

APPROVAL FOR

REPAK LIMITED

TO ACT AS A

PACKAGING COMPLIANCE SCHEME

UNDER THE EUROPEAN UNION (PACKAGING)
REGULATIONS, 2014.

(Approval extended to 31 December 2020)

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1. Purpose.

This approval sets out the terms and conditions under which Repak is approved as a packaging waste recovery and recycling scheme in accordance with their application to this Department.

The purpose of this approval is to ensure clear service ownership, accountability and responsibilities of Repak Limited (hereafter Repak) with a view to ensuring that Repak is discharging its statutory functions in an efficient and effective manner.

2. Corporate Governance.

Repak shall accept the provisions of the Code of Corporate Governance (see appendix 1) and the code shall immediately be adopted by Repak. Repak recognises that the Code is subject to modification by the Department in accordance with best practice and Repak undertakes (i) to make any immediate amendments necessary to its Memorandum and Articles of Association and (ii) to make such further amendments to its Memorandum and Articles of Association as may be necessary in the future if the Code is modified or updated by the Department. Changes to Repak's Memorandum and Articles of Association should be completed within 60 days of notification by this Department.

Repak in preparing the report outlined at Section 3 below shall include, in line with best international practice for not for profit companies, details of the Directors' and Chief Executive total remuneration and benefits, together with details of the attendance record of Directors at Board and sub-committee meetings level.

The Directors shall exercise full and effective control over the activities of Repak. The Directors, in conjunction with the Chief Executive, shall set, implement and review the strategic objectives of the company and shall monitor executive management and performance.

The Chairperson of the Board shall keep the Minister advised on matters of significance arising in respect of Repak, and shall brief the members on the functioning of the Scheme on an annual basis. The Chief Executive shall keep the Department and members advised on all matters relating to the performance of the company as set out in Section 22.

Any proposed changes to Repak's Articles of Association shall be submitted to the Department for approval. Repak shall have full regard to the Department's views on any proposed changes.

3. Reporting.

Repak shall, not later than 31st May in each year following the granting of this approval, submit to the Minister for the Environment, Community and Local Government: -

- a report specifying the steps taken by Repak in pursuance of the aforementioned packaging scheme in the preceding calendar year, and the results of those steps, and
- a copy of the full accounts of Repak in respect of the preceding calendar year.

Repak shall make this report available to their members and on their website.

4. Target Achievement.

(i) National and EU Targets.

Notwithstanding the aggregate weight of packaging waste that may be accepted or collected for the purposes of recovery and recycling by major producers acting in accordance with their obligations under article 11 of the European Union (Packaging) Regulations 2014, Repak shall be responsible for the achievement of -

- (a) a minimum recovery target of 75% of the aggregate weight of packaging placed on the market in Ireland, in tandem with,
- (b) a minimum recycling target of 65% of the aggregate weight of packaging placed on the market in Ireland, as well as the following material-specific recycling targets,
 - (i) 75% by aggregate weight for glass packaging placed on the market in Ireland,
 - (ii) 80% by aggregate weight for paper and board packaging placed on the market in Ireland,
 - (iii) 65% by aggregate weight for metallic packaging placed on the market in Ireland,
 - (iv) 40% by aggregate weight for plastics packaging placed on the market in Ireland, and
 - (v) 85% by aggregate weight for wood packaging placed on the market in Ireland

by a date no later than 31st December 2016 and in each year thereafter to which this approval applies.

Repak must, when using specific reprocessing sites outside the European Union, confirm that the requirements of Article 6(2) of Directive 94/62/EC, as amended by Directive 2004/12/EC have been met in respect of each site.

Repak must work with the Environmental Protection Agency (EPA) to ensure the collection and reporting of robust packaging statistics to the European Commission in fulfilment of our requirements under Articles 12 and 17 of the Packaging Directive 94/62/EC, as amended by Directive 2004/12/EC.

Furthermore, the Commission has recently highlighted that it has a responsibility to check the reliability of waste statistical returns submitted by Member States and that Member States equally have the obligation to apply the waste calculation methodology correctly. In this regard, Article 2(2) of Decision 2011/753/EU on Calculation methodology sets out the level of rigour that must be applied to the statistical calculations as follows:-

2. For the purposes of verifying compliance with the targets set in Article 11(2) of Directive 2008/98/EC, the following rules shall apply:

(2) The weight of the waste prepared for reuse, recycled or materially recovered shall be determined by calculating the input waste used in the preparation for reuse or the final recycling or other final material recovery processes. A preparatory operation prior to the submission of the waste to a recovery or disposal operation is not a final recycling or other final material recovery operation. Where waste is collected separately or the output of a sorting plant is sent to recycling or other material recovery processes without significant losses, that waste may be considered the weight of the waste which is prepared for reuse, recycled or has undergone other material recovery.

It should also be noted that the requirements of Article 2(2) of Decision 2011/753/EU are entirely consistent with the requirements of Commission Decision 270 of 2005 establishing the formats relating to the database system pursuant to Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste. Article 5.2 states the following:-

“The weight of recovered or recycled packaging waste shall, as far as is practical, exclude non-packaging materials collected together with the packaging waste.

Corrections shall be made to the data relating to the weight of recovered or recycled packaging waste, if non-packaging materials in the waste sent to an effective recovery or recycling process risk leading to substantial over- or underestimates of packaging recovery or recycling rates.

No corrections shall be made in the case of small amounts of non-packaging materials, or for such contamination as can regularly be found in packaging waste.

Significant corrections shall be reported in the descriptions regarding the data compilation, provided for in the fourth paragraph of Article 7.”

5. Enforcement.

A strong, effective enforcement regime is essential to ensure high levels of compliance and target achievement. While Repak is responsible for target achievement it does not have direct responsibility for enforcement of the Packaging Regulations. This lies with other bodies such as the local authorities, the Office of Environmental Enforcement and the Department of the Environment, Community and Local Government.

Repak will support (both financially and through the provision of expertise and industry knowledge) the efforts of the Department in the implementation of the enforcement recommendations of the PRI Review; specifically the establishment of a dedicated PRI enforcement unit and centre of excellence in line with the roll-out of new regional enforcement structures facilitating the concentration of specialised expertise at national and regional level. Enhanced cooperation between Repak and the Department on enforcement will ensure greater transparency, unity of purpose and concentration of effort in overcoming future challenges in achieving ambitious environmental targets. Repak in preparing the report outlined at Section 3 shall include details of the expenditure and measures taken by the Company to support enforcement.

6. Awareness Raising and Communications.

Repak in accordance with its Strategic Plan 2014 – 2018 shall operate a programme of national and sectoral educational and awareness raising activities. This awareness raising and communications campaign shall operate across all existing and emerging media platforms. Repak shall keep these campaigns under review and carry out internal analysis of the campaigns to ensure their impact and success. In carrying out this activity, Repak shall be aware of its obligation to co-operate with other compliance schemes as set out at Section 11 below. Repak shall provide this Department will an annual report on these activities; including details of the total spend on each activity, as part of the report outlined in Section 3 above.

7. Membership Interaction.

Repak in preparing the report outlined at Section 3 shall include details of its interaction with members in each year during this approval. The report shall outline the number of meetings held, including Annual General Meetings, newsletters issued, membership surveys, events, etc. as referred to in Section 9 below.

8. Cost Control.

Repak in preparing the report outlined at Section 3 shall include details of the measures taken by the Company, in accordance with its Strategic Plan, to ensure that costs are kept to a minimum. The report should include details of any reduction in direct recycling costs and the level of fees paid by members as referred to in Section 9 below.

9. Success Factors.

In terms of considering a re-approval application from Repak (See Section 25), this Department will have regard to the following criteria to measure the success of Repak during the period of its approval:-

- The administration of the packaging scheme in accordance with this approval,
- The achievement of the targets set out at 4 above,
- The level of member satisfaction,
- Details on interaction with members,
- Reduction in direct recycling costs
- Level of fees & costs paid vis-a-vis other similar EU packaging schemes,
- Repak being in full compliance with all necessary filings with all applicable registries including, but not limited to, the Companies Registration Office and the Revenue Commissioners.

10. Contingency Reserve Fund.

The purpose of the Contingency Reserve Fund is to ensure the availability to Repak members of sufficient resources for the continued delivery of the Scheme in the event of notice to terminate approval by the Department as in Section 20. The Fund should be sufficient to cover the direct operating costs of Repak for a period of one year from the date of notice and should be built up to a contingency reserve fund of €20m in line with Repak's Strategic Plan over the period of this approval. Repak is not permitted to access the fund to cover its day to day operations. The contingency fund should be ring-fenced from the day-to-day financial requirements of Repak, and the Fund should be held by Repak in trust for its members. The Fund can only be accessed by Repak in exceptional circumstance and only by agreement with Department.

The circumstances in which the Fund may be accessed are as follows:-

- In the event of the Scheme being wound down.
- Reaching recovery & recycling activity in excess of 853k tonnes per annum.
- The loss of major members in any one year.
- Commodity market shocks.

The latter three circumstances will have a cap of €5m in total over the life of the approval should such circumstance arises for access to the Fund.

It will constitute a breach of the approval for Repak to withdraw any amount from the Fund in circumstances other than those listed above and without the prior consent of this Department. Where drawdown of the Fund occurs, Repak shall rebuild the fund to the agreed level of €20m.

11. Co-operation.

Repak shall cooperate with compliance schemes across the various waste streams where this would be of benefit (for example in the co-funding of a public awareness programme which could apply to a number of streams).

Repak shall continue to work with other Agencies operating in a similar environment to identify areas where better collaboration and cooperation will yield efficiencies in the areas of reducing the administrative burden and eliminating any unnecessary duplication in areas such as data collection, analysis, reporting and sharing.

12. Regulatory Affairs.

Repak shall keep updated on relevant regulatory developments at a national and EU level. The company should be in a position to assist, advise and contribute to the development of Ireland's position on such regulatory matters. In particular Repak shall be mindful of and, if appropriate, participate in the debate on future developments regarding the Circular Economy Package and Extended Producer Responsibility currently taking place at EU level.

13. Provision of Information.

Repak shall furnish the Department with full audited accounts annually and respond to any such explanations that might be required. Repak shall make available to this Department any and such information which might be required, including information requested at short notice, in order to support our role in the democratic process. This information may be in addition to the report required at Section 3 above.

14. Confidentiality.

The Department of the Environment, Community and Local Government is subject to the Freedom of Information Acts (1997, 2003 and 2014) and the Access to Information on the Environment Regulations 2007 – 2011.

The principles and objectives underpinning the requirements for greater levels of reporting, transparency and information can be found in the Aarhus Convention, which was ratified by Ireland on 12 June 2012, and the EC (Access to Information on the Environment) Regulations 2007-2011.

In line with the provisions of the Aarhus Convention, Repak shall make information available on its website

In considering a request under these Regulations, the Department, if it does not hold the information requested, may direct the requestor to Repak.

The Department shall endeavour to ensure that the confidentiality of specific records provided by Repak to this Department is maintained consistent with our legislative obligations.

15. Risk and issue management.

Repak shall ensure it has an effective risk management system in place including the regular updating of corporate and office level risk registers. The risk mitigating measures will include disaster recovery and business continuity planning.

The Department and Repak shall adopt a ‘no surprises’ approach to areas of common concern.

Repak shall, without undue delay, notify the Department of any material developments that will have an impact on the ability of Repak to deliver on its legal and regulatory obligations and to carry out its functions effectively, and of issues with wider financial or reputational implications for the State. This also applies to developments that will have an impact on the compliance of the service with the applicable laws and regulatory requirements.

Similarly, the Department shall, without undue delay, inform Repak of any material changes or issues that would affect the ability of Repak to perform and resource its functions.

16. Green Procurement.

Repak shall adopt policies that are committed to environmental best practice in the procurement of goods and services (see www.greenpublicprocurement.ie) and shall accordingly introduce measures to promote green procurement, within Repak as an entity in itself in 2015 and within its member organisations in 2016 and 2017, so that the environmental impacts of its products and services are minimised where practicable.

17. Prevention and Minimisation

Repak shall continue its programme of prevention, minimisation and reuse of members’ packaging waste in accordance with its Strategic Plan. Repak in preparing the report outlined at Section 3 shall include details of the prevention and minimisation measures taken by the Company.

18. Policy Direction.

Repak will adopt policy directions in relation to packaging waste issued by the Minister for the Environment, Community and Local Government as and when these directions are issued.

19. Disputes.

Both this Department and Repak shall seek to resolve any disputes between them, arising out of or relating in any way to the issues covered by this approval, at the appropriate level. The Department and Repak may also agree a protocol for dispute resolution during the period of the approval.

20. Notice terms and conditions.

The Department shall have the ability to terminate the approval granted to Repak in the event of any of the following occurrences:-

- if an order is made or an effective resolution is passed or a petition is presented for the winding up of Repak;
- if a receiver, examiner, administrator or liquidator is appointed over any of the property or assets of Repak;
- if Repak commits any material breach of this approval (including but not limited to defaults in provision of the Services) which, if capable of remedy, shall not have been remedied within an agreed or reasonable timeframe after written notification thereof has been served on Repak;
- if a distress or execution order is levied or served upon any of the property or assets of Repak and is not paid off within thirty days;

- if Repak shall cease or threaten to cease to carry on all or a substantial part of the day to day compliance scheme operations as outlined in Section 1 above;
- if Repak is in breach of any of the material provisions of this approval;
- if Repak is in breach of any material provision of the Companies Acts or other applicable legislative provisions; and
- if any other material event occurs which the Department in its absolute discretion considers might or does adversely affect the ability of Repak to comply with its obligations under this approval.

The Department will provide Repak with 180 days' notice in the event of a decision being taken to terminate Repak's approval.

If Repak wishes to cease to provide the services it has been approved to provide, the Department of the Environment, Community and Local Government must be informed, in writing, 180 days in advance of this cessation.

21. Corrective Actions.

In the event that Repak breaches certain material conditions of this approval or where it is agreed that target attainment is at risk, a range of corrective actions may be considered by this Department. Such actions that might be considered include:-

- increased spending by Repak on education and awareness,
- use subsidy rates to reduced levels of contamination,
- additional training for key personnel and directors, and
- the assignment of additional personnel/resources by Repak.

22. Interface.

The contact person in the Department of the Environment, Community and Local Government dealing with all aspects of this approval is Roger Harrington, e-mail: roger.harrington@environ.ie telephone number 053 9117438. The contact person for Repak is Tony O Sullivan, e-mail: tony.osullivan@repak.ie, telephone 01 4670190. Contact between the Department and Repak will be maintained at this level.

23. Requirements.

Repak is only approved to act as a packaging compliance scheme on condition that Repak abides by the terms and conditions of this approval

24. Duration.

This approval is valid from 1st January 2015 and shall remain in place for a period of five calendar years until 31st December 2019 from its commencement date. A review of the approval shall take place in Q1 2017.

To ensure continuity of service both parties commit to informing each other of significant departures or changes in their respective roles and responsibilities. Amendments to the

contents of this approval shall be made by the mutual agreement of the Department and Repak.

25. Re approval timeline.

If it is Repak's intention to seek re approval to continue to operate as a packaging compliance scheme on completion of this approval, the following timeline will apply:-

30 th June 2019	Receipt by this Department of Repak's application to continue to operate as a packaging compliance scheme including Business, Financial and Strategic plans. Repak shall also provide this Department with a review, approved by their Board, of their current approval.
July – August 2019	Assessment of Repak's application in conjunction with Section 5 of this approval.
September 2019	Decision by this Department on Repak's application.
November 2019	Approval, if appropriate, to issue to Repak.