

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

18th Report of Session 2012-13

Correspondence:
Producer Responsibility Obligations
(Packaging Waste) (Amendment)
Regulations 2012

Includes Information Paragraphs on 2 Instruments

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HL Paper 89

Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)

The Committee has the following terms of reference:

- (1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—
 - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
 - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,
 with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (2).
- (2) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
 - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
 - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
 - (c) that it may inappropriately implement European Union legislation;
 - (d) that it may imperfectly achieve its policy objectives.
- (3) The exceptions are—
 - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
 - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
 - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (4) The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.
- (5) The Committee shall also consider such other general matters relating to the effective scrutiny of secondary legislation and arising from the performance of its functions under paragraphs (1) to (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Lord Bichard	Lord Methuen
Baroness Eaton	Rt Hon. Baroness Morris of Yardley
Lord Eames	Lord Norton of Louth
Rt Hon. Lord Goodlad (<i>Chairman</i>)	Lord Plant of Highfield
Baroness Hamwee	Rt Hon. Lord Scott of Foscote
Lord Hart of Chilton	

Registered interests

Information about interests of Committee Members can be found in Appendix 2.

Publications

The Committee's Reports are published on the internet at www.parliament.uk/seclegpublications

Information and Contacts

If you have a query about the Committee or its work, including concerns or opinions on any new item of secondary legislation, please contact the Clerk of the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email seclegscrutiny@parliament.uk.

Statutory instruments

The National Archives publishes statutory instruments on the internet at <http://www.legislation.gov.uk/>, together with a plain English explanatory memorandum.

Eighteenth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

No new instruments are drawn to the special attention of the House in this Report.

INSTRUMENTS OF INTEREST

Draft Charging Orders (Orders for Sale: Financial Thresholds) Regulations 2012

1. Orders for sale can be used to enforce charging orders, that is an order for a debtor to sell assets (including property, unit trusts or stocks) following consideration by a judge. Applications for orders for sale can currently be made for debts of any value, they are not commonplace, but in some cases are used to secure relatively low value Consumer Credit Act 1974 (CCA) debts. Concerns have been raised about this, such as in the Citizen's Advice paper, *Out of Order*,¹ which highlighted concerns about creditors using charging orders to secure originally unsecured CCA debts sold at higher premiums. Following such concerns, a Coalition commitment was made to introduce "more protection against aggressive bailiffs and unreasonable charging orders, to ensure that courts have the power to insist that repossession is always a last resort, and to ban orders for sale on unsecured debts of less than £25,000". Analysis of the consultation responses, impact on businesses and creditors, and consideration of the bankruptcy threshold (£750) have led the Ministry of Justice lay these Regulations to introduce a lower minimum threshold of £1,000.

Local Authorities (Calculation of Council Tax Base) (England) Regulations 2012 (SI 2012/2914)

2. The Regulations have been laid by the Department for Communities and Local Government (DCLG) to ensure that the calculation of the taxable capacity of billing and major precepting authority areas takes into account the new local council tax reduction schemes which local authorities will be required to implement from 1 April 2013, replacing nationally administered council tax benefits.
3. In our 17th Report (HL Paper 82), we drew to the House's attention the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 (SI 2012/2885) and the Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 (SI 2012/2886). In anticipation of the requirement that, from April 2013, all billing authorities in England must have their own localised council tax support schemes, SI 2012/2886 made provision for a default scheme to apply to those authorities that had not made their own scheme by 31 January 2013; while SI

¹ Published June 2009 http://www.citizensadvice.org.uk/out_of_order.htm

2012/2885 prescribed the matters which must be included in all localised schemes otherwise made by authorities. We commented in particular on DCLG's decision to bring SI 2012/2885 into force only five days after laying, in breach of the 21-day rule.

4. SI 2012/2914 was laid on 26 November and brought into force four days later. As before, DCLG has stated its regret over breaching the 21-day rule. In the Explanatory Memorandum, it explains that the power in the Local Government Finance Act 1992 under which the Regulations are made had to be expanded through an amending provision in the Local Government Finance Act 2012; and that the latter received Royal Assent only on 31 October 2012. DCLG wished to provide that the Regulations were in force by 30 November to ensure that the process for calculating the council tax base could proceed on schedule.

**PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE) (AMENDMENT) REGULATIONS 2012:
CORRESPONDENCE**

5. In our 12th Report (HL Paper 55), we published information about these Regulations, and about the consultation process which the Department for Environment, Food and Rural Affairs (Defra) had carried out before laying the Regulations. In Grand Committee consideration of the Regulations on 20 November 2012, it was stated that the Explanatory Memorandum (EM) which Defra had laid before Parliament with the instrument had been misleading in the information that it contained about consultation. We took the matter up with the Department. We are publishing at Appendix 1 the resulting exchange of letters with Lord de Mauley, Parliamentary Under-Secretary of State. In the light of that correspondence, and of the set of consultation responses which the Department provided to us, we consider that Defra's EM contained an acceptable summary of the consultation process.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.

Draft Instrument subject to affirmative approval

Charging Orders (Orders for Sale: Financial Thresholds)
Regulations 2012

Instruments subject to annulment

SI 2012/2914 Local Authorities (Calculation of Council Tax Base)
(England) Regulations 2012

SI 2012/2919 Armed Forces (Powers of Stop and Search, Search, Seizure
and Retention) (Amendment) Order 2012

SI 2012/2939 Rehabilitation Courses (Relevant Drink Offences)
Regulations 2012

SI 2012/2952 Occupational Pensions (Revaluation) Order 2012

SI 2012/2954 Police (Descriptions of Service) Order 2012

SI 2012/2963 Product Safety Amendment and Revocation Regulations
2012

SI 2012/2977 Regulated Covered Bonds (Amendment) Regulations 2012

APPENDIX 1: PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE) (AMENDMENT) REGULATIONS 2012: CORRESPONDENCE

Letter from Lord Goodlad to Lord de Mauley

The Secondary Legislation Scrutiny Committee cleared these draft Regulations at its meeting on 30 October of this year, and published information about them in its 12th Report of the current session. The Regulations are due to be approved in the House tomorrow.

As you know, the Regulations were considered in Grand Committee on 20 November. On that occasion, Lord Jenkin's remarks included the following:

"My first question to my noble friend is: why did officials ignore the warnings by the ACP about the very challenging nature of the targets they were minded to set? But the situation is worse than that. Here I come to the Secondary Legislation Scrutiny Committee. Paragraph 12 of its report-I will quote only one sentence-refers to the consultation and states: 'Overall, despite specific concerns, respondents supported the proposals for increased targets'.

"I looked for the source of that statement and discussed it both with the clerk to the Scrutiny Committee and with my noble friend Lord Goodlad, who is chairman of the committee. The Explanatory Memorandum stated clearly: 'Overall, respondents were supportive of increasing targets'.

"It went on to mention some of the concerns that my noble friend mentioned a moment ago.

"In these circumstances, it is not surprising that the scrutiny committee used the same words and gave the impression that there was no controversy about this. The scrutiny committee remained totally unaware that the producers of plastics, on whom the order places the entire responsibility for meeting these targets, had from the outset declared their grave concerns and deep unhappiness about what was in the order. Noble Lords may wonder why the department couched that in such neutral language-it was to mislead the scrutiny committee, which in turn inevitably has misled the House. I find this really very disappointing."

I know that your response in the debate included the following remarks:

"My noble friend Lord Jenkin suggested that the Explanatory Memorandum accompanying the regulation did not provide an accurate summary of the consultation responses received, and that opposition to the plastics targets was not properly represented. The memorandum states that overall, taken as a whole, respondents to the consultation were supportive of increasing the targets. However, it acknowledged that there was some concern about the level of increase for certain materials, notably plastics. I ask my noble friend to accept that this reflected the fact that the plastics producers who opposed the preferred option on the grounds that it was unachievable represented between 10% and 15% of the total obligated tonnage for plastics. The majority of respondents who expressed a preference supported the higher targets; only a minority expressly opposed them."

I am of course concerned at any suggestion that a Government Department might provide misleading information to the Committee which could potentially lead the Committee to put misleading information to the House. In this case, the nub of the issue is the plastics targets, the nature of the representations about them made

to your Department, and how accurately your Department explained the representations to Parliament in the Explanatory Memorandum.

In the light of Lord Jenkin's remarks, and in order for the Committee to have clarity on this issue, I would ask you to send us copies of all the original consultation responses which your Department received in relation to the plastics targets proposals. I would of course be happy to see any additional comments that you wish to offer.

Lord Goodlad

27 November 2012

Letter from Lord de Mauley to Lord Goodlad

Thank you for your letter dated 27 November 2012 in which you asked to see the original consultation responses that the Department received in relation to the plastics targets proposals. I have included with this letter a tabulated bundle of the consultation responses².

The consultation process encompassed proposed recycling targets for a number of different materials – namely glass, paper/board, metals, wood and plastics. Defra invited views on several options in the consultation (see Appendix 1).

All the consultation documents and a summary of the responses received can also be viewed at www.defra.gov.uk/consult/2011/12/16/packaging-regs (section 5, p4-5). This link was provided in the Explanatory Memorandum.

Overall, 101 responses were received in response to the consultation. These were analysed by consultation option and sub-option. 11 responses were not referenced in the published summary of responses because it was unclear which option was being supported.

As requested, my officials have re-visited the consultation responses and categorised all responses by specific reference to the plastics targets.

A total of 56 respondents supported the higher targets, set out in Option 3 of the consultation paper, for aluminium, steel and plastic (respectively 3%, 1% and 5% increase per year from 2013)³ Many of these responses did not make specific reference to individual materials. Support for Option 3 was taken as support for each of the higher material targets, including the plastics targets, unless specific comments were made to the contrary. Of the 56, 21 specifically commented on the plastics targets (the majority of which were from organisations involved with the collection and recycling of plastic waste – see Appendix 1, Table 1). The comments included observations such as the achievability and benefits of the targets (e.g. will give investors confidence and ensure current sorting capacity at Materials Recycling Facilities (MRFs) is fully utilised), and the steps the Government should take to ensure the targets are met (e.g. reduce the unobligated tonnage and support local authorities).

Twenty respondents to the consultation expressed no preference for any particular option or were not clear what option they were supporting.

Twenty-five respondents fell into one of the following categories: they either supported the set of higher targets with the exception of the plastics target; or specifically opposed the set of higher targets; or put forward their own targets; or

² Not published in this Report.

³ This includes all those which supported Options 3a – c.

supported the targets proposed under another consultation option. Of the 25, 19 specifically commented on the plastics targets (the majority of which were from organisations representing the views of the plastics manufacturing industry and others in the plastics packaging supply chain – see Appendix 1, Table 2). The comments included observations such as the desire to avoid going beyond the EU minimum and concerns with costs and the achievability of the targets.

When considering the consultation responses it was helpful to understand the role that the consultee plays in the supply chain and their area of expertise. Plastics manufacturers are not primarily engaged in the collection, sorting and reprocessing of packaging waste. This is the role of local authorities, waste management companies and dedicated reprocessing companies. As explained below, the evidence and responses received from these sectors generally supported the Department's proposals and differed from the views put forward by the British Plastics Federation (BPF), Packaging and Film Association (PAFA) and PlasticsEurope on behalf of the plastics manufacturing sector.

Key concerns expressed by respondents opposed to the Government's preferred consultation option included:

- The targets are unachievable or the targets are achievable but not in the timescale.
- There is insufficient infrastructure, either for collection or sorting, to deliver the targets.
- Higher targets will lead to increased costs for obligated businesses.

Responses which supported the Government's preferred option included those from local authorities, waste management companies, reprocessors and compliance schemes. These respondents reported that the targets were achievable and commented that there was sufficient infrastructure, either existing or planned, to deliver the targets.

To ensure the UK meets its packaging recycling and recovery targets, the Regulations establish a system of shared producer responsibility across the supply chain, covering manufacturing, converting, filling and selling. In this regard, please see regulation 4 of, and Schedule 2 to, the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (SI 2007/871). The percentages prescribed in paragraph 4 of Schedule 2 to the 2007 Regulations vary according to the class of producer. It can be seen that the percentage attributed to manufacturers is substantially less than that attributed to other businesses in the supply chain, particularly packer-fillers and retailers.

A comparison of the compliance schemes that responded to the consultation on behalf of their members reveals that schemes representing the vast majority of the plastics obligation supporting the Government's preferred option (3a). This comparison is detailed in Appendix 1, Tables 3 and 4.

When drafting the explanatory memorandum, the Department summarised the overall outcome of the consultation process that "overall, respondents were supportive of increasing targets, though there was some concern about the level of increase for certain materials, notably plastics".

Lord de Mauley

4 December 2012

Appendix 1 to Lord de Mauley's letter of 4 December 2012

A. Consultation Options

Option 1 – keep all packaging recycling and recovery targets to the minimum required to meet EU targets until 2017

Option 2 – Higher recycling targets for aluminium and plastic (respectively 1% and 2% increase per year from 2013, through

- a) Statutory targets
- b) Statutory targets to EU minimum plus voluntary responsibility deals

Option 3 – Higher recycling targets for aluminium, plastic and steel with glass recycling split by end use (respectively 3%, 5% and 1% per year from 2013) through

- a) Statutory targets (the Government's preferred option)
- b) Statutory targets to EU minimum plus voluntary responsibility deals
- c) Statutory targets to EU minimum plus introduction of deposit return system

B. Breakdown of respondents specifically commenting on the plastics targets

Table 1 – respondents in favour of the higher plastics targets

Type of respondent	Number of respondents
Producers and their trade associations	3
Compliance schemes	3
Individuals/consultants	2
Recyclers and their Trade Associations	5
Local Authorities and their Trade Associations	5
Other	3

Table 2 – respondents not in favour of the higher plastics targets

Type of respondent	Number of respondents
Plastics manufacturers and their trade associations	8
Other packaging trade associations	5
Compliance schemes	5
Individuals/consultants	2

C. Breakdown of responses from Compliance Schemes in terms of plastic obligation

Table 3 – compliance schemes who reported a majority of producer members not in favour of the preferred option

Compliance scheme/Producer	Plastic Obligation (tonnes)
Synergy	3,290
Nipak	1,526
Pennine Pack	2,166
Budget Pack	12,302
Comply Direct	21,288
Nampak	3,200
BpiPoly	2,535
RPC	2,041
Total	48,348

Table 4 – compliance schemes who reported a majority of producer members in favour of the preferred option

Compliance Scheme/Producer	Plastic obligation (tonnes)
Valpak	304,271
Wastepak	28,890
Recycle Wales	30,574
DHL compliance	18,477
Biffpack	35,716
Compliance Link	5,284
Properpak/Veolia	63,318
Total	478,754

Note: Total Plastic Obligation = 605,120 tonnes

APPENDIX 2: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 11 December 2012 Members declared no interests.

Attendance:

The meeting was attended by Lord Bichard, Lord Eames, Lord Goodlad, Lord Hart of Chilton, Lord Methuen, Baroness Morris of Yardley, Lord Norton of Louth and Lord Scott of Foscote.