EXPLANATORY MEMORANDUM TO

THE INTERNATIONAL WASTE SHIPMENTS (AMENDMENT) REGULATIONS 2024

2024 No. 1281

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Environment, Food and Rural Affairs and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Minister Hardy, Parliamentary Under-Secretary of State at the Department of Environment, Food and Rural Affairs, confirms that this Explanatory Memorandum meets the required standard.

2.2 Marc Casale, Deputy Director for waste shipments, at the Department of Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Simon Allcock at the Department of Environment, Food and Rural Affairs Telephone: 03459 33 55 77 or email: wastemovements@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument implements changes made to the annexes of the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal ("the Basel Convention"). It will amend two pieces of UK legislation:

- Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (EUR 2006/1013, "the WSR")
- Commission Regulation (EC) No 1418/2007 of 29 November 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 to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply ("EUR 2007/1418").

4.2 The legislation will subject transboundary movements - imports or exports - of waste electrical and electronic equipment (WEEE) to and from the UK to stricter controls.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, and Scotland.

5. Policy Context

What is being done and why?

5.1 The instrument will implement amendments to the Basel Convention. The United Kingdom is a Party to the Basel Convention and therefore has an obligation to implement these amendments with effect from 1 January 2025.

5.2 An important obligation of the Basel Convention is the Prior Informed Consent (PIC) procedure. The PIC procedure means that an importing party must give their consent before an exporter can export hazardous waste and certain other types of waste to them. The PIC procedure is intended to enhance the control that countries have over the transboundary movement of waste.

5.3 In 2022, the fifteenth Conference of the Parties (COP-15) of the Basel Convention agreed to amend the Convention with the effect that transboundary movements of non-hazardous WEEE - not just hazardous WEEE, as is the case currently - must be subject to the PIC procedure. [1]

5.4 Waste electrical and electronic equipment (WEEE) is one of the fastest growing waste streams globally. According to the UN, 62 million tons of WEEE was produced in 2022, up 82% since 2021. This is on track to rise to 82 million tons by 2030.

5.5 In 2022, less than a quarter (22.3%) of WEEE was documented as having been properly collected and recycled. Despite the existing controls on transboundary movements of WEEE, there is significant evidence of WEEE being poorly managed in importing countries, and especially in developing economies. This causes negative impacts on human health and the environment particularly where the informal sector seeks to extract the valuable material contained in the WEEE.[2]

5.6 The intended outcomes of the new measures are to:

- Reduce the negative impacts of poorly managed WEEE on human health and the environment
- Enhance the level of control that importing countries have over the WEEE they import
- Provide greater transparency over the transboundary movement, disposal and recovery operations of WEEE
- Encourage resource recovery and a more circular economy

5.7 The UK is also a member of the Organisation for Economic Co-operation and Development (OECD) and movements of waste between OECD members is controlled by the OECD Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery Operations ("the OECD Decision"). The OECD Decision is legally binding on the UK.

5.8 OECD members were not able to reach consensus on incorporating the amendments to the Basel Convention into the OECD Decision. As a result, OECD members, including the UK, have the ability to apply different controls for transboundary movement of WEEE to other OECD member countries.

[1] See decision BC-15/18: https://www.basel.int/Implementation/Ewaste/EwasteAmendments/Decisions/tabid/9267/Default.aspx.
[2] The Global Waste E-Monitor 2024, United Nations Institute for Training and Research (UNITAR), https://ewastemonitor.info/wp-content/uploads/2024/03/GEM_2024_18-03_web_page_per_page_web.pdf, retrieved 4 September 2024.

5.9 However, the UK will implement the Basel Convention in full, meaning it will require PIC to be applied for the transboundary movement of WEEE to all countries, whether they are OECD member countries or not. Applying different rules for OECD member countries would likely to lead to a confusing picture of regulations for both regulators and businesses. It would also undermine some of the benefits that the Basel Convention amendments are intended to have for human health and the environment.

5.10 Some parties to the Basel Convention, including the European Union, intend to go further than the amendments to the Basel Convention require, by banning the export of all WEEE – both hazardous and non-hazardous – to non-OECD countries. The UK's current approach provides a foundation for the UK also to go further in due course and to ban the export of all WEEE to non-OECD countries, which the UK could consider following an examination of the impact of the current measures and any unintended impacts and related uncertainties.

What was the previous policy, how is this different?

5.11 Currently, non-hazardous WEEE can be imported to or exported from the UK under so-called 'green list' controls which do not require the PIC procedure to be applied. However, hazardous WEEE does currently require the PIC procedure to be applied when it is imported to or exported from the UK.

5.12 The instrument will amend legislation by ensuring that both hazardous and non-hazardous WEEE will be subject to the PIC procedure when being imported to or exported from the UK.

6. Legislative and Legal Context

How has the law changed?

6.1 The instrument will implement amendments made to the Basel Convention's waste codes. The Basel Convention classifies different waste types under specific codes which are listed in the annexes of the Convention.

6.2 The WSR is the main piece of UK legislation which establishes the requirements for controlling waste movements to and from the UK. The WSR implements the provisions of both the Basel Convention and the OECD Decision. The WSR specifies which wastes can legally be exported, to where, and what controls apply, with the objective of ensuring that waste is dealt with in an environmentally sound manner throughout the movement and at the receiving facility for the waste.

6.3 The annexes to the WSR contain lists of codes derived from the Basel Convention and the OECD Decision. Articles within the WSR dictate which controls apply to the waste codes listed in each of the annexes.

6.4 EUR 2007/1418 reflects the import requirements of non-OECD countries for waste, based on the UK's request for written confirmation from those countries. The annex to this regulation lists waste codes according to how each country that has responded intends to control different waste types.

6.5 In 2022, COP-15 of the Basel Convention agreed to the following amendments (with effect from 1 January 2025) which will have the effect of making all WEEE subject to the PIC procedure:

- Introducing two new waste codes: Y49 for non-hazardous WEEE will be introduced to Annex II of the Convention, and A1181 for hazardous WEEE will be introduced to Annex VIII of the Convention. Waste codes listed in Annex II and Annex VIII of the Convention are subject to the PIC procedure.

- Deleting existing codes B1110, B4030 from Annex IX, and A1180 from Annex VIII of the Convention. The codes have been replaced by the Y49 and A1181 codes.

6.6 The instrument implements these amendments to the Basel Convention by reflecting the same changes to waste codes in UK legislation. Specifically the instrument will:

- Add the two new waste codes – Y49 and A1181 – to the WSR.
- Delete codes B1110, B4030 GC010 and GC020 from the WSR and EUR 2007/1418 .

6.7 GC010 and GC020 are WEEE codes from the OECD Decision. The deletion of these codes reflects the UK's decision to apply PIC for the transboundary movement of WEEE to all parties, whether they are OECD member countries or not.

6.8 All these changes will be effective from 1 January 2025.

Why was this approach taken to change the law?

6.9 This approach is the most effective way of changing the law. The Basel Convention and OECD Decision are implemented in the UK through the waste shipment regulations, and the most effective way to implement changes to the Basel Convention is to amend the legislation that implements it in UK law.

7. Consultation

Summary of consultation outcome and methodology

7.1 There were consultations with stakeholders on the proposed changes prior to COP-15 of the Basel Convention. Defra officials engaged with industry stakeholders in 2021 and early 2022. These included several trade groups representing WEEE export companies and the WEEE sector more generally, including the Industry Council for Electronic Equipment Recycling, the Chartered Institution of Wastes Management, the Environmental Services Association, the European Electronics Recyclers Association, techUK and the Approved Authorised Treatment Facilities (AATF) Forum. Although there were some concerns expressed over potential increased costs associated with the wider scope of PIC, they were generally content given the clarity this would bring for the requirements around exports of all WEEE.

7.2 The views of these stakeholders were helpful in developing the UK position on the proposals to amend the Basel Convention prior to COP-15 of the Basel Convention and in negotiations on amending the OECD decision.

7.3 This instrument implements the amendments to the Basel Convention and does not go beyond the changes necessary to give effect to those amendments. A consultation on implementing the amendments to the Basel Convention was not undertaken as any views expressed during such a consultation would not have materially affected the obligation of the government of UK to implement these amendments as a Party to the Basel Convention.

7.4 Waste shipments is a reserved policy area. The devolved governments were consulted on the approach taken during the drafting of this instrument and were given the opportunity to propose amendments to the text.

8. Applicable Guidance

8.1 The instrument will be enforced by the Environment Agency, the Scottish Environment Protection Agency and Natural Resources Wales. Guidance developed

by the regulators has been circulated to businesses engaged in WEEE shipments. The legislation will be enforced in accordance with this guidance. The Environment Agency's guidance was published on 26 September 2024.[3]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the impact to business is expected to be relatively low, but a de minimis assessment has been prepared. From 2025 to 2035, the overall cost to businesses is expected to be £18.5 million, with an equivalent annual net direct cost of £2 million.

Impact on businesses, charities and voluntary bodies

9.2 The impact on businesses, charities or voluntary bodies is £2 million annually, for those businesses, charities or voluntary bodies that are engaged in the export of WEEE. These costs are made up of:

- notification fees for businesses exporting WEEE that are paid to competent authorities in the UK and in the destination country
- financial guarantees or equivalent insurance that are required to be in place before a shipment can be approved in order to cover the cost if the shipment does not go ahead
- other familiarisation costs of the new regulations for businesses

9.3 This instrument applies to activities that are undertaken by small businesses.

9.4 No specific action has been taken to minimise regulatory burdens on small businesses. The instrument gives effect to amendments to the Basel Convention. It is not possible to exempt small business from the measures within the instrument because doing so would contravene the UK's obligations under the Basel Convention.

9.5 The impact on the public sector constitutes additional regulatory burden on the relevant competent authorities: the Environment Agency, the Scottish Environmental Protection Agency and Natural Resources Wales. There will likely be a small increase in time spent by the competent authorities assessing applications from exporters of WEEE, and on inspection and enforcement measures to ensure that the new requirements under the instrument are being met. The UK's competent authorities charge exporters seeking to export waste through the PIC procedure, and so will be able to recover costs from processing the exports of WEEE.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the effectiveness of this legislation will be monitored closely, and any amendments made if necessary.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Minister Hardy has made the following statement:

[3] Environment Agency Guidance on Importing and exporting waste electrical and electronic equipment (WEEE) https://www.gov.uk/guidance/importing-and-exporting-waste-electrical-and-electronic-equipment-weee, retrieved 15 October 2024.

"I consider a review provision would be disproportionate and undesirable for the following policy reasons, the Regulations are required to implement our international obligations under the Basel Convention and they provide certainty to businesses on the international regulatory framework in respect of shipments of waste electrical and electronic equipment"

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State (Minister for Water and Flooding) has made the following statement regarding Human Rights:

"In my view the provisions of The International Waste Shipments (Amendment) Regulations 2024) are compatible with the Convention rights.".

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").