EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2023

2023 No. 0000

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 These Regulations amend Schedule 9, Part 2 of the Environmental Permitting (England and Wales) Regulations 2016 ("2016 Regulations"), to expand the scope of material facilities ("MFs") required to comply with requirements to sample waste, to enhance the data on waste and to provide evidentiary support for Extended Producer Responsibility for Packaging (pEPR). Schedule 9, Part 2 of the 2016 Regulations requires operators of permitted MFs to notify the regulator (the Environment Agency in England, Natural Resources Wales in Wales) if they receive mixed waste material of 1,000 tonnes or more. Under the 2016 Regulations, MFs sort mixed waste material into specified waste streams which is subsequently transferred or sent to be recycled.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Rebecca Pow MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Environmental Permitting (England and Wales) (Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The 2016 Regulations set out an environmental permitting and compliance regime that applies to various activities and industries, including the waste industry and the recovery and disposal of waste.

6.2 These regulations amend Schedule 9, Part 2, of the 2016 Regulations, which set out specific permit conditions that operators of MFs with an environmental permit that receive mixed waste material of 1,000 tonnes or more must comply with. These regulations will increase the scope of MFs that are required to sample and report their waste, extend the types of materials they must identify and measure, including

packaging, and require MFs to report more information on suppliers and destinations of waste. This information will support the delivery of pEPR.

7. Policy background

What is being done and why?

7.1 The original objectives of Schedule 9, Part 2 of the 2016 Regulations were to provide information to stimulate the market conditions to improve recyclate quality, maximising the economic value of the waste material collected and to help to increase the environmental benefits of recycling through lower contamination levels in recyclates.

7.2 A post implementation review (PIR) into Schedule 9, Part 2 of the 2016 Regulations was completed in 2020. This review provided recommendations to better meet the recyclate quality objectives, including exploring connections between MFs' data reporting and pEPR. The PIR concluded that Defra would consider amendments to Schedule 9, Part 2 as we implemented policies set out in the Resources and Waste Strategy for England.

7.3 Schedule 9, Part 2 of the 2016 Regulations is being amended to increase the granularity of waste data reported by MFs to drive recyclate quality improvements, including enhanced data on the packaging tonnages and composition to support pEPR.

Explanations

What did any law do before the changes to be made by this instrument?

7.4 Prior to these amendments, Part 2 of Schedule 9 to the 2016 Regulations required data to be collected and reported from only those MFs that receive mixed waste and separated that waste into specified outputs. MFs likely to receive 1,000 tonnes of mixed waste in a year were required to sample at least 60kg for every 125 tonnes of mixed waste received at the facility from each supplier. Those MFs were also required to sample and report against fewer categories of input and output waste material and report less granular data, only reporting average tonnage composition.

Why is it being changed?

7.5 An objective of pEPR is to ensure packaging producers pay the cost of managing the packaging they place on the market. To support the delivery of pEPR, enhanced, granular data on the composition and quality of packaging waste collected, bulked, and sorted by MFs needs to be obtained.

7.6 The current data collected by MFs under the 2016 Regulations is not comprehensive enough for pEPR requirements, as they do not capture all necessary facilities, such as first points of waste consolidation (those that undertake the first weighing and consolidation of waste, e.g., transfer or bulking stations), nor the packaging proportions and composition moving through the waste system.

What will it now do?

7.7 The amendments made by these regulations will enhance the quantity and quality of waste data, especially packaging data, which will underpin tonnage and quality related payment mechanisms that will be used within the pEPR scheme. This enhanced data provision will also support the monitoring and achievement of recycling targets and

other pEPR and regulatory outcomes, including quality monitoring and consistency in recycling collections.

7.8 These regulations increase the scope of MFs required to collect and report data to include other types of facilities that consolidate and sort waste, such as waste transfer and bulking stations. MFs managing source segregated or single streams will also be brought into scope. MFs currently in scope under the 2016 Regulations will remain in scope.

7.9 MFs will have increased sampling requirements including a higher input sampling frequency of 75 tonnes and more material categories to sample and report against, including data on packaging. The material that MFs identify in an input sample must, as a minimum, be separately identified by reference to a new set of material categories, including glass, paper, card, plastic bottles, plastic pots, tubs and trays, film or other flexible plastic, other plastics, fibre-based composites, aluminium, and steel.

7.10 Recording and reporting requirements are amended to reflect new, increased sampling requirements and require MFs in scope to provide more information on the waste suppliers and destinations. MFs in scope must also report all raw data to regulators, removing the requirement to report averages and standard deviations, supporting more accurate data provision and analysis. The period in which records are to be kept is extended from four to seven years (for information recorded on or after 1 October 2024), to ensure this data is available for regulatory purposes and alignment with pEPR data retention periods. Information obtained by the regulator may be shared with the pEPR scheme administrator (once established), for use in the delivery of their pEPR functions.

7.11 All MFs within scope will be required to comply with the regulations from 1 October 2024.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 A consultation on pEPR ran for 10 weeks from 24 March 2021 to 4 June 2021. This consultation sought views on specific policy proposals for the introduction of an extended producer responsibility scheme for packaging and included proposals relating to obtaining enhanced packaging data through amendments to Schedule 9, Part 2 of the 2016 Regulations. This was a joint consultation by the UK Government, the Welsh Government, the Scottish Government and the Northern Ireland Executive.

10.2 The consultation received 1,241 responses from a wide range of stakeholders. The consultation set out the importance of collating and reporting packaging composition data from local authorities (LAs) and MFs (transfer stations, bulking stations, and sorting facilities) that receive and handle packaging waste, for pEPR purposes including for calculating fees and payments. These policy proposals, including amending Schedule 9, Part 2 of the 2016 Regulations, and equivalent approaches in

Scotland and Northern Ireland, received strong support through the consultation responses.

10.3 The summary of responses and the Government response to the 2021 consultation were published in March 2022. This response outlined our intention to amend Schedule 9, Part 2 of the 2016 Regulations in England and Wales, and to take equivalent approaches in Scotland and Northern Ireland, to obtain enhanced data on packaging waste composition to support pEPR delivery.

10.4 The response stated that:

- MFs that receive waste from multiple suppliers and undertake the first weighing, consolidation and/or sorting processes on their waste will be required to meet the enhanced sampling requirements, in addition to those currently in scope.
- The current de minimis threshold for sampling of 1,000 tonnes of input will be retained. This is due to the disproportionate costs that would fall on smaller facilities and is despite the fact that most respondents supported removing or reducing it.
- MFs that receive dry mixed recyclate and/or source separated recyclate will be within scope of the amended regulations.
- A more granular list of input material categories must be measured and reported against, with the inclusion of separate categories for paper, cardboard, film or other flexible plastic, plastic bottles, plastic pots, tubs and trays, fibre-based composites, aluminium, and steel.
- Packaging and Deposit Return Scheme (DRS) material proportions will be required to be sampled and reported at input and output.
- A separate methodology for assessment of glass will be considered.
- The sampling frequency will increase from 60kg every 125 tonnes to 60kg every 75 tonnes.

11. Guidance

11.1 Guidance for MFs on their sampling and reporting requirements will be published by Defra, the Environment Agency, Welsh Government, and Natural Resource Wales in advance of these regulations coming into force in October 2024 and will be made available on the GOV.UK website.

11.2 Defra and the Welsh Government, alongside the relevant regulators, the Environment Agency and Natural Resources Wales, will continue to engage with key stakeholders to increase awareness of the new sampling and reporting requirements ahead of the regulations coming into force.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument with the additional cost to business in England being assessed as low (see paragraph 12.5 below). A De Minimis Assessment (DMA) for England was undertaken to assess the impacts for those estimated in-scope facilities under these regulations in England.

12.4 An Impact Assessment for pEPR was previously published alongside the Government response to the 2021 pEPR consultation. That Impact Assessment outlined the estimated additional costs to obligated MFs under these regulations. The 739 facilities estimated to be in scope in England has recently been revised to 159 facilities following updated data and assumptions from the Environment Agency.

12.5 The same, green-rated cost calculation methodology that was used for the pEPR final Impact Assessment was used for the DMA and applied the updated estimated number of facilities in scope and regulator costs based on an estimated increase in compliance activity. The DMA assessed the additional capital, operational, familiarisation and regulator costs in meeting these regulations. These costs were compared against the baseline costs that MFs in scope of the 2016 Regulations are already facing to estimate the impact. The baseline costs were estimated to be £1.39m (with a low estimate of £0.87m and a high estimate of £1.50m). Subtracting the baseline from the total costs of the policy led to an Equivalent Annual Net Direct Cost to Business (EANDCB) of £2.65 million (with a low estimate of £1.54 million and a high estimate of £3.24 million).

12.6 Analysis of environmental permit data suggests a larger proportion of privately operated facilities are in scope of these regulations in comparison to local authority (LA) operated facilities. Therefore, these regulations are not expected to place disproportionate costs on the public sector.

12.7 We also expect proportionate costs associated with sampling and reporting of packaging waste borne by LAs, or passed on to LAs by third parties, in delivering efficient and effective waste management services, to be included within the pEPR disposal cost fees borne by packaging producers and payable to LAs.

13. Regulating small business

13.1 The legislation applies activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to retain the de minimis threshold within the 2016 Regulations to exempt MFs that receive less than 1000 tonnes of waste material per annum. This decision was taken following analysis of impacts suggesting the possibility of economies of scale, which may lead to disproportionate costs on smaller facilities. This was also despite the consultation proposal to reduce or remove this threshold receiving majority support from stakeholders. We have also taken the decision to reduce the input waste sampling frequency to every 75 tonnes per supplier, having proposed a higher sampling frequency of 25 tonnes in the pEPR 2021 consultation.

14. Monitoring & review

14.1 The environmental permitting regime is monitored by the UK Government and the Environmental Agency in England and the Welsh Government and Natural Resources Wales in Wales.

14.2 Part 2 of Schedule 9 to the 2016 Regulations creates permit conditions on MFs to notify under the 2016 Regulations. The approach to monitoring and enforcement of these regulations is set out in the 2016 Regulations which details the regulatory functions available in monitoring and enforcing permit compliance (specifically, Part 4 of the 2016 Regulations deals with enforcement and offences).

14.3 The pEPR scheme administrator, once established, local authorities and obligated businesses, are also expected to monitor the effectiveness of legislation relating to packaging waste and advise Government of any issues and changes they think may be needed.

14.4 A review of the impact of pEPR is expected to occur in the 2026/27 financial year. This review will cover whether data collection is sufficient (for example, whether MF sampling and compositional analysis is providing sufficiently accurate data).

14.5 A statutory review clause is included in regulation 80 of the 2016 Regulations. A Post Implementation Review of Schedule 9, Part 2 of the 2016 Regulations was completed in June 2020.

15. Contact

15.1 Tara Kelly at the Department for Environment, Food and Rural Affairs Telephone: +442087201794 or email: tara.kelly@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Dozie Chukudebelu, Deputy Director for Collections and Packaging Reforms, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rebecca Pow MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.