

Colm Lambert (DECC)

From: [REDACTED]
Sent: Friday 7 May 2021 10:29
To: wastecomments
Subject: DRS submission
Attachments: VOICE DRS Regs Consultation Submission final.pdf

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Dear Paul,

Attached is our DRS consultation submission. Please feel free to call me if you have any questions or need clarification. As discussed, I hope that we can see the regulations before the Minister signs them so that we can comment and add tweaks if needed.

Can you please confirm receipt of this submission?

Many thanks,

[REDACTED]

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VOICE Drinks Containers Deposit Refund Scheme (DRS) Consultation Submission

7th May 2021

VOICE welcomes the proposed legislation as a step towards the promotion of the wise use of natural resources and the creation of a robust container collection and potential reuse system that will enable a truly circular economy.

VOICE concurs with many of the elements of the proposed DRS regulatory framework in terms of producer responsibility and retailer's role in the sale and collection and reimbursement of the deposit for drinks containers. We also support the retention of deposits by the waste recycling industry where the containers are collected through kerbside collection and recycled by the waste company. However, there are a few areas where we need more transparency, clarification and ambition.

Transparency:

In terms of the Minister's approval of the DRS scheme and the awarding of the DRS contract to a specific operator, the regulations state that the operator must achieve specific performance targets in terms of separate collection and recycling of plastic bottles and aluminium cans.

The draft proposal includes other criteria that the Minister might include in the operator's approval document including:

- Reporting requirements
- Regular performance reviews,
- The possibility of revising targets
- Penalties for failure to meet obligations
- Market testing for other container types
- Other measures that could enable the achievement of higher performance in terms of application of the waste hierarchy.

We would like to see more specificity in these requirements and transparency outlined in the actual regulation rather than in the Minister's approval document. These requirements should be stated in the regulations to future-proof the success of this scheme and not leave it to the discretion of future Ministers.

The regulations must also set out the criteria of the performance reporting including:

- The number of collection points
- The number of Reverse Vending Machines (RVMs)



- The amount of material collected
- Aggregate sales, where the material is going and what it is being used for
- Regions/areas where collection is lower than the national average
- Areas where collection exceeds expectations and why such anomalies might be happening.

In Alberta Canada, the operator publishes information pertaining to the amount of material collected for recycling, as well as proof it was recycled, by sharing data related to material type, the material buyer, the percentage finally recycled, and ultimately what the material was used to produce.¹ This reporting to the Minister must be done annually and the data be published on the system operator's website and the department website and be easily available to the public.

Additionally, the Minister's requirements and rationale behind approval or rejection of an operator's contract should be published on the Department's website and be easily available to the public at large.

3-Year Review of Materials Included

We support the inclusion of PET and Aluminium drinks containers, regardless of the shape, volume or contents. As we already have a healthy glass recycling infrastructure in place to collect single use glass containers, we are not calling for the inclusion of glass bottles. However, if collection rates, currently at 87% in 2020, (which is 9% higher than the previous year), drop below 78% for two years in a row, we call for an automatic trigger for the inclusion of glass containers in the DRS.

We also call for a 3-year review on the impact of the DRS on shifting packaging decisions by the producers. Should producers move away from plastic and aluminium towards more glass, steel, tetrapak, pouches, cardboard, HDPE or other plastic polymers or other hard to recycle or reuse material, that type of container should be included in the DRS.

We don't want to create market conditions to encourage producers to use less sustainable material in their packaging. We need to future-proof the legislation to ensure that industry does not change the shape of the drinks container or the material used to fall outside the DRS. This determination will fall ultimately to the Minister of the Environment following the review, which must be published and available to the public at large.

¹ P. 16, [ABCRC-2019-Sustainability-Report.pdf](#) Additionally see Alberta DRS law here: [1997_101.pdf \(alberta.ca\)](#)

Ambition:

Performance Targets and Review

The regulations should set forth set collection and recycling performance targets according to year, but we ask Ireland to be a leader and exceed targets set by the EU. We call for intermediate targets such as 77% by 2025, 85% by 2026 and 90% by 2027 to track Ireland's progress in meeting Ireland's collection goals. This is not a pipedream and can be easily achieved. For example, two years after Lithuania introduced its DRS, it achieved a collection rate of 91.5% for PET and 94% for Aluminium cans.²

Additionally, the collection rate of aluminium cans should not be limited to the EU targets of 60% AL packaging by 2030 or 75% AL cans by 2030 (Circular Economy Package). Many EU countries that have a DRS in place, including Germany, Norway, Denmark, Finland and Sweden achieve between 85-99% recycling levels for aluminium cans.

Ireland should set its AL cans recycling ambition to the same level as plastic bottles with a recycling target of 90% by 2027.

The legislation should also include a set performance review of 2 years at the beginning of the scheme to ensure that problems are quickly identified and shortcomings addressed (and whether targets are being met). As the scheme matures, this performance review can be moved out to 5 years, like other EPR schemes.

Penalties and Automatic Triggers

The legislation should also detail the penalties and repercussions should recycling targets not be met. It should provide for automatic triggers if the scheme is not performing and the collection/recycling rate is lower than the set target. There are two such triggers that could be set:

1. Increase the deposit fee by five cents to encourage consumers to bring their bottles/cans back for a refund. This additional deposit amount should be earmarked towards expanding the collection infrastructure to make it easier for consumers to return their containers as well towards public engagement to improve communications and outreach.
2. Increase the member fees...there could be a conflict of interest. The scheme could be designed to incentivise producers to limit the number of containers collected so that the unclaimed deposits fund more of the scheme. By increasing the producer fees it would encourage them financially to collect

² [PowerPoint bemutató \(reloopplatform.org\)](https://www.reloopplatform.org/)



more containers and meet targets. The increase in fees would go towards developing further the collection infrastructure and improve communications and outreach.

Market Testing for other container types and for Reuse

We agree that the DRS operator, along with producers, retailers and other stakeholders should market test and run pilots to understand how a DRS could be used for both reusable drinks containers and other types of single-use containers, moving from a linear consumption model towards a reusable model. In language outlining the responsibilities of the system operator, it states it will make “[a]n undertaking to explore the future potential of the scheme to incorporate other materials.”

This language is vague and weak and we recommend the following language:

“...by 2024, a commitment to explore, develop and trial reuse systems using existing materials covered under this regulation or other materials used for drinks containers with the goal of rolling out reuse systems across the country upon the pilot’s successful completion. Reuse shall be considered to mean refilling the container at least twenty times.”

Additionally, a percentage of the annual turnover of the system should be allocated to run and trial reuse systems.

Public Awareness

The regulations must ensure that there is adequate funding for public awareness and engagement and set a funding floor to ensure the best performance of the system, because without individual education, participation and buy-in, the system will not meet set targets. In Lithuania, the government has set a floor of public awareness funding at 1% of the annual turnover of the operator each year. This will ensure development of a robust communications/outreach programme. We call for a similar and ongoing investment in public awareness campaigns to be included in the legislation of at least 1%. Once the collection target of 90% has been achieved for both PET and Aluminium containers, the Minister has the authority to reduce funding levels for public engagement.

Clarification:

Reference to ‘waste material’

The proposed regulations refer to ‘waste material’ several times. We believe that the term ‘waste’ should be removed and drinks containers should be referred to as ‘containers’ or ‘material’. Society must move away from considering items ‘waste’ that should be disposed. Under the circular economy, we need to reorient ourselves



towards a more regenerative economy where we view materials that have reached the end of their first life to be resources for another purpose, whether it is repaired, reused, repurposed or recycled.

Once an item is considered 'waste', then waste protocols, including waste licensing, are implemented. A DRS collects bottles and cans to be recycled and we must look at creative ways to collect such material to take advantage of existing infrastructure and logistics.

In Norway, if a shop needs a container collection, they put out a call and if there is an empty truck nearby, it can collect the material and drop to the sorting facility on a reverse logistics run. This way we can reduce the emissions associated with collections and reduce the number of collection vehicles on the road. For example, in Ireland, An Post trucks often return empty after their mail deliveries and could become a collection partner. If such material is considered waste, they would have to register as waste collectors.

We propose to remove mention of 'waste' in the regulations.

Deposit

We support a variable deposit applied according to volume of drink to avoid market disruption. The proposed 20 cent deposit on 500ml plastic bottles and 330 ml aluminium/metal can or 500 ml aluminium bottle should be the same for both as they reach similar market demographics and are considered single portions.

We support approximately a 40 cent deposit for 1 litre bottles and 80 cent deposit for 2+ litre bottles (equal to the volume of drink). A flat rate for all drinks containers would encourage the consumer to buy 4 2-litre plastic bottles for a deposit of 80 cents rather than 24 cans (the equivalent volumetric amount) of the same drink for a deposit of €4.80. While consumers will be reimbursed their deposit when the containers are returned and they will not be out of pocket. The initial outlay differential will make large plastic bottles more economically attractive when the purchasing decision is made.

Under the proposed regulation, the deposit is set by the Minister, after considering recommendations from the system operator. We propose that this consultation should be open to all stakeholders to make recommendations.

Additionally, the unredeemed deposits should only pay a portion of the system development and operations. The amount of the deposit should only be enough to induce consumers to return their containers, not alleviate the responsibility of the producers to pay for the management of the packaging they place on the market. Under the producer pays principle, the producer is liable for the cost of recycling and properly disposing of the waste products after their period of use is complete.

Enforcement

The enforcement provisions in the draft regulations are vague and do not specify the duties of the local authorities or the EPA, or how they will work together to enforce the provisions of this regulation.

This legislation must clearly outline how the two enforcement entities will work together, and the penalties for non-compliance with this regulation, whether it is a producer or retailer not participating, the system operator for not meeting its obligations or individuals/organisations trying to defraud the system. Enforcement authorities must maintain a competitive planning field and make public any performance data.

Avoidance of Fraud

Because of our shared border with Northern Ireland, there is an opportunity for fraud for individuals or criminal enterprises to take advantage of the open border and bring drinks containers without a deposit from the North and seek a payment of the deposit in the Republic.

This would be more widely conducted in shops that offer manual takeback of containers. The regulations should set out daily limits to the number of containers that may be redeemed. In the State of Oregon's DRS statute, it limits the number of containers that may be returned. Participating shops:

- a) '[m]ay not refuse to accept and to pay the refund value of up to 350 individual empty beverage containers, as established by ORS 459A.705, returned by any one person during one day
- b) Must provide hand counting of up to 50 individual empty beverage containers returned by any one person during one day for the refund value established.'³

Regulations should set out limits to the number of containers that may be redeemed in a RVM (around 100) or may be redeemed manually (around 25).

Conclusion

We understand that the Department wishes to develop a bare-bones regulation where the detail will be developed by the Minister and the Systems Operator in the approval process, but we need to ensure that this system is robust and future-proofed to ensure transparency, effectiveness and ambition no matter who is the Minister of the Department. The ultimate goal for Ireland is to move towards a circular economy and move up the waste hierarchy towards more waste prevention and reuse. This scheme is a good vehicle to start this transition and we need the ambition to move the industry and consumers towards more reuse opportunities and

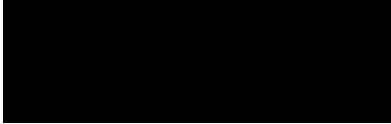
³ [SB0247 \(state.or.us\)](http://state.or.us)

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new business models that provide local employment and use or reuse locally produced material.

We have included more legislative language on various provisions of the draft regulations, which is included in Appendix I.

Contact:





APPENDIX I

DRAFT REGULATIONS

VOICE COMMENTS

PART I - PRELIMINARY AND GENERAL

Commencement Date

VOICE is of the view that the commencement date for the Regulations should be specified rather than having it fixed to be on the day after the date on which notice of their making is published in the *Iris Oifigiúil* as is frequently the case with secondary legislation. We believe this is essential to enable a comprehensive public information process to commence prior to the commencement of the Regulations to ensure the scheme has the maximum uptake from the outset.

Purpose of the Regulations

VOICE consider it appropriate the Regulations specifically set out that the purpose of the Regulations is to give effect to Ireland’s obligations under EU Law, specifying the relevant provisions.

PART II - PRODUCERS RESPONSIBILITY

Overview

It is imperative that the Regulations clearly prescribe the obligations imposed on a Producer and impose appropriate sanctions in the event these obligations are not discharged.

The core obligation imposed on Producers must obviously be the requirement to establish **and** maintain a deposit and return scheme (‘the Scheme’) which must specify recycling targets which are clearly prescribed by the Regulations.

More specifically the Regulations must impose collection and recycling performance targets on an annualised basis up until 2029. VOICE suggest the following recycling targets which we submit should be included in the Regulations whether by way of Schedule or otherwise:

	2021	2022	2023	2024	2025	2026
PET		Q4 commencement		77%	85%	90%
CANS		Q4 commencement		77%	85%	90%



The Regulations should stipulate the consequences in the event the prescribed targets are not met. If the targets are not met the Minister should be obliged to (a) review the level of the Deposit fixed (b) review the approval of the Approved Body (c) take such steps as are required including but not limited to increasing the level of the Deposit and/or increasing membership fees of the Approved Body to ensure the prescribed targets are met forthwith.

Should collection rates for glass fall below 78% for two years in a row or three times in five years, the regulations will have an automatic trigger for the inclusion of glass containers in the DRS.

Definition of Producer

The Regulations must clearly define a 'producer'. The definition must be such as it encompasses not just those who directly manufacture PET drinks bottles and Aluminium drinks cans, but also those who import, or distribute such products into or within the State. We suggest it is defined as a person who, for the purpose of trade or otherwise in the course of business, manufactures, sells, distributes or otherwise supplies to other persons PET and/or Aluminium Cans.

Obligation on Producer to Register with the Approved Body

The Regulations must impose a clear obligation on all Producers to register with the Approved Body within a specified time-period. We submit the Regulations should require a Producer to register with the Approved Body the within 20 working days of the commencement of these Regulations or the commencement of business, whichever is the later. Thereafter, Registration should be on an annual basis. Failure to register within the prescribed time period should be an offence.

Registration should be in writing and the Regulations should prescribe the details to be furnished by a Producer. Each Producer should be allocated a unique registration number by the Approved Body and display that registration number issued to him or her on any invoice, receipt, credit note, dispatch and delivery docket issued to a customer by him or her. The Approved Body should issue a certificate of registration bearing a unique registration number to the producer upon registration.

The Regulations should also provide that any person who is not in possession of a valid Certificate of Registration in accordance with the provisions of the Regulations shall be prohibited from displaying any registration number issued by the registration body on any invoice, credit note, dispatch and delivery docket, website or at any place.

The Regulations should provide that a producer may only de-register by informing the Approved Body in writing or electronically that it has ceased to be a Producer.



Prohibition on Producer placing PET and/or Aluminium Cans on the Market

The Regulations must impose an absolute prohibition on a Producer placing PET and/or Aluminium Cans on the market within the State unless registered with the Approved Body. The Regulation must contain an appropriate criminal sanction for breach of this provision.

Obligation on Producer to provide information to the Approved Body

The Regulations should impose a clear obligation upon Producers to provide information in a prescribed format to the Approved Body relating to the amount of PET and/or Aluminium Cans they place on the market.

The information and the format should be prescribed in the Regulation or a Schedule thereto. It should be furnished prior to a day in each month to be prescribed by the Approved Body.

The Regulations should also impose an obligation on each Producer to retain, for a period of 7 years after the end of a reporting period prescribed by the Approved Body, such records as are necessary to verify the accuracy of the information compiled by it in accordance with Regulations.

PART III - APPROVED BODY

VOICE considers that it is essential that Part III of the Regulations which will set out the process by which a corporate entity applies to the Minister for approval as the operator of the Scheme ('the Approved Body') on behalf of obligated producers does so in a manner which maximises transparency.

In particular, it is essential that the Regulations provide for effective public consultation by stakeholders in the process of approval of the approved body. More specifically the Regulations which should specify the process whereby an application is made for designation as the Approved Body it should ensure that stakeholders are conferred to make submissions to the Minister before any application is approved and the Minister should be obliged to take such submissions into account prior to appointing the Approved Body.

As outlined in the draft regulations, we concur with the provisions that as part of the application for designation as an Approved Body the Regulations must stipulate that the applicant must be obliged to provide a business and financial plan in respect of the proposed scheme which amongst other matters demonstrates a robust ability to achieve the designated recycling objectives. The application should (in addition to the matters set out in the consultation documentation) also be required to set out a comprehensive plan providing for a contingency reserve, proposals relating to the



dissemination of information to the public regarding the recovery and recycling of PET and/or Aluminium Cans.

VOICE submits that the Regulations should provide that an approval of an Approved Body should not exceed 5 years and should be subject to review and revocation as set out below.

The Regulations should provide the Minister with appropriate powers to impose conditions on any approval of an Approved Body. The Regulations should also empower the Minister to by notice in writing, attach a new condition or, vary any existing condition attached to an approval under the Regulations.

The Regulations should empower the Minister in granting approval to the Approved Body to fix and if necessary vary the producer's fee it may charge its members for participation in the Scheme.

Review and Revocation of approval

The Regulations must make provision for both the review and the revocation by the Minister of any approval in specified circumstances. We submit the Regulations should make provision for a review or revocation in the following circumstances:

- (a). New targets for the recycling of PET plastic beverage bottles/ aluminium cans are set;
- (b). The prescribed recycling targets have not been met;
- (c). For some other reason it is necessary in the interests of the environmentally sound management of PET plastic beverage bottles up to 3 litres in size and beverage aluminium cans;
- (d). The approved body goes into liquidation, examination or, receivership or, as appropriate.

Review and revocation should also be provided for in circumstances where it appears to the Minister that an approved body is not complying with conditions attached to its approval. The Regulations should ensure that the review procedure should enable the Minister to vary and/or impose new conditions on the approved body as a condition of the continuance of its approval.

It is acknowledged that the review and revocation procedures will have to be prescribed in some detail in the Regulations and provisions will have to be made to allow the approved body make submissions to the Minister before the approval is reviewed or revoked. VOICE considers it important that the Regulations ensure stakeholders are also be entitled to make submissions to the Minister to (a) request a review or revocation of an approval and (b) in circumstances where the Minister



has invoked the review/revocation procedure make submissions in respect of that proposed review or revocation of the approval of an approved body. This should include the right to make submissions on any proposed revisions to the approval including revised conditions.

Part IV - FUNCTIONS AND POWERS OF THE APPROVED BODY (SYSTEM OPERATOR)

As outlined in the draft regulations, we agree that they must clearly prescribe the functions and powers of the Approved Body. In particular, they must require that the Approved Body operate on a nationwide basis and on a not-for-profit basis. The Approved Body must be conferred with all necessary powers to ensure it can effectively discharge its functions under Regulations. This should include the imposition of a membership fee as determined by the Minister and the power to issue certificates of registration.

The Regulations must impose an obligation on the Approved Body to ensure material collected from deposit locations is maintained separately from all other materials. The Approved Body must also be obliged to ensure that PET bottles are recycled to a standard that achieves food grade quality. This should be a condition of its approval. A general obligation should be imposed on the Approved Body to ensure that PET bottles / aluminium cans are recycled in a manner which ensures the environmentally sound management PET / aluminium cans of on behalf of its members.

Whilst the Approved Body should be conferred with the power to make a submission to the Minister on the appropriate level of deposit payable the Regulations should make clear the Minister is not obliged to accept this submission and shall be solely responsible for the fixing of the deposit payable.

The Regulations must make provision for the use by the Approved Body of a logo. They must also provide that no person can, otherwise than with the written consent of the Approved Body, display at any premises or on or in any product, packaging, advertisement or notice, any logo or other mark or symbol designed and adopted by the Approved Body for use by Producers or retailers certified by that Approved Body for the purposes of the Regulations.

The Regulations must impose an obligation on the Approved Body to actively market and promote the Scheme to retailers and the general public through an annual information programme which must be approved by the Minister. The Approved Body must be required allocate on annual basis a sum equivalent to 1% of its turnover to this annual information programme. The Minister has the authority to reduce this amount once the collection rate of 90% has been achieved for both PET and Aluminium drinks containers.



The Regulations must also require that the Approved Body furnish such information, in such form and at such frequency and in such format as may be specified by a local authority, the EPA, the Minister or the Central Statistics Office, in relation to activities carried out by producers registered with that body, for the purposes of complying with the Regulations.

More specifically the Regulations must impose an obligation on the Approved Body to furnish the Minister and the EPA with an Annual Report in a written and prescribed format providing specified information for the preceding year including but not limited to the following:

- Details on a countywide basis of the of number of collection points in operation;
- Details on a countywide basis of the number of Reverse Vending Machines (RVMs) in operation;
- Details on a countywide & national basis the amount of PET / aluminium cans collected by the Approved Body;
- Details on a countywide & national basis of Aggregate sales;
- Details on a national basis identifying the end-destination of PET / aluminium cans collected via the scheme and ultimate use;
- Details of the foregoing information in a manner which enables collection trends to be determined and analysed at a county-wide, regional and national level.
- Details of the annual information programme

The Regulations should require that the Annual Report be published on the Approved Body's and EPA website and fully accessible to the public.

Three years after the establishment of the DRS, the Approved Body shall commission a review of the drinks marketplace to examine the potential impact of the DRS on shifting container material from PET/Aluminium to other materials currently not in the Scheme. Once the findings are completed, the Minister has the authority to add other materials to the Scheme.

By 2024, the Approved Body commits to explore, develop and trial reuse systems using existing materials covered under this regulation or other materials used for drinks containers with the intention of rolling out a reuse system across the country upon the pilot's successful completion.

PART V - RETAILER OBLIGATIONS

The Regulations must require to a retailer to apply to the Approved Body for membership of the DRS Scheme and prescribe the manner and format of such application. In addition, they must require the Retailer to engaged with the Approved



Body to ensure it puts in place appropriate measures including infrastructure to ensure effective collection of PET / aluminium cans at the outlet. It should be an offence to fail to comply with these obligations.

However, in order to avoid the danger of fraud the Regulations should impose a daily 'cap' on the number of PET / aluminium cans that may be accepted by a retail outlet within a 12 hour period. This daily limit should be imposed following consultation with the Approved Body and relevant stakeholders.

This Regulations must also include an obligation to require acceptance of PET / aluminium cans irrespective of their origin. They must preclude a retailer from limiting collection of PET /aluminium cans at its outlet to that purchased from its outlet. Failure to comply with these requirements must be subject to appropriate sanction.

The Regulations must contain an obligation on retailers to ensure it puts in place appropriate and effective measures including infrastructure to enable customers to collect a deposit following deposit of PET /aluminium cans at its outlet. This includes complying with any requirements imposed by the Approved Body in respect of the manner of refund, which must be specified by the Minister.

The Regulations should also impose an obligation on retailers to co-operate with the Approved Body in the promotion of the Scheme, display any approved logo and take such measures as may be prescribed by it to ensure its participation in the scheme is actively promoted to customers at its outlet. A retailer should be obliged by the Regulations to display its certificate of participation in the DRS Scheme at its outlet, in a manner which is visible to customers of the outlet. A general obligation should be imposed on retailers to actively promote the Scheme and comply with all reasonable directions from the Approved Body in this regard.

The Regulations must also require that a Retailer furnish such information, in such form and at such frequency and in such format as may be specified by a local authority, the EPA, the Approved Body or the Central Statistics Office, in relation to activities carried out by it, for the purposes of complying with the Regulations. Failure to comply with this obligation should be made an offence in the Regulations.

PART VI - DEPOSIT

It is important that the Regulations contain a clear and transparent basis for the fixing of the deposit. In particular, it should be provided that the Minister should fix the deposit having regard to submission of the Approved Body and submissions from relevant stakeholders to which the Minister must have regard. In fixing the level of the deposit the Regulations should also expressly provide that the Minister should have regard to the overall purpose of the Regulations, the provision of EU law to which it gives effect and the need to encourage consumers to return PET /aluminium



cans to retail outlets for recycling and in particular the requirement to meet the prescribed recycling targets.

The Regulations should empower the Minister to vary the deposit as well as the producer fee but only in specified circumstances namely. (a) where the prescribed targets are not met (b) it is apparent that level of deposit is insufficient to incentivise consumers to return items to the Scheme and (c) where it is established that the revenues returned to the Scheme are exceeding or are insufficient to cover operational costs. In any case the Regulations should require the Minister to consult with the EPA to ascertain its views prior to varying the Deposit.

PART VII - ENFORCEMENT

Functions of Local Authorities

The Regulations should provide that each local authority shall be responsible for the enforcement of the Regulations within their functional areas and must take such steps as are necessary for this purpose. In particular, the Regulations should stipulate that local authorities are responsible for the enforcement of Part V of the Regulations. They should also require that each local authority shall appoint authorised persons to take such steps as are necessary for this purpose.

In order to ensure local authorities are able to effectively discharge their functions under the Regulations, they should also be conferred with the power to require the submission of information from Retailers.

In order to ensure effective oversight by the EPA the Regulations should oblige local authorities to furnish such information within a specified period, in such form and at such frequency as may be specified by the EPA, in relation to activities carried out in the functional area of the authority, by retailers whom, have registered with the Scheme for the purposes of complying with these Regulations.

Functions of EPA

VOICE envisages the EPA having a key oversight role in the implementation of the Regulations, and in particular the supervision of the Approved Body. For this reason, the Regulations must require that the EPA shall be responsible for the enforcement of Part II to VI of the Regulations and shall appoint authorised persons to take such steps as are necessary for this purpose.

Authorised Persons

As with other EPR Regulations, VOICE believes that it is appropriate that the Regulations make provisions for the appointment of 'authorised persons' for the purposes of the effective administration and enforcement of the Regulations. Any

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such authorised persons should be conferred with appropriate powers including powers:-

- To all reasonable times, or at any time if he or she has reasonable grounds for believing that there may be a risk of environmental pollution arising from the carrying on of an activity at the premises or that such pollution is occurring, enter any premises and bring thereon such other persons (including members of An Garda Síochána) or equipment as he or she may consider necessary for the purpose, and
- At any time halt (if necessary) and board any vehicle and have it taken, or require the driver of the vehicle to take it, to a place designated by the authorised person, for such period as he or she may consider necessary.
- If appropriate make such plans, take such photographs, record such information on data loggers, make such tape, electrical, video or other recordings and carry out such inspections,
- Make such copies of documents and records (including records in electronic form) found therein and take such samples,
- Require that the premises or vehicle or any part of the premises or anything in the premises or vehicle shall be left undisturbed for such period,
- Require from an occupier of the premises or any occupant of the vehicle or any person employed on the premises or any other person on the premises, such information, (e) require the production of and inspect such records and documents, (including records held in electronic form) and take copies of or extracts from, or take away if considered necessary for the purposes of inspection or examination, any such records or documents, as the authorised person, having regard to all the circumstances, considers necessary for the purposes of exercising any power conferred on him or her, by or under the Regulations.

The Regulations should ensure that where an authorised person in the exercise of his or her powers under the Regulations is prevented from entering any premises or if an authorised person has reason to believe that evidence related to a suspected offence under the Regulations may be present in any premises and that the evidence may be removed or destroyed, he or she may apply to a judge of the District Court, in whose District the premises is located, for a warrant under authorising the entry by the authorised person into the premises.

The Regulations must confer an authorised person who in the exercise of any power conferred on him or her by the Regulations anticipates obstruction in the exercise those powers, with the ability to request a member of the Garda Síochána to assist in the exercise of such a power.



PART VIII – MISCELLANEOUS

Offences

VOICE suggests the Regulations should provide as follows:-

Any person who—

(a) contravenes or fails to comply with a provision, or provisions, of the Regulations, or

(b) provides information which is false or to his or her knowledge misleading in a material way,

or

(c) obstructs or interferes with an authorised person in the exercise of a power conferred by the Regulations

shall be guilty of an offence.

It should also be provided that where an offence under the Regulations is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence

Penalties and Prosecution

The Regulations should provide that a prosecution for a summary offence on account of contravention or failure to comply with the Regulations may be taken by either the EPA or relevant local authority as appropriate.

VOICE submits that the penalties under the Regulations should be equivalent to those applicable under other EPR legislation. Accordingly, we suggest the following penalties:

A person guilty of an offence under the Regulations should be liable on summary conviction to a Class A fine or imprisonment for a term not exceeding 12 months or both,

or

on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years, or both.

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As is standard in environmental legislation the Regulations should provide that where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Prosecutor, the costs and expenses, measured by the court, incurred by the Prosecutor in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of directors, employees, consultants and advisers engaged by the Prosecutor.