EXPLANATORY MEMORANDUM TO

THE INTERNATIONAL WASTE SHIPMENTS (AMENDMENT OF REGULATION (EC) NO 1013/2006 AND 1418/2007) REGULATIONS 2021

2021 No. 785

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends:

- the Annex to Commission Regulation (EC) No 1418/2007 ("Regulation (EC) No 1418/2007") concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council ("Regulation (EC) No 1013/2006") to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply; and
- Annex 7 of Regulation (EC) No 1013/2006.

2.2 The changes:

- set out export control procedures for a new category of sorted, non-hazardous, plastic waste classified as B3011, which has previously been a subset of classification B3010; and
- remove defunct references to plastic waste classified as B3010, which is no longer a classification used in the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, adopted on 22nd March 1989([1]) (the "Basel Convention")[2].

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

[1]The consolidated text of the Basel Convention may be seen here: http://www.basel.int/TheConvention/Overview/ TextoftheConvention/tabid/1275/Default.aspx

[2] As amended by Decision BC-14/12: http://www.basel.int/Implementation/Plasticwaste/Decisions/tabid/6069/Default.aspx

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland. This may change if and when the current draft of The International Waste Shipments (Amendment) (EU Exit) Regulations 2021 comes into force, to take account of the Northern Ireland Protocol.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP, has made the following statement regarding Human Rights:

"In my view regulation 2 of The International Waste Shipments (Amendment of Regulation (EC) No 1013/2006 and 1418/2007) Regulations 2021 is compatible with the Convention rights." In relation to the remaining provisions, as the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Further to section 3 of the European Union (Withdrawal) Act 2018, Regulation (EC) No 1013/2006 and Regulation (EC) No 1418/2007 form part of domestic law on and after IP completion day[3].

6.2 Further to Article 37(1) of Regulation (EC) No 1013/2006 the Secretary of State made a written request on 14th January 2021 to non-EU countries to which the OECD decision does not apply[4] seeking confirmation in writing that B3011 plastic waste may be exported for recovery in that country; and an indication as to which control procedure, if any, would be followed in the country of destination.

6.3 This instrument amends the Annex to Regulation (EC) No 1418/2007 to take account of the replies received. It also amends Annex 7 of Regulation (EC) No 1013/2006 to remove a reference to the defunct waste category B3010. The instrument makes these changes further to powers contained in, inter alia, the first paragraph of Article 37(2) and Article 59a(3)(a) of Regulation (EC) No 1013/2006.

6.4 Those Articles were amended by The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 (S.I. 2019/473) so that the powers contained in them were transferred from the European Commission to the Secretary of State. This instrument is the Secretary of State's first exercise of both those powers.

7. Policy background

What is being done and why?

7.1 The United Kingdom is a Party to the Basel Convention which was adopted on 22 March 1989 and entered into force in 1992. It now binds 187 Parties.

7.2 The Conference of the Parties of the Basel Convention decided at its fourteenth meeting on 10 May 2019 to adopt amendments to Annexes II, VIII and IX to the

[3] 11 p.m. on 31 December 2020

[4] https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0266?_ga=2.28787388.1208658976.1621367751-1204029006.1571407056

Basel Convention with the objectives of enhancing the control of transboundary movements of plastic waste and clarifying the scope of the Basel Convention as it applies to such wastes. These amendments included the creation of a new waste code for transboundary movements of broadly sorted non-hazardous plastic waste (B3011). This largely replaced the residual elements of a previous code (B3010) such that the B3010 code is now fully subsumed by other waste codes and so defunct. The new waste code came into force globally on the 1st January 2021. B3011 broadly covers sorted, non-hazardous, waste plastic that is destined for recycling[5] in an environmentally sound manner and is almost free from contamination and other types of waste.

7.3 Regulation (EC) No 1418/2007 sets out the control procedures for the export of non-hazardous waste for recovery from the UK to each country to which the OECD decision does not apply. Regulation (EC) No 1418/2007 is based on information received from countries of destination about their control procedures for the import of non-hazardous wastes. Historically, it was periodically updated by sending a questionnaire to each country (to which the OECD decision does not apply) asking what controls should be adhered to when exporting different categories of non-hazardous waste to their country. In the questionnaire the countries are presented with four options to indicate which import control each category of waste falls under. These options are:

- Prohibited (imports are subject to a prohibition and imports are not allowed into the country of destination);
- Prior informed consent (PIC) which involves: notifying regulators of the contents of the proposed shipment; paying a fee to the regulators [6] to cover the cost of determining the application; and insuring the waste in case it has to be repatriated back to the UK);
- No controls (imports are allowed without any control in the country of destination; these are typically known as 'Green List' controls);
- Specific national controls (these are typically any national requirements, such as the need for the destination facility to have an import permit).

7.4 If a country fails to respond or has not been contacted, then by default, waste shipments to that country must adhere to the PIC procedure (option b) as required under the second paragraph of Article 37 (2) of Regulation (EC) No 1013/2006/. PIC requires that shipments of wastes are approved by regulators in the country of dispatch, destination, and where applicable, transit before the shipment can commence. In addition, Parties to the Basel Convention are required to ensure that any transboundary movements of wastes which are subject to the PIC procedure are covered by insurance, a bond or another guarantee as may be required by the state of import, or any state of transit, which is a Party to the Basel Convention. This insurance is required to meet the costs of repatriation of the waste if it cannot be recovered or recycled in the country of destination or if an accident occurs during its transport which requires remediation.

[5] In this context, the waste must be recycled by R3. R3 means recycling or reclaiming organic substances that are not used as solvents in an environmentally sound manner

[6] The Environmental Regulators for UK are as follows: Environment Agency for England, The Scottish Environment Protection Agency for Scotland, Natural Resources Wales for Wales and Northern Ireland Environment Agency for Northern Ireland.

7.5 The Regulation (EC) No 1418/2007 was not amended before IP completion day[7] to include the new B3011 code. As a result, the new B3011 code was not included in domestic law.

7.6 To inform the planned amendments to Regulation (EC) No 1418/2007, Defra contacted over 150 countries (to which the OECD decision does not apply) in January 2021 asking them what their requirements are for imports of B3011 using the options outlined in paragraph 7.3.

7.7 In the absence of amended legislation which reflects import requirements exporters based in the United Kingdom will continue to be required to conform to PIC procedures for all shipments of B3011 plastic waste to the aforementioned countries. In cases where a destination country does not require any controls, or have their own national controls, the default application of the PIC procedure is an unnecessary additional cost and administrative burden for UK businesses.

7.8 If Regulation (EC) No 1418/2007 is not amended to reflect the import requirements, UK exporters will be required to conform to PIC procedures even if the country of destination does not require these controls. For example, if an exporter submitted its application, paid the application fees and arranged insurance, and the destination country responded to the notification application to state that they have no import requirements or applied their own national control procedures, the exporter would not be entitled to a full refund on the costs they had incurred in complying with the PIC procedure.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union.

8.2 This is because this instrument exercises powers, previously vested in the European Commission, but now vested in the Secretary of State, to amend Regulation (EC) No 1013/2006 and Regulation (EC) No 1418/2007, which form part of domestic law on and after IP completion day[8].

9. Consolidation

9.1 There are no plans to consolidate Regulation (EC) No 1013/2006 and Regulation (EC) No 1418/2007.

9.2 A consolidated text showing changes over, and at points in, time is available at www.legislation.gov.uk. This will be updated, in due course, with the changes in this instrument.

10. Consultation outcome

10.1 The primary policy objective is to update Regulation (EC) No 1418/2007 to reflect the import requirements for each country to which the OECD decision does not apply, in respect of the new category of sorted non-hazardous plastic waste (B3011).

10.2 Defra received responses from 41% of the countries contacted. A number of countries are yet to respond. If a country fails to respond, then by default, in accordance with

[7] 11 p.m. on 31 December 2020
[8] 11 p.m. on 31 December 2020

the second paragraph of Article 37 of Regulation (EC) No 1013/2006, exports of B3011 to that country must conform to the PIC controls.

10.3 This instrument will reflect the import requirements of these countries and where we have not received a response then PIC controls will apply to these movements by default. As there is no scope to change the requirements of import countries through a public consultation we have not consulted on the content of this instrument.

10.4 The Devolved Administrations were consulted on the approach taken during the drafting of the instrument and were given the opportunity to comment on the approach taken to collect information from countries to which the OECD decision does not apply. The Devolved Administrations did not provide any comments.

11. Guidance

11.1 Previous guidance on the introduction on the new B3011 code was provided in January 2021 at: https://www.gov.uk/guidance/importing-and-exporting-waste-plastic.

11.2 This instrument will be enforced by the regulators [9][10]. Guidance was previously developed by the regulators and circulated to businesses engaged in plastic waste shipment in January 2021. This guidance will be updated in keeping with the country responses received. In addition, the Environment Agency will update their International Waste Shipments (IWS) online tool to reflect the responses once this instrument comes into force.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 While costs and benefits have been assessed, a full impact assessment has not been prepared for this instrument because the impacts are below the threshold where one is deemed necessary. This instrument amends Regulation (EC) No 1418/2007, which was last amended in 2014. We have therefore assumed a baseline of the controls in 2014, prior to PIC being required for exports of B3011 to non-EU countries (to which the OECD decision does not apply) from the start of 2021. This approach assumes all the net benefits of removing PIC are taken up. We are therefore measuring the change in controls between the recent responses from countries against the requirements in 2014. Only three of the UK's larger trading partners for plastic waste have changed their preferences for controls since 2014 and so the change in controls for the number of shipments affected by this SI is low.

12.4 The Regulatory Policy Committee Secretariat are content with the approach we have taken and have advised that a Regulatory Triage Assessment should be carried out. This assessment demonstrates the impacts of this measure falls significantly below the +/- £5m de minimus threshold.

[9] The Transfrontier Shipment of Waste Regulations 2007: www.legislation.gov.uk/uksi/2007/1711/contents/made

[10] The Environmental Regulators for UK are as follows: Environment Agency for England, The Scottish Environment Protection Agency for Scotland, Natural Resources Wales for Wales and Northern Ireland Environment Agency for Northern Ireland.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that is not possible to exempt these from the measures in this instrument as doing so would result in disregarding the import controls preferences for B3011 plastic wastes that have been expressed by non-EU countries (to which the OECD decision does not apply).

14. Monitoring & review

14.1 The impact of these amendments will be monitored by the regulators[11] where controls have changed to PIC and by Defra through monitoring the change in UK export flows to non-EU countries (to which the OECD decision does not apply). Consideration will be given to amending the legislation as need is identified.

15. Contact

15.1 Naomi Ward at the Department for Environment, Food and Rural Affairs, Telephone: (0) 20 8720 3530 or email: Naomi.Ward@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rachel Mumba, Deputy Director for Chemicals, Pesticides & Hazardous Waste, at the Department for Environment, Food and Rural Affairs, Telephone: 07585100294 or email: Rachel.mumba@defra.gov.uk can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rebecca Pow MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

[11] The Environmental Regulators for UK are as follows: Environment Agency for England, The Scottish Environment Protection Agency for Scotland, Natural Resources Wales for Wales and Northern Ireland Environment Agency for Northern Ireland.