

## **Explanatory Memorandum to The Producer Responsibility Obligations (Packaging Waste) (Amendment) (Wales) Regulations 2020.**

This Explanatory Memorandum has been prepared by the Resource Efficiency and Circular Economy Division within the Economy, Skills and Natural Resources Department and is laid before Senedd Cymru 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 Producer Responsibility Obligations (Packaging Waste) (Amendment) (Wales) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths MS  
Minister for Environment, Energy and Rural Affairs  
3 December 2020

## **PART 1**

### **1. Description**

These Regulations amend the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871). Those Regulations require businesses obligated by the producer responsibility scheme to recover and recycle packaging waste in order to attain the recovery and recycling targets set out in Article 6(1) of European Parliament and Council Directive 94/62/EC on packaging and packaging waste (OJ No L 365, 31.12.94, p10) (the Packaging Directive).

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

The packaging waste producer responsibility scheme is a UK wide scheme that has previously been updated by the Secretary of State (the SofS) on behalf of England, Wales and Scotland. The powers relied upon to make these regulations, section 93 and 94 of the Environment Act 1995 (the 1995 Act), were transferred to the Welsh Ministers through the National Assembly for Wales (Transfer of Functions) Order 1999/672. The SofS is able to continue exercising the powers in Wales as set out in the specific circumstances in Schedule 3, paragraph 5 of the Government of Wales Act 2006 (GoWA 2006).

Broadly speaking however, the provisions in paragraph 5 of Schedule 3 to GoWA 2006 only apply where the exercise by the SofS is for the purpose of implementing an EU obligation. Past SIs setting the targets have been made on a GB basis relying on these powers, but it has always been clear that the purpose of these previous SIs has been to implement EU packaging targets set out in Art 6(1) of the Packaging Directive. However, although the SI will be made and laid during the EU Exit Implementation Period (IP), the targets are set for a period that falls after the IP has ended. The SofS will therefore no longer have the power to make the regulations for Wales and Scotland and Welsh Ministers need to make the SI for Wales.

### **3. Legislative background**

The Regulations are made in exercise of the powers conferred in sections 93 and 94 of the 1995 Act which provide Welsh Ministers the power to make regulations in relation to setting minimum recycling and recovery packaging targets for obligated businesses in Wales. The relevant functions of the SofS in the 1995 Act were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999.

The Regulations are subject to annulment procedure in accordance with section 93(11) and (12) of the 1995 Act.

#### **4. Purpose and intended effect of the legislation**

A UK-wide statutory producer responsibility scheme for packaging recycling was introduced in 1997. The scheme implements The EU Packaging Directive and seeks to reduce the amount of packaging waste going to landfill. It does so by setting minimum recycling and recovery targets on UK businesses in the packaging supply chain.

The Packaging Directive originally set an overall packaging recovery target of 60%, although EU Member States have the freedom to set higher national targets. At least 55% of the recovery target must be recycling. It also sets material specific recycling targets for the different types of packaging e.g. plastic, aluminium, glass etc. The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 set these targets for the UK and require obligated producers to recycle 73% of the paper packaging handled, 61% of aluminium, 82% of steel, 43% of wood, 79% of glass and 55% of plastic for 2019. However, in 2018 the Directive was amended as part of the Circular Economy Package to reinforce prevention and to promote reuse and recycling,

Ministers across the UK have collectively agreed to introduce a new extended producer responsibility (EPR) regime for packaging, which will replace the current regime. Both the EPR reforms and the introduction of a DRS will transpose requirements contained within the EU Circular Economy Package (CEP) whilst also supporting the delivery of our circular economy strategy, Beyond Recycling. It will also contribute to the delivery of our domestic interim targets for the recycling of waste in Wales - 70% recycling by 2025 for waste from households and commercial and industrial businesses. The current packaging targets expire at the end of 2020 and new targets need to be set for 2021-22. In order to account for packaging handled by non-obligated companies, the UK business targets are set at a higher level than the European Directive targets, this is to ensure the UK as a whole meets the European Directive targets. The targets are intended to ensure that the UK complies with the packaging recycling targets set out in the Packaging Directive and ensure that each nation remains on trajectory to deliver on their overarching targets by 2050. The new targets will provide certainty to business for the next 2 years until a new extended producer responsibility scheme is introduced in 2023.

These Regulations establish recycling targets under the UK packaging waste producer responsibility scheme for paper, aluminium, steel, wood and glass re-melt for 2021 to 2022.

No recovery targets are being set this time, meaning producers only have to meet recycling targets for packaging waste in order to meet their producer responsibility obligations. Instead, the focus is on moving the management of waste up the waste hierarchy and on recycling targets as a means of evidencing the producer responsibility obligations are met. This has a better environmental outcome and removes an incentive for material going to activities which are lower down the waste hierarchy. The removal of the recovery target also involves consequential amendments throughout the 2007 Regulations.

## **5. Consultation**

In 2019, a joint consultation was held with the other administrations on reforms to the current packaging producer responsibility regime. Ministers subsequently collectively agreed to introduce a new extended producer responsibility (EPR) regime for packaging, which will replace the current regime. Both the EPR reforms and the introduction of a DRS will transpose requirements contained within the EU Circular Economy Package (CEP) whilst also supporting the delivery of our circular economy strategy, Beyond Recycling.

Within the 2019 consultation on EPR, views were sought on the level at which business recycling targets should be set under the current system for the remaining years, before it is replaced by the new EPR regime. As the new arrangements are not expected to be operational until 2023, this will cover the targets for the years 2021 and 2022.

The new targets were developed in conjunction with industry representatives and the Advisory Committee on Packaging (ACP). The targets are supported by the sector as they seem reasonable and achievable, whilst driving positive change and providing an incremental rise towards the higher targets in 2025-2030. For Wales, the targets represent an increase on a trajectory for most materials which will help ensure a continued drive in the market for recycling.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

The packaging producer responsibility scheme is a UK wide scheme. Most obligated businesses are companies based in England operating across all UK borders. The RIA was therefore prepared on a UK-wide basis when the proposed targets for 2021 and 2022 were set. No specific Regulatory Impact Assessment (RIA) has been prepared for Wales. The UK RIA sets out the costs to business of complying with their obligations under the producer responsibility scheme.

The detailed Regulatory Impact Assessment can be found at:-

[https://consult.defra.gov.uk/environmental-quality/consultation-on-reforming-the-uk-packaging-produce/supporting\\_documents/packagingepiconsultimpactassessment.pdf](https://consult.defra.gov.uk/environmental-quality/consultation-on-reforming-the-uk-packaging-produce/supporting_documents/packagingepiconsultimpactassessment.pdf)