

STATES OF JERSEY



DRAFT WASTE MANAGEMENT (AMENDMENT) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 1st June 2012
by the Minister for Planning and Environment**

STATES GREFFE



Jersey

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REPORT

The Waste Management (Jersey) Law 2005 (“the Law”) was enacted in order to enable Jersey to achieve ‘ratified party status’ under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (“the Convention”). This paved the way for the United Kingdom’s ratification of the Convention to be extended to Jersey. The Convention was formally extended to Jersey by the United Kingdom in 2007.

In addition, the Law brought into effect the Decision of the Council of the Organisation for Economic Co-operation and Development on the Control of Transfrontier Movements of Wastes Destined for Recovery Operations (“the OECD Decision”), which Jersey is obliged to implement. The Convention obliges parties to take measures to ensure the environmentally sound management of hazardous or other wastes and the Law creates a regulatory licensing regime for waste management activities within Jersey.

The Law came fully into force in 2007 and its ongoing implementation since this time has raised a particular difficulty relating to applications for waste management licences where the applicant for the licence is not the landowner.

Article 26(3) of the Law currently requires an application for a waste management licence to be accompanied by the written undertaking of the landowner in a form that is legally binding on the owner and the owner’s successors in title to allow the applicant to carry out such future works on the land as the Minister may under the Law require the applicant to carry out, for the avoidance of pollution arising from the activity to which the licence relates or for the protection of the environment.

None of the applications for licences received from non-landowners since 2007 have satisfied the Article 26(3) requirement to provide a binding written undertaking. One difficulty is that the nature of Jersey’s property law would probably require the passing of contracts before the Royal Court in order to bind the landowner and his successors, and even then there is no guarantee that a contractual undertaking of this kind would be binding on the landowners’ successors. Another difficulty is the potential unknown timescale of the undertaking and the consequential burden that an undertaking for an indeterminate period would attach to the land. A feature of Jersey property law is that there is a presumption in favour of the freedom of land from excessive burdens.

It has therefore become evident that Article 26(3) of the Law is impractical because applicants are faced with not being able to comply with its requirements, which consequently raises a significant barrier to the Minister's ability to grant licences in accordance with the Law, as required by Article 27(1)(a). If licences cannot be issued, the environment may be at risk, since the regulatory tool designed to drive environmental best practice at waste management sites is not in place. This situation effectively means that Jersey is unable to comply with its general obligations under the Convention to implement measures (i.e. an effective regulatory framework) that ensure the environmentally sound management of hazardous or other wastes.

It is essential therefore that the Law is amended to overcome this so that licences can be issued lawfully and to comply with Jersey's obligations under the Convention.

The Law already adequately provides other measures to prevent and minimise the negative effects of waste management activities. These include the licensing regime itself, which requires a waste management licence to be in force and licence conditions to be complied with (Article 23), as well as enforcement provisions for co-operation by owners and others (Article 86), provision of information about potential pollution (Article 88), control of potential pollution (Article 89) and remedial action by the polluter (Article 90).

The proposed amendments to Article 26 therefore remove the written undertaking requirement and clarify what evidence is required to accompany an application for a waste management licence:

- evidence of grant of planning permission or evidence of continuous use of the land and
- evidence that the applicant has the landowner's consent to occupy the land for the purposes of carrying out the waste management activities,

will constitute evidence of the lawful use of the land.

Article 28 concerns conditions of licences and refers to the requirements of Article 26(3). Article 28 therefore requires consequential amendment.

There are a number of other amendments which are desirable to keep the Law up to date with the European legislation to which it refers. The Law includes reference to the European Regulation 259/93 on the shipments of waste and the European Council Directive 75/442/EEC on waste, both of which have been repealed.

Article 62(3) and Schedule 8, paragraph 6(2) restrict the period for which consent to a transboundary shipment can be given to 12 months. The proposed amendment to these parts of the Law will enable the Minister to extend the period of consent on movements of waste from 12 months up to a maximum period of 3 years. This brings the Law into line with the OECD decision which is incorporated into the Waste Shipment Regulation (EC) No. 1013/2006. It is discretionary and subject to the consent of the other competent authorities concerned, i.e. the jurisdictions of import or export.

Financial and manpower implications

The Regulations will allow licences to be issued and the annual subsistence fees for licences collected. This will contribute to the Departmental budget.

The Regulations will be implemented without any change to the current manpower levels.

Explanatory Note

These Regulations amend the Waste Management (Jersey) Law 2005 (the “principal Law” as defined in Regulation 1) and give effect to the following international agreements and instruments –

- the Decision of the Council for the Organisation for Economic Co-operation and Development (the “OECD Decision”) of 30th March 1992 concerning the control of transfrontier movements of waste destined for recovery operations (Decision C(92) 39/Final and revised by Decision C(2001) 107/Final);
- the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the “Basel Convention”); and
- Council Regulation (EC) No. 1013/2006 of 14th June 2006 on shipments of waste (the “European Community Regulation”),

which relate to the control of waste pollution and the regulation of the transboundary movements of wastes, and which are applicable to or binding on Jersey.

Regulations 2 and 6 update certain references to European Communities legislation contained in Article 1 (interpretation) of, and Schedule 8 (Control procedures for the movement of waste) to the principal Law.

Regulations 5 and 6 amend Article 62 (multiple consignments) of, and Schedule 8 to the principal Law to enable the waste management regulator to pre-authorize multiple transboundary consignments of waste for a period of more than 12 months subject to a maximum period of 3 years. The effect of these amendments is to align the principal Law with the maximum 3 year pre-consent period provided in the OECD Decision which is also incorporated in the European Community Regulation.

Part 3 of the principal Law establishes the regulatory framework for waste management within Jersey and gives effect in particular to Article 4(2) of the Basel Convention which sets out certain general obligations on the parties to the Convention, regarding the environmentally sound management of hazardous or other wastes within their territories.

Regulations 3, 4 and 7 respectively amend Article 26 (applications in respect of licences) and Article 28 (conditions of licence) in Part 3 of, and Schedule 11 (operations by Minister for Planning and Environment) to the principal Law. These amendments provide for changes to Jersey’s regulatory waste management regime in order to secure compliance with the Basel Convention by –

- clarifying that an applicant for a waste management licence (or a certificate where the Minister is acting as a waste operator) must produce evidence of grant of planning permission or evidence of continuous use of the land, for the purposes of carrying out controlled waste activities; and
- replacing the requirement (in Article 26(3) and paragraph 6 of Schedule 11) for an applicant (or the Minister) to obtain a binding undertaking from a landowner and any successors in title, with a

requirement that an applicant (or the Minister) produce evidence that he or she has the land owner's consent to occupy the land for the purposes of carrying out controlled waste activities.

Regulation 8 provides for the coming into force of these Regulations.



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Jersey

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 107, 108 and 110 of the Waste Management (Jersey) Law 2005¹, have made the following Regulations –

1 Interpretation

In these Regulations, “principal Law” means the Waste Management (Jersey) Law 2005².

2 Article 1 amended

In Article 1(1) of the principal Law –

(a) for the definition of “European Community Regulation” there is substituted the following definition –

“ ‘European Community Regulation’ means Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14th June 2006 on shipments of waste (O.J. No. L 190, 12.7.2006, p.1);” and

(b) after the definition of “waste” there is inserted the following definition –

“ ‘Waste Framework Directive’ means Directive 2008/98/EC of the European Parliament and of the Council of 19th November 2008 on waste and repealing certain Directives (text with EEA relevance) (O.J. No. L 312, 22.11.2008, p.3);”.

3 Article 26 amended

In Article 26 of the principal Law –

(a) for paragraph (2), there is substituted the following paragraph –

- “(2) Where the applicant for the grant of a waste management licence is the owner of the land to which the application relates, the application shall be accompanied by evidence –
- (a) that the applicant has been granted planning permission (where required) in respect of the land, for the purposes of the activity to which the application relates; or
 - (b) that the activity to which the application relates has been continuously carried out on the land prior to 1st April 1965 and has continued to be carried on (without a break) since that date.”;
- (b) for paragraph (3), there is substituted the following paragraph –
- “(3) Where the applicant for the grant of a waste management licence is not the owner of the land to which the application relates, the application shall be accompanied by evidence –
- (a) of planning permission (where required) or of continuous use as specified in paragraph (2)(b); and
 - (b) that the applicant has the land owner’s consent to occupy the land for the purposes of the activity to which the application relates.”;
- (c) in paragraph (4)(b), there is omitted the word “, undertaking”;
- (d) after paragraph (5), there is added the following paragraph –
- “(6) The expression “planning permission” has the meaning given in Article 1 of the Planning and Building (Jersey) Law 2002³.”.

4 Article 28 amended

For Article 28(1) of the principal Law, there are substituted the following paragraphs –

- “(1) It is a condition of every waste management licence that the licensee must not carry on the activity to which the licence relates on any land that he or she may not for the time being lawfully use for that purpose.
- (1A) The evidence specified in Article 26(2)(b) or (3)(b) shall be taken to constitute evidence of lawful use for the purposes of paragraph (1).”.

5 Article 62 amended

In Article 62 of the principal Law –

- (a) in paragraph (3), for the words “The period to which” there are substituted the words “Subject to paragraph (3A), the period to which”; and
 - (b) after paragraph (3) there is inserted the following paragraph –
- “(3A) The period referred to in paragraph (3) may with the Minister’s agreement be extended to a period not exceeding 3 years provided

that each other competent authority concerned agrees to the same period of extension not exceeding 3 years.”.

6 Schedule 8 amended

In Schedule 8 to the principal Law –

- (a) in the Introduction, for paragraph 6(2)(a) there is substituted the following sub-paragraph –

“(a) if the consent or agreement to proceed is given in writing –

- (i) the period of 12 months, or
- (ii) such other period not exceeding 3 years as may be agreed by the Minister and any other competent authority concerned,

following the date on which the competent authority of import has acknowledged receipt of its copy of the consignment note; or”;

- (b) in Part 2, for paragraph 5(d) there is substituted the following sub-paragraph –

“(d) if, in the case of a movement for disposal, the Minister considers that he or she should object to the movement in order to implement any of the principles of proximity, priority for recovery and self-sufficiency to which Article 11 of the European Community Regulation refers, in accordance with the Waste Framework Directive;”;

- (c) in Part 3, for paragraph 5(e) there is substituted the following sub-paragraph –

“(e) if, in the case of a movement for disposal, the Minister considers that he or she should object to the movement in order to implement any of the principles of proximity, priority for recovery and self-sufficiency to which Article 11 of the European Community Regulation refers, in accordance with the Waste Framework Directive;”.

7 Schedule 11 amended

In Schedule 11 to the principal Law, for paragraph 6(1) there are substituted the following sub-paragraphs –

“(1) It is a condition of every waste management certificate that the Minister shall not carry on the activity to which the certificate relates on any land that the Minister may not lawfully use for that purpose.

(1A) The evidence specified in Article 26(2)(b) and (3)(b) shall be taken to constitute evidence of lawful use for the purposes of sub-paragraph (1), and the references to “applicant” in Article 26(2)(b) and (3)(b) shall be taken to be a reference to the Minister for the purposes of a waste management certificate.”.

8 Citation and commencement

These Regulations may be cited as the Waste Management (Amendment) (Jersey) Regulations 201- and shall come into force 7 days after they are made.

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- ¹ *chapter 22.950*
² *chapter 22.950*
³ *chapter 22.550*