

Explanatory Memorandum to The Waste (England and Wales) (Amendment) Regulations 2014

This Explanatory Memorandum has been prepared by the Department for Natural Resources and Food and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Waste (England and Wales) (Amendment) Regulations 2014. I am satisfied that the benefits outweigh any costs.

Alun Davies AM

Minister for Natural Resources and Food

12 March 2014

1. Description

These Regulations amend The Waste (England and Wales) Regulations 2011 (S.I. 2011/988) which transpose the revised Waste Framework Directive (Directive 2008/98/EC) in England and Wales. Part 8 of the 2011 regulations makes provision in relation to registration of carriers of waste and brokers and dealers in waste and part 9 provides for a transfer note to be completed on the transfer of waste. These amending regulations make the following changes:-

- They amend regulation 35 by replacing the references in that regulation to “a transfer note” with a reference to “written information”.
- They amend regulation 29(5) of the 2011 Regulations by adding a new list of “relevant offences”. Relevant offences are taken into account by the regulators when considering an application for registration of a carrier, broker and dealer of controlled waste.
- They reinstate provisions relating to the requirement by a carrier of waste to produce their authority (an official waste registration certificate), for transporting controlled waste and provide for provisions relating to the making of copies of certificates of registration.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

These Regulations make minor amendments to earlier England and Wales regulations and are being made on a composite basis with the Secretary of State for DEFRA. Maintaining a consistent approach for businesses in Wales with England is considered beneficial for businesses, particularly for those businesses that operate on a cross border basis. Defra wish to bring these changes into effect by the 6 April (to meet common coming into force dates) and as we are not intending to do anything different in Wales a composite regulation is being proposed for expediency and to not disadvantage businesses in Wales.

This composite SI applies to Wales and England and is subject to approval by the National Assembly for Wales and by Parliament. It is therefore not considered reasonably practicable for this instrument to be made bilingually.

Section 2(8) of the Pollution Prevention and Control Act 1999 requires regulations made under that section, to be subject to approval by the Assembly, in the circumstances in section 2(9), that is, where the regulations are the first regulations under that section to be made in relation Wales, where they create an offence or increase a penalty for an existing offence, or where they amend or repeal any provision of an Act. Those circumstances do not apply in relation to this instrument, and it is therefore appropriate to follow negative Assembly procedure.

By virtue of section 8 Control of Pollution Act 1989, regulations made under that Act are subject to negative Assembly procedure.

By virtue of Section 2(2) European Communities Act 1972 there is a choice of Assembly procedure. The negative procedure has been proposed because the provisions do not amend any provisions of an Act or Measure and neither do they impose obligations of special importance. The amendments are relatively minor and relate to technical matters (for example Businesses may continue to use Waste Transfer Notes or choose to use alternative documentation and incur transition costs if it suits their business model). Accordingly there is no factor indicating the use of the affirmative procedure.

3. Legislative background

The Welsh Ministers will make the changes to the Waste (England and Wales) Regulations 2011 under powers contained in section 2 and Schedule 1 to the Pollution Prevention and Control Act 1999 and section 2(2) European Communities Act 1972. The Welsh Ministers are designated (European Communities (Designation) (No 2) Order 2010 [S.I.2010/1552]) for the purposes of section 2(2) ECA 1972, in relation to the prevention, reduction and management of waste. These powers were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and are exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

The shift of emphasis from “transfer note” to “written information” proposed in Regulation 35 is consistent with the statutory requirements in section 34(1)(c)(ii) of the Environmental Protection Act 1990 (EPA) provided that when presented in the proposed more flexible format, the waste information is in writing and in aggregate, meets those statutory requirements.

This Statutory Instrument is subject to annulment of the National Assembly for Wales and follows the negative procedure.

4. Purpose and Intended Effect of the Legislation

This legislation will provide greater flexibility to business in the documentation they can use to provide a description of wastes they transfer. Evidence provided to the UK Government’s Red Tape Challenge suggests that businesses (particularly small businesses) find it burdensome to fill in Waste Transfer Notes. Around 23.5 million Waste Transfer Notes are currently produced in the UK each year at a cost of £1.22 each which includes their creation, storage and retrieval. The biggest burden of Waste Transfer Note administration falls on smaller businesses which do not contract with the larger waste management companies

for their waste arrangements. This is because these businesses have to complete the paperwork and store the Waste Transfer Notes themselves.

Although this is a response to the UK Governments Red Tape Challenge, it is considered beneficial to businesses in Wales for the same provisions to apply. These concerns have been raised by the industry and the proposals will help reduce the requirements on businesses but at the same time still meet their legal obligation under the Waste Management Duty of Care. These amending Regulations will provide greater flexibility to businesses by clarifying in the 2011 Regulations that alternative forms of documentation will be acceptable to record the information required under the statutory Duty of Care.

This change needs to be put into context next to the electronic Duty of Care (EDoC) system, launched in January 2014 which will allow the electronic recording and storage of Waste Transfer Notes. It is estimated that 80% of waste transfers will be recorded on the voluntary EDoC system. This will leave around 20% of transfers using paper Waste Transfer Notes. These changes will therefore complement EDoC and increase the flexibility for those wishing to continue to use paper-based systems.

The amendments will also provide clarity to waste carriers on the evidence they need to provide if they are required to do so by the regulator Natural Resources Wales. A person will be required to produce, or send their authorisation to carry controlled waste to the relevant regulator within 5 working days from the date they are initially required to do so, and an authorised copy of the original certificate will be acceptable to demonstrate this authority. It is essential that clear procedures are in place that allows those stopped or required to produce evidence of their status to carry waste to be able to do so and so avoid enforcement action. The proposals also set clear requirements for how and where such evidence shall be produced. This will help to make the regulators' task easier.

Natural Resources Wales (NRW) register waste carriers, brokers and dealers in Wales in accordance with the provisions set out in the 2011 Regulations. When dealing with an application for registration NRW can refer to the list of relevant convictions in the current Regulations and can refuse an application if in their opinion it is undesirable for the applicant to be authorised to transport waste or to act as a dealer or broker of controlled waste. These amendments will limit the ability of convicted criminals to become authorised as waste carriers, brokers and dealers by adding convictions for offences such as metal theft and fraud, to the current list of relevant convictions. Furthermore the changes will provide a consistent approach across environmental permitting, scrap metal dealer licensing and waste carrier legislation in the range of circumstances where relevant offences are considered.

5. Consultation

These proposals have been subject to a joint public consultation with Defra over a 6 week period with a variety of stakeholders including private businesses, regulators, local authorities, trade associations and charities. The proposals concerning Waste Transfer Notes have come from recommendations made under the UK Government Red Tape Challenge process and the proposed amendments to waste legislation have been classed by the Cabinet Office as minor. As the issues affect only the waste sector and is reducing regulatory impact it was agreed that it was reasonable to have a shorter consultation period.

Wales received 6 responses to the consultation: four from local authorities, one from a large business and another from a charity. These responses have been included in the joint summary report published by Defra. Although there was an almost 2 to 1 response against the main proposal for alternative documentation, none were able to offer any substantial reasoning to not proceed with the amendments. Given the support for the proposals came from businesses including key stakeholders such as the Federation of Small Businesses and the National Farmers Union, both the Welsh Government and UK Government intend to proceed with the proposed amendments to the 2011 Regulations and from April 2014, allow alternative information to be used to record the written description of waste.

There was strong positive support for the rest of the proposed amendments.

A list of consultees is available at: <https://consult.defra.gov.uk/waste/red-tape-challenge-alternatives-to-waste-transfers>

6. Regulatory Impact Assessment (RIA)

Defra and the Welsh Government have prepared a joint Impact Assessment which examines costs and benefits, which is attached to this Explanatory Memorandum. The Impact Assessment is based on the best available information.

7. Post Implementation Review

The requirement to prepare a description of waste has operated effectively since 1991. The Welsh Government will continue to discuss the management of Waste Transfer Notes with Local Authorities and Natural Resources Wales and to monitor the effectiveness of changes to the provision and the Statutory Instrument.

Title: Consultation on alternatives to Waste Transfer Notes arising from the Red Tape Challenge and other aspects of waste regulation Lead department or agency: Department for Environment, Food and Rural Affairs (Defra) Other departments or agencies: Welsh Government	Impact Assessment (IA)		
	IA No: DEFRA 1535		
	Date: 18/11/2013		
	Stage: Consultation		
	Source intervention: Consultation		
	Type of measure: Secondary legislation		
Contact for enquiries: Sean Quirke 0207 2384840			

Summary: Intervention and Options	RPC Opinion: Awaiting Scrutiny
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Cost of Preferred (or more likely Option)				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
Unknown	Unknown	Unknown	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?
 The Red Tape Challenge concluded that some businesses find it burdensome to fill in Waste Transfer Notes (WTNs) that are used when waste is transferred to another person. In response we gave a commitment to (a) consult on clarifying the regulations that will allow businesses to use alternative documentation if they wish. We are also consulting on: (b) reinstating procedures on how waste carriers produce evidence of their authorisation to carry waste. The procedures were unintentionally repealed and this has caused difficulty for waste carriers and regulators; and (c) adding to the list of 'relevant offences' the Environment Agency may take into account when registering waste carriers, brokers and dealers.

What are the policy objectives and the intended effects?
 The policy objectives are: (a) to provide greater flexibility to businesses by clarifying the regulations allow them to use alternative forms of documentation to record the information required under the statutory Duty of Care; (b) to provide clarity to waste carriers on the evidence they need to provide if they are required to do so by the regulator and where and when it must be produced; and (c) to limit the ability of convicted criminals to become authorised as waste carriers, brokers and dealers by allowing convictions for offences such as metal theft and fraud, in addition to the current list of relevant convictions, to be taken into consideration by the Environment Agency when considering their registration.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Option 0 - Do nothing. (a) Every waste movement will continue to require a WTN. (b) Waste carriers will be required to carry authorisation to transport waste at all times or risk prosecution; and (c) persons convicted of offences relating to metal theft may be able to register as waste carriers, brokers and dealers.
 Option 1 - Remove references to 'transfer notes' in Regulation 35 of the Waste (England and Wales) Regulations 2011 and replace with 'waste information'. Option 1 is preferred as it is a permissive change, will reduce cost and administration. There is no alternative but to reinstate how waste carriers can demonstrate their authority to carry waste other than in the way previously set out. Not to do so makes the requirement to produce evidence unworkable. The addition of new 'relevant convictions' is part of a package of measures to tackle metal theft and will bring the registration of waste carriers, brokers and dealer provisions in line with 'relevant offences' listed in other waste legislation.

Will the policy be reviewed? The proposals will be reviewed in light of the consultation.

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	<20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)	Traded: N/A		Non-traded: N/A		

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:

Date:

Summary: Analysis & Evidence

Policy Option 1

Description: (a) Waste Transfer Notes; (b) Demonstrating authorisation to transport controlled waste; (c) Waste carrier, broker and dealer registration – relevant convictions

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

N/A

Other key non-monetised costs by 'main affected groups'

Businesses using Waste Transfer Notes who choose to adopt alternative documentation may incur transition costs. As this is a permissive change, businesses may continue to use WTNs and therefore businesses are only expected to incur transition costs if an overall net benefit is expected. There is a potential cost to businesses using alternative documentation if they do not record all the information required on a WTN as they open themselves up to non-compliance of the law.

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

N/A

Other key non-monetised costs by 'main affected groups'

(a) All businesses will have greater flexibility in providing the information required in a WTN. There will be minimal benefit for those using EDoC (estimated to cover 80% of waste transfers), however businesses involved in the remaining 20% of transfers will benefit from this permissive change. (b) Reinstating the procedures around authority to transport waste reduces the possibility of unfair prosecution for waste carriers; and (c) adding to the list of relevant offences may reduce the risk of negative environmental impact.

Key assumptions/sensitivities/risks

Electronic Duty of Care (EDoC) is a voluntary electronic system for recording WTNs that will be launched from January 2014 and is estimated will save businesses between £7.8m- £13.4m per annum. It is also estimated that 80% of waste transfers will be dealt with via the EDoC system. Our consultation assumes that the total benefits to businesses from EDoC will be realised. Therefore the changes proposed here relate to the businesses that choose to continue using paper based systems (covering the remaining 20% of waste transfers).

Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A
	Yes	OUT

Evidence Base (for summary sheets)

Executive summary

The Red Tape Challenge stated it was burdensome for some small businesses to fill in WTNs. In response we are proposing to clarify the legislation that alternative forms of documentation can be used instead of a WTN. Simultaneously we propose to invite consultees to suggest possible revisions to the nature of the information that is currently required to be recorded on a WTN.

The consultation proposes to amend regulation 35 of the 2011 Regulations and in particular replace the references to the 'transfer note' with 'waste information'. This will provide greater flexibility for businesses by clarifying that alternative, existing documentation can be used to record the required information. We have been working with relevant stakeholders and have received the support of the Federation of Small Businesses and Department of Business Innovation and Skills. Although we have been unable to ascertain an associated cost benefit to business with this proposal, however as it is a permissive change any businesses who do not see a benefit may continue using WTNs.

We will also be seeking to amend the 2011 Regulations to reinstate procedures which allow a waste carrier to produce their authorisation to carry controlled waste up to 5 working days after they were required to; and that a copy of the original certificate is acceptable to demonstrate this authorisation. Finally in relation to the Scrap Metal Dealers Act 2013 we will be seeking to amend the 2011 Regulations to update the relevant convictions the Environment Agency can take into account when registering waste carriers, brokers and dealers. These amendments will provide clarity to waste carriers on the evidence they need to provide if they are required to do so by the regulator and where and when it must be produced; and will limit the ability of convicted criminals to become authorised as waste carriers, brokers and dealers by allowing convictions for offences such as metal theft and fraud, in addition to the current list of relevant convictions, to be taken into consideration when considering their registration.

(a) Waste Transfer Notes

A Waste Transfer Note (WTN) is a document that details the transfer of waste from one person to another. Every load of household, industrial or commercial waste (known as controlled waste) transferred from one establishment or person to another must be covered by a WTN (this does not apply to householders). The information recorded on the WTN provides the 'written description' of waste required to meet the Waste Duty of Care provisions under section 34(1)(c) of the Environmental Protection Act 1990. Regulation 35 of the Waste (England and Wales) Regulations 2011 (2011 Regulations) sets out what must be recorded in the written description of waste in order to comply with section 34(1)(c) of the Environmental Protection Act 1990.

WTNs perform the following role in the UK's system of waste:

- They create a self-policing auditable system which tracks waste and therefore reduces the opportunity for unlawful disposal. In essence, they provide a mechanism for businesses to demonstrate that they are doing the right thing and handing their waste to an authorised person. The requirement to keep copies of WTNs provides a system whereby the Environment Agency in England and their equivalents in the devolved administrations and local authorities are able to carry out cradle to grave audits of waste in the UK.

- Supports the enforcement and prosecution by the Environment Agency in cases of illegal disposal. Many of the successful prosecutions for the illegal dumping have relied heavily on evidence obtained from WTNs.
- Helps implement the requirements of the revised Waste Framework Directive (rWFD) which requires Member States to ensure that waste is managed up the waste hierarchy, is handled by an authorised person and ensure that waste management is only treated at authorised facilities without endangering human health or the environment.
- The obligation to produce a WTN rests as much on the transferor of the waste as transferee of that waste. The way in which the requirement for a WTN has been implemented means all transferors and transferees retain a copy of a WTN. This places an obligation on businesses to both complete and store a specific document for this purpose alone.

23.5 million WTNs are currently produced in the UK each year (calculated as part of the Electronic Duty of Care (EDoC) pilot in 2010); [http://www.environment-agency.gov.uk/static/documents/edoc_A4_leaflet_\(PDF_2MB\).pdf](http://www.environment-agency.gov.uk/static/documents/edoc_A4_leaflet_(PDF_2MB).pdf) The Red Tape Challenge stated that it is burdensome for some small businesses to fill in WTNs.

We made a commitment as part of Defra's response to the Red Tape Challenge to consult on providing businesses with greater flexibility as to the types of documents that can be used as an alternative to WTNs.

There is already some flexibility in the system as businesses can design transfer notes themselves as long as they contain the information required by statute, although it is difficult to quantify to what extent this option is used.

There is also the option to use an annual "season ticket" and many businesses take advantage of this approach. This allows them to fill in a WTN at the start of a contract and covers all transfers for up to 12 months as long as the waste type and the parties to the transfer remain the same. This frees businesses from having to complete a WTN each time waste is transferred thus minimising the administrative burden.

As part of the EDoC pilot, project stakeholders estimated that, in 2010 the cost of filling in, storing and retrieving a WTN was about £1.22. This was based on information from waste companies who were closely involved in developing the EDoC system. In many cases, large waste management companies take care of the WTN requirements as part of the service they provide to businesses and local authorities. Smaller businesses are less likely to contract with large waste management companies and therefore may face a bigger burden of WTN administration. It is assumed that many of these businesses have to complete the paperwork and store the WTNs themselves, incurring disproportionately higher costs.

The policy objective is to reduce the administrative burden on businesses having to complete WTNs by giving them a clearer option to use alternative forms of documentation as evidence instead such as invoices, receipts or orders to record the required information.

(b) Demonstrating authorisation to transport controlled waste

All persons who carry waste as part of a business or for profit must be registered with the relevant regulator (Environment Agency, Natural Resources Wales). The regulator issues waste registration certificates to those who register to carry waste. They also issue official copy cards for those who want them as a convenient way of carrying around their proof of registration.

There is no duty on a waste carrier to have their certificate or a copy card with them when transporting waste. Local authorities and the regulators have the power to require a person to produce their authority to transport waste in much the same way as the Police do for driving licences or insurance by issuing a form requiring the person to produce evidence.

Prior to the Waste (England and Wales) Regulations 2011 (2011 Regulations) a regulation existed in the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 which set out:

- how a person could produce their authority to transport waste when this is not done at the time of request (i.e. allowing them to produce this up to 7 days later); and
- that copy certificates were acceptable as proof of registration (therefore not restricting registered carriers to carry around the original certificate).

This description of how to comply was unintentionally left out of the 2011 Regulations which recast the waste carrier provisions from predecessor regulations. The omission of these regulations has caused confusion to the relevant regulators as well as to waste carriers. It has taken away the flexibility for carriers not to carry their original certificate around at all times and there is anecdotal evidence that some people have been prosecuted for non-compliance.

The aim of the consultation is simply to recognise this fact and amend the error by reinstating a very similar provision. The new provision differs very slightly by allowing production up to **5 working days after the request** rather than 7 (calendar) days. The provision has limited scope and places no additional burden on businesses although it is important in tackling potential crime.

(c) Waste carrier, broker and dealer registration – relevant convictions

The Environment Agency and Natural Resources Wales register waste carriers, brokers and dealers under the Control of Pollution (Amendment) Act 1989 (the 1989 Act) and in accordance with the provisions set out in the Waste (England and Wales) Regulations 2011 (the 2011 Regulations).

The Environment Agency may refuse registration if, in its opinion, it is undesirable for the applicant to be authorised to transport or to act as a broker or dealer of controlled waste and the applicant or another relevant person has been convicted of one or more of the offences set out in regulation 29(b) of the 2011 Regulations. This provision is similar but not the same as the relevant convictions considerations under the operator competence provisions of the environmental permitting regime. The Environment Agency may also revoke an environmental permit or a registration as a carrier, broker or dealer of a person latterly convicted of a relevant offence.

The Government has taken a number of measures to tackle 'metal theft'. Key amongst these measures is the introduction of the Scrap Metal Dealers Act 2013 (the 2013 Act). The 2013 Act introduces the concept of scrap dealers being subject to a licensing system by local authorities. A licence may be refused or revoked where a dealer is convicted of a relevant offence.

As legitimate scrap metal dealers will invariably also be required to be registered as waste carriers, brokers or dealers or treat waste under an environmental permit, it is desirable that the list of relevant offences for which convictions will need to be declared should be the same under the environmental permitting, waste carrier, broker and dealers registration and scrap metal dealer licensing. Furthermore, the list of relevant offences should include those related to metal theft or the handling of stolen metal. The Environment Agency has already altered its guidance to applicants to broaden the range of relevant convictions for the purpose of obtaining an environmental permit. Unfortunately the 1989 Act does not provide for the relevant offences to be set out in guidance.

Accordingly the purpose of this consultation is to add additional offences that are connected to metal theft to the list of relevant offences in regulation 29(5) of the 2011 Regulations (See Annex A).

The list of relevant offences may need to be periodically updated if and when new offences are added to the 2013 Act.

The policy objective is to prevent those convicted of relevant offences from registering as waste carriers, brokers or dealers by ensuring persons applying to register must declare convictions relating to metal theft as well as other environmental offences. This will help tackle metal theft as persons who have committed offences relating to metal theft or the handling of stolen metal will be refused registration as a waste carrier therefore reducing the possible negative impact.

Description of options considered (including do nothing);

Option 0 - Do nothing: (a) Retain the current requirement for Waste Transfer Notes; (b) not make any amendments in respect of waste carriers demonstrating their authorisation to transport controlled waste; (c) and not include the additional offences that are connected to metal theft that must be declared when registering as a waste carrier, broker or dealer.

As part of the Red Tape Challenge we have committed to look at providing businesses with an alternative to WTNs, however we will retain the option of doing nothing. We are seeking to amend the unintentional omission from the 2011 Regulations regarding waste carriers demonstrating their authority to transport waste, however we will retain the option of doing nothing. We are seeking to include the additional offences relating to metal theft that must be declared when registering as a waste carrier, broker or dealer, however we will retain the right to do nothing.

Option 1 – (a) Remove references to 'transfer notes' in Regulation 35 of the 2011 Regulations and replace with 'waste information'; (b) Amend the 2011 Regulations to include how a person can demonstrate their authority to carry waste when evidence is not immediately available; (c) Amend regulation 29(b) of the 2011 Regulations to include the relevant offences that are connected to metal theft.

This is the preferred option as this will provide greater flexibility around WTNs to the transferor and transferees of controlled waste to meet their legal Duty of Care obligations and is supported by

business. As this is a permissive change businesses may still use WTNs if they see no benefit to using alternative documentation. This will only apply to businesses involved in the estimated 20% of transfers not handled through EDoC. This option also sets out how waste carriers can comply with demonstrating their authority to carry waste when required to do so, therefore clearing up possible confusion resulting from the unintentional repeal of the previous regulations. In addition, this option will help to tackle metal theft by restricting persons convicted of offences relating to metal theft from registering as a waste carrier, dealer or broker.

Monetised and non-monetised costs and benefits of each option (including administrative burden);

Option 0 – Do nothing

(a) Waste Transfer Notes

There were changes to the regulations in 2011 (The Waste (England and Wales) Regulations 2011) that enabled the WTN to be in non-paper form in the knowledge that the Environment Agency (EA) was developing an electronic Duty of Care (EDoC) system for waste transfer notes under an EU Life Plus funded project. The project is managed by the Environment Agency in partnership with other organisations and has industry-wide support.

EDoC is due to be introduced from January 2014 and will allow for the electronic recording of WTNs. EDoC is expected to reduce much of the administrative burden currently associated with WTNs by delivering an online waste tracking system to replace the present paper-based WTN system. Estimates of the savings are based on information provided by businesses and the Environment Agency. Taking into account the savings from reduced costs of creation, storage and retrieval of a WTN, it is estimated that EDoC will save businesses £0.68 in the current estimated costs of hard copy WTNs. This means an expected cost per WTN of £0.54 using 2010 prices. More than 50% of this saving comes from the storage and retrieval of WTNs as shown in Table 1 overleaf.

Table 1: Estimated saving from EDoC (2010 prices)

Costs per WTN	Current WTN system	Edoc	Savings
Creation	£0.55	£0.50	£0.05
Storage	£0.43	£0.00	£0.43
Retrieval	£0.24	£0.04	£0.20
Total	£1.22	£0.54	£0.68

Source: EA

Although EDoC is voluntary, the Environment Agency estimates take up by businesses will cover 80% of waste transfers with targeted communication and other publicity campaigns. The significant cost savings to businesses are expected to be the main driver of this take up rate. There will be transition costs of switching from paper based documentation to EDoC, but these costs of familiarisation with the portal and training of staff are expected to be low and are not expected to be undertaken if the potential savings are not expected to be realised. The Environment Agency is creating a large document management system that can easily be accessed via a web portal. Applications will be provided allowing companies to integrate EDoC directly with their existing waste management systems. Any UK company involved in the production, collection, transfer or disposal of waste will be able to use EDoC.

The benefits to business of EDoC are substantial. Scaling up the costs savings to 2013 using the GDP deflator gives £0.72 of savings per WTN. Assuming the number of WTN is unchanged (the total amount of waste and waste transactions can vary over time, but we do not have sufficient information to make an assumption about the number of WTNs required), there will be saving for 80% of the total number of WTNs or 18.8m. This could provide overall savings of up to £13.6m to businesses. These saving are expected to be fully realised from 2015. There are costs to government and the Environment Agency of developing and maintaining the system. There are support and maintenance costs and this is expected to be £300,000-£400,000. The estimated net benefit of the EDoC system assuming full take up and cost savings is £13.2m. A lower rate of take up would reduce this estimate.

There are additional benefits to take up of the EDoC system. According to the CBI, there is a lack of good quality data for commercial and industrial waste, which means it is difficult to identify opportunities for recycling and recovery. The EDoC system would fill a major gap in knowledge within the waste industry, providing a platform for the production of a real-time, accurate, benchmarking baseline of waste together with in-depth reporting of information on the UK's waste data such as disposal and treatment methods and waste streams.

EDoC is out of scope of any proposed legislative changes and is happening irrespective of this consultation and is therefore part of the counterfactual for this proposal. The counterfactual therefore assumes that 80% of WTNs are through EDoC and costs £0.57 (£0.54 inflated to 2013 prices) per WTN. It is further assumed that those businesses that do not take up EDoC are more likely to be smaller businesses, and will continue to incur the costs of full paper documentation for a WTN at a cost of £1.29 (GDP deflator applied to cost of £1.22 in 2010).The number of WTNs is assumed to remain unchanged at 23.5m as there is currently no evidence of any change since 2010. Although the total amount of waste arisings may vary over time, WTNs are expected to be related to the number of transactions which is less likely to be affected by overall changes in waste arisings. The total cost of WTNs is therefore £16.8m as shown in Table 2:

Table 2: Baseline costs for WTNs after 80% take up of EDoC

	Number of waste transactions requiring a WTN m	Cost per WTN/EDoC (2013 prices) £	Total £m
EDoC	18.8	0.57	10.8
WTN	4.7	1.29	6.1
Total	23.5		16.8

Source: EA

(b) Waste carrier demonstration of authorisation to transport controlled waste

There is no current legislation that stipulates how waste carriers can comply with the requirement to provide evidence of their authority to transport controlled waste when required to do so by a regulator and they do not have their original certificate with them.

This takes the assumption that every registered waste carrier would need to carry their certificate of authority with them at all times when operational to avoid possible penalties if required to show their authority by the relevant regulator. This also assumes that only the original certificate of authorisation is acceptable to demonstrate your authority when required. In some circumstances, businesses

registered as waste carriers will utilise a number of operational vehicles at one time under the same registration. This puts into practice that only one vehicle can carry the original authorisation at any one time therefore opening the other vehicles up to possible penalties.

The option of 'do nothing' restricts registered waste carriers from utilising more than one vehicle at any one time.

As the Environment Agency is currently taking a light touch approach around this legislation it is not possible to place a cost on it. There has been anecdotal evidence received, although nothing concrete, that some local authorities have stopped waste carriers who have not been carrying their certificate of authorisation and issued fixed penalty notices.

(c) Waste carrier, broker and dealer registration – relevant convictions

The Scrap Metal Dealers Act 2013 places restrictions on those who have been convicted of offences relating to metal theft and handling stolen metal from becoming licensed as scrap metal dealers. Persons who are unable to become licensed as scrap metal dealers may still register as waste carriers, brokers or dealers regardless of whether they have committed offences relating to metal theft.

If persons holding a scrap metal dealers licence and a waste carriers registration are convicted of offences relating to metal theft they may have their scrap metal dealers licence revoked but may continue to operate as a waste carrier under their registration.

This option may have a possible negative environmental impact associated as persons previously convicted of scrap metal theft offences will have the opportunity to become waste carriers and continue to work with scrap metal.

As this option is currently in place it is not possible to place a cost on retaining it.

Option 1:

(a) Remove references to 'transfer notes' in Regulation 35 of the 2011 Regulations and replace with 'waste information'.

There is no prescribed format for the transfer note and it can be in electronic form, so there is already some flexibility as to how the information can be provided. An example of a WTN is provided in a Code of Practice on how to comply with the Duty of Care.

This policy proposal offers greater flexibility around WTNs as it will clarify that there will be more than one way of complying with the Duty of Care by allowing businesses to use alternative forms of documentation as evidence to record the required information. However, there may be some upfront cost to businesses when adapting their existing system to incorporate these other forms of documentation.

During the consultation, we will request further information on using alternative documents and request associated costs savings and upfront costs of any change.

We have carried out informal research with stakeholders to ascertain if there will be any potential savings with this proposal. Our discussions with stakeholders indicate potential savings are unclear and suggest that a relatively small number of businesses will benefit from the proposed changes. The Federation of Small Businesses and Department of Business, Innovation and Skills have indicated their support for this option as, although it may not offer identified savings in terms of cost, the greater flexibility it offers businesses could result in savings that have not yet been identified.

This option is a permissive change, and as such businesses will not be required to stop using WTNs if they do not feel there is a benefit to do so. We will be using this consultation to invite views on the type of alternative documentation that could be provided and the associated cost savings.

As part of the consultation process we will also invite businesses to provide suggestions for possible revisions to the written description of waste that is currently required on WTNs. We may be limited as to the extent of changes we can implement as many of the existing requirements flow from our obligations under the revised Waste Framework Directive.

(b) Amend the 2011 Regulations to include how a person can demonstrate their authority to carry waste when not done immediately; and that copy of registration certificates are acceptable proof of registration

The 2011 Regulations do not stipulate how a waste carrier is required to provide evidence of their authorisation to carry controlled waste if required to do so by a regulator and they do not have their original certificate with them. The regulations also do not confirm whether an authorised copy of the original authorisation certificate is acceptable.

The policy proposed will reinstate the unintentional repeal of the relevant parts of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 which will allow a waste carrier to:

- produce their authorisation or send it to the principal office of the regulation authority for the area in which they are stopped within 5 working days after the date they were required to produce it; and
- establish that a copy of a waste carrier's certificate of registration as a carrier is acceptable to act as the authority for transporting controlled waste.

The EA offer authorised copies of registration certificates for an additional £5 fee. This policy will propose to reinstate that waste carriers are able to use these copies as a way of demonstrating authorisation to transport controlled waste.

The EA is currently taking a light touch approach to this legislation. This option will help to bring an explicit understanding to this legislation.

(c) Amend regulation 29(b) of the 2011 Regulations to include the relevant offences that are connected to metal theft as set out in the Scrap Metal Dealers Act 2013.

The policy proposed will help align offences taken into consideration when applying to register as a waste carrier, broker or dealer or applying for a licence as a scrap metal dealer.

It is important that persons who have been refused a scrap metal dealers licence by a local authority because they have been convicted of a relevant offence are not able to register as a waste carrier, broker or dealer without those same offences being taken into consideration as this would allow a possible loophole in the waste system. This policy will stop the ability for persons convicted of offences related to metal theft and the handling of stolen metal to continue this practice under registration as a waste carrier, broker or dealer. Persons, who are licensed as a scrap metal dealer and registered as a waste carrier, if convicted of offences relating to metal theft, may then have their scrap metal dealers licence or waste carrier registration revoked. However, it does not mean that the EA will automatically refuse a convicted person from registering as a carrier. However, the convictions will be taken into consideration. This is an important policy in the government's fight against metal theft.

This option will affect any persons with convictions relating to metal theft as they may no longer be allowed to register as waste carriers, brokers or dealers. The EA have already altered their list of offences to take into account when registering waste carriers, brokers or dealers.

Costs and Benefits

For proposal (a) it is expected that businesses involved in the 20% of transfers that are not handled through EDoC will take advantage of this permissive change if there are benefits to doing so. This change is expected to deliver benefits to businesses but there is currently insufficient information to monetise any expected benefits from the increased flexibility from the proposal for WTNs. The baseline already takes into account the substantial savings to the businesses involved in the other 80% transfers handled through EDoC. Information from the consultation will be used to estimate the number of businesses affected and the expected benefits from alternative forms of documentation. There may be transition costs that are incurred but these are expected to be more than offset by any benefits of the increased flexibility.

Proposals (b) and (c) are not expected to incur additional costs to legitimate businesses.

Risks

There is a risk that by using alternative documentation the required information under the 'written description' of waste may not be fully documented. This would mean both the transferor and transferee of the waste are not in compliance with their Waste Duty of Care and could be liable for financial penalties.

Summary of all proposals

Option 1 is the preferred option. This replaces references to 'transfer notes' in Regulation 35 of the 2011 Regulations with 'waste information'. This option provides greater flexibility for businesses to meet their Waste Duty of Care requirements and has the support of BIS/ the Federation of Small Businesses (FSB).

It is difficult to judge any impacts at this stage as we are unsure how many businesses will take up this option. Consultation from the FSB indicates the greater flexibility around WTNs will provide a positive impact to business.

With this in mind we are unable to calculate the EANCB for option 1. Our informal discussions with stakeholders have been unable to ascertain the level of cost saving for this option over the current practice. It has not been possible to establish the true potential savings of option 1 despite an understanding of the current cost of filling in a WTN. This consultation will be used to invite views on

the true cost of option 1 and we will seek to establish the value of the reduction in EANCB after it has closed.

Furthermore, this option will clarify how waste carriers are able to demonstrate their authority to carry waste when evidence is not immediately available as well as confirming that authorised copies of the original certificate are acceptable. This will have a positive impact on waste carriers who are unable to carry their certificate of authorisation with them as well as businesses that use multiple vehicles and therefore are reliant on copies of authorisation certificates.

This option will also allow the relevant regulators to take further convictions relating to metal theft and handling of stolen metal into account when registering persons as waste carriers, brokers or dealers. This will impact all persons convicted of offences relating to metal theft who are seeking to register as a waste carrier, broker or dealer as they may no longer be able to do so.

Consultation Questions

The following questions will be asked to consultees as part of the consultation document:

- **1a) please state whether clarifying in regulation 35 of the Waste (England and Wales) Regulations 2011 that the written description of waste can be recorded on documentation other than a WTN will provide any benefits and why? If so please –**
- **1b) provide any additional benefits not stated in the consultation where alternative documentation will help businesses comply with their Waste Duty of Care?**
- **1c) please provide estimated cost savings from the use of alternative documentation to record the written description of waste. This additional information will help establish additional monetary benefits or costs for this proposed amendment.**
- **Question 2) what are your views on the current information currently required to be recorded under regulation 35(2) of the Waste (England and Wales) Regulations 2011 and how helpful or necessary is this information to adequately meet the waste Duty of Care? Please provide specific examples of where changes may be made.**
- **Question 3) can you provide any reasons why reinstating the provisions regarding how a waste carrier presents their authority to carry waste may have a negative effect?**
- **Question 4) please give your views on the proposed additional relevant offences being taken into consideration when the Agencies exercise their power to refuse registration of a waste carrier, broker or dealer or revoke an existing registration?**

One in Two Out

Option 1 is in scope of One In Two Out and is classed as an out as the amendment around WTNs stems from the Red Tape Challenge and is deregulatory.

Option 1 gives businesses greater flexibility and makes it easier to comply with their waste Duty of Care responsibility. Currently there is no option but to fill in a Waste Transfer Note for every movement of waste. Option 1 gives them the flexibility to use alternative, existing documentation relieving some of the administrative burden.

The amendments concerning demonstrating authorisation to transfer waste and including the including relevant offences around metal theft have been classed as trivial by the Cabinet Office.

Implementation review

The proposals will be reviewed in light of this consultation.

Annex A –The proposed regulations

STATUTORY INSTRUMENTS

2014 No.

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Waste (England and Wales) (Amendment) Regulations 2014

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Laid before the National Assembly for Wales</i>		***
<i>Coming into force in accordance with regulation 1(2)</i>		

The Secretary of State is designated⁽¹⁾ for the purposes of the European Communities Act 1972⁽²⁾ in relation to the environment. The Welsh Ministers are designated⁽³⁾ for the purposes of that Act in relation to the prevention, reduction and management of waste.

The Secretary of State in relation to England, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by sections 5(3)(b) and (4)(b) and 8 of the Control of Pollution (Amendment) Act 1989⁽⁴⁾ and section 2(2) of the European Communities Act 1972.

Title, commencement and interpretation

—a) These Regulations may be cited as the Waste (England and Wales) (Amendment) Regulations 2014.

These Regulations come into force on xx February 2014.

In these Regulations, “the Waste Regulations” means the Waste (England and Wales) Regulations 2011⁽⁵⁾.

Amendment of the Waste (England and Wales) Regulations 2011

The Waste Regulations are amended in accordance with regulations 3 to 5.

(1) S.I. 2008/301.
(2) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 c. 7.
(3) 2010/1552.
(4) 1989 c.14.
(5) 2011/988 to which there are amendments not relevant to this instrument.

Amendment of regulation 29 (procedure for registration)

—b) Regulation 29 of the Waste Regulations is amended as follows—
for paragraph (5)(b), substitute—

“(b) the applicant or another relevant person has been convicted of a relevant offence.”
;

after paragraph (5), insert—

“(5A) For the purposes of paragraph (5)(b), a “relevant offence” means an offence under—

- (a) the Scrap Metal Dealers Act 1964⁽⁶⁾,
- (b) section 1, 8, 9, 10, 11, 17, 18, 22 or 25 of the Theft Act 1968⁽⁷⁾, where the specific offence concerned relates to scrap metal, or is an environment-related offence,
- (c) section 170 or 170B of the Customs and Excise Management Act 1979⁽⁸⁾, where the specific offence concerned relates to scrap metal,
- (d) section 9 of the Food and Environment Protection Act 1985⁽⁹⁾,
- (e) section 1, 5 or 7 of the Control of Pollution (Amendment) Act 1989⁽¹⁰⁾,
- (f) section 33, 34 or 34B of the Environmental Protection Act 1990⁽¹¹⁾,
- (g) section 85, 202 or 206 of the Water Resources Act 1991⁽¹²⁾,
- (h) the Transfrontier Shipment of Waste Regulations 1994⁽¹³⁾,
- (i) section 110 of the Environment Act 1995⁽¹⁴⁾,
- (j) the Control of Major Accidents and Hazards Regulations 1999⁽¹⁵⁾,
- (k) the Pollution Prevention and Control (England and Wales) Regulations 2000⁽¹⁶⁾,
- (l) regulation 17(1) of the Landfill (England and Wales) Regulations 2002⁽¹⁷⁾,
- (m) section 327, 328 or 330 to 332 of the Proceeds of Crime Act 2002 ⁽¹⁸⁾,
- (n) the Hazardous Waste (England and Wales) Regulations 2005⁽¹⁹⁾,
- (o) the Hazardous Waste (Wales) Regulations 2005⁽²⁰⁾,
- (p) section 1 of the Fraud Act 2006⁽²¹⁾, where the specific offence concerned relates to scrap metal or is an environment-related offence,
- (q) the Waste Electrical and Electronic Equipment Regulations 2006⁽²²⁾,
- (r) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007⁽²³⁾,
- (s) the Producer Responsibility Obligations (Packaging Waste) Regulations 2007⁽²⁴⁾,
- (t) the Transfrontier Shipment of Waste Regulations 2007⁽²⁵⁾,

⁽⁶⁾ 1964 c.69. This Act is to be repealed by section 19(1)(a) of the Scrap Metal Dealers Act 2013, which has not yet been commenced.

⁽⁷⁾ 1968 c.60.

⁽⁸⁾ 1979 c.2. Section 170B was inserted by the Finance (No 2) Act 1992 (c.48), section 3, Schedule 2, paragraph 8.

⁽⁹⁾ 1985 c.48.

⁽¹⁰⁾ 1989 c.14.

⁽¹¹⁾ 1990 c.43. Section 34B was inserted, in relation to England and Wales, by the Clean Neighbourhoods and Environment Act 2005 (c.16), section 46.

⁽¹²⁾ 1991 c.57. Section 85 was repealed by S.I. 2010/675, regulation 107 and Schedule 26, Part 1 paragraph 8(2)(a).

⁽¹³⁾ S.I. 1994/1137. These Regulations were revoked by S.I. 2007/1711, regulation 60(1)(a) and (2).

⁽¹⁴⁾ 1995 c.25.

⁽¹⁵⁾ S.I. 1999/743.

⁽¹⁶⁾ S.I. 2000/1973. These Regulations were revoked by S.I. 2007/3538, regulation 74(1) and Schedule 22.

⁽¹⁷⁾ S.I. 2002/1559. These Regulations were revoked by S.I. 2007/3538, regulation 74(1) and Schedule 22.

⁽¹⁸⁾ 2002 c.29.

⁽¹⁹⁾ S.I. 2005/894.

⁽²⁰⁾ S.I. 2005/1806.

⁽²¹⁾ 2006 c.35.

⁽²²⁾ S.I. 2006/3289.

⁽²³⁾ S.I. 2007/3538. Regulation 38 was revoked by S.I. 2010/675, regulation 108(1) and Schedule 27.

⁽²⁴⁾ S.I. 2007/871.

- (u) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010⁽²⁶⁾,
 - (v) regulation 42 of these Regulations,
 - (w) section 46 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012⁽²⁷⁾,
 - (x) the Scrap Metal Dealers Act 2013⁽²⁸⁾.
- (5B) The offences listed in paragraph (5A) include an offence of—
- (a) attempting or conspiring to commit any of those offences;
 - (b) inciting or aiding, abetting, counselling or procuring the commission of any of those offences.
- (5C) For the purposes of paragraph (5A)—
- “environment-related offence” means an offence which relates to the transportation, shipment or transfer of waste, or to the prevention, minimisation or control of pollution of the air, water or land which may give risk to any harm;
- “harm” means—
- (a) harm to the health of human beings or other living organisms;
 - (b) harm to the quality of the environment;
 - (c) offence to the senses of human beings;
 - (d) damage to property; or
 - (e) impairment of, or interference with, amenities or other legitimate uses of the environment.”;

after paragraph (6), insert—

“(6A) The appropriate body must, on payment of its reasonable charges, provide any person who has been provided with a certificate of registration under paragraph (6) such copies of the certificate as may requested by that person.

(6B) The appropriate body must ensure that the copies of the certificate are numbered and marked so as to show that they are copies of the certificate and that they have been provided by the appropriate body under this regulation.”.

Amendment of regulation 35 (the transfer note)

—c) Regulation 35 of the Waste Regulations is amended as follow—

in the heading for “The transfer note” substitute “Waste information”;

in paragraph (2), for (“the transfer note”), substitute (“written information”);

in paragraph (3)—

(i) for “a transfer note”, substitute “the written information”,

(ii) for “information”, substitute “matters”.

in paragraphs (4) and (5), in each place where it occurs, for “transfer note” substitute “written information”;

in paragraph (6), for “a transfer note” substitute “the written information”.

Insertion of new Part 10A (authority to transport controlled waste)

After Part 10 (enforcement) of the Waste Regulations, insert Part 10A as follows—

(25) S.I. 2007/1711.

(26) S.I. 2010/675.

(27) 2012 c.10. Section 146 is to be repealed by section 19(1)(f) of the Scrap Metal Dealers Act 2013, which has not yet been commenced.

(28) 2013 c.10.

“PART 10A

Authority to transport controlled waste

Specified requirements under section 5 of the Control of Pollution (Amendment) Act 1989

45A.—(1) Where a person is required to produce authority to transport controlled waste under section 5(2)(a) (power to require production of authority, stop and search etc) of the Control of Pollution (Amendment) Act 1989—

- (a) for the purposes of section 5(3)(b) of that Act, the authority is the certificate of registration provided under regulation 29(6) of these Regulations and it includes any copies of the certificate made in accordance with regulation 29(6A) and (6B); and
- (b) for the purposes of section 5(4)(b) of that Act, the authority must be produced—
 - (i) forthwith at the time the requirement is made; or
 - (ii) at, or sent to, the relevant office no later than 5 working days from the date the request was made.

(2) For the purposes paragraph (1)(b)(ii), the “relevant office” means an office of the appropriate body as may be specified by the authorised officer of a regulation authority or constable at the time the requirement is made.

(3) For the purposes of paragraph (2)—

- (a) “authorised officer” has the meaning given in section 9(1B) of Control of Pollution (Amendment) Act 1989;
- (b) “regulation authority” has the meaning given in section 9(1) of that Act, as read with section 9(1A) and (1AA).”.

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Waste (England and Wales) Regulations 2011 (S.I. 2011/988). They amend regulation 29(5) of those Regulations by adding a new list of “relevant offences” for the purposes of the remaining provisions in that regulation which apply to the registration of carriers, brokers and dealers of controlled waste. The Regulations insert provisions relating to the production of authority for transporting controlled waste (which is the certificate of registration issued in accordance with regulation 29) where this is required under section 5(2)(a) of the Control of Pollution (Amendment) Act 1989 (c. 14) and relating to the making of copies of certificates of registration. The Regulations amend regulation 35 by replacing the references in that regulation to “a transfer note” with a reference to “written information”.

A full impact assessment of the effect that this instrument will have on business, the voluntary sector and the public sector is available from Waste Regulation and Crime, Department for Environment, Food and Rural Affairs, Area 2B, Nobel House, 17 Smith Square, London, SW1P 3JR and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.