



## Plastic related consultations

Despite Brexit Government continues to focus on plastic waste

---

One could be forgiven for thinking the UK Government had put its other legislative plans on hold as it seeks to deliver Brexit, but this is not the case.

In February we saw the launch of a number of parallel consultations all designed to tackle plastic, in one form or another. The focus on plastic particularly in relation to packaging throws up a number of challenges for business, not least potential increases in cost at a time when many believe the economy is slowing. For others though getting ahead of the game may boost your brand.

The four consultations cover the following areas:



## Plastic Packaging Tax

It was announced in the October 2018 budget that the UK would introduce a world leading new tax on plastic packaging that does not include a certain level of recycled material with effect from 2022. The aim behind this legislation is to encourage businesses to use more recycled material within the plastic packaging they produce. This should generate greater demand for recycled plastic which will stimulate increased levels of collection of plastic waste.

The Government is consulting on:

- defining products within the scope of the tax (it is envisaged that all plastic packaging manufactured in the UK and unfilled plastic packaging that is imported into the UK will be covered by the tax including that which is compostable or biodegradable)
- the threshold for the recycled plastic content (30% is the proposal)
- the tax rate
- when the tax will be charged and who will pay
- how to minimise the administrative burdens ie whether small operators should be excluded

The Consultation closes on 12 May 2019, the other consultations mentioned below all close on the 13 May 2019.



## Deposit Return Scheme

Over the last 12 months there has been a sea change in the public attitude to tackling plastic waste. UK consumers go through an estimated 14 billion plastic drinks bottles, 9 billion drinks cans and 5 billion glass bottles a year. Despite plastic bottles being recyclable recent evidence suggests there is still some way to go, particularly in relation to drinks consumed “on the go”.

In response the Government is also consulting on the introduction of a Deposit Return Scheme (“**DRS**”) in England, Wales and Northern Ireland. Scotland has already consulted on a similar scheme.

The DRS would see a deposit added to the price of the bottled drink/can when it is bought, a customer would return the bottle/can to the system (not necessarily to the place of purchase) to get his/her money back. It is envisaged the DRS would cover plastic bottles, glass bottles and cans. Soft drinks including water and alcoholic drinks would be covered amongst other things.

All producers of beverages covered by the DRS would be required to join the scheme and to meet high collection rates. A new body, a Deposit Management Organisation will be set up to run the scheme funded by the producers and revenue generated from selling the collected items to recycling facilities.

The consultation is also considering whether all drinks containers should be included whatever their size or whether the DRS should be restricted to those less than 750ml ie “on the go” size.

An alternative to introducing a DRS would be for all drinks containers to be dealt with under a reformed producer responsibility scheme (see below). A key concern for producers will be to ensure they only pay once and there is no “double counting” between the two schemes should they both be introduced.



## Consultation on Reforming the UK Packaging Producer Responsibility System

This is a wide ranging consultation covering the whole gambit of the current packaging waste scheme. Key elements include how best to reduce unnecessary and difficult to recycle packaging. The Consultation also proposes that the full net costs of managing packaging waste are placed on those using packaging. Government calculates that producers currently fund under 10% of the true cost of dealing with their packaging waste. The rest of the cost is met by Local Authorities and businesses who consume packaged goods. Subject to the results of the Consultation the intention is that net costs will include the cost of collection, recycling, disposal and clear up of littered and fly tipped packaging.

To incentivise better packaging design choices additional fees are contemplated where packaging which can't be recycled or is harder to recycle continues to be placed on the market. Alternatively a deposit fee may be charged with producers being able to get all /part of this back if they can show the material has been recycled. Both alternatives are premised around an approved list of recyclable packaging materials.

At present a number of people in the supply chain share responsibility for packaging waste - the producer, the convertor, the packer/filler and the seller of packaged goods. The consultation contemplates two alternatives:

- a single point of compliance - 100% of the compliance obligation is placed on a single business, ie the business that has the most influence over the packaging design and use of materials. This is the Government's preferred option and possible parties being considered for this role are the brand owner or the seller.
- retaining shared responsibility but either lowering or removing the de-minimis or retaining the de-minimis but extending the obligations to distributors who sell on to non obligated businesses.

As a consequence of the rise in online distance selling the consultation contemplates creating a new class of producer - operators of online market places who would be responsible for the packaging on all products sold through their platform/website that are imported in to the UK.

Single use drinking cups are being considered although the preference appears to be for business to continue to develop take back arrangements on a voluntary basis, rather than to bring these items within the DRS or the revised producer responsibility scheme immediately.

Interestingly despite Brexit the Government remains committed to setting ambitious new packaging waste recycling targets which meet or exceed EU targets.

The role of compliance schemes is also considered including whether to:

- retain a scheme closely based on the current system;
- move to a single not for profit scheme;
- have separate schemes for household and non household materials; or
- to move to some form of deposit based scheme managed by the Government.

Furthermore enhanced labelling requirements are being considered so that it is clear whether packaging is recyclable or not and whether it falls within the scope of any DRS.





## Consultation on household and business recycling collections

Finally, as a response to general consumer confusion around what can be recycled in which parts of the country the Government is consulting on proposals for all waste collection authorities to collect the same core set of dry recyclable material from households and on how to achieve greater separation of dry materials in collections, (amongst other things).



## Next step

Taken together the above represents a serious attempt to make game changing steps in relation to producer responsibility and the impact of packaging, in particular plastic packaging on the environment.

Those making packaging or using packaging should review the consultation in detail and consider responding.

## For further information, please contact:



**Jane Southworth**  
*Legal Director*

**T:** +44 161 831 8195  
**M:** +44 778 937 5581  
janesouthworth@  
eversheds-sutherland.com

**[eversheds-sutherland.com](http://eversheds-sutherland.com)**

© Eversheds Sutherland 2019. All rights reserved.  
Eversheds Sutherland (International) LLP is part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit [www.eversheds-sutherland.com](http://www.eversheds-sutherland.com).  
MAN\_002\8662849\2