Shipments Regulation would apply and a procedure of prior notification and consent be required.

7.3 On 29 November, the Commission adopted Commission Regulation EC No 1418/2007 setting out the controls that would apply to the export for recovery of certain waste listed in Annex III or IIIA to the Waste Shipments Regulation to certain countries to which the OECD Decision on the control of transboundary movements of waste does not apply.

7.4 The Transfrontier Shipment of Waste (Amendment) Regulations 2008 are being made to ensure that failure to comply with Article 37 of the Waste Shipments Regulation and the related Commission Regulation 1418/2007 is an offence. The Regulations will also make a minor amendment to regulation 19 of the Transfrontier Shipment of Waste Regulations 2007, which sets out requirements for shipments of notifiable waste, to provide a specific offence for failure to comply with the requirements of Article 3(5) of the Waste Shipments Regulation. Article 3(5) requires that shipments of mixed municipal waste are subject to the same provisions as shipments of waste destined for disposal.

8. Impact

8.1 An impact assessment has not been produced for this instrument as it makes only minor changes to the Transfrontier Shipment of Waste Regulations for which an impact assessment was provided at the time that instrument was laid.

9. Contact

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