
Waste Management (Import and Export) Regulations 2007

In exercise of the powers conferred upon him under section 6 and section 30 of the Waste Management Ordinance 2007(a) the Administrator hereby makes the following Regulations:—

Citation and Commencement

1. These Regulations may be cited as the Waste Management (Import and Export) Regulations 2007 and will come into force on the date that they are published in the Gazette.

Interpretation

2. In these regulations unless the context otherwise requires—

“Convention” means the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal, opened for signature at Basel on 22nd March 1989;

“competent authority” means the appropriate competent authority for the Areas as referred to in regulation 5(1);

“competent authority of dispatch”, “competent authority of destination” or “competent authority of transit”, other than in regulation 5, means such an authority outside the Areas;

“consignee” means the person to whom waste is sent in connection with an importation or exportation;

“consignment” means a consignment of waste;

“disposal” means—

- (a) the collection, sorting, transport and treatment of waste;
- (b) the storage and tipping of waste above or below ground;
- (c) the transformation operations necessary for the re-use of waste;
- (d) the recovery or recycling of waste; or
- (e) an operation set out in Schedule 2A of the principal Ordinance.

“export” includes the taking of steps with a view to exporting;

“notifier in the Areas” means a person intending to export waste from the Areas;

“notifier of the exporting country or territory” means a person intending to export waste to the Areas;

“OECD country” means a country listed in the Schedule;

“Ordinance” means the Waste Management Ordinance 2007;

“other waste” means waste of a type listed in Schedule 1 to the Ordinance which is not hazardous waste;

“waste” means hazardous waste and other waste.

General Restrictions

3. (1) No waste will be imported except in accordance with the Convention’s obligations.
(2) No waste will be exported except to an OECD country.

(3) No waste will be exported unless it has been authorised by the competent authority and thereafter by the competent authority of destination.

(4) No waste will be exported unless it has been authorised under regulation 10.

Application

4. These regulations will apply to the importation and exportation of waste in and out of the Areas including consignments –

- (a) whose final destination is outside the Republic and outside the Areas;
- (b) whose final destination is in the Republic; or
- (c) whose final destination is in the Areas.

Competent authority, correspondent and focal point

5. (1) For the purposes of these regulations the competent authority of dispatch, destination and transit will be:

- (a) the Defence Estates Technical Support Manager where British Forces Cyprus and/or the Ministry of Defence is the producer or holder of hazardous waste, the transporter of hazardous waste, or the disposer of hazardous waste;
- (b) for all other hazardous waste, the Area Officer for the Area from which the waste is to be exported or to which the waste is to be imported.

(2) The Secretary of State for Environment, Food and Rural Affairs will act as correspondent for the Areas and the *focal point* for the purposes of Article 5 of the Convention.

Notification procedure

6. (1) By means of a consignment note a notifier in the Areas must give notice to the competent authority of the following details about the consignment which he intends to export—

- (a) the source, composition and quantity of the waste and the proposed method of disposal of it;
- (b) a detailed inventory if the waste comes from more than one source;
- (c) the identity of the producer of the waste, or, in a case coming within sub paragraph (b), those producers which are known;
- (d) the arrangements for transport and routing;
- (e) any insurance arranged against damage to third parties;
- (f) the measures to be taken for packaging and for the safe transport of the waste and to comply with the requirements of any state to which or through which the waste is intended to move;
- (g) the identity of the carrier and consignee of the consignment;
- (h) the address of the disposal centre to which the waste is being sent and a description of the authorisation under which the disposal centre operates;
- (i) the arrangements for dealing with and disposing of the waste.

(2) Subject to regulation 10, the notifier in the Areas must provide the competent authority of destination and the competent authority of transit (if appropriate) with the information required by paragraph (1).

Contract for Waste Disposal

7. (1) Subject to paragraph (3) no exportation of waste may take place unless the notifier in the Areas has made a contract with the consignee for the disposal of the waste, and no importation of waste may take place unless the notifier of the exporting country or territory has made a contract with the consignee for the disposal of the waste.

(2) Under the terms of the contract referred to in paragraph (1)—

- (a) the notifier in the Areas or notifier of the exporting country or territory must undertake to take the waste back if the exportation is not completed in accordance with the authorisation given under regulation 10 or a breach of these regulations has taken place in relation to the consignment; and

- (b) the consignee must undertake to dispose of the waste in an environmentally sound manner and (if appropriate) to provide as soon as possible and no later than one year after receiving the waste a certificate to the effect that the waste has been disposed of in that manner.

(3) Where the notifier in the Areas, or notifier of the exporting country or territory and consignee are the same person the requirements of paragraph (1) are satisfied if a written declaration is made to the same effect as the undertakings in paragraph (2).

Retention of documents

8. A notifier in the Areas must retain for 3 years the following documents in relation to any exportation of waste –

- (a) a copy of the consignment note;
- (b) the authorisation under regulation 10;
- (c) any contract required under regulation 7;
- (d) all documents relating to the guarantee or insurance required under regulation 14;
- (e) certificate under regulation 14(1).

Transmission of Notification by Competent Authority of Dispatch

9. (1) The competent authority may decide, in relation to a notification relating to a consignment of waste to be dispatched from the Areas, or in relation to any class of such notifications, to transmit the notification itself to the competent authority of destination, providing copies to the consignee and to any competent authority of transit in each case and it will give notice in the Gazette of that decision.

(2) A notice of a decision under paragraph (1) will describe the notifications to which the competent authority's decision applies and the decision which is the subject of the notice will take effect 2 weeks after the publication of the last of the notices required to be published.

(3) The competent authority may withdraw the notice of a decision published in accordance with paragraph (1) by giving notice in the Gazette of the withdrawal which will take effect 2 weeks after the publication of the last of those notices required to be published.

(4) Where a decision under paragraph (1) takes effect, a notifier in the Areas who intends to make a shipment of waste which requires a notification to which the competent authority's decision applies will send the required notification to the competent authority in the Areas and notwithstanding regulation 6(2) will not send copies of that notification to any competent authority of destination or transit or to the consignee.

(5) Subject to paragraph (6) a competent authority will within 3 working days of receiving a notification under paragraph (3) transmit it to the competent authority of destination and send copies to the consignee and any competent authority of transit.

(6) Paragraph (5) will not apply if the competent authority has immediate objections to raise against the shipment.

Authorisation of Exportation

10. (1) In coming to a decision to authorise or object to a proposed exportation of waste from the Areas the competent authority will take into account the responses of the competent authority of destination and the competent authorities of transit as the case may require.

(2) The competent authority will not authorise the exportation of a consignment subject to a notification requirement of regulation 6 without—

- (a) the written consent of the competent authority of destination and transit (as the case may be);
- (b) confirmation of the existence of a contract required under regulation 7;
- (c) a certificate with respect to the financial guarantee required under regulation 15.

(3) Written consent will be taken to have been given by the competent authority of transit under paragraph (2)(a) on a date 60 days from the date notification was given under regulation 6, in a case where a state which is a party to the Convention has informed the other parties in accordance with Article 13 of the Convention to the effect that written consent may be dispensed with on behalf of that party.

(4) Subject to any other condition imposed by the competent authority, an authorisation will be on the conditions that—

- (a) the exportation takes place in accordance with the details supplied by the notifier in the Areas under regulation 6; and
- (b) the consignment is accompanied by a copy of the consignment note required under regulation 6.

(5) If the competent authority does not receive information that a consignment authorised under this regulation has been received by the consignee and, as the case may be, disposed of properly, the competent authority will inform the competent authority of destination accordingly.

Procedures for transit and import

11. (1) Upon receiving a notification concerning a proposed importation of waste into the Areas (whether or not a transit) the competent authority will—

- (a) as soon as possible, issue an acknowledgement to the competent authority of dispatch and send a copy to any competent authority of transit;
- (b) where appropriate, within 60 days of the date of issue raise objections and request additional information;
- (c) within 60 days of the date of issue *or* within 10 days of the date of receipt of the information requested pursuant to paragraph (b), either consent upon such conditions (if any) as the competent authority may impose or refuse consent.

(2) The competent authority will send a copy of the final decision to the competent authority of dispatch and the notifier of the exporting country or territory.

Receipt of imported waste

12. (1) The competent authority on being provided with sufficient evidence will confirm the existence of a contract for the disposal of waste proposed to be imported which reflects the terms required for a contract under regulation 7(2).

(2) Any person receiving or otherwise handling waste which has been imported into the Areas must sign the consignment note which accompanies the consignment.

Certificate of receipt of consignment

13. (1) The consignee of imported waste must within 28 days of receipt of the consignment inform the notifier and the competent authority of dispatch and of transit (if appropriate) of its receipt by certifying on a copy of the consignment note that the waste has been received.

(2) The consignee of imported waste must within one year of receipt of the consignment inform the notifier and the competent authority of dispatch and of transit (if appropriate) of its disposal by certifying that the consignment has been disposed of in accordance with an authorisation given by the competent authority of dispatch.

Financial Guarantees or Insurance

14. (1) No person will import waste into or export waste out of the Areas unless he holds a certificate in relation to that consignment issued by the competent authority of the Areas under subsection (2) or an equivalent certificate issued by the competent authority of dispatch, destination or transit (as the case may require).

(2) Upon application the competent authority will issue a certificate if it is satisfied that there is in force in respect of the consignment, or will be at the time the consignment is to be imported into or exported out of the Areas (as the case may be), a financial guarantee or insurance.

Powers of customs officers

15. Without prejudice to any powers exercisable under the customs legislation, at the request of the competent authority made for the purposes of these regulations an officer of customs and excise may detain for not more than 3 working days a consignment which has been imported or brought to any place to be exported.

Power to ensure return of waste

16. (1) Where the Administration is required by a Convention obligation to ensure that a consignment of waste exported from the Areas is re-imported it may by notice require the notifier in the Areas to re-import the consignment within such reasonable time as may be specified in the notice.

(2) If the notifier in the Areas fails to comply with a notice served under paragraph (1) the Administration may arrange to re-import the consignment on behalf of the notifier in the Areas.

(3) Any costs arising as a result of arrangements made under paragraph (2) may be claimed as a debt due to the Administration.

Power to ensure disposal or recovery of waste in event of importation into the Areas

17. (1) Where the Administration is required by a Convention obligation to ensure that a consignment is disposed of in an environmentally sound manner then the consignment will be liable to forfeiture under the customs legislation.

(2) In the circumstances of paragraph (1) the Administration may by notice require the consignee to dispose of or recover the waste in an environmentally sound manner within such reasonable time as may be specified in the notice.

(3) If the consignee fails to comply with a notice served under paragraph (2) the Administration will arrange for the waste to be disposed of in accordance with its Convention obligation.

Offences

18. It is an offence for—

- (a) a person to import waste into the Areas otherwise than in accordance with Convention obligations;
- (b) a person to be concerned in the transit, importation or exportation of waste knowing that—
 - (i) a consent required under these regulations has not been obtained from the competent authority or competent authority of dispatch, destination or transit or has been obtained as a result of misrepresentation or fraud;
 - (ii) the nature of the waste is not fully described in the consignment note accompanying the consignment;
 - (iii) its disposal or recovery will not take place in compliance with the Convention;
- (c) a person to transport, recover, dispose of or otherwise handle waste in contravention of a condition imposed on the consignment by the competent authority or the competent authority of dispatch, destination or transit;
- (d) a consignee, in relation to waste imported into the Areas, to fail to send a certificate pursuant to regulation 13 within the time limit or to send a certificate which is false in a material particular;
- (e) a person to contravene regulation 14(1);
- (f) a person to supply to a competent authority information which is false in a material particular for the purpose of obtaining a certificate under regulation 14 (2);
- (g) a person to mix wastes which are the subject of different notifications made under regulation 6 or made to a competent authority of dispatch;
- (h) a notifier in the Areas to export waste without having entered into a contract with the consignee for the recovery or disposal of the consignment required by regulation 7;
- (i) a notifier in the Areas to export waste knowing that the consignment is not accompanied by the consignment note;
- (j) a person to fail to notify as required by regulation 6;
- (k) a person to intentionally obstruct an officer of customs and excise, an inspector or any other authorised person in the exercise of his duties in connection with the application of these regulations;
- (l) a person knowingly to produce, supply or use any document for the purposes of these regulations which is false in a material particular.

19. A person who commits an offence under regulation 18 is liable on conviction to a fine in an amount not exceeding £2000 or to imprisonment for a term not exceeding 2 years.

Defences

20. (1) In any proceedings for an offence under regulation 18(1)(a) it will be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(2) In any proceedings for an offence under regulation 18(1)(c) it will be a defence for the person charged to prove that he was not reasonably able to comply with the condition concerned by reason of an emergency.

(3) In any proceedings for an offence under regulation 18(1)(d) on the grounds that the consignee has not sent a certificate of disposal or recovery (as the case may be) within the applicable time limit, it will be a defence for the consignee to prove—

- (a) that he was not able to send the certificate within that time limit because he had not been able to dispose of or recover the waste in time as a result of an emergency; and
- (b) that he disposed of or recovered the waste as soon as was reasonably practicable or that he is taking all reasonable steps to ensure that the waste is disposed of or recovered as soon as is reasonably practicable.

SCHEDULE

List of OECD member countries		
Australia	Hungary	Norway
Austria	Iceland	Poland
Belgium	Ireland	Portugal
Canada	Italy	Slovakia
Czech Republic	Japan	Spain
Denmark	Korea	Sweden
Finland	Luxembourg	Switzerland
France	Mexico	Turkey
Germany	Netherlands	United Kingdom
Greece	New Zealand	United States of America

Dated this 2nd day of April 2007.

By the Administrator's Command,

P. D. Draycott,
Chief Officer,
Sovereign Base Areas.

(SBA/AG/2/EN/112/10)

EXPLANATORY NOTE

(This note is not part of the Rules)

Introduction

1. These explanatory notes relate to the Waste Management (Import and Export) Regulations 2007. They have been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Regulations. They do not form part of the Regulations.
2. The notes need to be read in conjunction with the Regulations. They are not, and are not meant to be, a comprehensive description of the Regulations. When a section or part of a section does not seem to require any explanation or comment, none is given.

The Regulations

3. The Regulations are made pursuant to the Waste Management Ordinance 2007, and establish requirements for the importation or exportation of hazardous waste into or from the Sovereign Base Areas.
4. Regulation 3(1) provides that hazardous waste may only be imported into the Sovereign Base Areas in accordance with the Basel Convention.
5. Regulation 3(2) provides that hazardous waste may only be exported to an OECD country; regulation 3(3) requires that an exportation of hazardous waste must be authorized by the competent authority; regulation 3(4) provides that the exportation of hazardous waste must be authorized under regulation 10.
6. Regulation 5(1) establishes the respective competent authority.
7. Regulation 18 creates a number of criminal offences; regulation 19 provides the maximum penalties for conviction.
8. Regulation 20 establishes a number of defences to a prosecution under regulation 18.