

**TO: JOINT WASTE DISPOSAL BOARD**  
**2<sup>nd</sup> March 2023**

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**LEGISLATION UPDATE REPORT**  
**Report of the re3 Project Director**

**1 INTRODUCTION**

- 1.1 The purpose of this report is to brief Members in relation to the emerging detail from the Environment Act 2021, as it relates to waste management.

**2 RECOMMENDATIONS**

- 2.1 That Members note the contents of this report.**

**3 ALTERNATIVE OPTIONS CONSIDERED**

- 3.1 None for this report.

**4 REASONS FOR RECOMMENDATION**

- 4.1 The purpose of this report is to brief Members in relation to the emerging detail from the Environment Act 2021, as it relates to waste management. Further reports will be published, when decisions are required or in the event of any further detail which has operational or contractual significance.

**5 LEGISLATION UPDATE**

**Environment Act 2021**

- 5.1 The background and context to the current legislative status can be described as follows:

- On December 18<sup>th</sup>, 2018, Government published its Resources and Waste Strategy which announced sweeping plans to change the way that waste is collected and treated in the UK.
- There followed two rounds of public consultations (2020 and 2021), in which Government sought input on how the three main limbs of the strategy (Extended Producer Responsibility (EPR), Deposit Return Scheme (DRS) and Waste Collection Consistency) should work. These three parts are now bracketed under the name of 'Collections and Packaging Reform' (CPR).
- A fourth limb, which establishes a tax on plastic products that have a recycled content below 30% is already in effect but has little direct, operational impact on the councils' day to day service delivery.
- The results of the most recent Government consultation on EPR were published on 26<sup>th</sup> March 2022.
- The results of the most recent Government consultation on DRS were published on 20<sup>th</sup> January 2023.
- The results of the most recent Government consultation on Waste Collection Consistency are awaited.
- The detail of each limb has been keenly anticipated but has undoubtedly been delayed by demands on Departmental resources (e.g. Brexit preparation and the Covid-19 pandemic).

- Details of when separate parts of the forthcoming legislation and statutory guidance will become operative are included below, where that detail is known.
- 5.2 The purpose of the Environment Act, in so far as it relates to waste management, is the intended promotion and delivery of: (a) extended producer responsibility, to include the costs for the treatment of packaging, (b) increased recycling, (c) the simplification and increased consistency of waste collection across the UK, (d) the development of a circular economy, and (e) the reduction of litter.
- 5.3 There are three principal limbs in the waste-related sections of the Environment Act, presented under the umbrella title of 'Collections and Packaging Reform' (CPR). They will be discussed in the sections below, with particular reference to the elements that will directly impact on council services.

### **Extended Producer Responsibility (EPR)**

- 5.4 Government wants producers of packaging to pay the full net cost of collection and treatment associated with the packaging placed into circulation. This is to encourage better overall design of packaging and systems of capture, and to promote resource circularity.
- 5.5 Under EPR, producers will pay modulated fees, set according to the assessed environmental impact and/or treatment cost of the packaging they put into circulation. The aggregated fees will be used to make payments to local authorities for the costs of managing packaging (ultimately replacing central funding). Government believes that fee modulation will encourage greater recyclability and packaging design, that reduces environmental impacts.
- 5.6 There will be some significant changes to the way that waste collection and management performance is measured. This will be important in aligning the payments through EPR with the expectations of the packaging and retail sector.
- 5.7 An important example of this will be in relation to waste collection performance. Councils will be assessed according to the relative 'Efficiency' and 'Effectiveness' of their service. Councils will be placed within a performance cohort, wherein their costs and their performance will be benchmarked against a 'best in class' council. Each cohort will be drawn from councils that share some similarities. Individual councils deemed to be sub-optimally 'efficient' and/or 'effective' may be presented with an Improvement Notice. When an Improvement Notice is issued, it will also identify future-year funding reductions that will be applied if the requirements of the Notice are not satisfied.
- 5.8 Performance will initially be assessed on modelled estimates of council costs. The scheme will eventually assess actual council costs.
- 5.9 There will be potentially significant changes to the way performance data is captured, and likely larger amounts of data needing to be captured. There are current statutory requirements to sample the quality of recycling delivered by the three councils to the re3 Material Recycling Facility (MRF); we expect the frequency and sample sizes to be increased as a result of the EPR requirements. In terms of waste collection, the cost of staff, vehicles, maintenance, depot space and administrative overheads are all likely to be captured for benchmarking, alongside the capture rates of council collections and recycling rates.
- 5.10 The arrangements will be quite different from current operating conditions and will likely mirror more commercial operating conditions.

- 5.11 The timescales are subject to change but, at present, local authorities are expecting to be presented with their initial funding allocation during the 2023/24 year.

### **Deposit Return Scheme (DRS)**

- 5.12 A deposit, an additional sum on top of the normal sale price, will be added to in-scope packaging, at the point of sale. To encourage the return of the packaging, the deposit will be reclaimable via reverse vending machines at retailers and via smaller shops.
- 5.13 In-scope packaging will have specific labelling and iconography, to support consumers in knowing which items are part of the DRS and to identify appropriate items that require being scanned for reverse vending.
- 5.14 In-scope packing will include all Polyethylene terephthalate (PET) plastic bottles and tins/cans (aluminium and steel) between 50 ml and 3 litres. Neither High Density Polyethylene (HDPE) nor glass bottles will be included in the DRS in England.



\*at time of writing we are double-checking the inclusion of 'food' tins. The most recent Government document refers to 'drinks' containers.

- 5.15 The level of the deposit will be controlled by the Deposit Management Organisation (DMO). The deposit will most likely be a sum such as £0.20 per item - a sum that has been widely referred-to throughout the consultations. The Government will set a maximum amount for the deposit, though the sum will be determined by the DMO. The deposit will apparently be applied to all single, in-scope, items and also those sold as part of a multi-pack.
- 5.16 The DMO will be an industry-based organisation, representative of companies and trade associations. Any unredeemed deposits will be used to cover the costs of the scheme.

### **Waste Collection Consistency**

- 5.17 It is important to note that we await the Government response to the second round of consultations on Waste Collection Consistency. The details shared below are reflective of current expectations but may be subject to change.
- 5.18 Councils will be mandated to collect newspapers and magazines, cardboard, glass bottles, plastic bottles, plastic pots/tubs/trays and steel and aluminium cans or tins. A separate food waste collection will also be required. The list of mandated materials, for councils to collect, retains materials that are in-scope for the DRS, described above.
- 5.19 Plastic film, aerosols, cartons and foil will be added to the list of mandated materials, most likely in 2027.

- 5.20 At present, the re3 councils are well-placed to comply with the requirements of waste collection consistency through the facility to process many of the waste types, through the shared arrangements. The commonly collected, 'kerbside', materials of newspapers, cardboard, plastic bottles, steel and aluminium cans or tins and aerosols have been collected for many years. In 2017 the re3 MRF was amended to allow for the inclusion of plastic pots/tubs/trays and cartons. Food waste was incorporated into the shared arrangements in 2019.
- 5.21 Glass collection and plastic film collection and processing will need to be added to current services to achieve compliance.
- 5.22 Businesses will also be required to make available for collection most of the items listed above, with some flexibility according to the size of the business. This element of the legislation has not been fully pursued at the same time as for household waste but it will be introduced.
- 5.23 Councils will be required to move from their current form of waste collection to one of three service archetypes, designed by the Waste and Resources Action Programme (WRAP). They are likely to be defined as follows:

Mixed dry recycling collection + glass, food waste and garden waste collections.

Two stream (one bin for paper and card + another for plastic, glass and tins) + separate food waste and garden waste collections.

Multi-stream collections (kerbside sorting) + food waste and garden waste collections.

- 5.24 The first archetype most resembles the collection system operated by each of the councils within the re3 partnership, save for the requirement to collect glass.
- 5.25 If a change to current service design (to adopt one of the archetypes) is not considered appropriate, there will be a process of justification that councils can pursue. It will be via enhanced form of assessment of the technical, economic and environmental practicability (TEEP) of retaining a non-compliant service design. Non-compliance and failure to satisfy TEEP criteria, may link to the assessment of efficiency and effectiveness, described above, and the level of funding allocated to a council.
- 5.26 Government consulted on whether councils should provide free garden waste collections. Many councils make a charge for the service, based on the premise that the recipients of the service should pay for it, rather than the cost being levied against all residents in an area. Government is apparently considering two options: (a) a free scheme for residents or, (b) an assessed reasonable charge, based on estimates put together by the Waste and Resources Action Programme (WRAP), and pitched at about 50% of current service charges. If Government chooses to go for the first option, free garden waste collections, the re3 partner councils have estimated that they will face a budget pressure of £3.32m.

### **Potential Impacts and Opportunities**

- 5.27 It is important to recognise that the precise impacts from the Collections and Packaging Reform (CPR) package will not be known for some time, until they have operated alongside each other, and the operating environment has adapted. However, at the time of writing this report, it is clear that the suite of changes are considered to represent a significant challenge to local authorities. This section of the report will seek

to highlight some of the potential challenges and opportunities.

- 5.28 Defra recognises that the ‘full net cost’ referred to above (and in the consultations) is unlikely to equate to the full *prevailing* cost for each local authority. The benchmarking process, within cohorts of similar councils, will allocate available funding according to an assessment of what the service should cost.
- 5.29 The likelihood that an individual council will receive an Improvement Notice will be relatively high (as only one council in each cohort can be ‘best in class’). It remains to be seen how prescriptive each Notice is but local decision-making, and/or prioritising, may be affected by the process.
- 5.30 The additional cost of the deposit cannot be avoided by consumers when they buy in-scope items of packaging. There are potentially millions of UK residents who, through disability or age (or other, non-protected characteristics), may find it challenging and/or inconvenient to access and utilise a reverse vending terminal. There appears to be a potentially mistaken assumption that the admirable logistical efficiency of large retailers and producers can, and should, be replicated in the lifestyles of UK residents, for recycling purposes. Government is due to update its impact assessment for DRS at some point this year.
- 5.31 At time of writing the following examples of the proportion of the deposit, relative to the new net cost, were identified from the online sales website of a leading UK supermarket:
  - 12 x 330ml Diet Coke £5.40, DRS £2.40 (33.77%)
  - Heinz Baked Beans £1.40, DRS £0.20 (12.50%)
  - Robinsons Orange Squash £1.85, DRS £0.20 (9.76%)
- 5.32 Government has decided to allow the retention of unredeemed deposits by the scheme, so that producers or retailers can reduce their costs of compliance.
- 5.33 The removal of up to 90% of plastic and metal drinks containers from recycling collections is likely to prove challenging to many councils who have contractual obligations that relate to waste composition, financial value or tonnage. It should be anticipated that Contractors may seek contractual relief and/or compensation through Change in Law (CiL) provisions. As part of the re3 response to the Government consultations on the Environment Act, in 2021, the re3 Project Team worked with the Contractor to assess the likely cost on the re3 contract across three principal areas of impact. The cost was assessed, by the Contractor to be £1.47m. The cost was derived from an assessment of the loss of income and contractual costs, in the following sums £0.58m loss of income, up to £0.43m contractual costs, £0.45m reduced tonnage costs. It is important to recognise that Government has not recognised these costs at the time of writing this report and so officers assume they will be a budget pressure until otherwise informed.
- 5.34 The co-collection of household and trade waste, where appropriate (and subject to the eventual inclusion of trade obligations, as described above) should be pursued with caution. It has hitherto been broadly good practice for a council to seek to supplement funding through discretionary commercial activity. It remains to be seen, however, whether the funding principles of forthcoming CPR arrangements will simply ‘net off’ any income from commercial activity.
- 5.35 The subsequent inclusion, within materials that councils are mandated to capture, of ‘soft’ plastics should be monitored with care. The logic of the transition has perhaps

not been fully considered by legislators. The CPR arrangements explicitly seek to encourage changes to packaging – through modulated fees which effectively penalise less recyclable packaging. It would not be efficient or effective if the councils were now to make, potentially expensive, business decisions, to capture soft plastics, only for those materials to be designed-out of circulation by Producers. That quandary may be more likely in relation to ‘soft’ plastics, whose enduring utility is arguably less than for other types of packaging.

5.36 There are also some potential areas of opportunity for councils to exploit, and risk mitigations, subject to local risk appetite. Early examples include the following:

- The re3 partnership would be well advised to consider operating its own reverse vending service, within the partnership area. It could be a way of extending access to harder to reach groups, or to position DRS at other publicly convenient locations, such as transport hubs or in neighbourhoods. This might be a way of supporting the existing investment of the councils in their sorting facility and retaining important engagement with residents.
- Alongside that, the councils should consider how waste collection can assist residents for whom DRS is either impractical, due to disability or advanced age, or even just inconvenient, such as residents who live in flats or HMOs where their capacity to store recycling (until they next go to the reverse vending machine) is reduced. This might be through pursuing the concept of a Digital DRS, as is being trialled in Wales, which could allow users to scan in-scope items at home for inclusion within the existing council collection. This approach would also help to moderate the scale of any compensation/relief that could be claimed by the Contractor to the re3 partnership (as described above).
- Waste collection is an important universal service, with high levels of recognition by residents and thus reflects on the councils as whole. Accordingly, they should prepare to be creative in both service provision and local communication, to ensure that the value of the extant waste service is not negatively impacted by the ‘market entrant’ of DRS.
- With the requirements for collections to satisfy exacting ‘efficiency and effectiveness’ standards, the development of a glass collection service should be given careful consideration. If opportunities exist to reduce costs, and/or moderate likely long lead-in times for vehicles, through working as partners, they could be worthy of exploration.

5.37 It is recommended that the council partners, seek to identify and exploit all possible opportunities to thrive within the new and still emerging legislative environment. As described above, the position of local government is not obviously bolstered by the new arrangements and that may have wider implications, beyond waste management.

5.38 Further reports will be prepared for the re3 Board as materially significant detail is release by Government (such as Secondary Legislation or Statutory Guidance) or for decision-making purposes.

## 6 ADVICE RECEIVED FROM ADMINISTERING AUTHORITY

Head of Legal Services

6.1 None for this report.

Corporate Finance Business Partner

6.2 None for this report.

Equalities Impact Assessment

6.3 None.

Strategic Risk Management Issues

6.4 None

Climate Impact Assessment

6.5 None.

## **7 CONSULTATION**

7.1 Principal Groups Consulted

Not applicable.

7.2 Method of Consultation

Not applicable.

7.3 Representations Received

Not applicable.

Background Papers

December 2021 re3 Board

Contacts for further information

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