

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND
NORTHERN IRELAND PROTOCOL**

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SWD(2022) 384 FINAL PART 1 OF 2 AND PART 2 OF 2**

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL ON PACKAGING AND PACKAGING WASTE, AMENDING
REGULATION (EU) 2019/1020 AND DIRECTIVE (EU) 2019/904, AND REPEALING
DIRECTIVE 94/62/EC**

**COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE
IMPACT ASSESSMENT REPORT ACCOMPANYING THE DOCUMENT
PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND THE
COUNCIL ON PACKAGING AND PACKAGING WASTE, AMENDING
REGULATION (EU) 2019/1020, AND REPEALING DIRECTIVE 94/62/EC**

REGULATORY SCRUTINY BOARD OPINION

**COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT REPORT
ACCOMPANYING THE DOCUMENT PROPOSAL FOR A REGULATION OF THE
EUROPEAN PARLIAMENT AND THE COUNCIL ON PACKAGING AND
PACKAGING WASTE, AMENDING REGULATION (EU) 2019/1020, AND
REPEALING DIRECTIVE 94/62/EC**

Submitted by Department for Environment, Food and Rural Affairs

20 December 2022

SUBJECT MATTER

1. A proposal from the European Commission setting out the details of a new European Parliament and Council regulation covering packaging and packaging waste, replacing the existing Packaging and Packaging Waste Directive 94/62/EC, together with supporting documentation.
2. The proposed new EU Regulation aims to provide greater consistency of approach across Member States and is therefore being introduced as a Regulation, which is applicable directly, rather than as a Directive. The EU Regulation is also being introduced solely under a single market treaty base whereas the Directive it would replace has a dual single market and environment treaty base.

3. The measures, many of which are entirely new, are wide-ranging, with their introduction phased and subject to tightening over several years. They introduce requirements over the entire lifecycle of packaging as regards its environmental sustainability.
4. The Regulation aims at reducing the amount of packaging placed on the market in terms of its volume and weight, as well as preventing the generation of packaging waste. This will be facilitated through packaging minimisation, avoiding packaging where it is not needed, establishing a harmonised label, specifications for labelling requirements and formats for the labelling of packaging, and increasing the re-use of packaging. Compliance with these new requirements will form part of the new conformity assessment procedure which manufacturers will need to complete before being able to place packaging on the EU market.
5. The Regulation introduces new standards regarding the composition and recyclability of packaging, including minimum recycled content targets for plastic packaging. There is a new requirement for certain packaging formats, including filter coffee pods, sticky labels attached to fruit and vegetables and very lightweight plastic carrier bags to be compostable within 24 months of the entry into force of the Regulation. Packaging should also be marked with a label containing information on its material composition in order to facilitate consumer sorting and recycling. Member states are to produce a specific chapter in their waste management plan for packaging.
6. There are specific targets related to packaging re-use and minimisation with a requirement that packaging is conceived, designed and placed on the market with the objective to be re-used or refilled a maximum number of times. Reusable packaging will be required to bear a QR code or other type of data carrier giving access to the relevant information facilitating its re-use. There is a new requirement that member states take steps to encourage the increase of systems to enable re-use.
7. The Regulation continues the existing requirement that member states establish suitable mechanisms for the collection, treatment and recycling of packaging waste and introduces a requirement for the establishment of a deposit return system for single-use plastic beverage bottles and single-use metal and aluminium beverage containers with a capacity of up to three litres.
8. Directive 94/62/EC was amended by Directive (EU) 2018/852 of the European Parliament and of the Council setting out recycling targets for Member States to be achieved by 2025 and 2030. These targets and the rules for their calculation are proposed to be retained. Directive 94/62/EC requires the Commission to review the 2030 recycling targets for packaging with the view to maintaining or, if appropriate,

increasing them. However, the Commission does not consider it appropriate to amend the targets set for 2030 yet, as evidence shows that some Member States still have difficulties with meeting the existing targets. For this reason, it is suggested that measures facilitating the attainment of these targets should be set up.

SCRUTINY HISTORY

9. The Parliamentary scrutiny history relevant to this Explanatory Memorandum is contained in the attached Annex A.

MINISTERIAL RESPONSIBILITY

10. Responsibility for policymaking in England lies with the Secretary of State for Environment, Food and Rural Affairs. The Secretary of State for Business, Energy and Industrial Strategy has an interest due to the movement of packaged goods between the UK and EU and for promoting the UK manufactured goods sector. The Minister for the Cabinet Office and the Secretary of State for International Trade have interests in view of the measures intended to set standards for access to the EU market. H.M. Revenue and Customs and H.M. Treasury have interests due to measures relating to recycled content and the Plastic Packaging Tax. The Foreign, Commonwealth and Development Office has an interest in relation to the Trade and Cooperation Agreement (TCA) with the EU.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

11. As this is a devolved area, the Scottish and Welsh Governments and the NI Executive are responsible for making policy in this area in their respective nations, and subject to a common framework. The DAs have been consulted in the preparation of this Explanatory Memorandum, but had no further comments at this stage.

LEGAL AND PROCEDURAL ISSUES

12.

i. Legal Base

The legal base for the proposed new EU Regulation is Article 114 of the Treaty on the Functioning of the European Union which must be used for measures that aim to establish or ensure the functioning of the single market.

ii. Voting Procedure

Voting Procedure – Not relevant to the UK.

iii. Timetable for adoption and implementation

This is a proposal for a Regulation rather than a Directive, and as such has direct effect in member States and in Northern Ireland. The draft Regulation does not set out when it will apply from but proposes a start-up period from 2023 to 2027.

POLICY IMPLICATIONS

13. The Northern Ireland Protocol provides that limited areas of EU law will continue to apply to and in the United Kingdom in respect of Northern Ireland. This proposed EU Regulation follows on from Directive 94/62/EC of The European Parliament and of The Council of 20 December 1994 on packaging and packaging waste, which is listed in Annex II of the Northern Ireland Protocol. While the provisions of the EU Regulation would be directly applicable (to the extent that it amends or replaces the previous Directive), any additional requirements, for example, around enforcement, would need to be put in place through domestic legislation in relation to Northern Ireland.
14. The proposal is wide-ranging, extending some way beyond the requirements of the existing Directive 94/62/EC on packaging and packaging waste. Further work will therefore be required to establish whether the Government considers it to be automatically applicable in Northern Ireland under Article 13(3) of the Protocol.
15. A number of the EU's proposals set new requirements that packaging will need to meet before being placed on the EU market. There are accompanying new conformity assessment processes, which manufacturers will need to complete to demonstrate compliance with these requirements and be able sell packaged goods in the EU. This will include UK businesses who export to the EU and NI.
16. It is anticipated that most global manufacturers will choose to meet the new EU conformity assessment requirements to continue to place packaging on the EU market. UK based manufacturers are likely to do the same. An assessment of the implications of the application of this EU Regulation in Northern Ireland, and any intra-UK legislative divergence, will be required.
17. The UK Government and the Devolved Administrations have conducted a review of the existing UK packaging waste requirements and new UK-wide packaging and packaging waste regulations are due to be introduced towards the end of 2023.
18. The EU's 1994 Directive was transposed on a UK-wide basis via the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended), the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 (as amended) and the Packaging (Essential Requirements) Regulations 2015 (as amended).

19. Those regulations have been, and will continue to be, reviewed jointly by all four nations, to consider how to strengthen the approach to reducing packaging waste. The new UK-wide regulations will include measures to drive and support the circular economy, including the introduction of Extended Producer Responsibility whereby producers will be incentivised to design and use packaging that can be recycled easily and made responsible for the costs of managing packaging waste disposed of by households and in street bins managed by local authorities. New regulations will also provide for the introduction of Deposit Return Schemes for drinks containers.

20. The review of the UK Essential Requirements Regulations is on-going. As with any other major amendments to third country legislation, we will consider the extent to which the proposals impact the UK as the EU's regulations develop.

CONSULTATION

21. This is a proposal for a new European Parliament and Council Regulation covering packaging and packaging waste. There has been engagement on the proposals between the European Commission and various stakeholder groups at a European level. There is ongoing engagement on reforming the present UK based packaging and packaging waste regulations and the subject of the new proposals will be taken forward as part of that.

FINANCIAL IMPLICATIONS

22. The EU proposals do not contain specific data on costs to business, the economy, or the environment and as we have not been involved in the development of the proposals, we cannot comment on what that impact might be. The summary documents show an aggregated view of the revisions to the Directive, and we would have to do our own analysis to assess specific impacts in time.



REBECCA POW MP
MINISTER FOR ENVIRONMENTAL QUALITY AND RESILIENCE
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PACKAGING AND PACKAGING WASTE, AMENDING REGULATION (EU) 2019/1020 AND DIRECTIVE (EU) 2019/904, AND REPEALING DIRECTIVE 94/62/EC

ANNEXES TO THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON PACKAGING AND PACKAGING WASTE, AMENDING REGULATION (EU) 2019/1020 AND DIRECTIVE (EU) 2019/904, AND REPEALING DIRECTIVE 94/62/EC

COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT ACCOMPANYING THE DOCUMENT PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON PACKAGING AND PACKAGING WASTE, AMENDING REGULATION (EU) 2019/1020, AND REPEALING DIRECTIVE 94/62/EC

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DIRECTIVE 2019/904 WAS SUBJECT TO SCRUTINY AS EU DOCUMENT 9465/18, COM(18)340; PROPOSAL FOR AN EP AND COUNCIL DIRECTIVE ON THE REDUCTION OF THE IMPACT OF CERTAIN PLASTIC PRODUCTS ON THE ENVIRONMENT

DEFRA SUBMITTED AN EM DATED 18 JUNE 2018

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
THE HOUSE OF COMMONS EUROPEAN SCRUTINY COMMITTEE REPORTED ON THREE OCCASIONS THAT THE PROPOSAL RAISED ISSUES OF POLITICAL IMPORTANCE AND COMPLETED SCRUTINY ON 12 DECEMBER 2018 (REPORT 48, 17/19).	THE PROPOSAL WAS EXAMINED IN THE THEN HOUSE OF LORDS EUROPEAN UNION COMMITTEE'S ENERGY SUB-COMMITTEE AND SCRUTINY WAS COMPLETED ON 5 JUNE 2019

REGULATION 2019/1020 WAS SUBJECT TO SCRUTINY AS EU DOCUMENT 15950/17, COM(17)795; PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN RULES AND PROCEDURES FOR COMPLIANCE WITH AND ENFORCEMENT OF UNION HARMONISATION LEGISLATION ON PRODUCTS

BEIS SUBMITTED AN EM DATED 12 JANUARY 2018

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
THE HOUSE OF COMMONS EUROPEAN SCRUTINY COMMITTEE REPORTED ON FIVE OCCASIONS THAT THE PROPOSAL RAISED ISSUES OF POLITICAL IMPORTANCE AND COMPLETED SCRUTINY ON 4 SEPTEMBER 2019 (REPORT 73, 17/19)	THE PROPOSAL WAS EXAMINED BY THE THEN HOUSE OF LORDS EUROPEAN UNION COMMITTEE'S INTERNAL MARKET SUB-COMMITTEE AND SCRUTINY WAS COMPLETED ON 16 JANUARY 2020.

6815/17: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS ON THE IMPLEMENTATION OF EU WASTE LEGISLATION FOR THE PERIOD 2010-2012 IMPLEMENTATION OF DIRECTIVE 2008/98/EC ON WASTE, DIRECTIVE

86/278/EEC ON SEWAGE SLUDGE, DIRECTIVE 1999/31/EC ON THE LANDFILL OF WASTE, DIRECTIVE 94/62/EC ON PACKAGING AND PACKAGING WASTE, DIRECTIVE 2002/96/EC ON WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WEEE), AND DIRECTIVE 2006/66/EC ON BATTERIES AND ACCUMULATORS

DEFRA SUBMITTED AN EM DATED 20 MARCH 2017

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT IMPORTANT CLEARED (REPORT 37;29/3/2017)	CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1653- 21/3/2017 AND CHAIRMAN'S SIFT 1655- 28/3/2017

DIRECTIVE 94/62 WAS SUBJECT TO SCRUTINY AS EU DOCUMENT 8426/92, COM(92)278; PROPOSAL FOR A COUNCIL DIRECTIVE ON PACKAGING AND PACKAGING WASTE

DTI SUBMITTED AN EM DATED 13 OCTOBER 1992.

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
THE HOUSE OF COMMONS EUROPEAN SCRUTINY COMMITTEE REPORTED ON TWO OCCASIONS THAT THE PROPOSAL RAISED ISSUES OF POLITICAL IMPORTANCE (REPORTS 6 & 15, 92/93) AND RECOMMENDED A DEBATE IN EUROPEAN STANDING COMMITTEE C WHICH WAS HELD ON 27 OCTOBER 1993 WHICH COMPLETED SCRUTINY ON THE PROPOSAL.	THE PROPOSAL WAS CONSIDERED BY THE THEN HOUSE OF LORDS EUROPEAN UNION COMMITTEES SUB-COMMITTEE C & F. INQUIRY REPORT 26, 92/93 WAS PUBLISHED AND IT WAS DEBATED ON 30 NOVEMBER 1993.