

Government position statement

Aluminium packaging recycling targets

The latest data shows that the number of aluminium packaging waste recovery notes (PRNs) issued in the UK are not on track to meet the statutory business targets for the recycling of aluminium packaging in 2015.

The Department's position on this issue is as follows:

We expect producers and compliance schemes to comply with their packaging recycling and recovery obligations. If there are instances of non-compliance identified at the end of the year, the Environment Agency, Scottish Environmental Protection Agency, Natural Resources Wales and the Northern Ireland Environment Agency (hereafter referred to as the "Agencies") will take appropriate enforcement action (see section on enforcement).

We are however mindful of the situation, and therefore are taking steps to address the situation:

We urge unaccredited reprocessors and exporters to become accredited and we encourage compliance schemes to actively assist them in this process to help secure the requisite number of PRNs/PERNs for their producer members.

We want reprocessors and exporters to make every effort to recycle all available aluminium packaging waste.

We urge reprocessors and exporters to make PRNs/PERNs available to the market.

Exceptionally, the following will apply to operators accredited after 1 January 2015.

The relevant agency will regard the operators as being accredited to issue PRNs/PERNs in relation to the total amount of waste received over an 'extended period'. The extended period in question will be from the date the application was received by the relevant agency, rather than the date on which it was approved.

If the operator applied before 1 January, the relevant period will be from 1 January.

In all cases the accreditation will run until 31 December unless notified in writing by the relevant agency.

This is subject to the operator submitting documentary evidence which satisfies the relevant agency that they will meet the conditions as laid out within Schedule 5 of the Regulations (and for this purpose the operator is treated as being accredited for the extended period in question).

We recognise that the accreditation process may seem complex to some potential operators. Whilst the process must remain robust, the Agencies will provide active assistance to those seeking accreditation to ensure a rapid turnaround.

Operators handling Incinerator Bottom Ash should also seek advice on the opportunities that are now available through the aluminium in IBA protocol.

It is important that compliance schemes and directly registered producers develop a good understanding of the market for all evidence and have robust plans and strategies in place to ensure that they can progress through the year towards meeting their individual obligations.

The aluminium business targets for 2016 and 2017 will continue to increase to 52% and 55% respectively. We would expect obligated businesses and compliance schemes to plan ahead to ensure that they can meet their obligations in these years.

Government will continue to monitor the recovery and recycling performance for 2015 and where necessary seek updates from specific sectors as well as the ACP on any emerging issues or difficulties.

Producer Responsibility Team, Defra

August 2015

Enforcement approach and options available for non-compliance with the packaging regulations available to the environment agencies¹.

Who is legally responsible for meeting the targets?

Producers who have joined a compliance scheme are not liable for the offences of failing to recover and recycle, as this obligation has been transferred to the compliance schemes through their membership of that scheme. Thus as long as the producer remains a member of the scheme, action against them is unlikely for failing to meet their recovery and recycling obligations. If a scheme or the producer decides to terminate its contract, this would leave the producer as unregistered and needing to meet its own recovery and recycling obligations.

Producers who are directly registered with any of the environment agencies are responsible for meeting their own recovery and recycling targets.

What action will the environment agencies take if the targets are not met?

When considering the appropriate course of action to address offending and to ensure compliance, the environment agencies aim to follow the penalty principles set out in the Macrory Review and included in the Regulators' Compliance Code, which include:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to deter future non-compliance.

Taking account of the above principles, the specific options open to the environment agencies for offences under the packaging regulations are:

Producer Compliance scheme non compliance

'Special Measures' – where a scheme fails to comply with its recovery and recycling obligations the environment agencies can require the scheme to meet specific additional conditions, which are to meet 50% of its obligation by the 30th June and to meet 100% of its obligation by 30th September, also that no new

¹ Environment Agency (EA), Scottish Environmental Protection Agency (SEPA), Natural Resources Wales (NRW) or Northern Ireland Environment Agency(NIEA)

members are accepted into the scheme. In addition the scheme will be required to pay an additional fee to the agency.

Cancellation of approval – if the above option is not considered appropriate the environment agencies could move straight to cancellation of the scheme's approval.

Warning letter, formal caution, prosecution – in addition to the above options on the approval of the scheme, the environment agencies could also consider enforcement action in the form of a warning letter, offering a formal caution or seeking to have the matter heard in court with the intention of securing a criminal conviction and fine.

Directly registered producers

Civil Sanctions – after the end of the compliance year, if a producer has failed to comply with their recovery and recycling obligations they could offer to the environment agencies an Enforcement Undertaking (EU) under Civil Sanction arrangements. Under this arrangement the offender would offer to provide funding into an environmental project which is equivalent to the costs they avoided through non-compliance plus an additional amount as a penalty.

Warning letter, formal caution, prosecution – The environment agencies are not obliged to accept an EU if offered, if they consider that an enforcement action would be more appropriate to deal with the non-compliance. Such enforcement actions could be in the form of a warning letter, offering a formal caution or seeking to have the matter heard in court with the intention of securing a criminal conviction and fine.