



**INCPEN response to
Scottish Government consultation on
Potential Legislative Measures to Implement Zero Waste**

INCPEN

INCPEN was established in 1974 to study the environmental and social impacts of packaging. Research includes:

- *Detailed assessment of the environmental impact of UK households, 2000*
- *Multi-stakeholder initiative in 1999 with consumer and environmental NGOs, local government to produce an Action Plan on packaging*
- *2-year study of the environmental impact of the UK Food Supply Chain 1996*
- *Independent study by the UK Centre for Economic and Environmental Development on “over-packaging”*
- *Life cycle analyses since the late 1970s*
- *The first analysis in the UK of the composition of municipal solid waste to identify the packaging fraction in 1980, jointly with Merseyside County Council*
- *Supporting and part-funding the National Household Waste Analysis Programme until it was discontinued in 1992*
- *Providing industry funding for Friends of the Earth’s first Recycling City project in Sheffield in the 1980s*
- *Part-funding a European Commission project analysing the composition of waste separated for recycling and residual household waste in 6 European countries.*

We support the objective of making optimum use of resources, increasing recycling and promoting good wastes management.

The following are INCPEN’s responses to the specific questions that relate to packaging in the consultation paper.

PROPOSAL 1: DUTIES ON PUBLIC BODIES AND BUSINESSES TO PROVIDE RECYCLING FACILITIES

This is in principle a good proposal, and preferable to the two possible alternatives put forward. The paper proposes “a voluntary Code of Practice on recycling outwith the home”. This would produce patchy results, as would limiting mandatory recycling facilities to certain materials at certain places (e.g. large retailers to have recycling facilities for plastic bags).

A universal obligation related to set criteria would cover both private sector and public sector operations, and would ensure a level playing-field.

We have however two concerns:

- The suggestion that the regulations should “specify which materials should be collected and whether facilities should be made available including, for example, any facilities that might be required to remove excess packaging in larger stores.” is not practical and is unlikely to have any useful effect.

A legal obligation on retailers to allow consumers to remove packaging in-store has been tried in Germany, but ¹a study for the European Commission by Perchards reported that this facility is no longer provided (store checks in 65 outlets in four German cities). The space requirement and handling costs would be disproportionate to any benefit in reducing “excess packaging” – which is better addressed through proper enforcement of the Essential Requirements Regulations.

- The consultation paper says that local authorities would “probably” be responsible for enforcement – but who would be responsible for enforcing an obligation for recycling facilities to be provided on local authority sites?

PROPOSAL 2: PACKAGING

Statutory reduction targets

Statutory packaging reduction targets would be far too inflexible. The Courtauld Commitment, a voluntary agreement, is already focusing retailers’ attention on packaging minimisation, but it would be unfair to make this a legal obligation when so many economic and social variables influence packaging decisions.

The overall demand for packaging is linked to the demand for packaged goods, and this is largely dependent on the state of the economy and demographics.

Targets relating to the amount of packaging placed on the market per unit of output (by weight, volume or sales value?) would also be problematic:

- The product mix is constantly evolving, and some products require more packaging than others.
- There are trade-offs to be made between minimising packaging waste and food waste/ product damage. Companies continue to innovate to bring about improvements in this area, but the optimal environmental outcome may sometimes involve the use of more packaging.
- There can also be a choice between using minimal packaging which is effectively unrecyclable (either for technical or economic reasons), or using a greater quantity of recyclable material. These decisions need to be made on a case-by-case basis, taking full account of fitness for purpose, cost and environmental considerations.

It may be true, as the consultation paper states that the Essential Requirements Regulations are largely seen as ineffective, but this is because they have not been properly understood. It is often asserted that it is difficult to demonstrate proof of conformity or non-conformity, but the “consumer acceptability” defence has never been tested.

If a company claims that consumer acceptability is the critical factor that prevents further minimisation, the enforcement authorities should ask for proof – market research results, or the findings from benchmarking exercises (if a competitor changed his packaging, what effect did that have in the market-place?).

The consultation paper notes that there have only been four prosecutions under these Regulations across the UK, none of them in Scotland, but is this a valid measure of success? Do we judge the success of the drink-driving laws by the number of convictions?

¹ Study on the progress of the implementation and impact of Directive 94/62/EC on the functioning of the internal market http://ec.europa.eu/enterprise/environment/reports_studies/index.htm

It is noteworthy that all four defendants pleaded guilty, so a successful prosecution is by no means impossible.

However, a study carried out by Perchards for the Department of Trade and Industry in 2003 – Impacts of the Packaging (Essential Requirements) Regulations: A Brief Survey – found that the main effect of the Regulations is to “provide those responsible for legal compliance or environment policy with a concrete obligation which can be and is used to improve their negotiating position with their colleagues in sales and marketing” and to encourage systematic assessment of packaging designs to ensure that weight and volume are minimised to the maximum extent practicable.

INCPEN support

INCPEN is currently sponsoring and helping LACORS provide training on the Essential Requirements for regional groups of Trading Standards Officers. We would be pleased to offer the same to the Scottish enforcement agency and make the INCPEN presentation available.

INCPEN has also produced a ²Guide to Packaging Eco-design with Envirowise to help companies design better packaging in terms of both the Essential Requirements Regulations and the broader environmental agenda, including energy use.

Excessive packaging

The consultation paper comments that “many consumers consider” that packaging can be excessive, particularly for products such as Easter eggs and certain types of electronic equipment.

However, consumers are not able to judge the amount of packaging required to protect fragile, high-value products during the distribution phase (or, indeed, the protection needed by the vast majority of products).

The amount of packaging which is appropriate for gift packaging is a matter of opinion. Manufacturers can best judge what is considered acceptable or desirable by reference to their sales figures and market shares, and they will always reconsider if their products are rejected in the marketplace.

If individual consumers believe that they have cause for complaint under the Packaging (Essential Requirements) Regulations, they can complain to their local trading standards department through Consumer Direct. Maybe the Scottish Government could publicise this opportunity, which is probably not well known.

Producer responsibility regulations

The consultation paper comments that firms have been able to meet their obligations by concentrating on “back of store” packaging waste rather than “front of store” waste, where the resulting cost for treatment (in reality, the collection cost) is in effect borne by local authorities as part of their waste management responsibilities.

To a large extent producers have been able to meet their obligations through the collection and recycling of business-to-business packaging, though this should not be overstated. Glass, for example, arises predominantly in household waste and this is widely collected for recycling. As the targets rise, there has to be an increasing focus on household packaging. This is already happening – it was at INCPEN’s initiative that discussions started which led to the formation of the Packaging Recycling Action Group (PRAG), a multi-stakeholder network, including local authorities, which is working on ways of stimulating the collection of household packaging.

² <http://www.incpen.org/pages/data/PackGuide%20a%20guide%20to%20packaging%20ecodesign.pdf>

The consultation paper says that it is claimed that recovery and recycling obligations do not in practice act as an incentive to reduce waste by designing out unnecessary packaging. This may be true. However, there are other important economic drivers which do have this effect:

- Procurement costs have always been a key issue, and are becoming even more important as raw material and energy prices rise.
- The heavier or bulkier the packaging, the higher the fuel cost per mile and the greater the number of vehicle movements that will be required. Fuel costs will also continue to rise.

Any attempts to artificially increase costs through government intervention would risk political unpopularity by driving up the cost of living, and would in any case be far less effective than market forces as a mechanism to reduce packaging waste.

PROPOSAL 3 : SPECIFYING RECYCLATE

At EU level there are already a number of public procurement standards and guides that include minimum recycled content requirements for packaging. These are inconsistent with each other, and are arbitrary in that they are not based on scientific research.

In reality, closed-loop recycling may not be the best option – many applications require a certain amount of virgin material in order to meet performance requirements.

Recycled material has long been used in packaging where it makes economic sense, and rising raw material prices will tilt the economic balance further in this direction. In any case, producers have already responded to public demand by developing technologies that enable them to incorporate recyclate in their packaging where it was not previously possible – in PET bottles, for example.

Therefore, we do not believe that there is a case for specifying the recycled content of packaging.

PROPOSAL 5: DEPOSIT AND RETURN

There are two studies done for the European Commission that cover the details of deposit systems.

Study on the progress of the implementation and impact of Directive 94/62/EC on the functioning of the internal market http://ec.europa.eu/enterprise/environment/reports_studies/index.htm

Study on factual implementation of a nationwide deposit system in Germany after 1 May 2006, downloadable from
http://ec.europa.eu/enterprise/environment/reports_studies/studies/report_packaging_direct.pdf

Denmark compared with Scotland

The return rate for refillables in Denmark was 104% in 2007, which suggests that more bottles were returned than were sold! This is partly due to cross-border purchases by Danish consumers and partly because the market for refillables is declining (92% in 2004, 78% in 2006), so the number coming back exceeds the number of bottles being filled. A more relevant indicator is the 85% collection rate for non-refillables –Denmark had no non-refillables before 2002, so consumers were used to taking their empties back to the store.

Refillable bottles have “largely disappeared from Scotland”, and once the habit of returning used containers to the store has been lost, it is very difficult to re-establish it. Thus, the Danish system, which is the only mandatory deposit system that handles both refillables and non-refillables, is not particularly relevant to Scotland.

Other countries

There are beverage container deposit systems for non-refillables in six European countries, eleven North American states, eight Canadian provinces and South Australia. Hawaii is the only one of these jurisdictions to have introduced a deposit law after refillables had disappeared from the market.

In Hawaii, the return arrangements have as much as possible in common with conventional 'bring' collection systems for recycling. Kerbside collection in Hawaii is still in its infancy. The return rate for non-refillables in Scotland would be closer to Hawaii's 68% than to the 80%-85% achieved in the Nordic countries.

According to the latest data supplied by member states to the Commission, for 2005, Germany is the only EU 'deposit state' to have achieved a higher overall recycling rate for all packaging than the EU-15 average, and Germany's recycling rate has fallen since deposits were introduced in 2003.

The UK and Ireland had a higher recycling rate for packaging waste than deposit states Denmark, Finland and Sweden, countries normally regarded as more environment-conscious than ours.

Deposits improve the recycling rate for beverage containers, but the added cost and complication of operating two parallel systems means that overall recycling rates are lower.

To be effective, we believe that a Scottish system would need a high deposit rate (at least 20p and maybe more), otherwise people will simply use the existing kerbside or 'bring' systems which are more convenient. It would also involve high admin costs (see below). Thus two collection systems would be run in competition, neither having full economies of scale and both having high admin costs which would be passed on to consumers.

To avoid double payment, deposit-bearing containers would have to be exempted from the producer responsibility system, but many would be collected along with non-beverage packaging. Would reprocessors issue PRNs on them, or would they be identified and sorted to avoid this?

Deposits place an artificial value on empty containers. The higher the deposit rate, the greater the incentive for fraud. If a deposit law was introduced in Scotland but not in the rest of the UK, there would have to be special bar-codes and security labels to prevent people from claiming back deposits that had never been charged. (All deposit systems operating in countries neighbouring a non-deposit country have problems with cross-border shopping by consumers and grey imports of non-deposit drinks by small operators.)

A high deposit increases the need for a clearing arrangement to avoid individual drinks operators either gaining or losing significant amounts from imbalances between the amount of deposits charged and the amount paid back to consumers (people don't necessarily return their empties to the shop where they bought them). It is also important that consumers can return empties anywhere if the highest possible return rate is to be achieved.

All voluntary deposit systems are for refillables. Where refillables still survive in the take-home trade, their market share is declining fast, even in countries where the law or tax system has protected them. Deposit systems for non-refillables operate only where there is a legal obligation for industry to do so.

The Scottish Government envisages a system in which the retailer initiates the deposit. This would be unique - normally the filler or importer (i.e. the operator that first places the drinks on the market) first charges the deposit, and it is passed along through the supply chain to the consumer, as in a deposit refill system. Retailers initiate the deposit for their "own brand" drinks.

The implication of the Scottish proposal is that each individual convenience store would be responsible for charging the deposit for the drinks that it sells, and for handling all the admin needed to reconcile deposits charged and deposits refunded.

Litter

A statutory deposit and return scheme might help reduce litter, as there would be a financial incentive to return the container to the retailer but beverage containers are only a small part of litter, and a comprehensive effort aimed at all littering would be more cost-effective.

Through intensive provision of 'bring' facilities for on-the-go consumption, Switzerland achieved a recycling rate of 76% for PET and 90% for aluminium in 2006 – and without the overheads and admin complications associated with a deposit system.

Operation of a deposit system

If Scotland wanted to introduce a deposit, it would have to set out precise obligations on market operators and governing the system. The disastrous experience in Germany (which had to amend its deposit requirements after the Commission successfully challenged them in the European Court of Justice) shows the problems that can arise when a deposit arrangement is not properly thought out and appropriate legal obligations are not in place.

It seems that drinks producers and retailers would have to incur a great deal of additional cost in setting up and running a deposit system, but would not be allowed to keep unredeemed deposits to defray these costs as they would be confiscated by the Government and used to fund the collection of both beverage and non-beverage packaging. Is this equitable?