

# The Producer Responsibility Obligations (Packaging Waste) Regulations 2007: post implementation review 2017

July 2017

## Introduction

The Packaging and Packaging Waste Directive 94/62/EC (“the Packaging Directive”) came into force in 1994. It aims to harmonise the management of packaging waste and prevent or reduce the impact of packaging and packaging waste on the environment by encouraging minimisation and reuse and by setting recovery and recycling targets. At the same time, it aims to avoid obstacles to trade of packaging and packaged products, and the distortion and restriction of competition within the EU.

The Producer Responsibility Obligations (Packaging Waste) Regulations have been in place since 1997 and transpose the requirements of the Packaging Directive into UK law. The Regulations impose the obligation to recover and recycle packaging waste on producers of packaging in order to attain the recovery and recycling targets set in Article 6(1) of the Packaging Directive. The Regulations have regularly been updated and amended over the last 20 years. The latest versions of the Regulations are the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (“the 2007 Regulations”).

## Scope of the Post Implementation Review (PIR)

**The Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2012 amended the 2007 Regulations so as to require the Secretary of State to:-**

- a) carry out a review of regulations 2 to 40 of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 in relation to England and Wales;
- b) set out the conclusions of the review in a report; and
- c) publish the report before 1st July 2017

## Review carried out

As the 2007 Regulations are in place to ensure that the UK meets annual recycling and recovery targets required by the Packaging Directive, they are subject to regular and ongoing review through engagement with industry. This, along with changes suggested through the Red

Tape Challenge review, has resulted in a number of recent amendments to the 2007 Regulations. On each of these occasions, regulatory amendments were based on the latest available information and following consultation with the industry and other key stakeholders. Our review found that the Regulations continue to ensure that the UK meets the requirements of the Packaging Directive and at a relatively low cost to businesses. For these reasons, we recommended to keep the Regulation.

The Regulatory Policy Committee (RPC) assessed the Post Implementation Review, giving it a green rating of 'Fit for Purpose'. They concluded that the evidence in the review was sufficiently robust to support Defra's recommendation to keep the Regulations.

The Post Implementation Review (PIR) report on The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and the Regulatory Policy Committee's (RPC's) opinion can be viewed below.

In June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

<p><b>Title: The Producer Responsibility Obligations (Packaging Waste) Regulations 2007</b></p> <p><b>PIR No:</b> 2012/3082</p> <p><b>Original IA/RPC No:</b> <a href="#">Click here to enter text.</a></p> <p><b>Lead department or agency:</b> Defra</p> <p><b>Other departments or agencies:</b> <a href="#">Click here to enter text.</a></p> <p>Contact for enquiries: <a href="mailto:geen.bhuniya@defra.gsi.gov.uk">geen.bhuniya@defra.gsi.gov.uk</a></p>	<b>Post Implementation Review</b>
	<b>Date:</b> <a href="#">Click here to enter a date.</a>
	<b>Type of regulation:</b> EU
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 01/01/1994
	<b>Recommendation:</b> Keep
	<b>RPC Opinion:</b> <a href="#">Choose an item.</a>

### 1. What were the policy objectives of the measure?

The regulations are part of the producer responsibility regime that implements the Packaging and Packaging Waste European Directive (94/62/EC), which aims to prevent or reduce the impact of packaging and packaging waste on the environment by encouraging minimisation and reuse and by setting recovery and recycling targets.

The Packaging (Essential Requirements) Regulations place a legal obligation on businesses which make or use packaging to ensure that a proportion of the packaging they place on the market is

recovered and recycled. The Producer Responsibility Obligations (Packaging Waste) Regulations – which are the subject of this review - set annual business targets for recovery and recycling of packaging waste designed to enable the UK to meet the corresponding targets set in the Directive.

#### How the Producer Responsibility Obligations (Packaging Waste) Regulations work

In order to show they have discharged the legal obligation to recover and recycle a proportion of the waste they produce, producers are required to obtain evidence in the form of Packaging Waste Recovery Notes (PRNs) or Packaging Waste Export Recovery Notes (PERNs) for material that is exported. These evidence notes are issued by accredited packaging waste reprocessors and exporters, respectively. An accredited reprocessor/exporter can issue PRNs/PERNs for the amount of waste reprocessed (e.g. 100 tonnes of steel reprocessed allows the reprocessor to ‘sell’ 100 PRNs in steel).

The evidence notes have two functions. Firstly, they are a ‘counting tool’ for the amount of recovery/recycling undertaken on the behalf of producers. Secondly, they are a way to channel producer funding to recycling/recovery operations. Their price varies depending on the availability of evidence. Proceeds from the sale of PRNs/PERNs to producers are intended to finance improvements in the collection and reprocessing infrastructure across the UK.

Therefore, the PRN system provides a financial incentive to existing packaging collectors and recyclers to increase their tonnages.

The UK Government sets mandatory recycling targets on affected businesses and to meet them, a prescribed tonnage of packaging recycling will need to be recycled each year. These so called “business targets” are set in the regulations for each year and periodically reviewed by the Government. The regulations cover England, Wales and Scotland. Similar regulations are made in parallel for Northern Ireland.

There have been no changes to the relevant provisions in the Directive since 2012, with the changes in the Regulations being based on domestic policy.

## **2. What evidence has informed the PIR?**

Given the market-based packaging recycling mechanism that the Regulations set out, Defra constantly reviews data relating to packaging recycling and recovery targets in order to decide whether intervention might be needed to, e.g., set new/higher targets. As part of compliance, data is collected and reported on the National Packaging Waste database (NPWD) on a quarterly basis by the Environment Agency.

Defra, the Regulators (Environment Agency, Scottish Environment Protection Agency, Natural Resources Wales and Northern Ireland Environment Agency) and the Advisory Committee on Packaging (ACP - an independent industry expert group that advises Defra) meet quarterly to discuss the functioning and impact of the regulations. The [ACP membership](#)<sup>1</sup> comprises of representatives of industry, regulators, consultants and compliance authorities who provide advice on possible changes to the legislation to maximise economic, environmental and social benefits of the reuse, recycling and recovery of packaging waste. The advice from the ACP is based on operational experience in the industry and on the compliance data collected and published quarterly by the regulators.

Defra also periodically commissions research from the Waste and Resources Action Programme (WRAP) and others to assist with reviewing the regulations; for example, checking that estimates and projections for how much packaging is placed on the market are correct, based on latest data.

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<sup>1</sup> Advisory Committee on Packaging members - <https://npwd.environment-agency.gov.uk/Public/GenericContent.aspx?CategoryId=595F40C2-76C4-49E3-8FC8-396CCDB77A9E>

The regulations have been amended three times since 2012 based on the latest available information and following consultation with the industry and other key stakeholders. These amendments are summarised as follows:

### **2013 Red Tape Challenge Review- link<sup>2</sup>**

In 2013, in response to stakeholder requests and as part of the Red Tape Challenge review, the Government published a discussion paper which invited views on ideas for developing a more coherent regulatory approach across the different Producer Responsibility regimes. In September 2013, a summary of stakeholder responses and the government response to the consultation was published. This resulted in Defra committing to amending the Regulations to make changes to the compliance reporting systems to relieve certain administrative burdens on business, including removal of the requirement to complete an operational plan, a change of approving body and changes to the sign off arrangements. These changes have been welcomed by industry.

**March 2014: Changes to the Glass Packaging Recycling Business Target to 2017- see link<sup>3</sup>.** And:

**November 2015: Plastic & Glass Packaging Recycling Business Targets 2016-2020 - see link to the [Plastic flow report<sup>4</sup>](#) and [Impact assessment<sup>5</sup>](#).**

Due to volatility in the glass recycling market in 2012, Defra tasked the Advisory Committee on Packaging (ACP) with investigating the causes of the perceived glass recyclate shortage in 2012 and subsequent rise in costs for the associated recycling evidence (PRNs). To assist with this work, WRAP commissioned Valpak Consulting to carry out a detailed study into glass packaging flows. The WRAP/Valpak Glass Flow report<sup>6</sup> produced a new estimate of glass packaging waste arisings based on a thorough and detailed analysis of the glass market. The report indicated that the glass waste arisings figures (the 'flow' figure) that Government used to calculate achievement of the EU Packaging Directive target, and set the statutory business targets, was around 350k tonnes too high.

As a result the regulations were amended to reduce the recycling target for glass, to more accurately reflect the market.

Defra commissioned similar research in to plastics waste flow which reported and was published in 2014 and provided an updated picture of the plastic packaging market in terms of material placed on the market<sup>7</sup>. The report indicated that the amount of plastic waste placed on the market was significantly lower than the estimates made in 2011/12. Therefore, the targets in the Regulations were based on the expectation of much higher waste arising. Therefore, the targets for plastic for 2016 were reduced, lowering the costs for producers, whilst still maintain a similar recycling rate. In addition, new targets for 2018-20 for glass and plastic were introduced, based on the latest research information.

**December 2016: Changes to packaging recycling business targets for paper, steel, aluminium, wood and overall recovery and recycling for 2018-20- [see link<sup>7</sup>](#)**

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<sup>2</sup> Red Tape Challenge - <https://consult.defra.gov.uk/waste/producer-responsibility-consultation/>

<sup>3</sup> Consultation on changes to the glass packaging recycling business target to 2017 - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/294260/packaging-targets-sum-resp.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294260/packaging-targets-sum-resp.pdf)

<sup>4</sup> Plastic Flow Report - <https://www.gov.uk/government/consultations/packaging-waste-changing-business-targets-for-plastic-and-glass>

<sup>5</sup> Impact assessment - [http://www.legislation.gov.uk/ukia/2016/233/pdfs/ukia\\_20160233\\_en.pdf](http://www.legislation.gov.uk/ukia/2016/233/pdfs/ukia_20160233_en.pdf)

<sup>6</sup> Glass Flow report - <http://www.wrap.org.uk/content/plastic-packaging-market-study-plastic-flow-2014-0>

<sup>7</sup> Changes to packaging recycling business targets - <https://consult.defra.gov.uk/waste/packagingtargets2018-20/>

We are also in the process of amending the packaging recycling targets for paper, steel, aluminium, and wood, based on new waste flow research on these materials and the fact that the Commission is currently negotiating for increased packaging recycling and recovery targets post 2020. A formal consultation closed in January 2017. As a result of responses, and as part of Budget 2017, the government announced that it will legislate new statutory packaging recycling targets for 2018 to 2020, to ensure continued compliance with the Packaging Directive. By 2020, the government will increase recycling targets for paper to 75.0%, aluminium to 64.0%, steel to 85.0% and for wood packaging to 48.0%. Targets for overall packaging recycling will increase to 75.4% and for recovery to 82.0% by 2020. We aim to make these changes to the legislation by the end of 2017.

For each of these amendments to the regulation, engagement with a broad range of representatives from industry, regulators and other interested parties, plus analysis of latest data relating to the regulations as part of impact assessments, has shown limited impact to business.

### **3. To what extent have the policy objectives been achieved?**

The Regulations ensure that the UK meets packaging recycling and recovery targets as set by the Packaging Directive. The UK is expected to meet these targets at least until EU exit, and possibly after this. We are required to report our packaging recycling/recovery rates to the European Commission on an annual cycle, 18 months after the end of the given calendar year. The data we report to the EU is published each year as part of Defra's [Digest of Waste and Resource Statistics](#)<sup>8</sup> and [UK Statistics on Waste](#)<sup>9</sup>.

The table below summarises the data since 2012 and shows that the UK has met all the necessary targets to date. 'Recovery' means any of the 13 applicable waste recovery operations provided for in Annex II to the [Waste Directive](#)<sup>10</sup>, including the recycling/reclamation of materials. 'Recovery rate' means the total quantity of packaging waste recovered, recycled or incinerated at waste incineration plants with energy recovery, divided by the total quantity of generated packaging waste. 'Recycling rate' means the total quantity of recycled packaging waste, divided by the total quantity of generated packaging waste.

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<sup>8</sup> Digest of Waste and Resource Statistics - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/607416/Digest\\_of\\_Waste\\_and\\_Resource\\_Statistics\\_2017\\_rev.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607416/Digest_of_Waste_and_Resource_Statistics_2017_rev.pdf).

<sup>9</sup> <https://www.gov.uk/government/statistics/uk-waste-data>.

<sup>10</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0098>

Material	Packaging Directive Minimum Targets (%)	UK recovery/ recycling rates 2012 (%)	UK recovery/ recycling rates 2013 (%)	UK recovery/ recycling rates 2014 (%)
Paper/ board	60	86.5	89.4	73.1
Glass	60	67.8	68.3	67.2
Metals	50	52.1	57.4	58.2
Plastic	22.5	25.2	31.6	37.9
Wood	15	51.3	42.3	31.4
Overall recycling	55	61.4	64.6	59.2
Overall recovery	60	69.1	72.7	64.1

The table shows that in 2014 in the UK, 64.1 per cent of packaging waste was either recycled or recovered. This was above the EU target of 60 per cent and compares to 72.7 per cent achieved in 2013. The main driver for this drop is the adoption of a new paper and cardboard ‘placed on market’ estimate published in a [bespoke industry report](#)<sup>11</sup>.

We are due to report the data for 2015 in June 2017. Indicative data suggests that the UK will also meet its targets in both 2015 & 2016.

The above Regulations are in place to ensure that the UK meets Packaging Directive targets and continues to do so at a relatively low cost to businesses. The Regulations are subject to ongoing review through engagement with industry and amendments have been made based on feedback from stakeholders. For these reasons the recommendation is to keep the Regulation.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

Signed: ***John Walsh***

Date: 17/03/2017

<sup>11</sup> Industry Report - <http://www.wrap.org.uk/content/paper-card-flow-2020>

## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### 4. What were the original assumptions?

There is a need to have domestic regulation that enables the UK to implement the Packaging and Packaging Waste European Directive (94/62/EC).

There is a need to have domestic regulation that ensures the UK continues to meet the recovery and recycling targets as set by the EU Packaging Directive.

The Producer Responsibility Obligations (Packaging Waste) Regulations provide systems that enable us to meet the aims and targets within the Directive in a way that provides one of the lowest-cost producer responsibility systems to businesses in Europe, whilst still achieving positive environmental outcomes through increased recycling.

### 5. Were there any unintended consequences?

To the best of our knowledge, the amendments to the regulations since 2012 have not had any unintended consequences.

### 6. Has the evidence identified any opportunities for reducing the burden on business?

The regulations already include a 'de minimis' for small businesses; only packaging producers that handle 50 tonnes or more of packaging materials or packaging a year and have a turnover of more than £2 million a year are obligated.

The Red Tape Challenge review described in Section 2 identified opportunities to reduce burdens on business from the compliance reporting process and the regulations were amended accordingly.

### 7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business?

Domestic regulations (The Producer Responsibility Obligations (Packaging Waste) Regulations) implement the producer responsibility provisions of EU Directive 94/62/EC. The Directive sets mandatory recovery and recycling targets in respect of glass, paper/board, metals, plastics and wood.

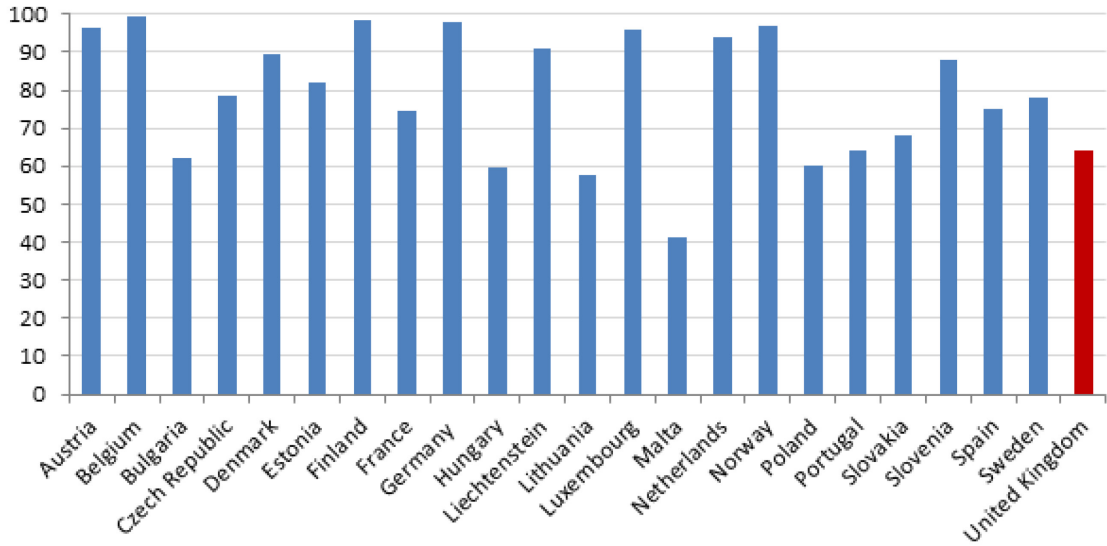
The graphs below show how the UK compares with other Member States in terms of packaging recycling and recovery rates, based on the latest Eurostat<sup>12</sup> data from 2014. 'Recovery' means any of

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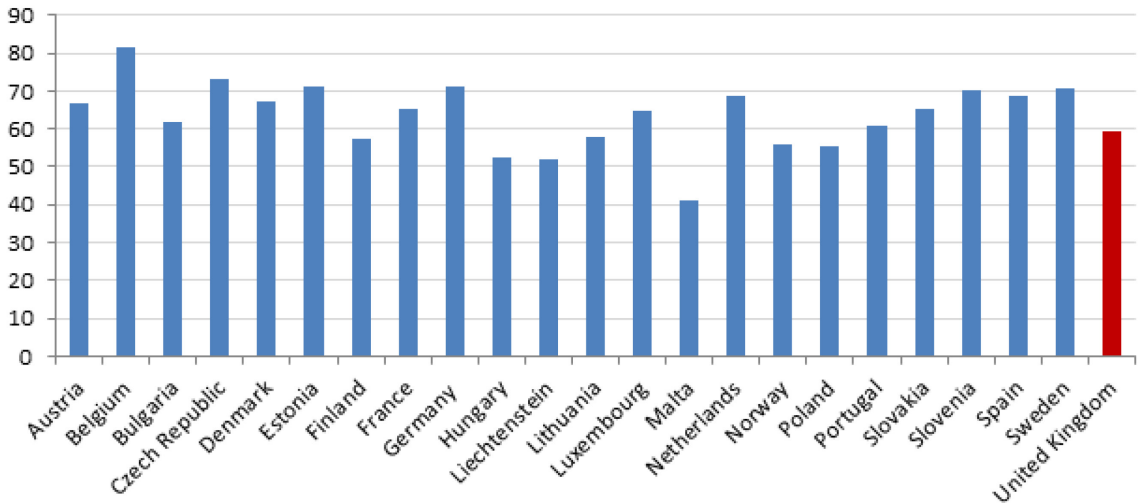
<sup>12</sup> Source: [Eurostat](#)

the 13 applicable waste recovery operations provided for in Annex II to the [Waste Directive](#)<sup>13</sup>, including the recycling/reclamation of materials. 'Recovery rate' means the total quantity of packaging waste recovered, recycled or incinerated at waste incineration plants with energy recovery, divided by the total quantity of generated packaging waste. 'Recycling rate' means the total quantity of recycled packaging waste, divided by the total quantity of generated packaging waste.

**Overall recovery rates for packaging waste in % for 2014 (including energy from waste) across Member States**



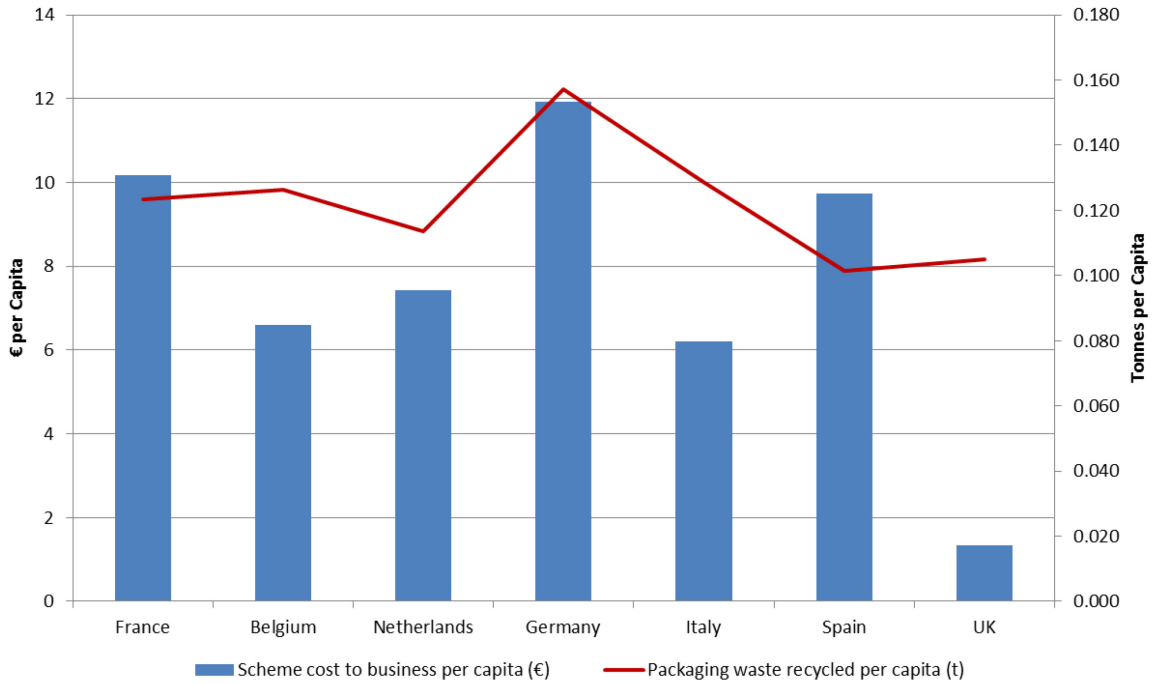
**Overall recycling rate for packaging waste in % for 2014 across Member States**



<sup>13</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0098>



The UK has one of the lowest cost systems in terms of the cost of compliance that obliges business. The graph below shows a comparison of compliance costs between the UK and some of the largest Member States (Source: [PackFlow 2025 from Valpak](#)<sup>14</sup>)



<sup>14</sup> PackFlow 20205 - [http://www.valpak.co.uk/docs/default-source/environmental-consulting/valpak\\_packflow-2025-summary-report.pdf?sfvrsn=4](http://www.valpak.co.uk/docs/default-source/environmental-consulting/valpak_packflow-2025-summary-report.pdf?sfvrsn=4)

## **The Producer Responsibility Obligations (Packaging Waste) Regulations 2007**

**Department for Environment, Food & Rural Affairs**

**RPC rating: fit for purpose**

### **Description of proposal**

The regulations were part of the producer responsibility regime, which implemented the Packaging and Packaging Waste European Directive (94/62/EC). Specifically, the regulations placed a legal obligation on producers to ensure a proportion of their packaging was recovered and recycled. In order to show they have discharged their legal obligation, producers are required to obtain evidence in the form of Packaging Waste Recovery Notes (PRNs). The PIR explains the PRN's two functions: first, they are a 'counting tool' for the amount of recovery/recycling undertaken on the behalf of producers; and, secondly, as businesses are charged for PRNs, they are a way to channel producer funding to recycling/recovery operations.

The Department, therefore, sees that the PRN system provides a financial incentive to existing packaging collectors and recyclers, to increase the amount of recycling undertaken.

### **Impacts of proposal**

The PIR provides detail of how, given the wide range of products covered by the regulations, the Department maintains a constant review of data, to monitor whether packaging recycling and recovery targets are being met. Where the targets need adjusting, the Department will intervene as required. To ensure that compliance is maintained, the Department, regulators, and the Advisory Committee on Packaging (ACP), containing stakeholders, meet quarterly to ensure that the targets provide maximum economic, environmental and social benefits in line with legislation. The Department also commissions periodic research from the Waste and Resources Action Programme (WRAP) to assess the estimates and projections of packaging usage.

As a result of the ongoing review, the regulations have, since coming into force in 2012, been amended three times. For each of these amendments to the regulation, the Department explains that engagement with a broad range of representatives from industry, regulators and other interested parties was undertaken, which has

shown the changes had a limited impact on business. For specific impacts on the wide range of affected sectors – paper, glass, metals, plastic and wood - the PIR contains a series of links. In summary, the Department has provided a table to show that, since 2012, the sectors have consistently met, if not exceeded, their minimum targets from the Packaging Directive and, therefore, intends to retain the regulations.

### Quality of submission

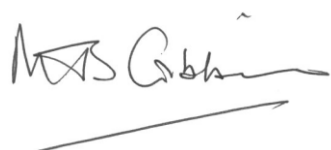
The Department has presented detail of how the targets are monitored to ensure they achieve the objective of the policy. The PIR would, however, have benefited from providing a summary of the impacts on business, rather than relying on a series of links to provide the narrative on the cost to business. In addition, the PIR could have provided more detail to support the Department's claim that there were no unintended consequences from the regulations, particularly given the access to stakeholders' views via the ACP.

The PIR would have benefited further from more comparative analysis of the impact of the measure in other EU member states. Finally, while the Department explains that the intention is to retain the regulations, the PIR could have provided more detail on the reasoning for doing so, instead of relying upon the detail within the links; this would have made the PIR more of a standalone document.

Departmental recommendation	Retain
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### RPC assessment

Is the evidence in the PIR sufficiently robust to support the departmental recommendation?	Yes
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**Michael Gibbons CBE**, Chairman