

EXPLANATORY MEMORANDUM TO
THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE)
(AMENDMENT) REGULATIONS 2017

2017 No. 1221

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument amends the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871) (“the 2007 Regulations”) by setting new packaging waste recycling targets for paper, steel, aluminium and wood and new overall packaging waste recovery and recycling targets from 2018 to 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The instrument amends the 2007 Regulations. The 2007 Regulations impose obligations 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 Council Directive 94/62/EC on packaging and packaging waste (as amended by Council Directive 2004/12/EC) (“the Directive”).
- 4.2 The current packaging waste recycling targets for paper, steel, aluminium and wood set out in the 2007 Regulations expire at the end of 2017. Public consultation on the new targets for 2018-2020 was carried out in 2016. The 2007 Regulations are now being amended to include the new targets.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales and to Scotland.
- 5.2 The territorial application of this instrument is England, Wales and Scotland.
- 5.3 Similar regulations will be made in parallel for Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The 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 and the distortion and restriction of competition within the EU.

7.2 Article 6(1) of the Directive, as amended, sets minimum recovery and recycling targets for packaging waste for the period to 2008, which then have to be sustained over subsequent years. The UK was required to achieve the Directive targets by 31 December 2008 and must thereafter continue to ensure that at least this level of recovery and recycling is sustained. The Directive targets are:

Minimum recovery	60%	
Recycling		55% - 80%

Differentiated material-specific recycling targets of:

Glass		60%
Paper/board		60%
Metals	50%	
Plastics		22.5%
Wood		15%

7.3 The targets in the Directive are implemented in Great Britain through the 2007 Regulations. The 2007 Regulations translate the EU targets into a set of targets for Great Britain which reflect domestic packaging markets and waste arisings. The targets are set at a higher level than the Directive targets to take account of the fact that small businesses are exempt from the requirement to meet recycling targets in the 2007 Regulations.

7.4 The 2007 Regulations impose obligations on businesses handling more than 50 tonnes of packaging and with a turnover of more than £2 million where the business is involved in manufacturing raw materials for packaging; converting materials into packaging; filling packaging; selling packaging to the final user, leasing out packaging or importing packaging/ packaging materials into Great Britain.

7.5 The existing packaging waste recycling and recovery business targets for 2013-17 were consulted on in 2011 and final targets announced at Budget in March 2012¹. The targets were set using the best evidence available from business at the time. Glass packaging waste recycling targets were revised in 2014² following the publication of a Defra-commissioned 'GlassFlow' report that provided new estimates for material placed on the market and waste arisings. In 2015, following the publication of a

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82441/packaging-ia.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294272/packaging-targets-ia.pdf

similar 'PlasticFlow' report the plastics packaging waste recycling targets were also revised, along with the establishment of new targets for plastic and glass for 2018-20.

- 7.6 The packaging waste recycling targets for the other materials (paper, steel, aluminium and wood), as well as the overall packaging waste recovery and recycling targets, expire in 2017. The Packaging Directive requires member states to deliver a specified recycling rate by 2008 and maintain that rate each year thereafter. Therefore, without targets beyond 2017 we would be in breach of our Packaging Directive requirements and would not deliver our domestic policy.
- 7.7 This SI amends the 2007 Regulations by setting new packaging waste recycling targets for paper, steel, aluminium, wood, and overall packaging waste recovery and recycling targets, for 2018-20.

8. Consultation outcome

- 8.1 The amending SI has been drafted following extensive engagement with a broad range of representatives from industry, regulators and other interested parties. A number of informal events were held prior to the formal consultation, as well as bilateral discussions and meetings to complement these consultations.
- 8.2 Informal consultation with the independent Advisory Committee on Packaging ("ACP"), key materials organisation and trade bodies, other government departments and regulators took place in developing a number of the proposals contained within this Impact Assessment and consultation document.
- 8.3 The Government also undertook a formal consultation on these proposals. This was accompanied by a draft copy of the Impact Assessment which presented the overall costs and benefits of the proposals.
- 8.4 A formal consultation ran from November 2016 to January 2017. The consultation set out 3 options for future targets: a 'no change' scenario, a high increase and an increase based on economic and environmental considerations.
- 8.5 Forty-five responses were received. Taking into account the comments received in the consultation, the Government is amending the targets in line with the option based on the optimum environmental and economic outcome (options 3) for paper and wood packaging plus overall recovery and recycling, but use the targets from the higher option (2) for aluminium and steel packaging.
- 8.6 This decision also reflects the number of respondents who suggested a hybrid set of targets, based on the desire to set challenging targets for materials where there was a strong environmental case.
- 8.7 As the 2007 Regulations create a market-based mechanism for encouraging recycling, and the business recycling targets drive these markets, changes to the targets are classified as a "tax and spend" measure. Therefore, any changes are made as part of a fiscal event. Following the consultation, the new targets were agreed with the Treasury and our intention to introduce them was announced as part of Budget 2017.
- 8.8 The consultation documents and summaries of responses can be found at <https://consult.defra.gov.uk/waste/packagingtargets2018-20/>. Other documents can be obtained from the contact at the end of this memorandum.
- 8.9 The 2007 Regulations are within the scope of the Technical Standards Directive as they relate to recycling of products. Therefore, the amending SI has also been subject

to a 3-month scrutiny period within the European Union. This elapsed on 3 November and no comments from other Member States were received.

9. Guidance

- 9.1 The environment agencies as enforcers of the 2007 Regulations will update their guidance based on the changes made by this instrument.

10. Impact

- 10.1 The impact on business or voluntary bodies is limited. The proposed targets are expected to have a net cost to producers over 5 years of £28m.
- 10.2 There is no impact on the public sector or charities.
- 10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to include a de minimis within the Regulations to exempt companies that do not handle more than 50 tonnes of packaging a year or have an annual turnover of more than £2 million.
- 11.3 The basis for the final decision on what action to take to assist small business is part of the Impact Assessment.

12. Monitoring & review

- 12.1 The UK packaging waste regime is monitored continually by Government, the Environment Agencies, the ACP and industry generally. The ACP, which includes representatives of the packaging industry, as well as retailers and local authorities, also monitors the effectiveness of the Packaging Regulations and advises Government as and when they consider changes may be needed.
- 12.2 The Regulations also include a review clause, thereby ensuring that they will be reviewed on a regular basis.

13. Contact

- 13.1 Ian Atkinson at the Department for Environment, Food and Rural Affairs, Area 2B, Nobel House, Horseferry Road, London SW1P 2AL, telephone: 020 8026 3260 and e-mail ian.atkinson@defra.gsi.gov.uk can answer any queries regarding the instrument.