

## Insights

# CHANGING PACKING AND PACKAGING WASTE OBLIGATIONS FOR RETAILERS AND MANUFACTURERS IN ENGLAND – ARE YOU AFFECTED?

Jan 26, 2021

## SUMMARY

On 1 January 2021, changes came into effect that affect recovery and recycling targets for packing and packaging waste for retailers and manufacturers in England. With significant change already imminent for UK retailers and manufacturers, as we navigate a post-Brexit landscape and the on-going COVID-19 crisis, operational bandwidth is stretched. However, we cannot afford to ignore 'business as usual' issues. Please read on for more information on what this may mean for you and your business.

## OVERVIEW

On 1 January 2021, changes came into effect that affect recovery and recycling targets for packing and packaging waste for retailers and manufacturers in England. With significant change already imminent for UK retailers and manufacturers, as we navigate a post-Brexit landscape and the on-going COVID-19 crisis, operational bandwidth is stretched. However, we cannot afford to ignore 'business as usual' issues. Please read on for more information on what this may mean for you and your business.

## WHAT IS CHANGING?

- New waste targets have been set for producers of packaging in relation to specific materials (paper, plastic, glass, aluminium, steel and wood);
- The recycling allocation for small producers for 2021 and 2022 has been modified; and
- The specific re-melt target for glass recycling has also been amended.

It's worth noting that, whilst recycling targets have changed, no significant changes have been made to the *operation* of the overall regime (including in respect of registration, oversight by the

Environment Agency, and liability for failures to comply).

These changes are contained in the snappily titled Producer Responsibility Obligations (Packaging Waste) (Amendment) (England) Regulations 2020, which amends the previous regime under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, and apply to England only. This means that producers in the devolved regions should be aware of the equivalent local regulatory changes, for example, the Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2020 apply in Scotland (SSI 2020/387) and equivalent regulations have been made in Wales.

## **DO THE REGULATIONS APPLY TO ME?**

Retailers are likely to be caught in the remit of the Regulations, since the Regulations apply to a “producer” and a “seller” (which includes a person who supplies packaging to a user or a consumer). Government guidance ([linked here](#)) emphasises that anyone who produces or uses packaging or sells packaged goods may fall within the registration regime and be required to meet the recycling targets.

However, there is a volume threshold before the Regulations apply – so the Regulations will only apply to you if you or a group of companies that you are part of handled 50 tonnes of packing or packaging materials in the previous calendar year and you have a turnover of more than £2 million a year.

As part of general supply chain management and the trend towards increasingly sustainable environmental practices, exercising proactive oversight over all environmental impacts of a supply chain is likely to pay dividends from both a regulatory and an investor perspective.

### **Guidance for small producers following the allocation method:**

Small producers have seen an increase of nearly 17% in their targets for recycling packaging waste. “Small” producers (i.e. those whose turnover in the last financial year for which accounts are available is £5,000,000 or less) now need to calculate their recycling targets for each of the next 2 years using the following formula: **A × B = Zs**

Where:

“A” =  $a/1,000,000$ ;

“a” is the annual turnover of the producer in the last financial year in respect of which audited accounts are available before the relevant date, rounded up to the nearest £10,000;

“B” is 35 (for both 2021 and 2022, representing an increase on preceding years); and

“Zs” is the amount of packaging waste (in tonnes) which is to be recycled in the relevant year.

And, for the purposes of this commitment, a small producer has to carry out its recycling obligations by recycling the recyclable material it handled which is predominant by weight.

### **Guidance for other producers:**

Larger producers (which category covers manufacturers, packers, importers and sellers of packaging materials) are also subject to increased overall targets for recycling (although the targets vary by type of material). However, the target for the recycling of wood has in fact been reduced by 27% to 35% for the next 2 years. Manufacturers are classed as A, B or C for the purposes of the types of material that they are required to recycle (being packing and packaging materials) depending on their role in the supply chain, with percentages aggregated for importers. This percentage again depends on the precise function carried out by the importer in respect of particular goods. Sellers are classified in category E for recycling of packaging materials.

The basic formula to determine the overall *amount* of packaging waste to be recycled is calculated using the formula:  **$P \times C \times X = Z$**

Where:

P = the amount of packing and packaging materials handled in the preceding year;

C = the percentage prescribed for each different class of producer ((a) manufacturer 6%; (b) convertor 9%; (c) packer/filler 37%; (d) seller 48%; (e) secondary provider 85%; and (f) service provider 85%);

X = 76% for 2021 and 77% for 2022; and

Z = the amount by tonnage of packaging waste which is to be recovered within the relevant year.

The Regulations then provide for a further formula to calculate proportions of material of each *type* of recyclable material which should be recycled by the producer, as follows:  **$M \times C \times Y = Q$**

Where:

Q = the amount by tonnage of packaging waste consisting of that material which is to be recycled in the relevant year;

M = the amount in tonnes to the nearest tonne of the recyclable material (whether in the form of packing or packaging materials) handled in Great Britain by the producer in the preceding year;

C = the percentage prescribed for each different class of producer ((a) manufacturer 6%; (b) convertor 9%; (c) packer/filler 37%; (d) seller 48%; (e) secondary provider 85%; and (f) service provider 85%); and

Y = the percentage prescribed by material type as per the table (which are all slightly higher percentage thresholds than for the preceding 2 years, bar the target for wood):

<b><i>Materials</i></b>	<b><i>2021</i></b>	<b><i>2022</i></b>
Glass	81	82
Plastic	59	61
Aluminium	66	69
Steel	86	87
Paper/Board	79	83
Wood	35	35

## **SUMMARY**

As part of our commitment to our clients, we monitor developments in the market so that we can update you of upcoming legislative changes which may affect your business. Please contact your usual BCLP contact or any member of the Retail and Consumer Products Group if you would like to discuss any information contained in this Alert.

## **RELATED CAPABILITIES**

- Retail & Consumer Products

## MEET THE TEAM



### **Anna Blest**

London

[anna.blest@bclplaw.com](mailto:anna.blest@bclplaw.com)

+44 (0) 20 3400 4475

---

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon ([kathrine.dixon@bclplaw.com](mailto:kathrine.dixon@bclplaw.com)) as the responsible attorney.