

NAWDO

National Association of Waste Disposal Officers

NAWDO Response to the Transfrontier Shipment of Waste Regulations Consultation

These comments are made on behalf of NAWDO (National Association of Waste Disposal Officers) in response to the invitation published by DEFRA in December 2006.

NAWDO is the primary network for senior waste managers in unitary and upper tier local authorities and is an association of approaching 100 Waste Disposal Authorities across England and Wales.

Any comments or queries regarding this response should be addressed to:

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Summary of questions in the consultation paper

Enforcement of controls for shipments of green list waste

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

Under the current definitions, notifiable waste will arise from local authority co-mingled collection schemes. Single stream materials with modest contamination are considered as notifiable under current EA guidance. Any increases in the charging structure will act as a disincentive to the open description of loads, as the financial differential between green list waste and notifiable waste will widen.

The low proportion of notifiable waste would create an uneven financial burden should charges for notification be increased. This would increase the disincentive to declare notifiable waste, potentially leading to increased non-compliance.

More generally, any increases in the costs of complying with legislation will naturally be passed back to the customer. This will increase the cost to local authorities of providing recycling services to residents. Evidence abounds that

LAs are already experiencing difficulties funding the services required to achieve recycling and LATS targets. Whilst effective policing of exported material is necessary, this approach will simply transfer the cost of enforcement from the EA to LAs.

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

Registration would provide valuable information, and would allow for the enhancement of the inspection regime. However, the range of organizations exporting waste is wide, with some exporting single-source material (ie over-issue news) in high volumes, whilst others are low volume sorting facilities with low tonnage turnovers. Any registration scheme should recognize this range, and should attempt to ensure that costs per tonne exported are relatively even. Registration fees should thus be related to the tonnages exported. There should also be a financial advantage for those shipping recyclable material.

Liability for non-compliance

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

The movement of waste is not easily traceable, and liability cannot be conclusively traced back to the originator of the waste. A MRF may accept co-mingled material from a number of sources. Each supplier will have a contract with the MRF. The MRF will have a range of contracts with end-users of segregated materials. However, it is impossible to specify the ultimate route of the materials delivered into the MRF, as the process naturally combines material from various sources. The MRF is responsible for sorting material to the appropriate standard for export (ie green list compliance) and charges its customers accordingly. Once the material leaves the MRF it may be shipped to a variety of destinations. Liability should rest with the MRF, as they have effectively created the particular waste type involved.

It would thus not necessarily be appropriate to attach liability to “any other person involved in the shipment of waste” or, as in paragraph 3.15, the “person responsible for the waste”, since the delivery of the waste to an appropriately licensed sorting facility has effectively discharged their responsibility.

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

Again, the producer of the waste cannot necessarily be held responsible for the on-shipment of waste delivered to an appropriately licensed sorting facility. Waste producers should not be included in regulation 5 unless they are directly involved in the export of the waste.

Competent authority for the offshore marine area

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

This would seem to be a practical solution.

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

NAWDO does not hold such information.

Transitional charges / fees

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

The proposed banding of charges provides a financial, and thus commercial, disadvantage for smaller operators exporting lower numbers of loads. This may create a disincentive for investment in plants dealing with low volume waste streams.

The system also assumes that producers will have advance knowledge of the number of loads they expect to export. However, the need to export may be caused by issues (such as plant breakdown, industrial action, refurbishment) causing temporary unavailability of UK facilities, possibly for an indeterminate period. Delays to the opening of new facilities could cause similar uncertainty. It would thus be reasonable to allow retrospective adjustment of charges to reflect the actual number of loads notified within a reasonable time period.

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

The bands seem reasonable. However, it would seem necessary to incorporate a time-limiting element – ie each band should cover the set number of notifications, but should qualify that they are to be notified within a set time-scale. If this limit isn't incorporated, some producers will still be using their pre-paid notification several years into the future. If the cost of notification has risen in the interim, this would be difficult to administrate.

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

NAWDO does not feel able to make any comment at this stage.

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

NAWDO does not hold such information.

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

Without detailed historical information regarding the number of refunds issued in the past, it is not possible to consider the effect of removing this option.

With regard to the number of notifications, the system assumes that producers will have advance knowledge of the number of loads they expect to export. However, the need to export may be caused by issues (such as plant breakdown, industrial action, refurbishment) causing temporary unavailability of UK facilities, possibly for an indeterminate period. Delays to the opening of new facilities could cause similar uncertainty. It would thus be reasonable to allow retrospective adjustment of charges to reflect the actual number of loads notified within a reasonable time period.

Financial guarantees

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

The changes appear to ease the burden on industry, predominantly by reducing the burden of proof required. The removal of the assessment of guarantees / insurance, to be replaced by a signed declaration, would seem to increase the potential risks involved. Hence, this may not be a positive move.

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

NAWDO does not feel able to make any comment.

Powers of competent authorities

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

NAWDO agrees with the proposals.

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

Where possible, it would seem sensible to extend powers back to the producers of the waste destined for shipment. In situations where the waste is undergoing interim treatment (ie sorting at a MRF), this would enable assessment of whether the sorting process or the original input material is the source of the problem.

Role of HM Revenue & Customs

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

NAWDO supports the proposal.

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

NAWDO does not hold such information.

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

NAWDO does not feel able to make any comment.

Reporting information that accompanies shipments of 'green list' waste

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

As stated earlier it is not necessarily be appropriate to attach liability to "any other person involved in the shipment of waste" or, as in paragraph 3.15, the "person responsible for the waste", since the delivery of the waste to an appropriately licensed sorting facility has effectively discharged their responsibility.

The statement in paragraph 3.42 "That they (local authorities) are not best placed to report this information" is a realistic assessment.

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

Option 2 appears preferable, as it avoids duplication of information already required.

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

NAWDO does not hold such information.

UK Plan for Shipments of Waste

Shipments in emergency situations

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

The drafting appears reasonable.

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

Providing all practical alternative options have been explored, then it seems practical to permit such shipments, providing they are closely monitored.

Shipments for trial runs

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

This is an option which may be beneficial in assisting the development of new technologies. However, shipments should be closely monitored to avoid potential abuse.

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

Checks should be made to ensure appropriate waste isn't available more locally ie within the country where the trials are taking place. Tonnages should be appropriate to the trial methodology, and export should cease once the technology is proven.

Shipments between Northern Ireland and the Republic of Ireland

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

This question raises an important point of principle. The regulations are designed to control and limit the movement of waste between different countries. It is appreciated that, particularly in countries with small volumes of some types of waste, moving it to a neighbouring country with appropriate facilities would seem a practical solution. Logically, this would lead to some facilities being set up to

deal with waste from other countries in a manner which takes advantage of economies of scale not possible if waste could only be sourced from one country.

However, if this is an acceptable approach, then the principle of the regulations would be diluted. Within national frameworks, it is difficult to think of a waste stream which doesn't generate sufficient tonnage to justify a dedicated facility.

Q Should this proposal be extended to include other disposal operations, such as biological treatment (D8) prior to D10 Shipments to the UK from Member States, or EFTA countries, of hazardous waste produced in small quantities in the country of dispatch

As above, this approach dilutes the principle of the regulations. Within national frameworks, it is difficult to think of a waste stream which doesn't generate sufficient tonnage to justify a dedicated facility.

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

NAWDO supports the proposal.

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

This option should be enforced in a manner which mirrors the waste hierarchy. As technology develops, the parameters will change. Attention should be paid to the residual outputs from the facilities – ie the limited market for refuse derived fuels from gasification facilities.

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

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

NAWDO supports the proposal.