

Adoption of the EU End of Waste Regulation for ferrous and aluminium scrap

Impact and implications for accreditation of metal reprocessors under the Producer Responsibility Obligations (Packaging Waste) Regulations



Department of the
Environment
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**The Scottish
Government**



Llywodraeth Cymru
Welsh Government



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Introduction

1. This document provides an overview of the EU End of Waste Regulation and its implications for the accreditation of metal recovery/recycling operators under the Producer Responsibility Obligations (Packaging Waste) Regulations and invites comments on the resulting position.

2. The EU End of Waste Criteria Regulation for certain types of scrap metal was adopted on 31st March 2011¹. The Regulation is made under Articles 6(1) and (2) of the revised Waste Framework Directive (2008/98/EC) and establishes criteria determining when iron, steel and aluminium scrap, including aluminium alloy scrap, ceases to be waste. The Regulation entered into force in April following its publication in the Official Journal and will directly apply from 9th October 2011 in all Member States.

3. Previously the end-of-waste point for scrap metal was set by European Court of Justice (ECJ) case law. In practice, this meant that scrap metal was not recycled and would not cease to be waste until it had been reprocessed into products such as ingots, sheet metal or steel coils.

4. The effect of the Commission's end-of-waste criteria is to change this case law. Where the criteria in the Regulation are met, the practical effect will be to set the point at which these specified types of scrap metal cease to be waste. This may change the point at which such waste materials are considered to have been recovered or recycled, and therefore the point at which a PRN/PERN can be issued under the UK Packaging Regulations.

5. The end-of-waste criteria are a deregulatory measure. Their main effect will be to enable ferrous and aluminium scrap metal to be traded between Member States, and exported from the EU, as non-waste products which are not subject to waste management controls. The principle of end-waste criteria has been supported by the Commission, Member States, and the European Parliament.

6. The adoption of this Regulation has direct implications for the UK packaging recovery system.

7. The changes resulting from the adoption of the End of Waste Regulation for scrap metals are expected to be of greatest interest to:

- Reprocessors and exporters of waste packaging
- Waste management companies and local authorities involved in the collection of packaging
- Compliance schemes
- Individual producers with an annual obligation in steel or aluminium

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:094:0002:0011:EN:PDF>.

- Any research institutions, groups or individuals with a particular interest in packaging waste.

Submitting comments on issues raised in this paper

8. Please send your comments on this paper to the following address:

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Or you can send your comments electronically to ian.atkinson@defra.gsi.gov.uk

9. If you are a company based in Wales please also copy your response to:

Mrs Anna Madeley,
Welsh Government,
Waste Policy Branch,
Cathays Park, Cardiff CF10 3NQ

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Comments should be submitted by 24th June 2011 at the latest.

1 Overview of legal position

Relationship between end of waste criteria, the revised Waste Framework Directive and the Packaging Directive

1.1 This section provides an overview of the relevant legislation at European and national level, and shows how the various regulations interrelate. It also outlines the Defra interpretation of key provisions from the legislation, and how this affects the current position.

1.2 The revised Waste Framework Directive (2008/98/EC) (rWFD) lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use. It defines key concepts, such as waste, recovery and disposal, and puts in place the essential requirements for the management of waste.

1.3 Article 3(1) of the rWFD defines waste, as “*any substance or object which the holder discards or intends or is required to discard*”.

1.4 The EU Directive on Packaging and Packaging Waste (94/62/EC, as amended – hereafter referred to as “the Packaging Directive”) aims to harmonise the management of packaging waste by minimising the impact of packaging and packaging waste on the environment and by avoiding obstacles to trade and distortion and restriction of competition within the EU.

1.5 The definition of waste in the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (“the Packaging Regulations”) relies on the definition of waste in the Packaging Directive, and in turn, the rWFD. The Packaging Regulations that are applicable in Northern Ireland work in the same way.

1.6 The EU Regulation on end of waste criteria for certain types of scrap metal (No 333/2011) (the “EWC Regulation”) provides that the specified scrap metals will cease to be waste when the criteria set out in the Regulation are met. The EWC Regulation has direct effect and does not require transposition in domestic law. Its effect is that materials meeting the criteria are no longer waste under Article 3(1) of the rWFD.

1.7 Waste that ceases to be waste by virtue of the EWC Regulation would not be considered waste under the Packaging Regulations. This is because such materials are no longer waste under Article 3(1) of the rWFD, meaning that they are no longer waste under Article 3(2) of the Packaging Directive (94/62/EC).

1.8 The Packaging Directive defines recovery activities as any *applicable operation provided for in Annex II to the Waste Directive*. If material has already been recovered (and is not waste) under the rWFD, it will also have ceased to be waste for the purposes of the Packaging Directive.

1.9 Within the Packaging Regulations there is no definition of the ‘point of issue for a PRN/PERN’. The ability to issue PRNs is linked to the recovery of packaging waste as defined above (1.8). Any business engaged in the recovery of waste

packaging can apply to be accredited as a reprocessor, stating which recovery process (and material) for which they wish to be accredited.

1.10 The definitions of recycling in the rWFD and the Packaging Directive are clear that only *waste* can be recycled. Therefore, after something ceases to be waste by virtue of the EWC Regulation, any further processing carried out on it cannot be considered recycling, and thus cannot be counted towards the Packaging Directive recycling targets.

1.11 Where scrap metal does not meet the EWC Regulation's end-of-waste criteria, it remains waste until it is reprocessed, in line with the ruling in the Mayer Parry case (where the ECJ found that the recycling of packaging waste occurs only once the waste is processed into a new material or product), and reaching a quality standard at least as high as that set out in the EWC Regulation.

1.12 It is understood that one of the European Commission's main intentions behind EWC Regulation was to support harmonisation across the range of waste regimes regarding the point at which waste ceases to be waste.

1.13 The Commission's view is that the definitions of waste, end of waste, recovery and recycling must be understood in a coherent way and avoiding different points for end-of-waste under several legislative acts. Their intention is for there to be a full alignment between the producer responsibility directives and the rWFD wording.

1.14 This is government's interpretation of the law and we are not seeking views on it in this consultation. Only the courts can provide a definitive interpretation of the law.

2 Implications for the UK Producer Responsibility Obligations (Packaging Waste) Regulations

2.1 Following the adoption of the EWC Regulation and compliance with the end-of-waste criteria established under this Regulation, a new group of businesses in the UK may now be able to show that they have recovered the waste metals and so apply to be an accredited reprocessor.

2.2 Within the Packaging Regulations there is no definition of the 'point of issue for a PRN/PERN'. The ability to issue PRNs is linked to the recovery of packaging waste. Any business engaged in the recovery of waste packaging can apply to be accredited as a reprocessor, stating which recovery process (and material) for which they wish to be accredited.

2.3 The EWC Regulation will apply, with direct effect, from 9th October 2011. Where the criteria are met, the practical effect of the Regulation will be to set the point at which the specified types of scrap metal cease being waste, which may change the point at which such materials are considered to have been recovered/recycled.

2.4 Businesses currently accredited as reproducers or exporters under the Packaging Regulations would still be eligible to be accredited and able to issue

PRNs, but only on material they received which was still waste. In these cases, the point of recovery will be the point at which the material is re-melted.

2.5 The Environment Agencies will issue revised guidance for the next accreditation round (September 2011) and it is envisaged that the changes will take effect for the 2012 obligation year.

2.6 One of the requirements and conditions that the Environment Agencies will require from Operators seeking to be accredited and who will be relying on the EWC position, will be a demonstration that they have a quality management systems (QMS) in place to meet the criteria set out in the EWC regulation. The QMS must have been approved by the conformity assessment body. Such a body must be approved by UKAS.

2.7 Due to the scope of the likely changes, we would welcome any comments from interested parties on how the system will function and any operational risks and how to manage them.

3 Implementation Issues

3.1 The adoption of the EWC Regulation will require changes at the operational level.

3.2 Defra has already received some comments from interested parties and the issues raised so far are described below.

a. Failure to meet targets

It has been suggested that the change to the point of issue of PRNs could result in decreased levels of evidence being issued.

For example, collector A might meet the end of waste criteria and certify the material as non-waste, but not be accredited to issue PRNs. If they then pass this material to reprocessor B, B would not be able to issue a PRN either, as packaging compliance evidence can only be issued on waste packaging. This means that though the same amount of material is being recovered, less is being counted by the PRN system.

The countervailing argument is that operators who go through the trouble and expense of establishing the required quality management systems and have sought approval from the relevant body are only likely to do so if there is some financial benefit. In this instance, the financial benefit may be from the ability to accredit as a reprocessor under the Packaging Regulations and issue PRNs. It is not envisaged that many operators would seek to meet the end of waste criteria without also becoming accredited to issue PRNs.

In any case, there is a need to ensure that all eligible material is still counted toward the achievement of targets and is available for compliance purposes.

Some in the metals reprocessing industry have also suggested that the achievement of targets under the Courtauld Commitment may be jeopardised

by these changes, as the targets are based on the recycling rate which may be under-reported.

Q. Government's objective is to ensure that the UK continues to comply with the requirements of the Packaging Directive. We want to gain a clearer view of likely changes in the market *in practice* as a result of the end-of-waste criteria.

- **If you are responding from a trade body, how many of your members are likely to seek to take advantage of the EWC?**
- **Of these businesses, how many are likely to also seek accreditation under the Packaging Regulations? Please provide an indication of the overall packaging tonnage handled by such businesses.**
- **If you are responding as an individual business, are you considering putting systems in place to meet the EWC?**
- **If so, are you considering becoming an accredited reprocessor under the Packaging Regulations? It would be really helpful to have an estimate, in confidence, of how many tonnes of packaging you handle(or plan to handle).**

Q. Government wants to ensure that all eligible material continues to have a PRN/PERN issued against it. Please give your views on how this can be achieved.

b. Mis-reporting and double-counting

There are a number of issues to do with properly monitoring and reporting the (metal) material being handled through the system.

It has been highlighted that the additional point of issue for metal PRNs increases the opportunity for fraud within the system. PRNs could be issued on the same load at multiple points as it passes through the processing chain. Under the current arrangement, if a load of scrap has been recovered (and most likely had a PRN issued against it), it is noticeably different from an un-recovered load, as it will have been through a melt process. Any new arrangements will need to have sufficient safe guards to ensure that the status (waste vs non waste) of material is clear as it is transferred between operators.

In terms of mis-reporting, Article 6(1) of the EWC Regulation requires the producer to “implement a quality management system suitable to demonstrate compliance with the end-of-waste criteria referred to in Articles 3 and 4”; and Article 6(5) provides that a conformity assessment body, or any other environmental verifier as defined in the Regulation, shall verify that the quality management system complies with the requirements of within Article 6.

Article 5(1) and (2) of the EWC Regulation requires that a ‘statement of conformity’ is issued with each load. Therefore, a load should be transferred with either a Waste Transfer Notice (WTF) or a certificate of conformity, which

should provide clarity for the person receiving the material that it has ceased to be waste or not.

The assessment process for accrediting a business as meeting the end of waste criteria would need to be undertaken to the satisfaction of the Agencies.

As with any assessment and verification process there is the possibility of some variation in the quality of the assessments between operators and assessors. It is anticipated that those involved in appointing verifiers and monitoring their performance (i.e. the body responsible for allowing assessors to approve operators) would seek to address any poor performance in the verification process.

In terms of monitoring and enforcement, for accreditation purposes the Agencies would have to accept that if an operator has their QMS approved and they have issued a statement of conformity the material has ceased to be waste.

Some in industry have raised concerns about being able to properly track material and be confident of its status as it moves through the system. There is a degree of concern that an operator, acting in good faith, could incorrectly categorise material or incorrectly issue a PRN. It is acknowledged that having ostensibly the same material in the system, some of which has ceased to be waste, may create some complications.

Once adopted it is anticipated that operators will be able to provide assurances as to whether the material is waste or not and also if it has had PRNs issued on it, possibly via the terms of sale or contract.

For commercial reasons, it is expected that current reprocessors would make such enquiries as they would offer a lower purchase price if they could not benefit from issuing the PRNs.

Q. Government wants to ensure the integrity and accountability within the system. Please provide details regarding what safe-guards could be applied to give operators suitable assurances of the status of material received.

Q. In your experience, how could double counting be avoided within the new arrangements?

c. Cost and visibility for obligated companies

As with any market disruption, there may be an impact on PRN prices for metals. The likelihood and scale of this is difficult to judge as they will depend on the amount of material that continues to have a PRN issued against it.

Any business which becomes an accredited reprocessor under the new arrangements will be bound by the same reporting requirements associated with PRN revenue as current reprocessors, as set out in paragraph 1(o) of Schedule 5 to the Packaging Regulations (as amended by the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2010 and the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations (Northern Ireland) 2010 . This should give producers suitable

transparency regarding the level of PRN revenue and how it is spent by accredited businesses.

Q. Government wants to avoid any unnecessary disruption to the PRN market. What effect do you think this change will have on the PRN market and any subsequent impact on PRN prices?

d. Additional administrative burden on Agencies

It is likely that the changes will see additional (new) operators seeking accreditation, for which they would pay the relevant fees. This anticipated increase will be an added burden on the Agencies, but will be covered by additional fees.

In addition, the Agencies would have to revise the current compliance approach slightly to include looking for material that was possibly double counted, instances of fraud, etc. However, this is not regarded as a significant “additional burden”, but simply part and parcel of the compliance work they already undertake.

e. Mixing material that has been subject to a PRN with material that has not

The possibility exists that some waste ceases to be waste and is traded on. Further down the chain it is then mixed with waste metals, at which the whole load would be considered to be waste, including that fraction which had already met the EWC requirements. It would therefore be possible for PRNs to have been issued on the initial load, and for the bulked up load of waste metals to go forward and have PRN evidence issued against it. This would give rise to double issuing of PRN evidence on the initial load.

However, operators are expected to act responsibly and within the law. Also, there is a monitoring and enforcement regime to deal with intentionally criminal acts intended to defraud the system.

Q. Government wants to ensure that there is a clear audit trail to ensure that eligible material is counted and PRNs issued. Please indicate how the system could be managed to avoid the double issue of evidence where waste and non waste metals are mixed.

f. Investment

Some sections of the metals industry have suggested that, strategically, it would seem logical that fewer operators with higher levels of funds to invest would have a greater impact. It has been suggested that in terms of achieving higher levels of investment in increasing UK recycling/recovery capacity concentrating the PRN to limited number of operators has allowed for larger investments and a more focussed approach.

This may be true in terms of large capital investment, where the dissipation of funds to a large number of small collectors/waste management companies may discourage/prevent large investment. However, the key issues in terms of

increasing the level of recovery and recycling are usually identified around the point of collection. Therefore, the ability of those involved in collections to access PRN funds may encourage an expansion of service to cover a greater area or include more packaging materials (or investment in collection infrastructure).

Q: Government wants to ensure that investment continues at the appropriate strategic points in the supply chain. In your opinion, how will these changes affect the operation of the current system?

Q. How could any detrimental effects of these be mitigated to ensure effective operation of the system?