

Submission from Green Alliance on the draft Environmental Permitting (England and Wales) Amendment Regulations 2023 (in italics), with the response from the Department for Environment, Food and Rural Affairs

Key questions

- *On what grounds was it decided that an impact assessment was not necessary and that there would be “no or no significant impact” on the public or private sector?*

A: We conducted an internal assessment in line with the latest [Better Regulation framework](#), which found that the costs associated with this SI (Equivalent Annual Net Direct Cost to Business (EANDCB) of £2.65 million) did not meet the threshold for producing a full impact assessment for this SI following revisions to assumptions about the estimated number of Materials Facilities in scope. The internal assessment used the same methodology and unit costs for the Materials Facilities enhanced sampling included in the previously published [Impact Assessment](#) for the Extended Producer Responsibility for packaging consultation response, scaled down by the revised estimate of facilities in scope in England (759 to 159).

The £50 million figure quoted in the Environmental Services Association report refers to the investment that Materials Facilities may require to adapt not only to the sampling requirements, which will be enhanced by this SI, but also to all the upcoming waste reforms, including packaging Extended Producer responsibility, consistent recycling collections and the Deposit Return Scheme. We expect Materials Facilities to be considering the impact of all these reforms holistically which is likely how this figure was reached. Again, the finding that Materials Facilities will need to close for 12 months to adapt is based on expected major upgrades required in response to the full package of waste reforms rather than these sampling requirements specifically.

We will further engage with industry on the transition required in adapting to the entire package of waste reforms.

- *What measures will be put in place to monitor and enforce these regulations?*

A: The MF regime sits in Schedule 9, Part 2 of the Environmental Permitting (England and Wales) Regulations 2016 (“2016 Regulations”) and as such, the Environment Agency’s compliance and enforcement approach in England will be consistent with that regime and policies. The approach to monitoring and enforcement of these regulations is set out in the 2016 Regulations which details the regulatory functions available in monitoring and enforcing permit compliance (specifically, Part 4 of the 2016 Regulations deals with enforcement and offences). See [How you’ll be regulated: environmental permits - GOV.UK \(www.gov.uk\)](#) and the Environment Agency’s Enforcement and sanctions policy (see [Environment Agency enforcement and sanctions policy - GOV.UK \(www.gov.uk\)](#)) for more information.

The Environment Agency (EA) intends to engage with all currently permitted Materials Facilities about the changes to Schedule 9, Part 2 of the 2016 Regulations. The EA are also requesting information from exempt waste facilities regarding whether they will become Materials Facilities under Schedule 9, Part 2 due to incoming exemption changes ([Register or renew waste exemptions - GOV.UK \(www.gov.uk\)](#)). Additionally, the Environment Agency are working with Defra on further engagement with wider industry & industry associations.

We have published guidance on gov.uk to help clarify which Materials Facilities will be in scope and what the requirements will be. Please see the guidance here: [Materials facilities: waste sampling and reporting from October 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/materials-facilities-waste-sampling-and-reporting-from-october-2024).

Other issues

- *Green Alliance welcomes the intention of this SI, recognising that better data is key to improving recycling in this country as well as ensuring that extended producer responsibility fees for packaging are calculated fairly.*
- *However, we are concerned that, in drawing up the legislation, the government has not adequately considered the impact it will have on the private recycling sector or assessed the ability of existing facilities to deliver. The explanatory note says that: “A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.” But the Environmental Services Association, the trade body for the waste and recycling sector, has said that [some facilities will need five years to adapt](#) to new reporting requirements and may not be able to do so without major upgrades. They have noted that, in a quarter of cases, this could require investment of £50 million for each facility and that some facilities would need to close for up to 12 months to be able to reconfigure their operations and comply with new testing requirements. These figures suggest both that there could be a significant impact on the private and potentially public sector, and suggest it may be difficult for some to be able to comply with the start date of October 2024, which is little more than a year away.*

A: Refer to the answer above to the question on the impact assessment.

- *Green Alliance has also spoken with operators of material facilities who remain unsure which of their facilities will be required to submit data under the new regulations. There is an understanding, for instance, that facilities that have only one dominant client do not need to report data, but there are some instances where there is one dominant client, but who sends multiple waste streams that go to a facility – for instance from both kerbside collections and from civic amenity sites. It is not clear if those facilities with one client but two or more waste streams will need to submit data under the amended regulations. If they do, the facility operators will need to recruit and train potentially large numbers of new staff, as well investing in rearranging the operations and purchasing new equipment.*

In developing these amending regulations and in response to the previous impact assessment, we have been working with the regulators and industry to clarify the scope of these regulations, trying to reduce unnecessary sampling where possible. In doing so, the regulations look to exempt Materials Facilities from notifying under the regulations where they don't undertake any sorting processes and only receive and consolidate waste from one single supplier. The existing definition of “supplier” within the regulations has not been significantly amended (although the definition will move from paragraph 4(8) currently to the interpretation paragraph 2(3)). However, we will continue to engage with industry and regulators to provide greater clarity on what facilities are in scope and what sampling may be required, producing further guidance as necessary.

- *Even in cases where facilities already had to report data under the previous requirements, the new sampling requirements mean that such sites will likely need to increase staff capacity for sampling and testing as well as potentially investing in more equipment.*

A: This was included within the previous [Impact Assessment](#) for Extended Producer Responsibility for packaging and assessment of costs to industry.

- *These changes are necessary in order to ensure that there is sufficient data under the new extended producer responsibility regime that will see producers cover 100 per cent of costs of the packaging they place on the market. However, it is not clear from the legislation itself or from government statements to date who will pay for the facilities to upgrade – whether there will be funding from the EPR scheme (although this seems unlikely, given the tight turnaround required by the legislation and the fact that producer fees are not yet available for redistribution); whether the government will provide funding; or whether the facilities operators will be expected to pay for it themselves (in which case, you could expect local authority fees for the facilities to increase, which may or may not eventually be covered through the EPR regime).*

A: We expect proportionate costs associated with sampling and reporting of packaging waste borne by LAs, or passed on to LAs by third parties, in delivering efficient and effective waste management services, to be included within the pEPR disposal cost fees borne by packaging producers and payable to LAs under that scheme.

We will continue to work with the Waste and Resources Action Programme (WRAP) and directly with Materials Facilities operators and membership organisations to support them through requirements under the collection and packaging reforms.

- *There is also little in the regulation to suggest how the new regime will be monitored and enforced. When the original legislation came into effect in 2014, [participation was patchy](#) and lower than expected, with suggestions that a number of eligible facilities were not complying with the requirements. As it can be expected that many more facilities will now become eligible for reporting requirements, what arrangements will be made to ensure all eligible facilities know their obligations and are capable of sampling and reporting data under the new regime?*

A: Refer to answer above to the question on monitoring and enforcement of the regulations.

11 & 14 July 2023