EXPLANATORY MEMORANDUM TO

THE WASTE (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2014

2014 No. 656

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. Purpose of the instrument

2.1 The purpose of the instrument is to amend the Waste (England and Wales) Regulations 2011 (S.I. 2011/988) ("the Waste Regulations") in order to clarify that the transfer of controlled waste may be recorded on alternative documentation, such as invoices, instead of waste transfer notes and to make other amendments relevant to the registration of waste carriers, brokers and dealers.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Waste Regulations transpose, for England and Wales, Directive 2008/98 EC of the European Parliament and of the Council on waste. Of particular relevance to this instrument are Articles 15 and 26 of that Directive.

4.2 Regulation 35 (which is amended by this instrument) of the Waste Regulations contains provisions relating to the duty of care applicable to the transfer of waste, as provided for in section 34(1)(c) of the Environmental Protection Act 1990 (which also transposes Article 15 of Directive 2008/98/EC), and in particular, relating to the making and retention of documentation for the purposes of complying with that duty.

4.3 The Waste Regulations revoked most of the provisions of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 (S.I. 1991/2839) ("the 1991 Regulations") for England and Wales meaning that certain provisions relating to the registration of waste carriers were lost. This instrument inserts replacement provisions into the Waste Regulations to address this.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

5.2 As waste is a devolved area, Scotland and Northern Ireland have similar but not identical waste practices.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Regulation 35 of the Waste Regulations sets out what must be recorded in the written description when controlled waste is transferred from one party to another in accordance with the duty in section 34(1)(c) of the Environmental Protection Act 1990. This description is currently defined in the Waste Regulations as "the transfer note" commonly known as the "waste transfer note". The instrument substitutes the wording "the transfer note" with "waste information" in order to clarify that alternative documentation, such as invoices, may be used.

7.2 The Red Tape Challenge stated that some small businesses find it burdensome to fill in waste transfer notes. The instrument will allow greater flexibility by clarifying that other forms of documentation, such as invoices (or other "waste information") may be used to record the written description.

7.3 In response to the Red Tape Challenge, Defra held a public consultation from 9 December 2013 until 20 January 2014. The consultation proposed to make three amendments to the Waste Regulations, these were:

- To amend regulation 35 to clarify that alternative information can be used to record the written description required when transferring controlled waste instead of waste transfer notes;
- To insert Part10A reinstating procedures similar to those revoked in the 1991 Regulations allowing waste carriers to provide evidence of their authority to carry controlled waste up to 5 working days after the initial request; and providing that authorised copies of registration certificates are adequate for this;
- To amend regulation 29(5) to include additional "relevant convictions" the Environment Agency and the Natural Resources Body for Wales can take into account when registering waste carriers, brokers and dealers to include offences relating to metal theft and the handling of stolen metal and fraud. Currently, the relevant convictions in regulation 20(5) only cover waste and environment offences.
- To insert provisions into regulation 29 relating to the making of copies of certificates of registration thereby reinstating provisions similar to those revoked in the 1991 Regulations.

8. Consultation outcome

8.1 As the proposal for alternative information stemmed from the Red Tape Challenge and the two amendments to waste carrier legislation were classed as minor by the Cabinet Office, we ran a shortened public consultation of 6 weeks. Defra held a public consultation directly contacting over 700 key stakeholders inviting their views on the consultation. 60 respondents responded to the main proposal regarding alternative documentation with 20 (33.3%) respondents in support, 35 (58.3%) against and 5 (8.3%) respondents with no strong view either way. 43 of the 45 (95.5%) respondents who answered were in support of inserting Regulation 10A. 47 out of 50 (94%) respondents who answered were in support of amending Regulation 29(5).

8.2 Despite a ratio of almost 2 to 1 against the proposal for alternative information there was no overriding reason given to underpin the objection.
More detailed analysis on the response to the consultation is to be published on Gov.uk.

9. Guidance

9.1 The Waste Management Duty of Care Code of Practice provides a comprehensive guide around the transfer of controlled waste. It currently requires revising and is due to be updated and re published in 2014.

10. Impact

10.1 The amendment to regulation 35 is aimed at providing greater flexibility for business, charities or voluntary bodies and reducing the burden on them. As the amendment is a permissive change, if businesses find that alternative information costs more they will naturally choose to continue using waste transfer notes or migrate to the Electronic Duty of Care. The amendments relating to the registration of waste carriers, brokers and dealers are not expected to incur additional costs or burdens to legitimate businesses.

10.2 There is not expected to be an impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The instrument applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to allow those who transfer waste to record the required information in any way that meets the requirements of regulation 35. This will present small businesses with three ways to record the transfer of their waste. If small businesses find that using alternative forms of information does not provide an easier way of recording the information, they may continue to use waste transfer notes or migrate to the new Electronic Duty of Care.

11.3 As part of its consultation exercise, Defra worked with the Federation of Small Businesses to ensure what was proposed concerning alternative information would be particularly beneficial to small businesses. The Federation of Small Businesses has confirmed its support for alternative information.

12. Monitoring & review

12.1 The Waste Regulations (regulation 49) require the Secretary of State to carry out a review of the Waste Regulations in relation to England and to set out his conclusions in a published report. The first such report is due within 5 years of 1st October 2012 and subsequent reports are due every 5 years thereafter. The review and reports will therefore encompass the amendments being made by this instrument.

13. Contact

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