EXPLANATORY MEMORANDUM TO

THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE) (AMENDMENT) REGULATIONS 2010

2010 No. [DRAFT]

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**

The instrument amends the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871) ("the 2007 Regulations") by including packaging waste recovery and recycling targets in the 2007 Regulations for 2011 and 2012, provisions to increase the transparency associated with revenue from Packaging Recovery Notes (PRNs) and a number of technical changes to improve the clarity of the Regulations.

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

None.

4. Legislative Context

4.1 The instrument amends the 2007 Regulations. The 2007 Regulations impose the obligation to recover and recycle packaging waste, and related obligations, 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 Public consultation was carried out in 2010 on the proposed changes. New targets are being included as the regulations currently only have targets until 2010. The other changes are being made in response to comments from the regulators and obligated businesses on how the operation of the 2007 Regulations could be improved.

4.3 The instrument also revokes a previous amendment to the 2007 Regulations, the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2008. The 2008 regulations amended the recovery and recycling targets, changes that are superseded by this instrument.

5. Territorial Extent and Application

5.1 This instrument extends to Great Britain.

5.2 Similar Regulations will be made in Northern Ireland.

6. European Convention on Human Rights

The Minister of State, Department for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2010 are compatible with the Convention rights.

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 2007 Regulations set targets until 2010. In order to continue to comply with the Directive requirements new targets are required for 2011 onwards.

This instrument will establish targets for 2011 and 2012, based on current market data.

7.6 The targets have been set in this way to take into account the Government's review of waste policy for England. Longer term targets will be set reflecting the outcome of this review and following discussions with the Devolved Administrations.

7.7 The producer responsibility system for packaging provides an additional incentive for recycling activity, over and above the landfill tax, particularly for lighter non-biodegradable materials such as plastics and aluminium. Packaging producers who do not carry out their own recycling provide 'top-up' funding, via the purchase of packaging recovery notes (PRNs), to accredited reprocessors or exporters who fulfill the producers' recycling obligation on their behalf. Reprocessors and exporters are not compelled to spend the revenue in any specific way.

7.8 The consultation included four options to deal with the lack of transparency of this funding, which was identified as a key barrier by both producers and local authorities.

7.9 The instrument will revise and better define the categories against which accredited exporters and reprocessors must report how they have spent producer funding. The new categories have been developed with industry input and should provide all actors with a more accurate picture of aggregated expenditure. It will also introduce a permissive power to set a common format for the business plans which reprocessors and exporters seeking accreditation must already submit.

7.10 The instrument also includes a number of "technical" changes to the Regulations. These changes aim to clarify definitions, key dates for data returns and payment deadlines, and update references to legislation revised since 2007. Most of the changes will have a negligible impact on businesses.

7.11 The key changes are:

- Clarification of the split of obligations between convertors and packer/fillers
- Inclusion of conditions (payment of any fees, submission of any required data) to clarify that a producer will only be considered a member of a compliance scheme under the Regulations when these are met.
- A change to the date for submission of an application for registration of compliance scheme from 7th April to 15th April (which was the deadline for submission of further information)
- The removal of the requirement on reprocessors and exporters to be independently audited.
- A revision of the fees which the environment agencies charge for processing applications from waste exporters to accredit overseas sites

for the purposes of the Regulations, as under the current fee structure the agencies are not recovering the full cost of this activity

- Allowing small producers to use the allocation method, which allows small businesses to calculate their recovery and recycling obligation based solely on turnover. This removes the need for the collection and collation of data on the amount and composition of packaging handled, and so reduces the burden on SMEs.

- Clarifying the position on offshore platforms, to ensure that packaging which becomes waste on marine installations is counted as part of the obligation of the company who send it to the installations.

- Updates and corrections: to remove/update outdated references and remove obsolete references.

8. Consultation outcome

8.1 The draft Regulations are put forward 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 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 undertook a full, formal consultation on these proposals. This was accompanied by an impact assessment which presented the overall costs and benefits of the proposals.

8.4 A formal consultation ran from March to May 2010. 96 responses were received. Overall, respondents were supportive of increasing targets, though there was some concern about the level of increase for certain materials. Respondents also supported the principle of transparency and the proposals included in the consultation document. There was general support for the technical changes, though there were some issues raised regarding the independent audit requirement, with several respondents finding the audit process useful. However, a majority of respondents (and the regulators) thought the audit process was costly, without delivering a clear benefit. .

8.5 The consultation documents and summaries of responses can be found at http://www.defra.gov.uk/corporate/consult/packaging-regs/index.htm. Other documents can be obtained from the contact at the end of this memorandum.

9. Guidance

9.1 The environment agencies will update their guidance based on the changes made by this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited. The proposed targets are expected to deliver overall net benefits estimated at **£1.6m - £18m** over two years. Decisions on targets for 2013 onwards will be taken in the light of the outcome of the Waste Review.

10.2 Benefits from the technical changes would ***reduce the net administrative burden placed on UK businesses by £285,000-£371,000 annually***. These savings are net of the additional costs of a couple of other proposals in the package, which met no opposition in the consultation.

10.3 Charities are exempt from the regulations.

10.4 The impact on the public sector is negligible.

10.5 Two Impact Assessments are attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation may apply to small business; however there is a de minimis so that businesses under certain threshold levels are exempt.

11.2 The basis for the final decision on what action to take to assist small business is part of the Impact Assessment. The changes include proposals to reduce administrative burdens which should particularly help small firms as they generally have less time to spend on red tape.

12. Monitoring and review

12.1 The UK packaging system is monitored continually by Government, the 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 changes are needed.

13. Contact

Ian Atkinson at the Department for Environment, Food and Rural Affairs, Room 6D, Ergon House, Horseferry Road, London SW1P 2AL, telephone: 020 7238 4345 and e-mail ian.atkinson@defra.gsi.gov.uk can answer any queries regarding the instrument.