

STATES OF ALDERNEY

MANAGEMENT PLAN FOR IMPORTATION AND
EXPORTATION OF WASTE

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Introduction

The States of Alderney Policy and Finance Committee, acting on the advice of the Director of Environmental Health and Pollution Regulation in Guernsey, must prepare and submit to the States of Alderney a management plan for the importation and exportation of waste in accordance with section 14 of The Transfrontier Shipment of Waste (Alderney) Ordinance, 2018.

This Plan sets out the States of Alderney's policy on the import into and export of waste from Alderney of waste shipments and it provides for grounds to make objections to, and where necessary, take action to prevent such shipments not approved in the Plan.

For the purposes of the Plan, Alderney includes the islands and islets around the coast of Alderney and the territorial waters adjacent to Alderney.

There is separate transfrontier shipment legislation in Guernsey and Sark. New transfrontier shipment Ordinances are proposed in Guernsey and Sark, subject to approval by the States of Guernsey and the Chief Pleas of Sark, which are similar to the 2018 Alderney Ordinance except that in Guernsey waste imports, whilst subject to restrictions, are not prohibited as in Alderney and Sark. If that legislation is approved, each island is required to produce its own import and export plan. Each of these plans will need to be consistent with the provisions of the Basel Convention that was extended to the whole Bailiwick in 2002.

Alderney has currently not developed any legislation equivalent to The Environmental Pollution (Guernsey) Law, 2004. As such, it has no regulatory controls required to licence, supervise and control waste operations on the island. In addition, it currently has no operational capacity to deal with waste imported from other locations and so the proposed Ordinance and this plan, consistent with the current legislation, prohibits all imports for recovery or disposal.

Alderney, like Guernsey, has international obligations to only export types of waste to which the Basel Convention applies¹ when the receiving location is a signatory to the Basel Convention². In certain circumstances, where waste is to be recovered, the export of such waste can also be to and from a member of the Organization for Economic Co-operation and Development (OECD).

¹ The Basel Convention applies to hazardous waste and certain other wastes (household waste and incinerator ash as defined in the Convention).

² The other islands of the Bailiwick and the Bailiwick of Jersey are also treated as parties to the Basel Convention as the UK's ratification of the Convention has been extended to them.

This document sets out the Plan, (page 8), setting out the principal policies regarding waste exports and imports. This is followed by explanatory information on the policies that apply around the disposal or recovery of waste when exported from or imported into Alderney.

The explanatory information should be read with the Transfrontier Shipment of Waste (Alderney) Ordinance, 2018 and the information reflects the legislation in force at the time the guidance is approved.

James Dent
Chairman
Policy and Finance Committee

Background

The appropriate disposal of hazardous waste when shipped around the world is subject to the international agreement known as the Basel Convention. The convention came into effect on 5 May 1992.

The purpose of the Basel Convention is to control transboundary movements of hazardous waste and their disposal in order to meet the objective of protecting human health and the environment against the adverse effects of such wastes. The UK's ratification of the convention was extended to the Bailiwick of Guernsey with effect from 27 November 2002.

In order to ensure compliance with this convention the States of Alderney approved The Transfrontier Shipment of Waste (Alderney) Ordinance, 2002. This Ordinance gave effect in Alderney to the controls set out in the 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 subject to appropriate modifications for Alderney. At that time, this Regulation also implemented the provisions of the Organization for Economic Co-operation and Development, (OECD) Decision applying to movements of waste for recovery between OECD countries which includes provision for the recovery of non-hazardous wastes through a more streamlined, risk-based control system than under the Basel Convention³.

In order to bring the local legislation up to date with the current EU Regulation 1013/2006, the States will be asked to approve The Transfrontier Shipment of Waste (Alderney) Ordinance, 2018 (the 2018 Ordinance), which gives effect in Alderney to the current EU regulation (with appropriate modifications). Section 14 of the 2018 Ordinance requires that The States Policy and Finance Committee must prepare and submit to the States for approval a management plan for the importation and exportation of waste which must contain the States policies in relation to the import and export of waste for recovery and disposal. The Plan is set out at page 8 of this document (the Plan).

The Plan, should it be approved by the States of Alderney, will become the States of Alderney Management Plan for the Importation and Exportation of Waste, as required under section 14. The 2018 Ordinance requires the Alderney competent authority, the Director of Environmental Health and Pollution Regulation (the Director) acting on behalf of the States of Alderney, to object to and prevent shipments of waste which the Plan indicates should not be imported into, or exported from Alderney.

³ The original OECD Convention and all instruments made under it extend to the Channel Islands and the Isle of Man, unless there is a contrary indication in a particular case, so they are treated as OECD countries for these purposes.

The Plan only applies to Alderney as there are separate provisions with respect to Guernsey, (the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018) and the proposed Sark (the Transfrontier Shipment of Waste (Sark) Ordinance, 2019), respectively. Additional plans on the importation and exportation of waste for Guernsey and Sark will also be required under these separate Ordinances, subject to approval by the States of Guernsey and Chief Pleas.

States of Alderney Plan for Imports and Exports of Waste

The following page alone, (page 8), represents the Plan for the States of Alderney. The remaining parts of this document represent supporting information to clarify for those undertaking, or proposing to undertake such waste shipments, the provisions that apply.

States of Alderney Plan for Imports and Exports of Waste

Shipments of Waste for Disposal

1. Consistent with the previous provisions of The Transfrontier Shipment of Waste (Alderney) Ordinance, 2002 and section 1 of, and paragraphs 17 and 19 of the Schedule to, The Transfrontier Shipment of Waste (Alderney) Ordinance, 2018, imports and exports of waste for disposal shall be prohibited save for the exceptions below;
2. Exports of waste for disposal to European Free Trade Association (EFTA) countries, or Member States of the European Union (EU), which in either case are also parties to the Basel Convention, to Guernsey or to Jersey⁴. Exports of waste for disposal will continue to be allowed to the United Kingdom following its exit from the EU.

It should be noted that even where these exceptions apply, shipments of waste for disposal to and from Alderney are subject to the procedure of prior written notification and consent required under The Transfrontier Shipment of Waste (Alderney) Ordinance, 2018. In addition, where waste is exported for disposal to the UK, the UK will apply relevant UK legislation⁵ and the policies in the UK Plan for Shipments of Waste. In these circumstances waste is required to be approved in principle under a Duly Reasoned Request (DRR), prior to seeking written notification and informed consent⁶.

Shipments of Waste for Recovery

3. Consistent with the previous provisions of The Transfrontier Shipment of Waste (Alderney) Ordinance, 2002 and section 1 of, and paragraph 20 of the Schedule to, The Transfrontier Shipment of Waste (Alderney) Ordinance, 2018, imports of waste for recovery shall be prohibited.
4. Exports of waste for recovery are permitted subject to meeting the requirements referred to in section 1 of, and paragraph 18 to, the Schedule to The Transfrontier Shipment of Waste (Alderney) Ordinance, 2018 and these requirements reflect the procedure applying to waste for recovery under the OECD Decision. A streamlined procedure where prior consent is not required for recovery of non-hazardous “green” list wastes is allowed for under the 2018 Ordinance.

⁴ The UK's ratification of the Basel Convention has also been extended to Jersey so it treated as a party to it.

⁵ The EU Regulation currently applies in the UK and its provisions, as in force at the date the UK exits the EU, will become “retained EU Law” from that date. In essence, this means that the provisions of the EU Regulation will become part of UK national law and continue to apply after the UK's exit; retained EU Law may be modified by the UK government so the provisions of the EU Regulation might in the future differ from equivalent provisions in UK national law.

⁶ The wording in italics and the footnote in the Plan are provided for information and are not part of the Plan.

Supporting Information

The remaining pages of this document are given to provide support and clarification to the Plan.

Details on Exports for Disposal

The export of waste for disposal is distinct from waste that is exported for recovery, which is detailed later. Further information of the difference between disposal and recovery can be found in the Glossary.

General Policy

Articles 34 and 35 of the European Waste Shipment Regulation, (WSR) prohibit the export of waste for disposal, without the prior informed consent of the competent authority receiving that waste. The Transfrontier Shipment of Waste (Alderney) Ordinance 2018 and the Plan seek to remain consistent with this principle.

Bilateral Agreements

Shipments exported from Alderney will also be subject to legislation and policy relating to waste shipments imported into the country of destination. For EU countries the applicable legislation is the EU Regulation⁷. The most common EU country of destination, as at the date of approval of the Plan, for Bailiwick of Guernsey waste shipments for disposal is the UK which is governed separately by a Duly Reasoned Request (DRR) which restricts what wastes are permitted to be exported for disposal. Exports of waste for disposal will continue to be allowed to the United Kingdom following its exit from the EU.

In addition, as Alderney is not a member state of the European Union, (EU), but has had the Basel Convention extended to it, any exports for disposal into the EU may be subject to the requirement of a bilateral agreement. This bilateral agreement can be with the whole of the EU, or with individual member states as set out in Article 41 of the WSR.

Duly Reasoned Requests

The UK has a policy set out in its plan (UK Plan for Shipments of Waste), that waste must not generally be imported for disposal. Under a very limited set of circumstances the UK will permit wastes to be imported for disposal, but in order to do so require parties, other than in emergency type situations, to submit a written submission, a Duly Reasoned Request, to one or more of the UK's competent authorities, depending on the final geographical destination of the waste (e.g. England or Scotland). The Bailiwick of Guernsey currently has a DRR with the UK's Environment Agency and this has been previously reviewed by the UK competent authority every few years. The current DRR is due to expire on 26 July 2020.

⁷ See footnote 5.

Should the DRR not be acceded to in future the Director would be bound, under the 2018 Alderney Ordinance, to prevent waste exports for disposal being sent to the UK.

Any DRR request to an EU Member State from a party to the Basel Convention should be on the basis that the exporting jurisdiction does not have and cannot reasonably acquire the technical capacity and the necessary facilities in order to dispose of the waste in an environmentally sound manner.

The current restrictions from the Environment Agency allow wastes to be exported from the Bailiwick of Guernsey to the UK for disposal, provided it is sent to a facility not available in the Bailiwick. In particular, those facilities currently acceptable are disposal by high temperature incineration or specialist hazardous landfill.

The States' Trading Supervisory Board, not the Director is responsible for submissions and dealing with queries with the Environment Agency under the DRR.

Shipments for Laboratory Analysis

In accordance with Article 3 of the modified EU regulation, shipments of waste explicitly destined for laboratory analysis to assess either its physical or chemical characteristics or to determine its suitability for recovery or disposal operations shall not be subject to the procedure of prior written notification and consent. Instead, the procedural requirements of Article 18 of the above regulation shall apply. The amount of such waste exempted when explicitly destined for laboratory analysis shall be determined by the minimum quantity reasonably needed to adequately perform the analysis in each particular case, and shall not exceed 25 kg.

Article 18 of the modified EU Regulation requires that written information be provided to accompany the waste for laboratory analysis in question. The minimum information required in these circumstances is set out in Annex VII to the modified EU Regulation. This documentation is available from the Director on request.

Details on Imports for Disposal

General Policy

Consistent with paragraph 19 of the Schedule to the Transfrontier Shipment of Waste (Alderney) Ordinance, 2018 and the previous provisions under the amended EU Regulation 259/93 within the Schedule to The Transfrontier Shipment of Waste (Alderney) Ordinance, 2002, the general policy is that all imports into Alderney of waste for disposal shall be prohibited.

The main reasons for this prohibition are that Alderney currently has no operational capacity to deal with waste for disposal from other locations and at present no regulatory controls required to licence, supervise and control waste operations.

Details on Exports for Recovery

General Policy

Consistent with Article 36 of the modified EU Regulation, exports of hazardous wastes or mixtures of hazardous and other wastes for recovery shall generally be prohibited other than to OECD Decision countries.

Export of Green List Waste listed in Annex III or IIIA to the modified EU Regulation may be allowed to non-OECD Decision countries where such countries do not prohibit such imports⁸.

The control procedure for exports of waste for recovery will vary depending on whether the recoverable waste is regarded as hazardous, with more regulatory control being exercised if that is the case.

Where the competent authority of destination has indicated that it does not wish to receive certain types of waste it will notify the Secretariat of the Basel Convention in pursuant to Article 4(1) of the Convention. This requirement is implemented in the modified EU Regulation under Article 37 which sets out a process where nation States can identify which wastes they wish to prohibit, or accept with prior written approval, or allow with no controls, as specified in Commission Regulation EC 1418/2007. The Director will not permit any export of waste for recovery that has not been notified in accordance with Article 37 of the modified EU Regulation.

Shipments for Laboratory Analysis

The same procedures with regard to sending waste to laboratories as set out on waste for disposal above, also apply to waste imports for recovery, including the 25 kg limit⁹.

Sham Recovery

The process of seeking to dispose of waste under the guise of recovery is described as sham recovery. This could be attempted as less strict controls apply to shipments for recovery than for disposal of waste because of the environmental benefits in recovering waste. Under Article 12 of the modified EU Regulation the Director may object to a shipment to be exported from Alderney if the Director determines that sham recovery is occurring. The

⁸ See Article 37 of the modified EU Regulation as modified by paragraph 18(2) of the Schedule to the 2018 Ordinance.

⁹ See Article 3(4) of the Modified EU Regulation.

same ground for objection is available for a receiving competent authority in the EU under the EU Regulation. In particular Article 12(1)(g) of the EU Regulation allows a competent authority in the EU to object to a shipment of waste where the ratio of the recoverable and non-recoverable waste, the estimated value of the materials to be finally recovered or the cost of the recovery and the cost of the disposal of the non-recoverable fraction do not justify the recovery, having regard to economic and / or environmental considerations. In such circumstances the Director may also determine that the operation is not being undertaken in an environmentally sound manner as required under the modified EU Regulation¹⁰.

¹⁰ See Article 49 of the modified EU Regulation.

Details on Imports for Recovery

General Policy

Consistent with paragraph 20 of the Schedule to The Transfrontier Shipment of Waste (Alderney) Ordinance, 2018 and the previous provisions under the amended EU Regulation 259/93 within the Schedule to The Transfrontier Shipment of Waste Ordinance, 2002, the general policy is that all imports into Alderney of waste for recovery shall be prohibited¹¹.

The main reason for this prohibition is that Alderney has no operational capacity to deal with waste for recovery from other locations and at present no regulatory controls required to licence, supervise and control waste operations.

¹¹ See Article 43 of the modified EU Regulation, as substituted by paragraph 20 of the Schedule to the 2018 Ordinance.

The Director of Environmental Health and Pollution Regulation, (the Director)

Designation

Under sections 3 and 4 of the 2018 Ordinance, the Director of Environmental Health and Pollution Regulation (the Director) is designated, in relation to Alderney, as the competent authority of dispatch, destination and of transit for waste either, imported, exported or transiting through Alderney. The Director acts on behalf of the States of Alderney as competent authority of dispatch (export) and destination (import). Consistent with the Transfrontier Shipment of Waste (Alderney) Ordinance, 2002, the Director acts on behalf of the UK competent authority as competent authority of transit on behalf of the States of Alderney.

Role of the Director with Respect to this Plan

Section 14(2) of the Ordinance sets out the role of the Director in raising objections under the plan, as set out below;

“For the purpose of ensuring environmentally sound management of waste and preventing movements of waste which are not in accordance with the plan, the Director must, within the applicable time limit specified in the modified EU Regulation object to any shipment of waste notified under the modified EU Regulation which the plan indicates should not be imported into or exported from Alderney.”

Should the Director receive prior notification of a proposed waste shipment that is in contravention to this plan, he/she will object to the shipment and inform the notifier stating the reasons for such an objection.

In addition, and without prejudice to the above, the Director has additional powers to raise other objections, termed reasoned objections, to imports and exports and waste transit shipments in Alderney. These are referred to in section 14(4) of the Ordinance and set out within the modified EU Regulation. The grounds to raise reasoned objections can occur when waste is destined for disposal but is not listed on any classification list, but the Director may also object when;

- the planned shipment would be contrary to national legislation in an objecting country
- the notifier or consignee was previously convicted of illegal shipment
- the consignee repeatedly fails to dispose or recover of waste in a timely manner

such that it represents illegal shipment.

The Director shall exercise the functions above, as set out in section 6(2) of The Environmental Pollution (Guernsey) Law, 2004, “with fairness, impartiality and independence and in a manner that is timely, transparent and objective...”.

Implementation

Should the States of Alderney approve this draft plan it will become the Management Plan for the Importation and Exportation of Waste for Alderney and shall come into effect on the 19th November 2018.

The plan shall remain in force until such time as the Policy and Finance Committee submit a new draft plan for approval by the States of Alderney.

Glossary

Advice note; This glossary refers to a number of terms defined in the modified EU Regulation as given effect in Alderney by the 2018 Ordinance. The modified EU Regulation is given effect as amended, replaced or re-enacted from time to time by other EU legislation. Therefore, this glossary sets out these meanings as at the date of issue of the Plan.

"Basel Convention" means the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal.

"Disposal" has the meaning in the EU Regulation which is that set out in Article 3(19) of the Waste Framework Directive. This includes any of the operations provided for in Annex I of that Directive.

"EFTA" means a European Free Trade Association member country.

"EU Regulation" or "WSR" means Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 16 June 2006 on shipments of waste as amended, replaced or re-enacted.

"Environmentally sound management" has the meaning in the EU Regulation i.e. taking all practicable steps to ensure that waste is managed in a manner that will protect human health and the environment against adverse effects which may result from such waste.

"Hazardous waste" has the meaning in the modified EU Regulation which is that set out in Article 3(2) of the Waste Framework Directive i.e. waste which displays one or more of the hazardous properties listed in Annex III to that Directive.

"The modified EU Regulation" means the EU Regulation as modified by the Transfrontier Shipment of Waste (Alderney) Ordinance, 2018.

"OECD Decision" means Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on control of transboundary movements of wastes destined for recovery operations.

"OECD Decision countries" means those countries specified in Annex D of the OECD Guidance Manual for the Control of Transboundary Movements of Recoverable Waste¹².

"Recovery" has the meaning in the EU Regulation which is that set out in Article 3(15) of the Waste Framework Directive; this includes any of the operations provided for in Annex II of that Directive.

"The 2018 Ordinance" means the Transfrontier Shipment of Waste (Alderney) Ordinance, 2018 as amended, replaced or re-enacted.

"Waste" has the meaning in the EU Regulation which is that set out in Article 3(1) of Waste Framework Directive; "any substance or object which the holder discards or intends or is required to discard".

"Waste Framework Directive" means Directive 2008/98/EC on waste and repealing certain Directives as amended, replaced or re-enacted.

"WSR" see "EU Regulation".

Other terms used in this document have the same meaning as in the 2018 Ordinance and the modified EU Regulation.

¹² Guernsey, Alderney, Sark, Jersey and the Isle of Man are OECD Decision countries for these purposes.

References

1. Basel Convention website; <http://www.basel.int/>
2. Confirmation of ratification and extension of the Basel Convention to the Bailiwick of Guernsey, see note 5 on the UK's entry; <http://www.basel.int/Countries/StatusofRatifications/BanAmendment/tabid/1344/Default.aspx>
3. The Transfrontier Shipment of Waste (Alderney) Ordinance, 2002; <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=70291&p=0>
4. Council Regulation EEC 259/93 on the supervision and control of shipments of waste within, into and out of the European Community; <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31993R0259>
5. OECD Decision of the Council concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, 14 June 2001 - C(2001)107/FINAL Amended on 25 February 2002 - C(2001)107/ADD1, 9 March 2004 - C(2004)20, 25 November 2005 - C(2005)141, 18 November 2008 - C(2008)156; <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=221&InstrumentPID=217&Lang=en&Book=False>
6. (EC) No 1013/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2006 on shipments of waste; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1013&from=en>
7. UK Plan for Shipments of Waste; May 2012; https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69546/pb13770-waste-shipments.pdf
8. Commission Regulation EC 1418/2007; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R1418&from=en>