

The Transfrontier Shipment of Waste Ordinance, 1999

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The Transfrontier Shipment of Waste Ordinance, 1999

THE STATES, in pursuance of their Resolution of the 27th day of March, 1996^a, and in exercise of the powers conferred upon them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^b, hereby order:-

Regulation to have effect in Guernsey.

1. Council Regulation (EEC) No. 259/93 of the 1st February, 1993^c on the supervision and control of shipments of waste within, into and out of the European Community ("**the Regulation**") shall have full force and effect in Guernsey.

Competent authority of dispatch and destination.

2. The States Board of Health ("**the Board**") shall be the competent authority of dispatch and destination in relation to Guernsey for the purposes of the Regulation.

Competent authority of transit.

3. The Board shall be the competent authority of transit in relation to Guernsey for the purposes of the Regulation.

Correspondent.

4. The States Advisory and Finance Committee ("**the Committee**")

^a Article VIII of Billet d'État No. IV of 1996.

^b Order in Council No. III of 1994.

^c Amended by Commission decisions 94/721/EC and 96/660/EC and by Council Regulation (EC) 120/97.

shall be the correspondent in relation to Guernsey for the purposes of the Regulation.

Transmission of notification by Board.

5. (1) If the Board decides, in relation to the notifications referred to in Article 3(1), 6(1) or 15(1) relating to shipments of waste dispatched from Guernsey, or in relation to any class of such notifications, to transmit the notification itself to the competent authority of destination, with copies to the consignee and to any competent authority of transit, it shall give notice by advertisement of that decision.

(2) A notice of a decision under subsection (1) shall describe the notifications to which the decision applies; and the decision shall take effect 14 days after publication of the notice.

(3) Where a decision under subsection (1) takes effect, a notifier who intends to make a shipment of waste which requires a notification to which the decision applies shall send the required notification to the Board and shall not send copies of that notification to any other competent authority or to the consignee.

(4) Subject to subsection (5), where the Board receives a notification in accordance with subsection (3) it shall, within 3 working days of receipt, transmit it to the competent authority of destination, with copies to the consignee and to any competent authority of transit.

(5) Where the notification relates to the shipment of waste for disposal, subsection (4) shall not apply if the Board has immediate objections to raise against the shipment in accordance with Article 4(3).

(6) Where the Board has published notice of a decision under this

section, the Board may withdraw the notice at any time by giving notice by advertisement of the withdrawal; and the withdrawal shall take effect 14 days after publication of the notice.

(7) In this section "**notice by advertisement**" means a notice published in La Gazette Officielle.

Financial guarantees or equivalent insurance.

6. (1) No person shall ship waste into or out of Guernsey unless a certificate has been issued in relation to the shipment under this section.

(2) An application for a certificate under this section shall be made to the Board.

(3) On receipt of an application under subsection (2) the Board shall issue the certificate requested if satisfied that there is in force in respect of the shipment, or that there will be in force at the time the waste is shipped into or out of Guernsey, a financial guarantee or equivalent insurance satisfying the requirements of Article 27.

(4) The Board shall make its decision on an application under subsection (2) -

(a) in the case of a shipment to which Article 3 applies, within 20 days following receipt of the application if the Board is the competent authority of dispatch or transit or within 30 days if the Board is the competent authority of destination;

(b) in the case of a shipment to which Article 6 applies,

within 30 days following receipt of the application;

- (c) in the case of a shipment to which Article 15 applies, within 70 days following receipt of the application;
- (d) in the case of a shipment to which Article 20 applies, within 60 days following receipt of the application if the Board is the competent authority of transit or within 70 days if the Board is the competent authority of destination;
- (e) in the case of a shipment to which Article 23 applies, within 60 days following receipt of the application if the Board is the last competent authority of transit within the Community or otherwise within 20 days.

(5) The Board shall, if satisfied as mentioned in subsection (3), issue a certificate to that effect.

Power of Board to ensure return of waste.

7. (1) Where the Board is required by Article 25(1) or 26(2) to ensure that waste is returned to Guernsey, the Board may serve a notice on the notifier concerned under subsection (2).

(2) A notice served under this subsection shall require the notifier to return the waste to the place in Guernsey specified in the notice by the date so specified.

(3) The date specified in a notice served under subsection (2) shall allow the notifier a reasonable time to comply with the notice having regard,

in particular, to the location of the waste at the time the notice is served.

(4) Where a notifier fails to comply with a notice served on him under subsection (2), the Board may serve a further notice on him stating that the Board intends to act as his agent to effect the return of the waste to Guernsey in order to fulfil the Board's obligations under Article 25(1) or 26(2), as the case may be.

(5) Where the Board serves a notice under subsection (4), it may act as the agent of the notifier so far as is necessary to effect the return of the waste to Guernsey in order to fulfil the Board's said obligations; and the notifier shall provide the Board with such information and assistance as the Board may reasonably request in writing to enable it to effect the return of the waste.

(6) Where the Board acts under subsection (5) it shall be deemed to be the duly authorised agent of the notifier acting within the scope of its authority, and may recover its costs accordingly.

Power of Board to ensure disposal or recovery of waste.

8. (1) Where the Board is required by Article 26(3) to ensure the disposal or recovery of waste in an environmentally sound manner, the Board may serve a notice on the consignee concerned under subsection (2).

(2) A notice served under this subsection shall require the consignee to ensure the disposal or recovery of waste in an environmentally sound manner in accordance with the notice and by the date specified in the notice.

(3) The date specified in a notice served under subsection (2) shall allow the consignee a reasonable time to comply with the notice.

(4) Where a consignee fails to comply with a notice served on him under subsection (2), the Board may serve a further notice on him stating that the powers set out in subsection (5) will be exercised by the Board so far as is necessary to enable it to effect the disposal or recovery of the waste in order to fulfil its obligations under Article 26(3).

(5) Pursuant to a notice under subsection (4), an officer of the Board may, on production if so required of his authority-

- (a) enter any land which he has reason to believe it is necessary for him to enter and, on entering any land, take with him -
 - (i) any person duly authorised by the Board and, if he has reasonable cause to apprehend any obstruction in the execution of the powers conferred by this subsection, an officer of police; and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (b) make such examination and investigation as may in any circumstances be necessary;
- (c) remove any waste from the land, or arrange for its removal, for its disposal or recovery; and
- (d) dispose of or recover any waste, or arrange for its

disposal or recovery.

(6) An officer of the Board may exercise any of the powers conferred by subsection (5) so far as is necessary to enable him to effect the disposal or recovery of the waste in order to fulfil the Board's obligations under Article 26(3); and the consignee shall provide the officer and the Board with such information and assistance as the officer or the Board may reasonably request in writing to enable the Board to fulfil those obligations.

Powers of officers of customs and excise.

9. (1) On a request made upon him by the Board for the purpose of facilitating the exercise of any function conferred on it by the Regulation or this Ordinance, an officer of customs and excise may detain, for not more than 3 working days, any waste specified in the request which has been imported into Guernsey or brought to a place for the purpose of being exported from Guernsey.

(2) Anything detained under this section shall be dealt with during the period of its detention in such manner as the States Board of Administration may direct.

(3) Without prejudice to the provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^d, the master of every ship and the commander of every aircraft which arrives in Guernsey from a port or place outside Guernsey -

(a) shall declare to an officer of customs and excise any waste carried in that ship or aircraft;

^d Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

- (b) shall declare to such an officer all waste which is to be unloaded from that ship or aircraft in Guernsey;

and such an officer may, for the purpose of enabling him to determine whether or not any such waste is being carried and, if so, any fact or circumstance in connection with the waste and the carriage thereof, require the master or commander -

- (i) to answer any question put to him by the officer; and
- (ii) to produce any document or information in his custody, possession or power as the officer may reasonably require.

(4) Expressions used in subsection (3) shall, to the extent that a meaning is not assigned to them by this Ordinance, have the meanings given by the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972.

Objections to shipments under waste management plan.

10. (1) The Board shall prepare and submit to the States for approval a management plan for the importation and exportation of waste ("**the plan**") in accordance with Article 7 of Council Directive 75/442/EEC which shall contain the States' policies in relation to the import and export of waste for recovery or disposal into and out of Guernsey.

(2) Any provision in the plan relating to the prevention of imports or exports of waste for disposal shall be in accordance with the principles referred to in Article 4(3)(a)(i), but shall be subject to Article 4(3)(a)(ii) and (iii).

(3) For the purpose of preventing movements of waste which are not in accordance with the plan, the Board shall, within the applicable time limit -

(a) object to any shipment of waste notified under Article 3(1) or 20(1) which the plan indicates should not be imported into Guernsey;

(b) object to any shipment of waste notified under Article 3(1) or 15(1) which the plan indicates should not be exported from Guernsey.

(4) In the case of shipments of waste to which Article 7(4) applies, the Board shall, within the applicable time limit, raise reasoned objections under the first indent of Article 7(4)(a) to prevent movements of waste which are not in accordance with the plan.

(5) The plan shall, subject to the provisions of subsection (2), reflect the principles set out in the Strategic and Corporate Plan prepared by the Committee under section 2 of the Island Development (Amendment) (Guernsey) Law, 1990^e.

Offences.

11. (1) A person who contravenes a provision of the Regulation in Guernsey so that waste is shipped in circumstances which are deemed to be illegal traffic under Article 26 is guilty of an offence.

(2) A person who transports, recovers, disposes of or otherwise handles waste in Guernsey in contravention of a condition imposed under the

^e Ordres en Conseil Vol. XXXII, p. 33.

Regulation on the shipment of waste is guilty of an offence.

(3) A consignee who, in relation to waste shipped to Guernsey, fails to send a certificate of disposal or recovery pursuant to Article 5(6), 8(6) or 20(9), as the case may be, within the time limit set out in the applicable Article, or sends a certificate which is false, deceptive or misleading in a material particular, is guilty of an offence.

(4) A person who contravenes section 6 is guilty of an offence.

(5) A person who, for the purpose of obtaining a certificate under section 6, supplies information to the Board which is false, deceptive or misleading in a material particular is guilty of an offence.

(6) A person who, in Guernsey, mixes wastes which are the subject of different notifications during shipment contrary to Article 29 is guilty of an offence.

(7) A notifier who ships waste from Guernsey without having entered into a contract with the consignee in accordance with Article 3(6), 6(6) or 15(4) where required to do so by the Regulation is guilty of an offence.

(8) A notifier who ships waste from Guernsey which is required to be accompanied by the information set out in Article 11, signed as required by that Article, and which is not so accompanied whilst in Guernsey, is guilty of an offence.

(9) A person who fails to comply with a notice served on him under section 7(2) or 8(2) is guilty of an offence.

(10) A person who without reasonable excuse, proof whereof shall lie on him, obstructs or fails to give all reasonable assistance to-

- (a) an officer of the Board, a person duly authorised by the Board or an officer of police in the exercise or purported exercise of his powers under section 8; or
- (b) an officer of customs and excise in the exercise or purported exercise of his powers under section 9;

is guilty of an offence.

(11) A person who -

- (a) without reasonable excuse, proof whereof shall lie on him, contravenes section 9(3)(a) or (b);
- (b) in purported compliance with any provision of or requirement under section 9(3) -
 - (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
 - (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;
 - (iii) produces or furnishes or causes or permits to

be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or

(iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular;

(c) without reasonable excuse, proof whereof shall lie on him, fails to comply with any requirement of an officer of customs and excise under section 9(3)(i) or (ii);

is guilty of an offence; provided always that a statement made by a person to an officer of customs and excise in response to a requirement imposed under section 9(3)(i) or (ii) may not be used in evidence against him except in proceedings under paragraph (b) or (c) of this subsection or in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

Offences due to default of another.

12. Where the commission by any person of an offence under section 11 is due to the act or default of another person, the latter is guilty of the offence and may be proceeded against and punished accordingly, whether or not proceedings are taken against the former.

Offences by bodies corporate.

13. (1) Where an offence under section 11 is committed by a body

corporate and is proved to have been committed with the consent or connivance of, or to be attributable to or to have been facilitated by any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

Defences.

14. (1) In proceedings against a person for an offence under section 11 it shall be a defence for him to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) In proceedings against a person for an offence under section 11(2) it shall be a defence for him to show that he was not reasonably able to comply with the condition concerned by reason of an emergency.

(3) In proceedings for an offence under section 11(3) on the grounds that the consignee has not sent a certificate of disposal or recovery within the applicable time limit, it shall be a defence for the consignee to show-

- (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.

Penalties.

- 15.** A person guilty of an offence under section 11 shall be liable -
- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months or to both;
 - (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.

Notices.

16. (1) A notice to be served on a notifier under section 7 or on a consignee under section 8 may be served by being delivered to him or by being left at, or sent by post to, the address given for him on the consignment note relating to the shipment of waste in relation to which the notice is served.

- (2) Any such notice may be served -
- (a) in the case of a body corporate, on a director thereof or on the secretary or clerk thereof; and
 - (b) in the case of a partnership, on a partner or on a person having control or management of the partnership business.
- (3) A document sent by post shall, unless the contrary is shown,

be deemed for the purposes of this Ordinance to have been received -

- (a) in the case of a document sent to an address in the United Kingdom, Channel Islands or Isle of Man, on the third day after the day of posting;
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting;

excluding in each case any non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^f.

(4) Service of a document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

Registration of dealers and brokers.

17. (1) The Board shall establish and maintain a register of establishments and undertakings which arrange as dealer or broker for the disposal or recovery of waste.

(2) The register shall be available for public inspection during ordinary office hours.

(3) The register shall contain the following information in relation to each such establishment or undertaking registering with the Board under this section -

^f Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; and No. XI of 1993; see also Guernsey S. I. 1993/28.

- (a) the name of the establishment or undertaking;
- (b) the address of its principal place of business; and
- (c) the address of any place at or from which it carries on business.

(4) No establishment or undertaking may register with the Board under this section unless it conforms to such standards and complies with such terms and conditions as the Board may in its absolute discretion think fit.

(5) An establishment or undertaking not registered with the Board under this section shall not be a registered dealer or registered broker for the purposes of Article 2.

Interpretation.

18. (1) In this Ordinance, unless the context otherwise requires -

"**Article**", in the case of an Article bearing a number, means the Article of the Regulation bearing that number;

"**the Board**" means the States Board of Health;

"**the Committee**" means the States Advisory and Finance Committee;

"**contravention**" includes failure to comply, and cognate expressions shall be construed accordingly;

"**Guernsey**" means the islands of Guernsey, Herm and Jethou;

"**officer of customs and excise**" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^g;

"**officer of police**" means a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey;

"**the plan**" has the meaning given by section 10;

"**the Regulation**" has the meaning given by section 1;

and other expressions used in this Ordinance have the meanings given by the Regulation.

(2) Any reference in this Ordinance to an enactment, statutory instrument or Community provision (within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994) is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied.

Citation.

19. This Ordinance may be cited as the Transfrontier Shipment of Waste Ordinance, 1999.

Commencement.

20. This Ordinance shall come into force on the 1st May, 1999.

^g Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.