

REGULATORY REGIMES RELEVANT TO SHIP RECOVERY

1. There are a set of interlocking regimes that govern the transfrontier movement of ships for recovery and the authorization, in the UK, of the facilities needed to carry out the work and to dispose of the residual waste.

TRANSFRONTIER SHIPMENTS

2. The control of transfrontier shipment of hazardous waste is governed by international, European Community and domestic rules. The disposal and recovery of such waste in the UK is governed by a number of European Community and domestic rules.

Basel Convention

3. The control of transboundary movement of hazardous waste is governed at the international level by the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal. The Convention entered into force in May 1992. The UK ratified the Basel Convention on 7 February 1994.

4. The overall goal of the Convention is to protect human health and the environment against the adverse effects which may result from the transboundary movement and management of wastes. It rests on 2 main pillars:

- a control system for the transboundary movement of wastes aiming at the reduction of transboundary movement of waste and
- the environmentally sound management of wastes aiming at the reduction of the quantity of wastes to a minimum.

5. Article 1 defines the scope of the Convention. Hazardous wastes, for the purpose of the Convention, are wastes that belong in any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III, as well as any waste not so covered but defined as hazardous waste by the domestic legislation of a Party of export, import or transit.

6. Central to the operation of the Convention is a prior written notification procedure for any proposed transboundary movement of hazardous wastes or other waste between Parties. Detailed procedural rules are set out in Article 6 of the Convention and require prior notification to the Competent Authority of Destination before a transboundary movement takes place.
7. The Convention also provides for general obligations including, acknowledgement of Parties to exercise their right to prohibit the import of hazardous waste and to inform other Parties of their decision and the obligation to prohibit or not permit the import of hazardous waste if the importing country has not given its prior consent in writing to the specific import.
8. Other significant requirements concern the duty to return waste in certain circumstances, the definition of illegal traffic and provisions on dealing with such traffic, international co-operation and development of bilateral, multilateral or regional agreements or arrangements for the transboundary movement of hazardous waste.
9. At the 3rd Conference of the Parties it was agreed to amend the Convention (referred to as the Ban Amendment) so as to prohibit exports of hazardous waste for any purpose from OECD countries to non-OECD countries. The effect of the Ban Amendment will be to prevent OECD countries (where they are Party to the Convention) from sending hazardous wastes to non-OECD countries which are unlikely to deal with such wastes in an environmentally sound manner. The UK ratified this amendment in October 1997. The Ban Amendment has not yet come into force in its own right but is implemented in the EU through an amendment to the Waste Shipments Regulation (paras 13-16).

OECD

10. As permitted by Article 11 of the Basel Convention, the UK (along with the European Community) has entered into a multilateral agreement concerning transfrontier movements of waste under the auspices of the OECD.

11. OECD Decision C(92)39/FINAL concerns the control of transfrontier movements of waste destined for recovery operations. The decision provides for 3 different procedures for the transboundary movement of waste, the application of which depends on the classification of waste in the green, amber or red list. The decision was revised in 2001 by OECD Decision C (2001) 107/FINAL OECD States have adopted this decision but it does not become binding on them until the necessary domestic measures have been introduced.

12. The USA and the UK (along with the EC) has transposed the 1992 OECD decision into domestic law. The revised OECD decision will be transposed into Community law through a revision of the Waste Shipments Regulation.

European Community Legislation

Council Regulation 259/93 on the supervision and control of shipments of waste

13. The Basel Convention and 1992 OECD decision are given effect in the European Community by Council Regulation 259/93 on the supervision and control of shipments of waste within, into and out of the Community (the 'Waste Shipment Regulation').

14. The Regulation is directly applicable in the UK (although there are some domestic Regulations - see below).

15. The Regulation provides detailed rules for the transboundary movements on waste. The central aspect of these rules is a notification procedure where the person intending to ship waste for disposal or recovery is required to notify the Competent Authority of destination prior to shipment of the waste. Such a notification is required to be copied to the Competent Authorities of dispatch and transit. The Competent Authority of destination may raise reasoned objections to the shipment on certain grounds. The specific controls which apply to a particular case are dependent on (1) whether the waste is hazardous or non-hazardous; (2) whether the waste is

destined for disposal or recovery; and (3) the State of destination of the waste (EC Member States, Basel Parties, OECD States).

16. Negotiations to revise the Regulations, in order to transpose the provisions of the revised OECD Decision began at the end of last year.

Domestic Legislation

17. The Waste Shipments Regulation is supplemented by UK legislation, namely the Transfrontier Shipment of Waste Regulations 1994 (SI 1994 No. 1137). These Regulations designate the competent authorities for Great Britain and Northern Ireland (the Environment Agency is the Competent Authority for England and Wales) and provide further detailed rules for the transmission of notification and the provision of financial guarantees. These Regulations also provide for enforcement powers, criminal offences and penalties.

18. These Regulations will be revised when the new EC Regulations enter into force.

19. The controls on the import of asbestos are exercised through another European Directive on prevention and reduction of environmental pollution by asbestos 87/217/EEC. The HSE as competent authority granted exemption from the general prohibition on importation on the grounds that the asbestos was for disposal and not for recycling.

20. The safety of the ship and its seaworthiness are matters for the exporting country. The steps taken by the Maritime Coastguard Agency to verify the condition of the US ships before they left the US were not required under international law.

21. The exporter of waste is required, as part of their notification procedure, to set out the arrangements for the routing of the consignment and for insurance against damage to third parties. Transit authorities have 30 days in which to object and 20 days in which to lay down conditions in respect to transport within their jurisdiction. Rights of passage are enshrined in the UN Convention on the Law of the Sea (UNCLOS) The UK's powers are confined

to those set out in the Merchant Shipping Act 1995 as amended by the Marine Safety Act 2003. These provide that in certain circumstances the Secretary of State for Transport may give Directions to the owner or whoever is navigating the ship if an issue of safety or risk of pollution has arisen or is likely to arise. The power in respect to safety cannot be exercised in respect to non-UK ships that are exercising their right of innocent passage or right of transit passage through straits used for international navigation.

AUTHORISATION OF RECOVERY FACILITIES

22. Once the waste arrives in the UK, its disposal or recovery is subject to a number of legislative requirements depending on the particular circumstances of a case. The list below outlines the potential applicable EC legislation:

- Waste Framework Directive 75/442/EEC as amended by 91/156/EC
- Directive on disposal of waste oils 75/439/EEC
- Directive on the Conservation of wild birds 79/409/EEC
- EIA Directive 85/337/EEC as amended by 97/11/EC
- Directive on hazardous waste 91/689/EEC
- Directive on the conservation of natural habitats and of wild fauna and flora 92/43/EEC
- Directive on the disposal of RGBs and PCTs 96/59/EC
- Directive on the control of major accident hazards involving dangerous substances 96/82/EC
- Directive on the landfill of waste 99/31/EC

23. The four regulatory regimes that were a particular focus of attention with the US ships were the waste management licensing regime, the planning system and the requirements of the Environmental Impact Assessment and Habitats Directives

WASTE MANAGEMENT LICENSING

24. The final destination of waste consigned for recovery is a waste management facility licensed under Part II of the Environmental Protection Act 1990. This fulfils many of the UK's obligations arising from European legislation on waste and in particular the Waste framework Directive. A waste management licence authorises the treatment, keeping or disposal (including recovery) of any specified description of controlled waste. It may be granted on such terms and conditions as appear appropriate. Once made the conditions may be varied, but not the terms. The terms should include the activities authorized by the licence, the extent of the site, the name of the licence holder and the address of the site etc. Conditions should relate to the activities authorized by the licence, e.g. types and quantities of waste, security aspects etc. In determining a new application the EA is required to consult the local planning authority. Where it judges that consultation on an preceding planning application will have brought all the relevant issues before the public further consultation is not mandatory.

PLANNING SYSTEM

25. The basic structure of the modern planning system is over 50 years old, stemming from the Town and Country Planning Act 1947 . The legislation was last modified in 1991 but is now about to undergo substantial change in the Planning and Compulsory purchase Bill which is about to complete its passage through Parliament. Recognising that the changes noted below are dependent upon final approval of the Bill and its Royal Assent, the key elements are:

- The system is plan led, which means that if planning applications are in accordance with the development plan drawn up by district and unitary authorities and structure plans drawn up by county councils they are likely to be approved unless there are 'material considerations' that suggest otherwise.
- Regional Planning Guidance provides a strategic planning framework in each of the English regions. This is to be replaced by Statutory

Regional Strategies prepared by the planning teams of the Regional Assemblies-whether elected or not. A statutory London-wide plan already exists

- Planning applications are considered by the county, district and unitary authorities who put local plans in place.
- Appeals may be made to the Secretary of State. He can also call in individual applications for his own determination.
- Local authorities in exercising their powers are expected to take account of national guidance published by the Secretary of State. This has been done hitherto in a series of Planning and Mineral Policy Guidance notes. These are being selectively revised into statements of planning policy, that will set out requirements of policy separately from advisory material e.g. on 'good practice'.

26. As noted above the planning system is currently being reformed. While the basic concepts remain in place, if the proposals are enacted there will be significant changes in the means of delivery at local authority level:

- Structure, local and unitary development plans will be replaced by a single development framework comprising a set of specified development plan documents
- The core of the revised framework will be a statement of core policies, concerned with the development and use of land, which will be short, focused and strategic. This will be backed up by a proposals map indicating matters such as specific or preferred locations, or areas of search for sites for particular purposes.
- It will be for local authorities to identify where more detailed action plans for local areas are required.

27. Current PPGs relevant to handling waste are:

- PPG1 General Policy and Principles (Currently being revised as a

Planning Policy Statement)

- PPG9 Nature Conservation
- PPG10 Planning and Waste Management
- PPG11 Regional Planning
- PPG 12 Development Plans
- PPG23 Planning and Pollution Control (Currently being revised as a Planning Policy Statement)

EIA AND HABITATS DIRECTIVES

28. These Directives are transposed in England and Wales by the:

- The Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999-SI 1999 No 293
- The Conservation (Natural Habitats, etc) Regulations 1994.

29. The EIA Directive's main aim is to ensure that the authority giving the primary consent for a particular project makes its decision in the knowledge of any significant effect on the environment. The Directive sets out a procedure, including arrangements for public consultation that must be followed. Certain projects must always be subject to an EIA. For others it is for the competent authority to decide. The developer may ask the 'competent authority'¹ for an opinion on what information needs to be included.

30. Under the Habitats Directive an appropriate assessment must be made of the implications for an European site of any plan or project which either alone or in combination with other plans or projects would be likely to have a significant effect on it. An European site includes SPAs (Special Protection Areas), SACs (Special Areas of Conservation) and potential SPAs, candidate SCAs and RAMSAR (international wetland) sites.

31. These requirements affect the handling of planning applications and applications for a waste management licence.