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**Agriculture, Environment
and Rural Affairs**

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Consultation on the draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations [2024]

Consultation Document

28 July 2023

We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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packaging@defra.gov.uk

www.gov.uk/defra

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1. Executive summary

The UK Government and the Devolved Administrations of Northern Ireland, Scotland and Wales (hereafter referred to as the Devolved Administrations) are committed to protecting the environment and have all signalled their strong intent to introduce Extended Producer Responsibility (EPR) for packaging. EPR will require that businesses pay the full costs of dealing with the packaging they supply and use when it becomes waste. The basis of this policy is to improve efficiency by placing responsibility on businesses for the environmental impact of their packaging. This to incentivise recyclability and reuse of packaging, and in turn encourage more domestic reprocessing and overall system improvements and savings.

We have published two consultation documents in 2019 and 2021 which, together, outlined our proposals on the introduction of EPR for packaging across the UK. The Government Response published in March 2022 confirmed how we intend to implement EPR for packaging. This can be found here [EPR Consultation Government response template \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/consultations/epr-consultation-government-response).

Since the publication of the Government Response, the UK Government and the Devolved Administrations have been working closely to develop the draft Regulations which implement these reforms. Our objective is to ensure that these reforms deliver sustained change. Having reflected on industry feedback, the UK Government and the Devolved Administrations decided to defer EPR for packaging payments from October 2024 to October 2025. A 12-month deferral to packaging payments will give:

- Industry additional time to prepare for the new requirements, which may include reviewing and improving current packaging use.
- Industry and local authorities more opportunity to be involved in the design of the scheme.
- Local authorities and waste management companies more time to adjust current services and to introduce new efficient and effective services for EPR.

The UK Government and the Devolved Administrations remain committed to packaging reforms that work for business, the environment, and the economy as a whole. This consultation now shares the draft Regulations which implement EPR for packaging, as set out in the March 2022 Government Response. These draft Regulations will apply UK-wide.

We are seeking views on the draft text to ensure that the draft Regulations achieve the policy intentions set out in the Government Response, creating clear and operationally feasible obligations. Changes to those policy intentions are minimal and are set out in Section 3. The draft Regulations have been developed following engagement with industry. Alongside this consultation we are planning co-design workshops with stakeholders across the value chain that will address the more detailed, technical areas of the draft Regulations. More information will be shared on these workshops in due course.

2. Introduction

Purpose of the consultation

The UK Government and Devolved Administrations have ambitious goals to protect our climate, drive green growth, and drive down unnecessary waste. Our plans for EPR for packaging play a key part in delivering those goals. The current producer responsibility system for packaging has operated across the UK since 1997, but it has never placed the full net costs of disposing of packaging waste on businesses who supply and use packaging.

The UK Government, the Scottish Government, the Welsh Government and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland published joint consultations in 2019 ([Consultation on reforming the UK packaging producer responsibility system \(defra.gov.uk\)](#)) and 2021 ([Extended Producer Responsibility for Packaging - Defra - Citizen Space](#)) setting out proposals to reform the producer responsibility system for packaging. The majority of respondents to both consultations were supportive of the proposals put forward. The Government Response published in March 2022 ([EPR Consultation Government response template \(publishing.service.gov.uk\)](#)) confirmed how the reforms to producer responsibility system for packaging are intended to be implemented.

We are now consulting on the draft Regulations at Annex 1, which will implement EPR for packaging across the UK consistent with the March 2022 Government Response. The Regulations include provisions that implement the 'polluter pays' principle by requiring obligated producers to pay the full net cost of collecting and recycling their packaging when it becomes waste. The UK Government and the Devolved Administrations have worked together to develop these draft Regulations. The Regulations are in draft and will require further changes and review prior to finalisation.

As the overall policy intention and objectives have already been the subject of consultation, the purpose of this exercise is not to consult on these matters. Rather, the purpose of this consultation is to gather views on how the approach set out in the Government's consultation response of March 2022 has been reflected in these draft Regulations, and to receive feedback on the operability of their implementation arrangements. We would particularly appreciate views on the clarity with which these draft Regulations define the responsibilities of obligated producers, exporters, reprocessors, compliance schemes, local authorities and councils, the Scheme Administrator, and the regulators, identifying any ambiguities in the text that could be improved. Responses which go beyond the questions asked in this consultation document will be noted and considered as part of future work on the reforms but not included within the consultation response.

There are however several areas that we intend to develop further with businesses and wider stakeholders, particularly from the collection and packaging sectors with a view to potential future reform. These include issues such as ownership of packaging materials as they pass through collection, sorting and reprocessing and as indicated in the March 2022 Government Response, packaging re-use policy and payments for the management of business waste. These are outside the scope of the current draft Regulations as they are not deliverable prior to the introduction of the initial reforms, but we welcome input on these matters to inform future regulatory, policy and delivery decisions.

We also intend to lay separate regulations to amend the 2007 Packaging Producer Responsibility (Packaging Waste) Regulations to introduce packaging waste recycling targets for 2024. Recycling targets for 2025-2030 will be included in the final version of the draft Regulations we are consulting on.

A new Impact Assessment has not been prepared for this consultation. The March 2022 Final Impact Assessment (FIA), which can be found here [Impact Assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk), presented the costs and benefits at that time, building on the analysis in the Impact Assessments that accompanied the 2019 and 2021 consultations, and feedback from the Regulatory Policy Committee. We will publish an updated version of the FIA when the draft Regulations are laid in Parliament.

As with the previous consultations, this consultation is being undertaken jointly by the UK Government, the Scottish Government, the Welsh Government and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland. Unless otherwise stated, references to 'Government' are references to the UK Government, the Scottish Government, the Welsh Government and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

References to Ministers are references to Ministers of each administration. References to 'the regulator' or 'regulators' are references to the Environment Agency (EA), the Northern Ireland Environment Agency (NIEA), Natural Resources Wales (NRW), the Scottish Environment Protection Agency (SEPA) and the Labelling Authority, unless stated otherwise.

References to "local authorities" (referred to in the draft Regulations (regulation 2(1) as 'relevant authority') include a waste collection authority, a waste disposal authority, a district council in Northern Ireland and the Council of the Isles of Scilly.

Audience

Responses to this consultation are welcomed from:

- Businesses involved in the design, production and specification of packaging.

- Businesses who manufacture products and put these products into packaging, or who have products put into packaging on their behalf, and who place these products on the UK market.
- Retailers, online marketplaces and importers of both packaged products and unfilled packaging.
- Local authorities
- Packaging compliance schemes.
- Organisations involved in the management and recycling of packaging waste including waste management companies, brokers, exporters, and reprocessors.
- Other organisations such as professional and membership organisations, Non-Governmental Organisations, consultants and charitable organisations who have an interest in packaging and how packaging waste is managed in the UK.
- Members of the public.

Responding to the consultation

Please respond to this consultation in one of the following ways:

Online using the Citizen Space consultation hub at Defra <https://consult.defra.gov.uk/>

For ease of analysis, responses via the Citizen Space platform would be preferred, but alternative options are provided below if required:

By email to: packaging@defra.gov.uk

In writing to:

Collection and Packaging Reform
Extended Producer Responsibility Team, Defra
Seacole Building
2 Marsham Street
London
SW1P 4DF

Please note, any responses sent by post must have **arrived** at the above address by the closing date of the consultation (9 October) to be counted. Any responses received after this date will not be analysed. To ensure your response is included in the analysis, please consider responding online via Citizen Space.

Defra is managing the consultation process on behalf of Government.

The Scottish and Welsh Governments will have access to the consultation responses provided via the Citizen Space consultation hub. If you would like to send a copy of your consultation response to the Scottish and/or Welsh Governments, then please send by email to:

Scotland: producerresponsibility@gov.scot

Wales: wastestrategy@gov.wales

If you are responding from Northern Ireland, please ensure a copy of your response is also sent to EPRTeam@daera-ni.gov.uk. Consultation responses will be shared with the Department for Agriculture, Environment and Rural Affairs in Northern Ireland.

Consultation period

This consultation will run from 28 July and close on 9 October 2023

After the consultation

We will review the responses received and make changes to the draft Regulations as appropriate. The draft Regulations will be made publicly available when they are notified to the World Trade Organisation (WTO) and the European Union (EU) in respect of Northern Ireland to comply with international obligations. During the notification period, we will publish a high-level summary of the responses.

Information provided in response to this consultation document, including personal information may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes e.g., Freedom of Information Act 2000 (FOIA), Environmental Information Regulations 2004 (EIR) and the Data Protection Act 2018.

If you want information, including personal data, that you provide to be treated as confidential, please say so clearly in writing when you submit your response to the consultation and explain why you need these details to be kept confidential.

If we receive a request for disclosure under the FOIA or EIR, we will take full account of your explanation, but due to the law we cannot provide an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as a confidentiality request.

Defra is the data controller in respect of any personal data that you provide, and Defra's Personal Information Charter, which gives details of your rights in respect of the handling of your personal data, can be found at:

<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs/about/personal-information-charter>

Compliance with the consultation principles

This consultation is being conducted in line with the Consultation Principles set out in the Better Regulation Executive guidance which can be found at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>.

If you have any comments or complaints about the consultation process, please address them to:

By e-mail: consultation.coordinator@defra.gov.uk

Or in writing to:

Consultation Co-ordinator
Packaging Extended Producer Responsibility Team
Resources & Waste, Defra
Seacole Building
2 Marsham Street
London
SW1P 4DF

About you

A wide range of businesses, organisations and individuals are involved with or take an interest in packaging. The questions below are intended to grasp this diversity and put your responses in perspective with those of other respondents.

Q1. Would you like your response to be confidential?

Yes / No

If you answered 'Yes', please provide your reason.

Q2. Your name?

Q3. Your email address?

This is optional, but if you enter your email address you will be able to return to edit your consultation response in Citizen Space at any time until you submit it. You will also receive an acknowledgement email when you submit a completed response.

Q4. Which best describes you? Please provide the name of the organisation/business you represent and an approximate size/number of staff (where applicable).

(Please tick one option. If multiple categories apply, please choose the one which best describes the organisation you are representing in your response.)

- Business representative organisation/trade body
- Packaging designer / manufacturer / converter
- Product manufacturer /brand owner/ packer filler
- Importer of packaged products or unfilled packaging
- Distributor
- Retailer including Online Marketplace
- Local authority
- Waste management company
- UK reprocessor / recycler of packaging waste
- Exporter of packaging waste for recycling
- Non-governmental organisation
- Charity or social enterprise
- Consultancy
- Academic or research
- Individual
- Other
- If you answered 'Other', please provide details:

Q5. Government will need to understand the needs of users to build digital services for EPR for packaging. Would you like your contact details to be added to a user panel for EPR for packaging so that we can invite you to participate in user research (e.g., surveys, workshops and interviews) or to test digital services as they are designed and built?

You can read a [Privacy Notice](#) that explains how your information is safeguarded in relation to user research, what we will and won't do with it, how long it will be kept and how to opt out of user research if you change your mind.

Yes / No

3. The draft Regulations explained

Overview of the legislation implementing the EPR for packaging reforms

The first building blocks of an EPR scheme for packaging were introduced by the Packaging Waste (Data Reporting) (England) Regulations 2023 which can be found here [The Packaging Waste \(Data Reporting\) \(England\) Regulations 2023 \(legislation.gov.uk\)](#). These were amended by the Packaging Waste (Data Reporting) (England) (Amendment) Regulations 2023 which can be found here [The Packaging Waste \(Data Reporting\) \(England\) \(Amendment\) Regulations 2023 \(legislation.gov.uk\)](#). There are equivalent regulations in:

- Northern Ireland - [The Packaging Waste \(Data Reporting\) \(No.2\) Regulations \(Northern Ireland\) 2023 \(legislation.gov.uk\)](#) and [The Packaging Waste \(Data Reporting\) \(No. 2\) \(Amendment\) Regulations \(Northern Ireland\) 2023 \(legislation.gov.uk\)](#).
- Scotland - [The Packaging Waste \(Data Reporting\) \(Scotland\) Regulations 2023 \(legislation.gov.uk\)](#) and [The Packaging Waste \(Data Reporting\) \(Scotland\) Amendment Regulations 2023 \(legislation.gov.uk\)](#).
- Wales – [The Packaging Waste \(Data Collection and Reporting\) \(Wales\) Regulations 2023](#)

All these Statutory Instruments are referred to together as the ‘Data Regulations 2023’ in this consultation document.

The Data Regulations 2023 require obligated producers to collect and/or report data from March 2023 for England, 28th February 2023 for Scotland and Northern Ireland and 17th July 2023 for Wales (or from January 2023 if the data is available in all nations) on the amount and type of packaging that they supply. This data is needed to calculate the disposal fees for the collection and sorting of packaging for recycling and the collection and disposal of packaging in residual waste) that these producers will be required to pay. This data will also be used to calculate producers recycling obligations.

The draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations [2024] (“the draft Regulations”) set out obligations on producers to continue to collect and report data. These requirements mirror the requirements in the Data Regulations 2023 but with some further amendments to address small gaps in the data collection and reporting obligations. The draft Regulations also include provisions to:

- Enable the appointment of a Scheme Administrator.
- Allow a Scheme Administrator to raise fees from obligated producers to cover local authority costs for the management of household and binned packaging waste, the costs of public information campaigns, and its operational costs.

- Set recycling targets on producers covering all types of packaging waste (i.e., primary, shipment, secondary, tertiary; household and non-household).
- Require certain types of packaging to be labelled to indicate recyclability.
- Introduce a mandatory takeback and recycling requirement for fibre-based composite cups.
- Require all reprocessors and exporters of packaging waste to register with a regulator and to report data, and, for those that choose to, to become accredited and issue recycling evidence.
- Enable regulators to effectively monitor compliance and enforce the draft Regulations.

Subject to Parliamentary approval, the Data Regulations 2023 will be replaced by these draft Regulations, which will also revoke the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (the 2007 Regulations) and the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations (Northern Ireland) 2007 (the Northern Ireland 2007 Regulations).

Changes in the draft Regulations from the policy intentions set out in the Government Response

In developing the draft Regulations, we have made a small number of changes and added detail to clarify the policy intentions that were set out in the Government Response published in March 2022.

- Due to the change to the implementation date of the Scottish Deposit Return Scheme (DRS) to October 2025, scheme articles will be subject to the same obligations under EPR for packaging as drinks containers in scope of the England, Northern Ireland and Wales DRS, until such time as the DRS is operational. This change will also require a further amendment to the Data Regulations 2023.
- Reuse targets for wooden pallets were proposed to be introduced from 2024. We are continuing to work with the wood sector to develop options and are taking this forward as part of our wider work on packaging reuse policy, so obligations are not included in these draft Regulations. The draft Regulations will include recycling targets for wood packaging, and we will aim to introduce reuse targets from 2026.
- We have adopted a broad definition of household packaging as it has not proved possible to develop the guidance and protocols necessary to underpin more accurate apportionment. However, following concerns raised by producers, we are exploring whether the definition can be refined. Further details are set out in the following section.
- The proposal for an ‘operator competence test’ has become a ‘Fit and Proper Person (FPP) test’ to better align with existing permitting regimes (see draft regulation 106). This will allow the regulator to determine if an applicant is a fit and proper person for the purposes of these draft Regulations, taking into account the conditions specified.

- In relation to the proposal that exporters will only be able to issue Packaging Waste Export Notes (PERNs) once confirmation of receipt of the packaging waste has been obtained from final destination sites, we have clarified that, while proof of receipt will be required, this will not need to be submitted in real time in order to issue PERNs. Proof of receipt must be obtained and available for audit/inspection by the regulator.
- Mandatory requirements for the inspections of overseas sites by third party operators have not been included in the draft Regulations but will be considered as part of future reforms. There were legal and practical issues which need further development for this proposal to be implemented.
- Producers who self-manage packaging waste will have to report in which UK nation the waste was collected and sent for recycling. If they collect it in one nation and send it to another UK nation for recycling, they will also report to which nation it was sent. This now includes 'post-back' packaging.
- In accordance with the Government Response, we will provide the Scheme Administrator with the ability to adjust the disposal cost payment to a local authority where they consider an authority is not delivering against reasonable cost and performance benchmarks of efficient and effective services. We will be introducing a limit on the extent to which the Scheme Administrator can deduct money from local authority payments in relation to effectiveness assessments. The Scheme Administrator cannot reduce the disposal costs which the relevant authority is entitled to recover to an amount which is less than 80% of the efficient disposal costs assessed. This limit may be reviewed in future.
- Producers that can demonstrate they have collected and recycled packaging waste that is not commonly collected by local authorities for recycling or have collected and recycled packaging waste from an operational re-use system, will be able to offset these tonnages against their disposal cost obligations, thereby reducing their disposal fees.

What is not included in the draft Regulations and future reforms

The draft Regulations do not include every area in which we would like to consider reform, including matters raised by stakeholders. In some cases, this is because a regulatory approach may not be necessary. In others, it is because our regulatory approach merits further consideration with external stakeholders, and therefore are matters best considered for future regulations and iterations of EPR.

In parallel to this consultation, we will continue to work with stakeholders across the collection and packaging sectors to review these matters in more detail. These include but are not limited to assurances for producers that local authorities will spend producer payments on packaging waste services, the Scheme Administrator governance arrangements to provide for greater sector involvement, material ownership by producers, packaging re-use obligations, and payments for the management of packaging waste from businesses.

Further consideration will be given to the place of closed-loop collection and recycling models. Producers operating such models may already bear the costs of managing their packaging when it becomes waste, so we will explore whether any further exemptions of such models from disposal fees should apply and if so what performance and reporting standards would need to be met to merit an exemption, and any impacts such exemptions may have on other EPR outcomes such as increasing the re-use of packaging and efficient and effective local authority packaging waste management services.

We will also continue to look at improvements to the definition of household packaging, establishing a working group with producers to develop this further. In the Government response to the 2022 consultation Government said that it would work towards an approach that would allow producers to report how much of their primary and shipment packaging was likely to end up in households. It also set out that if it was not feasible to establish the necessary guidance and protocols for the start of EPR, the assumption would be that all primary and shipment packaging would be considered household packaging except where producers could clearly and convincingly evidence this was not the case.

Following further work in 2022 Government concluded that developing comprehensive guidance and protocols for the start of EPR was not feasible. The Data Regulations 2023 and the draft Regulations therefore define household packaging as primary or shipment packaging which is not supplied to a business which is a final user of that packaging. This has been criticised for classing some packaging, such as large beer kegs or drums of industrial chemicals, as household packaging. We want to address this concern, but also need to ensure the Regulations remain clear and enforceable until such time as more detailed guidance and protocols can be developed.

We are therefore considering amending the draft Regulations as drafted to exclude packaging on a product which is designed only for business use. This would continue to be a binary assessment, with all packaging that may end up in household bins being classed as household packaging, unless a producer could provide evidence it had been supplied direct to a final business consumer, but it would allow for primary packaging, that is designed only for business use to be excluded, even if supplied through a third party such as a distributor. If feasible Government will work towards such a reporting approach applying for the 2024 reporting year.

Q6. Do you agree that we should work towards excluding packaging that is designed only for use by a business from the payment of household disposal cost fees?

- a. Yes
- b. No
- c. Do not know

Defra also intends to produce a circular economy action plan for England building on the outputs from the recent series of visioning sprints. This will provide a roadmap for the implementation of EPR for packaging, including its interactions with related policies such as Deposit Return Schemes across the UK, the introduction of Digital Waste Tracking, and Consistent Collections implementation in England.

Overview of the draft Regulations

As set out above, via this consultation we are seeking views on the following:

- The clarity of the definitions of the responsibilities placed on producers, exporters, reprocessors, compliance schemes, the Scheme Administrator and the regulators, the key considerations for local authorities and the identification of any points of ambiguity. We ask if the draft Regulations are clear, by this we want to understand whether the Regulations create obvious and understandable obligations on your organisation,
- The feasibility of the operational processes required to meet the obligations as set out in the draft Regulations as they apply to your organisation,
- The completeness of the draft Regulations as the basis for the implementation of EPR for packaging as per the confirmed policy intent, and
- Any unintended consequences of the draft Regulations as a whole.

The draft Regulations do not at this point include any commencement years but do include dates and months, so that the data reporting cycle is clear.

The following sections outline the high-level obligations on producers, the Scheme Administrator and the regulators. Each section is followed by questions to request feedback. Please answer those questions that are relevant to your organisation. We do not expect all respondents to answer all the questions. Responses which go beyond these questions will feed into wider work on the implementation and continuous improvement of the collection and packaging reforms. References to relevant sections of the draft Regulations (which in turn refer to relevant Schedules in the draft Regulations) are provided with the questions.

Obligations on producers

(Refer: draft Regulations, Part 2, Chapter 1. Definition of producers is provided in Part 1, regulation 8)

Large producers are those which have an annual turnover of more than £2 million, and which handle more than 50 tonnes of packaging annually. They will be obliged to continue to report their packaging supplied data. Based on this data they will be required to meet recycling targets, pay regulator fees and, if supplying household packaging, pay a disposal fee and a Scheme Administrator fee.

Small producers are those which have an annual turnover of more than £1 million, and which handle more than 25 tonnes of packaging annually, but do not surpass the large producer threshold. Small producers will be required to report their total tonnes of packaging supplied annually by packaging material (glass, plastic, etc) and packaging type (primary, secondary, shipment or tertiary). This data will inform future review of the Regulations.

Certain small and large producers are also required to collate and report data on packaging supplied or discarded in each nation of the UK.

Q7. Do the draft Regulations ensure all types of packaging, which is not exempt packaging, are subject to recycling obligations?

- d. Yes
- e. No
- f. Do not know

If 'no', please detail which types of packaging are missed.

Q8. Are producers recycling obligations clear?

- a. Yes
- b. No
- c. Do not know

If 'no', please provide details of anything that is unclear.

Q9. Are the obligations on each type of producer clear?

- a. Yes
- b. No
- c. Do not know

If 'no', please state the type of producer and how the obligation is unclear.

Q10. Are the obligations on all types of packaging clear?

- a. Yes
- b. No
- c. Do not know

If 'no', please give examples of any packaging types where the obligations are unclear.

Q11. Are there any areas in which two producers may be obligated for the same item of packaging?

- a. Yes
- b. No
- c. Do not know

If 'yes', please set out clear examples to demonstrate this.

Compliance schemes

(Refer: draft Regulations, Parts 3, 4 and 5)

Producers can meet their recycling obligations directly or join a packaging compliance scheme, which will assume responsibility for meeting these obligations on behalf of its members. (Note: a compliance scheme cannot take on the disposal fee or Scheme Administrator fee obligation of its members).

Q12. Is the relationship between a Packaging Compliance Scheme and its members clear?

- a. Yes
- b. No
- c. Do not know

If 'no', please provide details of anything that is unclear.

Q13. Are the obligations that a Packaging Compliance Scheme assumes on behalf of its members clear?

- a. Yes
- b. No
- c. Do not know

If 'no', please provide details of obligations that are unclear.

Provision of recycling information and labelling

(Refer: draft Regulations Part 2, Chapter 2)

The draft Regulations introduce a single, UK-wide approach to packaging labelling. Producers that are brand owners, packer/fillers and importers must label primary and shipment packaging using the appropriate 'Recycle Now' mark and wording (Recycle or Do Not Recycle). This will provide consumers with clear and consistent information on what packaging they can and cannot recycle.

There is no de-minimis threshold for these requirements and the draft Regulations will require distributors to provide recycling information to those to whom they supply packaging.

The draft Regulations provide flexibility for the provision of recycling information for certain packaging items which include filled, unbranded packaging and for medicinal products.

Government will publish guidance ahead of the draft Regulations coming into force to help those obligated to understand and adopt these new mandatory requirements. We plan to undertake targeted engagement with relevant stakeholders to help develop the guidance.

Q14. Are the requirements for the provision of recycling information and packaging labelling clear?

- a. Yes
- b. No

c. Unsure

If 'no' or 'unsure', please explain the reason for your response and provide examples.

Recyclability assessments

(Refer: draft Regulations Part 1, regulation 10; Part 2, Chapter 1, regulation 15(6); Part 2, Chapter 2, regulation 21 and Chapter 5 for record keeping and reporting obligations)

The draft Regulations will require producers that are obligated to provide recycling information and label packaging and/or those obligated to pay disposal fees to assess packaging to determine its recyclability. The output of the assessment will be used to both inform fee modulation and to underpin how packaging is labelled. To ensure a common approach is followed, a prescribed methodology must be used.

It is anticipated that, for a large proportion of packaging items, the assessment will be a straightforward process. However, Government recognises some businesses may wish to outsource the undertaking of assessments and is exploring the role of third-party organisations to help with this. Services offered by these organisations could include certifying a producer's self-assessment or conducting the assessment on their behalf.

Government is considering whether there is a need for third-party organisations to be accredited by the United Kingdom Accreditation Service (UKAS) or approved by the Scheme Administrator to ensure that standards are upheld, and that effective quality assurance and auditing practices are in place.

Q15. Are you likely to use a third-party organisation to conduct packaging recyclability assessments?

- a) Yes
- b) No
- c) Unsure/not decided

Please provide the reason for your response.

Q16. If you answered yes to Q14, should there be a mandatory accreditation scheme for third-party organisation(s) who undertake recyclability assessments?

- a) Yes, approved by the Scheme Administrator
- b) Yes, accredited by UKAS
- c) Yes, other (please specify)
- d) No accreditation scheme

Please explain the reason for your response.

Mandatory takeback and recycling of fibre-based composite cups

(Refer: draft Regulations Part 2, Chapter 3. There are also provisions relating to takeback schemes in Part 3.)

Sellers of fibre-based composite cups that are filled at the point of supply (e.g. coffee shops) which employ 10 or more staff on a full time equivalent basis will be required to register with their regulator, provide a bin in their stores for the collection of used cups, and arrange for these cups to be sent to be recycled. These sellers will also need to report to their regulator the weight of cups that they have sold and the weight of cups they have sent for recycling. Sellers can register with a regulator directly or choose to register with a take back scheme. A take back scheme is a third-party organisation that will take on the obligations of a business to register with a regulator and submit required data. They can help provide a bin and to arrange for the used cups to be collected and recycled.

Government plans to introduce the mandatory cup takeback and recycling obligations in 2025. The draft Regulations set out these obligations, but we are currently considering the best legal vehicle to introduce these requirements in light of the changes to the timeline for the introduction of EPR for packaging. However, we do not intend the substance of the legal obligations to change significantly. We will be engaging directly with stakeholders affected by these obligations over the coming weeks. Please sign up to the [CPR newsletter](#) for the latest on reforms, or contact CPRenquiries@defra.gov.uk if your business has a particular interest in these requirements and would like to be part of these engagement opportunities.

Scheme Administrator establishment

(Refer: draft regulations Part 6 and Schedule 5)

The draft Regulations require the Defra Secretary of State, the Welsh Ministers, the Scottish Ministers and Department for Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA) to act jointly to appoint a Scheme administrator. A decision to revoke an appointment must also be made jointly.

The draft Regulations set out the functions of the body and other key requirements on the Scheme Administrator (such as annual reporting). They also give relevant Ministers and DAERA the ability to direct the Scheme Administrator if it is acting or failing to act in a way that is likely to have an adverse impact on the environmental effects which the EPR for packaging policy is intended to achieve.

As indicated in the March 2022 Government Response we have taken the decision to host the Scheme Administrator, at least initially, in the public sector. This is based on advice from HM Treasury which considered the type of functions to be undertaken by the Scheme Administrator and that the Regulations will require producers to pay disposal costs. For example, setting disposal fee rates, collecting fees from producers, and then making payments to local authorities are considered sovereign-type functions, in other words functions typically undertaken by government. We are continuing to work on the Scheme Administrator design including through co-design sessions and are reflecting on feedback from stakeholders and international best practice. We are considering which functions

should be performed by the Scheme Administrator and which could better be performed by a sector-led organisation or outsourced. The draft Regulations provide for the Scheme Administrator to enter into an agreement(s) with an organisation(s) to perform functions on its behalf. Whether the Scheme Administrator chooses to do so or not, and the nature of any agreement is not set out in the draft Regulations, however the Scheme Administrator must obtain the consent of relevant Ministers and DAERA before doing so.

We will keep the role of the Scheme Administrator under review as we consider further policy approaches such as material ownership by producers. Please sign up to the [CPR newsletter](#) for the latest on reforms, or contact CPRenquiries@defra.gov.uk for more information if your business has a particular interest in this and would like to be part of these engagement opportunities.

Q17. Are the functions of the Scheme Administrator as outlined in the draft Regulations clear?

- a. Yes
- b. No
- c. Do not know

If 'no', please provide examples of where the draft Regulations are not clear.

Scheme Administrator calculation of producer disposal and administration fees

(Refer: draft Regulations, Part 6, Chapter 2)

The Scheme Administrator will be required to calculate producer fees based on the amount and type of household packaging the producer has supplied and the disposal and scheme administrator costs assessed.

The Scheme Administrator is responsible for calculating producer disposal fees which will cover local authority household packaging waste and binned packaging waste disposal costs, and Scheme Administrator public information costs.

If a producer can demonstrate they have collected and recycled packaging waste that is either not commonly collected by local authorities for recycling or is reusable packaging waste from an operational re-use system, the Scheme Administrator can offset these tonnages from a producer's disposal fee obligations, thereby reducing their disposal fees. As noted earlier in the consultation document, we are considering whether any further exemptions of such models from disposal fees should apply.

The draft Regulations also introduce a requirement for the Scheme Administrator to adjust (modulate) disposal fees based on the environmental sustainability of the packaging producers supply and require the Scheme Administrator to publish a statement of policy setting out how the adjustments will be applied.

The draft Regulations also provide the Scheme Administrator with the ability, when calculating total tonnes of packaging to estimate the amount of packaging supplied by producers which have not fully met their reporting and registration obligations. This is a discretionary provision that allows the Scheme Administrator to consider producer non-compliance when calculating producer disposal fees where this may have a material impact on compliant producers. The recalculation of cost and fees, as set out below, provides further provision to the Scheme Administrator to consider and recalculate fees based on producer non-compliance.

In addition, the Scheme Administrator will need to separately calculate a producer's annual administration fee that covers the costs the organisation incurs in delivering its functions.

The Scheme Administrator will be required to provide notices of liability to producers obligated for disposal fees and administration fees, setting out how these fees have been calculated.

Q18. Do the draft Regulations allow for the Scheme Administrator to accurately apportion fees to producers?

- a. Yes
- b. No
- c. Do not know

If no, please detail why.

Q19. If your organisation collects and recycles packaging waste, do you understand if you would qualify for off-setting under the draft Regulations?

- a. Yes
- b. No
- c. Do not know

If no, how can this be made clear?

Q20. Do you think the offsetting provisions should be extended as part of future reforms to EPR?

- a. Yes
- b. No
- c. Do not know

If yes, please detail how you think these offsetting provisions should be extended and why.

Q21. Do the draft Regulations provide appropriate safeguards for compliant producers, including with regards to the impact producer non-compliance may have on producer disposal fees?

- a. Yes
- b. No
- c. Do not know

If 'no', please provide details of your concerns.

Scheme Administrator's calculation of disposal costs and scheme administrator costs to be recovered from producers

(Refer: draft Regulations, Part 6, Chapter 3 (disposal costs), Chapter 4 (Scheme Administrator costs) and Chapter 5 (payments to relevant authorities))

The draft regulations do not place any direct obligations on local authorities as primary powers do not allow for this. However, the draft Regulations limit payments to local authorities to the costs of efficient and effective packaging waste management services, protecting producers from excessive and unfair costs.

The Scheme Administrator must assess local authority costs in managing household packaging waste from Year 1. This includes assessing the necessary, efficient costs of local authority packaging waste management services. The Scheme Administrator must assess income earned by a local authority through the sale of packaging waste and subtract this from their efficient disposal costs in calculating net costs. If a local authority is assessed as being ineffective, and not delivering against an improvement plan, the Scheme Administrator can make deductions to that local authority's assessed efficient costs to incentivise service effectiveness (up to 20% of efficient costs). When assessing the effectiveness of local authority packaging waste management services, the Scheme Administrator will provide authorities with the opportunity to discuss their effectiveness assessments and how their services could be improved. The Scheme Administrator will provide authorities with a reasonable period of time to deliver against their improvement plans, where produced, before taking the decision to make reductions to efficient cost payments.

The Scheme Administrator must provide notices to local authorities on their disposal cost assessments and payments.

In addition, the Scheme Administrator must assess the costs it incurs in delivering public information services and separately calculate its scheme administrator costs and recover both from producers.

Q22. Do the draft Regulations make it clear what the Scheme Administrator is required to do and consider in assessing local authority efficient net disposal costs and service effectiveness?

- a. Yes
- b. No

If no, how could these be made clear and what do you consider is missing?

Q23. Do the draft Regulations make appropriate provision for how the Scheme Administrator will incentivise the delivery of efficient and effective packaging waste management services by local authorities?

- a. Yes
- b. No
- c. Do not know

If no, please detail why and explain what is missing.

Q24. Do the draft Regulations make it clear what the Scheme Administrator is required to do and consider in assessing Scheme Administrator public information costs and administration costs?

- a. Yes
- b. No

If no, how could these be made clear and what do you consider is missing?

Q25. Do the draft Regulations make appropriate provision for how the Scheme Administrator will distribute disposal cost payments to local authorities?

- a. Yes
- b. No
- c. Do not know

If no, how could the provisions be made clear or and what do you consider is missing?

Q.26 Do the draft Regulations make it clear how the Scheme Administrator will adjust (modulate) fees to account for the environmental sustainability of household packaging?

- a. Yes
- b. No

If no, how could these be made clear and what do you consider is missing?

Q27. Do you have views on any materials that should be exempted from the scope of modulating fees?

- a. Yes
- b. No

If yes, please specify which materials.

Recalculation of costs and fees

(Refer: draft Regulations, Part 6, Chapter 6)

The draft Regulations provide for the Scheme Administrator to undertake in-year or post-year recalculations of producer fees and local authority costs and sets out the grounds on

which these recalculations could occur and relevant timings. The draft Regulations allow the Scheme Administrator to consider whether new or revised information suggests a material difference to the costs and fees they had assessed and notified for a given assessment year. It sets out the process for how the Scheme Administrator should reconcile the costs of local authorities and the fees of producers where it decides to make recalculations, including the reissuing of notices.

Q28. Do the draft Regulations provide the necessary grounds to allow the Scheme Administrator to recalculate the costs and fees?

- a. Yes
- b. No
- c. Do not know

If no, which grounds are missing?

Q29. Do the draft Regulations set out clearly the process the Scheme Administrator must follow in making fee and cost recalculations?

- a. Yes
- b. No
- c. Do not know

If no, how can the process be made clearer?

Reprocessors and Exporters

(Refer: draft Regulations, Part 7, Chapter 1 for Registration and Chapter 2 for Accreditation)

Reprocessors and exporters who handle packaging waste as part of their operations are required by these draft Regulations to register with the relevant regulator (EA, NIEA, NRW or SEPA) and submit data on an annual basis in relation to that packaging waste.

They can also be accredited by the relevant regulator to issue evidence of packaging waste recycling (Packaging Waste Recycling Notes (PRNs) or Packaging Waste Export Recycling Notes (PERNs).

Q30. Are the new registration requirements for reprocessors and exporters handling packaging waste clear?

- a. Yes
- b. No
- c. Do not know

If 'no', please provide details of any requirements that are unclear.

Q31. Are the new conditions and reporting requirements for accredited reprocessors and exporters clear?

- a. Yes
- b. No
- c. Do not know

If 'no', please provide details of any conditions and/or reporting requirements that are unclear.

Appeals

(Refer: draft Regulations, Part 8)

Producers, operators of schemes, reprocessors and exporters can appeal against certain decisions of the regulators, in relation to approvals, registration and accreditation. These appeals will be heard by the First Tier Tribunal in England and Wales, the Planning Appeals Commission of Northern Ireland in Northern Ireland and Scottish Ministers in Scotland.

Producers can appeal against the Scheme Administrator decisions related to the notice of liability to pay disposal fees and local authorities can appeal against the Scheme Administrators assessment and/or distribution of disposal costs. Appeals against the Scheme Administrator will be determined by the First Tier Tribunal in England and Wales, the Planning Appeals Commission of Northern Ireland in Northern Ireland and the sheriff in Scotland. An appeal cannot be brought against a decision unless the appellant has first brought a complaint against the Scheme Administrator. The Scheme Administrator will be required to establish a complaints procedure.

Q32. Do the draft Regulations adequately capture the decisions that can be appealed?

- a. Yes
- b. No
- c. Do not know

If no, what decisions are not adequately captured or missing?

Q33. Do the draft Regulations set out an adequate appeals process?

- a. Yes
- b. No
- c. Do not know

If no, how could this process be made clear?

Regulators

(Refer: draft Regulations, Part 10)

The draft Regulations place a duty on the regulators to monitor compliance with the obligations and requirements of producers, schemes, reprocessors and exporters as laid out in the draft Regulations. The regulators may publish guidance as they consider appropriate in relation to the operation of any provision in these draft Regulations.

There is a new 'fit and proper person test' that the EA, NIEA, NRW and SEPA will need to apply. The draft Regulations require those regulators to publish joint guidance on the criteria that will be applied in determining whether a person is fit and proper.

Future development of EPR for packaging

In the Government Response to the 2021 consultation, we committed to reviewing EPR for packaging after 2 years of operation; the commitment to undertake this review remains. This review will include the following (but may include additional factors that become apparent during the initial operation of the scheme):

- The sufficiency of EPR measures, in the context of wider collection and packaging reforms and in the delivery of the stated environmental objectives
- The outcomes of further work on material ownership and disposal costs for business packaging waste and related implications for the 'PRN system'
- The form and operational arrangements of the Scheme Administrator
- The sufficiency of arrangements to ensure the efficiency and effectiveness of local authority packaging waste collection and recycling services
- The scope to continuously improve the scheme design and regulatory framework based on international best practice.

We recognise that EPR for packaging will evolve over time. We are therefore interested in views on areas to focus on in that review and where the scheme could be developed further.

Q34. Please raise up to three areas of EPR packaging policy that you would like us to consider in the first review and rank in order of priority.

Next steps

Next steps on the implementation of the draft Regulations

This consultation will close on 9 October 2023. The Governments will consider the responses to the consultation and make amendments to the draft Regulations as appropriate.

Alongside the consultation we will hold co-design workshops with stakeholders to address the more detailed, technical areas of the draft Regulations.

Following consideration of responses, appropriate amendments and refinements to the draft Regulations will be made, and that updated draft will be notified to the WTO and EU in Spring 2024 and will be available via the notification process for stakeholders to view.

All the Governments will continue to work together to monitor the impact of these draft Regulations on the operation of the UK internal market.

Annex 1: The draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations [2024]