



**CIWM Briefing - Version 1: 20 September 2018**

*This briefing will be updated as additional information becomes available*

## **Brexit, Waste and the Island of Ireland**

The UK's exit from the European Union in March 2019 will impact on the resources and waste sector in the Republic of Ireland and Northern Ireland and this paper seeks to document the known or anticipated implications, summarise current understanding on how these will be resolved, and highlight areas where more information is required to understand and address the possible consequences.

### **1. Transboundary movements of waste**

When the UK leaves the EU on 29 March 2019, notwithstanding the fact that the European Union (Withdrawal) Act 2018 will transpose the EU 'environmental acquis' into UK law, the UK relationship to that body of law will change as its status moves from 'Member State' to 'Third Country' as far the EU is concerned.

This change in status will have a number of impacts. One of key areas for the resource and waste sector relates to cross-border movements of waste and waste derived-products between mainland UK, Northern Ireland (NI) and the Republic of Ireland (ROI). This section summarises the legislative frameworks that pertain to the transboundary movements of waste, the UK Government's intended approach to ensuring that the retained EU legislation is fit for purpose on Day 1 after exit, the key implications, including where further questions may arise as a result of the final outcome of the ongoing EU exit negotiations, and available policy and regulatory statements from the NI and ROI governments and regulatory agencies.

#### **1.1 Legislative frameworks that pertain to the transboundary movements of waste**

##### **International**

Shipments of waste are subject to control through a number of international agreements and legislative frameworks.

The **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal** (Basel Convention) <sup>1</sup> is the major international agreement that regulates the transboundary movement and disposal of hazardous and other wastes. It entered into force in 1992 and its overarching objective is to protect human health and the environment against the adverse effects of hazardous wastes. Its principal aims are:

- the reduction of hazardous waste generation and the promotion of environmentally sound management of hazardous wastes, wherever the place of disposal;
  - the restriction of transboundary movements of hazardous wastes except where it is perceived to be in accordance with the principles of environmentally sound management;
- and

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<sup>1</sup> <http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx>

- a regulatory system applying to cases where transboundary movements are permissible, including a requirement for notice and written consent for transboundary movements of hazardous waste between trading countries

The Convention contains two major restrictions on waste movements. The first restriction requires that exports of waste occur only under the following circumstances:

- if the exporting country does not have sufficient disposal or recycling capacity;
- if the exporting country does not have disposal and recycling facilities that can manage the waste in an environmentally sound manner; or
- if the wastes are required as a raw material for recycling or recovery industries in the importing country.

The Convention also prohibits the movement of waste between parties to the Convention and non-parties, except when these movements occur under a separate agreement. The agreement must provide an equally sound management structure for transboundary movements of waste.

The **OECD Council Decision on the Control of Transboundary Movements of Wastes Destined for Recovery Operations**<sup>2</sup>, meanwhile, provides a framework for Organisation for Economic Cooperation and Development (OECD) member countries to control the transboundary movements of wastes for recovery within the OECD area. Entering into force in March 1992, and superseded by a revised version in 2002, the OECD Council agreement provides a tiered level of control for transboundary movements of hazardous waste. This agreement specifies two categories of waste: green and amber, where Green List wastes are those that pose the least hazard to human health and the environment, and are subject to the same level of control as normal transboundary commercial shipments, and Amber List wastes are those that present sufficient risk to justify their control.

The UK has ratified the Basel Convention and is an OECD Member, and is therefore subject to the requirements of both agreements.

### European legislation

At an EU level, Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste<sup>3</sup> is the main piece of legislation and sets out a system to supervise and control shipments of waste within its borders and with the countries of the European Free Trade Association (EFTA), the Organisation for Economic Cooperation and Development (OECD) and non-EU countries that have signed the Basel Convention.

It lays down rules for controlling waste shipments in order to improve environmental protection and incorporates the provisions of the Basel Convention and the OECD Council Decision, including the control and notification procedures.

The law applies to shipments of waste:

- between EU countries within the EU or transiting via non-EU countries;
- imported into the EU from non-EU countries;
- exported from the EU to non-EU countries; or
- in transit through the EU, on the way from or to non-EU countries.

<sup>2</sup> <http://www.oecd.org/env/waste/theoecdcontrolsystemforwasterecovery.htm>

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l11022>

It covers almost all types of waste, with the exception of radioactive waste, waste generated on board ships, shipments subject to the approval requirements of the animal by-product regulation, certain shipments of waste from the Antarctic, and imports into the EU of certain waste generated by armed forces or relief organisations in situations of crisis.

Regulation (EC) No 1418/2007<sup>4</sup>, meanwhile, covers the export for recovery of certain wastes to non-OECD countries and sets out the position of each of these countries with regard to the wastes that they will accept for recovery and the control and notification procedures that must be followed.

### **UK legislation**

In the UK, the Transfrontier Shipment of Waste Regulations 2007<sup>5</sup> transpose Regulation (EC) No 1013/2006 into UK law and detail the UK's procedures, offences, penalties and relevant enforcement authorities. The UK Plan on Shipments of Waste<sup>6</sup>, meanwhile, sets out Government policy in relation to imports and exports for disposal.

### **1.2 The UK Government's intended approach post-Brexit**

As the retention and modification of EU law through the Withdrawal Act is a reserved matter, the Department for the Environment, Food & Rural Affairs (Defra) is taking the lead in assessing the implications of EU exit for this area of waste legislation, and the changes that are required to ensure that all relevant retained EU legislation functions effectively and that there is maximum certainty and continuity.

In stakeholder engagement meetings during Summer 2018, Defra outlined its proposals to retain Regulation (EC) 1013/2006 and other related EU regulations pertaining to the movement of waste with the minimum number of modifications to ensure 'operability' on day one after EU exit in the absence of a negotiated settlement.

These modifications are not intended to be substantive but rather to make the legislation workable after exit; for example, by changing current references to EU legislation to references to the implementing UK legislation or, where necessary, to the Basel Convention and the OECD Council Decision. The sections on exports from the Community to Third countries and imports into the Community from Third countries (Titles IV and V) will be repurposed as the process for UK waste exports and imports respectively and the transit provisions (Title VI) will be repurposed as the process for waste transiting the UK to ensure parity with the EU requirements. In addition, there will also be minor changes to the UK TFS Regulations.

Defra has also confirmed that EU Waste Shipments guidance and ECJ Case Law on waste shipments will continue to apply.

With regard to Regulation (EC) No 1418/2007 covering the export for recovery of certain wastes to non- OECD countries, Defra will be bringing it into UK legislation with no changes as there are no perceived operability issues. As a result, however, the department recognises that there is a small risk that these countries may choose to treat the UK differently once it is no longer an EU Member State. In due course, therefore, the UK will need to replicate the process followed by the EU of

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<sup>4</sup> <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32007R1418>

<sup>5</sup> <https://www.gov.uk/guidance/importing-and-exporting-waste>

<sup>6</sup> <https://www.gov.uk/government/publications/uk-plan-for-shipments-of-waste>

contacting these states to establish what rules and controls they wish to put in place for imports of certain wastes from the UK for recovery.

### **1.3 Practical implications**

#### **1.3.1 Green List wastes**

Under the approach set out by Defra, for both the UK and the ROI, there would be no change anticipated to the controls and requirements governing the import or export of Green List wastes for recovery. Green List wastes are not notifiable (unless specifically required by the importing country), however further assessment of any potential administrative and logistical implications is currently underway.

Importantly for ROI, which exports a significant volume of Green List waste to the UK for recovery and recycling (over 340,000 tonnes in 2016 – equivalent to 43% of the total export tonnage), a European Commission notice to stakeholders on Brexit and waste law issued in February 2018<sup>7</sup> also confirms that where recovery of waste generated in the EU Member States takes place outside the EU (i.e. in the UK in this context), Member States can count that waste towards the fulfilment of their EU waste management targets as long as there is an equivalent standard of treatment conditions. Given that UK treatment facilities are already operating in line with EU standards, this requirement is not expected to pose any problems in the short term, although additional checks and evidence of equivalent standards may be required in the longer term depending on the degree of legislative divergence post-Brexit.

***Cross-border implications for Ireland:*** There is considerable cross-boundary movement of Green List wastes between NI and ROI, as well as exports to mainland UK and Europe. Data on ROI exports and imports is available<sup>8</sup>. No data is publicly available on NI Green List waste exports and imports.

#### **1.3.2 Amber List (notifiable) wastes**

##### **Imports into the UK for recovery**

From a UK perspective, no significant changes are anticipated with regard to the legislative framework for imports of Amber List wastes into the UK for recovery.

As per the February 2018 EU notice mentioned above, as far as ROI is concerned, the export of Amber List wastes to the UK (87,776 tonnes in 2016 – equivalent to around 10% of the total), including WEEE and waste batteries will continue to be allowed, subject to the same requirements that currently govern these exports, and will be counted towards the waste management targets as long as there is evidence that treatment in the UK takes place in conditions that are equivalent to the requirements of the relevant Directives.

##### **Imports into the UK for disposal**

There are implications when it comes to the import of wastes for disposal, however. While Defra anticipates no practical changes with regard to the UK approach, once the UK becomes a Third Country on the 29 March 2019, the rules will change for the ROI.

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<sup>7</sup> [https://ec.europa.eu/info/sites/info/files/notice\\_to\\_stakeholders\\_brexit\\_waste.pdf](https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_brexit_waste.pdf)

<sup>8</sup> <http://www.dublincity.ie/main-menu-services-water-waste-and-environment-waste-and-recycling-national-tfs-office/ntfso-waste>

The EU Waste Shipment Regulations (Article 34) prohibit EU Member States from exporting:

- waste for disposal and
- mixed municipal waste (EWC code 20 03 01) for recovery

from the EU to a third country, unless it is a member of the European Free Trade Association (EFTA) and a party to the Basel Convention.

As the UK will not be an EFTA member, the ROI will therefore be prohibited from exporting wastes for disposal and mixed municipal waste for recovery to the UK unless there is a negotiated agreement.

This has particular implications for hazardous waste exports, as the ROI has relied to a significant extent on exporting these wastes for disposal because it does not have the necessary domestic treatment infrastructure. The latest data available (2014) shows that the ROI was exporting 37% of its hazardous waste to mainland UK in 2014 and 1% to NI<sup>9</sup>, although no detail is available on the percentages destined for disposal and recovery respectively. According to industry sources, most of the asbestos waste produced in the ROI is exported to NI for landfill disposal and the NIEA have been advising producers in ROI that, in the absence of any agreement or transitional agreement, the end date of the existing transfrontier shipment notifications could be March 2019.

#### **Hazardous waste exports from ROI in 2014**

In 2014, 328kt of hazardous waste was managed, of which 141kt (44%) was exported - 51kt of exported waste for disposal and 90kt for recovery.

37% of the total exported went to Great Britain, and 1% to Northern Ireland.

Solvents accounted for 36% of exports, followed by batteries and accumulators (12%), waste electrical and electronic equipment (12%) and wastes from waste treatment (7%).

Imports: Just under 4kt of hazardous waste was imported for treatment, primarily waste oils, from Northern Ireland.

In addition to the export prohibition that will come into force as a result of EU, a bilateral agreement between the UK and ROI that allowed for imports of hazardous waste to the UK for high temperature incineration also expires in March 2019<sup>10</sup>. However, the EPA is liaising with ROI hazardous waste stakeholders on this issue and the ROI government is confident that alternative EU destinations for these wastes will be available (see Section 1.4).

Unlike England, Wales and Scotland, the regulatory framework in ROI allows the export of mixed municipal wastes (EWC 20 03 01); however, according to the 2017 data on Amber List exports<sup>11</sup>, the Netherlands, Sweden and Estonia are the only export destinations for EWC 20 03 01 from ROI and so will be unaffected by Brexit.

**Cross-border implications:** There is some cross-border movement of hazardous waste from ROI to NI, although the tonnage is reported to be very limited (circa 5kt, primarily asbestos and waste chemicals). It is not clear if these exports will continue to be allowed, for example under the auspices of the framework for cross-border environmental co-operation that was recognised and

<sup>9</sup>[http://www.epa.ie/pubs/reports/waste/stats/hazardouswaste2014/EPA\\_Hazardous%20Waste%20Data%20Release\\_2014\\_web.pdf](http://www.epa.ie/pubs/reports/waste/stats/hazardouswaste2014/EPA_Hazardous%20Waste%20Data%20Release_2014_web.pdf)

<sup>10</sup> <http://archive.basel.int/natreporting/1997/1997Compl.pdf> - p12

<sup>11</sup> <http://www.dublincity.ie/main-menu-services-water-waste-and-environment-waste-and-recycling-national-tfs-office/ntfso-waste>

strengthened by the Good Friday Agreement<sup>12</sup>, within which Strand II provides for the institutional mechanisms necessary to develop and promote increased cross-border and all-island cooperation on environmental matters. It is, therefore, likely to be dependent on the outcome of the Brexit negotiations with regard to the NI-ROI border.

### **Exports from the UK for recovery**

From a UK perspective, no significant changes are anticipated with regard to the legislative framework for export of Amber List wastes from the UK for recovery as the UK will continue to be a Basel Convention party and an OECD member.

**Cross-border implications:** Exports of Amber List wastes from NI to the ROI are mainly confined to refuse-derived fuel (RDF) and solid recovered fuel (SRF) (see Section 1.3.3).

### **Exports from the UK for disposal**

From a UK perspective, Defra intends to maintain the current provision in the EU Waste Shipment Regulations that prohibits the export of waste for disposal except to EU and EFTA countries.

From an EU perspective, the EU WSRs state that: “Imports into the Community of waste for disposal should be permitted where the exporting country is a Party to the Basel Convention.”

**Cross-border implications:** NI exports circa 4kt of hazardous waste to ROI, primarily waste oils. However, no significant changes to the controls for these movements are expected given the above provisions and provisions in the UK Plan for Waste Shipments which allow (subject to specific restrictions) for shipments of hazardous waste for disposal between Northern Ireland and Ireland.

### **1.3.3 RDF**

According to a research report on RDF exports and markets currently being carried out for CIWM by SLR Consulting for publication this Autumn, ROI exported 328,000 tonnes of RDF in 2017, which maintains a downward trend seen since a 2014 peak of 557,000 tonnes, while DAERA data for Northern Ireland shows a relatively stable export tonnage of between 140,000 and 160,000 between 2014 and 2017. Notably, ROI has been the third largest market for NI exports in recent years, taking 28,000 tonnes in 2017. It is understood that this is largely SRF destined for cement kilns. Sweden, Denmark, the Netherlands and Germany are the main end destinations for Irish RDF.

For ROI, exports of RDF to other EU Member States will not be directly impacted as a result of the UK leaving the EU, although other market factors will still apply. For NI and the UK as a whole, there has been concern about the potential impact of tariffs on RDF after EU exit. However, at a recent stakeholder briefing Defra stated that:

*“Our view is that the export of waste for recovery does not constitute a sale of goods but the provision of a service. This is based on our understanding that UK exporters of RDF/SRF have to pay the energy recovery sites to take UK RDF/SRF away.*

*“This view is supported by both HMRC and the WTO (which considers Refuse Disposal generally a service). As a result, no tariff should be applied to the export.”*

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<sup>12</sup> <https://www.gov.uk/government/publications/the-belfast-agreement>

### 1.3.4 Waste-derived products meeting End-of-Waste criteria

As the Waste Framework Directive requirements with regard to End-of-Waste (EoW) will be retained in UK law through the European Union (Withdrawal) Act 2018, no significant legislative change or impact is currently anticipated on the export and import of EoW compliant waste-derived products, although there is the possibility that new or different tariffs could apply to some of these materials post-Brexit or that they could be impacted by new customs procedures (see section 1.3.6).

New or higher tariffs could impact on the ROI in particular, which currently exports EoW glass and metal to the UK, potentially in the order of 90,000tpa of glass and significantly larger tonnages of EoW metals.

### 1.3.6 Tariffs

On the wider issue of tariffs, at the recent stakeholder workshop, Defra also included an assessment of the materials to which tariffs would be anticipated to apply and what those tariffs would be under WTO rules in the event of a 'hard' or 'no deal' Brexit – see Table 1 below. However, this is a complex area and further details will be added to this briefing as more information becomes available. In a no deal or 'hard' Brexit scenario, it is also important to highlight the potential impact of non-tariff barriers to trade in waste including product standards, waste definitions, etc. and it is not presently possible to quantify the impact of any such barriers.

**Table 1. Defra assessment of tariffs for waste and recovered materials post EU exit**

Tariffs	EU Tariff % Maximum	No tariff
Municipal waste	6.5%	RDF
Clinical Waste	6.5%	Rubber waste, parings and scrap (except hard rubber)
Waste, Parings and Scrap, of Plastics	6.5%	Hard Rubber (e.g. ebonite) in all forms, articles, scrap
Tungsten "wolfram" and articles thereof, n.e.s.; tungsten waste and scrap (excl. ash and residues containing tungsten)	7.0%	Waste or scrap of paper or paperboard
Waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators	4.7%	Ferrous waste and scrap; remelting scrap ingots of iron or steel
Glass cullet, waste or scrap, glass in the mass	3.0%	Copper, copper alloy, waste or scrap
Worn clothing and other worn articles	5.3%	Nickel waste or scrap
Waste, noils, garnetted stock of manmade fibres	4.0%	Aluminium waste or scrap
Waste organic solvents, non-halogenated	6.5%	Lead waste or scrap
Gallium, hafnium.... Waste and scrap	4.5%	Zinc waste or scrap
Woven fabric of silk or of silk waste	7.5%	Tin waste or scrap

### 1.3.5 Notification and customs procedures

Defra has informed stakeholders that it anticipates no practical changes to notification procedures for imports and exports of waste for recovery. However, existing approvals for shipments that extend beyond 29 March 2019 will be subject to a re-consenting process and Defra is in discussions to try to ensure continuity for shipments that have already been approved with the minimum disruption or additional administrative burden.

For notified imports to EU, there is also a provision in Article 6 of the EU Waste Shipment Regulations for the competent authority of destination in the Community to require an additional financial guarantee, however it is extremely rarely used. As is currently the case, Waste Carriers Licences will be subject to agreement with individual EU Member States.

The EU will be introducing customs checks and while there is no detailed information available currently, Defra estimates that potentially up to 5% of shipments may be inspected. Regulators are preparing for these and other potential secondary consequences of Brexit that may disrupt some shipments. Specific arrangements for the border between the ROI and NI will be subject to the final Brexit agreement.

This remains an area of some uncertainty and UK waste management operators are expressing concern about the potential for delays and disruption, both in terms of the re-consenting process and as a result of customs checks and delays. One industry stakeholder commented:

“It is already a fairly cumbersome administrative process to set up or renew the transfrontier shipment notifications, so we would hope that a lot more resources will be added into dealing with renewals if all of the existing ones need renewing post 29<sup>th</sup> March 2019. Otherwise we could see delays in shipments and a short term increase in storage.”

### 1.4 Summary

As the UK will continue to be a Basel Convention party and an OECD member, and because the UK intends to transpose the current relevant EU legislation with only minor modifications, no significant changes are anticipated with regard to the legislative framework and controls on the transfrontier shipment of waste, with the exception of the import of hazardous waste for disposal from the ROI to the UK. Under the current framework, exports to mainland UK will be prohibited, but movement across the border between the ROI and NI remains subject to the final Brexit agreement.

In practical terms, the status of pre-notified shipments after 29<sup>th</sup> March 2019 will be affected and a re-consenting process required. Further consequences, including customs checks and longer border crossing times are likely but these will be dependent on a number of factors yet to be clarified, including the outcome of the Brexit negotiations.

A Defra powerpoint presentation summarising the UK's Government proposed approach is available [here](#) and for the ROI, the following update at the end of August from the Department of Communications, Climate Action and Environment provides a useful summary:

*“Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, after 29 March 2019, EU waste law will no longer apply to the UK. There are already well established protocols for shipments of waste between “third countries” and Member States under the Waste Shipment Regulations so no regulatory changes will be required in this event - Articles 31-40 and 47&48 of Council Regulation EC No. 1013/2006 are the main provisions to be noted in relation to the export of waste from the EU.*

*The main consequences of Brexit with regard to shipments of waste are:*

*Shipments of waste for disposal and mixed municipal waste (European Waste Code 20 03 01) for recovery from Ireland to the UK will become illegal [under Irish and EU law] (but not vice versa).*

*For certain types of waste, recovery in the UK of the waste generated in Ireland would only count towards Ireland's EU waste management targets if there is sound evidence that the treatment of that waste in the UK takes place in conditions that are equivalent to the requirements of the relevant Directive. These are:*

- *Waste electrical and electronic equipment and waste batteries and accumulators exported for treatment in the UK*
- *Municipal waste for preparation for reuse and recycling and construction and demolition waste exported for preparation for reuse, recycling, and other material recovery, and*
- *Packaging and packaging waste and end-of life vehicles exported for recovery and/or recycling*

*The Department is working with the National Transfrontier Shipment Office [NTFSO] on assessing data on quantity, type and consignor of waste exports to the UK, in order to identify, notify and engage with stakeholders affected. NTFSO is already notifying key waste exporters to the UK on logistical and administrative implications of the UK becoming a Third Country and is planning on displaying accessible information on its website to support ongoing engagement with industry.*

*The Department continues to engage with Producer Responsibility Organisations to apprise them of the need to be in a position to demonstrate, in the event of the UK becoming a third country, how the material being treated on their behalf in the UK is treated to a standard equivalent to the requirements of the relevant Directive. Given the level of investment in the UK in quality recycling and recovery facilities, it is anticipated that continuing to meet and provide evidence of the relevant treatment standards is unlikely to prove problematic. Nonetheless, we continue to monitor the situation and will prepare guidance to assist industry in this regard as required."*

## **2. Waste crime**

Waste crime continues to be a serious issue in the UK and Ireland and while the potential impact of EU Exit is not yet clear, a 'no deal' outcome could weaken the current cross-border co-operation between NI and ROI to tackle illegal waste activities and movements and – if there is a subsequent divergence in environmental legislation, standards or fiscal frameworks such as landfill tax – could incentivise further illegal activity.

According to a Queen's University Belfast Brexit briefing<sup>13</sup>:

"While Brexit provides the UK with the opportunity to diverge from EU law, any deviation in environmental standards will create complications across the Irish border. One example is waste. Differing rules and costs for waste management between Northern Ireland and the Republic of Ireland have already fuelled waste smuggling in the past: a price-hike for the cost of landfill in the Republic of Ireland in the early 2000s led to an estimated 250,000 tonnes of waste being illegally dumped in Northern Ireland. A cross-border repatriation plan was established under the auspices of the 2006 EU Shipment of Waste Regulation and should be completed by 2018 (Northern Ireland Assembly 2016).

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<sup>13</sup> <https://www.qub.ac.uk/brexit/Brexitfilestore/Fileupload,777642,en.pdf>

“Illegal waste shipment across the border continues however and is likely to increase after Brexit as any divergence in waste rules between the two jurisdictions would create new opportunities for smuggling, while reduced tools for cross-border cooperation (such as the UK leaving the European Arrest Warrant scheme) would make it harder to tackle illegal activities at the border (House of Lords EU Committee 2016).”

These risks are also identified in a joint Brexit briefing by The Environmental Pillar and Northern Ireland Environment Link<sup>14</sup> which notes that post Brexit, “there is a risk that Northern Ireland could become an easy dumping ground for waste produced in the South if standards and/or enforcement efforts are relaxed.”

Currently, cross-border co-operation depends on a number of frameworks to access and share intelligence, including access to European agencies and frameworks such as Europol and the European Arrest Warrant scheme. While other international agreements on mutual legal assistance could still be applied after EU Exit, there is concern that any reduction in intelligence sharing and enforcement co-operation could adversely affect efforts to tackle waste crime.

Under the Good Friday Agreement, the North South Ministerial Council (NSMC) was established “to develop consultation, co-operation and action within the island of Ireland – including through implementation on an all-island and cross-border basis - on matters of mutual interest”. In its 2016 Annual Report<sup>15</sup>, the council reports that: “Ministers reaffirmed that they are continuing to target resources into joint enforcement action against those involved in illegal waste activity, including the exchanging of intelligence and information on problem areas and the carrying out of co-ordinated inspections.”

However, it is not yet clear how EU Exit will affect this framework for an all-island approach in strategic matters. A joint report from EU and UK negotiators in December 2017<sup>16</sup> on progress during phase 1 of negotiations under Article 50 TEU on the UK’s withdrawal from the EU acknowledged the “roles, functions and safeguards of the Northern Ireland Executive, the Northern Ireland Assembly, and the North-South Ministerial Council (including its cross-community provisions) as set out in the 1998 Agreement”, the extent to which North-South cooperation relies on a common EU legal and policy framework and the fact that the UK’s exit from the EU “gives rise to substantial challenges to the maintenance and development of North-South cooperation”.

The nature of the border between NI and ROI post EU Exit, in terms of the degree of free movement of goods and people, will also have implications for waste crime and illegal cross-border activity.

Discussions with regulators and policy officials in NI and ROI, however, suggest that there is a commitment to maintaining current co-operation arrangements regarding intelligence sharing, monitoring and enforcement, and at a formal level this could be underpinned through bilateral agreements on cross-border working.

Equally, co-operation at a local level will also continue to be needed through joint working between the sub-regional waste management groups involved in the cross-border area, including the North West Region Waste Management Group and ARC21 in NI, and the Connacht and Ulster Region and Eastern-Midlands Region in ROI. The co-ordinated approach to waste management both sides of the

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<sup>14</sup> <http://www.europarl.europa.eu/cmsdata/133703/patrick-casement-joint-briefing.pdf>

<sup>15</sup> <https://www.northsouthministerialcouncil.org/publications/annual-report-2016-0>

<sup>16</sup> <https://www.belfasttelegraph.co.uk/news/brexit/brexit-breakthrough-full-text-of-euuk-brexit-deal-first-stage-36390025.html>

border is acknowledged as being essential to effective control over the movement and disposal of legal and illegal waste.

### 3. Future environmental policy and governance

At a more strategic level, maintaining a common regulatory framework between NI and ROI has been widely identified as essential to ensure no divergence in environmental policy and standards in the longer term. There is also the question of replicating the underpinning environmental principles, governance function and access to environmental justice currently performed by the European Commission and the CJEU – which will also be important in maintaining a ‘level playing field’ across Ireland.

In its recent response to Defra’s Environmental Principles & Governance consultation response<sup>17</sup>, CIWM stated that environmental stewardship and protection is a cross-border issue and that the new governance body should be UK-wide, co-designed with the Devolved Assemblies, and should have regard to particular circumstances in Northern Ireland in terms of the border and relationship with the Republic of Ireland. At the very least, the underpinning environmental principles which the body will need to uphold should be agreed at a UK level to maintain a similar rigour to the current framework provided by the EU and ensure that the principles are not undermined by further policy divergence across the UK post-Brexit.

CIWM’s understanding is that discussions are taking place between UK governments on the issue of environmental principles and governance and the development of high level pan-UK common frameworks to ensure a consistent approach to environmental policy while still respecting devolved powers. From an NI perspective, however, the recent Arc21 Court of Appeal incinerator<sup>18</sup> ruling recently suggests that any decisions on UK-wide approaches will have to wait until NI has a functioning government in place.

### 4. Conclusions

In summarising some of the possible impacts of Brexit on the resources and waste sector in Northern Ireland and the Republic of Ireland, this paper has focused on three areas of particular concern: transboundary movements of waste, waste crime, and future environmental policy and governance. It shows that while there are clear measures being taken in some areas to provide certainty and stability after Brexit day, some important questions remain unanswered at this point. CIWM will continue to liaise with UK governments and other stakeholders on these issues and update this briefing paper accordingly.

**Transboundary movements of waste:** Preparations to date have focused primarily on Day One readiness and ensuring continuity and certainty in the event of a ‘no deal’. In this context, as the UK will continue to be a Basel Convention party and an OECD member and intends to transpose the current relevant EU legislation with only minor modifications, no significant changes are anticipated with regard to the legislative framework and controls on the transboundary shipments of waste. The main exception to this is the export of hazardous waste for disposal from the ROI to the UK which will be prohibited. Indications are that the ROI has been preparing for this change for some time and that alternative solutions are or are expected to be in place before 29 March 2019. However, the Irish Waste Management Association is due to write to the Irish Government to seek a renewal of

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<sup>17</sup> <https://www.ciwm.co.uk/EnvironmentalPrinciplesandGovernanceresponse>

<sup>18</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-44735564>

the bi-lateral agreement between the UK and ROI that allows for imports of hazardous waste to the UK for high temperature incineration, which expires in March 2019<sup>19</sup>.

What is less clear is the extent to which the current approach to movements of waste between NI and ROI, as provided for under the framework for cross-border environmental co-operation in the Good Friday Agreement and the UK Plan on Shipments of Waste, will continue. CIWM understands that this issue is the subject of ongoing discussions between Defra and relevant EU officials and will also, of course, be dependent on the final Brexit agreement and the final border arrangements.

In addition, there is still some uncertainty with regard to the status of agreed notified shipments after exit day and any re-consenting process and, on a wider scale, the potential level of disruption to shipments as a result of customers checks and other border controls post-Brexit. While Defra's assessment of the applicable tariffs under WTO rules in the event of a 'hard' or 'no deal' Brexit provides some short term assurance, there is also still concern about the longer term risk of tariffs on recovered material exports.

**Waste crime:** There is still considerable work to be done to assess the future of cross-border co-operation to tackle waste crime, including the UK's future access to European agencies and frameworks such as Europol and the European Arrest Warrant scheme. Discussions with regulators, policy officials and other stakeholders in NI and ROI indicate that there is a strong commitment to maintaining current co-operation arrangements and it was suggested that bilateral agreements may, to some extent, be able to replace co-operation arrangements that currently happen under the auspices of the EU, depending on the final Brexit agreement.

**Future environmental policy and governance:** The development of a pan-UK framework that enshrines similar environmental principles and governance mechanisms will be important to maintain a 'level playing field' between NI and ROI. Any significant divergence in environmental legislation and standards between the two countries could pose significant challenges to the resource and waste management sector, result in damage to the environment, and increase the risk of illegal waste activities.

It should be noted that this paper does not cover all the potential impacts of Brexit on the resources and waste sector in NI and ROI. Other considerations, in particular, include the availability of EU labour post-Brexit, both for waste treatment facilities and for transport activities, and potential currency fluctuations. The wider impact of Brexit on the general economies of both countries and on the UK as a whole will also be an important factor. CIWM will be updating this briefing as further information and understanding becomes available.

**Note:** *While all due care has been taken in the preparation of this briefing, CIWM accepts no liability whatsoever to any third party for any loss or damage arising from any interpretation or use of the information contained in this report, or reliance on any views expressed therein.*

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<sup>19</sup> <http://archive.basel.int/natreporting/1997/1997Compl.pdf> - p12