

**EXPLANATORY MEMORANDUM TO**  
**THE TRANSFRONTIER SHIPMENT OF WASTE REGULATIONS**  
**2007**

**2007 No. 1711**

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 ensure full implementation and enforcement of the revised Waste Shipments Regulation (EC 1013/2006), which was adopted in the European Union in June 2006 and which makes provision for the supervision and control of shipments of waste within, into and out of the European Community.
  
3. **Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select 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 implementing and enforcing the provisions of Regulation (EC) No 1013/2006 on shipments of waste.
  - 4.3 The Regulations replace current transposition through controls imposed by the Transfrontier Shipment of Waste Regulations 1994 (SI 1994/1137), the Transfrontier Shipment of Waste (Amendment) Regulations 2005 (SI 2005/187), and the Transfrontier Shipment of Waste (Fee) Regulations (Northern Ireland) (2005) (SI (NI) 2005 No.90).
  
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to all of the United Kingdom including the territorial sea adjacent to the United Kingdom, including 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 of State (Local Environment, Marine and Animal Welfare) 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(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 have been implemented in the European Union 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.

7.2 Following changes to the Basel Convention and the OECD decision, the Waste Shipments Regulation was revised to ensure that the changes were implemented within the Community. The revised Regulation (Regulation (EC) No 1013/2006 of the European Parliament and of the Council) will apply in Member States from 12 July 2007. The provisions of the Transfrontier Shipment of Waste Regulations 1994 are therefore being replaced by the Transfrontier Shipment of Waste Regulations 2007 to take into account the changes in the EC's Waste Shipments Regulation.

7.3 The Transfrontier Shipment of Waste Regulations 2007 set out offences and penalties and designate the competent authorities for enforcing the Waste Shipments Regulations in the UK. These are the Environment Agency for England and Wales; the Scottish Environment Protection Agency in Scotland; and the Department of the Environment in Northern Ireland. The Secretary of State is named as the competent authority for the marine area (except in relation to waste vessels in the area landward of the baselines submerged at mean high water springs) and for shipments transiting the UK.

7.4 The Regulations also amend the Environment Act 1995 to allow the Environment Agency and the Scottish Environment Protection Agency to prescribe fees for the carrying out of their functions under the Community Regulation. Schedule 2 sets out the fees that will apply in England, Wales and Scotland until a charging scheme under that Act takes effect and provides that this be no later than 1 April 2011. Schedule 3 sets out the fees that will apply in Northern Ireland. Provision is also made for the competent authorities to recover the costs incurred in taking back illegal shipments and shipments that cannot be completed as intended.

7.4 There is also provision for enforcement to be by the competent authorities and Schedule 5 sets out powers that may be used by any person authorised by a competent authority. These include the power to serve enforcement and prohibition notices and powers

to seize wastes. There are also powers to competent authorities to enable them to carry out their take-back functions under the Community Regulations as well as powers to officers of HM Revenue and Customs to detain waste for up to five days (as opposed to the current three), where requested to do so by a competent authority.

7.5 A consultation paper setting out proposals was issued to over 600 consultees on 18 December 2006. The consultation closed on 12 March 2007. Approximately 40 responses were received, which were broadly favourable to the proposals.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact of the proposed changes is explored in the RIA. There may be some additional costs for those shipping waste and the UK competent authorities if Her Majesty's Customs and Revenue detain waste for longer than at present. However, detaining waste for longer will allow the UK competent authorities more time to investigate and take any necessary action to resolve any breach of controls. In addition, the proposed charging structure, which more closely reflects the modelled regulatory effort for the determination of notifications and monitoring may result in some increase in the charges for smaller numbers of shipments. However, there will be significant reductions in charges for general notifications covering large numbers of shipments.

## **9. Contact**

Alison Gadsby at the Department for Environment, Food and Rural Affairs Tel: 020 7082 8759 or e-mail: [alison.gadsby@defra.gsi.gov.uk](mailto:alison.gadsby@defra.gsi.gov.uk) can answer any queries regarding the instrument. (These contact details are supplied for Parliamentary purposes only. For OPSI Online, these details should be replaced by [waste.policy@defra.gsi.gov.uk](mailto:waste.policy@defra.gsi.gov.uk).)

## **Final Regulatory Impact Assessment**

# **The Transfrontier Shipment of Waste Regulations 2007**

## **Proposal**

1. Final Regulatory Impact Assessment (RIA) for the review of the Transfrontier Shipment of Waste Regulations 1994 No.1137 (TFS Regulations)

## **Purpose and intended effect**

### **Objectives**

2. These are:
  - To bring the TFS Regulations into line with the revised Council Regulation (EC) No 1013/2006;
  - To be consistent with the UK's international obligations dealing with transboundary shipments of waste;
  - To strengthen enforcement provisions in light of the experience of UK competent authorities and to minimise the risks to human health and the environment arising from the transboundary movements of waste.

## **Background**

3. 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) implements the Basel Convention<sup>1</sup> and the relevant OECD Decision<sup>2</sup> within the EU. The Waste Shipments Regulation (WSR) provides detailed rules for the control of transboundary movements of waste. The applicable control procedure depends where the waste is sent; whether the waste is destined for recovery or disposal; and the classification of the waste. Certain wastes movements may only take place legally if strict procedures are followed. The control framework for such wastes is based on a system of prior informed notification and consent involving the competent authorities of dispatch, transit and destination.
4. However, other waste movements may also take place legally between the UK and some other countries for recovery without notification. Such movements are generally subject to the controls applicable to other internationally traded non-waste goods subject only to an additional requirement that they be accompanied by specified information. Examples include "clean" waste paper being imported from

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<sup>1</sup> UN Basel Convention on the control of transboundary movements of hazardous wastes and their disposal

<sup>2</sup> Decision C(2001)107/Final on the control of transboundary movements of wastes destined for recovery operations

another EU country for recovery or “clean” waste plastic being exported to certain non-OECD states for recovery.

5. The classification scheme for wastes subject to transfrontier shipment controls differs from that used for domestic purposes, such that wastes considered as non-hazardous in the UK may need to be controlled as hazardous wastes for the purposes of shipment from, to and through the UK and could therefore be subject to notification procedures.
6. The WSR prohibits the shipment of all waste for disposal outside the Community except to EFTA countries. It does not prohibit shipments into the Community for disposal, but Member States are empowered to impose more restrictive controls if they wish. The United Kingdom Management Plan for Exports and Imports of Waste (the Plan) sets out Government’s policies on this issue.
7. The WSR is based on a system of “prior informed consent”, which ensures that certain wastes may not be moved unless the shipment is agreed beforehand by all the relevant competent authorities. The enforcement of the WSR is undertaken by competent authorities and the TFS Regulations designates the competent authorities in the UK, these are the Environment Agency in England and Wales, the Scottish Environment Protection Agency in Scotland, and the Department of the Environment in Northern Ireland. The TFS Regulations create rules and penalties that ensure these competent authorities have the necessary powers and legal basis to take action for infringement of the provisions of the WSR.
8. Before the competent authorities allow a shipment of notifiable waste to take place they must be satisfied that the correct arrangements are in place. The competent authorities are required to determine applications that are submitted to them to ship waste. The notification process is designed to ensure that waste only moves to sites which are capable of carrying out the proposed recovery or disposal operation on the waste to be shipped in accordance with their site permit and any other relevant environmental legislation. In addition to this, there must be a contract in place between the parties to the shipment and a financial guarantee to provide the funds to deal with the shipped waste if something goes wrong that the parties can’t resolve to the satisfaction of the regulatory authorities involved. There are streamlined procedures for when waste having the same physical and chemical characteristics is shipped regularly over a twelve-month period to the same destination following the same route.
9. The WSR provides the control framework for the shipment of waste to and from the UK. Hazardous waste may be traded between OECD countries for recovery. The controls for such shipments depend on whether the waste is classified as hazardous, e.g. lead acid batteries, or highly hazardous, e.g. asbestos.
10. Non-hazardous wastes shipped for recovery operations are generally known as ‘Green List’ wastes (GLW) Broadly, fewer controls are required for shipments of GLW, such as separated recyclables, to or from developed countries and such shipments are generally subject to commercial controls only, i.e. they can be moved for recovery without prior notification and consent. However, more stringent controls

are required for shipments to some of the new Member States and to developing countries.

11. Aside from movements of particular categories of GLW to the new Member States, movements of GLW between Member States for recovery do not need to be notified and consented to but instead merely have to be accompanied by specified information. Similarly, movements for recovery to non-EU OECD are subject to these lesser controls. However, exports of GLW to non-OECD countries for recovery are more complex and a range of controls can apply. The applicable controls are determined by the countries involved and depends on the controls certain countries may have requested. These controls are as set out in Commission Regulation No. 1520/1999 and Council Regulation No. 1420/1999 (more commonly known as the 'Green List' Regulations). The controls applied to the export of GLW to developing countries vary widely with certain countries requesting an export ban, certain countries requesting the systems of prior informed consent required for hazardous wastes and certain countries requesting normal commercial controls.
12. Any person who ships waste is responsible for ensuring that GLW are shipped in accordance with the applicable regulatory regime. The UK competent authorities are responsible for monitoring and enforcement of the regime to ensure compliance with the rules. Where the UK competent authorities detect non-compliance with the applicable controls, they are responsible for deciding the appropriate enforcement action to take in line with the provisions set out in the TFS Regulations.

## **The revision of the Waste Shipments Regulation**

13. Both the Basel Convention and OECD Decision have been substantially revised since the WSR came into force in 1994. The existing WSR is therefore unaligned with some of the requirements of the Basel Convention and the relevant OECD Decision. Consequently, the WSR needed to be revised to ensure that these changes were implemented within the Community. This process offered the opportunity to improve the structure and clarity of the existing WSR, and the degree of environmental protection afforded.
14. 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 a new Waste Shipments Regulation. Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste<sup>3</sup> was published in June of this year and will apply from **12 July 2007**.
15. The WSR applies directly within all Member States and therefore its provisions do not require transposition into national legislation in the UK. However, national legislation is required to give full effect to the provisions of the WSR. In the UK, for the purposes of the current WSR, this is achieved through the Transfrontier Shipment of Waste Regulations 1994 No 1137 (TFS Regulations). These Regulations set out offences and penalties for non-compliance with the WSR.

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<sup>3</sup> OJ L190/1

16. The TFS Regulations have to be consistent with the revised WSR and therefore must be revised and updated to take into account the changes to the WSR. The revised TFS Regulations must enter into force at the same time that the WSR applies, on 12 July 2007. Whilst the broad policy direction is already set by the WSR, there is some flexibility in relation to how it is supported in national legislation. In the light of recent developments regarding illegal and potentially illegal exports of waste, the review of the TFS Regulations has considered what can be done to strengthen enforcement of the revised WSR.
17. The revision of the WSR and the subsequent changes to the TFS Regulations will affect enterprises who are involved in the shipment of waste or who have shipped waste consigned to them. To a lesser extent, the changes will also have an impact upon anyone who has any involvement with producing, holding, transporting, or arranging such transport, of waste that is destined for, or that has been subject to, a transboundary movement. The effects of the proposed changes to the TFS Regulations will be variable, depending on the types of wastes.

### **Key changes to the system under the revised WSR**

18. The review of the WSR had a number of objectives, the principal ones being:

- To implement the OECD Decision C(2001)107 of 14 June 2001 in Community legislation;
- To address the problems encountered in the application, administration and enforcement of the 1993 Regulation and establish greater legal clarity;
- To pursue global harmonisation in the area of transboundary shipments of waste;
- To enhance the structure of the articles of the Regulation.

19. In order to achieve this, various sections and aspects of the WSR have been amended. There have been changes to its structure, changes and clarifications as regards definitions and clarification of its scope, changes to the procedures applicable to shipments of waste depending on where it is coming from or going to and finally, changes in other provisions of the Regulation.

### **Rationale for Government Intervention**

20. The TFS Regulations must give full effect to the provisions of the WSR in the UK and thereby provide the controls to prevent the shipment of waste which is uncontrolled, or ineffectively controlled and which could result in damage to human health and/or the environment. There is a risk of legal uncertainty and confusion if the provisions of the revised WSR are not supported in national legislation and implemented in a timely manner.
21. The provisions of the WSR ensure the competent authorities have prior notification of any proposed import or export of hazardous waste and a tracking system for shipments to ensure such wastes are treated in an environmentally sound manner. By giving full effect to the provisions of the WSR, the TFS Regulations ensure the competent authorities have a legal basis to oppose hazardous waste imports or exports and requires them to object to shipments notified to them that are not in

accordance with the Plan. Given the potential toxicity of hazardous waste, the possibility that its identity and responsibility for its management can be more readily lost when shipped over longer distances between countries and different operators, and the length of time that some forms can remain toxic within the environment, it is reasonable to conclude that a substantial risk would be posed to human health and the environment without this legislation. The recent example of the release of toxic waste in the Ivory Coast leading to the deaths of a number of people, and the hospitalisation of thousands underlines the risks involved in the movement and management of waste.

22. The rules governing waste imports and exports that are subject to notification procedures are designed to ensure that any potentially adverse environmental consequences of their treatment and management are considered before they are moved and that a system is in place to track their movement. This system also provides protection of the environment and accountability for its proper management by, for example, requiring that waste is sent back to its origin if it is found to have moved illegally. However, there has been rising concern that compliance with the rules is being disregarded, whether deliberately or by accident.
23. Tackling the illegal shipment of waste is one of the many priorities in ensuring environmentally sound waste management. However, there is a growing body of evidence that suggests some operators are sending waste illegally to other countries. Companies and individuals involved in the import and export of waste, particularly 'Green List' waste, often conduct their activities outside the framework of control systems provided by the WSR and hence risk causing such shipments to be made illegally. The results of the IMPEL<sup>4</sup> 'Seaport' project demonstrated the problem of illegal waste export across Europe. In addition to this, inspections by UK competent authorities at a number of UK ports have shown many of the waste shipment containers to be non-compliant.
24. The legislation governing this area makes it difficult to identify and enforce against illegal activity because of the relative ease with which unscrupulous exporters and importers can circumvent the requirements. Consequently, the UK competent authorities currently have no means to obtain information about movements of 'Green List' waste, even those that are legitimately made. The revision of the WSR and necessary changes to the TFS Regulations offers an excellent opportunity to tackle this issue.
25. Non-compliance needs to be addressed as effectively and efficiently as possible to ensure that the UK meets its international obligations and to avoid legitimate business from being undermined. It has become clear that some traders are unaware of the relevant controls or are deliberately trying to avoid them. Whilst there is a need to raise awareness generally of the controls that apply, it is also clear that action needs to be taken against specific actors who are deliberately mis-classifying waste to avoid controls. There is no doubt that illegal waste is a problem. Not only can it damage human health and the environment, but it can

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<sup>4</sup> European Union Network for the Implementation and Enforcement of Environmental Law  
<http://ec.europa.eu/environment/impel/index.htm>



also damage businesses that work to ensure that their waste is dealt with legally and in an environmentally sound manner.

26. In light of the publication of the revised WSR, the necessary review of domestic legislation has offered Defra the opportunity to work with regulators to see where we can strengthen enforcement activities. Consequently, there have been changes to the structure of the revised TFS Regulations to support the work that is being undertaken by the UK competent authorities, strengthen enforcement of the TFS regime and establish greater legal clarity.

## **Issues and Options**

27. There is limited flexibility in terms of how the WSR may be transposed into national legislation. However, several Articles do present Member States with certain options in terms of how they can be implemented. In this context, there are four key issues to address in the TFS Regulations:

- I. Reporting of information that accompanies shipments of 'green list' waste for recovery
- II. Financial guarantees and equivalent insurance
- III. Powers of HM Revenue and Customs to detain waste
- IV. Charges for notified shipments

28. Options are displayed for each of these issues, where appropriate.

### **I: Reporting of information that accompanies shipments of 'Green List' waste for recovery**

29. Under the current regime, movements of green list waste are effectively excluded from the scope of the WSR within the Community. However, under the revised WSR, such movements are included within the scope of the Regulation and are now subject to certain procedural requirements, set out in Article 18 of the revised WSR. These place an obligation on anyone shipping 'green list' waste (recyclables) for recovery to complete certain information (as set out in Annex VII of the revised WSR) and require that this information shall accompany the waste. This is to assist the tracking of shipments of such waste. The information required in Annex VII includes: the composition, quantity and destination of the waste, and a declaration that a contract with the consignee has been entered into.
30. Article 18 (3) also allows Member States to require that the information contained in the Annex VII document be provided for inspection, planning and statistical purposes in accordance with national legislation. Should the UK wish to take advantage of this provision, it is necessary to include the relevant obligations and requirements in the TFS Regulations.

#### **Option 1 - do nothing**

31. 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 exported from 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 no knowledge of where the waste is coming to or going from. However, there will still be a provision in the TFS Regulations that requires the facility or consignee to provide this information at the request of the competent authority in accordance with Article 18(3) of the WSR.

**Option 2 – Include a provision in the TFS Regulations which requires operators of facilities exporting or receiving waste and the consignee to provide copies of the Annex VII information to the relevant competent authority on a quarterly or annual basis for inspection, enforcement, planning and statistical purposes.**

32. This option would place a statutory obligation on those who are involved in the shipping of 'green list' waste to submit copies of the Annex VII form 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 would 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 ensure that the regulators have access to information on the scope, scale and pattern of the trade in 'green list' waste, which could subsequently be used to target enforcement action, promote better compliance with the WSR and tackle the illegal shipment of these wastes in and out of the UK.

**Option 3 – Include a provision in the TFS Regulations which requires operators of facilities exporting or receiving waste and the consignee to provide certain information from the Annex VII form to the relevant UK competent authority on a quarterly or annual basis for inspection, enforcement, planning and statistical purposes.**

33. Not all of the information on the Annex VII form is of direct interest to Government. In addition, the input of data from the forms onto a database (as per option 2) would be extremely resource intensive for the competent authorities. Rather than simply requesting a copy of the Annex VII form, this option would require operators to submit specified information from the form to competent authorities. Ideally, the submission of the information would be by 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 the operators would submit the necessary information on a quarterly or annual basis to the competent authorities. Such a reporting system would require time to be established and is an option for the medium or longer term. The quarterly reporting system for consignee returns under the Hazardous Waste (England and Wales) Regulations 2005 (S.I. 894) might provide the basis for developing such a system. Such a system could become operational by April 2009.

## **II: Financial guarantees and equivalent insurance**

34. The current WSR, the Basel Convention and the revised OECD decision hold as a basic principle that waste which has been illegally shipped, or cannot be disposed of

or recovered as stated in the notification, may be returned to the country of export at the expense of the notifier. Therefore, contracts for the shipment of waste must include an undertaking on behalf of the notifier to take back the waste if the shipment cannot be completed as planned or is an illegal shipment. It is for this reason that the current WSR requires a financial guarantee or equivalent insurance to be in place at such time as the shipment begins.

35. The process for establishment of a financial provision involves a number of steps. Whilst the requirement that a financial guarantee or equivalent insurance is in place cannot be ignored (since it is a requirement under the WSR), the approach that the UK competent authorities use for their assessment is slightly more flexible in the revised WSR provided the appropriate provisions are established in national legislation.
36. Article 6(4) of the revised WSR requires approval of a financial guarantee or equivalent insurance by the competent authority of dispatch. Accordingly, a UK competent authority is required to assess the financial provision made, or to be made, in relation to the proposed movement where it is the competent authority of dispatch, or where it is the competent authority of destination in respect of an import from a country outside the Community.
37. The current system requires details of the financial guarantee to be submitted to the appropriate UK competent authority for their scrutiny and certification. The current TFS Regulations specify the maximum time in which the competent authorities must determine any application and this period varies depending upon the precise nature of the notification and the UK competent authorities role in relation to that notification. The application for a certificate of satisfaction can be submitted to the relevant UK competent authority at any time, but no shipments can take place until it is issued. Under the revised WSR, the financial guarantee or equivalent insurance would generally need to be in place and legally binding at the time of notification.
38. However, Member States have the option to include provisions in national legislation to permit the competent authority to allow the financial guarantee or equivalent insurance to be put in place at some later point, provided that point in time is prior to any notified shipment commencing.

### **Option 1 – Do nothing**

39. This option would mean that the financial provision would always need to be in place at the time of notification.

### **Option 2 – Give UK competent authorities the flexibility to allow the financial guarantee or equivalent insurance to be supplied after notification.**

40. This option would take advantage of the provisions of Article 4(5) of the revised WSR which states that, if the competent authority so allows, 'evidence' of the financial guarantee of insurance, or a declaration certifying its existence may be supplied to the competent authority (instead of supplying the actual guarantee or insurance).

41. Therefore, the notifier, or some person on his behalf, would need to present evidence or a declaration certifying that the financial guarantee or equivalent insurance exists at the time of notification. However, whilst this would need to be in place and legally binding at the time of notification, it would not need to be 'activated' at this stage, provided that it becomes 'activated' by the time a shipment commences.
42. Whilst this provision does exist, it is only available at the discretion of the relevant UK competent authority. Therefore, it is the competent authority that has the flexibility to exercise this provision on a case-by-case basis.

### **III: Powers of HM Revenue and Customs officials to detain waste**

43. The revised WSR places an obligation on HM Revenue and Customs (HMRC) to inform the relevant UK competent authority when they have grounds to suspect that a shipment of waste is illegal (articles 36(6) and 38(7)). The TFS Regulations therefore need to consider how the relevant UK competent authorities will deal with the waste once they have been informed by HMRC, in particular, what period of time they will have to take any necessary action to deal with the detained waste. Under regulation 10 of the current TFS Regulations, HMRC officials may detain imports or proposed exports or imports of waste in ports for up to three working days at the request of the relevant UK competent authority. However, under the existing regime, this has proved to be an insufficient period of time for the UK competent authorities to undertake the necessary action.

#### **Option 1 – Do nothing**

44. This option would be business as usual and would mean the requirement in the existing TFS Regulations would be transferred into the new TFS Regulations. Consequently, once informed by HMRC, the UK competent authorities would request HMRC to detain the waste for a period of up to three working days.

#### **Option 2 – As per option 1, but enable the UK competent authorities to request HMRC to detain the waste for a period of up to 5 working days.**

45. We see benefits in increasing the period of detention 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 existing three day period. An increase of two days would assist the UK competent authorities in tackling non-compliant shipments.

#### **Option 3 – As per option 2 but enable the UK competent authorities to request HMRC to detain for a period of up to seven working days.**

46. As per option two, this option would enable the relevant UK competent authority to request waste be detained for an even longer period to take any necessary action in respect of non-compliant shipments.

### **IV: Charges for notified shipments**

47. The proposed new charging structure for Great Britain has been developed by modelling the likely impacts of the new notification procedures using the notification data from 2005 for England and Wales. The aim of the new charges is to reflect the work the Environment Agency has undertaken under their Modernising Regulation Programme and Better Regulation Initiative. The charges have been developed using the principles identified in Defra's Charging Handbook, 2005. The key principles are that charges should fully recover appropriate costs, be reflective and be administratively simple to operate.
48. A much smaller number of notifications are received annually by SEPA than the Environment Agency. Only 10 were received by SEPA for approximately 400 shipments in 2005/06. As a result SEPA do not achieve year on year cost recovery for the existing scheme. This small number of notifications does not significantly influence the overall total UK regulatory effort or cost and the proposed charges are therefore based on notification data from England and Wales only. SEPA believes that common UK charges are desirable, supports the proposals in this consultation and subject to final approval, will apply these charges in Scotland.
49. Charges for Northern Ireland are set out in a separate Schedule 3 to the draft Regulations. The charges are unchanged from those already in place in Northern Ireland, currently set out in separate Regulations<sup>5</sup>, with a notification charge of £450 and a consignment (shipment) charge of £25. The Department of the Environment in Northern Ireland became the competent authority for TFS in Northern Ireland in March 2005 (the district councils were the competent authorities prior to this date). As the Department of the Environment is in the early stages of its competent authority role it is not possible to identify whether these charges fully recover their costs. 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. As the charges in Northern Ireland are not changing they are not explored any further in the partial RIA.

### **Current notifications**

50. Under the existing WSR where notifiers have a shipment/s comprised of different types of wastes they can include all the relevant waste codes on the notification form.
51. Notifiers can also submit 'general' notifications to cover several shipments if in the case of each shipment: the type of waste is the same; the waste is shipped to the same consignee and the same facility; and the route of each shipment is as indicated on the notification.
52. Competent authorities may grant 'pre-consented' status to specific recovery facilities under their jurisdiction. Such consents must be notified to the Commission. There are currently 9 pre-consented facilities in the UK.

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<sup>5</sup> The Transfrontier Shipment of Waste (Fees) Regulations (Northern Ireland) 2005, S.I. No. 90

## Predicted changes in notifications

53. Three key changes in the WSR will affect the pattern of notifications received under the new control system:

- Only one code can be used per notification when the general notification procedure is used (article 6(4));
- Competent authorities can grant up to a maximum of three years (compared to one under the existing system) to pre-consented recovery facilities (article 14(2));
- Waste destined for interim recovery or disposal operations will require separate, additional, notification to any subsequent interim and/or final recovery or disposal operations (article 15).

54. Taking into account the changes to general notification, pre-consented notification and interim disposal or recovery operations, it is very difficult to predict how the current spread of notifications will change. The impact of distinguishing between interim and final operations, as set out in article 15 of the WSR, is particularly difficult to model. However a 5% increase in notifications received in England and Wales, per annum, is a possibility.

**Table 1 – predicted overall impact on notifications for shipments into, out of and through England and Wales**

	Existing WSR	New WSR	% Difference
Shipment into England and Wales	249	335	+51%
Shipment out of England and Wales	95	65	-32%
Transit	141	141	-
TOTAL	517	541	+5%

55. However, the scale of impact varies between movements in and out of the UK and according to whether the shipment is part of a general notification, destined for a pre-consented facility, and/or destined for an interim disposal or recovery operation. Tables 2 and 3 highlight the predicted changes. Notifications received for waste transiting the UK are unaffected by the new WSR and it is predicted that a similar number will be received each year.

**Table 2 – predicted impact on notifications for shipments into England and Wales**

	Existing WSR	New WSR	% Difference
Pre-consented	59	25 p.a.	-58%
Interim recovery	42	147	+250%
Interim disposal	5	15	+200%
Final recovery	80	85	+6%

Final disposal	63	63	-
<b>TOTAL</b>	<b>249</b>	<b>335</b>	<b>+35%</b>

**Table 3 – predicted impact on notifications for shipments out of England and Wales**

	<b>Existing WSR</b>	<b>New WSR</b>	<b>% Difference</b>
Pre-consented	40	13 p.a.	-68%
Interim recovery	3	3	-
Final recovery	52	52	-
<b>TOTAL</b>	<b>95</b>	<b>65</b>	<b>-32%</b>

### **New structure for charges**

56. Due to the types of notifications most likely to be affected, continuing with the current charge structure could result in a significant increase in income. However, as a result, of the planned efficiency changes, the Environment Agency predicts that they will be able to handle the increase in notifications without an increase in the total income. TFS income in 2005/06 was £1.7m.

57. SEPA does not currently fully recover regulatory, monitoring and reporting costs for this scheme. However, subject to approval of the revised charges SEPA will reduce the shortfall in cost recovery and be able to handle the predicted increase in notifications. Current charges in Great Britain are set out in Table 4. The Environment Agency are currently consulting on inflationary increases to these which would come into effect on 1 April 2007.

**Table 4 – Charges for shipments of notified shipments of waste to and from Great Britain, 2006-2007**

	<i>Recovery</i>	<i>Disposal</i>
<b>England and Wales</b>		
Application fee (per notification)	£1028	£1028
Shipment charge (per shipment)	£93	£90
Transit charge (per notification)	£447	£447
<b>Scotland</b>		
Application fee (per notification)	£332	£902
Shipment charge (per shipment)	£26	£26
Transit charge (per notification)	£144	£144

58. The proposed new charges are structured to more closely reflect the differences in regulatory effort required by the different types of notification. The proposed charges differ according to where the shipment is going to, or coming from, and whether it is destined for recovery or disposal. It is proposed to replace the charges per notification and per shipment with charge per notification based on a banding scheme of number of shipment per notification. A more proportionate approach to transit notifications means that these can be processed free of charge. The proposed transitional charges are set out in Table 5.



**Table 5 – 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+
<b>Notifications of waste from Great Britain for non-interim recovery</b>	£1,510	£1,510	£2,740	£4,070	£7,920	£14,380
<b>Notifications of waste from Great Britain which include interim recovery</b>	£1,510	£1,510	£2,740	£4,070	£7,920	£14,380
<b>Notifications of waste from Great Britain for non-interim disposal</b>	£1,590	£1,590	£3,360	£5,570	£11,200	£20,270
<b>Notifications of waste from Great Britain which include interim disposal</b>	£1,740	£1,740	£3,370	£6,160	£13,300	£24,820
<b>Notifications of waste to Great Britain for non-interim recovery</b>	£1,330	£1,330	£2,770	£4,980	£10,610	£19,680
<b>Notifications of waste to the Great Britain include interim recovery</b>	£1,480	£1,480	£3,010	£5,800	£12,940	£24,460
<b>Notifications of waste to Great Britain for non-interim disposal</b>	£1,590	£1,590	£3,360	£5,570	£11,200	£20,270
<b>Notifications of waste to Great Britain which include interim disposal</b>	£1,740	£1,740	£3,370	£6,160	£13,300	£24,820
<b>Notifications of waste to Great Britain to a pre-consented site</b>	£1,040	£1,040	£2,140	£4,350	£9,980	£19,050
<b>Notifications of waste transiting Great Britain</b>	Nil	Nil	Nil	Nil	Nil	Nil

## Costs and Benefits

### Costs

#### **I: Reporting of information that accompanies shipments of green list waste**

##### **Option 1 - Do nothing**

59. This option would incur no additional costs for those involved in such shipments as the Annex VII forms would not have to be submitted to competent authorities. There would also be no costs for the UK competent authorities in terms of processing the relevant information and establishing and maintaining a database. However, the UK competent authorities would not have any paperwork or data on the type and scale of these shipments. Consequently, there would be no consistent and reliable information on the trends affected exports and imports of 'green list' wastes. In addition to this, if this information is not to be submitted then it can't be used by UK competent authorities to inform port inspections or target enforcement activities.

##### **Option 2 – Include a provision in the TFS Regulations which requires operators of facilities exporting or receiving waste and the consignee to provide copies of the Annex VII information to the relevant competent authority on a quarterly or annual basis for inspection, enforcement, planning and statistical purposes.**

60. There will be additional costs to the UK competent authorities to input and process the information from the Annex VII form and to establish and maintain any database that is created. The exact cost is difficult to estimate since the scale of shipments that would be subject to article 18 procedures is unknown.

61. The completion of the Annex VII forms is a mandatory requirement under the WSR, so those who ship 'green list' waste out of the UK for recovery will have to comply with this requirement. Consequently, associated costs for industry of providing this information to the UK competent authorities will be relatively minimal. It will simply be a case of submitting a copy of the forms they have already completed. In addition to this, there is already a pre-existing requirement under article 11 of the existing WSR certain information to accompany shipments that are subject to normal commercial controls. Therefore it does not represent a significantly new burden to industry. Operators could also minimise their costs by making use of the Annex VII form in their own contractual procedures.

62. An indication of costs for setting up and operating "green list" recording and reporting system for a simple and unsophisticated reporting Access database and ongoing data entry costs have been estimated at £20,000-£25,000 a year. These costs would fall to Government. However, these costs must be treated with a certain degree of caution since there is currently no way to establish the number of forms the UK competent authorities are likely to receive each year.

##### **Option 3 – Include a provision in the TFS Regulations which requires operators of facilities exporting or receiving waste and the consignee to provide certain**

**information from the Annex VII form to the relevant UK competent authority on a quarterly or annual basis for inspection, enforcement, planning and statistical purposes.**

63. This option could result in higher costs on industry compared to option 2. Despite potentially higher initial costs to competent authorities, and Government, ongoing costs to process the information and establish and maintain any database would probably be reduced. Obviously, the more complex the reporting requirements, the more costly the system will be. However, the creation of an electronic reporting system would assist the UK competent authorities in processing and using this information. It might be possible to design such a system around an electronic version of the annex VII form in order to minimize impacts on and costs to industry.
64. Set-up costs for an on-line reporting system that allowed importers and exporters to enter information relating to imports and exports that they make would be greater than a simple unsophisticated Access database. However, if this approach were followed it is likely that the year-on-year operating costs would be lower and the accuracy of the data collected and subsequent reporting would be higher.

## **II: Financial guarantees and equivalent insurance**

### **Option 1 – Do nothing**

65. Financial guarantees are usually provided as bank bonds. If these have to be put in place at the time of notification and there then passes a period of at least 30 days for the necessary consent to the shipment, or longer if objections are raised, before a shipment can begin, then bank charges will rise. This will obviously have cost implications for industry.

### **Option 2 – Give UK competent authorities the flexibility to allow the financial guarantee or equivalent insurance to be supplied after notification.**

66. There are no increases in costs associated with this proposal. It would not change the amount of the financial provision or the contractual arrangements.

## **III: Powers of HM Revenue and Customs (HMRC) officials to detain waste**

### **Option 1 – Do nothing**

67. This option presents no additional costs to exporters and importers other than those that they are presently subject to under the existing regime.

### **Option 2 – As per option 1, but enable the UK competent authorities to request HMRC to detain the waste for a period of up to five working days.**

68. This could have cost implications for those who import and export waste since their shipments could be detained for a longer period of time while the relevant competent authority undertook the necessary steps and pursued any applicable

enforcement action. However, given that the majority of waste detained is associated with targeted enforcement action, costs for legitimate operators are likely to be minimal.

**Option 3 – As per option 2 but enable the UK competent authorities to request HMRC to detain for a period of up to seven working days.**

69. As per option 2, this could introduce additional costs for importers and exporters as a result of prolonged detention but is unlikely to have a significant impact on legitimate operators. Costs to UK competent authorities in terms of storage and treatment of the waste could also rise.

**IV: Charges for notified shipments**

70. With the new charge structure approximately 60% of notifications would have a reduction in charge based on a pattern of existing notifications. Almost a third of existing notifications were to pre-consented sites and under the new WSR such notifications will last for three years. It could also mean that the number of shipments per notification will increase and they will benefit from the reduced charges for large numbers of shipments.

71. Notifications with large numbers of shipments will see the biggest reduction. The increased charge for notifications with smaller numbers of shipments will ensure cost recovery of the monitoring of these shipments. Table 6 explores the impact of the proposed charges on notifiers across the bands.

**Table 6 – Impact of proposed charges based on averages across the bands**

Band - No. of shipments per notification (excludes transits)	No of notifications per band (2005)	Average shipments / notification (2005)	Current average charge*	Proposed average charge	Impact of proposed charge - average increase/(decrease)	
					£	%
1 to 5	63	3	£1,337	£1,444	£107	8.0%
6 to 20	133	13	£2,291	£2,773	£482	21.0%
21 to 100	113	49	£5,660	£4,846	-£814	(14.4)%
101 to 500	33	214	£21,365	£9,841	-£11,524	(53.9)%
500+	3	900	£86,552	£16,147	-£70,405	(81.3)%
Total all bands			£5,777	£4,002	-£1,776	(30.7)%

\*Based on 2007/08 forecast charges

## Benefits

### I: Reporting of information that accompanies shipments of 'Green List' waste

#### Option 1 - Do nothing

72. There are no additional benefits to this option since no action would be required on the part of either the UK competent authorities, facility or consignee. Therefore, whilst the Annex VII information would have to be completed by those shipping green list wastes as a mandatory requirement under the WSR, this option would not require any further action to be taken. However, there will still be a provision in the TFS Regulations that requires the facility or consignee to provide this information at the request of the competent authority in accordance with article 18(3) of the WSR.

#### **Option 2 - Include a provision in the TFS Regulations which requires operators of facilities exporting waste or receiving waste and the consignee to provide copies of the Annex VII information to the relevant competent authority on a quarterly or annual basis for inspection, enforcement, planning and statistical purposes.**

73. The key benefit here is that it will enable the competent authorities to develop a statistical database for movements of non-notified 'green list' waste (information that is not currently available) which will provide valuable information on the types and quantities of the waste being exported and the destination of these wastes. The regulators would have access to information on the scope, scale and pattern of the trade in green list waste, which could subsequently be used to target enforcement action and potentially prevent the illegal export of these wastes.

74. Currently, there is a real lack of reliable, consistent information about the trends affecting these particular import and export markets. As well as being beneficial to the UK competent authorities from a compliance perspective, provision of this information will also enable the UK Government to assess the consequences of policy initiatives already in place and to estimate future capacity and required waste infrastructure to deal with these sorts of wastes, in particular recyclables from municipal waste.

75. Furthermore, generating a database of this information, would provide further information concerning the people who are actually involved in the import and export of 'green list' waste. Such shipments are generally subject to commercial controls only meaning that they are not notified to anyone. Consequently, there is no information available to indicate the size of this trade or who is involved. The information in the Annex VII forms would provide this information allowing for more targeted awareness raising to clarify the controls that apply to such shipments. It could also result in better provision of any applicable guidance to those concerned in shipments of 'green list' wastes.

#### **Option 3 – Include a provision in the TFS Regulations which requires operators of facilities exporting or receiving waste and the consignee to provide certain information from the Annex VII form to the relevant UK competent authority on a**

**quarterly or annual basis for inspection, enforcement, planning and statistical purposes.**

76. This would enable the UK competent authorities to specify what information from the Annex VII form that they want industry to provide. The benefits of receiving this information would be the same as those outlined for option 2. However, there would be added value in requesting specific information to be provided from the Annex VII form rather than simply receiving a copy of the form itself as per option 2. This is also likely to reduce any errors in the input of data by the competent authorities.

77. For this option, the TFS Regulations would need to consider and specify the type of information to be supplied from the Annex VII form. Also, the UK competent authorities would have to establish a system and a format for industry to submit this information to them on a regular (quarterly or annual) basis. In this respect, it would make sense for the submission and collection of the information to be as automated and electronic as possible.

78. This option would provide reliable, frequently updated information on the economics of the user market and on future trends which could also be extremely valuable to Government, to Local Authorities, and to the recycling sector.

## **II: Financial guarantee or equivalent insurance**

### **Option 1 - Do nothing**

79. There are no additional benefits to this option as this would require the financial guarantee or equivalent insurance to be in place at the time of notification.

### **Option 2 - Give UK competent authorities the flexibility to allow the financial guarantee or equivalent insurance to be supplied after notification.**

80. If deemed appropriate by the relevant UK competent authority, this option would be beneficial for industry since the financial guarantee or equivalent insurance would not need to be in place at the time of notification thus reducing the regulatory burden on industry.

## **III: Powers of Customs to detain waste**

### **Option 1 – Do nothing**

81. There are no additional benefits to this option as this is the business as usual scenario.

### **Option 2 - As per option 1, but enable the UK competent authorities to request HMRC to detain the waste for a period of up to five working days**

82. This would give the UK competent authorities more time to investigate and identify those responsible for the shipment. Under the current regime, three working days has proved to be insufficient time in some cases to carry out an inspection of the waste and identify the parties responsible for the waste that has been detained.

**Option 3 - As per option 2 but enable the UK competent authorities to request HMRC to detain for a period of up to seven working days.**

83. This would have similar benefits to those outlined in option 2 but would give a further two working days for any necessary investigations, serving of notices or sampling that may be necessary.

**IV: Charges for notified shipments**

84. The main benefits of the new structure are:

- Maintains full cost recovery but each charge more closely reflects the modelled regulatory effort for determination and monitoring.
- Significant reductions in charge for general notifications covering large numbers of shipments.
- Removal of the need for refunds of unused shipments means the charges are simpler to operate and will save the administrative effort involved in tracking the potential refund requirement.



## Summary

Option	Total cost per annum Economic, environmental, social	Total benefit per annum Economic, environmental, social
<b>I: Reporting of information that accompanies shipments of 'green list' waste for recovery</b>		
1. Do not require the Annex VII data to be submitted to the competent authorities.	No additional costs	No additional benefits.
2. Include provisions in the TFS Regulations requiring a copy of the Annex VII form to be submitted to the UK competent authorities on a quarterly or annual basis.	Potential costs to UK competent authorities to establish and maintain a database and process the information provided.	Create a database for shipments of 'green list' waste from the information provided to generate an understanding of the scope, scale and pattern of 'green list' waste..
3. Include a requirement in the TFS Regulations for industry to extract and submit certain information from the Annex VII form and provide it to the UK competent authorities on a quarterly or annual basis.	Possible additional costs for facilities exporting and receiving waste and consignees to process this data in the required format.  Costs for competent authorities to establish and maintain a suitable reporting system.	Reliable and frequently updated information on 'green list' wastes which will be used to highlight trends, inform future policy making and potentially improve compliance with the applicable controls.  Collection of the relevant information would be more straightforward and less burdensome.
<b>II: Financial guarantee or equivalent insurance</b>		

1. Require that the financial guarantee be in place at the time of notification.	Bank charges could rise depending on the time required to obtain the necessary consent to the shipment and responding to any objections that may be raised by the competent authorities.	No additional benefits.
2.Allow the financial guarantee or equivalent insurance to be supplied after notification at the discretion of the competent authorities.	No additional costs other than those that exist under the current regime.	Additional benefits to both industry if the competent authorities agree that financial guarantee or equivalent insurance is not required to be supplied at the time of notification.
<b>III: Powers of HMRC to detain waste</b>		
1. Maintain the current regime whereby HMRC may detain waste for a period of up to three working days at the request of the relevant UK competent authority.	No additional costs.	No additional benefits and continuing enforcement problems for competent authorities.
2.Enable HMRC to detain waste for up to five working days at the request of the relevant UK competent authority.	Potential additional costs for the person shipping the waste if it is detained for a longer period of time.  Costs for UK competent authorities for any storage or treatment of the detained waste.	This approach would allow the UK competent authorities more time investigate and take any necessary action to resolve any breach of the controls. It also ensures better compliance with the revised WSR in relation to obligations placed on competent authorities in cases of illegal shipments or shipments that cannot be completed as intended.
3.As per option 2, but only enable UK competent authorities	As per option 2, potential additional costs for the UK	Benefits as per those outlined in option 2 but allowing UK

to request that HMRC detain waste for a period of up to seven working days.	competent authorities and the person responsible for arranging the shipment if waste is detained for a longer period of time.	competent authorities more time to resolve any potential complications.
<b>IV: Charges for notified shipments</b>		
New charging structure introduced	Notifications with large numbers of shipments will see the biggest reduction. The increased charge for notifications with smaller numbers of shipments will ensure cost recovery of the monitoring of these shipments.	Maintains full cost recovery but each charge more closely reflects the modelled regulatory effort for determination and monitoring. Significant reductions in charge for general notifications covering large numbers of shipments. Removal of the need for refunds of unused shipments means the charges are simpler to operate and will save the administrative effort involved in tracking the potential refund requirement.

## Recommendations

85. In view of the costs, benefits and risks assessed for each option, the following options are recommended for selection:

### **I: Reporting of information that accompanies shipments of 'Green List' waste**

86. Option 3 - 'Include a provision in the TFS Regulations which requires operators of facilities exporting or receiving waste and the consignee to provide certain information on the Annex VII form to the relevant UK competent authority on a quarterly or annual basis for inspection, enforcement, planning and statistical purposes' - is ultimately the favoured option. This option would result in the submission of information through an electronic reporting system, allowing for greater accuracy of the data collected and enabling the competent authorities to develop a statistical database for movements of non-notified 'Green List' waste. However, following consideration of the consultation responses and issues surrounding the reporting of this information, it has become clear that further discussion as to the financing, practicality and execution of this approach is required before any provisions can be included in the TFS Regulations.

87. Option 2 would provide the UK competent authorities with copies of the Annex VII forms, and thereby access to certain information that they do not currently have. However, the number of shipments in England and Wales means that there would be considerable work involved in processing and collating this information in order to extract the relevant and useful information from the forms. In Scotland and Northern Ireland, the number of shipments of green list waste is expected to be lower and the competent authorities believe there would be merit in receiving copies of Annex VII forms prior to shipment of the waste to help target enforcement work and to gain a more detailed understanding of the green list waste market.
88. Therefore, of the options presented with regard to the reporting of information that accompanies shipments of “Green List” waste, **Option 1 - do nothing is currently the preferred option in England and Wales, but a modified version of option 2, whereby Annex VII forms are sent to the competent authorities prior to shipment is the preferred option in Scotland and Northern Ireland.**
89. Option 1 will incur no additional costs for those involved in such shipments in England and Wales and there are no additional benefits since no action would be required on the part of either the Environment Agency, facility or consignee. The modified option 2 will mean that those making shipments of green list waste from Scotland and Northern Ireland will incur a small additional charge in faxing or posting a copy of the Annex VII form to the competent authorities. The competent authorities will also incur additional expenditure in analysing and processing the information on the forms. These additional costs are estimated to be around £9k per annum in Scotland and around £14k per annum in Northern Ireland.
90. In the longer term, further work is needed to establish what reporting requirements, if any, should be in place for shipments of “Green List” waste in England and Wales. Collection of data from the Annex VII form on a quarterly or annual basis would enable the Environment Agency to target enforcement efforts, thereby making better use of their resources. It would also be beneficial 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 recycling; in what quantities; where they are destined for; and what trends there are in such shipments over time. Such information could also assist local authorities, ensuring they are better informed on the role exports play in meeting recycling targets.
91. Any such work will need to consider what information is already available via other reporting regimes such as the Waste Statistics Regulation and assess whether there could be some form of information sharing gateway established between HMRC and the UK competent authorities. Consideration would also need to be given to the possibility of Scotland and Northern Ireland adopting an approach requiring quarterly or annual returns rather than copies of the Annex VII forms. Quarterly or annual returns could allow electronic reporting, which might be more accurate than assessing individual Annex VII forms.
92. Any future proposal in respect of implementing option 3 would be subject to a further public consultation exercise and an associated RIA.

## **II: Financial guarantee or equivalent insurance**

93. Option 1 – ‘require that the financial guarantee be in place at the time of notification’ – provides no additional benefits. This effectively mirror the current system which requires the financial guarantee to be submitted to the appropriate UK competent authority for their scrutiny and certification before a shipment starts. Given the time limits for determination of such applications in practice notifiers submit the application at the time of notification as the shipment cannot commence until a ‘certificate of satisfaction’ has been issued. If objections are raised by the relevant UK competent authority before a shipment can begin, there will be cost implications for industry.
94. Whilst the requirement that a financial guarantee or equivalent insurance is in place cannot be ignored, the WSR does give Member States the flexibility to simplify the procedures to be followed provided domestic legislation allows them to adopt such an approach. Given this, **Option 2 – Give the UK competent authorities the flexibility to allow the financial guarantee or equivalent insurance to be supplied after notification is the preferred option.**
95. The TFS Regulations therefore include provisions which take advantage of the flexibility in the WSR which will reduce the regulatory burden on industry. The majority of consultees were supportive of this proposal and there were limited concerns with this approach. However, further work will need to be undertaken to establish how the financial provision will be established and submitted to the UK competent authorities.

### **III: Powers of HM Revenue and Customs to detain waste**

96. As part of the review of the TFS Regulations, we have taken the opportunity to both address areas where the present regulatory can be strengthened, in particular as regards to the detection and prevention of illegal shipments.
97. Over the past few years, there has been a significant increase in illegal traffic (particularly in the context of exports of “green list” wastes to non-OECD countries). Experience in enforcing the 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 existing three day detention period. Option one – ‘do nothing’ – would therefore provide not help in this respect since there would be continuing enforcement problems for the competent authorities.
98. The extension of the detention period is seen as a useful tool to effectively tackle illegal shipments. An increase would assist the UK competent authorities in tackling non-compliant shipments and would also ensure better compliance with the revised WSR in relation to obligations placed on competent authorities in cases of illegal shipments or shipments that cannot be completed as intended.
99. The proposal to extend to detention period to five days was well supported during the public consultation. Given that the majority of waste detained is associated with targeted enforcement action, costs for legitimate operators are likely to be minimal.

There was limited support for an extension of the detention period in serious cases. However, the majority of the consultees considered five days to be long enough.

100. In addition to this, the increased powers available to the UK competent authorities in the revised Regulations will enable them to seize waste after the five day period in serious cases. In view of this, and the increased storage problems and demurrage charges that might arise should option 3 be implemented, **Option 2 – ‘ Enable the UK competent authorities to request HMRC to detain waste for a period of up to five working days’ is preferred.**
101. The relevant provisions for this option were included in the consultation draft of the TFS Regulations and we do not propose any further change.

#### **IV: CHARGES FOR NOTIFIED SHIPMENTS**

##### **Consultation with small businesses**

102. It is anticipated that the impact of the changes to the TFS Regulations will be minor. During the review of the WSR, all small businesses that use the Regulations were contacted seeking their views on the proposal and were asked to reply by telephone, e-mail, fax or in writing. There was a limited response. The Federation of Small Businesses was also contacted and indicated that, for their members, the proposal appeared to have no significant impacts.
103. The TFS Regulations have to be consistent with the revised WSR and therefore represent the changes previously consulted on for the WSR. However, we would welcome further representations from small businesses and representative organisations if they feel they are likely to be adversely affected by the proposed changes to the Regulations.

#### **Competition Assessment**

104. The competition filter test has been applied to the draft Transfrontier Shipment of Waste Regulations 2007 and strongly suggests that the proposal will have very little effect on competition. The market that could be affected by the proposal is generally composed of firms involved in the transport of waste into and out of the UK for recovery and for which notification is required by Regulation (EC) No 1013/2006 of the European Parliament and of the Council on Shipments of Waste (the Community Regulation).
105. The Transfrontier Shipment of Waste Regulations is existing legislation that has been reviewed following changes to the Community Regulation. Since the review did not affect the types of firms that come under the scope of the proposed legislation or the general nature of the provisions that apply, impacts on existing market structures as a result of these reviews are anticipated to be minimal. The costs associated with this legislation will not affect some firms more substantially than others or change the number or size of firms. Costs to both existing and new businesses will also be the same.

## **Enforcement, Sanctions and Monitoring**

106. Responsibility for ensuring compliance with the policies in the TFS Regulations rests with the Environment Agency for England and Wales, the Scottish Environment Protection Agency in Scotland and the Department of the Environment in Northern Ireland. The amendments to existing UK policies should not introduce a new regulatory burden on the enforcement agencies. Decisions about monitoring and enforcement of compliance with the TFS Regulations are for competent authorities. It is not feasible in this assessment to take a view on the consequence for such activity arising out of the implementation of the TFS Regulations.
107. The Transfrontier Shipment of Waste Regulations 2007 will set out the offences and penalties for the transfrontier shipment of waste controls for Great Britain and Northern Ireland.
108. The UK has annual reporting obligations under the Basel Convention and the Waste Shipments Regulation whereby data regarding notified shipments of wastes is reported on an annual basis.

## **Monitoring and Review**

109. The UK Secretary of State and the devolved administrations will monitor all aspects of the implementation of the TFS Regulations, seeking information as necessary from the UK competent authorities, to feed into any future review.

## **Consultation**

110. Defra has consulted with Governmental Departments and Agencies, Devolved Administrations and a number of non-Governmental organisations in the development of the TFS Regulations.

- **I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.**

**Signed by the responsible minister**

.....**Ben Bradshaw**  
**Date ...12th June 2007**

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