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OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT ENVIRONMENTAL PERMITTING
(ENGLAND AND WALES) (AMENDMENT)
REGULATIONS 2023

Tuesday 5 September 2023

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The Committee consisted of the following Members:

Chair: PHILIP DAVIES

Abrahams, Debbie (*Oldham East and Saddleworth*)
(Lab)

† Bailey, Shaun (*West Bromwich West*) (Con)

Byrne, Ian (*Liverpool, West Derby*) (Lab)

† Churchill, Jo (*Vice-Chamberlain of His Majesty's Household*)

† Glindon, Mary (*North Tyneside*) (Lab)

† Hudson, Dr Neil (*Penrith and The Border*) (Con)

† Loder, Chris (*West Dorset*) (Con)

† Mak, Alan (*Havant*) (Con)

† Maskell, Rachael (*York Central*) (Lab/Co-op)

† Mayhew, Jerome (*Broadland*) (Con)

† Nichols, Charlotte (*Warrington North*) (Lab)

Poulter, Dr Dan (*Central Suffolk and North Ipswich*)
(Con)

† Pow, Rebecca (*Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*)

Smith, Nick (*Blaenau Gwent*) (Lab)

† Throup, Maggie (*Erewash*) (Con)

† Warman, Matt (*Boston and Skegness*) (Con)

† Zeichner, Daniel (*Cambridge*) (Lab)

Luanne Middleton, *Committee Clerk*

† **attended the Committee**

Second Delegated Legislation Committee

Tuesday 5 September 2023

[PHILIP DAVIES *in the Chair*]

Draft Environmental Permitting (England and Wales) (Amendment) Regulations 2023

9.25 am

The Chair: Before I call the Minister, I would like to say that, as the eagle-eyed will have spotted, Members may remove their jackets.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I beg to move,

That the Committee has considered the draft Environmental Permitting (England and Wales) (Amendment) Regulations 2023.

It is a pleasure, as ever, to have you in the Chair, Mr Davies. The regulations were laid in draft before this House on 28 June and amend schedule 9, part 2, to the Environmental Permitting (England and Wales) Regulations 2016. The Government committed to amending those regulations in the response to the 2021 consultation on the extended producer responsibility for packaging, or EPR, scheme to obtain enhanced packaging waste data from materials facilities. The EPR scheme will move the cost of dealing with waste generated by households from local taxpayers and councils to businesses that handle and use packaging, making producers responsible for the packaging they place on the market.

In 2020, the Department for Environment, Food and Rural Affairs undertook a post-implementation review of schedule 9, part 2, to the Environmental Permitting (England and Wales) Regulations 2016. The review included a recommendation to explore the connections between materials facilities data reporting and the EPR scheme. In many cases, those facilities are where the material ends up. The review concluded that DEFRA would consider amending the regulations. These amendments will improve the quantity and quality of packaging waste data that materials facilities are required to collect, record and report. That in turn will support fair and accurate cost assessments and payments through the EPR scheme.

I turn to the details of this instrument. These amendments to the regulations will introduce enhanced sampling, recording and reporting requirements for materials facilities and increase the scope of the regulations to include more types of facilities. Materials facilities will be in scope of the amended regulations if they receive and manage at least 1,000 tonnes of household or household-type material a year for the purpose of reuse and recycling. The sampling requirements will include a higher input sampling frequency—in other words, sampling will be conducted more often—and more material categories for facilities to sample and report against. There will be an increase in the number of categories from four to 10, and new categories including a requirement to record data on fibre composites such

as Tetra Paks and coffee cups that have a layer of aluminium or plastic inside. Facilities will also need to separately record and report against packaging and deposit return scheme material proportions, to support packaging composition calculations or exemptions under EPR.

Rachael Maskell (York Central) (Lab/Co-op): It seems that these regulations are necessary, but I am concerned that the Government's approach will drive behaviour change far too slowly and that the scale of non-recyclable packaging usage will still have an impact on the environment. What is the Minister doing not only to recycle and to reuse, but to reduce the amount of packaging used?

Rebecca Pow: I share the hon. Lady's views entirely. That is the whole purpose of this: to drive the change we need to reduce the overall amount going on the market, because our hierarchy is reduce, reuse, recycle. The reason why the data is so important is that it helps to inform how much is in fact going on to the market; it will then be used by the scheme administrator, in setting up the extended producer responsibility scheme, to work out what the fees will be.

The less recyclable a company's product is, the more that company will pay—so it will say, “Hold on a minute. Could we make this recyclable?” Loads of companies are probably already reducing the amount of packaging that they use ahead of this system; they know that if they do not, it will cost them. All the schemes that we will be rolling out will work in tandem to achieve what the hon. Lady is asking for.

Charlotte Nichols (Warrington North) (Lab): To pick up on that point, the Minister referred to companies paying according to how much of their product is recycled. What consideration has she given to producers that already have closed loop recycling schemes in place? Wiltshire Farm Foods in my constituency is an example. It has a scheme that is more effective for recycling its own products than what the Government propose here.

Rebecca Pow: I thank the hon. Lady. I have met representatives of the company—as have many colleagues, I believe. It has a really interesting model. In fairness, it was ahead of the game in having effective closed loop models. We are working with it to come up with a solution for all. Obviously, we do not want to penalise people who are already doing the right thing.

The enhanced recording and reporting requirements will require materials facilities to provide more information on waste suppliers and samples taken, and to report all raw data to regulators to support the improved analysis. To give an example of that in practice, I should say that in my constituency of Taunton Deane the council contracts Suez, a waste management company, to perform our waste collection. When a Suez truck picks up household waste—I hope my son has put ours out this morning; I forgot to leave him a note—and delivers it to a materials facility for reuse and recycling, that facility will sample the waste so that we know how much is EPR packaging material and how much is newspapers, magazines, deposit return containers, contamination or other non-packaging materials. The waste collected by Suez from neighbouring councils, or from its own commercial contracts with business, would be sampled separately.

The process will help to ensure that the EPR payments to my local council reflect the quality and quantity of packaging materials collected from my constituents' homes. That will provide valuable new information to help my council to optimise waste collection operations, and, through EPR payments, to provide a new means to incentivise councils to improve performance and ensure that producers get good value for money.

These amending regulations apply to England and Wales only. Scotland and Northern Ireland are aligned to our policy intent when it comes to bringing in enhanced materials facility sampling requirements and waste data reporting to support EPR.

Rachael Maskell: I am very conscious that local authorities are tied into waste disposal contracts that will not deliver on the Minister's objectives. What is she doing to enable local authorities to renegotiate those contracts to meet these environmental standards?

Rebecca Pow: I thank the hon. Lady for that intervention. My officials have close and continuing engagement with local authorities. We understand that there are a whole lot of different models. We are engaging with local authorities on how they can work through the new systems to deliver what we need, without creating hardship for those authorities. Some councils are clearly tied into contracts, and all that is being worked through with them. However, as I said, the general direction of travel is to reduce, recycle and reuse and to get to our targets for cutting down the overall amount of waste that we create as a society.

As I was saying, these amending regulations apply to England and Wales only. Scotland and Northern Ireland are aligned with our policy intent to bring in the enhanced materials facility sampling requirements and the waste data reporting to support EPR. My officials and I are working closely with the relevant Departments in the devolved Administrations to develop that legislation. The measures will be crucial for providing a mechanism to obtain enhanced data on packaging and the waste management services needed to achieve the effective implementation of EPR, and realise the associated environmental benefits.

9.35 am

Daniel Zeichner (Cambridge) (Lab): It is a pleasure, as ever, to serve with you in the Chair, Mr Davies. Also as ever, I am grateful to the Minister for her introduction. When we have two sets of acronyms that are both EPR—environmental permitting regulations and extended producer responsibility—there is always a danger of getting slightly confused, so I am grateful for her introduction.

I first pay tribute to my hon. Friend the Member for Oldham West and Royton (Jim McMahon), who stood down yesterday as shadow Secretary of State, and welcome the new shadow Secretary of State, my hon. Friend the Member for Croydon North (Steve Reed). I know that the Minister and other Government Members will join me in sending good wishes to both of them.

I also bring to the Committee the apologies of my hon. Friend the Member for Newport West (Ruth Jones), who is away on parliamentary business today, so cannot attend this sitting as she normally would. I will not

detain Members for too long. Normally, I would start by reassuring the Whips as to whether we will support the SI—I can immediately reassure them that we will not be pressing this to a Division—but should say that the decision has been more difficult than usual. I will explain why.

We support the basic principles of what the Government are trying to do with the regulations. It is clearly important that we as a nation go as far as we can to avoid unnecessary waste and all the negative impact it creates for the environment and through costs to the consumer. We agree with the regulations: more data and information about the waste that we as a society generate will help us with our ultimate aim to protect the environment and minimise waste in all areas of our lives.

I have some concerns, however, about the details, which I will come to, and more widely. I think it is fair to say that it has perhaps not been a tremendously good summer for the Minister and her Secretary of State, whether because of poor water quality in our rivers, continuing poor air quality, the debacle about deposit return schemes, the chaos around nutrient neutrality or—specifically relating to the regulations—yet more delays on extended producer responsibility. Frankly, the Government's environment policies are in tatters, which makes it hard to support extra regulation for businesses in a scheme that I am not convinced the Government will ever be able to enact. I remain, however, an eternal optimist. Despite the shambles, let us hope a way forward can be found.

There are some issues of detail about the planning, implementation and costs associated with these proposals. I am not fully persuaded that they have been properly thought through. There is a lack of clarity about how the scheme will work; indeed, I have talked to stakeholders, and they seem perplexed at the lack of detail. Businesses need to be able to plan for the future, not left in the dark, worrying about how many additional staff they might need to recruit or how much they need to set aside to invest in new equipment. Certainly, the sense I get is that there has been insufficient consultation and engagement.

One of the key questions is understandably about cost. The Government claim that minimal costs will be incurred for the recycling facilities and other stakeholders by the additional regulatory burdens, including the requirement to conduct more sampling and report considerably more data. There has not been a full impact assessment, which would have provided a much clearer picture of precisely how the changes will affect recycling centres, food and drink producers, local authorities and, ultimately, consumers and taxpayers.

I find it extremely hard to believe that, in the first instance, materials facilities that recycle waste and have to comply with the additional regulation will not incur significant additional costs. I am told that one waste company claims that it will have to recruit an additional 80 staff to fulfil the testing requirements at new sites. Employing those 80 new staff alone will run to more than £1 million a year for just one company, and that is before the new equipment and reconfigurations are taken into account.

The Environmental Services Association has undertaken a detailed analysis of the logistical and financial impact of the additional obligations presented by this statutory instrument and has concluded that the costs would

[Daniel Zeichner]

significantly exceed the £2.65 million threshold for an impact assessment. The association noted that, in a quarter of cases, the SI 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.

An extensive survey of stakeholders that the association carried out found that just over half of all recycling facilities lack the space for the enhanced sampling requirements. Many, including waste transfer stations, will require reconfiguration and reduced throughput to accommodate the requirements. Those sites will also incur significant additional logistical challenges, such as additional staff traffic and a move to off-site sample analysis.

If that is the case, it seems that the implications have not been properly thought through. The Government have too readily dismissed the analysis of the Environmental Services Association. Can the Minister explain how she is so sure that the association is wrong, and the costs will not exceed the £2.65 million threshold required for a proper impact assessment? If she is wrong, will she carry out that assessment and think again? Why is she so reluctant to submit the policy to proper scrutiny?

The question is: who is going to end up paying for all this, either directly or indirectly? Will it be the facilities, manufacturers or local authorities, or will it ultimately be the consumers and council tax payers? I draw Members' attention to the Government's response to the question posed by the Green Alliance, which, for those with a sharp eye, can be found in the report from the Secondary Legislation Scrutiny Committee. The Government responded that they expect the costs will be covered by the extended producer responsibility disposal cost fees borne by the packaging producers and payable to local authorities. However, that was their answer when they were arguing that the costs were minimal. As I have argued, like many of the stakeholders in this sector and beyond, I am not convinced that they will be minimal. Therefore, I am concerned about the wider consequences. Can the Minister tell us who she thinks will bear those costs, and over what timescale? Can she also tell us what meetings have taken place between her Department and the sector? How often and when? I understand that she might not know today, but perhaps she could write to me.

In recent years, my hon. Friend the Member for Newport West has pressed the point about enforcement on a range of issues. There is a lack of clarity about how the new regime will be enforced, not least based on what happened when the original legislation was introduced. Will the Minister outline how much money her Department has allocated to enforcement? As we all know, there is no point introducing new rules unless they are going to be enforced. We can also see from the legislation that the proposals will have a limited impact on the resources sector as that is more aimed at the producers. I suspect that any impact will depend on the type of business and where it is in the value chain. Can the Minister outline what engagement she has had with producers and the producers sector?

Overshadowing all this is the wider extended producer responsibility regime. Will the Minister confirm that the Government remain committed to it? It is important,

because the "polluter pays" principle was once a driving principle of this Government. We agree, because for too long producers, brands and retailers have not had to take full accountability for the products they place on the market. I am sure the Minister agrees that EPR can be a crucial step towards a more sustainable resource management system.

We have a real opportunity to be world leaders abroad and innovators at home, but that requires boldness, ambition and commitment. I do not doubt the Minister's personal commitment, but it seems to many of us that the wider Government are on the run when it comes to environmental policy. We will not force the issue to a vote today, but the wider world knows the truth. The Government have lost the plot when it comes to the big environmental challenges that we face.

9.43 am

Rebecca Pow: I thank the shadow Minister. Although he is a stand-in, it is always good to see him. I also welcome the new shadow DEFRA Minister; I know we will be meeting very soon.

The shadow Minister suggested that it had been a bad summer for me, but in fact it has been a good summer. I went on my water walkabout around the country. Contrary to what one might read in the press, I saw an awful lot of excellent work going on in the water space, across a whole range of facilities, including a great many sewage treatment works, where I looked at the monitoring kit. I analysed in great detail how the whole system works, as well as the new schemes we are bringing forward to get duration monitoring, and extra monitoring upstream and downstream.

Similarly, I saw some of the excellent work going on with chalk stream restoration, particularly in the consistency of my hon. Friend the Member for Bury St Edmunds and other counties. It gave me great heart that what we are doing on chalk stream restoration in particular is game changing. We absolutely will be committed to that.

While we are talking about our record, let me say that, far from people overseas looking at us and thinking that we are downgrading what we are doing and that what we are doing is not good enough, we are actually revered across the world. I did go to see another piece of DEFRA work, which was overseas, that was working on waste recycling and ocean protection regarding plastics. I can tell hon. Members that the schemes that we are bringing in—the way they all knit together—and our collection system, from household to recycling facility and onwards, are really revered by other countries.

Yes, we still have a long way to go to knit this all together in a completely circular economy, but I will not allow the shadow Minister to berate us for what we are doing, because I know that it is the right thing to do. We will continue with it—we are absolutely committed to it, as he knows—and it will make the difference that we need; we are already well on track. That was slightly out of the box, but while we are at it, I will point out that 93% of bathing waters are good or excellent—I have seen a lot of that, too.

To answer the shadow Minister's questions, yes, there has been a great deal of local authority consultation. It has been ongoing with officials and ongoing with me. As I explained earlier, it is very important, and it will

continue. On the impact assessment, as I said earlier, as part of the Government response to the consultation on the EPR scheme, we produced an EPR impact assessment, which included the expected costs to materials facilities in meeting the proposed regulatory requirements. Assumptions about the estimated number of materials facilities in scope were then revised with regulators, following clarification on the definition and the types of facilities in scope of these amending regulations, further reducing the burden on facilities where possible. Originally, 739 facilities were estimated to be in scope in England. That was revised down to 159, following our receiving the updated data and the assumptions of the Environment Agency. As a result, the threshold required for producing a full impact assessment for this SI was not reached. The shadow Minister asked about that, so I hope that what I have said answers his question. A lot of the facilities that were in there were moved out, because they will be assessed in a different way—they are mostly the household recycling centres, where material goes to. That material will be captured, but in relation to what we are dealing with today, the facility numbers have been revised right down.

This will be a new recording requirement for local authorities, but they have known that it has been coming down the track, because we consulted a while ago, and it does not actually come in for 12 months, so they have more time to gear themselves up to it. They will also get their first invoices when all this data and other data has been used to calculate the expected fees—they will get their first invoices for EPR in October 2025.

Daniel Zeichner: On the costs, will the Minister clarify something? Many of these organisations seem to think that there will be a significant extra cost. Does she think they are wrong?

Rebecca Pow: Well, we carried out the impact assessment. One of the purposes of the entire scheme, when it is correctly functioning, is that the amount of waste going into the system will overall be reduced. Of course, that is why we are asking the organisations to collect data, for example on what later will be in the deposit return scheme. Most of that will not be in this waste once this gets working properly. A lot of it will not even be there. It will, just to start with, and that is why gathering the data is so important, because the whole system will be functioning as one, so that the costs will not be prohibitive, according to our calculations and working with them, when they have to start doing this extra sampling.

The shadow Minister also asked about enforcement. The EA is already starting work with the permitted facilities to talk to them about what is expected of them, what they will have to do, and how they will bring that in. I hope that answers his question; we can write to him with more detail on the funding if he would like.

We are also constantly working with the producers. They are the ones who put the packaging on the market and they will be the ones who have to pay the fees. That is why, as the hon. Gentleman will know, we moved the date for the start of the EPR, which, along with current impacts around the cost of living and inflation, was largely to give industry members more time. Work with them is ongoing to make sure we get this right. It is new and complicated, but I am engaged with the Food and Drink Federation, the British Retail Consortium and so on, as are my officials. That is important.

That covers the questions. The shadow Minister asked about the overall schemes for the circular economy and the “polluter pays” principle. All the schemes are linked to the whole “polluter pays” principle, and that is what underpins them. Although there have been some delays, we are still doing all the work to make sure they are introduced within the timescales we have set. We are looking all the time at feedback from industry, hence the delay on the EPR scheme by 12 months, and I also remind the shadow Minister that it was a joint decision with the devolved Administrations. The additional year gives everyone more time to prepare for the systems when they come in. The materials facilities will need to meet the requirements introduced by this statutory instrument in advance of the EPR in 2025. We want all those requirements implemented before then to ensure that the data can be used by the scheme administrator, as I said earlier, to continue developing their fees and payment mechanisms.

Consistent collections in England for households will introduce a simpler system for recycling waste material. That will not be introduced until after the implementation of the EPR for packaging scheme in 2025. Councils are still waiting for the absolute detail on that, and that is why we are working with them to make sure that everything is streamlined and they know what will be required. I hope I have covered most, if not all, of the shadow Minister’s questions. I will write to him about the detail of the sums.

In summary, this statutory instrument will make crucial changes to the Environmental Permitting (England and Wales) Regulations 2016. Those amendments will introduce a new sampling requirement on materials facilities and bring more facilities in scope. That in turn will enhance the quality and quantity of waste data, strengthening the original objective of the regulations in response to the post-implementation review, and support fair and accurate payment calculations in the EPR scheme. I trust that I have made it clear about what the SI brings in; once again, I thank all hon. Members.

Question put and agreed to.

9.53 am

Committee rose.

