POLICY NOTE

THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE) AMENDMENT (SCOTLAND) REGULATIONS 2020

SSI 2020/387

The above instrument was made in exercise of the powers conferred by section 93(1) and (8) and 94(1)(b), (c) and (d) and (7) of the Environment Act 1995. The instrument is subject to negative procedure.

Purpose of Instrument
The instrument amends the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 ("S.I. 2007/871") ("the 2007 Regulations") by varying Scotland's overall 2021 and 2022 packaging waste targets for all materials as well as varying the targets set for specific materials.

Policy Objectives
The 2007 Regulations apply to Great Britain ("GB"). This instrument amends the 2007 Regulations for Scotland only; similar amending instruments are being made in relation to England and Wales by the UK Government and Welsh Government. Northern Ireland has separate Regulations and will make similar changes in parallel.

The 2007 Regulations impose producer responsibility obligations on producers of packaging to recover and recycle a calculated amount of packaging waste in order to attain the Government's intended recycling rate. Producers are obligated to recycle a proportion of the packaging they place on the market. The obligation is placed 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 GB.

The current packaging waste recovery and recycling targets expire at the end of 2020. The 2007 Regulations are being amended, in relation to Scotland only, to set new recycling targets for 2021 and 2022 that are intended to increase recycling rates. The amendments also reflect that no recovery targets are being set because these have been fully replaced by recycling targets.

Current targets in the 2007 Regulations set an overall recovery target on producers, of which a minimum of 92% had to be achieved by recycling. This left a maximum of 8% of the total obligation which could be achieved by recovery activities. 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. This reflects the culmination of a gradual shift when varying targets to encourage a reduction in the amount of waste going for disposal and to landfill. Instead, the focus is on moving the management of waste up the waste hierarchy and on recycling targets as a means of providing evidence that producer responsibility obligations are met. This has a better environmental outcome and removes an incentive for material going to activities which are lower on the waste hierarchy.

Amendments to the 2007 Regulations have in the past been made at a GB level with the Scottish Ministers' consent, in order to maintain consistency in application of the producer responsibility scheme across GB. The power used by Defra to do this (section 57(1) of the Scotland Act 1998) will no longer be available after completion of the EU-exit implementation period on 31 December, although we expect replacement powers in the Environment Bill currently before the UK Parliament. In the circumstances it was considered appropriate for the Scottish Ministers to make these Regulations, coming into force on 1 January 2021, in parallel with similar regulations being made by Defra and the Welsh Ministers. Similar amendments will be made at a Northern Ireland level to their parallel Regulations.

Consultation
New recycling targets were included in the public consultation (February to May 2019) on reform of the packaging producer responsibility system, carried out jointly by the UK and Devolved Administrations. That consultation included a proposal not to set an overall packaging waste recovery target.

The consultation document, "Reforming the UK Packaging Producer Responsibility System", discussed the rationale for reforming the current producer responsibility system, set out the key principles and features of an extended producer responsibility system for packaging and proposed packaging waste recycling targets to 2030.

Informal consultation with the independent Advisory Committee on Packaging ("ACP"), key materials organisations and trade bodies, other government departments and regulators took place to inform development of a number of the proposals contained within the consultation document and associated Impact Assessment.

Taking into account the comments received, the Scottish Government is amending the Regulations in relation to Scotland, and introducing recycling targets for 2021 and 2022 in line with the proposals in the consultation.

The consultation document can be found at https://consult.defra.gov.uk/environmental-quality/consultation-on-reforming-the-uk-packaging-produce/ and a summary of responses can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819467/epr-consult-sum-resp.pdf. Other documents can be obtained from the contact at the end of the Explanatory Note.

Impact Assessments
As this instrument is aligned with provisions being introduced by the UK Government and Welsh Government on the basis of a UK-wide consultation and attendant Impact Assessment, the Scottish Government does not consider it necessary to carry out Scottish-specific impact assessments.

The impact assessment which accompanied the UK-wide consultation can be found at https://consult.defra.gov.uk/environmental-quality/consultation-on-reforming-the-uk-packaging-produce/supporting_documents/packagingeprconsultimpactassessment.pdf.

Financial Effects
As this instrument is aligned with provisions being introduced by the UK Government and Welsh Government on the basis of a UK-wide consultation and attendant Impact Assessment (see link above), the Scottish Government does not consider it necessary to carry out a Scottish-specific Business and Regulatory Impact Assessment (BRIA).

Scottish Government
Environment and Forestry Directorate

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