

COVID-19 EU EXIT WASTE CONTINGENCY: WASTE & RESOURCES SECTOR FORUM

BRIEFING ON EU EXIT & WASTE MANAGEMENT

UK and Scottish law on waste management has been updated to reflect our new relationship with the EU.

This briefing highlights those areas which a) will not change, b) will change and c) remain unclear at this stage.

What won't change?

New legislation ensures relevant EU law continues to have effect after EU Exit.

Firstly, references in UK and Scottish law to six EU Directives have been updated to ensure their requirements continue to function after EU Exit.

Secondly, some directly applicable EU Regulations and Decisions have been fixed in place, becoming UK 'retained law'.

There is no doubt these amendments have made navigating waste management law more complex. If you have particular queries, please contact nationalwaste@sepa.org.uk. Links to the relevant legislation is provided in the Annex.

The following aspects of waste law will not change in practice at the end of the transition period.

- **Your role and duties as a Waste Collection Authority (as Local Authority)**. This includes the provision on domestic and commercial waste services including those on separate collection. The provisions on charging for services under in the Controlled Waste Regulations 1992 (as amended) are also unaffected.
- **The 'Definition of Waste'**. This includes the core definition in Article 3 of the WFD and the provisions regarding 'by-products' and 'end-of-waste'. These articles must now be read in accordance with the [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019](#) and [The Waste and Environmental Permitting etc. \(Legislative Functions & Amendment etc.\) \(EU Exit\) Regulations 2020](#).
- **The 'Duty of Care'**. You must continue to manage waste in line with S.34 of the Environmental Protection Act 1990 and the Duty of Care Code of Practice.
- **The need for authorisation from SEPA**. Storage, transport, recovery and disposal of waste must still be authorised by SEPA. This includes HWRCs, transfer stations, treatment facilities and landfills.
- **Waste classification**. The European Waste Catalogue continues to apply although powers to amend it has been transferred from the EU to UK and Scottish Ministers. The EU methodology for determining if waste is hazardous remains in place and is set out in Guidance Note WM3.
- **Technical storage & treatment standards**. Storage and treatment standards for hazardous waste, WEEE, batteries and ELVs remain in line with EU Directive requirements. Chapter IV of the Industrial Emissions Directive continues to apply to

municipal waste incineration. Landfill Regulations continue apply to the design and operation of landfill sites and the waste acceptance criteria (WAC) for different categories of landfill is unchanged. The amendments in these areas can be found in [The Environment \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019](#) and main list of 'retained' EU legislation is in [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019](#)

- **Producer responsibility schemes.** The EPR schemes for packaging, WEEE, Batteries and ELVs remain in effect. The main substantive EU-exit related amendments to the EPR schemes are in [The Waste \(Miscellaneous Amendments\) \(EU Exit\) \(No. 2\) Regulations 2019](#) and the [The Waste and Environmental Permitting etc. \(Legislative Functions & Amendment etc.\) \(EU Exit\) Regulations 2020](#).
- **Waste Exports.** Some, but not all, aspects of waste export controls remain the same. The areas which will be unaffected at the end of the transition period include -

'Green List' Waste Exports

- GB exports of green list waste for recovery to the EU and non-EU countries - no changes to waste shipment controls from 1 January 2021. This covers exports of segregated paper, metal, plastic etc, although note on page 2 the tighter quality controls being applied to plastic exports from 01 January due to changes to the Basel Convention (not EU Exit related).

Notifiable 'Amber List' Waste Exports

- All existing notifications will be rolled over by the relevant EU Competent Authorities, with the exception of waste destined for Andalucía, Spain. These still require re-approval by the Spanish government. This covers exports of co-mingled DMR or RDF.

Transport of Waste from Northern Ireland to GB

- There will be no changes to the controls on the transport of waste from Northern Ireland to GB at the end of the transition period.

What will Change?

The main area of change regards the trade in waste with the EU. These changes go beyond waste management law and include changes to customs arrangements and, possibly, tariffs.

- **Imports of EU waste to GB for disposal.** The EU prohibits the export of waste for disposal outside the EU, except to EFTA countries. This means exports of waste from the EU to GB for disposal will be prohibited after the 1 January 2021 under EU Law.
- **Exports of waste from GB to EU for disposal.** UK waste exports for disposal are generally prohibited under the UK Plan for Waste Shipments. Where exports of waste from GB to the EU for disposal are permitted under the UK Plan, the UK Government will need to submit a Duly Reasoned Request to the relevant EU Competent Authority in advance of any notification paperwork.
- **Transport of Waste from GB to Northern Ireland.** Northern Ireland will apply EU legislation on waste shipments for the duration of the Protocol. This means that it will

be necessary to conform with EU waste shipment controls waste exported from Great Britain to Northern Ireland. This includes the system of prior informed consent for wastes that are notifiable under the EU and Basel Convention regimes. Legislation which will give effect to these requirements is being discussed by the UK, the Devolved Governments and will be brought forward shortly. Guidance on the timing for the enactment of these controls in Great Britain will also be provided as soon as possible.

- **Transport of Green List Waste from GB to Northern Ireland.** Once the necessary legislation is in force, 'Green List' waste, which does not require prior notification such as segregated paper, metal and some plastic, will be subject to TFS controls. This means that to transport this type of waste exporters must:
 - Ensure waste is accompanied by a completed Annex VII document,
 - Have a written contract in place between the person who arranges the transport of the waste and the destination facility in Northern Ireland.
 - For waste moving from Scotland to Northern Ireland, Annex VII forms should be submitted to SEPA prior to movement (to Transfrontier@sepa.org.uk).

Exports of Notifiable 'Amber List' Waste from GB to Northern Ireland. Once the necessary legislation is in force, wastes notifiable under the EU and Basel Convention regimes such as co-mingled DMR and RDF will require prior consent from SEPA and the Northern Ireland Environment Agency before the transport of the waste can take place. Before you move the waste you will need:

- Submit an application to SEPA with the relevant fee,
- Arrange a financial guarantee,
- Have a contract with the facility in Northern Ireland,
- Insurance against liability for damage to third parties,
- Permission from SEPA and NIEA.

Changes to the Basel Convention. Although not EU Exit related, significant amendments to the Basel Convention, to strengthen the controls on plastic waste exports, take effect at the same time - on 1st January 2021. This will mean only contaminant free plastics consisting of one type of polymer, which are clearly destined for recycling, will be able to be exported as 'Green List' waste. Mixed loads of plastic from Scotland will be classed as 'Amber list' and require prior consent from SEPA.

What Remains Unclear at this Stage?

Some aspects of the new arrangements are still to be finalised. Further information will be made available as soon as possible about -

- When planned changes to how waste is transported to Northern Ireland will begin.
- Whether UK Government will underwrite insurance and financial guarantees related to notifiable exports to Northern Ireland.

Annex 1 – Key EU Exit Legislation

[The Waste and Environmental Permitting etc. \(Legislative Functions & Amendment etc.\) \(EU Exit\) Regulations 2020](#) - These regulations transfer power to create a 'list of waste' (i.e. the European Waste Catalogue) to UK and Scottish Ministers. They also change the way we should read Articles 5 & 6 (by-products & end-of-waste) of the Waste Framework Directive.

[The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019](#) – These regulations fix out of date and deficient references to EU law in primary legislation such as the Environmental Protection Act 1990 (as amended). They also fix in place a range of directly applicable EU law (Commission Regulations & Decisions) so they continue to have effect after EU Exit. The list of this 'retained EU law' is set out in Part 4 of the Regulations and include, for example, the Waste Acceptance Criteria for Landfill. This legislation has effect across the UK but there are some differences in Scotland which are explicit in the Regulations.

[The Waste \(Miscellaneous Amendments\) \(EU Exit\) \(No. 2\) Regulations 2019](#) – These make amendments regarding the GB/UK producer responsibility regimes which operate on a UK basis (in addition to amending secondary legislation for England & Wales only). These regulations will themselves be amended before coming into force, most notably by the 2020 regulations at the top of this list.

[The Environment \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019](#) – These regulations amend Scottish secondary legislation including the special waste, PCB, landfill, ELV and WML Regs to fix deficiencies that would otherwise have arisen as a result of EU-exit.

[The Environment \(EU Exit\) \(Scotland\) \(Amendment etc\) \(No.2\) Regulations 2019](#) - These regulations amend the Regulatory Reform Act to fix out of date references and deficiencies. They also make further amendments to Scottish secondary legislation missed the by the first set of regulations and revoke subordinate legislation in consequence of amendments made to the Pollution Prevention Control Act by Part 2 of the Environment (Amendment etc.) (EU Exit) Regulations 2019 and to the Regulatory Reform (Scotland) Act 2014 by these Regulations.