



Rialtas na hÉireann
Government of Ireland

Removal of the self-compliance option for packaging producers

Public Consultation Report

December 2022

Table of Contents

1	Introduction.....	3
2	Assessment of the Impacts on SMEs.....	4
2.1	Background to policy direction	4
2.2	Application of the SME Test on draft regulations.....	4
3	Summary of Responses.....	10
4	Key Issues Raised in Consultation – DECC response	11
4.1	Governance of EPR schemes.....	11
4.2	The Approval Process for An Approved Body	12
4.3	Operation of Contingency Reserve Fund	12
4.4	Back fees.....	12
4.5	Targets	12
5	Next Steps	13

1 Introduction

The [European Union \(Packaging\) Regulations 2014](#) place obligations on **all** producers that put packaging on the Irish market. These include separating packaging waste by material type, collecting and treating packaging waste. Producers must also provide certain information on the weight of this packaging and packaging that is destined for reuse. *The amending regulations will not impact or change these primary obligations.*

The Regulations place additional obligations on producers who generate a certain amount of packaging. These “major producers” currently have the option of self-complying with a local authority or becoming members of an approved body (Repak) for the recovery of packaging and packaging waste.

The [Programme for Government \(PfG\)](#), published in June 2020, committed to strengthen the Extended Producer Responsibility (EPR) model for packaging, to ensure the coverage of the full net costs related to the separate collection and treatment of the end-of-life products. It also committed to end self-compliance as an option under EPR, to ensure that all producers are equitably treated and to remove potential loopholes.

As a first step, net costs were introduced into [Irish law](#) in 2020 and reflected in the [approval](#) for Repak. To deliver on the PfG commitment, regulations were drafted to provide for the removal of the self-compliance option from the Packaging Regulations by the end of December 2022.

A public consultation ran for six weeks, closing on 28th October 2022. This report provides an overview of that process and outlines the next steps to deliver the PfG commitment.

2 Assessment of the Impacts on SMEs

2.1 Background to policy direction

Article 8a of the Waste Framework Directive¹ seeks to ensure the equal treatment of producers of products regardless of their origin or size, without placing a disproportionate regulatory burden on producers, including small and medium-sized enterprises, of small quantities of products. This Article also provides for the application of 'net necessary costs' to ensure the proper waste management and the economic viability of EPR schemes.

Producers who comply with their obligations via the approved body (Repak) are funding the collection and recycling of packaging and packaging waste directly and participate in a funding system that incentivises environmentally sound design choices by producers (eco modulated fees). Eco-modulated fees are a key policy support to the objective that all packaging on the market is reusable or recyclable in an economically viable way by 2030.

2.2 Application of the SME Test on draft regulations

The SME Test guidelines acknowledge that the main thrust of the Test is not to avoid regulating smaller businesses, but instead to ensure the ease of use, understanding and application of regulations for SMEs.

Screening question

Q. To what extent is the proposed legislation relevant for SMEs?

Not relevant Relevant Highly relevant

The following questions are relevant to consideration of the above question:

- Are SMEs within the scope of the legislative initiative?
- Does the initiative specifically target SMEs?
- Will SMEs be impacted directly or indirectly by the initiative?
- Are SME impacts likely to be more substantial than on other companies, for example, in terms of adverse effects?

If 'Relevant' or 'Highly Relevant', please proceed to complete Sections 1-5.

¹ [EUR-Lex - 32018L0851 - EN - EUR-Lex \(europa.eu\)](#)

1. Identification of affected businesses

Q1a: Please identify the types of SMEs that will be directly affected by the proposed legislation.

Micro (1-9 employees)

Small (10-49 employees)

Medium (50-249) employees

N/A

Q1b: Please identify the types of SMEs that will be indirectly affected by proposed legislation (i.e. SMEs not in scope, but potentially affected indirectly, for instance through impacts on supply chain)

Micro (1-9 employees)

Small (10-49 employees)

Medium (50-249) employees

N/A

Q1c: Has an estimate been carried out of the numbers of micro, small and medium companies affected directly or indirectly by the legislation?

Yes No N/A

Q1d: Will the proposed legislation have a greater impact on SMEs in any particular economic sector?

Yes No

If Yes, please specify.

All producers of packaging have obligations under the Packaging Regulations, however the removal of self-compliance relates to the additional obligations on major producers only. Major producers are determined by the amount of packaging they place on the market (10 tonnes) in a year and their annual turnover (more than €1m). The latest data on file (from 2020) confirmed there are approximately 111 affected businesses.

Q1e: Will the proposed legislation have a greater impact on SMEs in any particular region?

Yes No

If Yes, please specify.

2. Consultation

2.1 What consultation will take or has taken place to capture input from the SME community, particularly those potentially most impacted by this initiative?

Public consultation

Other (e.g. stakeholder meetings, targeted consultation)

N/A

If Other, please provide details:

The initial announcement of the policy direction was in June 2020 and has been reaffirmed in the public domain in the intervening two-year period. It is proposed to conduct a 6-week public consultation starting in September 2022. A commencement date of end December 2022 for the regulatory measure will provide four months for engagement and awareness raising by local authorities with the affected SMEs and for the approved body to provide switcher assistance.

Proposed timeframe for regulatory measure:

Jun 2020 – PfG published



Sep 2020 – Waste Action Plan for a Circular Economy published



2020-2022 impact of Covid



Sep 2022 – Public consultation



Oct to Dec 2022 – Engagement by local authorities with affected SMEs & Switcher Assistance from Approved Body

3. Assessment of the impacts on SMEs

Q3a What are the expected positive impacts of the legislation on SMEs (e.g. improved regulatory framework or working conditions, cost savings)?

Improved regulatory framework ensuring the cost and operating model for compliance within the packaging regulations is equitable for all producers.

Q3b Will the proposed legislation result in any of the following impacts for SMEs?

- Administrative costs, including the obligation to provide information on the activities or products of the company, including one-off and recurring administrative cost
- Other compliance costs, including the obligation to pay fees or duties; and costs created by the obligation to adapt the nature of the product/service and/or production/service delivery process to meet economic, social or environmental standards.
- Other impacts, including on business entry and exit; competition and competitiveness, whether proposed regulations might discourage, entrepreneurship or innovation; potential impact of any proposed exemption thresholds on business growth; impacts on SME population composition and location.

Yes No

Q3c If yes, please describe impacts, including whether any impacts will affect particular cohorts of SMEs differently, for example based on size (micro, small and medium), age of the business (e.g. start-up costs for new companies), economic sector and geographic location.

Packaging Obligations:	Impact Assessment:
Compulsory take-back of similar types of waste from the public.	Positive impact: Approved body takes over this role therefore SME no longer needs to accept packaging waste from the public. Economies of scale of the collective approach could see a reduction in associated administrative, operational resources and financial costs.
Provision of receptacles for segregated collection of packaging waste on their premises.	Positive impact: Likely reduction as segregated collection remains only in respect of SME's own packaging waste as additional packaging waste from the public is collected and funded via kerbside collection and civic amenity sites.
Achievement of quarterly targets.	Positive impact: Target attainment continues to apply to SMEs. Approved body takes over the role on behalf of obligated producers and collective approach provides economies of scale.
Preparation of implementation plans and annual reports.	Positive impact: Implementation plans and annual reporting requirements no longer apply. Likely reduction in administrative burden for

	SMEs as the approved body takes over the reporting role.	
Placement of signage on their premises.	Positive Impact: Likely reduction in administrative burden as approved body provides members with a certificate with high recognition value for compliance purposes.	
Advertising of take-back.	Positive impact: Approved body takes over this role therefore SME no longer needs to advertise. Membership fee to approved body covers this, economies of scale of the collective approach could see a reduction in associated administrative, operational resources and financial costs.	
Single option for compliance	Negative impact: SMEs who are major producers will not have a choice in how they comply with their packaging obligations.	
Loss of business	Negative impact: Environmental compliance companies will lose the business they provide to 'major producers' of packaging.	
Fee structure	Fee structure with local authorities	Fee structure with Repak
	Per annum fee €500 min €15,000 max	Scheduled membership estimated €500-€4,500 per annum Regular membership estimated average annual cost of €26,049 <small>*estimation based on material from Repak 2021 Annual Report</small>
It is possible that some 'major producers' may be impacted by higher fees. The fee structure for the self-compliance option dates from 2007 and is not commensurate with waste management costs in 2022. The self-compliance/LA fee structure does not include costs for take back, advertising, signage, data compilation etc.		

4. Assessment of alternative options and mitigating measures

4a If the analysis above has shown that the draft legislation will result in impacts on SMEs, has there been consideration of any measures to mitigate against these impacts, such as less onerous reporting requirements, exemptions for certain cohorts of SME, simplified language etc? (See list of examples of potential mitigating measures on page 5 above)

Yes No N/A

Please provide details.

- An engagement campaign by the Waste Enforcement Regional Lead Authorities (WERLAs) to inform affected SMEs of the regulatory change will be undertaken. The WERLAs have responsibility for co-ordinating the waste enforcement actions of local authorities, setting priorities and common objectives for waste enforcement and ensuring consistency of enforcement of waste legislation including the Packaging Regulations.
- The Approved Body (Repak) has been directed to provide switcher assistance to affected SMEs.

5. Post-completion of SME Test

5a Do you intend to summarise the outcome of the SME Test, including identified impacts and provision for mitigating measures, under the Impacts section of any Memorandum for Government proposing the legislation?

Yes No N/A

5b Do you intend to make this form available publicly on your Department's website?

Yes No

3 Summary of Responses

The eight responses received on the public consultation will be published on the Department's website. An overview of the submissions is provided below:

Chambers Ireland

Chambers Ireland broadly welcome the proposed changes to the regulations. Due to the level of responsibility being given to the Producer Responsibility Organisation, revised approaches are suggested for monitoring Repak's service, price capping, education, and awareness.

Leaf Environmental

Leaf Environmental posed several questions on the policy approach including, what is the environmental benefit, will there be an increase in recycling, who is looking for this change, who has been consulted, the possibility of a monopoly and how will LAs and producers benefit from the change.

Waterford City & County Council

Waterford City and County Council raised concerns about the legislative approach in the draft regulations to remove self-compliance and suggested a compulsory provision to join an approved body.

Irish Food Packaging Alliance

IFPA suggest that the regulations give Repak a monopoly and too much responsibility in relation to packaging, the concerns centre around governance of the approved body, accountability, and traceability of recyclate and data collection.

Repak

Repak broadly welcome the changes to the regulations and suggest a consolidated revision of the packaging regulations in the future rather than additional amending legislation.

Environmental Protection Agency (EPA)

The EPA sought the retention of Regulation 27 which will need to remain in force for a transitional period. The Agency will require self-compliance data from Local Authorities for 2021 and 2022, which will be reported to the EU Commission in 2023 and 2024.

Waste Enforcement Regional Lead Authorities

The WERLAs welcome the regulations and suggested an alternative approach to the proposed implementation timeline.

Fingal County Council²

Fingal County Council raised concerns about the legislative approach in the draft regulations to remove self-compliance and put forward suggestions for transitional arrangements, application of back fees and other issues arising for consideration.

4 Key Issues Raised in Consultation – DECC response

4.1 Governance of EPR schemes

Sufficient oversight and governance is central to the success of any EPR scheme. The application, approval, and review processes in place for Ireland’s compliance schemes are rigorous and comprehensive. The Department oversees Repak’s compliance with the terms of its Approval. Quarterly governance meetings form part of this oversight.

In addition, the Waste Action Plan outlines measures to improve the governance and the transparency of our EPR schemes in order to provide:

- clear definition of producer roles and responsibilities;
- measurable waste management targets;
- data collection and reporting systems; and
- equal treatment and non-discriminatory services for all participants.

Ireland’s compliance scheme for packaging is operated by Repak, a not-for-profit organisation, in operation since 1997 with the aim to promote, co-ordinate and finance the collection and recovery of packaging waste.

Under the terms of Repak’s approval, they are responsible for the achievement of its members’ share of the recycling and recovery targets set out in the Packaging Regulations.

The current approval, effective from 1 January 2021, remains in place for a period of five calendar years until 31 December 2025. A mid-term review of the approval will take place in 2023.

The approval and annual reports are publicly available on Repak’s website.

² This submission was received past the deadline

4.2 The Approval Process for An Approved Body

Each Approved Body is approved by the Minister for the Environment, Climate and Communications under the relevant legislation of their respective waste stream.

There is no specified deadline in the EPR legislation, it remains open to any entity to make an application to become an approved body (see Regulation 18 of the Packaging Regulations).

4.3 Operation of Contingency Reserve Fund

Repak must ensure the necessary financial and organisational means to meet its extended producer responsibility obligations.

The purpose of the Contingency Reserve Fund is to ensure the availability to Repak members of sufficient resources for the continued delivery of the Scheme in the event of notice to terminate approval by the Department. The Fund should be sufficient to cover the direct operating costs of Repak for a period of 6 months from the date of notice and should be built up to a contingency reserve fund of €20.5m in line with Repak's Strategic plan over the period of their approval.

The [approval](#) and annual reports are publicly available on Repak's [website](#).

4.4 Back fees

'Back fees' are charged by Repak where a business has not been in compliance with their legal obligations under the Packaging Regulations, operating at a financial advantage over competitors in compliance with the legislation.

These fees are an operational matter for Repak.

4.5 Targets

The 2014 Review of the Producer Responsibility Initiative Model in Ireland found that Repak and its members were largely responsible for the achievement of Ireland's national targets for recycling and recovering waste, and that self-compliers were making a very limited contribution. There are ambitious new 2025 and 2030 targets for individual packaging streams (especially plastic), as shown in the table below and Ireland's response to the challenge of meeting these targets requires that our EPR system is optimized to firstly ensure all producers play their part and secondly that all producers contribute on a fair and equivalent basis.

Material	Ireland's 2020 Recycling rate	Current Target	Packaging Directive recycling target by 2025	Packaging Directive recycling target by 2030
All Packaging	62%	55%	65%	70%
Plastic	29%	22.5%	50%	55%
Wood - including repair and reuse	48%	15%	25%	30%
Metal	71%	50%	Separate targets introduced for Ferrous metal and Aluminium	
- Ferrous Metals	79%	n/a	70%	80%
- Aluminium Metals	59%	n/a	50%	60%
Glass	84%	60%	70%	75%
Paper & board	78%	60%	75%	85%

5 Next Steps

Following the review of the submissions from the public consultation, the draft regulations were revised to retain the reporting provision for the EPA and to provide a clear mandate for major producers to join an approved body.

Regulations ending the self-compliance option under current packaging legislation, as per the Programme for Government commitment, will be signed by year end coming into effect from 1 January 2023.

Repak is providing a switcher support service to facilitate the transfer of the 111 producers affected into the compliance scheme.

The European Commission is currently reviewing the [Packaging and Packaging Waste Directive](#) with proposals in this area expected shortly. The Department will support an environmentally ambitious approach to any future revisions with a view to strengthening the EPR model for packaging.