



User Guidelines for the Legal Notices transposing the 2018 Waste Legislative Package:

- I. Waste Management (End of Life Vehicles) (Amendment) Regulations, 2021;**
- II. Waste Management (Waste Batteries & Accumulators) (Amendment) Regulations, 2021;**
- III. Waste Management (Electrical and Electronic Equipment) (Amendment) Regulations, 2021;**
- IV. Waste Management (Landfill) (Amendment) Regulations, 2021;**
- V. Waste (Amendment) Regulations, 2021;**
- VI. Extended Producer Responsibility Framework Regulations, 2021;**
- VII. Waste Management (Packaging and Packaging Waste) (Amendment) Regulations, 2021.**

1. Introduction

In May 2018, the EU adopted four directives on waste, known as the “Waste Legislative Package”, as part of the Circular Economy Action Plan, with the aim of improving waste management in the Member States and moving towards a true circular economy.

The four directives amend a number of existing EU directives relating to waste, as follows:

- Directive (EU) 2018/849 of the European Parliament and of the Council amending Directives 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment;
- Directive (EU) 2018/850 amending Directive 1999/31/EC on the landfill of waste;
- Directive (EU) 2018/851 amending Directive 2008/98/EC on waste; and
- Directive (EU) 2018/852 amending Directive 94/62/EC on packaging and packaging waste.

The transposition of these directives into national legislation necessitated a number of amendments to existing waste legislation, as well as the drafting of new regulations, such that a total of seven Legal Notices were drafted.

The Waste Management (End of Life Vehicles) (Amendment) Regulations, 2021, Waste Management (Waste Batteries and Accumulators) (Amendment) Regulations, 2021, and Waste Management (Electrical and Electronic Equipment) (Amendment) Regulations, 2021, transpose Directive (EU) 2018/849.

The Waste Management (Landfill) (Amendment) Regulations, 2021, transpose Directive (EU) 2018/850.

The Waste (Amendment) Regulations, 2021, and the Extended Producer Responsibility Framework Regulations, 2021, transpose Directive (EU) 2018/851.

Finally, the Waste Management (Packaging and Packaging Waste) (Amendment) Regulations, 2021, transpose Directive (EU) 2018/852 amending Directive 94/62/EC on packaging and packaging waste.

These Guidelines serve to explain the main obligations being imposed through these regulations that may impact the business environment.

2. Sectors covered by these regulations

The sectors to be affected by the seven Legal Notices are mostly waste management operators and the economic operators who qualify as producers as per the relevant EPR pieces of national legislation, notably the Packaging and Packaging Waste Regulations, WEEE Regulations and Waste Batteries and Accumulators Regulations.

3. Overview of obligations

Waste Regulations

The new regulation 6 on End-of-Waste, in conjunction with Schedule 10, clarify the procedure to be followed and the information to be provided by the applicant to ERA upon applying for an end-of-waste permit.

As per regulation 10, registered waste carriers who collect any one of the targeted waste streams (i.e. paper, metal, plastic, glass and bio-waste) are legally obliged to keep all fractions collected separately.

In line with regulation 4A, 10A and C, the Minister shall take a number of measures that might potentially affect the business community, notably to:

- i. Encourage the waste management options that deliver the best overall environmental outcome;
- ii. Provide incentives for the application of the waste hierarchy;
- iii. Prevent waste generation, by means of *inter alia* promoting and supporting sustainable production and consumption models, encouraging the design, manufacturing and use of more sustainable products; as well as ensuring that any supplier of an article as defined under the REACH Regulation provides the information pursuant to that Regulation to the European Chemicals Agency as from 5 January 2021;
- iv. Establish an integrated and adequate network of waste disposal and recovery installations for municipal waste taking into account Malta's specificities;
- v. Promote reuse of products and high-quality recycling of waste.

In line with the Polluter-pays Principle the full costs of waste management is to be borne by the original waste producer or previous or current holder, depending on who has duty of care for such waste. Such costs now also include the development and operation of the related waste management infrastructure.

In addition (regulation 33), waste management operators, including establishments and undertakings who collect waste, dealers and brokers of waste, shall now submit annual reports to ERA within three months of the closing of the reference year. Such operators shall, if so requested by ERA, submit an audited report together with their annual reports to the Authority.

The amended Schedule 3 sets out a revised hazardous property (i.e. HP14 – eco-toxic), including the new conditions whereby waste is hazardous by the said hazardous property.

Extended Producer Responsibility Framework Regulations

According to regulation 4, when the Minister responsible for the environment takes measures to ensure the producers of specific products have Extended Producer Responsibility (EPR), the costs of the management of the waste arising from the products placed on the national market are to be wholly borne by such producers, while the distributors of such products may share the costs.

Pursuant to regulation 6, any producer of products or Producer Responsibility Organisation (PRO) shall adhere to the new General Minimum Requirements on Extended Producer Responsibility. Such requirements *inter alia* oblige producers and PROs to provide an appropriate availability of waste collection systems within the interested areas and establish an adequate self-control mechanism to assess their financial management and the quality of the data reported to ERA. The new minimum requirements introduce a further element of transparency, as PROs shall now make also publicly available information about ownership and

membership, financial contributions paid by their members as well as the selection procedure for waste management operators. The financial contributions paid by producers of products shall cover (i) the costs of collection and treatment of the waste arising from the products they place on the national market, (ii) costs of providing adequate information to waste holders as well as the (iii) costs of data gathering and reporting. In the case of PROs, such contributions shall be modulated, where possible, for individual products or groups of similar products depending on their environmental performance (e.g. durability, reusability etc.), whilst not exceeding the necessary costs to provide waste management services in a cost-efficient way. Such costs shall be established in a transparent way between all the actors concerned.

Moreover and in line with regulation 7, ERA, in collaboration with the EPR Consultative Committee being established in accordance with regulation 5 to assist ERA in fulfilling its duties vis-à-vis the implementation of the EPR principle in Malta, may conduct an investigation into a producer or PRO, including investigations into particular type of agreements. To this end, ERA may request any information, including financial information, held by other competent authorities, producers and PROs, in relation to the producer/PRO being investigated as well as carry inspections with a view to ensuring that the objectives of the EPR Framework Regulations are achieved. Such investigations can be triggered by ERA itself or at the request of the Minister or upon a reasonable allegation in writing of a breach of these Regulations, by a complainant or any producer of a product or a PRO.

Packaging and Packaging Waste Regulations

In line with the new EU Waste Legislative Package, the amended Packaging and Packaging Waste Regulations make use of the new terminology “*Packaging Waste Recovery Organisation*”, which replaces the concept of “*Packaging Waste Recovery Scheme*”, since an EPR scheme is a set of measures whereby producers of products have EPR rather than an organisation fulfilling certain EPR obligations on behalf of the producers participating in such organisations.

Moreover, the EPR system established under the Regulations in question will no longer be based on the two categories of packaging “*consumer packaging*” and “*back-end store packaging*”, which are being phased out and replaced with “*primary*”, “*secondary*” and “*tertiary packaging*”, such that producers are now obliged to join an authorised Packaging Waste Recovery Organisation for the *primary* and *secondary* packaging they place on the national market, whilst they may opt to self-comply for the *tertiary* packaging placed on the market in Malta.

Regulation 8 and Schedule 3 set out the following new sets of recycling targets to be achieved by producers or Producer Responsibility Organisations:

	2025	2030
Overall recycling	65%	70%
Plastic	50%	55%
Wood	25%	30%
Ferrous metal	70%	80%
Aluminium	50%	60%
Glass	70%	75%
Paper and cardboard	75%	85%

Such new targets are also coupled with much stricter calculation rules, whereby e.g. the amount of packaging waste recycled shall be measured as the input of packaging waste into the actual recycling operation, thus excluding all rejects arising from preliminary treatment. By way of derogation, the weight of the packaging waste recycled may be measured at the output of any sorting operation if the output waste is then recycled and the weight of rejects is excluded from the weight of packaging waste reported as recycled. With regards to packaging waste exported from the Union, it shall count towards the attainment of the targets only if the exporter can prove that (i) the requirements of the Waste Shipment Regulation are met and that (ii) the treatment of packaging waste outside the Union took place in conditions that are broadly equivalent to the requirements of the relevant European Union environmental law.

In order to increase the reuse of packaging in Malta, the Minister shall take effective measures to increase the amount of reusable packaging placed on the national market and the systems to reuse packaging in an environmentally-sound manner, such as the use of deposit-return schemes, the setting of qualitative or quantitative targets as well as the use of economic incentives. Moreover, ERA may decide that producers or PROs attain an adjusted level of the recycling targets by means of taking into account the average share of reusable sales packaging placed on the market during the preceding three years, up to a maximum of 5% points according to the rules stipulated therein. The amount of wooden packaging repaired for reuse may also be taken into account into the calculation for the attainment of the stipulated targets.

Following the introduction of a new definition for *municipal packaging waste* and in line with regulation 13(7), the authorised Packaging Waste Recovery Organisations shall finance any systems set up for the collection, treatment, recovery and environmentally sound disposal of municipal packaging waste generated. To this end, such organisations shall make arrangements with the Local Councils for the door-to-door collection of such packaging waste as well as the provision of recycling points according to the quota stipulated in the Waste Regulations.

The amended regulation 17 sets out the new reporting obligations on Packaging Waste Recovery Organisations (in both terms of frequency and time-frames for fulfilling such obligations), whereby the quarterly reporting obligation is being phased out and replaced with

half-yearly reports. Packaging Waste Recovery Organisations shall submit half-yearly reports three months after the end that period, whilst annual reports shall be submitted within four months of the end of the related year. In addition, Packaging Waste Recovery Organisations shall submit a quarterly declaration on the actual weight of packaging or packaging material placed on the national market by their members within one calendar month following the end of that quarter.

WEEE Regulations

In line with the new EU Waste Legislative Package, the amended WEEE make use of the new terminology "*Waste Electrical and Electronic Equipment Collective Organisation*", which replaces the concept of "*Waste Electrical and Electronic Equipment Compliance Scheme*", since an EPR scheme is a set of measures whereby producers of products have EPR rather than an organisation fulfilling certain EPR obligations on behalf of the producers participating in such organisations.

Regulation 5 as amended stipulates that Waste Electrical and Electronic Equipment Collective Organisations shall collect the share of the WEEE allocated to them as determined by ERA, within six months of notification by the local agency. If such organisations fail to comply with such date, the local agency may treat such WEEE at the expense of the producer responsibility organisation subject to the Minister's approval. In addition and in line with the EPR principle, producers or Waste Electrical and Electronic Equipment Collective Organisations shall ensure continuity of waste management services throughout the year, even if the collection targets have been achieved.

According to the new regulation 8A, self-compliant producers and Waste Electrical and Electronic Equipment Collective Organisations shall also acquire and submit to ERA proof of recovery, preparation for reuse, recycling or disposal, indicating the actual rate of WEEE treated as well as that such WEEE has been treated in an environmentally sound manner.

In order to reflect the concept of Waste Management Hierarchy in the management of electrical and electronic equipment and waste electrical and electronic equipment, the Minister may make use of economic instruments and other measures to provide incentives for the application of the waste hierarchy (new regulation 15A).

Regulation 21 and Schedule 14 as amended require that Waste Electrical and Electronic Equipment Collective Organisations submit a bank guarantee to ERA within four months of the issuance of the permit or its renewal. Such bank guarantee shall cover the WEEE collective organisation's operations and obligations as prescribed in the WEEE Regulations and permit granted by ERA and might be released only when ERA confirms that all obligations have been fulfilled. The bank guarantee is to be revisited every year in case of permit which validity exceeds one year.

The amended regulation 23 sets out the new reporting obligations on Waste Electrical and Electronic Equipment Collective Organisations (in both terms of frequency and time-frames for fulfilling such obligations), whereby the quarterly reporting obligation is being phased out and replaced with half-yearly reports. Such organisations shall submit half-yearly reports three months after the end that period, whilst annual reports shall be submitted within four months of the end of the related year. In addition, the information submitted to ERA as per above shall be kept by Waste Electrical and Electronic Equipment Collective Organisations for a period of five years. Similarly, producers shall keep the information submitted to ERA upon registration or renewal for five years.

Waste Batteries and Accumulators Regulations

In line with the new EU Waste Legislative Package, the amended Waste Batteries and Accumulators make use of the new terminology “*Waste Batteries and Accumulators Collective Organisation*”, which replaces the concept of “*Waste Batteries and Accumulators Collection, Treatment and Recycling Scheme*”, since an EPR scheme is a set of measures whereby producers of products have EPR rather than an organisation fulfilling certain EPR obligations on behalf of the producers participating in such organisations.

In order to reflect the concept of Waste Management Hierarchy in the management of batteries and accumulators and waste batteries and accumulators, the Minister may make use of economic instruments and other measures to provide incentives for the application of the waste hierarchy (new regulation 14A).

The amended regulation 24 sets out the new reporting obligations on Waste Batteries and Accumulators Collective Organisations (in both terms of frequency and time-frames for fulfilling such obligations), whereby the quarterly reporting obligation is being phased out and replaced with half-yearly reports. Such organisations shall submit half-yearly reports three months after the end that period, whilst annual reports shall be submitted within four months of the end of the related year.

End-of-Life Vehicles Regulations:

While importers of vehicles already qualify as producers under the current Regulations, a new definition of producer has been included to clarify that such importers only refer to professional importers.

In order to reflect the concept of Waste Management Hierarchy in the management of end-of-life vehicles, regulation 6 as amended requires that end-of-life vehicles shall be treated in accordance with the concept of waste management hierarchy (which priorities re-use over recycling and other waste management operations) and in line with the requirements laid down in regulation 4A of the amended Waste Regulations.

Landfill Regulations

Regulation 5 as amended establishes the new target on landfilling of municipal waste, i.e. by 2035 the amount of municipal waste landfilled is to be reduced to 10% or less of the total amount of municipal waste generated. This target may be postponed by up to five (5) years if certain conditions defined in the Regulations are met. The new target is coupled with strict calculation rules, whereby – *inter alia* – the weight of municipal waste which enters an incinerator, where such a thermal treatment facility does not operate under R1 conditions, shall be reported as landfilled.

The list of waste streams that cannot be accepted in a landfill has also been amended (regulation 6), which now also includes waste that has been separately collected for preparing for re-use and recycling. Furthermore, ERA shall endeavour to ensure that as of 2030, all waste suitable for recycling or other recovery, notably municipal waste, shall not be accepted in a landfill.

In order to promote a shift towards a more circular economy, the amended legislation (new regulation 17A) provides that the Minister shall make use of economic instruments and other measures to provide incentives for the application of the waste hierarchy.

Schedule 3 has also been amended such that the operator of a landfill is no longer required to supply certain information.

4. Compliance with the amendment regulations

ERA shall ensure compliance with the amended Regulations, in accordance with the law.

5. Further Information

Individuals who require further guidance may contact ERA:

Email: info.era@era.org.mt

Telephone: 22923500

N.B. These Guidelines shall be considered solely as an interpretative and explanatory document, and are not intended to be an exhaustive description of the instrument nor a substitute or legislative supplement to it.