

 <p>connacht-ulster waste region</p> <p>eastern - midlands waste region</p> <p>southern waste region</p>	<p>Date: 26/08/2022</p>	<p>Ref: WERLA-Sub-2022-0028</p>
<p>Document Title</p>	<p>Submission to DECC regarding the removal of packaging self-compliance</p>	

Dear,

On behalf of the three WERLAs, I welcome the opportunity to submit observations on the proposed legislation that will provide for the removal of packaging self-compliance. The following details our observation on same: -

Major producers of packaging can meet their obligations under the European Union (Packaging) Regulations 2014, as amended (principal Regulation) by registering with their respective Local Authority (self-compliance). There is a commitment under the programme for government to end self-compliance to facilitate the mandatory introduction of EPR for all packaging producers.

Being cognisant of the proposed change in the principal Regulations it is important that all references to self-compliance is removed. This may prove challenging as the principal Regulations are interpreted through the prism of self-compliance. This includes reporting requirements, recovery, and recycling targets and the levy paid for packaging placed on the market.

Part III of the 2014 Regulations applies to Additional Obligations on Major Producers.

Amendment of Regulation 9 of the principal regulations.

Regulation 9 of the principal regulations state: -

“The provisions of regulations 10 to 16 and regulation 25 shall apply to all major producers unless such producers are exempt in accordance with regulation 17.”

The proposed amendment of the principal regulations proposes the following wording for regulation 9: -

“The provisions of regulations 10, 11 and 16 and regulation 25 shall apply to all major producers unless such producers are exempt in accordance with regulation 17.”

If the purpose of the proposed legislation is to remove the option of self-compliance for major producers, exemptions no longer apply as approved body membership is the only option. Reference to exemptions should be removed from the principal Regulations.

Regulation 10 refers to actions required to support take back of packaging waste required under self-compliance while regulation 11 applies to recovery targets that each self-complier must meet. Regulation 16 details the requirement for a major producer to furnish quarterly reports, three-year implementation plan, non-application of packaging supplied to the market and the publishing of notices in local newspapers by Local Authorities.

These requirements do not apply to major producers who are members of the approved body, Repak. The obligations under Regulation 10, 11, and 16 are redundant for a major producer as these will now be met by the approved body. A major producer who signs up to the approved body, does so on the basis that the approved body is now responsible for meeting their obligations e.g., recovery and recycling targets.

Amendment of Regulation 16 of the Principal Regulations.

Amendment of Regulation 17(1) of the Principal Regulations.

Amendment of Regulation 35 of the Principal Regulations.

The comments applicable to Regulation 10, 11 and 16 also refer to the proposed amendments to Regulation 16(2), 17(1) and Regulation 35.

Amendment of Regulation 26 of the Principal Regulations.

This amendment is acceptable.

Transitional provision

This amendment is acceptable

Revocations

The revocations proposed in part (a) is acceptable

The revocations proposed in part (b) is unacceptable

- Part 1 of Schedule 2 should be revoked as this applies to registration with the Local Authority. Part 4 of Schedule 2 remains as it is a condition of Repak membership to display a membership sign at the members premises.

The revocations proposed in part (c) is acceptable

Citation, Commencement and Construction

The proposed legislation will come into effect on the 31st of December 2022. The WERLAs propose twin approaches to major producers seeking to register with Local Authorities in 2023.

Twin approach 1 – removal of self-compliance for initial registrations

Major producers will not be permitted to apply for initial registration as a self-complier with their Local Authority with effect from 31st December 2022. This will prevent new registrations occurring in 2023. Regulation 13(1)(a) should be removed from the regulations.

Twin approach 2 – self-compliance to remain until 31st December 2023

The option of self-compliance to remain for over 100 major producers who registered in 2022 with their Local Authority, until 31st December 2023. This will be the last year of self-compliance and full scheme rules will apply. As per Regulation 13(1)(b) of the principal Regulation, major producers are required to submit an application for renewal of registration to the Local Authority no later than the 31st of January each year. Major producers who are currently self-complying with the Local Authority submit quarterly reports provided for under Regulation 15(7) and anticipating Registration with the Local Authority for the preceding 12-month period.

The WERLAs further propose that the new regulations should include a clause that self-compliers are registered with the approved body by 31st January 2024. This will allow a 13-month period of

adjustment for self-complying major producers, Local Authorities, and the approved body, Repak. Furthermore, this lead-in period will facilitate stakeholder engagement and enable the retraining of self-compliers by the approved body.

In terms of fees paid by major producer to the Local Authority for packaging placed on the market, Regulation 14(5)(c) caps same at €15,000 in respect of a premises. The removal of self-compliance would remove this cap with major producers potentially paying significantly higher fees to the approved body. This could negatively impact on businesses and an appropriate transitional period would allow businesses to plan financially.

The loss of revenue to Local Authorities arising from the removal of self-compliance must also be considered. A transitional period would allow Local Authorities to adjust to the change in revenue arising. However, it must be noted that a Local Authority will still be required to assess whether a producer of packaging is a major producer. Part V of the principal Regulations include the power of a Local Authority to require a producer to submit information in a specified format i.e., packaging report and evidence of turnover.

Each self-complying major producer under Regulation 11(2) must currently meet recovery and recycling targets of 60% and 55% of the packaging that is either imported or pack-filled. These recovery and recycling targets are reported to the registering Local Authority. With the removal of self-compliance, the approved body takes on the responsibility for meeting recovery and recycling targets for their members. The approved body may seek improved performances from their network of waste collectors and waste facilities to ensure that the national targets will be met. This includes waste packaging from facilities provided by Local Authorities. It is important that the approved body adequately compensates Local Authorities for the provision of waste packaging from these facilities especially with the loss of income caused by the proposed removal of self-compliance.

The WERLAs have issued guidance documents on the principal Regulations. These guidance documents primarily focus on the enforcement of the Packaging Regulations. The WERLAs will have to amend these documents following the removal of self-compliance and again upon publication of the new Packaging Regulations following the revision of the EU Packaging Directive which is anticipated at the end of 2022.

Additional Observations

Part IV of the principal Regulations covers approved bodies. Regulation 17 grants an exemption to a producer from Regulations 10 to 16 and 25 of the principal Regulations. The wording in Regulation 17 would require amendment to reflect the proposed revocations in the draft legislation.

Recovery and recycling targets are detailed in Regulation 11 of the principal Regulations. To delink these targets from Local Authority registration the WERLAs suggest amending the wording in Regulation 11 to reflect the removal of self-compliance with same included under a new heading e.g., major producer obligations.

The WERLAs also suggest that a regulation is included whereby membership of an approved body is mandatory for major producers.

We look forward to hearing from you in due course.

Yours sincerely,