

**EXPLANATORY MEMORANDUM TO  
THE PACKAGING (ESSENTIAL REQUIREMENTS) REGULATIONS 2015**

**2015 No. 1640**

1. This explanatory memorandum has been prepared by The Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 These Regulations implement Articles 9 and 11 of Directive 94/62/EC of the European Parliament and Council on Packaging and Packaging Waste (“the principal Directive”) as amended by Directives 2004/12/EC, Commission Decision 2006/340/EC and Decision 2009/292/EC, Article 1 and the Annex of Directive 2013/2/EU and Article 1 of Directive (EU) 2015/720. They set the essential requirements packaging must meet before it can be placed on the market. They provide enforcement authorities with powers for the enforcement of those obligations. They consolidate the amendments to the Packaging (Essential Requirements) Regulations 2003 (SI 2003/1941), (“the original Regulations”) that implemented these provisions and revoke and replace the original Regulations and amending legislation.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 These Regulations are made under section 2(2) of the European Communities Act 1972 under the negative resolution procedure and include a consequential amendment to paragraph 10 of Schedule 5 to the Consumer Rights Act 2015 to substitute a reference to the Packaging (Essential Requirements) Regulations 2003. There is an equivalent power to amend paragraph 10 under paragraph 12 of Schedule 5 and paragraph 12(6) provides that amendment to primary legislation must be made under the affirmative procedure.

3.2 After careful consideration we have decided not to use the power under paragraph 12 and will be disapplying paragraph 12(6) in effect. Section 2(2) of the ECA 1972 permits either the affirmative or negative resolution procedure. We consider that the possibility of controversy in relation to the amendment to paragraph 10 to be minimal and that therefore the negative procedure is the more appropriate option for making the amendment to paragraph 10.

3.3 The amendment merely substitutes the reference to the original Regulations. The decision to give the enforcement authorities under the original Regulations the powers set out in Schedule 5 was already considered during the passage of the Consumer Rights Act through Parliament. It would be a waste of Parliamentary time and resource to require a debate on these Regulations in the circumstances.

3.4 These Regulations do not amend the list of enforcement authorities and are not used to confer significantly additional powers into legislation which currently confers no such powers. We understand that this was one of the reasons for the affirmative procedure being imposed for use of the power to amend paragraph 10.

3.5 We also considered whether the amendment to paragraph 10 could be made in any other affirmative legislation under paragraph 12(6). It is intended that these Regulations come into force on 1 October 2015 and we are not aware of any other legislation that could be used to amend the list of legislation in paragraph 10 under paragraph 12(6) so that the powers in Schedule 5 are available under these Regulations from 1 October 2015. The Regulations are intended to come into force after the commencement of Schedule 5 to the Consumer Rights Act 2015 which is due to commence on 1 October 2015 through an order to be made under the negative procedure. In addition it is not considered helpful to readers of the legislation to require them to have regard to two sets of legislation (in addition to Schedule 5 to the Consumer Rights Act) in order to understand the application of the legislation.

#### **4. Legislative Context**

4.1 The UK transposed Directive 94/62/EC into UK law by The Packaging (Essential Requirements) Regulations 1998 (SI 1998/1165). These were revoked by the Packaging (Essential Requirements) Regulations 2003 (SI 2003/1941), which were subsequently amended by S.I. 2004/1188, 2006/1492, 2009/1504 and 2013/2212. These Regulations consolidate this legislation and transpose the definition of “plastic” and “plastic carrier bag” in Art 1 of Directive (EU) 2015/720. The remaining provisions of Directive 94/62/EC as amended are implemented through the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871)

4.2 The European measures were considered by the scrutiny committees. DTI submitted an EM on Council Directive 6891/04 on 16/03/2004 relating to a “Proposal for a European Parliament and Council Directive amending Directive 94/62/EC on packaging and packaging waste”. The Commons European Scrutiny Committee cleared it from scrutiny (Report 13, Session 03/04). The Lords Select Committee on the EU cleared it on 9/4/2004 (Sift 1174, Session 03/04). BERR submitted an EM on Council Directive 8488/12 on 19/04/12 relating to a “Proposal for Council Directive amending Annex I to European Parliament and Council Directive 94/62/EC on packaging and packaging waste”. The Lords Select Committee on the EU cleared it from scrutiny on 1st May 2012 (Sift 1464, Session 10/12) and HoC cleared scrutiny without the requirement for a substantive report on 12/07/2012. BIS submitted an EM on Council Directive 15845/13 on 20/11/13 relating to “Proposal for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste (the “Packaging Directive”) to reduce the consumption of lightweight plastic carrier bags”. The Commons European Scrutiny Committee cleared it as politically important on 4th February 2014 (Report 26, Session 13/14). Proposal released from HOL scrutiny on 10/12/14

4.3 A Transposition Note has been prepared and is attached as an Annex.

#### **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

#### **6. European Convention on Human Rights**

6.1 The Rt Hon Anna Soubry MP Minister of State for Small Business, Industry and Enterprise at the Department for Business, Innovation and Skills has made the following statement regarding Human Rights:

In my view the provisions of the Packaging (Essential Requirements) Regulations 2015 are compatible with the Convention rights.

## **7. Policy background**

- *What is being done and why*

7.1 This is a consolidation of the regulations implementing articles 9 and 11 of the principal Directive together with applicable Decisions and the Regulations introducing a definition for “plastic” and “plastic carrier bag” from Directive (EU) 2015/720. In summary, Article 9 sets the essential requirements that packaging must meet before being placed on the market and Article 11 sets limits on heavy metal concentration levels in packaging and packaging components. It also provides for disapplications and derogations from these limits. Derogations have been provided for heavy metals levels in glass packaging and in plastic crates and pallets through Decisions of the Commission.

7.2 In accordance with the requirements of the Directive, the regulations provide powers for enforcement authorities to ensure these requirements are met, and set offences and penalties for non-compliance with the obligations. The powers of investigation are set out in Schedule 5 to the Consumer Rights Act 2015 and include a power of entry to monitor compliance. The principal Directive also sets targets for packaging recycling and recovery which are implemented by separate packaging producer responsibility regulations made by Defra.

7.3 These Regulations revoke the original Regulations and amending legislation and update the references to the original Regulations in the Consumer Rights Act 2015 and other statutory instruments.

- *Consolidation*

7.4 The regulations are a consolidation of the original Regulations and amending legislation. The consolidation of these Regulations is a result of a commitment under the Red Tape Challenge.

## **8. Consultation outcome**

8.1 No formal consultation has taken place as this is a consolidation exercise and no changes to the obligations or requirements of economic operators are being made. The new investigatory powers for enforcement authorities in Schedule 5 to the Consumer Rights Act 2015 have already been considered in the passage of the Act through Parliament. We have circulated a draft of these Regulations to the devolved administrations for comment.

## **9. Guidance**

9.1 Information on the new regulations will be made available in revised government guidance notes on gov.uk. The guidance notes have been simplified and halved in length.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is unchanged as a consequence of consolidation.

10.2 The impact on the public sector is enforcement costs. There is no reason to believe that consolidating the regulations will increase or decrease costs.

10.3 An Impact Assessment has not been prepared for this instrument as there are no expected changes in costs or savings to business as a consequence of the consolidation. Impact assessments have been produced amending legislation in July 2003 and in relation to the powers of investigation under the Consumer Rights Act 2015 and these have been made available in the libraries of the Houses of Parliament.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 As a single market European measure (obligating universal application of the Directive by all member states), and one applying to environmental protection and human health, it is not possible or appropriate to make adaptations or minimise the impact of the requirements on firms employing up to 20 people. The approach taken to small businesses is therefore no different to the rest of the market.

## **12. Monitoring & review**

12.1 These Regulations provide for the Secretary of State to publish, before the end of the period of five years beginning with the day on which these Regulations come into force, a review of the Regulations. The European Commission is expected to bring forward a proposal to amend the Directive within the next two years and this will offer an opportunity to review the legislation.

## **13. Contact**

Peter Askew at the Department for Business, Innovation and Skills Tel: 020 7215 5000 or email: [peter.askew@bis.gsi.gov.uk](mailto:peter.askew@bis.gsi.gov.uk) can answer any queries regarding the instrument.