

Proposed Regulatory Approach for Basel Amendments

2 November 2020

Overview

On 1 January 2021, the Basel Convention will be amended to strengthen the controls for the export of waste plastics. The changes mean that only plastics which are recycled, almost exclusively one type of plastic and almost free from contamination can be exported as 'Green List' waste. Mixtures of polypropylene (PP), polyethylene (PE) and polyethylene terephthalate (PET) can also continue to be exported under Green List controls on the proviso they are separated. All other waste plastic international movements will require prior informed consent (PIC) from the competent authorities of dispatch, transit and destination. The full list of plastic wastes subject to PIC can be viewed at <http://www.basel.int>.

The Basel Convention has been ratified by the UK Government and along with the OECD Decision has been implemented across the European Union through the Waste Shipments Regulation 259/93 EEC and subsequently 1013/2006 (the WSR). In order to take effect in Great Britain, new legislation is due to be in force for 1 January 2021.

Implementation of the Basel Changes

From the 1 November 2020 the Environment Agency will be accepting applications for notifications for Y48 movements from England as the competent authority of dispatch. More information can be found at <https://www.gov.uk/guidance/importing-and-exporting-waste>

We are not able to guarantee that applications will be determined by the 1 January 2021 as the overseas competent authorities have 90 days in which to respond. If they do not respond the export will not be permitted. Operators must not move notifiable plastics without a suitable notification in place.

Operational Interventions

We operate a risk based, intelligence led compliance monitoring strategy for notified wastes and new notifications are added to the database as they are determined. Our compliance plan may involve :

- Auditing the notifier at the source address or via remote / desktop monitoring
- Inspecting waste (notified and green list wastes) on its designated route, including carrying out ports inspections where the container or packaging may be opened to observe the wastes
- Informing the relevant overseas competent authorities of specific movements of concern or interest which they may wish to observe
- A combination of interventions including using Notices requiring actions or information to be provided.

The inspection of waste plastics of all types and polymers is a key part of our Prevention and Disruption Strategy to address the illegal export of wastes. We expect operators to comply with the new requirements and we may stop movements of waste where a required notification is not in place, as we would with any illegal shipment that we identify.

Enforcement and Sanctions Policy

Where we identify non-compliance with the requirements we will refer to our enforcement and sanctions Policy <https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/environment-agency-enforcement-and-sanctions-policy>

We have a wide range of enforcement and sanctioning options available to us, and we follow the Regulators Code to engage with those we regulate. We identify the most appropriate, proportionate and consistent intervention for each situation, and act in transparent and accountable way. We will normally consider all other options before considering criminal proceedings. Generally, prosecution is our last resort.

Our Regulatory Approach

Our regulatory approach will be based on providing advice and guidance in the first instance where an offence is or is likely to be committed. This will be without prejudice to (this means, will not affect) any other enforcement action that may be required if there is continued or further breaches, or where breaches are serious or significant enough to warrant a higher enforcement response. Our objective is to provide an opportunity for the operator to return to compliance and stay compliant.

Until March 2021 we aim to tackle non-compliance with the new requirements for movements of waste by advice and guidance where possible to allow businesses to adapt.

However as the Basel Convention is a global convention, waste movements which are identified as illegal under the Transfrontier Shipment of Wastes 2007 as amended may be inspected and stopped at any point by a relevant competent authority during its route. They may be returned to the source site or other suitable location as agreed between all parties until the correct documentation is in place at the cost of the person arranging the shipment. **This will apply from 1 January 2021.** Protecting the environment and human health will be at the centre of our decision making.

However where serious, significant or repeated breaches are identified, we may choose to follow a different enforcement response from 1 January 2021. These can be summarised as :

- Warning - either verbal or in writing
- Enforcement Notice - a legal Notice requiring the addressee to stop their activity or to carry out a specific request
- Use of a Civil Sanction where relevant - for example we may impose a Variable Monetary penalty where waste is moved without being accompanied by a relevant Annex VII document
- Criminal proceedings - including fixed penalty notices, formal caution or prosecution.

Continued and repeat offending will normally result in us increasing the level of our enforcement response and imposing or seeking a more severe sanction.