EXPLANATORY MEMORANDUM TO
THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE) (AMENDMENT) REGULATIONS 2012

2012 SI 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 for 2013-7, and introducing split targets for glass based on the end use.

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").

Public consultation was carried out in 2011 on the proposed changes. New targets are being included as the regulations currently only have targets until 2012.

The instrument also revokes part of a previous amendment to the 2007 Regulations, the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2010. The provision being revoked is superseded by this instrument.

5. Territorial Extent and Application

5.1 This instrument applies 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 2012 are compatible with the Convention rights.

7. Policy background

- What is being done and why

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.

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%

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.

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.

The 2010 Regulations set targets until 2012. In order to continue to comply with the Directive requirements new targets are required for 2013 onwards. This instrument will establish targets for 2013 to 2017 and 2012, based on current market data.

The targets and the split targets for glass have been set in this way to take into account the Government's review of waste policy for England.

For Wales, these targets will contribute to recycling targets and policies in the Welsh Government's overarching waste strategy document- Towards Zero Waste.

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.

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.

The Government undertook a formal consultation on these proposals. This was accompanied by an impact assessment which presented the overall costs and benefits of the proposals.

A formal consultation ran from December 2011 to February 2012. 101 responses were received. Overall, respondents were supportive of increasing targets, though there was some concern about the level of increase for certain materials, notably plastics. Whilst supporting the higher targets, some respondents expressed concern about the risk of quality of recyclates deteriorating with the proposed increases. There were also concerns about the perceived disadvantages of Packaging Waste Recovery Notes (PRNs) (generated by waste recycled in the UK) relative to Packaging Waste Export Recovery Notes (PERNs) (derived from waste exported for recycling).

The consultation documents and summaries of responses can be found at http://www.defra.gov.uk/consult/2011/12/16/packaging-regs/ . Other documents can be obtained from the contact at the end of this memorandum.

9. Guidance

The environment agencies 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 deliver overall net benefits estimated at **£270 - £506m** over five years.

Charities are exempt from the Regulations

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

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.

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 & 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.

The Regulations also include a new provision, thereby ensuring that they will be reviewed on a regular basis.

13. Contact

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