ORDINANCE
OF THE STATES OF DELIBERATION

ENTITLED

The Transfrontier Shipment of Waste Ordinance, 2002 *

[CONSOLIDATED TEXT]

NOTE

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* No. I of 2002, Recueil d'Ordonnances Tome XXIX, p. 1; as amended by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207). This Ordinance has been repealed by the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018 (No. ** of 2018).

ORDINANCE

OF THE STATES OF DELIBERATION

ENTITLED

The Transfrontier Shipment of Waste Ordinance, 2002

ARRANGEMENT OF SECTIONS

1. Regulation to have effect in Guernsey.
2. Competent authority of dispatch and destination.
3. Competent authority of transit.
4. Correspondent.
5. Transmission of notification by the Committee for Health & Social Care.
6. Financial guarantees or equivalent insurance.
7. Power of the Committee for Health & Social Care to ensure return of waste.
8. Power of the Committee for Health & Social Care to ensure disposal or recovery of waste.
9. Power of officer of customs and excise.
10. Objections to shipments under waste management plan.
11. Offences.
12. Offences due to default of another.
13. Offences by bodies corporate.
14. Defences.
15. Penalties.
16. Notices.
17. Registration of dealers and brokers.
18. Power to amend Schedule.
19. Interpretation.
20. Repeal.
21. Citation.
22. Commencement.

SCHEDULE Council Regulation (EEC) No 259/93.

REPEALED

(*Made on the 30th January, 2002*.)

The Transfrontier Shipment of Waste Ordinance, 2002

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 as set out in the Schedule hereto (**"the Regulation"**) shall have full force and effect in Guernsey, subject to the adaptations, exceptions and modifications made therein.

Competent authority of dispatch and destination.

2. The States of Guernsey [Committee for Health & Social Care] (**"[the Committee for Health & Social Care]"**) shall be the competent authority of dispatch and destination in relation to Guernsey for the purposes of the Regulation.

NOTE

In section 2, the words in the first and second pairs of square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 5 and section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.[1]

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.

REPEALED

Competent authority of transit.

3. [The Committee for Health & Social Care] acting on behalf of the Secretary of State shall be the competent authority of transit in relation to Guernsey for the purposes of the Regulation.

NOTE

In section 3, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Correspondent.

4. The States of Guernsey [Policy & Resources Committee] (**"the Committee"**) shall be the correspondent in relation to Guernsey for the purposes of the Regulation.

NOTE

In section 4, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.[2]

Transmission of notification by [the Committee for Health & Social Care].

5. (1) If [the Committee for Health & Social Care] decides, in relation to the notifications referred to in Article 4(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

REPEALED

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 Committee for Health & Social Care] and shall not send copies of that notification to any other competent authority or to the consignee.

(4) Subject to subsection (5), where [the Committee for Health & Social Care] receives a notification in accordance with subsection (3) it shall, within 5 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 Committee for Health & Social Care] has immediate objections to raise against the shipment.

(6) Where [the Committee for Health & Social Care] has published notice of a decision under this section, [the Committee for Health & Social Care] 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.

NOTE

In section 5, the words "the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

REPEALED

Financial guarantees or equivalent insurance.

6. (1) Subject to sub-section (6) 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 Committee for Health & Social Care].

(3) Subject to sub-section (6) on receipt of an application under subsection (2) [the Committee for Health & Social Care] 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 16.

(4) [The Committee for Health & Social Care] shall make its decision on an application under subsection (2) –

(a) in the case of a shipment to which Article 4 applies, within 70 days following receipt of the application,

(b) in the case of a shipment to which Article 12 applies, within 60 days following receipt of the application.

(5) [The Committee for Health & Social Care] shall, if satisfied as mentioned in subsection (3), issue a certificate to that effect.

(6) No shipment of waste into Guernsey from Alderney shall require a certificate under this section where it is shipped by the States of Guernsey acting in pursuance of its obligations and responsibilities to undertake the transferred services as provided for in the Alderney (Application of Legislation) Law, 1948 as

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amended from time to time.

NOTE

In section 6, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Power of [the Committee for Health & Social Care] to ensure return of waste.

7. (1) Where [the Committee for Health & Social Care] is required by Article 14(1) or 15(2) to ensure that waste is returned to Guernsey, [the Committee for Health & Social Care] 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 Committee for Health & Social Care] may serve a further notice on him stating that [the Committee for Health & Social Care] intends to act as his agent to effect the return of the waste to Guernsey in order to fulfil [the Committee for Health & Social Care]'s obligations under Article 14(1) or 15(2), as the case may be.

(5) Where [the Committee for Health & Social Care] serves a notice under subsection (4), it may act as the agent of the notifier so far as is

REPEALED

necessary to effect the return of the waste to Guernsey in order to fulfil [the Committee for Health & Social Care]'s said obligations; and the notifier shall provide [the Committee for Health & Social Care] with such information and assistance as [the Committee for Health & Social Care] may reasonably request in writing to enable it to effect the return of the waste.

(6) Where [the Committee for Health & Social Care] 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.

NOTE

In section 7, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Power of [the Committee for Health & Social Care] to ensure disposal or recovery of waste.

8. (1) Where [the Committee for Health & Social Care] is required by Article 15(3) to ensure the disposal or recovery of waste in an environmentally sound manner, [the Committee for Health & Social Care] 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

REPEALED

under subsection (2), [the Committee for Health & Social Care] may serve a further notice on him stating that on the land or at the premises specified in the notice the powers set out in subsection (5) will be exercised by [the Committee for Health & Social Care] 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 15(3).

(5) Pursuant to a notice under subsection (4), an officer of [the Committee for Health & Social Care] may, on production of a warrant issued by the Bailiff –

(a) enter any land or premises specified in the notice which he has reason to believe it is necessary for him to enter and, on entering any land or premises take with him –

(i) any person duly nominated by [the Committee for Health & Social Care] 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 premises specified in the notice, or arrange for its removal, for its disposal or for its recovery, and

REPEALED

(d) dispose of or recover any waste, or arrange for its disposal or recovery.

(6) An officer of [the Committee for Health & Social Care] 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 Committee for Health & Social Care]'s obligations under article 15(3); and the consignee shall provide the officer and [the Committee for Health & Social Care] with such information and assistance as the officer or [the Committee for Health & Social Care] may reasonably request in writing to enable [the Committee for Health & Social Care] to fulfil those obligations.

(7) An officer of [the Committee for Health & Social Care] may, for the purposes of ensuring compliance with a notice served under subsection (4), apply to the Bailiff for the issue of a warrant.

(8) On such an application the Bailiff may subject to the conditions contained in subsection (9) issue a warrant authorising an officer of [the Committee for Health & Social Care] and such other persons nominated by [the Committee for Health & Social Care] and named in the warrant and any officer of police to enter on any specified land or premises for such period as is necessary to undertake the tasks specified in paragraphs (b) to (d) of subsection (5).

(9) The conditions referred to in subsection (8) are –

(a) that there are reasonable grounds for suspecting that any notice served under subsection (2) has not been complied with, or

(b) that it is not practicable to communicate with any person in occupation of or exercising control over the

REPEALED

land.

NOTE

In section 8, the words "the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Powers of officers of customs and excise.

9. (1) On a request made upon him by the [the Committee for Health & Social Care] 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 of Guernsey [Committee for Home Affairs] 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,

(b) shall declare to such an officer all waste which is to be

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

REPEALED

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.

NOTES

In section 9,

the words in square brackets in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016;

the words in square brackets in subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.[3]

The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.[4]

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Objections to shipments under waste management plan.

10. (1) [The Committee for Health & Social Care] shall prepare and submit to the States for approval a management plan for the importation or 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 export of waste for recovery or disposal.

(2) For the purpose of ensuring environmentally sound management of waste and preventing movements of waste which are not in accordance with the plan, [the Committee for Health & Social Care] shall, within the applicable time limit object to any shipment of waste notified under Article 4(1) which the plan indicates should not be imported into or exported from Guernsey.

(3) In the case of shipments of waste to which paragraph 2(4) of Annex 1 Part 2 of the Regulation applies, [the Committee for Health & Social Care] shall, within the applicable time limit, raise reasoned objections to prevent movements of waste which are not in accordance with the plan.

(4) The plan shall 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.

REPEALED

NOTES

In section 10, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

The Island Development (Amendment) (Guernsey) Law, 1990 has since been repealed by the Land Planning and Development (Guernsey) Law, 2005, section 93, Schedule 3, Part I, paragraph 8, with effect from 6th April, 2009, subject to, first, the savings in section 93 of the 2007 Law and, second, the savings and transitional provisions in the Land Planning and Development (Guernsey) Law, 2005 (Savings and Transitional Provisions) Ordinance,

2007.

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

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

(4) A person who, for the purpose of obtaining a certificate under section 6, supplies information to [the Committee for Health & Social Care] which is false, deceptive or misleading in a material particular is guilty of an offence.

(5) A person who, in Guernsey, mixes wastes which are the subject of different notifications during shipment contrary to Article 18 is guilty of an offence.

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

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

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

REPEALED

(a) an officer of [the Committee for Health & Social Care], a person duly authorised by [the Committee for Health & Social Care] 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.

(9) 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

REPEALED

(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[...].

[(10) However, 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) –

(a) may be used in evidence against him in proceedings other than criminal proceedings, and

(b) may not be used in evidence against him in criminal proceedings except –

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for –

(A) an offence under paragraph (b) or (c) of subsection (9),

REPEALED

(B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.]

NOTES

In section 11,

the words "the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016;

the words omitted in square brackets in subsection (9) were repealed, and subsection (10) was inserted, by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

REPEALED

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.

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

REPEALED

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[e].

(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.

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

REPEALED

17. (1) [The Committee for Health & Social Care] shall establish and maintain a register of establishments and undertakings in Guernsey 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 Committee for Health & Social Care] under this section –

(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 Committee for Health & Social Care] under this section unless it conforms to such standards and complies with such terms and conditions as [the Committee for Health & Social Care] may in its absolute discretion think fit.

(5) An establishment or undertaking not registered with [the Committee for Health & Social Care] under this section shall not in relation to Guernsey be a registered dealer or registered broker for the purposes of Article 2.

NOTE

In section 17, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

REPEALED

Power to amend Schedule.

18. (1) [The Committee for Health & Social Care] may by regulation amend the provisions of the Schedule hereto.

(2) Regulations under subsection (1) may be amended or repealed by subsequent regulations hereunder.

NOTE

In section 18, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Interpretation.

19. (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 as set out in the Schedule hereto bearing that number,

"[**the Committee for Health & Social Care**]" means the States of Guernsey [Committee for Health & Social Care],

"**Committee**" means the States of Guernsey [Policy & Resources Committee],

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

"**officer of customs and excise**" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of

REPEALED

Guernsey) Law, 1972[f],

"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,

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

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.

REPEALED

NOTES

In section 19,

the words in the first and second pairs of square brackets in the definition of the expression "the Committee for Health & Social Care" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(3), Schedule 3, paragraph 6 and section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016;[5]

the words in square brackets in the definition of the expression

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

"Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.[6]

The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.[7]

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.[8]

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

Repeal.

20. The Transfrontier Shipment of Waste Ordinance, 1999[g] is repealed.

Citation.

21. This Ordinance may be cited as the Transfrontier Shipment of Waste Ordinance, 2002.

Commencement.

22. This Ordinance shall come into force on the 1st February, 2002.

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[g] No. IV of 1999.

REPEALED

SCHEDULE

393R0259

Council Regulation (EEC) No 259/93 of 1 February 1993
on the supervision and control of shipments of waste within,
into and out of the European Community

Official Journal L 030 , 06/02/1993 p. 0001 – 0028

Amendments:

Derogation in 194N
*Amended by **397R0120** (OJ L 022 24.01.1997 p.14)*
*Amended by **399D0816** (OJ L 316 10.12.1999 p.45)*

Text:

COUNCIL REGULATION (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130s thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

REPEALED

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the Community has signed the Basle Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal;

Whereas provisions concerning waste are contained in Article 39 of the ACP-EEC Convention of 15 December 1989;

Whereas the Community has approved the Decision of the OECD Council of 30 March 1992 on the control of transfrontier movements of wastes destined for recovery operations;

Whereas, in the light of the foregoing, Directive 84/631/EEC (4), which organizes the supervision and control of transfrontier shipments of hazardous waste, needs to be replaced by a Regulation;

Whereas the supervision and control of shipments of waste within a Member State is a national responsibility; whereas, however, national systems for the supervision and control of shipments of waste within a Member State should comply with minimum criteria in order to ensure a high level of protection of the environment and human health;

Whereas it is important to organize the supervision and control of shipments of wastes in a way which takes account of the need to preserve, protect and improve the quality of the environment;

Whereas Council Directive 75/442/EEC of 15 July 1975 on waste (5) lays down in its Article 5(1) that an integrated and adequate network of waste disposal installations, to be established by Member States through appropriate measures, where necessary or advisable in cooperation with other Member States, must enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move

REPEALED

towards that aim individually, taking into account geographical circumstances or the need for specialized installations for certain types of waste; whereas Article 7 of the said Directive requests the drawing up of waste management plans, if appropriate in cooperation with the Member States concerned, which shall be notified to the Commission, and stipulates that Member States may take measures necessary to prevent movements of waste which are not in accordance with their waste management plans and that they shall inform the Commission and the other Member States of any such measures;

Whereas it is necessary to apply different procedures depending on the type of waste and its destination, including whether it is destined for disposal or recovery;

Whereas shipments of waste must be subject to prior notification to the competent authorities enabling them to be duly informed in particular of the type, movement and disposal or recovery of the waste, so that these authorities may take all necessary measures for the protection of human health and the environment, including the possibility of raising reasoned objections to the shipment;

Whereas Member States should be able to implement the principles of proximity, priority for recovery and self-sufficiency at Community and national levels - in accordance with Directive 75/442/EEC - by taking measures in accordance with the Treaty to prohibit generally or partially or to object systematically to shipments of waste for disposal, except in the case of hazardous waste produced in the Member State of dispatch in such a small quantity that the provision of new specialized disposal installations within that State would be uneconomic; whereas the specific problem of disposal of such small quantities requires cooperation between the Member States concerned and possible recourse to a Community procedure;

Whereas exports of waste for disposal to third countries must be prohibited in order to protect the environment of those countries; whereas exceptions shall apply to exports to EFTA countries which are also Parties to the Basle Convention;

REPEALED

Whereas exports of waste for recovery to countries to which the OECD Decision does not apply must be subject to conditions providing for environmentally sound management of waste;

Whereas agreements or arrangements on exports of waste for recovery with countries to which the OECD Decision does not apply must be subject to periodic review by the Commission leading, if appropriate, to a proposal by the Commission to reconsider the conditions under which such exports take place, including the possibility of a ban;

Whereas shipments of waste for recovery listed on the green list of the OECD Decision shall be generally excluded from the control procedures of this Regulation since such waste should not normally present a risk to the environment if properly recovered in the country of destination; whereas some exceptions to this exclusion are necessary in accordance with Community legislation and the OECD Decision; whereas some exceptions are also necessary in order to facilitate the tracking of such shipments within the Community and to take account of exceptional cases; whereas such waste shall be subject to Directive 75/442/EEC;

Whereas exports of waste for recovery listed on the OECD green list to countries to which the OECD Decision does not apply must be subject to consultation by the Commission with the country of destination; whereas it may be appropriate in the light of such consultation that the Commission make proposals to the Council;

Whereas exports of waste for recovery to countries which are not parties to the Basle Convention must be subject to specific agreements between these countries and the Community; whereas Member States must, in exceptional cases, be able to conclude after the date of application of this Regulation bilateral agreements for the import of specific waste before the Community has concluded such agreements, in the case of waste for recovery in order to avoid any interruption of waste treatment and in the

REPEALED

case of waste for disposal where the country of dispatch does not have or cannot reasonably acquire the technical capacity and necessary facilities to dispose of the waste in an environmentally sound manner;

Whereas provision must be made for the waste to be taken back or to be disposed of or recovered in an alternative and environmentally sound manner if the shipment cannot be completed in accordance with the terms of the consignment note or the contract;

Whereas, in the event of illegal traffic, the person whose action is the cause of such traffic must take back and/or dispose of or recover the waste in an alternative and environmentally sound manner; whereas, should he fail to do so, the competent authorities of dispatch or destination, as appropriate, must themselves intervene;

Whereas it is important for a system of financial guarantees or equivalent insurance to be established;

Whereas Member States must provide the Commission with information relevant to the implementation of this Regulation;

Whereas the documents provided for by this Regulation must be established and the Annexes adapted within a Community procedure,

HAS ADOPTED THIS REGULATION:

SCOPE AND DEFINITIONS

Article 1

1. This Regulation shall apply to shipments of waste within, into and out of Guernsey.

REPEALED

2. The following shall be excluded from the scope of this Regulation:

(a) the offloading to shore of waste generated by the normal operation of ships and offshore platforms, including waste water and residues, provided that such waste is the subject of a specific binding international instrument;

(b) shipments of civil aviation waste;

(c) shipments of radioactive waste as defined in Article 2 of Directive 92/3/Euratom of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community;

(d) shipments of waste mentioned in Article 2 (1) (b) of Directive 75/442/EEC, where they are already covered by other relevant legislation;

3. Shipments of waste destined for recovery only and listed in Annex II shall also be excluded from the provisions of this Regulation except as provided for in Article 6 (2).

Article 2

For the purposes of this Regulation:

(a) waste is as defined in Article 1 (a) of Directive 75/442/EEC;

REPEALED

(b) competent authorities means the competent authorities designated in accordance with Article 5 of the Basle Convention;

(c) competent authority of dispatch means the competent authority, for the area from which the shipment is dispatched;

(d) competent authority of destination means the competent authority, for the area in which the shipment is received, or in which waste is loaded on board before disposal at sea without prejudice to existing conventions on disposal at sea;

(e) competent authority of transit means the single authority designated by the State through which the shipment is in transit;

(f) notifier means any natural person or corporate body to whom or to which the duty to notify is assigned, that is to say the person referred to hereinafter who proposes to ship waste or have waste shipped:

(i) the person whose activities produced the waste (original producer); or

(ii) where this is not possible, a collector licensed to this effect or a registered or licensed dealer or broker who arranges for the disposal or the recovery of waste; or

REPEALED

(iii) where these persons are unknown or are not licensed, the person having possession or legal control of the waste (holder);

(iv) or in the case of import into or transit through Guernsey of waste, the person designated by the laws of the State of dispatch or, when this designation has not taken place, the person having possession or legal control of the waste (holder);

(g) consignee means the person or undertaking to whom or to which the waste is shipped for recovery or disposal;

(h) disposal is as defined in Article 1 (e) of as amended by Council Decision 96/350 EEC;

(i) authorized centre means any establishment or undertaking authorized or licensed by the law of the State in which it is situated.

(j) recovery is as defined in Article 1 (f) of as amended Council Decision 96/350 EEC;

(k) State of dispatch means any State from which a shipment of waste is planned or made;

(l) State of destination means any State to which a shipment of waste is planned or made for disposal or recovery, or for loading on board before disposal at sea

REPEALED

without prejudice to existing conventions on disposal at sea;

(m) State of transit means any State, other than the State of dispatch or destination, through which a shipment of waste is planned or made;

(n) consignment note means the standard consignment note in the form determined from time to time by [the Committee for Health & Social Care];

(o) the Basle Convention means the Basle Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal;

(p) the OECD Decision means the decision of the OECD Council of 30 March 1992 on the control of transfrontier movements of wastes destined for recovery operations;

(q) "MSEU" means Member State of the European Union;

(r) "EFTA" means European free Trade Area.

EXPORTS OF WASTE

Chapter A

Waste for disposal

Article 3 (ex. 14)

REPEALED

1. All exports of waste for disposal shall be prohibited, except those to EFTA countries or MSEU which are also parties to the Basle Convention.

2. However, without prejudice to Articles 14 (2), and 15 (2), exports of waste for disposal to an EFTA country or MSEU shall also be banned:

   (a) where the EFTA country or MSEU of destination prohibits imports of such wastes or where it has not given its written consent to the specific import of this waste;

   (b) if [the Committee for Health & Social Care] in Guernsey has reason to believe that the waste will not be managed in accordance with environmentally sound methods in the EFTA country or MSEU of destination concerned.

3. [The Committee for Health & Social Care] shall require that any waste for disposal authorized for export to EFTA countries or MSEU be managed in an environmentally sound matter throughout the period of shipment and in the State of destination.

Article 4 (ex. 15)

1. The notifier shall send the notification to [the Committee for Health & Social Care] by means of the consignment note and in accordance with Annex 1, Part 1, with copies to the other competent authorities concerned and to the consignee. The consignment note shall be issued by [the Committee for Health & Social Care].

REPEALED

On receipt of the notification, [the Committee for Health & Social Care] shall within five working days send the notifier a written acknowledgement of the notification, with copies to the other competent authorities concerned.

2. [The Committee for Health & Social Care] shall have 70 days following dispatch of the acknowledgement to take its decision authorizing the shipment, with or without conditions, or refusing it. It may also request additional information.

It shall give its authorization only in the absence of objections on its part or on the part of the other competent authorities and if it has received from the notifier the copies referred to in paragraph 3. The authorization shall, where applicable, be subject to any transport conditions referred to in paragraph 4. [The Committee for Health & Social Care] shall take its decision no earlier than 61 days following the dispatch of the acknowledgement.

It may, however, take its decision earlier if it has the written consent of the other competent authorities.

It shall send a certified copy of the decision to the other competent authorities concerned, to the customs office and to the consignee.

3. The notifier shall provide to [the Committee for Health & Social Care] a copy of:

(a) the written consent of the EFTA country or MSEU of destination to the planned shipment;

(b) the confirmation from the EFTA country or MSEU of destination of the existence of a contract between the notifier and the consignee specifying environmentally

REPEALED

sound management of the waste in question; a copy of the contract must be supplied, if requested.

The contract shall also specify that the consignee be required to provide:

- within five working days following the receipt of the waste for disposal, copies of the fully completed consignment note, except for the certification referred to in the second indent, to the notifier and to the competent authority concerned,

- as soon as possible and not later than 180 days following the receipt of the waste, a certificate of disposal under his responsibility to the notifier and to the competent authority concerned. The form of this certificate shall be part of the consignment note which accompanies the shipment.

The contract shall, in addition, stipulate that if a consignee issues an incorrect certificate with the consequence that the financial guarantee is released he shall bear the costs arising from the duty to return the waste to the area of jurisdiction of the competent authority of dispatch and its disposal in an alternative and environmentally sound manner;

(c) written consent to the planned shipment from the other State(s) of transit, unless this (these) State(s) is (are) a

REPEALED

Party (Parties) to the Basle Convention and has (have) waived this in accordance with the terms of that Convention.

4. Under article 6.4 of the Basle Convention the competent authorities of transit have 60 days following the dispatch under 6(4) of the Convention of the acknowledgement in which to lay down conditions in respect of the shipments of waste in their area of jurisdiction.

5. The conditions, are to be forwarded to the notifier, with copies to the other competent authorities concerned.

6. The shipment may be effected only after the notifier has received authorization from [the Committee for Health & Social Care].

7. Once the notifier has received authorization, he shall insert the date of shipment and otherwise complete the consignment note and send copies to the competent authorities concerned five working days before the shipment is made. A copy or, if requested by the competent authorities, a specimen of the consignment note, together with the stamp of authorization, shall accompany each shipment.

   All undertakings involved in the operation shall complete the consignment note at the points indicated, sign it and retain a copy thereof.

   A specimen of the consignment note shall be delivered by the carrier to the customs office of departure when the waste leaves Guernsey.

8. As soon as possible after the waste has left Guernsey, the customs office of departure shall send a copy of the consignment note to the competent authority which issued the authorisation.

REPEALED

9. If, 42 days after the waste has left Guernsey, [the Committee for Health & Social Care] has received no information from the consignee about his receipt of the waste, it shall inform without delay the competent authority of destination.

It shall take action in a similar way if, 180 days after the waste has left Guernsey [the Committee for Health & Social Care] has not received from the consignee the certificate of disposal referred to in paragraph 3.

10. [The Committee for Health & Social Care] may, in accordance with Guernsey legislation, decide to transmit the notification itself instead of the notifier, with copies to the consignee and the competent authority of transit.

[The Committee for Health & Social Care] may decide not to proceed with any notification if it has itself immediate objections to raise against the shipment. It shall immediately inform the notifier of these objections.

11. The information given in paragraphs 1 to 4 shall be treated confidentially and in accordance with any existing national regulations.

Chapter B

Waste for recovery

Article 5 (ex. 16)

1. All exports for recovery of waste listed in Annex V for recovery shall be prohibited except those to countries to which the OECD decision applies.

2. However, without prejudice to Article 14 (2) and 15 (2), exports of waste for

REPEALED

recovery to the countries referred to in paragraph 1 shall be prohibited:

(a) where such a country prohibits all imports of such wastes or where it has not given its consent to their specific import;

(b) if [the Committee for Health & Social Care] has reason to believe that the waste will not be managed in accordance with environmentally sound methods in such a country.

3. [The Committee for Health & Social Care] (where it is the competent authority of dispatch) shall require that any waste for recovery authorized for export be managed in an environmentally sound manner throughout the period of shipment and in the State of destination.

Article 6 (ex. 17)

1. Where such waste is subject to control in the country of destination or where a country of destination has notified under Article 3 of the Basle Convention that it regards certain kinds of waste listed in Annex II as hazardous, exports of such waste to that country shall be subjected to control, [the Committee for Health & Social Care] shall determine in consultation with the country of destination which of the control procedures shall apply, that is those applicable to Annex III or IV or the procedure laid down in Article 4.

2. Where waste listed in Annex III is exported from Guernsey for recovery to countries and through countries to which the OECD Decision applies Annex 1 Part 2 shall apply.

3. Where the waste for recovery listed in Annex IV and waste for recovery

REPEALED

which has not yet been assigned to Annex II, III or IV is exported for recovery to countries and through countries to which the OECD Decision applies, Paragraph 4 of Annex 1 Part 2 shall apply by analogy.

4. In addition, where waste is exported in accordance with paragraphs 2 to 3:

- a specimen of the consignment note shall be delivered by the carrier to the customs office of departure when the waste leaves Guernsey,

- as soon as possible after the waste has left Guernsey, the customs office of departure shall send a copy of the consignment note to [the Committee for Health & Social Care],

- if, 42 days after the waste has left Guernsey, [the Committee for Health & Social Care] has received no information from the consignee about the receipt of the waste, it shall inform without delay the competent authority of destination,

- the contract shall stipulate that, if a consignee issues an incorrect certificate with the consequence that the financial guarantee is released, he shall bear the costs arising from the duty to return the waste to the area of jurisdiction of the competent authority of dispatch and its disposal or recovery in an alternative and environmentally sound manner.

Chapter C

Export of waste to ACP States

Article 7 (ex. 18)

REPEALED

1. All exports of waste to ACP States shall be prohibited.

IMPORTS OF WASTE

Chapter A

Imports of waste for disposal

Article 8 (ex. 19)

1. All imports into Guernsey of waste for disposal shall be prohibited except those from Alderney, Sark and Jersey.

2. [The Committee for Health & Social Care] shall prohibit the bringing of waste into its area of jurisdiction if it has reason to believe that the waste will not be managed in an environmentally sound manner in its area.

Article 9 (ex. 20)

1. Notification shall be made to [the Committee for Health & Social Care] by means of the consignment note in accordance with Annex 1, Part 1 with copies to the consignee of the waste and to the competent authorities of transit. The consignment note shall be issued by [the Committee for Health & Social Care].

   On receipt of the notification, [the Committee for Health & Social Care] shall, within five working days, send a written acknowledgement to the notifier.

2. [The Committee for Health & Social Care] shall authorize the shipment only in the absence of objections on its part. The authorization shall be subject to any transport conditions referred to in paragraph 5.

REPEALED

3. They may also request additional information. These objections shall be conveyed in writing to the notifier, with copies to the other competent authorities concerned.

4. [The Committee for Health & Social Care] shall have 70 days following dispatch of the acknowledgement to take its decision authorizing the shipment, with or without conditions, or refusing it. It may also request additional information.

   It shall send certified copies of the decision to the competent authorities of transit the consignee and the customs office of entry into Guernsey.

   [The Committee for Health & Social Care] shall take its decision no earlier than 61 days following the dispatch of the acknowledgement. It may, however, take its decision earlier if it has the written consent of the other competent authorities.

   [The Committee for Health & Social Care] shall signify its authorization by appropriately stamping the consignment note.

5. [The Committee for Health & Social Care] shall have 60 days following dispatch of the acknowledgement to lay down conditions in respect of the shipment of the waste. These conditions, must be conveyed to the notifier, with copies to the competent authorities concerned.

6. The shipment may be effected only after the notifier has received authorization from [the Committee for Health & Social Care].

7. Once the notifier has received authorization, he shall insert the date of the shipment and otherwise complete the consignment note and send copies to the

REPEALED

competent authorities concerned five working days before the shipment is made. A specimen of the consignment note shall be delivered by the carrier to the customs office of entry into Guernsey.

A copy or, if requested by the competent authorities, a specimen of the consignment note, together with the stamp of authorization, shall accompany each shipment.

All undertakings involved in the operation shall complete the consignment note at the points indicated, sign it and retain a copy.

8. Within five working days following receipt of the waste for disposal, the consignee shall send copies of the completed consignment note, except for the certificate referred to in paragraph 9, to the notifier and the competent authorities concerned.

9. As soon as possible and not later than 180 days following the receipt of the waste, the consignee shall, under his responsibility, send a certificate of disposal to the notifier and the other competent authorities concerned. This certificate shall be part of or attached to the consignment note which accompanies the shipment.

REPEALED

Chapter B

Imports of waste for recovery

Article 10 (ex. 21)

1. All imports of waste for recovery into Guernsey shall be prohibited, except those from Alderney, Sark and Jersey or countries to which the OECD decision applies.

Article 11 (ex. 22)

1. Where waste is imported for recovery from countries and through countries to which the OECD Decision applies, the following control procedures shall apply by analogy:

   (a) for waste listed in Annex III paragraphs 1 to 3 of Annex 1, Part 2;

   (b) for waste listed in Annex IV and waste which has not yet been assigned to Annex II, III or IV: Paragraph 4 of Annex 1 Part 2.

TRANSIT OF WASTE FROM OUTSIDE AND THROUGH GUERNSEY FOR DISPOSAL OR RECOVERY OUTSIDE GUERNSEY

Chapter A

Waste for disposal and recovery (except transit covered by Article 13)

Article 12 (ex. 23)

1. Where waste for disposal and, except in cases covered by Article 13, recovery is shipped through Guernsey, notification shall be effected by means of the consignment note to the competent authority of transit, with copies to the consignee, the other competent authorities concerned and the customs offices where off loaded.

2. The competent authority of transit shall promptly inform the notifier of receipt of the notification. The competent authority shall then respond in writing to

REPEALED

the notifier within 60 days, consenting to the shipment with or without reservations; or imposing, if appropriate, conditions. The competent authority shall send a certified copy of the decision to both the other competent authorities concerned and the customs offices of entry if appropriate.

3. Once the notifier has received authorization, he shall complete the consignment note and send copies to the competent authorities concerned five working days before the shipment is made.

A specimen of the consignment note, together with the stamp of authorization, shall accompany each shipment.

A specimen of the consignment note shall be supplied by the carrier to the customs office of departure if appropriate when the waste leaves Guernsey.

All undertakings involved in the operation shall complete the consignment note at the points indicated, sign it and retain a copy thereof.

Chapter B

Transit of waste for recovery from and to a country to which the OECD Decision applies

Article 13 (ex. 24)

1. Transit of waste for recovery listed in Annexes III and IV from a country and transferred for recovery to a country to which the OECD Decision applies requires notification to the competent authorities of transit.

2. Notification shall be effected by means of the consignment note.

REPEALED

3. On receipt of the notification the competent authority of transit shall send an acknowledgement to the notifier and to the consignee within five working days.

4. The competent authority of transit may raise objections to the planned shipment. Any objection must be provided in writing to the notifier and to the competent authorities of transit of the other Member States concerned within 30 days of dispatch of the acknowledgement.

   In the case of transit of waste listed in Annex IV and waste which has not yet been assigned to Annex II, III or IV, consent must be given in writing prior to commencement of the shipment.

5. The shipment may be effected only in the absence of any objection.

COMMON PROVISIONS

Article 14 (ex. 25)

1. Where a shipment of waste to which the competent authorities concerned have consented cannot be completed in accordance with the terms of the consignment note or the contract referred to Annex 1, Part 1 or Part 2. [The Committee for Health & Social Care] (in cases where it is the competent authority of dispatch) shall, within 90 days after it has been informed thereof, ensure that the notifier returns the waste to its area of jurisdiction or elsewhere within the State of dispatch unless it is satisfied that the waste can be disposed of or recovered in an alternative and environmentally sound manner.

2. In cases referred to in paragraph 1, a further notification shall be made.

3. The obligation of the notifier to take the waste back shall end when the

REPEALED

consignee has issued the certificate referred to in Articles 4(3) and Annex 1 Part 2.

Article 15 (ex. 26)

1. Any shipment of waste effected:

(a) without notification to all competent authorities concerned pursuant to the provisions of this Regulation; or

(b) without the consent of the competent authorities concerned pursuant to the provisions of this Regulation; or

(c) with consent obtained from the competent authorities concerned through falsification, misrepresentation or fraud; or

(d) which is not specified in a material way in the consignment note; or

(e) which results in disposal or recovery in contravention of international rules; or

(f) contrary to Articles 3, 5.

shall be deemed to be illegal traffic.

2. If such illegal traffic is the responsibility of the notifier of the waste, [The Committee for Health & Social Care] (where it is the competent authority of

REPEALED

dispatch) shall ensure that the waste in question is:

(a) taken back by the notifier or, if necessary, by the competent authority itself, into the State of dispatch, or, if impracticable,

(b) otherwise disposed of or recovered in an environmentally sound manner, within 30 days from the time when the competent authority was informed of the illegal traffic or within such other period of time as may be agreed by the competent authorities concerned.

In this case a further notification shall be made.

3. If such illegal traffic is the responsibility of the consignee, [the Committee for Health & Social Care] (where it is the competent authority of destination) shall ensure that the waste in question is disposed of in an environmentally sound manner by the consignee or, if impracticable, by the competent authority itself within 30 days from the time it was informed of the illegal traffic or within any such other period of time as may be agreed by the competent authorities concerned. To this end, [the Committee for Health & Social Care] shall co-operate with the competent authorities concerned, as necessary, in the disposal or recovery of the waste in an environmentally sound manner.

4. Where responsibility for the illegal traffic cannot be imputed to either the notifier or the consignee, [the Committee for Health & Social Care] shall co-operate with the competent authorities concerned to ensure that the waste in question is disposed of or recovered in an environmentally sound manner.

Article 16 (ex. 27)

REPEALED

1. Save for those shipments provided for under sub-section (6) of section 6 of the Ordinance all shipments of waste covered within the scope of this Regulation shall be subject to the provision of a financial guarantee or equivalent insurance covering costs for shipment, including cases referred to in Articles 14 and 15, and for disposal or recovery.

2. Such guarantees shall be returned when proof has been furnished, by means of the certificate of disposal or recovery, that the waste has reached its destination and has been disposed of or recovered in an environmentally sound manner.

Article 17 (ex. 28)

1. While respecting the obligations imposed on him by Annex 1, Part 1 or Part 2 or the applicable articles 4, 6, 9, 11, 12 and 13, the notifier may use a general notification procedure where waste for disposal or recovery having the same physical and chemical characteristics is shipped periodically to the same consignee following the same route. If, in the case of unforeseen circumstances, this route cannot be followed, the notifier shall inform [the Committee for Health & Social Care] (in cases where it is the Competent Authorities concerned) as soon as possible or before the shipment starts if the need for route modification is already known at this time.

   Where the route modification is known before the shipment starts and this involves other competent authorities than those concerned in the general notification, this procedure shall not be used.

2. Under a general notification procedure, a single notification may cover several shipments of waste over a maximum period of one year. The indicated period may be shortened by agreement between the competent authorities concerned.

REPEALED

3. The competent authorities concerned shall make their agreement to the use of this general notification procedure subject to the subsequent supply of additional information. If the composition of the waste is not as notified or if the conditions imposed on its shipment are not respected, the competent authorities concerned shall withdraw their consent to this procedure by means of official notice to the notifier. Copies of this notice shall be sent to the other competent authorities concerned.

4. General notification shall be made by means of the consignment note.

Article 18 (ex. 29)

Wastes which are the subject of different notifications shall not be mixed during shipment.

Article 19 (ex. 31)

1. The consignment note shall be printed and completed and any further documentation and information referred to in Annex 1, Part 2 shall be supplied in a language which is acceptable to the competent authority of:

- dispatch, as referred to in Annex 1, Part 1, or Articles 4 and 6,

- destination, as referred to in Articles 9 and 11, in the case of the import of waste,

- transit, as referred to in Articles 12 and 13.

A translation shall be supplied by the notifier at the request of the other competent authorities concerned in a language acceptable to them.

REPEALED

OTHER PROVISIONS

Article 20 (ex. 33)

1. Appropriate administrative costs of implementing the notification and supervision procedure and usual costs of appropriate analyses and inspections may be charged to the notifier.

2. Costs arising from the return of waste, including shipment, disposal or recovery of the waste in an alternative and environmentally sound manner pursuant to Articles 14(1) and 15(2), shall be charged to the notifier or, if impracticable, to the Member States concerned.

3. Costs arising from disposal or recovery in an alternative and environmentally sound manner pursuant to Article 15(3) shall be charged to the consignee.

4. Costs arising from disposal or recovery, including possible shipment pursuant to Article 15(4), shall be charged to the notifier and/or the consignee depending upon the decision by the competent authorities involved.

Article 21 (ex. 34)

1. Without prejudice to the provisions of Article 15 and to national provisions concerning civil liability and irrespective of the point of disposal or recovery of the waste, the producer of that waste shall take all the necessary steps to dispose of or recover or to arrange for disposal or recovery of the waste so as to protect the quality of the environment.

2. Guernsey shall take all necessary steps to ensure that the obligations laid down in paragraph 1 are carried out.

REPEALED

Article 22 (ex. 35)

All documents sent to or by the competent authorities shall be kept in Guernsey for at least three years by the competent authorities, the notifier and the consignee.

Article 23 (ex. 40)

Guernsey, as appropriate and necessary in liaison with the United Kingdom, shall cooperate with other parties to the Basle Convention and inter-State organizations directly or through the Secretariat of the Basle Convention, inter alia, via the exchange of information, the promotion of environmentally sound technologies and the development of appropriate codes of good practice.

Article 24 (ex. 41)

Guernsey shall draw up a report in accordance with Article 13(3) of the Basle Convention and send it to the United Kingdom annually.

ANNEX 1

Part 1

1. Notification shall be effected by means of the consignment note which shall be issued by:

(a) [the Committee for Health & Social Care] in the case of exports, and

(b) the relevant competent authority of dispatch in the case

REPEALED

of imports.

2. In making notification, the notifier shall complete the consignment note and shall, if requested by competent authorities, supply additional information and documentation.

3. The notifier shall supply on the consignment note information with particular regard to:

- the source, composition and quantity of the waste for disposal including, in the case of Article 2(f)(ii), the producer's identity and, in the case of waste from various sources a detailed inventory of the waste and, if known, the identity of the original producers,

- the arrangements for routing and for insurance against damage to third parties,

- the measures to be taken to ensure safe transport and, in particular, compliance by the carrier with the conditions laid down for transport by the Member States concerned,

- the identity of the consignee of the waste, the location of the disposal centre and the type and duration of the authorization under which the centre operates. The centre must have adequate technical capacity for the disposal of the waste in question under conditions presenting no danger to human health or to the environment,

- the operations involving disposal as referred to in Annex II.A to Directive 75/442/EEC.

4. The notifier must make a contract with the consignee for the disposal of the

REPEALED

waste.

The contract may include some or all of the information referred to in paragraph 3. The contract must include the obligation:

- of the notifier, in accordance with Articles 14 and 15(2), to take the waste back if the shipment has not been completed as planned or if it has been effected in violation of this Regulation,

- of the consignee, to provide as soon as possible and no later than 180 days following the receipt of the waste a certificate to the notifier that the waste has been disposed of in an environmentally sound manner.

A copy of this contract must be supplied to the competent authority on request.

Should the waste be shipped between two establishments under the control of the same legal entity, this contract may be replaced by a declaration by the entity in question undertaking to dispose of the waste.

5. The information given in accordance with paragraphs 2 to 4 shall be treated confidentially and in accordance with any existing national regulations.

6. [The Committee for Health & Social Care] in cases where it is the competent authority of dispatch may, in accordance with national legislation, decide to transmit the notification itself instead of the notifier to the competent authority of destination, with copies to the consignee and to the competent authority of transit.

[The Committee for Health & Social Care] in cases where it is the competent authority of dispatch may decide not to proceed with notification if it has itself

REPEALED

immediate objections to raise against the shipment. It shall immediately inform the notifier of these objections.

Part 2

Paragraph 1

1. Where the notifier intends to ship waste for recovery listed in Annex III and/or pass it in transit, and without prejudice to Articles 14(2) and 15(2), he shall notify the competent authority of destination and send copies of the notification to the competent authorities of dispatch and transit and to the consignee.

2. Notification shall mandatorily cover any intermediary stage of the shipment from the place of dispatch to its final destination.

3. Notification shall be effected by means of the consignment note issued by the competent authority of dispatch.

4. In making notification, the notifier shall complete the consignment note and shall, if requested by competent authorities, supply additional information and documentation.

5. The notifier shall supply on the consignment note information with particular regard to:

   - the source, composition and quantity of the waste for recovery, including the producer's identity and, in the case of waste from various sources, a detailed inventory of the waste and, if known, the identity of the original producer,

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- the arrangements for routing and for insurance against damage to third parties,

- the measures to be taken to ensure safe transport and, in particular, compliance by the carrier with the conditions laid down for transport by the country concerned,

- the identity of the consignee of the waste, the location of the recovery centre and the type and duration of the authorization under which the centre operates. The centre must have adequate technical capacity for the recovery of the waste in question under conditions presenting no danger to human health or to the environment,

- the operations involving recovery as contained in Annex II.B to Directive 75/442/EEC,

- the planned method of disposal for the residual waste after recycling has taken place,

- the amount of the recycled material in relation to the residual waste,

- the estimated value of the recycled material.

6. The notifier must conclude a contract with the consignee for the recovery of the waste.

The contract may include some or all of the information referred to in paragraph 5.

The contract must include the obligation:

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- of the notifier, in accordance with Articles 14 and 15(2), to take the waste back if the shipment has not been completed as planned or if it has been effected in violation of this Regulation,

- of the consignee to provide, in the case of retransfer of the waste for recovery to another country, the notification of the initial country of dispatch,

- of the consignee to provide, as soon as possible and not later than 180 days following the receipt of the waste, a certificate to the notifier that the waste has been recovered in an environmentally sound manner.

A copy of this contract must be supplied to [the Committee for Health & Social Care] on request.

Should the waste be shipped between two establishments under the control of the same legal entity, this contract may be replaced by a declaration by the entity in question undertaking to recover the waste.

7. The information given in accordance with paragraphs 4 to 6 shall be treated confidentially and in accordance with any existing national regulations.

8. [The Committee for Health & Social Care] (in cases where it is the competent authority of dispatch) may, in accordance with national legislation, decide to transmit the notification itself instead of the notifier to the competent authority of destination, with copies to the consignee and to the competent authority of transit.

<u>Paragraph 2</u>

1. On receipt of the notification [the Committee for Health & Social Care] (in

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cases where it is the competent authority of destination) shall send, within five working days, an acknowledgement to the notifier and copies thereof to the other competent authorities and to the consignee.

2. [The Committee for Health & Social Care] (in cases where it is any of the competent authorities of destination, dispatch and transit) shall have 30 days following dispatch of the acknowledgement to object to the shipment. Any objection must be provided in writing to the notifier and to other competent authorities concerned within the 30-day period.

   [The Committee for Health & Social Care] (in cases where it is any of the competent authorities concerned) may decide to provide written consent in a period less than the 30 days.

   Written consent or objection may be provided by post, or by telefax followed by post. Such consent shall expire within one year unless otherwise specified.

3. [The Committee for Health & Social Care] (where it is any of the competent authorities of dispatch, destination and transit) shall have 20 days following the dispatch of the acknowledgement in which to lay down conditions in respect of the transport of waste within its jurisdiction. These conditions must be notified to the notifier in writing, with copies to the competent authorities concerned, and entered in the consignment note. They may not be more stringent that those laid down in respect of similar shipments occuring wholly within its jurisdiction and shall take due account of existing agreements, in particular relevant international conventions.

4. [The Committee for Health & Social Care] (where it is any of the competent authorities of destination and dispatch) may raise objections to the planned shipment.

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5. In case of prior written consent, [the Committee for Health & Social Care] (in cases where it is the competent authority) shall signify its authorization by appropriately stamping the consignment note.

Paragraph 3

1. The shipment may be effected after the 30-day period has passed if no objection has been lodged. Tacit consent, however, expires within one year from that date.

   Where the competent authorities decide to provide written consent, the shipment may be effected immediately after all necessary consents have been received.

2. The notifier shall insert the date of shipment and otherwise complete the consignment note and send copies to the competent authorities concerned five working days before the shipment is made.

3. A copy or, if requested by the competent authorities, a specimen of the consignment note shall accompany each shipment.

4. All undertakings involved in the operation shall complete the consignment note at the points indicated, sign it and retain a copy thereof.

5. Within three working days following receipt of the waste for recovery, the consignee shall send copies of the completed consignment note, except for the certificate referred to in paragraph 6, to the notifier and to the competent authorities concerned.

6. As soon as possible and not later than 180 days following receipt of the waste the consignee, under his responsibility, shall send a certificate of recovery of

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the waste to the notifier and the other competent authorities concerned. This certificate shall be part of or attached to the consignment note which accompanies the shipment.

Paragraph 4

1. Shipments of waste for recovery listed in Annex IV and of waste for recovery which has not yet been assigned to Annex II, Annex III or Annex IV shall be subject to the same procedures as referred to in this Part except that the consent of the competent authorities concerned must be provided in writing prior to commencement of shipment.

ANNEXES II to V

Annexes II to V of this Schedule reproduce without modification Annexes II to V of Regulation 259/93 and are accordingly not set out here.

NOTE

In the Schedule, the words "T/the Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016.

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(1) OJ No C 115, 6. 5. 1992, p. 4.

(2) OJ No C 94, 13. 4. 1992, p. 276 and opinion delivered on 20 January 1993 (not yet published in the Official Journal).

(3) OJ No C 269, 14. 10. 1991, p. 10.

(4) OJ No L 326, 13. 12. 1984, p. 31. Directive as last amended by Directive 91/692/EEC (OJ No L 377, 31. 12. 1991, p. 48).

(5) OJ No L 194, 25. 7. 1975, p. 39. Directive as amended by Directive

REPEALED

91/156/EEC (OJ No L 78, 26. 3. 1991, p. 32).

(6) OJ No L 35, 12. 2. 1992, p. 24.

(7) OJ No L 377, 31. 12. 1991, p. 20.

(8) OJ No L 194, 25. 7. 1975, p. 23. Directive as last amended by Directive 91/692/EEC (OJ No L 377, 31. 12. 1991, p. 48).

(9) OJ No L 108, 26. 4. 1976, p. 41.

(10) OJ No L 270, 23. 9. 1987, p. 1.

(11) OJ No L 377, 31. 12. 1991, p. 48.

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1 The words in the first pair of square brackets were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

2 These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), with effect from 6th May, 2004.

3 These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 3(a), with effect from 6th May, 2004.

4 The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Ordinance were previously transferred to and vested in them, respectively, from the Board of Administration and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 3(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

5 The words in the second pair of square brackets were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

6 These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), with effect from 6th May, 2004.

7 The functions, rights and liabilities of the Health and Social Services Department and its Minister arising under or by virtue of this Ordinance were previously transferred to and vested in them, respectively, from the Board of Health and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 4, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

8 The functions, rights and liabilities of the Policy Council and its Minister

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arising under or by virtue of this Ordinance were previously transferred to and vested in them, respectively, from the Advisory and Finance Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

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