



Department
for Environment
Food & Rural Affairs

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Consultation on proposed changes to the Waste Batteries Regulations 2009, PRO (Packaging Waste) Regulations 2007, PRO (Packaging Waste) Regulations (Northern Ireland) 2007, and call for evidence on the impact of new plastic flow figures, and links with household waste recycling targets.



Llywodraeth Cymru
Welsh Government



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packaging@defra.gsi.gov.uk

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Introduction

1. This consultation seeks your views on proposals by the Department for Environment, Food and Rural Affairs, the Scottish Government, the Welsh Government and the Department of the Environment for Northern Ireland, to amend the:
 - Producer Responsibility Obligations (Packaging Waste) Regulations 2007¹
 - Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007².
 - The Waste Batteries and Accumulators Regulations 2009³
2. The proposed regulatory amendments reduce the burden of producer responsibility obligations on business by improving the effectiveness of the schemes. This should enable both the compliance schemes and environment agencies to focus on the schemes' primary aim; delivering environmental benefit by subsidising the recycling of packaging and batteries. Following analysis of consultation responses, the Government will notify the EU of proposed changes as required under the EU Technical Standards Directive (Directive 98/34/EC), allowing regulations to be made in time for the start of 2016.
3. In addition the consultation also seeks evidence which will enable us to assess the case for changing the business target for the recycling and recovery of plastic waste packaging; and explore the opportunities for increasing the links between the producer responsibility regime for packaging and Local Authorities collection of packaging waste for recycling.
4. The consultation is accompanied by draft regulations and an evidence base, which will be updated following consideration of consultees' views and supporting evidence.

Who should read this consultation?

5. The proposals in this consultation are expected to be of greatest interest to:

¹ SI 2007/871

² S.R. 2007 No.198

³ SI 2009/890

- Packaging ‘producers’, as defined in the Packaging Regulations;
 - Batteries producers;
 - Packaging and batteries compliance schemes;
 - Waste Collection and Disposal Authorities.
6. Others who may have an interest include:
- Reprocessors and exporters of waste packaging and batteries;
 - Waste management companies involved in the collection of packaging and batteries;
 - Any research institutions, groups or individuals with a particular interest in packaging waste, batteries, or recycling;
 - Manufacturers and importers;
 - Trade associations.

Responding to this consultation

7. This consultation will run for 8 weeks from 27th March to 22nd May 2015. Please send your comments on the proposals in this paper and on the accompanying Evidence Assessment and draft Statutory Instrument to the following address:

Producer Responsibility Team, Defra
 Area 2B Nobel House
 17 Smith Square
 London SW1P 3JR

8. Or you can send your comments by email to packaging@defra.gsi.gov.uk

Respondents in Scotland should also send their response to:

Tim Chant
 Zero Waste Delivery Team
 Environmental Quality Division
 Scottish Government
 1-D(N) Victoria Quay
 Edinburgh
 EH6 6QQ

Email: timothy.chant@scotland.gsi.gov.uk

Respondents in Wales should also send their response to:

Alex Hamilton
 Waste Regulation Policy Branch
 Welsh Government
 Cathays Park
 Cardiff

CF10 3NQ

Email: alex.hamilton@wales.gsi.gov.uk

Respondents in Northern Ireland should also send their response to:

Janis Purdy
Environmental Policy Division
DoENI
6th Floor, Goodwood House
44-58 May Street
Belfast
BT1 4NN
Email: wspri@doeni.gov.uk

Confidentiality & Data Protection

9. Information provided in response to this consultation document, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
10. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Background

Producer Responsibility regimes

11. The UK has commitments under both the Packaging Directive (1994/62/EC) and Batteries Directive (2006/66/EC) to recycle a proportion of the portable batteries and packaging materials that are placed on the market.
12. In order to meet these obligations the UK has producer responsibility regimes covering packaging and batteries. The regimes share a common financial obligation for producers to bear the costs of collecting, treating and recycling/recovering a proportion of their products to meet legal targets and minimum standards.
13. They also have similar administrative processes such as producer registration, approval of compliance schemes and the authorisation of treatment facilities and exporters.

Packaging

14. The UK has had since 1997 a statutory producer responsibility scheme for recycling packaging, which implements the producer responsibility provisions of the EU Packaging Directive. This scheme internalises some of the externalities of dealing with packaging at the end of its life. This reduces the amount of packaging waste going to landfill and reduces the environmental impacts in a way that is better for the environment and natural resources than landfill. It does so by setting minimum recycling and recovery targets on UK businesses in the packaging supply chain. These packaging producers then buy evidence known as Packaging Recovery Notes (PRNs) or Packaging Export Recovery Notes (PERNs) from accredited reprocessors or exporters to demonstrate that sufficient packaging has been recycled. The current targets in the Packaging Regulations run from 1 January 2013 for five years.

Batteries

15. The Waste Batteries and Accumulators Regulations 2009 implement the producer responsibility provisions of Batteries Directive which aims to prevent batteries entering landfill and sets recycling targets (25% by 2012 and 45% by 2016). Since 2010, battery producers in the UK have been legally obliged to fund the collection, treatment and recycling of a proportion of waste portable batteries that are placed on the market. The Batteries Regulations apply to both GB and

NI. They apply to all economic operators involved in the life-cycle of batteries, including producers (including importers and manufacturers), distributors, and operators involved with the treatment, recycling and/or export of waste batteries. All producers of portable batteries (except small producers) must join a Battery Compliance Scheme.

Household waste recycling target

16. Under the Waste Framework Directive (2008/98/EC), the UK has a target to recycle 50% of the waste generated by households, by 2020.

Rationale for change

17. On 18 April 2013, the Government published a discussion paper which invited views on ideas for developing a more coherent regulatory approach across the different Producer Responsibility regimes. In September 2013, a summary of stakeholder responses and the government response to the consultation was published. The government response indicated which of the 21 proposals the Government intended to take forward, with further consultation on detailed proposals promised. This consultation sets out the detailed proposals concerning proposed changes to the Packaging and Batteries Regulations. Reprioritising the waste programme has made us look again at what Government must and should do. Our priority is to make the regimes more cost-effective, taking forward those proposals that have the biggest impact on business, but maintain our environmental ambition. This should enable both the compliance schemes and environment agencies to focus on the schemes' primary aim; delivering environmental benefit by subsidising the recycling of packaging and batteries.

18. The remainder of this consultation is split into five sections:

Part I – sets out the Government's proposals for the Batteries Regulations

Part II – sets out the Government's proposals for the Packaging Regulations

Part III – calls for evidence to support analysis of the impact of new plastic flow figures.

Part IV – calls for evidence to support the Government's analysis with WRAP and other partners to consider what further actions can be taken to ensure that the household waste recycling target is met.

Part V – summarises the consultation questions.

19. The costs and benefits of the proposals laid out in parts I and II of this paper, are described in the evidence base that accompanies this consultation paper, and that also sets out the reasons why we have not taken forward all of the proposals included within the producer responsibility review.

Part I - Batteries Proposals.

20. A draft statutory instrument, “The Waste Batteries and Accumulators (Amendment) Regulations 2015” accompanies this consultation paper. The references to specific regulations in the section below refer to that document.

Removal of the operational plan

Current position

21. When a compliance scheme is first approved, it is required to develop an operational plan covering the next three years, setting out how it will comply with its legal obligations. The plan is prescribed in detail within the regulations. It must set out details of:

1. available financial resources and technical expertise;
2. how the scheme will discharge its obligations to finance collection treatment and recycling of batteries and other duties under Part 3 of the regulations.
3. the collection of waste portable batteries from distributors and facilities offered to economic operators and waste collection
4. the scheme information campaign.

22. The plan must be agreed by the appropriate agency, and performance against the plan is monitored by appropriate agency. Changes to the plan must be notified and agreed and the agency annually considers an updated operational plan in order to decide whether or not to allow the scheme’s approval to continue. This process focuses attention by both compliance schemes and the environment agencies on the planning process rather than the activity undertaken.

23. At present the scheme’s approval is reconfirmed every year, following receipt of an updated operational plan. It is not clear that this is necessary: the approval could automatically remain in place unless the scheme operator fails to comply with one of its approval criteria.

Proposed Amendments

24. The Government proposes to remove the requirement for compliance schemes to develop, agree, follow, and update an operational plan. In addition, the environment agency would no longer annually confirm the compliance scheme’s approval following receipt of an updated operational plan.

25. Regulation 7 removes the basic requirement for an operational plan. Regulations 8, 9, and 13 remove the references to operational plans within the approval process and conditions of approval. Regulation 10 removes the requirement for annual confirmation of approval of battery compliance schemes.

Consultation questions

Question 1. Do you agree with the Government's proposal to replace operational plans and annual confirmation of scheme approval as set out above?

Please set out your reasons and include any evidence that would improve our assessment of the impacts of the proposals.

Sign-off Arrangements

Current position

26. When the batteries regulations require information on portable batteries to be provided by battery producers, or compliance scheme operators, that information must be signed by an "appropriate person". This level of sign-off is needed when information is provided by a producer to a scheme operator (or directly to an environment agency where the producer is not currently a member of a compliance scheme) when this is needed to demonstrate compliance and to the environment agencies on the weight of portable batteries placed on the market. A signature is also needed when information is provided by the scheme operators to the environment agencies to: register scheme members; or about the weight of portable batteries placed on the market; the weight of waste portable batteries that the operator has been responsible for collecting and delivering for treatment and recycling; and the declaration of compliance.

Proposed Amendments

27. The Government proposes to enable the appropriate person to delegate their responsibilities for signing off reports. It is proposed that any application to delegate responsibilities in this way would be made in writing to the appropriate environment agency. The proposed amendments set out a procedure for approving delegation, based on the proposed delegate's level of seniority, relationship to the "appropriate person", and knowledge and access to information. Regulation 3 inserts a new definition of "delegate". Regulation 4 enables delegation. Regulation 5 sets out the delegation procedure.

Consultation questions

Question 2. Do you agree that the "appropriate person" should be allowed to delegate responsibility for signing off reports?

Please set out your reasons and include any evidence that would improve our assessment of the impacts of the proposals.

Independent Audit Reports

Current position

28. Under section 66 of the Batteries Regulations an approved battery treatment operator or approved battery exporter must provide regular reports on the batteries processed or exported. These reports must be audited by an independent auditor.
29. The requirement for an independent audit report has been removed from both the Packaging and WEEE Regulations but remains in the Battery Regulations. Waste battery reprocessors/exporters are required to report on their treatment of batteries using an independent auditor. The original intention was that the reports would help ensure that the quality of recycling was upheld. However, these reports are not used by the Environment Agencies for compliance purposes.

Proposed Amendments

30. The Government proposes to remove the requirement for Independent Audit Reports from the Battery Regulations. Regulation 11 and 12 give effect to this change.

Consultation questions

Question 3. Do you agree that the requirement for an independent audit report should be removed?

Please set out your reasons and include any evidence that would improve our assessment of the impacts of the proposals.

Part II - Packaging Proposals

31. There are two sets of Packaging Regulations: one for Great Britain and a very similar set for Northern Ireland. The Government proposes to amend both packaging regulations in the same way. This consultation paper is therefore accompanied by two draft statutory instruments:

For Great Britain – “The Producer Responsibility obligations (Packaging Waste) (Amendment) Regulations 2015”

For Northern Ireland – “The Producer Responsibility obligations (Packaging Waste) (Amendment) (Northern Ireland) Regulations 2015”

32. A copy of the keeling schedule for the GB regulations is also attached. This shows how the amendments change the existing regulations. The references to specific regulations in the section below refer to the GB version.

Removal of Operational Plan

Current position

33. At present a compliance scheme or directly registering producer with an obligation above 500 tonnes is required to develop an annual operational plan that sets out how they will comply with their legal obligations. The plan is prescribed in detail within the regulations. It must demonstrate:

- (a) that the scheme (or producer) has sufficient financial resources and technical expertise to meet their obligations
- (b) that the arrangements for recovery and recycling take account of national waste policy statements.
- (c) considerable detail about how the recovery and recycling obligations will be met.
- (d) that the scheme (or producer) will ensure that data provided is as accurate as reasonably possible.

34. The plan must be agreed by the appropriate agency as part of registration, and performance against the plan is monitored by appropriate agency. Changes to the plan must be notified and agreed and the agency may cancel registration for any scheme or registrant that does not comply with its operational plan.

35. The operational plan focuses attention by both compliance schemes and the environment agencies on the planning process rather than the activity undertaken, and introduces burdens on business in mapping out how the recovery and recycling obligations will be met in detail.

36. However, some of the principles which underpin the operational plan remain sound and are important in ensuring that compliance meet the legal obligations of their constituent members and for which they are paid. The 2013 discussion paper therefore proposed that some aspects of the operational plan provisions should be considered as conditions of approval. The proposal was supported by most with the proviso that the standards for the conditions for approval are high, and give sufficient information for the environment agencies to make informed decisions concerning monitoring schemes.

Proposed Amendments

37. The Government proposes to remove the requirement for compliance schemes and larger producers to develop, agree, and follow an operational plan. These changes are set out in regulation 9(a)(ii) (schemes) and regulations 4(a)(ii) and 5 (producers). For producers the remaining conditions of registration, provide sufficient assurance that the recycling and recovery obligation will be met.
38. There are three elements of the operational plan that the Government considers important to ensure that schemes function efficiently and effectively. These require the scheme to: monitor the accuracy of information provided by scheme members; acquire PRNs or PERNs in a manner which least hinders the ability of other operators to purchase them; and maintain sufficient financial resources to maintain the necessary expertise and acquire PRNs or PERNs. The Government proposes to incorporate these elements of the operational plan within new conditions of approval. These conditions would apply to all compliance schemes, including those approved before the amendments are made. These changes are set out in regulation 8 which sets out conditions of approval of a scheme, sets out the appropriate Agency's power to withdraw approval of a scheme and provides that, where that power is exercised, registration of the scheme must be cancelled.
39. Regulation 10 replaces the conditions of registration of a scheme with an obligation for an operator of a scheme to notify the appropriate Agency of changes in membership of the scheme and pay a fee in respect of the changes.
40. Moving these elements of the operational plan to conditions of approval will reduce the administrative burden on compliance schemes whilst ensuring that they are still regulated effectively.

Consultation questions

- Question 4. Do you agree with the Government's proposal to replace operational plans and conditions of scheme registration with conditions for scheme approval as set out above?
Please set out your reasons and include any evidence that would improve our assessment of the impacts of the proposals.

Change of approving body

Current position

41. At present a new compliance scheme is required to seek approval from the authority of the nation in which it has its registered office: the "appropriate authority".

Proposed Amendments

42. The Government proposes to transfer responsibility for the approvals process from the appropriate authority to the appropriate agency. Regulation 7 gives effect to this. Compliance schemes which have already been approved need take no action.

Consultation questions

Question 5. Do you agree with the Government's proposal to transfer the approvals process from the appropriate authority to the appropriate agency? Please set out your reasons and include any evidence that would improve our assessment of the impacts of the proposals.

Sign-off Arrangements

Current position

43. There are a number of requirements within the Packaging Regulations, where an "approved person" must sign off information. These are: an application for producer or scheme registration; information provided to a scheme by a producer; the certificate of compliance. The term "approved person" normally means a person in control of the enterprise such as a director or the secretary of a company, rather than the person who has put together the data and understands the position. This is a burden on business and often leads to delays when a senior manager is not available.

Proposed Amendments

44. The Government proposes to amend the Packaging Regulations so that the approved person can delegate their responsibilities for signing off reports. It is proposed that any application to delegate responsibilities in this way would be made in writing to the appropriate environment agency. The proposed amendments set out a procedure for approving delegation, based on the proposed delegate's level of seniority, relationship to the "approved person", and knowledge and access to information. Regulation 3 inserts a definition of "delegate". Regulation 18 enables delegation. Regulation 19 sets out the procedure for delegation.

Consultation questions

Question 6. Do you agree that the "approved person" should be allowed to delegate responsibility for signing off reports? Please set out your reasons and include any evidence that would improve our assessment of the impacts of the proposals.

Part III – Call for evidence on the impacts of new plastic flow figures

45. The Packaging Regulations sets a business target for plastic of 52% in 2016 and 57% in 2017. This target was based on our understanding of the proportion of packaging which is placed on the market by producers who are obligated under the regulations, and on the estimated flow onto the market of plastic packaging.
46. On 16th December 2014, an industry wide report – Plastic Flow⁴ – was published. The report suggests that existing estimates of plastic packaging flows onto the market had significantly over-estimated the amount of plastic placed on the market.
47. The project's final best estimate of UK flow for 2013 is 2,260k tonnes, a reduction of 332k tonnes from the previous estimation of the flow figure for 2013. These figures mean that obligated producers are legally required to recycle a higher proportion of the plastic packaging placed on the market than previously thought. If there were no further growth in the amount of plastic placed on the market, this means that with the current business targets for obligated producers, the UK would expect to achieve a 47.1% plastic recycling rate by 2017.
48. Under the EU Packaging Directive, the UK is currently required to recycle 22.5% of plastic packaging waste. There is considerable uncertainty about the future of this target. On 2nd July 2014 the European Commission adopted proposals to amend six EU waste directives. As drafted, these would increase all the packaging targets, increasing the plastic packaging recycling rate to 45% by 2020. However, the proposals have been withdrawn for the European Commission to consider further before returning with new plans during 2015.
49. The Government wishes to better understand what impact this change in understanding of the flow figure is likely to have on business' ability to meet its legal obligations. We would therefore be interested in collecting information on costs and benefits of keeping the current targets, reducing the targets, or delaying achievement of the 2016 and 2017 targets. No decision has been made about whether or not to change the plastic target. Any information provided will help to inform our assessment and decisions on next steps.

<http://www.wrap.org.uk/content/plastic-packaging-market-study-plastic-flow-2014-0>

Consultation questions

- Question 7. Do you have any evidence to support or refute the assumption made in Plastic Flow that the total weight of plastic packaging placed on the market will continue to be steady from 2015 to 2017?
- Question 8. Are you able to share with us any modelling or evidence that shows how PRN prices could respond to target changes?
- Question 9. Do you have other evidence about the potential impacts of keeping the plastic targets as they are, or changing them?

Part IV – Call for evidence to support analysis of the options for meeting the 2020 household waste recycling target.

50. The primary purpose of the producer responsibility regime for packaging is to meet our EU and domestic targets for recycling packaging waste. It is unclear what targets will emerge from the European Commission's waste review. Nevertheless, the UK also has relevant obligations under the Waste Framework Directive. By 2020, the Government is committed to recycling 50% of waste generated within households.
51. The proportion of waste from households which is now recycled or composted has more than doubled since 2003/04. However, the recycling rate for waste from households has now been roughly 44% for the last two years. The Government is therefore undertaking a programme of work to understand the evidence and drivers for influencing recycling rates and the best interventions, working closely with WRAP and other stakeholders.
52. The increases in recycling of packaging waste have made a significant contribution to the UK's increase in household waste recycling. With the exception of wooden items, the majority of packaging becomes waste within the household. The PRN system provides some indirect subsidy for local authorities recycling packaging waste. The 2013 breakdown of PRN revenue subsidy suggests that around a third of the £111m total revenue was used to support the collection of household, and commercial and industrial packaging, whilst less than 0.5% of the total PRN revenue was spent on communications strategies.
53. The Government would like to better understand where there are opportunities for the producer responsibility regime for packaging to better support local authority collection of waste packaging for recycling. What are the barriers, and which are the most cost-effective interventions?

54. Discussions with key stakeholders have identified concerns from local authorities that the PRN system does not provide an adequate, steady or transparent stream of funding. On the other hand producers expressed concerns that direct subsidy to local authorities does not promote the most cost-efficient approach.

Consultation questions

55. Do you have any evidence about the opportunities and barriers, costs and benefits for producers and compliance schemes to work with Local Authorities to increase the extent of collection of household packaging waste for recycling?

Summary of Questions

Batteries

Question 1. Do you agree with the Government's proposal to replace operational plans and annual confirmation of scheme approval as set out above?

Please set out your reasons and include any evidence that would improve our assessment of the impacts of the proposals.

Question 2. Do you agree that the "appropriate person" should be allowed to delegate responsibility for signing off reports?

Please set out your reasons and include any evidence that would improve our assessment of the impacts of the proposals.

Question 3. Do you agree that the requirement for an independent audit report should be removed?

Please set out your reasons and include any evidence that would improve our assessment of the impacts of the proposals.

Packaging

Question 4. Do you agree with the Government's proposal to replace operational plans and conditions of scheme registration with conditions for scheme approval as set out above?

Please set out your reasons and include any evidence that would improve our assessment of the impacts of the proposals.

Question 5. Do you agree with the Government's proposal to transfer the approvals process from the appropriate authority to the appropriate agency?

Please set out your reasons and include any evidence that would improve our assessment of the impacts of the proposals.

Question 6. Do you agree that the "approved person" should be allowed to delegate responsibility for signing off reports?

Please set out your reasons and include any evidence that would improve our assessment of the impacts of the proposals.

- Question 7. Do you have any evidence to support or refute the assumption made in Plastic Flow that the total weight of plastic packaging placed on the market will continue to be steady from 2015 to 2017?
- Question 8. Are you able to share with us any modelling or evidence that shows how PRN prices could respond to target changes?
- Question 9. Do you have other evidence about the potential impacts of keeping the plastic targets as they are, or changing them?
- Question 10. Do you have any evidence about the opportunities and barriers, costs and benefits for producers and compliance schemes to work with Local Authorities to increase the extent of collection of household packaging waste for recycling?