

EXPLANATORY MEMORANDUM TO
THE PACKAGING (ESSENTIAL REQUIREMENTS) (AMENDMENT) REGULATIONS
2013

2013 No. 2212

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.

2. Purpose of the instrument

These Regulations implement Commission Directive 2013/2/EU (the “2013 Directive”), which amends Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste (the “Directive”). The 2013 Directive replaces Annex I of the Directive with a new Annex, which adds more examples to the illustrative list of items considered to be packaging.

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

None

4. Legislative Context

4.1 The UK transposed the Directive 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) (the “2003 Regulations”). The 2003 Regulations were subsequently amended by SI 2004/1188, SI 2005/894, SI 2006/1492 and SI 2009/1504. These Regulations implement the 2013 Directive by further amending the 2003 Regulations.

4.2 The 2013 Directive is a Commission Directive adopted under the procedure provided for by Article 5a of Council Decision 1999/468/EC. A very similar proposal was presented by the Commission to Council and to the European Parliament, but was withdrawn with no vote taking place.

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

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The purpose of the 2013 Directive is to provide clarity in order to further harmonise the interpretation of the definition of packaging in the EU. The generic definition and criteria for interpreting what is packaging is given in the Directive (Article 3). However, in borderline cases, clarity is given by providing examples in Annex I of the Directive on how this definition has been applied to specific items. The Directive requires the Commission to examine, and where necessary review, the list of illustrative examples for the definition of packaging.

7.2 The 2013 Directive replaces Annex I of the Directive, adding a number of new items to the illustrative list in the Directive.

7.3 The Directive has implications for the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and the producer responsibility regime in the UK under Defra. Whilst the majority of the new examples align to the UK interpretation of packaging already, there is likely to be an impact from a few of the new items that do not align to the UK interpretation. Defra intend to publish and consult on an assessment of the impact of this amendment on the National Packaging Waste Database (“NPWD”) as part of a package of changes to the Producer Responsibility Obligations (Packaging Waste) Regulations 2007.

- Consolidation

7.4 The Department does not intend to consolidate the Regulations on this occasion. More fundamental changes are foreseen arising from the Consumer Rights Bill and a further possible proposal from the Commission. These will require changes to the Regulations and provide the opportunity for consolidation of earlier amending regulations at that stage in line with Red Tape Challenge commitments.

8. Consultation outcome

8.1 This is a technical change for which no formal consultation has been undertaken. We have sought views from devolved administrations and engaged with the major trade associations likely to be affected by changes in the proposals regarding refillable gas cylinders on an informal basis using the information from the Commission on their likely approach. The UK government has received correspondence from trade associations on the classification of rolls, tubes and cores. We have not been able to identify a specific stakeholder with a significant interest in matchboxes.

8.2 Defra will consult on an assessment of the impact of these amendments on NPWD in September 2013 along with a summary of the amendments and what actions affected UK producers will need to take.

9. Guidance

Information on the new Regulations can be found on the www.gov.uk website, including revised Government Guidance Notes.

10. Impact

10.1 The Regulations apply to all business, charities or voluntary bodies.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared to accompany this instrument. Defra will consult on an assessment of the impact of these amendments on NPWD in September 2013 along with a summary of the amendments and what actions affected UK producers will need to take.

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

No review clause has been added to these Regulations as a more fundamental change to the Regulations is foreseen, at which point a review clause can be considered.

13. Contact

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