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Department of
Agriculture, Environment
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Consultation on reforming the UK packaging producer responsibility system

February 2019



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Executive summary

Policy rationale

We have had a system of producer responsibility for packaging in place since 1997. This has helped to drive recycling of packaging waste from 25%, 20 years ago to 64.7% in 2016. Over this period we have met all our UK and EU packaging waste recycling targets, and the cost of compliance to business has been kept low when compared to other Member States. However, like any system that is over 20 years old, it is in need of reform. Stakeholders have expressed concerns over the transparency of the system including how income from the sale of evidence has supported packaging waste recycling, that local authorities receive limited direct financial support for managing packaging waste, and that there is not a level playing field for domestic reprocessing.

Additionally the UK government and the governments of Scotland and Wales are committed to maximising value from our resources and minimising waste through the circular use of materials. In a number of policy documents commitments have been made to exploring ways to better incentivise producers to manage resources more efficiently. This includes placing responsibility on businesses for the environmental impact of their products and for the full net costs of managing products at end of life.

Our ambitions have increased too and recent months have seen a rise in the public consciousness when it comes to the need to tackle packaging waste. We want unnecessary and difficult to recycle packaging to reduce substantially, we want more packaging designed to be recyclable, we want more packaging waste to be recycled and we want more packaging to be made from recycled material. We also want fewer packaging items to be littered and for it to be easier for people and businesses to recycle their packaging waste. Reforming the packaging waste system fits with these ambitions and the commitments made by all national governments in the UK.

Summary of key content

The current packaging producer responsibility system operates UK-wide. This consultation concerns the whole of the UK and is being undertaken jointly by the UK, the Scottish and the Welsh governments. As the Northern Ireland Assembly is not sitting, the UK government has agreed to consult on behalf of Northern Ireland because of the historic UK-wide approach to packaging producer responsibility.

This consultation seeks views on measures to reduce the amount of unnecessary and difficult to recycle packaging and increase the amount of packaging that can and is recycled through reforms to the packaging producer responsibility regulations. It also proposes that the full net costs of managing packaging waste are placed on those businesses who use packaging and who are best placed to influence its design, consistent with the polluter pays principle and the concept of extended producer responsibility.

The proposals we are consulting on in this document are highlighted below.

1. The definition of full net cost recovery and approaches to recovering full net costs from producers
2. Incentives to encourage producers to design and use packaging that can be recycled
3. The businesses that would be obligated under a packaging extended producer responsibility system
4. Producer funding is used to pay local authorities for the collection and management of household packaging waste and to support the collection for recycling of household-like packaging arising in the commercial waste
5. Mandatory labelling on all packaging to indicate if it is recyclable or not
6. New packaging waste recycling targets for 2025 and 2030, and interim targets for 2021 and 2022
7. Alternative models for the organisation and governance of a future packaging extended producer responsibility system
8. Measures to strengthen compliance monitoring and enforcement including for packaging waste that is exported for recycling

Implications of the proposals for different stakeholders

The proposals set out in this document will impact on those businesses who produce and sell packaging and packaged products, on local authorities and waste management companies that collect and manage packaging waste, on businesses that recycle, or export for recycling, packaging waste and manufacturers that use recyclable materials, and on consumers. The key implications for the proposals for these key stakeholder groups are:

Business: For businesses handling packaging the proposals will accelerate adoption of packaging types that are widely recycled, mean less use of avoidable or unnecessary packaging and incentivise the development and use of easy to recycle packaging. More packaging will need to be recycled and higher recycling targets achieved. Obligated businesses will pay the full net cost of managing packaging waste. Our preference is to move to a single point of compliance which means that obligated businesses will change, some currently obligated may no longer be directly obligated, others not obligated currently will be brought into the system. However, all businesses who use packaging and sell packaged products will pay into the system, if not directly as an obligated business then through the price they're charged by others in the supply chain. Some obligated businesses could choose to develop their own systems for collecting materials, particularly more niche packaging items, if this is cheaper or likely to deliver higher quality recycling.

Local authorities¹: The management of packaging waste costs local authorities in the region of £820m per year. The proposals in this consultation mean that the funding to meet these costs will transfer from central government and local taxpayers to businesses; local

¹ Local authorities include councils in Northern Ireland

authorities will be paid by producers for collecting and managing packaging that arises in household waste. Local authorities will have to collect all recyclable packaging that is identified for collection through household collection services. Collection services will have to meet with any minimum collection standards required in each nation. This will lead to more consistent service provision across the country.

Waste management companies: Waste companies will have the confidence to invest in collection services and recycling infrastructure. This will be on the back of certainty over ambitious future recycling targets, clarity on the packaging materials that can (or can't) be recycled and the materials required to be collected for recycling from businesses and households.

Reprocessors and manufacturers: Reprocessors can expect to have greater confidence in the supply of materials resulting from the adoption of more consistent approaches to collecting recyclable materials. They can expect the materials they receive to be of a better quality owing to changes in packaging design, particularly plastic packaging, and less confusion on the part of the public on what they can and can't recycle. This will help reduce risks related to the supply of materials. Ensuring that UK reprocessors are not disadvantaged compared to exporters and that all recyclable packaging is managed in an environmentally sustainable way will increase confidence to innovate and invest in domestic reprocessing capacity. This in turn will increase confidence amongst manufacturers and brands that they can access improved quality secondary raw materials.

Consumers: Consumers will have clarity on what packaging items can be recycled and those that can't be recycled. For items that can be recycled they will be able to recycle them wherever they live. Combined with more consistent collection services, this will reduce confusion and contribute to more packaging being recycled, less contamination and hence better quality materials. Consumers will be asked to take more responsibility and may be asked to recycle things differently, so good quality and reliable collections and effective communications to keep them informed and motivated will be important.

Summary of initial analysis of impacts of proposals

Alongside this consultation we are publishing an early-stage Impact Assessment. It considers the costs and benefits on the economy, environment and society from the proposals to reform the packaging producer responsibility system. It is intended to provide an initial assessment of the potential impact of the proposed policies. The Impact Assessment looks at one regulatory option and three scenarios for that option.

Scenario 1 looks at the costs and benefits of producers meeting the increased recycling targets whilst funding the full net costs of managing household and household-like packaging waste (through cost transfer from local authorities and businesses generating this waste) and of using a modulated fee/deposit to make certain plastic packaging more recyclable. The latter has only involved an assessment of reducing PVC and polystyrene packaging in favour of easily recyclable alternatives due to existing availability of evidence. Scenario 1 is the key option when considering what the costs and benefits of these reforms are. Over the period 2023-2032, the **Net Present Value for Scenario 1 is £245m.**

Over the same period it achieves **GHGs emissions savings of £77m** and will have a **net direct cost to business of £626m per year**.

Scenarios 2 and 3 are included to take account of the impact of a potential deposit return scheme (DRS) for specified drinks containers on kerbside collections, as a large amount of packaging materials would be diverted to DRS return points, impacting on material revenues and collection and disposal costs of remaining packaging waste. This provides an indication of the impact of these changes on the costs to producers of packaging that is not DRS drinks container. Over the period 2023-2032, the **Net Present Value for Scenario 2 (DRS 'all-in') is -£243m**. This net cost is a result of diverting valuable packaging material to DRS which now benefits from material revenue. **Net direct cost to business is £629m per year**.

Your responses to this consultation will help us to design an effective extended producer responsibility system for packaging and to put in place the necessary regulatory framework to deliver change. As a second stage to this process we intend to consult on our preferred approach and specific regulatory measures in early 2020.

Introduction

This consultation document is concerned with **proposals to reform the packaging waste regulations**².

Annually in the UK we generate around 11.6 million tonnes of packaging waste. In 2016, the UK packaging waste recycling rate was 64.7%. Whilst we can be proud of this achievement, we want to take further action. We want to see a reduction in the use of unnecessary and difficult-to-recycle packaging, we want more packaging to be designed for optimal recyclability, we want more packaging waste to be recycled and we want more packaging to be made from recycled material. We also want fewer packaging items to be littered and for it to be easier for people and businesses to recycle their packaging waste. Better quality recycle and greater certainty of supply of recycle will provide opportunities for business and encourage investment in UK-based recycling infrastructure.

The UK government and the governments of Scotland and Wales and the Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland are committed to maximising value from our resources and minimising waste through the circular use of materials. They are also committed to exploring ways to better incentivise producers to manage resources more efficiently. This includes placing greater responsibility on businesses for the environmental impact of their products and for the full net costs of managing products at end of life through extended producer responsibility (EPR). The recent Resources and Waste Strategy for England³ identified the intention to adopt a framework for EPR that would extend to other products currently covered by producer responsibility requirements, and to new products in the future. The proposals set out in this document fit with these wider commitments.

In reforming the current regulations, we want to design a packaging producer responsibility system that has a positive long term impact. It must work well for all stakeholders, for the UK as a whole and for each nation. The devolved system of government means each government is accountable to their citizens and devolved powers must be respected. Many manufacturers and retailers operate as part of UK-wide supply chains and have told us of their preference for a consistent approach across the UK to be retained.

As well as the reforms we are consulting on in this document, HM Treasury is consulting on the introduction of a world leading new tax, announced in Budget 2018, on the production and import of plastic packaging that does not contain at least 30% recycled content⁴. Together these measures will transform the financial incentives for manufacturers to produce more sustainable packaging, ensuring that far more packaging can be recycled, and that more recycled plastic is used in packaging.

² The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) <http://www.legislation.gov.uk/ukxi/2007/871/contents/made>

³ <https://www.gov.uk/government/publications/resources-and-waste-strategy-for-england>

⁴ Subject to consultation, this tax will apply to any plastic packaging that is produced or imported into the UK that does not contain at least 30% recycled content <https://www.gov.uk/government/publications/single-use-plastics-budget-2018-brief>

This document sets out the proposals of the UK, Scottish and Welsh governments for reforming the producer responsibility regime for packaging waste. It is presented in three parts:

- **Part A** sets out key principles for a reformed packaging waste producer responsibility system
- **Part B** sets out proposals for packaging waste recycling targets post-2020
- **Part C** sets out options for future governance arrangements

Purpose of the consultation

The current producer responsibility system for packaging has been in place since 1997, and predates devolved government which occurred in 1999. It operates UK-wide under GB and parallel Northern Ireland regulations:

- The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) and The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 (and amendments) cover the recycling and recovery of packaging waste (the Packaging Waste Regulations).
- The Packaging (Essential Requirements) (Amendment) Regulations 2015 cover single market and design and manufacturing aspects of packaging.

Stakeholders have told us that the current system is in need of radical reform. Earlier this year, WRAP (Waste & Resources Action Programme), the Industry Committee for Packaging and the Environment (INCPEN) and the government's Advisory Committee on Packaging (ACP) gathered the views of over 160 organisations on packaging reform. These views were summarised as a set of recommendations to the Secretary of State for Environment, Food and Rural Affairs⁵. The ACP separately has put forward papers on future regulations and governance arrangements⁶. The Environmental Audit Committee (EAC) has considered aspects of the regulations and a number of other organisations have shared their views on reform with the UK government. The National Audit Office investigation on implementation of aspects of the packaging waste regulations in England was critical of the current system⁷.

Additionally, public consciousness around the management of waste and plastics has increased significantly over the past 12 months. In particular, the growing awareness of the global issue of plastic waste in our oceans is driving a desire for further action on the part of the public.

We do not believe that the ambitions of government and the expectations of the sector and the public can be met without reforming the current system and establishing higher recycling targets. All governments are supportive of the principles of extended producer responsibility as set out in the EU Circular Economy Package (CEP) approved in May

⁵ <http://www.wrap.org.uk/blog/2018/05/reform-regulations-relating-packaging>

⁶ <https://npwd.environment-agency.gov.uk/Public/GenericContent.aspx?CategoryId=595F40C2-76C4-49E3-8FC8-396CCDB77A9E>

⁷ <https://www.nao.org.uk/wp-content/uploads/2018/07/The-packaging-recycling-obligations.pdf>

2018 and wish to see these adopted in a reformed producer responsibility scheme by the end of 2022. This is why we are consulting on a range of proposals for packaging producer responsibility. Proposals which follow from this consultation will take account of the future relationship we negotiate with the EU on environmental matters.

Your responses to this consultation will help us to design an effective system and put in place the necessary regulatory framework to deliver change. As a second stage to this process we intend to consult on specific regulatory measures in early 2020.

Alongside this consultation there are three other consultations taking place:

- **The UK and Welsh governments** and the **Department of Agriculture, Environment and Rural Affairs, Northern Ireland** are consulting jointly on a deposit return scheme (DRS) for drinks containers. The Scottish Government's consultation on a DRS closed on 25 September 2018.
- **The UK government** is consulting on the requirement for households and businesses to present dry recyclables and food waste separately from residual waste for collection and recycling; and on a minimum service standard for local authority household waste collections. This includes collection of the same set of dry materials (including a consistent set of packaging materials) for recycling. **This consultation covers England only.**
- **HM Treasury** is consulting on the introduction of a new tax on the production and import of plastic packaging from April 2022. The tax will provide a clear economic incentive for businesses to use recycled material in the production of plastic packaging, which in turn will create greater demand for this material.

As these policy initiatives form a cohesive package of measures we have chosen to consult at the same time and give respondents the opportunity to consider these proposals as a whole. A reformed packaging producer responsibility regime, a potential DRS and a tax on plastic packaging would need to work together and alongside the recycling systems in operation in each country (including any potential future changes).

We encourage you to look at these linked consultations as you consider your response to this consultation. We also encourage you to respond to these other consultations:

- [Introducing a Deposit Return Scheme in England, Wales and Northern Ireland](#)
- [Consistency in Household and Business Recycling Collections in England](#)
- [Plastic Packaging Tax](#)

As part of its wider consideration of packaging policy, the UK Government will initiate a review of the Packaging (Essential Requirements) Regulations and the government guidance notes in 2019⁸. This consultation **does not** cover these Regulations.

Geographical extent and definitions

Whilst waste policy is a devolved responsibility, the packaging waste producer responsibility scheme has operated on a UK-wide basis to date. The current producer responsibility packaging waste regulations are GB-wide with identical regulations in place in Northern Ireland⁹. This consultation is being undertaken jointly by the UK, the Scottish and the Welsh governments. As the Northern Ireland Assembly is currently not sitting, the Department of Agriculture, Environment and Rural Affairs is not in a position to consult on packaging reform. The UK government therefore has taken the decision to consult on behalf of DAERA because of the historic UK-wide approach to packaging producer responsibility. Officials in DAERA have informed Defra that they have no evidence that Northern Ireland stakeholders or Ministers would wish to pull out of a UK-wide scheme and confirmed that key Northern Ireland stakeholders participated in stakeholder events organised by Defra.

This document and descriptions of existing law therefore relate to England, Scotland, Wales and Northern Ireland.

Unless otherwise stated, references to ‘government’ are references to the UK government, the Scottish Government, the Welsh Government and the Northern Ireland Assembly. References to Ministers are references to Ministers from each government.

Reference to ‘the regulator’ or ‘regulators’ are references to the Environment Agency (EA), the Northern Ireland Environment Agency (NIEA), Natural Resources Wales (NRW) and the Scottish Environment Protection Agency (SEPA).

Reference to “local authority” or “local authorities” includes a district council or district councils in Northern Ireland.

Audience

Responses to this consultation are welcomed from:

- Businesses that are obligated under the current producer responsibility packaging waste regulations, including raw material manufacturers, packaging manufacturers, pack fillers, sellers and importers of packaged products
- Businesses that are not obligated currently but may be in the future
- Packaging compliance schemes

⁸ The Packaging (Essential Requirements) Regulations 2015 and the Packaging (Essential Requirements) Regulations: guidance notes

⁹ The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) and The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 and amendments

- Organisations involved in the management and recycling of packaging waste including local authorities, waste management companies, brokers, exporters, and reprocessors
- Other organisations such as professional and membership organisations, NGOs, 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 this consultation

Not all questions in this consultation are mandatory. The consultation is split in to three parts and 12 sub-sections. If you do not want to answer all sections you do not need to.

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/>

By email to: packaging@defra.gov.uk

Or in writing to:

Extended Producer Responsibility Team
 Department for Environment, Food and Rural Affairs,
 Ground Floor, Seacole Block,
 2 Marsham Street,
 London, SW1P 4DF

Defra is managing the consultation process on behalf of the UK, Scottish and Welsh governments and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

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: egce.cezw@gov.scot

Wales: wastestrategy@gov.wales

If you are responding from Northern Ireland please ensure a copy of your response is also sent to wslpr@daera-ni.gov.uk.

Duration

This consultation will run for 12 weeks. This is in line with the Cabinet Office's 'Consultation Principles' which advises government departments to adopt proportionate

consultation procedures. The consultation opens on 18 February 2019. The consultation closes on 13 May 2019.

After the consultation

A summary of the responses to this consultation will be published and placed on the government websites at www.gov.uk/defra, www.daera-ni.gov.uk, www.gov.scot and www.gov.wales

The summary will include a list of names and organisations that responded but not personal names, addresses or other contact details. However, 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) 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 send 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, 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, Defra,
1C, Nobel House,
17 Smith Square,
London SW1P 3JR

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. What is your name?

Q2. What is 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 complete the consultation.

Q3. 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 only one option. If multiple categories apply to you please choose the one which best describes you and which you are representing in your response.) (Required)

- Business representative organisation/trade body
- Packaging designer
- Packaging manufacturer / converter
- Product manufacturer / pack filler
- Distributor
- Retailer
- Waste Management Company
- Reprocessor
- Local government
- Community group
- Non-governmental organisation
- Charity or social enterprise
- Consultancy
- Academic or research
- Individual
- Other
- If you answered 'Other' above, please provide details:

Q4. Please provide any further information about your organisation or business activities that you think might help us put your answers in context. (Optional)

Q5. Would you like your response to be confidential?

Yes / No

If you answered 'Yes' above, please give your reason:

Background

The current packaging waste regulations require businesses that handle¹⁰ over 50 tonnes of packaging annually and have an annual turnover over £2 million to meet a share of the annual UK packaging waste recycling targets. Businesses obligated under the regulations are often referred to as obligated producers¹¹. Businesses that fall below this de-minimis threshold are not obligated under the regulations. The contribution of obligated producers is based on their role in the supply chain and the amount of packaging (split by material) they handled in the preceding year. They indirectly also pick up a share of the cost of meeting the targets for businesses that fall below the tonnage and turnover threshold.

Rather than comply directly, an obligated producer can join an approved (by a regulator) compliance scheme that will take on all its legal obligations¹². To date, most have chosen to join a compliance scheme. All obligated producers are required to register with a regulator either directly or through their compliance scheme.

The regulations do not require obligated producers to collect or recycle their own packaging to meet their share of the UK packaging waste recycling targets. Rather, they must acquire evidence to demonstrate that tonnages equivalent to their individual targets have been recovered and recycled during the year. This evidence is called a PRN (Packaging Waste Recovery Note) or where the packaging waste is recovered overseas a PERN (Packaging Waste Export Recovery Note). This evidence can only be acquired from reprocessors and exporters accredited by a regulator. A PRN and a PERN provide equal evidential value when presented to meet a producer's statutory obligations.

The financial value/cost of evidence notes is determined by the market. They fluctuate in price in response to a range of factors, such as the supply of recyclables; the price of raw materials; the price of secondary materials; the availability of evidence; and the level at which the targets have been set. PRNs can only be bought and sold between registered producers (and compliance schemes representing producers) and accredited exporters or reprocessors. The market variables mean that total income raised through the sale of PRNs/PERNs varies from year to year. In the past 10 years, the annual reported income from the sale of PRNs/PERNs has ranged from a low of £20 million up to £110 million.

Accredited reprocessors and exporters therefore receive additional revenue from supplying PRNs/PERNs over and above any value in the recycled material. This additional revenue is intended to support the diversion of more packaging waste into recycling to stimulate investment in more UK reprocessing capacity and support the collection of more packaging waste for recycling. If PRN prices rise, particularly when there is a shortage of

¹⁰ Handling means businesses have to do all of the following: carry out one or more of a number of activities (raw material manufacture, packaging conversion, packing/filling, selling, importing) or have these activities carried out on their behalf, own the packaging on which the activities are carried out and supply packaging or packaging materials at any stage in the chain or to the final user of the packaging.

¹¹ Further guidance on who is obligated under the current regulations is available at <https://www.gov.uk/guidance/packaging-producer-responsibilities>

¹² As of November 2018, 50 compliance schemes were registered with the regulators.

material to meet targets, then reprocessors are likely to pay a higher price to the collectors who deliver the packaging waste to them¹³.

There are concerns however with the current system, in particular how income from the sale of evidence has supported packaging waste recycling. Local authorities have received limited support from producers for managing packaging waste including direct financial benefit from PRN income. Many people continue to be confused over what packaging can and can't be recycled¹⁴. The demand for recycled materials has not been stimulated sufficiently and recycling that can be done at a lower cost overseas has been encouraged leading to an over-reliance on export markets. Whilst there is evidence that light-weighting of certain packaging formats has occurred, there is no indication that this has been driven by the packaging waste regulations alone, as a number of other initiatives have contributed.

The case for action

Government has stated its intent in a number of policy documents¹⁵, that producers should take greater responsibility for the materials and products they put onto the market.

Extended producer responsibility (EPR) is a well-established principle adopted by many countries around the world, across a broad range of products and materials. **It places responsibility on producers for the cost of managing their products once they reach end of life and gives producers an incentive to design their products to make it easier for them to be re-used or dismantled and recycled at end of their life.**

Furthermore, the current system does not provide information on packaging and packaging recycling in each nation of the UK. Each administration has had devolved responsibility for waste policy since 1999, and is accountable to its own electorate on the level of recycling performance for packaging waste. Under a reformed system, packaging placed on the market and packaging waste recycled will have to be reported by producers by nation as well as for the UK, and packaging waste recycling targets will need to be met by producers for each nation and for the UK as a whole.

Timings and business adaptation

The EU Circular Economy Package (Article 8a) establishes minimum operating requirements applicable to any EPR scheme¹⁶. For existing producer responsibility schemes, it requires EU Member States to transpose these requirements into national law by the end of 2022. Government's intention is to make the necessary legislative changes for a reformed packaging producer responsibility system by 2021, with a new system to be operational from 2023. This will allow businesses two years to transition and adapt their activities to comply with the reformed regulations.

¹³ Further information on how the current system works is available at <https://www.gov.uk/guidance/packaging-producer-responsibilities>

¹⁴ WRAP (2018) [Recycling tracking survey](#)

¹⁵ Including the Clean Growth Strategy, the 25 Year Environment Plan, the Resources & Waste Strategy for England, the waste strategy for Wales, Towards Zero Waste.

¹⁶ http://europa.eu/rapid/press-release_IP-18-3846_en.htm

Our approach

Principles

Set out below are the principles on which government's proposals for a packaging waste EPR scheme are based. We have taken into account the views of stakeholders across a range of sectors as well as local government, reviewed reports by international organisations and looked into how EPR for packaging operate in other countries. They are based on the framework principles for EPR in the new Resources & Waste Strategy for England, the principle for EPR set out in Wales *Towards Zero Waste* strategy, commitments to EPR in the Zero Waste Plan for Scotland and the EPR requirements of the EU Circular Economy Package (CEP). A revised Strategy for Northern Ireland plans to embrace the principles of EPR.

The **proposed overarching principles** for packaging EPR are:

1. Extended producer responsibility should form part of a coherent system for improving the recycling of packaging and reducing use of virgin materials, alongside any deposit return scheme for drinks containers, the recycling systems in each nation and consideration of other appropriate fiscal measures. These measures should work together in a way that is understandable and fair for businesses and consumers.
2. Businesses will be incentivised to reduce unnecessary and difficult-to-recycle packaging, and to design and use packaging that is recyclable.
3. Businesses will bear the full net cost of managing the packaging they handle or place on the market at end of life. Subject to this consultation, this should include the cost of collection, recycling, disposal, the clear-up of littered and fly tipped packaging, and communications relating to recycling and tackling littering.
4. Fees raised from obligated businesses will be used to support the management of packaging waste and the achievement of agreed targets and outcomes. This is to include the collection of a common set of packaging materials for recycling across the UK. Local authorities will be expected to meet any minimum service standards (in place in each nation) for the household collection service they provide.
5. All packaging should be labelled as recyclable or not recyclable to make it easier for people to recycle and dispose of packaging waste; with the labelling scheme addressing packaging that may be collected via alternative routes such as a DRS.

The **proposed principles of governance** of an EPR packaging scheme are:

6. Government will set clear outcomes and targets for packaging EPR to encourage long-term planning, investment and innovation by producers and the resource management sector. Producers will be expected to meet the packaging waste recycling targets in each nation.

7. Scheme governance arrangements will be approved by government in accordance with the normal rules and processes; and the roles and responsibilities of all obligated parties and organisations involved in managing and regulating the scheme will be made clear.
8. Appropriate measures will be put in place to increase transparency of markets, target setting, system costs and producer fees in order to drive efficiency along the value chain and ensure costs to producers do not exceed those necessary to provide packaging waste management services in a cost-efficient way and are fair, necessary and transparent, and that costs to local authorities are met.
9. The system will be underpinned by strong measures to ensure packaging waste is managed in an environmentally responsible way, promote compliance and limit the opportunities for fraud and waste crime. Further actions to control waste exports, including through tighter monitoring and enforcement of existing export regulations will be considered.

Q6. Do you agree with the principles proposed for packaging EPR?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response. Specifically, if you respond No, please identify which principles you do not agree with and explain why.

Outcomes - what we are hoping to achieve

A packaging EPR system will support delivery of government's wider objectives of using resources more sustainably and efficiently, mitigating climate change and minimising waste. We have identified a number of outcomes that we would expect a packaging EPR scheme to contribute to delivering:

- For more packaging to be designed to be recyclable
- For unnecessary packaging, that is packaging items that can be removed altogether or where less packaging could be used, to be reduced
- For packaging materials that are difficult to recycle to be reduced or no longer used (such as black plastic, PVC and Polystyrene (PS))
- For more packaging to be recycled – this means that by 2030 70% of all packaging placed on the UK market will be recycled (see Part B)
- In conjunction with a potential DRS, for less packaging to be littered

Following consultation it would be our intention to establish appropriate metrics and to agree definitions for recyclable packaging, unnecessary packaging and difficult to recycle¹⁷.

¹⁷ The UK Plastics Pact <http://www.wrap.org.uk/content/the-uk-plastics-pact-roadmap-2025>, the environmental charity Common Seas and the report by Resource Futures for the Resourcing the Future Conference

As well as environmental outcomes we have identified a number of outcomes related to system delivery:

- That there is sufficient high quality reprocessing capacity in the UK to handle the increasing quantities of packaging waste for recycling (for example, as measured by growth in UK reprocessing capacity, tonnage of packaging waste reprocessed in the UK)
- That the efficiency of the system for managing packaging waste increases (for example, as measured by the average cost of managing a tonne of packaging waste)
- That people's knowledge of the packaging they can and can't recycle (and compost) increases (for example, as measured by people's understanding of what they can and can't recycle or by quantity of materials rejected for recycling)

Q7. Do you agree with the outcomes that a packaging EPR should contribute to?

(a) Yes

(b) No

(c) I neither agree nor disagree

If you answered No, please state which outcomes you do not agree with.

Links with other initiatives

These outcomes will not be achieved through reform to the packaging waste regulations alone; other initiatives including those highlighted below will contribute to their delivery. In setting out our proposals for reform we consider these linkages:

- The important role that packaging plays in protecting and preserving the product it contains, particularly food. We would not want to see any unintended consequences, such as more food being wasted as a result of responses from businesses to changes to the packaging waste regulations.
- That changes to the packaging waste system need to be cohesive with other policy instruments designed to achieve similar outcomes.
- That the compliance and enforcement regime for packaging waste operates within the wider regulatory framework for waste. Government will be reforming regulations relating to waste duty of care, waste carrier/broker/dealers and international waste shipments all of which will have a bearing on the management of packaging waste.
- The requirements in each nation regarding how households and businesses present their waste and recycling for collection and management.

<https://www.resourcefutures.co.uk/project/a-use-based-approach-to-policy-and-decision-making-for-plastics/> are all helpful in contributing to wider discussions on definitions.

Definition of packaging and packaging waste

The Packaging Waste Regulations (Part 1, article 2(2)) adopt the following definitions¹⁸:

- “packaging” means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer. Non-returnable items used for the same purposes shall also be considered to constitute packaging.
- “packaging materials” means materials used in the manufacture of packaging and includes raw materials and processed materials prior to their conversion into packaging;
- “packaging waste” means any packaging or packaging materials which the holder discards or intends or is required to discard. It excludes production residues and packaging that became waste outside the United Kingdom.

In addition, amendments to the Packaging Waste Directive include definitions for reusable packaging and composite packaging:

- “reusable packaging” shall mean packaging which has been conceived, designed and placed on the market to accomplish within its lifecycle multiple trips or rotations by being refilled or reused for the same purpose for which it was conceived;
- “composite packaging” shall mean packaging made of two or more layers of different materials which cannot be separated by hand and form a single integral unit, consisting of an inner receptacle and an outer enclosure, that it is filled, stored, transported and emptied as such.

Single-use packaging-type items that primarily are sold as a product for use in the home such as foil, cling film, jiffy bags, paper cups and sandwich bags currently are not legally considered as packaging and do not fall within the scope of the current packaging waste system.

Q8. Do you think these types of items not currently legally considered as packaging should be in scope of the new packaging EPR system?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

¹⁸ Definitions in the Packaging Waste Regulations adopt the definitions in Article 3(2) of the Packaging Waste Directive. The Directive also sets out criteria to further define packaging and provides illustrative examples of the application of these criteria. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0852>

Types of packaging and sources of packaging waste

The current packaging waste system makes no differentiation between types of packaging (other than reusable packaging) or where packaging waste arises; it requires obligated businesses or compliance schemes on their behalf to provide evidence that recycling of packaging waste has occurred equivalent to their obligations. It could be evidence of the recycling of packaging waste from households or from commercial or industrial premises. In a reformed scheme greater consideration needs to be given to where packaging waste arises and the cost of managing this waste. This would help further ascertain our packaging waste recycling performance and costs estimates, both of which experience data quality issues, and ensure that producers do not pay twice.

Packaging typically is described in terms of the function it performs, falling into three broad types¹⁹, which also give an indication of where packaging waste is likely to arise.

- **Primary Packaging:** is the layer of packaging in immediate contact with the product; or the first packaging layer in which the product is contained. It is used to contain, preserve and protect the product and it can include important information about the product. The primary packaging can have a number of components, e.g. for a multi-pack of beer this would include the bottles, their labels, the metal tops and the card sleeve or shrink film in which the bottles are contained. Primary packaging includes all packaging up to the point of sale, but does not include, for example, carrier bags and delivery boxes.

This packaging is consumer-facing and therefore will end up in the household or commercial waste streams when it becomes waste. Household-like waste arising at commercial and other outlets (e.g. transport hubs, offices) can also be referred to as non-household municipal waste. Businesses along with many public sector organisations pay for the collection and management of this waste.

- **Secondary packaging:** packaging that is additional to the primary packaging and used for protection and collation of individual units during storage and distribution. It can be used in some sectors to display primary packs on shelf. It can include packaging purposely made to display multiple product units for sale so as to speed restocking from storeroom to shelf. It can also be referred to as retail-ready packaging (RRP), shelf-ready packaging (SRP) or counter-top display units (CDUs).

The majority of this packaging will end up in the commercial waste stream. Its collection and management is paid for by the business/premise where it arises. There are examples of the larger retailers managing this waste directly by reverse-hauling it from their retail outlets to their central distribution points for bulking and subsequent management.

¹⁹ Adapted from WRAP Definitions: Type of Packaging <http://www.wrap.org.uk/sites/files/wrap/Definitions.pdf>

- **Tertiary or transit/delivery packaging:** outer packaging, including pallets, slip sheets, stretch wrap, and strapping, used for the shipment and distribution of goods. It is mostly used for 'business to business' transactions and many items are designed to be re-used. When it becomes waste it arises in commercial or industrial waste streams. Businesses either pay waste management companies to manage this waste on their behalf or operate their own systems (e.g. back-haul to distribution depots and sell recyclable materials direct to reprocessors).

With the growth of on-line sales many consumers now have their purchases delivered direct to their homes. This means that increasing quantities of distribution type packaging arise in the home and are managed through household collection services.

As a result some stakeholders have told us that they are moving away from using the traditional classification to a two-fold classification: **consumer-facing packaging** (i.e. primary packaging and home delivery packaging) and (business to business) **distribution and transit packaging** (i.e. secondary and tertiary packaging for deliveries to stores, warehouses and distribution centres).

In terms of waste, consumer-facing packaging can therefore be described as **household and household-like** packaging waste, and distribution and transit packaging **commercial or industrial** packaging waste. A breakdown of packaging waste by material and by waste stream is provided below. We have estimated the split of packaging waste for 2023, which is the first year we are proposing a reformed system being place. The breakdown is based on current data of packaging waste arisings, together with a number of assumptions, and should be considered as indicative only.

	Household packaging waste ('000 tonnes)*	Household-like packaging waste (non household municipal waste) ('000 tonnes)	Commercial & Industrial Packaging Waste ('000 tonnes)	Total ('000 tonnes)
Paper & Card	1,200	1,100	2,500	4,800
Glass	1,500	600	300	2,400
Aluminium	100	100	-	200
Steel	300	200	100	600
Plastic	1,200	700	400	2,300
Wood	-	-	1,400	1,400
Total	4,300	2,700	4,700	11,700

* All figures rounded to the nearest '000 tonnes

We are interested in further feedback on how manufacturers and users of packaging classify packaging.

Q9. Which of these two classifications best fits with how your business categorises packaging?

(a) Primary, secondary, tertiary

(b) Consumer-facing and distribution/transit

(c) Neither – please say why, and provide a description of how your business categorises packaging

The proposed changes in detail

Government's detailed proposals for packaging EPR are set out in the following sections. They demonstrate how we propose to deliver the overarching principles outlined above, outline alternative future governance arrangements and address reforms to the compliance monitoring and enforcement regime. Sections of this consultation therefore are designed to explore potential future approaches; other sections are more specific as they address the current regulations.

Part A: Principles for a reformed packaging producer responsibility system

Section 1: Full net cost recovery (Principle 2)

Section 2: Driving better design of packaging (Principle 3)

Section 3: Obligated producers (Principle 4)

Section 4: Supporting improved infrastructure (Principle 5)

Section 5: Helping consumers to do the right thing (Principle 6)

Part B: Recycling Targets to 2030

Section 6: Recycling Targets

Part C: Governance arrangements

Section 7: Governance models

Section 8: Creating a level playing field

Section 9: Increasing transparency

Section 10: Compliance monitoring and enforcing the system (principle 11)

Section 11: Estimated costs and benefits

Part A: Packaging extended producer responsibility – key principles

1. Full net cost recovery

Background

Under the current system, producers are not obligated to pay the full costs of collecting, sorting, treating and disposing of their packaging when it becomes waste. The PRN system was not set up to fund all costs, only to support growth in collection and recycling and ensure that recycling targets are met. Other policy measures such as landfill tax and local authorities' duties to collect have helped increase packaging waste recycling.

Estimates vary on the proportion of packaging waste management costs that producers fund through the PRN system. At most around 10% of costs are covered²⁰; but our analysis indicates that less than 7% of the costs of managing household packaging waste are covered by producers. This is a fraction of the costs of managing packaging waste. The majority of costs are funded by local authorities, other public authorities and businesses who consume packaged goods. As a result, producers have been able to put packaging on to the market without taking account of the true cost of managing it at the end of life.

The case for reform

A key principle of EPR is that producers cover the **full net cost** (taking account of revenue from the sale of materials for recycling) of managing their packaging at end-of-life. Government intends to adopt full net cost recovery within a reformed packaging producer responsibility system to incentivise prevention, re-use, recycling and less littering of packaging waste.

By adopting the 'polluter pays' principle, packaging producers should be responsible for the costs of collection, transport, sorting, treatment and disposal of packaging waste. Additionally, producers should be responsible for funding consumer communication campaigns and the clean-up costs of littered and fly-tipped packaging items.

Our proposals

We propose that full net cost recovery applies to all 'consumer-facing' packaging; that is packaging waste that arises from households and similar packaging waste that arises at commercial and public sector outlets (such as restaurants, offices, etc.). In other words household and household-like packaging waste.

²⁰ House of Commons Environmental Audit Committee Report, December 2017
<https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/339/339.pdf>.

We consider the cost of managing packaging waste for commercial/industrial applications out of scope of full net cost recovery. As described in the Background this primarily is delivery and transit packaging (stretch wrap, outer packaging, pallets, etc) used in 'business to business' transactions. The cost of managing these wastes is borne directly by businesses, many of whom are obligated producers under the current regulations. Much of it is clean material which is separated at source and attracts good prices when sold for recycling.

There will also be a need to ensure that the design of the packaging EPR scheme takes into account packaging items that may be captured under a potential DRS for drinks containers. One way to approach this would be for packaging items identified as in scope for a DRS to not also be obligated under a packaging EPR system, with both schemes incentivising the use of packaging that is recyclable. Some DRS items could enter kerbside or other packaging collections if consumers choose not to return them to a designated DRS return point, in which case the deposit value could fall to the collectors (such as local authorities) should they choose to claim it. These matters are considered further in the DRS consultation.

Full Net Cost Definition

Our proposed definition of full net cost covers:

- Collecting and transporting household/household-like packaging waste for recycling
- Sorting and treatment of household/household-like packaging waste (where required) for recycling. The income obtained from the sale of recyclable materials would be netted off.
- Treating/disposing of any packaging disposed of in the residual waste stream
- Providing information to consumers on recycling packaging waste and anti-littering
- Clean up of littered and fly-tipped packaging items
- The collection, collation and reporting of relevant packaging and waste management data (including litter and fly-tipping)

In addition, and as currently, obligated business would continue to pay a charge to cover compliance monitoring by the regulator. Obligated businesses would also be expected to contribute to scheme management and administration costs, again as businesses that are members of compliance schemes do currently.

Costs relating to collection, sorting and treatment of household/household-like packaging waste

We have modelled the costs of collecting and sorting packaging waste for recycling from households and businesses at a UK level. This suggests that the annual net cost to local authorities of managing packaging waste that currently arises from households in the UK

for recycling is in the region of £644 million²¹. Household-like packaging that is collected for recycling from businesses, offices and commercial premises is estimated to cost in the region of £185 million²² per year. This cost is borne by those businesses.

With further expansion of recycling collection services, collection of a consistent set of dry materials from all households, public sector organisations and businesses from 2023 and adoption of other measures as set out in section 4 we expect recycling costs per tonne of packaging to decrease over time. Additionally, through measures to incentivise better packaging design (as set out in section 2) we expect fewer harder-to-sort-and-recycle materials to be placed on the market; thereby reducing costs further.

Measures to encourage efficiencies in collection and sorting of packaging waste for recycling would also be put in place²³. We know that collection costs and recycling performance vary depending on rurality, population density, demographics and other considerations so fee income to local authorities through packaging EPR would need to take account of these factors. This is addressed further in Section 4.

Costs relating to disposal of household/household-like packaging in residual waste

We estimate that it costs local authorities £174 million²⁴ annually to treat packaging waste disposed of in the residual waste stream, and commercial businesses and public organisations in the wider municipal sector £197 million²⁵ to deal with this waste. This is a mix of packaging that is deemed 'non-recyclable' as well as packaging disposed of in litter bins or packaging which is too contaminated for recycling. It also includes packaging that is recyclable but which has not been separated for recycling by householders or businesses or for which collection services are not available.

With the introduction of incentives to drive better design of packaging, we would expect less non-recyclable or difficult to recycle packaging to be placed on the market. With improvements to recycling services and communication initiatives to encourage householders to recycle more we would expect more packaging that can be recycled to be recycled. Producer payments to collectors would also be expected to encourage higher collection rates of recyclable packaging. As a result the amount of packaging that is disposed of in residual waste and the associated cost of this should decrease over time.

We would expect packaging producers to fund the costs of disposing of household packaging waste in the residual waste stream. We remain open on whether producers should fund the costs to businesses of disposing of household-like packaging waste in the

²¹ 2018 costs – See accompanying [Impact Assessment](#)

²² 2018 costs – See accompanying [Impact Assessment](#)

²³ Revised Waste Framework Directive Article 8(a) 4 Member States shall take the necessary measures to ensure that the financial contributions paid by the producer of the product to comply with its extended producer responsibility obligations:.....c) do not exceed the costs that are necessary to provide waste management services in a cost-efficient way. Such costs shall be established in a transparent way between the actors concerned. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.150.01.0109.01.ENG

²⁴ 2018 costs

²⁵ 2018 costs

residual waste stream. Businesses pay for their waste services. Access to recycling services for businesses would increase as a result of EPR. Furthermore the UK government and the Welsh Government separately will be consulting on measures to require businesses to present their waste separately for collection and recycling (described in section 4). Scotland already have regulations in place. Businesses therefore would have both a financial and legal driver to recycle their household-like packaging waste.

Costs relating to littered packaging

In 2016/2017 it cost local authorities in England £682 million to keep the streets clean²⁶; it cost Welsh local authorities £54 million in 2017/18²⁷ and Scottish local authorities £53 million in 2014. Highways authorities and private landowners also incur costs for clearing up littered items. Litter has many 'hidden' costs too, from restricting local economic growth to harming the environment and wildlife. A range of measures are being implemented across the UK to reduce littering and increase enforcement action against offenders.

We propose that through producer fees a strategic fund is established for each nation to support national and local anti-littering communications campaigns and community-based initiatives to reduce the littering of packaging where this would prove value for money.

We also propose that producer fees cover the full cost to local authorities of dealing with littered and fly-tipped packaging waste²⁸. Further work would be required to determine these costs and would need to take account of the introduction of any DRS.

Costs relating to recycling communications

The current packaging regulations place a responsibility on organisations that carry out a selling activity to provide end users with information about the product packaging. This includes information on how they can return or recycle packaging, how they can help re-use or recycle packaging as well as explaining any recycling labelling on packaging²⁹. This is called the Consumer Information Obligation. Sellers have chosen to meet this obligation in various ways and to varying degrees, for example, by labelling packaging, by providing recycling information on customer websites and by signposting to the Recycle Now website.

In 2016 £1 million of income raised from the sale of packaging recovery notes was reported as spent by accredited reprocessors and exporters on communication

²⁶ <https://www.gov.uk/government/publications/litter-and-littering-in-england-2016-to-2017/litter-and-littering-in-england-2016-to-2017#the-cost-of-keeping-the-streets-clean>

²⁷ <https://statswales.gov.wales/Catalogue/Local-Government/Finance/Revenue/Outturn/revenueoutturnexpendituresummary-by-service>

²⁸ The EPR requirements in the EU's proposed Single Use Plastic Directive state that EPR schemes should cover the costs to clean up litter of certain packaging items, and the subsequent transport and treatment. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=consil:ST_5483_2019_INIT

²⁹ Regulation 4 (4) (d) of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended)

strategies³⁰. Some compliance schemes have also undertaken their own or support third party communications initiatives³¹.

We propose that a proportion of producers' fees should be allocated to support national and local recycling communications in each nation. Separately stakeholders have suggested that producers should be required to fund recycling campaigns and support local authorities to invest in service-related communications. Stakeholders also have suggested that funding for communications could be levied as a separate fee on producers³². This would create a level playing field for producers and schemes, whilst having the potential to have a greater impact on consumer behaviour and reach a wider audience. In section 5 we present specific proposals for producer funding of communications.

Costs relating to data and reporting

A reformed system involving more stakeholders and the management of considerably more producer fees would require additional data and additional reporting including by nation (as currently done for Northern Ireland) for most obligated parties. In the future we would need to better understand the source of packaging waste (household, non-household, industrial), more detail on packaging types/materials (e.g. plastics by polymer), and where the packaging is placed on the market (by nation). Irrespective of how the future system is governed this would require a data management system with increased functionality compared to the National Packaging Waste Database. This would need to be designed, tested and ready to implement when the new packaging EPR arrangements commence, and would need to be funded by producers.

Compliance monitoring and enforcement costs

Monitoring compliance and enforcing the regulations are key to the system functioning as it should. To achieve the ambitious outcomes we want a reformed system to deliver, the enforcement must be fit for purpose.

Under the current regulations, registration fees paid to the regulator are restricted to compliance monitoring of registered businesses and compliance schemes. Government is looking into whether these fees could be increased to cover enforcement activities of businesses that are obligated under the regulations but who are not registered (otherwise known as 'free riders').

We intend for regulator registrations fees to continue to be levied as a separate fee on obligated businesses. However, rather than these rates being established in the regulations, we will look into the regulator having the flexibility to review and consult on

³⁰ Source: Environment Agency data, 2017. As reported: <https://www.letsrecycle.com/news/latest-news/prn-revenue-topped-50-million-in-2016/>

³¹ For example, Valpak's recyclemore website and Ecosurety's funding of schools recycling workshops and metal recycling campaigns

³² WRAP/INCPEN/ACP recommendations, <http://www.wrap.org.uk/blog/2018/05/reform-regulations-relating-packaging>; Packflow Report, <https://www.valpak.co.uk/information-zone/reports/packflow-2025>

these rates on the same basis as it does for the charges that apply to all its regulated regimes.

Q10. Do you agree with our definition of full net cost recovery?

- (a) Yes
- (b) No, it does not fulfil the Polluter Pays Principle
- (c) No, it goes beyond the Polluter Pays Principle

Please briefly state the reasons for your response and provide any information to support your view.

Q11. Do you agree that producers should be required to fund the costs of collecting and managing household and household-like packaging waste, i.e. all consumer facing packaging?

- (a) Yes
- (b) No
- (c) I don't know

If No, please briefly state the reasons for your response and state what waste you think full net cost recovery should apply to.

Q12. Do you agree that packaging for commercial/industrial applications should be out of scope for full net cost recovery?

- (a) Yes
- (b) No
- (c) I don't know

If No, please briefly state the reasons for your response.

Q13. We would welcome your views on whether or not producers subject to any DRS should also be obligated under a packaging EPR system for the same packaging items.

- (a) Yes they should
- (b) No they should not
- (c) I don't know

Please briefly state the reasons for your response.

2. Driving better design of packaging

Background

Businesses that produce and sell products are at the heart of decisions related to the design of product packaging. Many factors influence their decisions – cost of production, cost of packaging relative to the value of the product it is protecting, brand image, environmental considerations – and for food products it can extend shelf life and help to reduce food waste. Choices at the design stage play a key role in how easy or not packaging is to recycle, and therefore, the cost of managing it at end of life.

Case for change

Government wants to incentivise the design and use of packaging that is easy to recycle and hence lower the cost of managing packaging waste at end of life. EPR can be used to impose higher costs on packaging that has a higher environmental impact. The intention behind this policy is to discourage the use of hard to recycle packaging and drive them off the market. For example, government would like to see the use of expanded polystyrene carbon black plastic phased out of use in packaging applications. However in pursuing this outcome we want to avoid any adverse or unintended consequences that could drive producers to make decisions that result in more packaging or worse environmental outcomes, such as higher carbon impacts.

Our proposals

We propose two alternative approaches to incentivise producers to make better packaging design choices:

1. Modulated placed on the market (POM) fees (where producers pay more if their packaging cannot be recycled or is difficult to recycle and less if their packaging is readily recyclable); or
2. A deposit fee (where producers pay a deposit which is redeemable if they are able to prove that the equivalent of the packaging that they have placed on the market has been recycled). In this case the incentive to design for recyclability is separated from the full net cost recovery requirement. This approach has two elements:
 - a) Recyclable packaging would pay a deposit. The deposit per tonne would vary by material
 - b) Non-recyclable packaging would pay a fee, set high enough to create an incentive to use recyclable packaging.

We describe each of these options below including how full cost recovery is addressed within each approach.

‘Approved’ list of recyclable packaging

Both options for incentivising recyclable packaging design would need to be informed by an ‘approved list’ of recyclable packaging materials. Materials/formats not on the ‘approved’ list would be those that cannot be recycled. In order for such a list to be developed a clear definition of ‘recyclable/recyclability’ would be required. We consider there to be three fundamental elements to determining if packaging is recyclable:

- That the packaging item technically can be recycled
- That it can be collected and sorted for recycling at an acceptable cost
- That it can be recycled back into a new product for which end markets exist

The approved list would need to be agreed and consulted on at a later stage. We would expect it to include: paper and card; glass, clear and coloured; aluminium; steel; food and drinks cartons; and plastics: PET, clear and coloured; HDPE (and possibly LDPE), clear and coloured; and PP³³.

A consideration would need to be the proportion of the packaging item that can be recovered for recycling. For example, for some composite packaging items only a proportion of the item can be recovered for recycling. Therefore, how much would need to be capable of being recycled to deem the overall packaging item recyclable? A further consideration is how compostable packaging should be addressed.

The proportion of a packaging item that can be recycled would need to be considered in setting the modulated fee or deposit. Under the current system the obligation on composite or mixed material packaging is calculated on the material which makes up the largest proportion of the packaging. The fee structure for composite packaging under a reformed scheme would need to account for the overall make-up of the packaging and how hard or otherwise each element of the packaging is to recycle.

The development of the ‘approved list’ would require input from across the supply chain; from reprocessors who are able to inform what packaging items can be recycled or are difficult to recycle, through to producers who take the packaging design decisions. Stakeholders are already considering these issues through work by the UK Plastics Pact, the WRAP consistency packaging working group and On-Pack Recycling Label Ltd and WRAP’s Recycling Guidelines³⁴. The list would have to be kept under review to allow for developments in packaging materials and packaging design, and innovation in sorting and processing technologies.

The approved list would also provide the basis for clear unambiguous labelling of what packaging can and cannot be recycled.

³³ PET – Polyethylene terephthalate; HDPE – High-Density Polyethylene; LDPE – Low-density polyethylene; PP – Polypropylene

³⁴ <http://www.wrap.org.uk/collections-and-reprocessing/collections-and-sorting/kerbside-collections/reports/recycling-guidelines>; <https://www.oprl.org.uk/>; <http://www.wrap.org.uk/content/the-uk-plastics-pact-roadmap-2025>

Modulated placed on the market (POM) fee

Obligated producers would pay fees based on the quantity and types/formats of packaging they handle annually. In total these fees would be set to cover the full net system cost for managing packaging waste. The fees for individual packaging types/formats would be set to recover the costs of managing those materials at end of life, and modulated to support the delivery of the outcomes set out above and the statutory recycling targets.

Government would provide a framework for cost recovery and criteria for fee modulation through regulation. The setting of fee rates would take account of the 'approved list' of recyclable packaging (as referred to above). Packaging materials/formats which are not on the 'approved list' would require a higher fee in order to discourage their use, as well as reflect the costs of their management at end of life.

To inform this consultation we have undertaken a partial assessment of the impact of using EPR to drive more sustainable design decisions. This considered the impact of using modulated fees to incentivise producers who currently use two hard to recycle plastics, Polyvinyl Chloride (PVC) and polystyrene (PS), to adopt easier to recycle alternatives. This shift resulted in significant environmental benefits including a 4% uplift in plastic recycling rate and a 0.7mt carbon benefit over the 5th Carbon Budget. Applied more widely to other hard to recycle packaging formats these benefits could increase further.

We see modulated POM fees being compatible with three of the proposed alternative models of governance (models 1, 2 and 3 in Section 7).

Packaging deposits and fees

An alternative option for driving producer design choices and increasing packaging recycling would be for producers to pay a deposit for each tonne of each type of recyclable packaging they place on the market. The ability of producers to get all or some of their deposit back would depend on how much of the packaging can be recycled and if it is used in closed loop and equivalent applications [refer Part B]³⁵. The proposal is that they would get their deposit back in full only if they could provide evidence that a tonne of the packaging they place on the market had been recycled to an equivalent application; for example, food grade PET to food grade PET. They would get a proportion of their deposit back if they could provide evidence of recycling to an alternative application. For non-recyclable packaging they would pay a fee that is not returnable. In this way the deposit approach is designed to both drive the use of easy to recycle packaging and more 'closed loop' recycling of that packaging. Deposits would need to be set at a level high enough to incentivise change.

³⁵ If a recycled material substitutes for the equivalent virgin material it is considered closed loop recycling regardless of the application (e.g. plastic packaging or plastic pipes). If recycled content is replacing a different material or its properties change in the recycling process it is open loop recycling.

The unredeemed deposits, the non-recyclable packaging fees and a cost recovery fee on producers relating to the management of the household packaging waste would all contribute to obtaining full net costs from producers.

This approach may require setting deposits at a rate which means that producers could contribute more than the full net cost overall for packaging placed on the market. The government would need to carefully consider the implications if this was the case.

This approach underpins governance model 4 described in Section 7.

Q14. Do you agree with the development of an 'approved list' of recyclable packaging to underpin the setting of either modulated fee rates or deposits?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

Q15. Do you think the payment of modulated fees or the payment of deposits with the prospect of losing some or all of the deposit would be more effective in changing producers' choices towards the use of easy to recycle packaging?

- (a) Modulated fee
- (b) Deposit (for recyclable packaging) and fee (for non-recyclable packaging)
- (c) I don't know / I don't have enough information

Please briefly state the reasons for your response and provide any information to support your view.

Q16. Do you think there could be any unintended consequences in terms of packaging design and use arising from:

- (a) Modulated fees
- (b) Deposit (for recyclable packaging) and fee (for non-recyclable packaging)
- (c) I don't know / I don't have enough information

Please briefly state the reasons for your response and provide any information to support your view.

Q17. Do you agree that the deposit approach should be designed to incentivise more closed loop recycling?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

During the consultation period government will undertake further work to help inform the setting of modulated fees and/or deposits. In particular we are keen to understand the differential in rates that would be necessary to drive the desired changes in packaging design and use.

3. Obligated producers

Background

The current packaging waste regulations stipulate that responsibility for meeting packaging waste recycling obligations is shared across the packaging chain ('shared responsibility'). The obligation is split according to the activity performed as follows: manufacturer of raw material (6%), convertor (9%), pack filler (37%), and seller (48%). These percentages were agreed between government and industry before being set in the regulations. These percentages are applied to the producer's packaging waste obligation. This means it is possible for four separate producers to be obligated for one unit of packaging. However, many businesses handle packaging at more than one point in the packaging chain e.g. a pack filler may also be a seller. In this scenario, they take a rolled-up obligation of 85% (37% + 48%). Importers are also obligated and take a different ("rolled up") obligation depending on the activity the packaging is imported for. As at September 2018 9,992 businesses within 6,839 company registrations were registered and complying under the regulations.

The current packaging producer responsibility system has a de-minimis threshold. This threshold states that a 'producer' is only obligated if they had (in the previous financial year) *a turnover of more than £2 million and handled more than 50 tonnes of packaging.*

In 2017 the total amount of packaging placed on the market in the UK was approximately 11.5m tonnes. The amount accounted for by compliant companies (producers) in the same year was 9.8m tonnes³⁶, or 85%. The amount of packaging not accounted for (either from producers who are below the de-minimis threshold or free-riders³⁷) was approximately 1.7m tonnes, or 15%. The complying producers have a business target applied to their obligation to account for this tonnage (as explained in Part B).

Any producer whose turnover is between £2 million and £5 million can register as a "small producer". A small producer can choose to either comply in the normal way, or to use the **Allocation Method**. This is a more simple way of calculating an obligation that requires no reporting of tonnage of packaging handled. It is done by multiplying annual turnover (in £m) by a factor set by government. A producer is required to purchase PRNs for their predominant material (by weight). As an example:

Annual turnover: £2,750,000

Government set tonnage multiplier: 30 tonnes

*Obligated tonnage: £2.75 million * 30 tonnes = 82.5 tonnes*

³⁶ National Packaging Waste Database (NPWD), 2018

³⁷ Free-riders are businesses that are obligated under the regulations but do not register and comply with the regulations.

Case for reform

Shared responsibility has engaged businesses at all stages of the packaging chain. It has promoted awareness of the issues around packaging waste and recycling and has required all obligated businesses to contribute financially. However, it could be argued that shared responsibility reduces the incentive for any individual producer to act to reduce packaging or increase recyclability by diluting the strength of the price signal for good or bad behaviours. It also puts an obligation on some who have less ability to make or influence change. The requirement of full net cost recovery also raises considerations as to where in the supply chain these costs are best levied.

Removing or lowering the de-minimis to bring every (or nearly every) producer in to scope could improve our understanding of the packaging that is placed on the market as the current complying producers do not account for 100% of all packaging. It could spread the costs of compliance over more producers and help to engage more small and micro businesses in issues related to packaging. However, there would be a proportionate increase in compliance monitoring and enforcement costs.

Our proposals

As is explained in the Impact Assessment there currently is a lack of available data and evidence to use in assessing the impacts of both changing to a single point of compliance and removing or lowering the de-minimis threshold. The proposals below are based on the analysis conducted for the early-stage Impact Assessment as well as feedback obtained through stakeholder engagement and research into EPR systems in other countries. We will be looking to extend our analysis in the coming months, informed by an external evidence project to develop more accurate estimates of the likely number of businesses that would be obligated through a change in definition.

We have proposed two options (each with possible variations) for changing the definition of obligated businesses (producers) under a reformed system. We also present proposals for two related matters: how small business could comply and online distance-selling.

Option 1: A single point of compliance

A single point of compliance is when 100% of the producer responsibility obligation is placed on one business for each unit of packaging placed on the market. In moving to a single point of compliance, the obligation should be on those businesses who have the greatest amount of influence over packaging design and the use of materials.

It may be difficult for either a modulated fee or deposit approach to operate effectively if there are several businesses responsible for each item of packaging. Getting the incentives and drivers right would be complex. We have looked at EPR systems across Europe with modulated fees and all of them operate with a single point of compliance. Moving to a single point of compliance is our preferred option.

Below are two approaches to a single point of compliance. Importers would have an obligation for certain imports under both scenarios.

Brand Owner (and Importer of packaged products)

In this option, the obligated producer would be the brand owner at the first point of sale of the packaged product. In the main this would be equivalent to the “pack-filler” in the current regulations. Brand owners may be large, multinational manufacturers of branded products, retailers selling own-brand products or smaller manufacturing businesses and independent shops. The brand owner would have the capacity to react quickly and effectively to the strong price signals that would be sent by a modulated fee or deposit payment. This increases the likelihood that they would take the decision to reduce unnecessary packaging and/or move to easier-to-recycle packaging.

We would want to avoid placing an unacceptable reporting burden on very small or micro businesses who may come under this definition. These could include independent shops who buy their packaging from wholesalers (e.g. cafés and restaurants that buy takeaway food containers to fill). However, a recent report published by the Welsh Government *Options for Extended Producer Responsibility in Wales*³⁸ highlighted the issues of packaging that is placed on the market by such businesses. Whilst the tonnages may be small the packaging is very visible as it is generated ‘on the go’ and can contribute to littering. We therefore propose two alternatives:

- a) Replace the current de-minimis threshold with a lower turnover threshold aimed at excluding the small and micro businesses who would otherwise be obligated (e.g. an independent café that fills takeaway boxes at point of purchase). We anticipate that this would account for a small proportion of the packaging placed on the market however we do not have the data to support this assumption.
- b) Retain the current de-minimis threshold and obligate wholesalers and direct-to-retail sellers of unfilled packaging. They would pay modulated fees or deposits on the unfilled packaging products (or own brand products) they sell to producers (i.e. brand owners, pack fillers) below the de-minimis threshold. Wholesalers and direct sellers of packaging would be expected to present prices inclusive of an ‘EPR obligations’ when selling unfilled packaging. The wholesaler could discount the fee when selling to an obligated business.

Under a brand owner single point of compliance, sellers may need to be required to report the packaging they handle (but not pay fees/deposits) in order to provide data on where packaging is placed on the market. This would enable the reporting of POM data and packaging recycling rates at an individual nation level. We understand that it would be difficult for many brand owners to know where their products will be sold. Sellers on the other hand should be able to report where (geographically) products are placed on the market for sale.

³⁸ Eunomia Research & Consulting, 2018: <https://gov.wales/docs/desh/publications/180524-final-report-options-for-extended-producer-responsibility-in-wales-final-report-en.PDF>

To account for delivery and transit packaging (commercial and industrial packaging waste), we propose that raw material manufacturers and converters are obligated for the packaging used to supply their products to pack fillers or sellers.

Seller (and Importer of packed products)

Another approach would be to obligate the seller (of the packaged product to the end user). The seller can provide the most accurate data on where products are bought by consumers. We expect larger sellers to have a good level of influence on packaging design and use. However, if the de-minimis threshold was reduced or removed, we anticipate this would obligate many more businesses than if the point of compliance was the brand-owner (as described above).

Q18. What do you consider to be the most appropriate approach to a single point of compliance, the Brand-owner or the Seller approach?

- (a) Brand-owner
- (b) Seller
- (c) Other
- (d) I don't support moving to a single point of compliance

Please briefly state the reasons for your response and provide any information to support your view.

Q19. If a single point of compliance approach was adopted, do you think the de-minimis should be:

- (a) Replaced with a lower turnover threshold?
- (b) Retained and wholesalers and direct-to-retail sellers take on the obligation of those below the threshold?
- (c) Other, please state
- (d) Don't know

Please briefly state the reasons for your response and provide any information to support your view.

Q20. Should small cafés and restaurants selling takeaway food and drinks whose packaging is disposed 'on the go' be exempt from being obligated?

- (a) Yes
- (b) No
- (c) Don't know

Please briefly state the reasons for your response and provide any information to support your view.

Option 2: Retain shared responsibility

The options below retain the shared responsibility approach but consider how to draw into the system, packaging handled by businesses who are not obligated under the current system.

The de-minimis threshold as it stands was designed to protect small businesses from the burden of complying. Small businesses have much less control over the design of packaging. It can also be burdensome for small businesses to understand and obtain data on the packaging they handle. Currently, the recycling targets to be met by obligated producers are increased to account for the packaging handled by companies below the de-minimis threshold (the business targets). This means that complying producers are obligated for more tonnage than they would otherwise need to be in order for the UK to meet EU recycling targets.

A. Lower or remove the de-minimis

Lowering or removing the de-minimis threshold would be consistent with the “everybody plays their part” principle. It would mean a more level playing field for all producers and potentially remove the need for business targets. However, our initial high level analysis indicates it may bring up to 910,000 additional businesses into the EPR system³⁹. The costs involved in regulating this number of additional businesses plus the burden on small businesses may outweigh the environmental and societal gains.

B. De-minimis threshold remains unchanged and extend obligations on distributors of packaging or packaged products

Many small businesses will use distributors (wholesalers) for supplies of packaging or packaged products. These distributors currently have packaging obligations, however they do not take on an obligation for any packaging they sell to non-obligated sellers, that is subsequently sold on to the final consumer. Our proposal here is that the de-minimis threshold would be retained and distributors and other businesses who sell packaging or packaged goods to non-obligated businesses, which are subsequently sold on to the final consumer, would be required to take on the obligation of that business. As an example, a distributor selling primary packaging to a non-obligated seller would take the 48% obligation of a seller on that packaging.

This would be akin to reintroducing ‘Class D Packaging Supply’. This was in the original regulations and removed in 2005. The definition of Class D Packaging Supply in the original regulations was “... a supply to a seller who, at the time of the supply, was not a producer”. It was removed as part of the consolidation of the regulations in 2005 because it was recognised that distributors were obligated by carrying out activities such as importing and selling on a lot of the packaging they handled.

In combination with a new approach to online distance-selling (see below), this approach could bring into the system most of the packaging handled by businesses who fall below

³⁹ Refer to Annex E of the [Impact Assessment](#).

the de-minimis threshold without burdening those businesses directly and with the least change to the system. This is why we think it is worth re-considering this requirement.

Q21. If shared responsibility is retained, is Option A or Option B preferable for including smaller businesses or the packaging they handle in the system?

- (a) Option A (Lower or remove the de-minimis)
- (b) Option B (De-minimis threshold remains as is and obligations extended to distributors of packaging or packaged products)
- (c) Other, please state
- (d) I don't know

Please briefly state the reasons for your response and provide any information to support your view.

Q22. If you have stated a preference for A, do you think the de-minimis threshold should:

- (a) Be reduced (please state your suggested threshold)
- (b) Be removed entirely

Please briefly state the reasons for your response and provide any information to support your view.

Q23. Overall, do you have a preference for maintaining a shared responsibility compliance approach, or moving to a single point of compliance?

- (a) Shared responsibility
- (b) Single point of compliance

Please briefly state the reasons for your response and provide any information to support your view.

Small producers

As described above the current system offers a simpler approach for smaller obligated businesses to comply (currently defined as having an annual turnover between £2 million and £5 million): the *Allocation Method*. This has been taken up by around 6% of producers in recent years (a number that could increase if the allocation method is made more visible). If the de-minimis threshold was to change it is important to consider how smaller businesses might register and comply:

- 1) **Pay a flat fee** – some stakeholders have suggested that small business pay a flat fee to include for example registration costs, a contribution to the scheme administration costs and a contribution towards recycling or anti-littering communications. A small producer flat fee arrangement operates for both the WEEE and Batteries producer responsibility schemes.
- 2) **Apply the allocation formula** - extend the **Allocation Method** to any business brought into the system from lowering the de-minimis. This approach is proven and means that companies pay less if their turnover is lower. Rather than purchase PRNs, producers would pay fees based on their obligated tonnage which would be determined by application of the allocation formula.

Q24. Do you have a preference for how small businesses could comply?

- (a) Pay a flat fee to include a contribution to a communications fund
- (b) Apply an allocation formula
- (c) Other, please describe

Please briefly state the reasons for your response and provide any information to support your view.

Online Distance-Selling

Over the last 10 years, e-commerce sales in the UK have increased⁴⁰. As e-commerce sales across international boundaries climb further, they will account for more of the packaging placed on the UK market that is not accounted for through producers based in the UK. Stakeholders have highlighted the need to consider how online sales are captured within the packaging producer responsibility regime.

The key concern lies with producers who are not based in the UK and sell online direct to UK consumers through online marketplaces (a website through which a person other than the operator of the website can sell their products). The European Commission has estimated that 70-75% of international online trade is carried out via online marketplaces⁴¹. The regulators have no jurisdiction to enforce the regulations on these overseas producers and so there is a growing problem of non-compliance through online marketplaces.

We propose that one way to address this is to require the operators of online marketplaces to take the legal responsibility for the packaging on products for which they facilitate the import. It will be less burdensome and more achievable for the regulators to monitor the online marketplaces than it would be for them to monitor the overseas producers.

We would create a new class of producer that would put an obligation on the operators of online marketplaces for the packaging on all of the products they sell through their platforms/websites that are imported to the UK.

The online marketplaces would continue to be obligated for any packaging they add to the products that are delivered to consumers (including any delivery packaging).

Q25. Do you think that requiring operators of online marketplaces to take the legal responsibility for the packaging on products for which they facilitate the import would be effective in capturing more of the packaging that is brought into the UK through e-commerce sales?

- (a) Yes
- (b) No
- (c) Other, please suggest options

Please briefly state the reasons for your response and provide any information to support your view.

⁴⁰ Office for National Statistics (ONS), 2017

⁴¹ http://europa.eu/rapid/press-release_MEMO-16-3746_en.htm

4. Supporting improved collections and infrastructure

Background

An overarching principle for a reformed packaging system is that money raised from producer fees should pay for the management of packaging waste at end-of-life. Furthermore producer fees should be used to support improvements to the current infrastructure so as to deliver:

- Higher quality, consistent collections of packaging waste for recycling; and
- More provision for managing packaging waste generated ‘on-the-go’

The materials collected for recycling and the approaches to collecting waste and recyclables from households and businesses vary across the UK and within each nation. Current arrangements are summarised in Annex 1.

Case for change

The recent National Infrastructure Assessment⁴² identified the need for consistent national standards of waste recycling from households and businesses, and clear labelling on product recyclability among the key measures required to help improve waste recycling rates in the UK. Support for more consistency in collections has also been expressed by industry representatives, NGOs and the Environmental Audit Committee.

WRAP’s 2018 Recycling Tracker Survey⁴³ indicates that around 34% of householders surveyed raised confusion over what can be recycled as contributing to them not presenting potentially recyclable materials for collection. Consistent collections, together with clearer packaging labelling and communications, would reduce uncertainty as to what materials can be collected for recycling, and help improve recycling rates and quality.

Wales and Scotland are on the way to having consistent collections across local authority areas. The UK government is consulting on collections consistency in England building on the framework for consistency in household collections developed by WRAP. The recently published Resources & Waste Strategy states that subject to consultation the UK government will legislate to specify a core set of materials to be collected by local authorities⁴⁴ and waste operators in England.

⁴² https://www.nic.org.uk/wp-content/uploads/CCS001_CCS0618917350-001_NIC-NIA_Accessible.pdf

⁴³ http://www.wrap.org.uk/sites/files/wrap/Recycling%20Tracker%20Report%202018%20-%20Final%20for%20publication_0.pdf

⁴⁴ In the Resources & Waste Strategy it is stated that recognising the financial pressures on local authorities, they will receive additional resource to meet new net costs arising from the policies set out in the Strategy once implemented. This includes both net up front transition costs and net ongoing operational costs.

Our proposals

Common set of packaging materials collected for recycling

Local authorities would be required to collect a core set of packaging materials from households for recycling. This requirement would be mandated in the new regulations. This packaging would include items on the 'approved' list of recyclable packaging referred to in Section 2. As a minimum the broad categories of packaging would be:

- Paper and card packaging
- Metal packaging (steel and aluminium; cans, aerosols, foil/foil containers)
- Plastic packaging (PP, PET, HDPE; bottles, pots, tubs, trays)
- Glass (bottles and jars)
- Food and beverage cartons

Within each category the specific packaging formats to be collected would need to be defined (e.g. HDPE bottles, aerosol cans) and would be required to be labelled as recyclable to make it clear to people what they can recycle. These would also depend on whether or not any DRS for drinks containers was to be introduced alongside packaging EPR.

As described earlier the list would be subject to periodic review to take account of advances in packaging design, developments in sorting/processing technology and decisions regarding how certain packaging materials are best collected for recycling. If additional packaging items, such as film plastic waste produced by households (which is mostly LDPE) and compostable plastic packaging, were to be required to be collected from households in the future then producers would be expected to cover these costs.

Collections consistency

Recognising the investment that has already been made in collection infrastructure by local authorities, government and the private sector, our proposal is that the packaging EPR system supports the collection frameworks established by programmes in Scotland and Wales, and the adoption of the minimum service standards for households and businesses being consulted on in England.

By support we mean that producers **would be responsible for the costs to local authorities of collecting and recycling agreed packaging wastes**. This would include any necessary capital costs and net operational costs. Also, as recognised above, as these packaging items could change over time payments to local authorities would need to adjust to include for the costs of collecting any additional packaging materials.

Distributing producer funds to local authorities and businesses and ownership of materials

There are various approaches that could be taken to allocate EPR funding for packaging to local authorities and businesses who collect and manage household and household-like packaging waste. The practicalities of how this funding would be distributed and the

arrangements for doing so would largely depend on the final governance arrangement for the packaging EPR scheme and the mechanism for raising fees from producers.

This section seeks the views of stakeholders on how producer payments will be distributed among local authorities and businesses. For both we would anticipate a formula-based approach that takes account of the cost of collection provisions for the management of packaging waste and the quantity and quality of packaging waste materials collected for recycling. As highlighted earlier, producers should not be expected to cover the costs of inefficient service delivery and their financial contribution should not exceed the costs necessary to provide those services (Section 1).

Payments to local authorities for household packaging waste

There are 32 local authorities in Scotland, 22 local authorities in Wales and 11 councils in Northern Ireland with responsibility for both waste collection and disposal. In England there are 55 unitary authorities responsible for waste collection and disposal, 27 county councils with disposal responsibilities and 201 district councils with collection responsibilities. Arrangements in the 32 London boroughs and 36 metropolitan boroughs vary with some acting as unitary authorities for waste and some having collection-only responsibilities with disposal arrangements covered by six statutory joint waste disposal authorities (four in London, one for Merseyside, one for Greater Manchester).

A practical approach is therefore required and one that takes into account:

- The legitimate variations between local authorities in the cost of collection (per household or per tonne of packaging material) and the amount of material available to collect from households;
- That payments to local authorities are transparent and it is clear what local authorities have collected in terms of total packaging waste and packaging waste recycled;
- Ownership of the material and where in the value chain the value of materials are accounted for so that producers pay net cost; an option would be to pay local authorities their gross costs of collection so they no longer bear the risk of material prices.

We see there being three components to producer payments to local authorities for managing packaging waste and each is discussed further below:

A. Payment for the cost of providing a recycling collection service for the agreed set of packaging materials and which meets any minimum service requirements that may be required of local authorities (by nation⁴⁵).

B. Recycling payment for the amount of packaging waste collected and recycled.

⁴⁵ Proposals for minimum service requirements for local authorities in England including dry recycling are currently subject to consultation alongside this consultation.

C. Residual waste payment related to the cost of managing household packaging waste in residual waste; that is packaging that cannot be recycled and packaging that can be recycled but has not been captured for recycling. (See below for how this might be calculated.)

Unitary authorities would receive all three payments. For authorities in two-tier local authority areas in England, we would need consider how payments could be made between collection and disposal authorities.

Collection related payments (A & B)

We propose that local authorities are grouped taking account of their rurality (geography) and socio-demographics – these being the key factors that impact on the cost and performance of services. For the early stage Impact Assessment Defra has used WRAP's six local authority rurality groups as the basis for cost modelling. An appropriate classification would need to be agreed in due course either for the UK as a whole or for each nation individually.

Local authority rurality groups – England

- R1 Predominantly urban, higher deprivation
- R2 Predominantly urban, lower deprivation
- R3 Mixed urban/rural, higher deprivation
- R4 Mixed urban/rural, lower deprivation
- R5 Predominantly rural, higher deprivation
- R6 Predominantly rural, lower deprivation

Reference recycling collection costs could be developed for each local authority grouping. The reference costs could be based on:

- collection costs
- material sorting costs
- average capture rate for the different packaging materials
- different collection schemes e.g. multi-stream, two-stream rate
- cost of collecting each packaging material collected (e.g. card, metals, plastics).

Expectations for material quality would also need to be set out. Local authorities would need to report on quantities of packaging collected and recycled.

Payments for packaging waste in residual waste (C)

We propose that these payments would be based on the average disposal gate fee for household waste for landfill or incineration. These rates could be either national average rates or regional average rates. There are two elements to this payment:

- Payment per tonne of packaging waste in the residual stream – based on an estimate informed by waste composition analysis of the amount of non-recyclable packaging in residual waste

- Payment per tonne of recyclable packaging – this could be based on the average recycling rate for recyclable packaging (by local authority grouping). For example, if the average packaging recycling rate was 60% then the 40% not separated for recycling could be eligible for Payment C. Alternatively, payments could be determined for each material separately e.g. average recycling rate for card x tonnes of card assumed to be in residual waste (for each local authority grouping).

Payments for the collection of household-like packaging waste from businesses/other public sector organisations⁴⁶

A similar formula based approach to payments for the collection and recycling of household-like packaging is suggested that takes into account:

- Cost of collection – a key consideration here would be whether cost of collection would need to factor in geographical considerations or whether a single rate could apply
- Proportion of target recyclable packaging materials in the waste stream
- Weight of target materials recovered for recycling

For household-like packaging collected for recycling from businesses or public sector premises, accredited sorting or transfer stations could facilitate producer payments to the large numbers of collectors of business waste (100,000+ waste carriers) and the even larger numbers of organisations producing household-like packaging waste. This is based on our understanding that most packaging waste from these sources would need to be bulked up or sorted prior to transfer to a reprocessor / exporter.

Accredited sorting facilities and transfer stations would receive producer payments if they could present evidence of quantity and type of packaging waste recycled. Having received payment the sorting facility or transfer station would be required to pass the benefit back to collectors who in turn would pass this on to business customers by way of a discount on recycling collection charges. The discount applied could be shown on invoices to enable it to be transparent to the (waste producing) businesses and provide an audit trail. Local authorities providing recycling collections services to trade customers on a commercial basis would also be eligible to receive producer payments on the presentation of evidence of packaging waste collected and recycled.

As businesses pay for waste collection and disposal they would have a financial incentive to recycle their household-like packaging waste if this resulted in lower overall costs to them. In section 1, we remained open on whether businesses generating household-like packaging should receive a payment to cover their costs of managing household-like packaging waste in residual waste.

⁴⁶ This refers to public sector organisations, other than local authorities, in this section.

Ownership of material through the value chain

An important consideration in determining payments for any given transaction along the value chain is ownership of the materials and at what point income is received for the materials. At present ownership tends to change when there is a financial transaction. Decisions regarding ownership of packaging waste recovered for recycling need to be factored into considerations regarding payments to local authorities. If ownership of material is retained by producers then local authorities could be paid their gross costs and hence would no longer bear the risk of fluctuating material prices. Or, as now, local authorities could continue to receive income for the sale of their recyclable packaging materials and this income would need to be taken account in payments made to local authorities as producers are required to pay net costs. This will require further consideration as proposals for packaging EPR are developed further.

Q26. Do you agree payments to local authorities for collecting and managing household packaging waste should be based on:

- (a) provision of collection services that meet any minimum standard requirements (by nation);
- (b) quantity and quality of target packaging materials collected for recycling;
- (c) cost of managing household packaging waste in residual waste

Please briefly state the reasons for your response and provide any information to support your view.

Q27. Do you think we have considered all of the costs to local authorities of managing packaging waste?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

Q28. Do you agree with our approach to making payments for the collection of household-like packaging waste for recycling?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

Q29. Should businesses producing household-like packaging receive a payment for the costs of household-like packaging waste in residual waste?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

Q30. Are there other factors, including unintended consequences that should be considered in determining payments to:

(a) Local authorities?

Please explain the reasons for your response and provide any information to support your view

(b) For the collection and recycling of household-like packaging waste?

Please explain the reasons for your response and provide any information to support your view.

Recycling of 'on-the-go' packaging waste

Background

Packaging waste generated 'on-the-go' is a component of litter. A 2014 INCPEN/Keep Britain Tidy study of litter composition⁴⁷ in England indicated that food packaging items made up 14.6% of all litter and consisted mainly of confectionery litter. Non-alcoholic drinks-related items made up 9% and alcoholic drinks-related items accounted for 2%. A further 12% of litter items fell into the 'other' category, which included some packaging items such as meat trays and cardboard sleeves. A parallel study carried out in Scotland by Keep Britain Tidy⁴⁸ found that the composition of litter was comparable to that recorded in the England survey.

Studies by WRAP/Valpak and INCPEN/Keep Britain Tidy have indicated that the current provision of on-the-go recycling infrastructure generally is patchy and in places inadequate. A survey conducted by RECOUP in 2017 found that 42% of UK local authorities provide on-the-go recycling collections⁴⁹.

The RECOUP study findings were corroborated by an Environment Agency survey which reported that only 34 English waste collection authorities (c. 12%) out of the 283 respondents provided street recycling bins as part of their non-kerbside provision⁵⁰. A range of measures are also being implemented in England to reduce littering and increase enforcement action against offenders, notably through the Litter Strategy⁵¹ and further highlighted in the Resources and Waste Strategy⁵².

In Scotland, there has been a push to increase on-the-go recycling points with Zero Waste Scotland having funded about 4,000 on-the-go recycling bins in recent years, and developed a toolkit to help businesses to install bins⁵³. Additionally the impact of a DRS on

⁴⁷ <https://www.incpen.org/litter-composition-survey-of-england-2014/>

⁴⁸ <https://www.incpen.org/composition-of-litter-in-scotland-2/>

⁴⁹ <http://www.recoup.org/p/300/disposal-on-the-go-local-authority-survey>

⁵⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493192/WCA_separate_collection_arrangements_-_survey_results.pdf

⁵¹ <https://www.gov.uk/government/publications/litter-strategy-for-england>

⁵² <https://www.gov.uk/government/publications/resources-and-waste-strategy-for-england>

⁵³ <https://www.zerowastescotland.org.uk/litter-flytipping/recycle-on-the-go>

street litter and on-the-go recycling has been addressed in studies by the Scottish Government.

The Welsh Government has invested in improving on-the-go facilities. A survey by the Welsh Local Government Association established that 16 (73%) of the 22 Wales local authorities provide some litter recycling bins, though the coverage is not extensive⁵⁴.

On the go recycling operations tend to be characterised by high contamination rates and low return on investment, partly due to confusion over which bins to use. High levels of contamination mean that materials captured are often not acceptable for recycling and are sent for disposal at additional cost to local authorities. Some local authorities have withdrawn public recycling bins for these reasons.

Case for change

The findings from the 2014 INCPEN/Keep Britain Tidy survey of litter composition in England show that, apart from smoking-related litter and chewing gum, packaging waste is a significant source of litter. This would suggest that even if a potential DRS was successful in capturing the majority of the component of litter that is made up of drinks containers a considerable amount of packaging waste including items such as single-use cups, confectionary and food packaging would require suitable collection infrastructure.

An adequate provision of on-the-go recycling and litter bins would complement improvements to household collections and help achieve the outcomes proposed for packaging EPR.

Q31. Do you have any information that would help us to establish the costs incurred by local authorities and other organisations of cleaning up littered and fly-tipped packaging items?

Q32. How do you think producer fees could be used to improve the management of packaging waste generated on-the-go?

Q33. Do you have any information that would help us to establish the costs of collection and disposal of increased on-the-go provision?

⁵⁴ Welsh LGA survey, October 2018, unpublished.

Disposable, single-use cups

At Budget 2018, the UK government concluded that a levy on all disposable cups would not at this time be effective in encouraging widespread reuse⁵⁵. Businesses are already taking steps to limit their environmental impact, but the government expects industry to go further and has stated that it will return to the issue if sufficient progress is not made.

Disposable cups are often litter and can be difficult to recycle. Disposable cups are defined as packaging and producers handling disposable cups are obligated under the current regulations. Obligated producers pick up both the pack-filler and seller obligations where they fulfil both activities; they fill a cup with coffee, for example, and then sell the cup of coffee to a consumer. When this occurs, the business is deemed to have supplied to another stage in the packaging chain and picks up the relevant obligations for both activities.

Disposable cups are in scope for the measures set out in this consultation document. They could be accommodated within either a deposit approach or a modulated fee structure. Producers could have the flexibility to establish their own collection systems and determine how best to maximise the collection and recycling of disposable cups. Alternatively producers could be set a recycling target and invited by government or the producer management organisation to put forward their plans for meeting this target. Producers would fund the collection system directly and be responsible for achieving the target. Under such an arrangement the modulated fee structure for disposable cups would need to take this into account but it would be reasonable to expect producers to contribute to other EPR costs such as data/reporting and communications.

In the linked consultation on a DRS for drinks containers we are seeking evidence on whether it would be cost effective to include disposable cups (drinks containers filled at the point of sale) in scope of a DRS. Responses to both consultations will help inform any next steps by government.

As packaging EPR and any potential DRS (in England and Wales) are unlikely to be implemented before 2023 government would like to see businesses increasing arrangements on a voluntary basis whereby businesses over a certain size selling hot and cold drinks in disposable cups establish take-back arrangements for these cups. This would build on initiatives already being taken by some of the larger coffee shop chains.

We would welcome your views through this consultation on how under a packaging EPR scheme further action could be taken to reduce the impact of disposable cups. Specifically we are interested in the following:

Q34. Do you agree that provision for the take back of single-use disposable cups for recycling should continue to be developed a voluntary basis by business prior to a government decision on whether disposable cups are included under an EPR scheme or DRS?

⁵⁵ <https://www.gov.uk/government/publications/budget-2018-documents/budget-2018>

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

Q35. Do you think the recycling of single-use disposable cups would be better managed through a DRS or EPR scheme?

- (a) DRS
- (b) EPR
- (c) Both
- (d) None of these options

Please briefly state the reasons for your response and provide any information to support your view.

Q36. Do you think a recycling target should be set for single-use disposable cups?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

5. Helping consumers do the right thing – communications and labelling

Background

Research conducted by compliance scheme Valpak shows that under most European single producer-owned schemes funding is allocated to communications campaigns to increase public participation in recycling⁵⁶. Financial contributions vary from around 2-5% of scheme turnover; for example, budgets allocated by the French and Spanish schemes range from €22-35 million per year⁵⁷. To date compliance schemes have tended not to support UK or nation-wide communications campaigns. This is attributed in part to the competitive compliance market; a scheme is unwilling to pay for a campaign, where the benefits would be shared by all schemes⁵⁸.

In each nation recycling communications programmes are funded by each government and delivered by WRAP (in England and Northern Ireland - **Recycle Now**), WRAP Cymru (in Wales, **Recycle for Wales**) and Zero Waste Scotland (in Scotland, **Recycle for Scotland**) with in kind support from business. As well as running nation-wide campaigns these programmes provide artwork and resources for local authorities and others to use. These resources can be personalised for local or organisation-specific use.

Local service related communications tend to be delivered and funded by local authorities. Additional funding has been made available on occasion by government. Pressures on local authority budgets have seen the frequency and nature of these communications reduce in many areas in recent years⁵⁹.

Case for action – communications

Research on the barriers to recycling undertaken by WRAP set out four key linked and interdependent barriers (situational, behavioural, motivational and attitudinal). Key issues for dry recycling were that some materials were not collected for recycling, confusion about what and how to recycle, a lack of understanding of the benefits of recycling and for some people inertia. In addition to service related challenges WRAP's consumer surveys⁶⁰ consistently show that, even when people have a service, they do not always recycle or do not recycle all the materials they could. One reason for this is confusion about what they can and can't recycle.

The latest consumer research from WRAP states that 34% of UK householders said the following statement applies to them “*There are so many different types of item, I'm never sure what is allowed in recycling and what isn't*”. Further, over half (54%) of UK

⁵⁶ Valpak, Packflow 2025, September 2017: <https://www.valpak.co.uk/information-zone/reports/packflow-2025>;

⁵⁷ Extended Producer Responsibility Alliance (EXPRA), Implementation of EPR in Europe, Presentation to Defra November 2018

⁵⁸ Valpak, Packflow 2025, September 2017: <https://www.valpak.co.uk/information-zone/reports/packflow-2025>

⁵⁹ WRAP LA survey [report www.wrap.org.uk/sites/files/wrap/Local%20Authority%20Survey%20Report%20240316.pdf](http://www.wrap.org.uk/sites/files/wrap/Local%20Authority%20Survey%20Report%20240316.pdf)

⁶⁰ WRAP, Recycling Tracking Surveys, 2014, 2015, 2016, 2017 2018

households reported disposing of one or more items in their residual bin that could be collected for recycling in their area. Over three-quarters (76%) of UK households report adding one or more items to their recycling collection which are not accepted locally⁶¹.

Consumer surveys conducted by other organisations have received similar feedback. A 2017 survey by Viridor reported that only four in ten respondents (43%) were very confident that they put different wastes in the right bins. In a repeat survey in 2018, 72% of respondents were frustrated about not knowing what can be recycled compared to 67% in 2017⁶². 23% of respondents in a Suez survey admitted to often throwing away items that can be recycled⁶³.

WRAP evidence also indicates that recycling is a learned behaviour⁶⁴. When services change or people move house they need to relearn what to recycle and how to recycle. In the Viridor 2018 survey, 72% of respondents were frustrated about not having enough educational materials available to them on recycling compared to 69% in 2017⁶⁵.

Communications and behaviour change initiatives help to addressing people's knowledge gaps and change attitudes and behaviours towards recycling. The measures proposed for packaging EPR will make it easier for people to recycle and to know what packaging to recycle. However, people could have more choices in where to recycle in the future, for example, through any DRS or other take-back scheme. Packaging formats and materials that can be recycled will continue to change, meaning services may change into the future. As such there will be an on-going need to provide people with information about what and how they can recycle.

Our proposals

In section 1, we proposed that producers should contribute to the cost of consumer communications and behaviour change campaigns that lead to more packaging waste being recycled and considered how such funding could be raised from producers. In this section we are seeking views on how any producer funding identified for communications should be used. In section 7 we consider how funding for communications could be allocated.

We consider there to be a role for locally delivered communications that provide people with the necessary information and tools that make it easier for them to use their local recycling services. The WRAP 2018 survey indicates that the most prominent source of information for people on recycling is still the council leaflet⁶⁶.

We also strongly believe there is a role for information and messages to be delivered at a national level. The national campaigns referred to earlier help make recycling visible, promote recycling as an activity that everyone is doing and help to dispel myths about

⁶¹ WRAP, Recycling Tracking Survey 2018 – <http://www.wrap.org.uk/content/recycling-tracker-report-0>

⁶² Viridor 2018 <https://blog.viridor.co.uk/wp-content/uploads/2018/09/Viridor-UK-Recycling-Index-2018.pdf>

⁶³ Suez 2018, <http://www.sita.co.uk/wp-content/uploads/2018/09/SUEZ-BritainThinks-CombinedReport-1809-web.pdf>

⁶⁴ WRAP Barriers to Recycling, 2014 – <http://www.wrap.org.uk/content/barriers-recycling-home>

⁶⁵ <http://www.wrap.org.uk/content/recycling-tracker-report-0>

⁶⁶ <http://www.wrap.org.uk/content/recycling-tracker-report-0>

what can and can't be recycled. They provide tools and web-based information and can get consistent messages to a wide audience cost effectively, particularly through the use of social media and PR⁶⁷.

We believe that more opportunities will open up to communicate at both at nation level and UK-wide when all packaging that can be recycled is collected for recycling. This includes opportunities for brands and retailers to adopt common messages and to communicate directly with their customers. Feedback from some brands and retailers to the WRAP consistency framework for England indicated an unease at communicating with their customers on recycling until they could be confident that all their customers, no matter where they live, could recycle the same packaging materials.

Q37. Should producer fees be used to support local service related communications delivered by local authorities?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response. Where available, please share evidence to support your view.

Q38. Should producer fees be used to support nationally-led communications campaigns in each nation?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response. Where available, please share evidence to support your view.

Q39. Are there any circumstances where producers should be exempt from contributing to the cost of communications campaigns?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response. Where available, please share evidence to support your view.

⁶⁷ For example, the Recycle Now campaign in 2018 reached over 45 million people through social media, out of home advertising and PR; and 3.7 million searches were completed on the Recycling Locator - www.recyclenow.com/local-recycling

Case for action – labelling on packaging

At present, producers can voluntarily adopt one of a variety of recycling labels⁶⁸. These include On-Pack Recycling Label (OPRL), green dot (mainly seen on imported products), the mobius loop and symbols specific to plastic, glass, steel and aluminium; the most widely used being OPRL⁶⁹. Research shows that consumers do look at the labelling on packaging but the different labels/symbols mean that consumers face a confusing situation with some labels not applicable in a UK context.

The recent WRAP survey indicates that the second most prominent source of information for people is what it says on the product packaging⁷⁰. However, the research also highlights that a key factor for contamination of recycling – recognised by almost half (46%) of UK households - relates to presuming that on-pack labels/guidance applies to their local collection⁷¹. The Viridor survey indicated some confusion from labelling; less than one in five (16%) felt recycling labelling on product packaging is very easy to understand⁷². OPRL Ltd reports that 7 in 10 consumers recognise and act on their labels⁷³. Research by SUEZ suggests there is public support for sustainability labelling and identifies five principles including using existing (familiar) symbols and a focus on recyclability over other metrics⁷⁴.

Stakeholders have recommended that government introduces a mandatory national labelling scheme for packaging that states what is and is not recyclable⁷⁵.

Our proposals

Recycling labels

We would like to see a **mandatory UK-wide labelling scheme** that provides clear information to help consumers to recycle. It is proposed that producers would label their packaging as 'Recyclable' or 'Not Recyclable' (exact wording and messages would need to be determined), informed by the approved list of recyclable packaging materials/formats; i.e. the same list on which modulated fees or deposits would be set and hence the packaging that local authorities and waste management companies would be required to collect for recycling.

⁶⁸ Recycle Now website identifies 12 different labelling schemes/symbols used on products and packaging. <https://www.recyclenow.com/recycling-knowledge/packaging-symbols-explained>

⁶⁹ OPRL is a business-led UK labelling scheme that has been operating for over 10 years. Over 550 brands across all sectors use the label on their packaging products. The OPRL is based on what technically can be recycled as well as what is collected for recycling through local recycling services. The threshold for the *widely recycled* label is 75% of UK local authorities offering a collection service.

⁷⁰ WRAP Recycling Tracking Survey 2018 – <http://www.wrap.org.uk/content/recycling-tracker-report-0>

⁷¹ WRAP Recycling Tracker Survey 2018 – <http://www.wrap.org.uk/content/recycling-tracker-report-0>

⁷² Viridor UK Recycling Index 2018 – <https://blog.viridor.co.uk/wp-content/uploads/2018/09/Viridor-UK-Recycling-Index-2018.pdf>

⁷³ OPRL <https://www.oprl.org.uk/about-oprl>

⁷⁴ Suez, September 2018 Britainthinks EPR Research – <http://britainthinks.com/news/public-attitudes-to-waste-recycling-and-producer-responsibility-a-report-for-suez>

⁷⁵ WRAP/INCPEN/ACP recommendations to Defra Secretary of State, April 2018 – <http://www.wrap.org.uk/blog/2018/05/reform-regulations-relating-packaging>

Any labelling scheme would need to accommodate a potential DRS for drinks containers. Labelling of packaging returnable through a DRS would need to indicate the deposit value and inform consumers that the drinks container is covered by the DRS. Bespoke labelling would also likely be required for packaging items subject to take-back or store-based collections such as plastic bags collected at front-of-store collection points and single use drinks cups returnable to collection points at coffee shops.

We would also expect the labelling scheme to address compostable plastic packaging. In tonnage terms it represents a small proportion of total packaging currently but can undermine mechanical recycling of conventional plastics and be a contaminate in compostable waste streams if the composting or food waste treatment plant can't handle it. Consumers therefore need clear advice on what to do with this type of packaging. Until such time as all households have food waste collections and all anaerobic digestion plants can treat compostable plastic packaging we would suggest that consumers are told to put this type of packaging in the residual waste bin. In 'closed environments' where there is control over the packaging used such as some public sector buildings, offices or venues compostable packaging may be able to be disposed of with food waste and then treated at in-vessel composting⁷⁶ facilities.

We are also conscious that other on pack recycling labelling (such as Green Dot, Mobius Loop and labels specific to plastic, glass, steel and aluminium) risk undermining the effectiveness of a clear 'Recyclable' and 'Not Recyclable' labelling system. For instance, a piece of packaging may be labelled 'Not Recyclable' but also bear the Green Dot recycling symbol (as the product is also sold in Germany, for example). Government therefore intends to explore the extent to which the use of confusing or conflicting labelling relating to recyclability could be restricted.

Recycled content labelling

A further way in which labelling could promote recycling and allow consumers to make informed choices is in making clear the proportion of recycled material in packaging items. For some materials the nature of the manufacturing process means that at production stage it is impossible to determine what the raw material is intended for, it could be packaging or other uses. Government however is keen to explore if there is a role for recycled content labelling on packaging, in particular on plastic packaging, provided it is consistent with recyclability labelling and does not increase confusion. There is also the potential interaction with any HMRC compliance requirements for the plastic packaging tax.

Q40. Do you agree it should be mandatory for producers to label their packaging as Recyclable/Not Recyclable?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

⁷⁶ In-vessel composting systems ensure that composting takes place in an enclosed environment, with accurate temperature control and monitoring.

Please briefly state the reasons for your response and provide any information to support your view.

Q41. Do you think that the percentage of recycled content should be stated on product packaging?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

Q42. If you responded yes to the previous question, how could recycled content information be provided to consumers?

Please describe briefly.

Q43. Do you have any other proposals for a labelling system?

Please describe briefly.

Q44. Do you have experience to suggest an appropriate lead-in time for businesses to incorporate any mandatory labelling requirements?

Part B: Packaging waste recycling targets

Government has set annual packaging recycling targets to 2020. This part of the consultation document sets out government's proposals for recycling targets to 2030.

6. Packaging waste recycling targets to 2030

Background

The current packaging waste regulations⁷⁷ make **obligated producers** (businesses that handle more than 50 tonnes of packaging per annum and have an annual turnover of over £2 million) responsible for meeting the UK and EU packaging waste recycling and recovery targets, based on their role in the supply chain and the amount of packaging handled in the preceding year.

Statutory recycling targets on obligated producers are required to ensure that the UK meets the minimum recovery and recycling levels set down in the EU Packaging Directive (at least until the UK exits from the EU).

In 2011, government consulted on revised targets for the period 2013-2017⁷⁸. Since then, informed by a series of research reports to ascertain the amount of packaging placed on the market by material type, the government has set recycling targets for all materials, as well as overall recovery and recycling targets, to 2020. The recycling rates achieved in 2016, based on the existing packaging targets, are set out in Table 1.

Table 1: Reported 2016 packaging recycling rates

Packaging Material	Reported UK recycling rate (achieved) 2016
Paper	81.9%
Glass	67.1%*
Aluminium	50.8%
Steel	74.4%
Plastic	44.9%
Wood	30.9%
Total Packaging Recycling	64.7%

*of which 67% recycled by re-melt

Targets are set in the regulations to 2020; these are projected to deliver as a minimum the packaging waste recycling rates set out in Table 2.

⁷⁷ <http://www.legislation.gov.uk/ukxi/2007/871/contents/made>

⁷⁸ <https://www.gov.uk/government/consultations/recovery-and-recycling-targets-for-packaging-waste-for-2013-2017>

The projections show the amount of recycling that will be delivered by the material specific targets set in the Regulations. They do not take into account the additional recycling that producers are required to deliver in order to meet their overall recycling requirement. Hence the final overall recycling rate for each material tends to be higher than the minimum that is delivered by the material specific targets (e.g. 81% paper recycling rate against a projected minimum of 60%).

Table 2: Projected UK packaging recycling rates to 2020

	Projected minimum UK recycling rates based on current business targets for each year		
Material	2018	2019	2020
Paper	60.2%	62.4%	64.7%
Glass	68.2%	69.1%	70.0%
Aluminium	53.5%	57.0%	60.8%
Steel	68.5%	70.6%	72.6%
Plastic	44.4%	46.1%	47.7%
Wood	29.1%	33.2%	37.2%
Total Packaging Recycling	62.1%	63.1%	64.2%

The case for action

Government has committed to setting new packaging waste recycling targets to 2030. The EU Circular Economy Package and the revised Packaging Directive set targets for the recycling of packaging waste for 2025 and 2030 (shown in Tables 3 and 4). To provide producers and the wider waste management sector with the certainty it needs to plan and invest in recycling and reprocessing capacity government intends to set statutory packaging recycling targets for 2025 and 2030. Government regards these EU targets as a minimum requirement and, where appropriate, intends to be more ambitious. Proposals which follow from this consultation will take account of the future relationship we negotiate with the EU on environmental matters.

Government also intends to set interim business recycling targets on obligated producers for 2021 and 2022, given targets in the current regulations run until 2020 and the new packaging EPR arrangements are not expected to be operational until 2023. Depending on the outcome of this consultation, in particular whether the de-minimis for obligated businesses is to be retained (or lowered), the obligated business targets may need extending beyond 2022. If this becomes the case government will set out further details when it consults on the regulations to implement its preferred approach for packaging EPR.

Our approach

The current UK business recycling targets are weight based and were established using the following data:

- the weight of packaging reported as handled/placed on the UK market, and
- the weight of packaging flowing into the UK waste stream for recycling and recovery.

The current targets use figures based on the amount of packaging 'placed on the market' (POM) to inform the amount of packaging waste arising (making the assumption that packaging is a 'short life' item and will become waste shortly after sale). To assess the POM figures Defra commissioned a series of Material Flow reports⁷⁹ to review the industry-provided underlying data regarding the amount of packaging waste arising.

These reports have been criticised due to in-built incentives for under-reporting and variations in the weight data for individual packaging items used to calculate total packaging. An alternative methodology, which has been suggested by some commentators, would be to use dry recyclable tonnage data (relevant local authority data being available from Waste Data Flow⁸⁰, and government and/or the regulator waste arisings estimates for commercial and industrial sectors) and waste compositional analysis to establish collected packaging waste tonnages. When applied this methodology generates a higher figure for total packaging but, as with the POM method, this method has its critics who cite issues of contamination, sample size and sample frequency.

Data held in the National Packaging Waste Database⁸¹ and data from the Material Flow reports have been used by government as the most robust data available to determine packaging recycling targets. These data have been used as the basis of the proposals for future recycling targets and for the cost-benefit analysis in the accompanying Impact Assessment.

Government does however recognise that uncertainty over this data may impact on the costs, benefits and recycling performance of a reformed system. To take account of possible variations in the base data we have undertaken a sensitivity analysis which reflects the potential range in base data⁸². Full details and further analysis can be found in the associated Impact Assessment that supports this consultation.

Given this uncertainty around the data, government will commission a review of methodologies with a view to improving understanding of packaging waste arisings and reducing uncertainty further prior to regulating for new targets. We are keen to receive any additional evidence regarding packaging placed on the market or packaging waste arisings to inform this review.

⁷⁹ <http://www.wrap.org.uk/collections-and-reprocessing/dry-materials>

⁸⁰ <http://www.wastedataflow.org/>

⁸¹ <https://npwd.environment-agency.gov.uk/>

⁸² The low and high estimates assume 11.6 Mt and 15.2 Mt of UK placed on the market packaging by 2032. See the [Impact Assessment](#), Annex D.

The transparency and enforcement sections (sections 9 and 10) of this consultation document set out a number of proposals to improve reporting and waste analysis. Over time these improvements will ensure a more robust and auditable system for capturing data improving confidence in the underlying data.

In setting packaging waste recycling targets we intend to continue to use the definition of recycling from the Waste Framework Directive (*“any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations”*).

The Circular Economy Package includes clarification regarding the methodology for calculation of recycling, based on deriving the final weight of material entering the recycling process, rather than the total weight of material collected, as well as no longer containing a target for material recovery. This should not have a significant impact on the UK, though any new system is likely to have increased requirements for sampling and data reporting for all parts of the supply chain.

Q45. In your view, are the estimates made in the Material Flow reports for packaging waste arisings the best available data?

- (a) Yes
- (b) No
- (c) I don't know / I don't have enough information

Please briefly state the reasons for your responses and provide any information to support your view.

Q46. Are you aware of any other factors which may affect the estimates of packaging waste entering the waste stream?

- (a) Yes
- (b) No
- (c) I don't know / I don't have enough information

Please briefly state the reasons for your responses and provide any information to support your view.

Q47. In your view, are there other factors which may affect the amounts of obligated tonnage reported?

- (a) Yes
- (b) No
- (c) I don't know / I don't have enough information

Please briefly state the reasons for your responses and provide any information to support your view.

Our proposals

The remainder of this section considers four key areas for change:

- 1) Overarching packaging recycling targets for 2025 and 2030
- 2) Nation packaging waste recycling targets
- 3) Other potential targets
- 4) Interim obligated business packaging waste recycling targets to the end of 2022

Overarching packaging recycling targets for 2025 and 2030

Government is committed to setting ambitious new packaging waste recycling targets on producers that meet or exceed EU targets. The policy reforms being considered in this consultation and the two parallel consultations on introducing consistent municipal recycling collections in England and a potential DRS for drinks containers are central to meeting higher targets.

As these three policies will impact on collection and recycling infrastructure we have modelled their impact on packaging waste recycling rates in a sequential fashion, first looking at the impact of consistent collection, then looking at the impact of reducing the use of hard to recycle materials through packaging reforms and then looking at the impact of an 'all in' DRS scheme that captures all in-scope drinks containers⁸³. The results of this analysis is set out in Tables 3 and 4.

For the impact of reducing the use of hard to recycle packaging it is important to note that we have only undertaken **a partial analysis** focused on reducing the use of two hard to recycle plastic polymers, PVC and polystyrene (PS). These are polymers that industry is already taking steps to reduce the use of in packaging and where we expect to see progress before 2025. We intend to develop our analysis further to cover black plastic food packaging trays, other plastic pots, tubs and trays, and other complex composites and laminates before finalising future targets, in particular for 2025.

Table 3: Expected impact of proposals on UK packaging recycling rates by 2025

Packaging material	2016 recycling rate	Consistent collections	Packaging reform	DRS	Projected 2025 rate	EU Target 2025
Paper & card	82%	0%	0%	0%	82%	75%
Glass	67%	4%	0%	11%	82%	70%
Aluminium	51%	4%	0%	13%	68%	50%
Steel	74%	5%	0%	1%	80%	70%
Plastic	45%	4%	3%	2%	55%	50%
Wood	31%	0%	0%	0%	29% ⁸⁴	25%

⁸³ See the accompanying [Impact Assessment](#)

⁸⁴ Due to the tonnage of wood packaging placed on the market increasing at a higher rate than the tonnage of wood waste recycled between 2016 and 2030, there is a slight drop in the projected recycling rate of wood in 2025 and 2030 compared to 2016. This drop in the recycling rate for wood does not stem from new packaging policy. Our proposed target for wood also takes account of on-going discussions with the wood sector regarding future targets.

Total Packaging Recycling	65%	2%	1%	1%	70%	65%
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Table 4: Expected impact of proposals on UK packaging recycling rates by 2030

Packaging material	2016 recycling rate	Consistent collections	Packaging reform	DRS	Projected 2030 rate	EU Target 2030
Paper and card	82%	2%	0%	0%	84%	85%
Glass	67%	5%	0%	11%	82%	75%
Aluminium	51%	9%	0%	12%	71%	60%
Steel	74%	12%	0%	1%	88%	80%
Plastic	45%	5%	4%	2%	56%	55%
Wood	31%	0%	0%	0%	28% ⁸⁵	30%
Total Packaging Recycling	65%	2%	1%	3%	71%	70%

The outputs from the modelling indicate that, in 2030 with the exception of both paper and card and wood where there is less than a 2% shortfall in our projections compared with the EU targets, the UK should meet or exceed the minimum 2030 EU packaging recycling targets by delivering our package of reforms.

As noted there is some uncertainty regarding these projections given differences between POM estimates and our bottom up analysis based on estimated waste tonnages and waste composition data. Our analysis also does not take account of the following elements of reform which should allow for higher recycling rates to be achieved by 2030:

- Impact of modulated fees or deposits on hard to recycle materials (other than PVC and PS) such as carbon black plastic, composites and laminates.
- Metals recovered from incinerator bottom ash for recycling, both within the UK and from refuse derived fuel sent for recovery overseas.
- Simple, easy to understand recycling labels and strengthened communications increasing household and business participation in recycling schemes and reducing contamination.
- Impact of HMT's plastic packaging tax.
- Impact of market restrictions on hard to recycle packaging materials (TBD).
- The impact of businesses fulfilling commitments of the UK Plastics Pact.
- Possible reforms of the Essential Packaging Requirements legislation (due to be reviewed by 2020).

Taking account of modelling to date, our proposed targets for 2025 and 2030 are set out in Table 5.

⁸⁵ See footnote 84.

Some countries have shown that high overall packaging recycling rates can be achieved. For example, in 2016 Belgium achieved a recycling rate of over 80% for packaging waste. In our Resources and Waste Strategy we committed to meeting or exceeding where, economically practicable, European targets. We remain committed to meeting the 70% target for packaging recycling by 2030. We will review our targets and progress every five years. However, we want to be more ambitious if we can and would welcome views on the policies and actions that could help us to achieve an even higher overall packaging recycling rate, for example, 75%, as well as your views on the costs associated with doing so.

Table 5: Proposed UK Packaging Recycling Targets 2025 and 2030

Packaging material	Proposed Target (2025)	Proposed Target (2030)
Paper & card	82%	85%
Glass	70%	75%
Aluminium	55%	60%
Steel	75%	80%
Plastic	50%	55%
Wood	30% ⁸⁶	30%
Total Packaging Recycling	66%	70%

Depending on the outcome of the DRS consultation, there may be a need to set recycling targets for specific drinks container formats. If this was the case then these would need to take account of the overall packaging waste recycling targets for the relevant materials.

Our final proposals for future targets will be included in the second stage consultation on specific regulatory measures in early 2020.

Q48. Do you agree with the packaging waste recycling targets proposed for 2025?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your responses and provide any information to support your view.

Q49. Do you agree with the packaging waste recycling targets proposed for 2030?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your responses and provide any information to support your view.

Q50. Please provide your views on the policies and actions that could help us achieve an even higher overall packaging recycling rate, for example 75%, as well as your views on the costs associated with doing so.

⁸⁶ Our proposal for wood takes account of on-going discussions with the wood sector regarding future targets.

Reporting of packaging and packaging waste recycling by nation

Each nation has its own statutory waste management plan and nation-specific targets for recycling and landfill diversion. At present packaging waste recycling targets are established and reported for the UK as a whole. Through the reforms being consulted on, devolved nations would like to see a number of changes related to the achievement and setting of targets. These include:

- Achieving common targets at each individual nation level. For example, a 70% overall target for UK would translate to a 70% target for England, Wales, Scotland and Northern Ireland.
- Setting individual targets at nation level according to local ambition. For example, one nation may set a 65% plastic target and another nation may set a 75% target.

This consultation is based on the continuation of a UK-wide approach with agreed targets to be achieved in each nation. It assumes that fees /deposits would be established taking account of the need to achieve the agreed targets in each nation. Further analysis will be required for the final Impact Assessment to better understand the costs and benefits.

This would require data on the amount of packaging placed on the market in each country to be captured. If there is a move to a single point of compliance (as proposed in section 3) this should be relatively straightforward, although it would depend on the point of compliance. If it is the seller/retailer and wholesaler they would have to report packaging placed on the market by nation, in addition to the tonnages they would be required to make payments for as obligated producers. If it is the brand and wholesaler, then there would likely need to be a requirement on sellers/retailers to report placed on the market data. Continuation of the current multi-point approach to compliance would make this more complex (as it would be difficult to track the movement of packaging from manufacture to final point of sale).

It would also require greater tracking of waste from the point of collection, as it would be necessary to know the source of the packaging waste (i.e. which country it was collected in) so that it can be reported once recycled (or recovered). There would also need to be a new requirement for reprocessors and exporters to record the source of all packaging waste received and issue evidence accordingly (e.g. to report on tonnages received from each nation to allow calculation of the actual recycling rate). Improvements to the UK's waste tracking system would help in this respect (Section 9).

Q51. Do you foresee any issues with obtaining and managing nation specific data?

- (a) Yes
- (b) No
- (c) Don't know

Please briefly state the reasons for your responses and provide any information to support your view.

Other potential targets

a) 'Equivalent use' closed loop recycling targets

Government would like to see materials kept circulating in the economy for as long as possible. To achieve this it is important that the quality of materials as they pass through the waste value chain is maintained and the opportunities for 'closed loop' recycling maximised. The generally held understanding is if a recycled material substitutes for the equivalent virgin material, it is 'closed loop' regardless of application. If it is replacing a different material or its properties change it is 'open loop' recycling.

Government would like to encourage greater use of recycled materials in equivalent applications before considering alternative uses (for example, more recycled content in plastic packaging first before consideration of alternative end market applications such as plastic pipes). This is a core principle of governance model 4 set out in section 7, where producers would be encouraged to buy evidence that packaging has been recycled to a level necessary to be used again in equivalent packaging. For example, evidence that clear food grade PET has been reprocessed into clear food grade PET flake or pellet.

This principle however could also apply to the other governance arrangements (Models 1, 2, 3 in Section 7). There could, for example, be a requirement on compliance schemes or a single management organisation to provide evidence or be able to demonstrate that a certain proportion of the target for plastic packaging recycling had been met through equivalent closed loop recycling. This principle already applies to glass packaging whereby a proportion of the recycling target for glass has to be met through re-melt applications.

In practice this would mean that compliance schemes or a single management organisation would need to obtain evidence of materials (by tonnage) being recycled into 'equivalent use' end markets e.g. food grade plastics packaging to food grade plastic packaging; it would not necessarily need to be polymer specific. However, this approach could go further for some polymer types (e.g. PET) to offset lower rates of recycling for other polymer types. Given the competition for recycled material, such an approach could increase the incentive to modulated fees to reward the use of the most polymers that can be more readily recycled back into similar packaging/products and penalise the use of the least 'circular'.

Q52. Should a proportion of each material target be met by "closed loop" recycling, e.g. as is the case for glass recycling targets?

- (a) Yes
- (b) No
- (c) I don't know / I don't have enough information

Please briefly state the reasons for your responses and provide any information to support your view.

b) Composite packaging recycling targets

Under the current packaging waste regulations a producer's obligation for composite packaging relates to the predominant material used within that piece of packaging. For instance, if a piece of packaging contains 70% card, 20% plastic and 10% aluminium, the producer would be obligated to buy evidence of paper being recycled for 100% of the tonnage. This has attracted criticism that producers of composite packaging that is hard or impossible to recycle are able to meet their obligation too cheaply.

Section 2 sets out government's intention to use either modulated fees or a deposit fee to either discourage the use of hard to recycle packaging or stimulate investment to support their recycling. In addition, Section 4 asks if a specific recycling target should be set for disposable cups. This approach could be extended to other hard to recycle composite packaging, such as liquid carton board, to support investment in collection, sorting and reprocessing.

Q53. Should government set specific targets for individual formats of composite packaging?

(a) Yes

(b) No

(c) I don't know / I don't have enough information

If yes, what key categories of composite packaging should be considered?

Please briefly state the reasons for your responses and provide any information to support your view.

Interim obligated business targets to the end of 2022

Businesses below the de-minimis threshold are not 'obligated' under the current packaging waste regulations. However, the packaging that is handled by those exempt businesses still counts when calculating the UK's recycling performance. This is because the Packaging Directive targets are set as a percentage of the total packaging waste arising in each Member State.

Therefore, the recycling and recovery targets which apply to 'obligated tonnage' (that handled by 'obligated businesses') are higher than those set by the Packaging Directive in order to cover material handled by de-minimis businesses. These higher domestic targets are known as business targets.

The current business targets end in 2020. The business targets therefore need extending to the end of 2022 when wider packaging producer reforms have been implemented. Should these reforms require a continuation of business targets for 2023 onwards then these would be subject to consultation.

Table 6 sets out the existing business targets to 2020 and proposed business recycling targets for 2021 and 2022. These take account of current performance and put us on a trajectory towards the targets for 2025 and 2030 set out in Table 5.

We do not propose to set overall packaging waste recovery targets beyond 2020.

Table 6: Proposed business packaging waste recycling targets for 2021 and 2022

	Existing Business Targets			Proposed new business targets	
	2018	2019	2020	2021	2022
Paper	71%	73%	75%	79%	83%
Glass	78%	79%	80%	84%	87%
<i>of which by re-melt</i>	67%	67%	67%	68%	68%
Aluminium	58%	61%	64%	66%	69%
Steel	79%	82%	85%	88%	90%
Plastic	53%	55%	57%	61%	65%
Wood	38%	43%	48%	35%	35%
Recycling	73.6%	74.4%	75.4%	76.1%	76.8%

For small businesses using the allocation method⁸⁷ to determine their obligation the percentage applied to turnover would increase to 35%.

Q54. Do you agree with the proposed interim targets for 2021 and 2022 set out in Table 6?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your responses and provide any information to support your view.

Q55. Do you agree with the proposal to increase the allocation method percentage to 35% for 2021 and 2022?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your responses and provide any information to support your view.

⁸⁷ This is a simple way of calculating an obligation that requires no reporting of tonnage of packaging handled. It is done by multiplying annual turnover (in £m) by a factor set by government.

Part C: Governance arrangements

The previous sections of this consultation document have described the current producer responsibility arrangements for packaging waste and outlined some of its shortcomings. Government's requirements and desired outcomes for a reformed scheme and a number of specific proposals for how these could be achieved have also been set out. In this part of the consultation document we:

- present options for future governance arrangements,
- address the need for a more transparent system; and
- consider compliance monitoring and enforcement.

7. Governance models

Our approach

A range of governance models for packaging EPR operate across Europe and internationally. Drawing on this experience, experience from our current producer responsibility regimes and stakeholder input including from the ACP⁸⁸ we put forward four alternative governance models for consideration. These are:

- Model 1: Enhanced near-to-business as usual - compliance schemes
- Model 2: Single not-for-profit producer scheme
- Model 3: Separate scheme for household/household-like packaging and commercial/industrial packaging
- Model 4: Deposit-based government managed scheme

By governance we mean the organisation of the packaging EPR system and the roles and responsibilities of the individual stakeholders. For each model we provide:

- A high level description – indicating how it could operate in practice and drawing out any differences in arrangements for household/household-like packaging waste and commercial/industrial packaging waste
- An indication of the likely roles and responsibilities of key parties – government, compliance schemes, obligated producers, the regulator and the management organisation or scheme administrator.

Under each model the obligated businesses (producers) may not be the same as now. We set out our proposals in Section 3 for changing to a single point of compliance.

Models 1, 2 and 3 are underpinned by modulated fees as the mechanism for raising full net costs from producers and incentivising behaviour. In Model 4 the mechanism is a

⁸⁸ Advisory Committee on Packaging, September 2018: Recommendations to Defra for a Future Packaging Waste Producer Responsibility System

deposit/ fee for all packaging plus a cost recovery fee for household packaging. Both approaches are described in Section 2 and therefore referred to in outline here.

Obligated businesses would be required to fund the set-up of any new scheme administrator / management organisation and the on-going management costs. In the compliance schemes model (model 1) businesses would pay an annual membership fee (or similar) as now.

Government wants to fully understand the practicalities of each broad approach, including likely effectiveness, feasibility, and potential unintended consequences. Government will weigh up these factors and discuss further with stakeholders before deciding on its preferred approach. Further consideration will also be given to how these approaches would operate across the UK respecting devolved powers. The details of the preferred approach would be subject to a second stage consultation on specific regulatory measures in early 2020.

Our proposals

Alternative Model 1: Enhanced near-to-business as usual - compliance schemes

Overview:

This model is based on the current compliance scheme model. Obligated producers would choose a compliance scheme to join. All obligated producers would need to join a scheme thereby removing the option of direct registration with the regulator that is available under the current system. Schemes would take on the legal obligations of their members as currently.

Some consolidation of schemes could result as the resources and expertise required to deliver compliance under a packaging EPR scheme would be greater compared to the current system. There would be nothing to prevent new schemes from being established. The market would determine the appropriate number of schemes.

Similar to the current system, each scheme would be responsible for achieving the recycling targets for the packaging their members place on the market. Schemes would also be required to demonstrate full net cost recovery payments had been made for household and household-like packaging.

Household/household-like packaging waste

Schemes would levy modulated fees on their members based on the quantity and type of packaging each handles. Each scheme would set its own fee rates to ensure full net cost recovery of the household/household like packaging it is managing, but in setting their rates would take account of national guidance on:

- 1) the costs to be recovered through modulated fees (full net cost recovery);

- 2) the packaging materials/formats deemed to be recyclable (i.e. the approved list);
and
- 3) the level of differential expected in the fee rates for different types packaging/
formats to ensure all schemes incentivise the same desired design behaviours and
outcomes.

Each scheme would be required to set aside a proportion of producer fees to support communications campaigns and other costs such as litter initiatives in each nation. This funding would be transferred to an independent board to allocate to each nation to distribute (see below).

Schemes would compete with each other to access packaging waste handled by local authorities. They would enter into contracts/agreements with local authorities for an agreed period (possibly 3- 5 years). The payments a scheme makes to a local authority would need to cover the cost of collecting and managing packaging waste and meeting any required minimum collection standard. Authorities would recover their costs directly from the scheme they had contracted with consistent with the approaches discussed in Section 4. Where collection and sorting services are contracted out by a local authority schemes could choose to support authorities in their procurements.

For household-like packaging not collected by local authorities, schemes would enter into agreements with sorting facilities / transfer stations that receive packaging waste from commercial collectors. Payments would need to be based on meeting acceptability criteria related to tonnage and quality and the presentation of supporting evidence that the packaging had been recycled. Again, options for how this could operate are presented in Section 4.

Commercial/industrial packaging waste

In order to meet their targets schemes would need to acquire evidence directly from accredited reprocessors or exporters of commercial and industrial packaging waste recycling (i.e. distribution and transit packaging). This effectively means a market for evidence of packaging recycling would continue to apply. As the cost of collection and treatment of this packaging waste is (and would continue) to be borne by business, the value of this evidence (PRN) would effectively represent the additional cost of recycling this material.

If an obligated producer could provide evidence of recycling their own packaging waste (e.g. by back-hauling transit packaging and selling the materials direct) to the scheme, this would count towards their obligation (as currently).

It is proposed that under this model an independent (of the compliance schemes) advisory board would be established by government to provide strategic oversight of the system and the schemes. This could include reviewing plans, monitoring performance and advising schemes, developing the approved list of packaging and other guidance, and managing the allocation of producer funding to each nation for communications campaigns and litter related activities. The membership of the board and its remit would need to be

considered further. The Board could provide oversight to ensure that every local authority is contracted by a scheme and could act as an arbiter if a situation arose whereby there was disagreement between a scheme and a local authority⁸⁹. In Sections 9 and 10 we put forward proposals for increasing transparency of a competitive compliance scheme approach.

There are a number of competing compliance scheme models operating across Europe including in Germany, Austria, Poland, Romania and Bulgaria⁹⁰. The German system is perhaps the more widely known, where since 2003 compliance is delivered through a number (currently nine) of schemes. As of January 2019 a new Central Packaging Registry (Agency) managed and financed by industry, but with deferred enforcement rights will come into effect. This is to provide more transparency on how the overall system operates and to bring more freeriders into the EPR system. Recycling targets will increase for all materials and financial incentives for producers to use easy to recycle packaging materials and to use recycled content are to be introduced. Austria introduced competitive arrangements in 2016 and at the same time established a new public body to provide oversight of the individual schemes. This experience indicates that in addition to the role of the regulator, an additional level of oversight and scrutiny is required to ensure the individual schemes and the system overall is functioning as intended and delivering the outcomes government wants to see achieved.

Key roles and responsibilities could include:

Organisation	Key responsibilities (indicative only)
<p>Government & government appointed Packaging Advisory Board</p>	<ul style="list-style-type: none"> • Establishes / mandates minimum service standards for collection (household and business) (by nation) • Mandates packaging recycling targets for producers • Establishes/mandates reporting requirements for schemes • Sets out requirements for full net cost recovery • Applies a compliance fee if required⁹¹ • Establishes a Packaging Advisory Board (accountable to Ministers of the four UK nations) • Advisory Board responsibilities could include: <ul style="list-style-type: none"> - strategic oversight of the overall EPR system and the compliance schemes; review strategic plans, etc - oversees the ‘approved list’ of packaging that can/ can’t be recycled

⁸⁹ This could be similar to the arrangements currently in place under the WEEE producer responsibility scheme in which schemes are required to participate to ensure that no local authorities are excluded from access to fully funded collections.

⁹⁰ Source: Extended Producer Responsibility Alliance (EXPRA), Implementation of EPR in Europe, Presentation to Defra November 2018

⁹¹ The ACP has proposed that any evidence issued under commercial arrangements– similar to the current PRN system - such as would be the case under this model should have a capping mechanism available to avoid excessive price escalation. The WEEE Compliance Fee provides such an example that is considered to be effective. This may also be required under Model 3.

	<ul style="list-style-type: none"> - oversees the protocols for modulated fees, full net cost recovery, payment criteria, etc - allocates funds (raised through producer fees) to each nation for communications, litter, etc - ensures all local authorities are contracted by a scheme - arbitrate in situations where, for example, a scheme and local authority can't agree on payments
Compliance schemes	<ul style="list-style-type: none"> • Prepare strategic and operational plans • Manage members data and register members with the regulator • Manage compliance on behalf of members • Set the modulate fee structure for their scheme • Raise fees from their members • Enter into arrangements with local authorities and waste management companies and make payments relating to the collection and management of household/household-like packaging waste • Acquire evidence of recycling of C&I packaging • Transfer proportion of producer fees to Packaging Advisory Board for comms campaigns, strategic projects in each nation • Gather information from and report on agreed UK and nation data sets • Agree any local data sets needed with stakeholders • Produce and publish annual reports to include reporting on targets • Accountable for their members share of the packaging waste recycling targets
Obligated Producers	<ul style="list-style-type: none"> • Join a scheme • Provide data on packaging materials, formats, quantities by nation • Pay modulated fees • Pay annual registration fee which the scheme passes to the regulator to cover the cost of monitoring and compliance (as currently) • Pay annual scheme membership fee
Regulator	<ul style="list-style-type: none"> • Approve compliance schemes • Monitor schemes – data, evidence and evidence-related fees • Compliance monitor producers • Compliance monitor reprocessors & exporters who issue evidence of recycling • Data checking at key reporting & evidence points

	<ul style="list-style-type: none"> • Compliance monitor other operators who could issue evidence under a reformed system (e.g. MRFs) • Investigate and enforce ‘free riders’ • Takes enforcement action against the schemes if targets not met • Demonstrate that evidence used to measure recycling and calculate national recycling targets satisfies the legal requirement of recycling
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Alternative Model 2: Single not-for-profit management organisation

Overview

Delivery of all aspects of the packaging EPR scheme would be the responsibility of a single management organisation (a not-for-profit or a government Arms’ Length Organisation) who would act as the scheme administrator. If the management organisation were a not-for-profit, it is proposed that government would invite proposals from potential operators and award an operating licence for a set period of time⁹². Subject to the performance of the management organisation the licence could be awarded for a further agreed period. There would also be provision for government to withdraw the licence or require remedial action should the management organisation not be performing per the agreement.

The management organisation would be responsible for meeting the legally binding packaging waste recycling targets and other outcomes agreed with government.

All obligated producers would be required to register with the management organisation. The modulated fee rates would be proposed by the management organisation so as to achieve full net cost recovery and would be agreed with government. Fees would be paid by obligated producers based on the quantity and type of packaging they handle (as described in Section 2).

The management organisation would allocate the funds to ensure targets are met and other outcomes are achieved. It would make payments to local authorities and waste management companies/sorters in accordance with priorities and agreed funding formulae. These payments would support a more coherent collection infrastructure for packaging waste and the delivery of minimum service standards/ collection blueprints/codes of practice in each nation (as discussed in Section 4).

The management organisation would set aside a proportion of producer fee income for communications campaigns, for litter initiatives, etc. in each nation. How this funding would

⁹² One approach would be for the management organisation to operate under a joint licence agreement with the four governments. There are examples of such arrangements in other countries. Fost Plus in Belgium operates under an interregional agreement with the three regional governments Belgium. Ecoembres operates under an agreement with the Federal government and 16 regional governments in Spain with accreditation reviewed every five years.

be allocated / distributed to each nation would be agreed between the management organisation and the government of each nation.

In this model there is no statutory role for compliance schemes as under the current system.

As exporters and reprocessors would not be required to sell evidence of recycling this essentially removes the need for them to be accredited. Instead they would be required to report tonnages of all packaging waste exported or reprocessed to the regulator. In Wales, as a requirement of their Environmental Permit, reprocessors are already required to provide this information under the 'site return' provisions. A charge could be applied to the provision of this data to the management organisation. An alternative would be to require all exporters and reprocessors of packaging waste to be accredited and to report tonnages of all packaging waste exported and reprocessed.

A single organisation model in which the organisation is a not-for-profit is similar to arrangements for packaging producer responsibility in other countries such as Fost Plus in Belgium, Ecoembes in Spain, Citeo in France and Conai in Italy. Experience from these schemes strongly indicates that a single management organisations should be established on a not-for-profit basis and that obligated producers should be represented in the governance arrangements, in particular so as to incentivise cost optimisation. Complete transparency of operations, costs and data are essential. We have not come across any examples of a single organisation model as described here run by government.

Key roles and responsibilities could include:

Organisation	Key responsibilities (indicative only)
Government	<ul style="list-style-type: none"> • Awards operational licence to PO • Provides oversight of the PO – possibly through an appointed advisory board • Establishes / mandates minimum service standards for collection (household and business) • Has powers to approve the modulated fee rates • Sets out requirements for full net cost recovery and payments to local authorities • Fines the PO if agreed targets are not met?
Producer Management Organisation	<ul style="list-style-type: none"> • Prepares strategic business and annual operating plan • Registers and manages member data • Establishes the 'approved' list of recyclable packaging and proposes the modulated rates • Collects fees directly from its members • Pays local authorities and businesses for household/household like packaging • Administers arrangements for supporting litter, communications campaign, etc in each nations

	<ul style="list-style-type: none"> • Gather information from and report on agreed UK and nation data sets • Agree any local data sets needed with stakeholders • Publishes annual report • Accountable for achieving agreed packaging recycling targets and other outcomes
Obligated Producers	<ul style="list-style-type: none"> • Join scheme • Report data on packaging materials, formats, quantities, etc • Pay modulated fees • Pay annual registration fee which the management organisation passes to the regulator to cover the cost of monitoring and compliance (as currently) • Pay annual membership fee to cover the admin/overhead costs, etc of the management organisation and data collection/reporting
Regulator	<ul style="list-style-type: none"> • Compliance monitor individual producers • Investigate and enforce 'free-riders' • Data checking at key reporting & evidence points e.g. waste handling facilities, reprocessors, exporters • Demonstrates that reported data used to measure recycling and calculate recycling targets satisfies the legal requirement of recycling • Takes enforcement action against the PO if agreed targets are not met (or this could be government depending on how the organisation is set up)

Alternative Model 3: Separate scheme for household/household-like packaging and commercial/industrial packaging

Overview

In this model separate arrangements would be put in place for household/ household-like packaging waste and for commercial and industrial packaging waste (i.e. distribution/ transit). Responsibilities would sit with different organisations. It would require recycling targets to be split for household/household-like packaging waste and commercial/industrial packaging waste.

Arrangements for commercial and industrial packaging

Arrangements for commercial and industrial packaging would be managed by compliance schemes. All obligated producers would join a scheme. Compliance schemes would acquire evidence of commercial and industrial packaging waste recycling from accredited

reprocessors and exporters equivalent to the tonnages required to meet their targets (by material).

The evidence would be paid for through a market-based system and producers would be charged for the cost of this evidence as now. In sections 9 and 10 we set out proposals to address shortcomings in the current PRN system.

If an obligated producer could provide evidence of recycling their own packaging waste (e.g. by back-hauling transit packaging and selling the materials direct) to their compliance scheme, this would count towards their obligation (as currently).

Arrangements for household and household like packaging

The requirements for household/household-like packaging would be managed by a single not-for-profit management organisation. This organisation effectively would be the same as that described for Model 2. It would be responsible for meeting the legally binding packaging waste recycling targets as they applied to household/household-like packaging and other outcomes as agreed with government. Fees would be paid by obligated producers based on the quantity and type of household/household-like packaging they handle (as described in Section 2). The modulated fee rates would be proposed by the management organisation and agreed with government.

There are two options for producers to pay these fees:

- 1) Obligated producers register directly with the management organisation and pay their fees directly; or
- 2) Obligated producers pay their fees to a compliance scheme and the compliance scheme would pass these fees to the management organisation (for the household/household-like scheme). This would avoid the need for the management organisation to interface directly with all obligated producers and hence could reduce overall scheme administration.

The management organisation would make payments to local authorities as described for Model 2 (and in Section 4). It would also make arrangements with sorting / transfer facilities to support collection of household-like packaging waste from commercial outlets. The management organisation would be required to ring-fence a proportion of producer fees for such as communications campaigns and litter initiatives in each nation, again as proposed under Model 2.

Many other countries do not yet operate EPR schemes that cover all types of packaging waste; and only have schemes for household and household and household-like packaging. Where all packaging is covered practice varies – in France, Belgium and Spain for example compliance arrangements for household and commercial/industrial packaging waste are different. In Belgium two schemes operate, Fost Plus for household packaging

and Val-i-Pak for all other packaging. In Italy, Romania, Czech Republic and Slovakia the same requirements apply to all packaging⁹³.

Key roles and responsibilities:

Organisation	Key responsibilities (indicative only)
Government	<ul style="list-style-type: none"> • Awards licence to the producer management organisation to operate • Has oversight of the management organisation • Sets/ mandates minimum service standards for collection (household and business) • Has powers to approve the modulated fee rates • Sets out requirements for full net cost recovery and payments to local authorities
Producer Management Organisation	<ul style="list-style-type: none"> • Establishes the 'approved' list of recyclable packaging and sets the modulated fee rates • Pays local authorities and businesses for household/household-like packaging • Administers arrangements for supporting litter/ comms campaigns, etc by nation • Produces annual report including any nation specific reporting and compliance with agreed targets • Pays fines if recycling targets are not met
Compliance schemes	<ul style="list-style-type: none"> • Manage their members data and register members with the regulator • Manage compliance of C&I requirements on behalf of their members • Levy modulated fees for household/household-like packaging on their members – pass the money to the PO • Purchase evidence directly from accredited reproprocessors/exporters equivalent to their total obligated tonnage for C&I packaging • Produce annual reports
Obligated Producers	<ul style="list-style-type: none"> • Join a compliance scheme • Provide data on packaging materials/formats, quantities by nation • Pay modulated fees and evidence-related fees • Pay annual registration fee which the scheme passes to the regulator to cover the cost of monitoring and compliance • Pay annual scheme membership fee

⁹³ Source: Extended Producer Responsibility Alliance (EXPRA), Implementation of EPR in Europe, Presentation to Defra November 2018

	<ul style="list-style-type: none"> • Contribute to the set up and operating costs of the management organisation
Regulator	<ul style="list-style-type: none"> • Approve compliance schemes (as now) • Compliance monitor individual producers (as now) • Compliance monitor the management organisation • Monitor schemes – movement of evidence • Compliance monitor reprocessors & exporters who issue evidence • Compliance monitor other collectors/operators who may issue evidence in the future (e.g. MRFs) • Investigate and enforce ‘free-riders’ • Data checking at key reporting /evidence points – waste management facilities and reprocessors/exporters – quality, quantity • Demonstrate that evidence used to measure recycling and used for the calculation of national recycling targets by government satisfies the legal requirement of recycling • Take enforcement action against compliance schemes if statutory targets are not achieved

Alternative Model 4: Deposit-based government managed system

Overview

It is likely that this model would need to be delivered by a government established scheme administrator, however, if it was to be delivered by a scheme administrator independent of government then it would need to operate to the standards required by government.

Obligated producers could register directly with the scheme administrator or could choose to join a compliance scheme and the compliance schemes would take on the legal obligations of their members.

Obligated producers would make the following payments based on the packaging they place on the market/handle:

- 1) For **all recyclable packaging**⁹⁴ they would pay a deposit fee. This would be payable per tonne and would vary by material. These materials would include those that would be required to be collected at kerbside for recycling, and labelled as such.
- 2) For **all non-recyclable packaging** they would pay a fee, set high enough to create an incentive to use recyclable packaging. Some of the fee would be used to support communications and litter-related measures.

⁹⁴ By all we mean household, household-like and commercial/industrial packaging.

3) Alongside 1) and 2) they would pay a packaging fee related to the tonnage of household packaging. This would contribute to full net cost recovery and ensure full net cost recovery for the management of household packaging waste by local authorities.

Packaging deposit/fees would need to be set at a high enough level to incentivise a change towards the use of recyclable packaging. This may require setting deposits at a rate which means that producers overall contribute more than full cost recovery. The government would need to carefully consider the implications if this was the case.

Deposits would be reclaimed by producers against evidence from reprocessors and exporters based on commercial arrangements agreed between producers or compliance schemes and recyclers/reprocessors. The cost of evidence would be determined by the market in much the same way as happens under the current system. The prices of evidence would be expected to rise towards that of the deposit for different materials. If the deposit on, for example clear PET was £300 per tonne, the price of evidence might increase up to this level and hence increase the incentive to recycle. The income raised from recyclers/reprocessors from the sale of evidence would be expected to pass up the chain to collectors and businesses – providing the incentive to separate, collect and recycle more packaging materials including household-like packaging. Evidence could also come from back hauling where producers do this (e.g. collection points in store) and can demonstrate the material has been recycled.

It is proposed that deposits would be returned in full if the recycling is closed loop and to equivalent use, e.g. clear food grade PET to clear food grade PET. The deposit would not be returned in full (proportion would need to be determined) if the material is recycled to a lower grade or alternative use (e.g. food grade to non-food grade).

As now, a producer would not have to recycle their actual packaging but would have to provide evidence that an equivalent amount of the same packaging material had been recycled. Unlike now, materials would be specifically defined – for example, if you use clear PET, you must show that clear PET has been recycled.

The scheme administrator would make payments to local authorities in accordance with an agreed funding formulae. These payments would be expected to support a more coherent collection infrastructure for packaging waste and the delivery of any minimum service standards/ collection blueprints/codes of practice in place in each nation (as discussed in Section 4).

We have not found a similar system operating elsewhere, although Spanish producers have the option of joining a deposit collection and return system whereby a company applies a deposit to packaging items which is refunded when the packaging is returned to the 'packer', or a single management scheme. We understand that all producers have chosen the latter option.

Key roles and responsibilities:

Organisation	Key responsibilities (indicative only)
Government /scheme administrator	<ul style="list-style-type: none"> • Establishes a scheme administrator • Establishes an 'approved list' of recyclable packaging materials/formats (with business) • Establishes a protocol for producers to self-assess open/closed loop recyclability of their packaging. • Sets rates for all fees and deposits • Collects fees and deposits • Refunds deposits to producers on evidence of recycling achieved • Makes payments to local authorities and others • Allocates unredeemed deposits • Liaises with the regulator on compliance monitoring and enforcement matters.
Obligated producers	<ul style="list-style-type: none"> • Register with the scheme administrator directly or join a compliance scheme • Self-assess recyclability of packaging. • Pay fees and deposits based on type/quantity of packaging handled • Provide/acquire evidence of recycling from reprocessors • May chose to introduce their own schemes to recover packaging waste (e.g. take-back) and obtain evidence of recycling
Compliance schemes	<ul style="list-style-type: none"> • Register members with the scheme administrator and regulator • Manage and report members packaging data • Manage compliance on behalf of members - levy deposits, fees, purchase evidence • Act as the primary point of contact with the scheme administrator
Regulator(s)	<ul style="list-style-type: none"> • The role of the regulator will require further clarification under this model and will depend on scheme administration arrangements.

Q56. Overall, which governance model for packaging EPR do you prefer?

- (a) Model 1
- (b) Model 2
- (c) Model 3
- (d) Model 4

Please briefly explain your preference.

Q57. If you had to modify any of the models in any way to make them better suited to achieve the principles and outcomes government has set for packaging EPR what changes would you suggest?

Q58. Do you have any concerns about the feasibility of implementing any of the proposed governance models?

- a) Yes
- b) No
- c) If yes, please provide specific reasons and supporting information for each governance models that you have concerns about.

Q59. Do you think that any of the governance models better enable a UK-wide approach to packaging producer responsibility to be maintained whilst respecting devolved responsibilities?

Q60. Stakeholders have suggested that a compliance fee mechanism similar to the arrangements currently in place under the WEEE producer responsibility scheme should be introduced if a competitive evidence market continues to operate such as in Model 1. Do you agree?

- (a) Yes
- (b) No
- (c) I don't know / I don't have enough information

Please briefly state the reasons for your response and provide any information to support your view.

Q61. Should a Packaging Advisory Board be established to oversee the functioning of the EPR system and the compliance schemes in the competitive compliance scheme model 1 or do you think other arrangements should be put in place?

- (a) Packaging Advisory Board
- (b) Other – please provide details

Please briefly state the reasons for your response and provide any information to support your view.

Q62. Please let us know your thoughts as to whether the proposed single management organisation should be established on a not-for-profit basis or as a government Arm's Length Organisation.

Q63. If such a management organisation is established as not-for-profit, one option is for government to invite proposals from potential operators and then issue a licence to operate for a defined period of time. Do you agree with this approach?

(a) Yes

(b) No

(c) If no, would you like to suggest an alternative approach?

Q64. Should a single scheme be established for household/household-like packaging and C&I packaging as described for model 2?

(a) Yes

(b) No

(c) I don't know / I don't have enough information

Please briefly state the reasons for your response and provide any information to support your view.

Q65. Or, should there be a separate system for managing compliance for household/household-like packaging and C&I packaging as described for model 3?

(a) Yes

(b) No

(c) If yes: could model 3 work as described? Or would additional mechanisms be required to make this approach work effectively, please indicate what these might be?

(d) If no: do you have suggestions on an alternative approach?

Q66. Under model 4 are producers more likely to?

(a) Manage their own compliance?

(b) Join a compliance scheme?

Please briefly state the reasons for your response and provide any information to support your view.

8. Responsible management of packaging waste domestically and globally

Background

Between 2007 and 2017 the amount of packaging waste recycled increased from 59% to 64% from 6.3 million tonnes to 7.35 million tonnes. Over the same period the amount of packaging waste recycled in the UK dropped from 4 million tonnes to around 3.7 million tonnes. In 2017 around 50% of packaging waste was reprocessed in the UK and the remaining 50% was exported. The UK is particularly reliant on export markets for plastic and paper/card, with approximately two thirds of packaging recovery notes issued by exporters through PERNs. For other packaging types it was much lower in 2017 at 22%. Of all reported waste exported for recycling in 2017 26% was packaging waste.

Most packaging waste that is exported for recycling is done so under the procedures laid out in Article 18 of the EU Waste Shipment Regulations (Regulation (EC) 1013/2006 on Shipments of Waste), known as Annex VII or “Green List” controls⁹⁵. The requirements set out in the Waste Shipment Regulations also state that waste which is contaminated by other materials to an extent which prevents the recovery of the wastes in an environmentally sound manner has to be approved by the relevant competent authorities before it can be exported.

Case for change

Our reliance on exports, particularly for plastic and paper, causes environmental risk, particularly for countries with inadequately regulated waste management operations. As awareness of plastic pollution in the marine environments grows, the fate of UK packaging waste exports has become the focus of significant public concern.

Major waste importing nations such as China, Vietnam and Malaysia are pursuing measures to restrict waste imports, citing high levels of contamination and the impact of poor quality recyclate on their environment as justification. The impact of these restrictions has already started to be felt domestically. The premium paid for higher quality recovered materials has increased, with the price of materials such as clear PET and natural HDPE bottles rising sharply in the third quarter of 2018⁹⁶ whereas prices for other polymers have dropped. The Resources and Waste Strategy⁹⁷ commits the UK government to actively engage with international activities to manage and control waste exports in a manner that protects human health and the environment.

Further to this, through our engagement with the packaging industry we have had feedback about a level playing field between accredited reprocessors and exporters when issuing PRN/PERNs. The current packaging waste regulations require evidence notes to

⁹⁵ <http://ec.europa.eu/environment/waste/shipments/legis.htm>

⁹⁶ http://www.wrap.org.uk/sites/files/wrap/Market%20Snapshot%20October%202018_0.pdf

⁹⁷ Resource and Waste strategy, chapter 7, international leadership

be issued only on the tonnage of UK derived packaging waste (target material) which is presented for a recovery or recycling operation. Apart from material that can reasonably be associated with the packaging item and not easily removed before reprocessing (for example the paper label on a plastic bottle), non-target material must be deducted from the tonnage of the PRN/PERN. This applies to both reprocessors in the UK and exporters to overseas reprocessors.

Contamination should be removed from the packaging waste prior to it being input to a recovery or recycling process and cannot be included in the tonnage value used for the purpose of issuing evidence. Every tonne of evidence issued must therefore be fully supported by a verifiable audit trail from the waste producer to the final reprocessor whether by a UK based reprocessor or an exporter. The concerns flagged by industry around an uneven playing field potentially arise because of the risk that PERNs are being fraudulently issued on recyclable material that is not packaging, packaging that is of poor quality that cannot be recycled, or on contamination such as food residues.

Our proposals

In Part B we set out our proposals for higher packaging recycling targets for producers to 2030. We want to ensure that packaging waste is managed in an environmentally sustainable way and that UK reprocessors are not disadvantaged, increasing their confidence to innovate and invest domestically. However, we recognise that for most materials UK reprocessing capacity is determined by a variety of factors that go beyond the scope of the packaging waste regulations. These include factors such as costs of manufacturing, international demand for raw materials and global commodity prices (virgin and secondary raw materials). In the Resources and Waste Strategy⁹⁸, the UK government has set out a range of strategic actions to support an increase in domestic reprocessing capacity.

Government's objectives for more responsible reprocessing are threefold. To ensure:

1. UK packaging waste is managed in an environmentally responsible way;
2. the regulatory system safeguards against fraudulent activity and deceptive practices, and secures compliance with relevant or related regulations; and
3. the UK has access to sufficient high quality, environmentally responsible reprocessing capacity to handle increasing quantities of recyclable packaging waste in the future.

We have identified four broad areas for action to ensure packaging waste exports are managed fairly and responsibly. Each is considered further below:

- Strengthened accreditation arrangements where this is needed (e.g. Models 1, 2 and 4)
- Strengthened reporting arrangements
- Strengthened monitoring arrangements

⁹⁸ Chapter 3: Recovering resources and managing waste.

- A change in the point of issue of evidence of reprocessing

In addition, the introduction of further restrictions on the export of plastic packaging waste streams are currently the subject of international consideration. These are outlined below.

Strengthened accreditation arrangements

Measure 1 – Introduction of mandatory accreditation of UK reprocessors and exporters that handle UK waste packaging, including any sites or traders which are not currently permitted.

At present there is no mandatory requirement for UK-based packaging reprocessors or packaging waste exporters to seek accreditation as a reprocessor or an exporter unless the business issues evidence (PRNs / PERNs).

A consequence of this voluntary arrangement is that we have an incomplete data set for all packaging waste that is recovered or recycled. Further, not all PRN/PERN evidence that could be made available to the market is made available; this can impact on the market-based system and pricing of evidence. This is a lack of transparency in the current system as we do not know how much material is flowing through the system and at what rate. As it currently stands, there is an imbalance in information.

Accredited reprocessors and exporters are not obligated to create a PRN/PERN for every tonne of material they reprocess – this means that they can “withhold evidence” if they consider the price to be too low. They are also not required to sell PRN/PERNs immediately – again, they can wait until the price increases. However this evidence has no value if it is retained by the reprocessor or exporter beyond the end of the “compliance year”. Creating a more stable market is important to producers to inform forward planning and provide greater certainty of costs. This is considered further in section 9 which proposes a mechanism to ensure accredited reprocessors and exporters issue evidence into the market within a certain time period.

Measure 2 – Require exporters to register within the jurisdiction of the regulatory authority within which they operate and to register their principle place of business.

Within the waste industry there are operators who obtain, collect and reprocess wastes from across a wide geographical area. Reprocessors apply to the regulator where the site to be accredited is based, and therefore there is a clear jurisdiction and requirement for compliance monitoring by that regulatory authority. A reprocessor application may cover one or more material types depending on their operation for the payment of a single fee.

Exporters often function without an operational waste site as they may export packaging waste directly from the supplying site. Therefore they may be based in one area of the country, but export from numerous supplying sites. Their application is made based on their registered office address, but they may keep records for supplying sites separately and these may cross regulator jurisdictions.

By requiring exporters to register within the jurisdiction of the regulatory authority where their auditable address and records are located as well as to register their principle place of business issues relating to the application of powers by the correct regulatory authority will be avoided.

Measure 3 – Exporter accreditation fees that better reflect regulatory effort

All applications for accreditation require the payment of an application fee. This fee covers assessment of the application as well compliance monitoring of the exporter or reprocessor during the period of accreditation. Currently the fees are not included in the regulators charging schemes, but rather are set out in the regulations. There is a two tier application fee arrangement, exporters or reproducers who intend to issue less than 400 tonnes of PRN/PERNs pay a fee of £505. Exporters or reproducers intending to issue 400+tonnes of PRNs/PERNs are required to pay a fee of £2,616. Applicants can include in their application the option to be accredited for more than one material. The current application fees do not reflect the increased work associated with assessing an application for multiple materials.

Exporters require one accreditation application (and fee) no matter how many materials the application includes, the number of sites they export from or the number of suppliers. UK reprocessor applications are site specific to the reprocessing operation. In addition at the point of application an exporter can apply for as many approvals for their overseas reproducers as they wish under the flat fee.

Exporters can add overseas reproducers post determination of their application for a fee of between £35 and £85 per site. This does not reflect the costs to regulators to process these applications.

We propose that the charge for accreditation of exporters be set to reflect the actual work necessary to check the application, taking account of the number of materials within an application, the number of suppliers an exporter sources materials from and the number of overseas reproducers they intend to export to.

Strengthened reporting arrangements

Measure 4 - Require all accredited packaging waste exporters to submit fully completed Annex VII forms, contracts and other audit documentation as part of the supporting information when reporting the export of packaging waste and prior to the issue of any evidence.

The Waste Shipment Regulations currently require Article 18 movement forms (also known as Annex VII forms) to be fully completed and be supported with a relevant contract, but they do not have to be provided to the regulatory authorities unless requested. For non-EU facilities there is no legal requirement for Annex VII forms to be signed and returned by the overseas receiver to confirm either or both receipt of the waste and its subsequent recovery/recycling. There is however a legal requirement for forms to be fully completed by the exporter, including transport information, but these forms do not

need to be returned. SEPA and NIEA do require Annex VII forms to be submitted prior to the shipping of green listed waste.

To improve visibility and assurance that exports of UK packaging waste are compliant and are actually recovered/recycled to equivalent standards we are proposing that Annex VII forms, contracts and other audit documentation provided as part of the supporting information are submitted electronically to the relevant regulator, where they are not done so already, in advance of shipping the waste. This could include information on material type and grade. This information would be used to support the regulator's risk based approach to enforcement. It will also help ensure PERNs are only issued on target packaging, once non-target, poor quality or contaminated materials have been accounted for.

Measure 5 – Pre-reporting of shipment to support improved inspection of shipments

At present there is no requirement on accredited packaging waste exporters to give the relevant regulator advance notice of individual shipments of packaging waste. This reduces their ability to make timely port side inspections of shipments before they leave the UK.

To address this we propose requiring accredited packaging exporters to give regulators at least 7 days' notice of individual shipments, including the date of the shipment, what is being shipped, the port it will be shipped from, the port it will be shipped to, and the details of the final destination.

Strengthened monitoring arrangements

Measure 6 - Overseas inspection of reprocessing facilities paid for by exporters

All OECD and EU countries have environmental legislation applying similar standards to the UK. On this basis accredited exporters currently are not required to provide additional evidence to demonstrate broadly equivalent standards for any destination sites in those countries. However, this has not prevented contaminated waste being illegally exported and in some cases abandoned in EU countries. Furthermore, UK regulators are not funded to carry out detailed checks on overseas sites. This is because historically "Green List" wastes both in the UK and overseas have been considered to be low risk.

Currently the regulating authorities rely on information and evidence provided by the accredited exporter as to the waste that will be exported, the details of the receiving site and what the site will undertake as a recycling operation. When considering applications for accreditation and undertaking compliance checks they undertake what checks they can that these exports will be sent to facilities that are permitted and operating to broadly equivalent standards to our own. Physical inspections of overseas sites and their receipt and processing of UK waste are not undertaken.

Given the increasing concern over the environmental harm arising from UK packaging waste exports there appears to be a good case to increase transparency and assurances

regarding the recycling of UK packaging wastes overseas, through greater collaboration with overseas regulators and use of third party inspections.

Appropriately accredited third party inspectors who have the local knowledge and/or are based in the destination country would be well placed to provide increased assurances that sites are permitted and operating to equivalent standards, to ensure the correct permissions are in place, and that the sites are able to reprocess the materials being exported and to the standard specified in the contract.

We propose that checks of overseas recycling should be required and that it would be for the regulatory authority to appoint third party inspectors and to manage these inspections with the costs paid for by accredited waste exporters.

Measure 7 - Mandatory reporting of rejected shipments and overseas checks on rejected shipments

At present there is no requirement for exporters to notify the regulator where a shipment of packaging waste is rejected by the overseas site to whom the packaging waste is sent. This makes it more difficult for the regulators to quickly identify potentially fraudulent exports, use this to inform risk based inspections and take necessary enforcement action. We therefore propose three complimentary actions: 1) require mandatory reporting of rejected shipments; 2) use measure 6 above to help identify instances where reprocessors have either not received shipments as expected or have had significant concerns over quality (from any UK exporters); and 3) used third party inspectors to develop country based intelligence.

Measure 8 – Give the relevant regulator the power to audit exporters’ financial accounts to check that actual payments to reprocessors align with contracts and reported deductions for non-target materials

Exporters could be obligated to provide fully audited accounts to the regulator, providing the regulator with a greater degree of intelligence about how PRN revenue has been raised. Giving the regulator this power would strengthen the monitoring of rejections of shipments, and provide assurance that packaging waste exports are being sold at the market rate. This measure is also important in providing greater transparency as to how PRN revenue is being spent by both domestic reprocessors and exporters, and is also proposed in section 9 from a broader transparency perspective.

A change in the point of issue of evidence of reprocessing

Measure 9 - A shift in the point of evidence

In Part B we asked whether obligated producers should be required to obtain a certain amount of evidence of recycling into equivalent closed loop applications. This is key to Model 4 but could be applied to other governance arrangements. This however may require a shift in the issue of evidence from the point at which materials are received by a reprocessor or exported by an exporter to the point at which the packaging waste has

been reprocessed. Such an approach would need to allow for the issue of evidence to be limited to packaging waste, and may therefore require multiple points of sampling in facilities that reprocess both packaging and non-packaging items. Moving the point at which evidence is issued to the point at which the packaging waste has actually been reprocessed would provide more certainty that the waste has been reprocessed to a broadly equivalent standard, as well as driving efficiency and circularity of material use.

Current arrangements allow for the inclusion of reprocessing losses in the tonnage of evidence issued, and we recognise that shifting the issue of evidence to the point at which the packaging waste has been reprocessed would mean the value of the waste collected would not be reflected by the value of the evidence issued. However, this loss could be mitigated through the accounting and valuation of the evidence. Adoption of this measure would require reprocessors and exporters to provide for audit the relevant information/ documents confirming the tonnage of material outputs from a reprocessing operation.

The measures above consider improvements to the reporting and monitoring of exports. Combined, these should help to level the playing field and increase transparency to ensure all exports are undertaken in an environmentally responsible manner. We are conscious however, that in shifting the point of evidence, reporting and monitoring arrangements may become more complex.

Measure 10 - Requirement to sort and clean packaging waste prior to domestic reprocessing or export

An alternative approach, reducing the risk on non-compliance and fraud, would be to require packaging waste materials to be sorted, cleaned and pre-processed to meet a defined specification (i.e. same colour, food grade etc) prior to reprocessing domestically or being exported for reprocessing overseas.

Under this approach the sorted materials would be further refined and prepared for recycling, requiring no further sorting or cleaning and thereby meet end of waste criteria. Evidence of reprocessing would still be issued by the reprocessor or exporter, but would provide greater certainty that it is only being issued on 100% target material that is free of contamination. It would also mean that the material would command a price premium and as a result the risk of poor environmental stewardship would be much lower particularly if exported.

Potential restrictions on the export of plastic waste streams

The Government of Norway has put forward a proposal to the Secretariat of the Basel Convention to include the export of mixed plastics within the Basel Convention control regime for international waste shipments⁹⁹. This would mean that all mixed plastic waste, including any shipments of mixed plastic packaging, would be notifiable and both the exporting and importing countries as well as any intermediary countries through which the

⁹⁹ <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP14/tabid/7520/Default.aspx>

waste is transported would need to agree the export in advance. This proposal is subject to international consideration currently and the outcome will not be known until after the Basel Convention of the Parties in April/May 2019. However, any final decision may have implications for some of the measures outlined above. Defra is engaging with key industry stakeholders to inform discussions on this proposal. If you would like to provide views to Defra then please email WasteMovements@defra.gov.uk.

Q67. Do you agree that government should seek to ensure export of packaging waste is undertaken in a transparent and environmentally responsible manner?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

Q68. Do you agree that measures identified here would help ensure the export of packaging waste is undertaken in a transparent and environmentally responsible manner?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

Q69. Have we missed potential measures that you believe need to be considered alongside those measures we have proposed?

- (a) Yes
- (b) No
- (c) If yes, please explain which potential measures should be considered.

Q70. Do you have any concerns about the feasibility and / or costs of implementing any of the proposed measures?

- (a) Yes
- (b) No
- (c) If yes, please provide specific reasons and supporting information for each measure that you have concerns about.

9. A more transparent system

Background

The current system has been criticised for a lack of transparency. It has been raised in reports¹⁰⁰ and stakeholders have repeatedly indicated that a more transparent system is important to them and would help reduce fraud¹⁰¹. In particular, they are concerned about improving the transparency of any market-based evidence system so that it is clear how funding paid into the system is used and the outcomes it achieves. They are also concerned about better data on packaging waste flows and that the evidence on which packaging recycling rates and compliance are based is robust.

One of the underpinning principles for packaging EPR is for measures to be put in place to ensure that the new system is transparent in its operations in order to:

- Increase confidence in the system
- Increase efficiency of the evidence market
- Improve accuracy of data
- Demonstrate how funding has been used and the outcomes it has delivered
- Reduce the potential for fraud and waste crime

Case for change

Below we have set out our understanding of why transparency is important to key stakeholders.

Producers

Producers want a clear policy framework and clarity on their costs to inform long term planning. They want to be confident in the system they are paying into; that the money raised through producer fees is used to support effective services and additional recycling capacity, and that it will deliver agreed outcomes including higher packaging recycling. Producers want access to a more sustainable supply of quality secondary raw materials and have clear sight of where these materials will come from.

Producers want any new scheme administrator or management organisation or the compliance schemes to operate in a transparent way. They want to know they are getting a good deal and that their producer organisation or compliance scheme(s) is working with them to reduce the environmental impacts of packaging waste. Finally, producers want to be better informed of how the fees they pay to the regulators are used. They want to be confident that others are not free-riding or abusing the system.

Consumers

Consumers want to know what to do with their packaging waste. This means clarity on what can be recycled and how to recycle. Consumers also want assurances that the

¹⁰⁰ NAO report – <https://www.nao.org.uk/wp-content/uploads/2018/07/The-packaging-recycling-obligations.pdf>; ACP report

¹⁰¹ WRAP/INCPEN workshops March/April 2018 and Defra Workshop June 2018, <http://www.wrap.org.uk/blog/2018/05/reform-regulations-relating-packaging>

materials they separate for recycling are recycled and to be confident that producers of the products they buy are doing the right thing. This will help them make environmental informed decisions when buying products.

Local Authorities

Local authorities have not had clear sight of how producer money going into the current 'PRN system' has helped them. Moving to a system whereby the collection and management of household packaging waste will be paid for by producers, local authorities want transparency on how these payments will be provided and that their costs will be met. This will give confidence that payments received from producers is appropriate and all authorities have been treated fairly.

Waste Management Companies

Waste management companies will benefit from clarity on the packaging materials required to be collected for recycling from businesses and households, transparency on the flow of material through the system and visibility on how producer fees will support higher recycling. This will increase confidence in investment decisions and longer term planning.

UK Reprocessors

Transparency for reprocessors is about being better informed on what materials are being placed onto the market, how those materials are expected to flow through the system and the quantity and quality of materials they can expect to receive. They also want a level playing field with exporters. Improvements will increase confidence in investing in new/improved capacity and longer term planning.

Proposed measures

Below we have set out proposals for improving transparency, allowing for the different governance models where approaches or requirements may vary.

Reprocessors and Exporters

Governance models 1, 3 and 4 have a market-based element which relates to the sale of evidence of recycling of packaging waste by reprocessors and exporters. All revenue raised through the sale of evidence would be required to be used to build capacity for the collection and recycling of packaging waste but additional measures would be necessary to improve accountability in two areas.

1. Accountability for building capacity

The current packaging waste regulations state that the reprocessor/exporter should spend PRN/PERN funds on:

"(i) the development of capacity for the collection and reprocessing of packaging waste and the development of new markets for materials or goods which have been made from recycled packaging waste; and

(ii) arrangements for the collection and sorting of packaging waste;..."

Reprocessors and exporters have to submit information to the regulator on how they spend funds raised from the sale of evidence against six categories. The information tends to be high level and does not detail specific projects. The categories can have a wide interpretation and include support for prices paid for recyclable materials. This revenue does not have to be declared as separate items of credit or spend and is not ring fenced as relating to the packaging scheme. If a business fails to implement its business plan or fails to provide a post compliance report these are not enforceable violations. An accreditation can be suspended if the business plan is not satisfactorily implemented, but in practice this can be difficult to do.

We propose that all reprocessors and exporters are required to submit fully audited financial accounts annually. These would detail how they spend income raised through the sale of evidence of recycling (PRNs). The reports would be provided to the relevant parties (depending on the governance model) who would ensure that no information is made public that would hamper competitive advantage.

Q71. Do you agree that accredited reprocessors and exporters should be required to report their financial information?

(a) Yes

(b) No

(c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view. If you answered no, how would you suggest transparency is provided on how income from the sale of evidence has been used to support capacity building?

2. Improving data and reducing fraud

One of the drivers of market volatility is the lack of transparency on the prices paid for PRN/PERNs. Only around 14% of PRN/PERN trades¹⁰² are done on the spot market (i.e. through trade platforms such as The Environment Exchange¹⁰³). Otherwise prices paid (bilateral, over-the-counter) are confidential. This means that reprocessors and exporters, who may trade directly with compliance schemes and producers, have access to market information that is not available to producers and compliance schemes.

We propose that (where relevant to an alternative governance model) reprocessors and exporters should be required to report prices paid for evidence to an independent third party. This data could be aggregated and commercially sensitive information removed

¹⁰² Unpublished Eumonia report for Defra

¹⁰³ <https://www.t2e.co.uk/>

before being reported quarterly. There are precedents for reporting commercial pricing information such as WRAP's waste management facilities gate fees and materials pricing reports¹⁰⁴.

As explained in Section 10 reprocessors and exporters are not required to be accredited. This means that there is packaging waste that is recycled but not accounted for and for which no evidence is available to purchase. Some operators choose to report only up to the 400 tonnes threshold, to avoid paying the full accreditation fee. Additionally, those reprocessors and exporters who are accredited are not obligated to create an evidence note for every tonne of material they handle – this means that they can “withhold evidence” if they think the price is too low. They are also not obligated to sell PRNs immediately – again, they can hold onto evidence until they consider the price to be right, however evidence has no value beyond the end of a compliance year.

We propose in Section 8 that all reprocessors and exporters of packaging waste should be accredited. This would require clear definitions for a reprocessor and an exporter to ensure that all relevant operators are brought into the system.

We propose mandatory monthly reporting of packaging waste data by reprocessors and exporters. Currently, quarterly reports are mandatory and monthly reports are voluntary (all governance models).

We propose that accredited reprocessors and exporters should be required to generate evidence for all the packaging waste they reprocess/recycle¹⁰⁵ and that there is a mechanism to ensure they issue evidence into the market within a certain time period. Where they are unable to sell this evidence, they should be declared to the regulator.

These proposals would help to improve the robustness of the data for determining recycling rates. They will make market information more readily available to producers, compliance schemes and reprocessors. They will also increase the volume of trades in the evidence market. This will help to create a more stable market with lower volatility and liquidity where forward planning is boosted.

Q72. Should accredited reprocessors and exporters be required to generate evidence for every tonne of packaging waste that they process?

- a) Yes
- b) No
- c) I don't know

Please briefly state the reasons for your response and provide any information to support your view.

Q73. Should accredited reprocessors and exporters be required to report on the packaging waste they handle monthly?

- a) Yes
- b) No

¹⁰⁴ www.wrap.org.uk

¹⁰⁵ In the case of model 3 for commercial and industrial packaging only.

c) I don't know

Please briefly state the reasons for your response and provide any information to support your view.

Under model 4 producers potentially could secure evidence individually or choose to join/form a compliance scheme. We expect the evidence market to operate in a similar way to the current market however the price of evidence might be expected to increase compared to the current system or what might be expected under models 1 and 2.

Q74. Do you think that any additional measures to those already described would be required to ensure transparent operating of the evidence market in model 4?

(a) Yes

(b) No

(c) I don't know

If yes, please provide details

Compliance Schemes (governance models 1, 3 and 4)

Compliance schemes would be handling much more producer fee income under a reformed system. In return their members would want transparency and accountability for how this fee income is allocated and spent, and to know the measures schemes are putting in place to achieve value for money and economies of scale and to ensure agreed outcomes and targets are achieved.

In governance model 1, compliance schemes would have a broader strategic, commercial and operating role compared to currently; their roles would also change in models 2 and 4. These changes would require a different balance of resources, systems and skills. As a result it would be our intention to require compliance schemes to re-apply for approval under a packaging EPR system.

We propose that if the final preferred governance model includes compliance schemes that they should be more tightly regulated. This would include a requirement to produce an annual strategic plan that sets out how they plan to meet the requirements of their members over the longer term. Annual reporting would cover items such as outcomes achieved, packaging waste recycled, packaging handled by their members and a breakdown of how producer fees have been spent. Oversight of all compliance schemes would be provided through a government board or other appointed regulator.

Q75. Are there any additional requirements that should be placed on compliance schemes to ensure greater transparency of their operations and reporting?

(a) Yes

(b) No

(c) I don't know

If Yes, please briefly state the reasons for your response and provide any information to support your view.

Q76. Under a reformed system do you think compliance schemes should continue to be approved by the existing regulators or do you think a different approach is required?

- (a) Yes, approved as now
- (b) Other, please explain

Single not-for-profit producer management organisation (Model 2)

In this model, if the single producer management organisation was not-for-profit and external to government, it would be directly accountable to government, and to the producers who pay into the system, for its actions and performance. Total transparency on all aspects of the organisation's operations, including payments to local authorities would be required. To ensure that this happens, a framework for what would be expected of the organisation would be set in regulation.

A single producer organisation would be more clearly sighted on obligated businesses that are not complying (free-riders). They would be the single scheme that every producer would be required to register with, which would make non-compliance more difficult.

We propose that this organisation would be required to produce a strategic business plan and annual operating plan to show how they plan to meet the requirements set out in their agreement with government and their members' requirements. They would be required to produce an annual report covering items such as packaging handled, a breakdown of how producer fees have been spent, outcomes achieved and recycling performance and to submit audited accounts annually.

Q77. Are there any additional requirements of a single producer organisation to ensure transparency of its operation and reporting?

- (a) Yes
- (b) No
- (c) I don't know

If yes, please briefly state the reasons for your response and provide any information to support your view.

Regulators (all governance models)

In a reformed system producers would continue to pay fees to the regulator for compliance monitoring. Through stakeholder engagement exercises producers have indicated that they would be willing to pay higher fees to include for the cost of enforcement activities¹⁰⁶. This is a matter that government has agreed to consider (Sections 1 and 10).

We propose that if the regulators receive additional fees, and the requirements for compliance monitoring and enforcement increase, that they are transparent on how these fees are spent and their approach to compliance monitoring and inspections¹⁰⁷. Producers want to know that the system is being properly monitored and those that free-ride or abuse

¹⁰⁶ March 2018 WRAP/INCPEN/ACP workshops, <http://www.wrap.org.uk/blog/2018/05/reform-regulations-relating-packaging>

¹⁰⁷ The NAO in particular was critical of the Environment Agency's approach to compliance monitoring. <https://www.nao.org.uk/wp-content/uploads/2018/07/The-packaging-recycling-obligations.pdf>

the system will be caught and punished appropriately. It is important for all stakeholders in the system to be confident that they are operating on a level playing field.

Producers

Section 2 outlined two options for incentivising recyclable packaging design - modulate fees and a deposit fee. In both options producers would have to assess their packaging against a number of criteria:

- That the packaging item technically can be recycled
- That it can be collected and sorted for recycling at an acceptable cost
- That it can be recycled back into a new product for which end markets exist

We think this information provides a powerful tool that could help consumers understand the overall performance of individual products as well as see what individual companies are doing to, for example, reduce packaging and use more packaging that can be recycled. Whilst many companies provide this information on their own websites it could be reported on a publicly accessible database making it readily accessible to consumers and other interested parties. Other information might include how much recycled content there is in different packaging materials, percentage of packaging that has been recycled and what packaging has been recycled into including 'closed loop' applications.

Providing this information in this way could help businesses to demonstrate how they are meeting their corporate commitments including any national or international commitments. The information could be used by NGOs to hold businesses to account for the commitments they have made and actions taken (or not taken) and it would enable comparison of the performance of different companies and brands.

Q78. Do you think there is a need to make more information on packaging available to consumers?

- a) Yes
- b) No

Please briefly state the reasons for your response and provide any information to support your view.

10. Compliance monitoring and enforcement

Background

To deliver the maximum outcomes from the proposed reforms and demonstrate national compliance in achieving the packaging waste recycling targets, the regulations would require:

- the provision of prescribed data from stakeholders
- defined and specific requirements placed on stakeholders, against which compliance can be monitored robustly
- effective and proportionate enforcement powers that drive high levels of compliance

The compliance and enforcement of the regulations must create a level playing field which minimises and removes any potential for individual stakeholders to gain unfair advantages. The regulations also need to be sufficiently clear and prescriptive to prevent fraud.

The checks and balances both in the current system and in any proposed future system rely on the provision of accurate data in a format and at intervals which support the effective operation of the regulatory system. There needs to be verification and validation that stakeholders in the chain are correctly and accurately reporting the type and amount of packaging they handle, and the packaging waste they receive, recover and recycle and/or export and that any evidence is correctly issued on UK derived packaging waste. Therefore, each of the transactions throughout the system needs to be verified either directly or indirectly by the regulator to ensure that there is an accurate reflection of packaging and packaging waste put onto the market and managed in each nation. This process needs to be sufficient to prevent fraud and error.

Both the current system and each of the proposed governance models have numerous data points placing a requirement on participating businesses to provide information. Data can be company information, waste data, or relate to financial transactions between the various stakeholders in the system. Failing to do so, or providing recklessly misleading or false information, can significantly impact on the effective operation. The regulator or managing organisations must be able to address failures quickly and efficiently to prevent undermining of the system and to provide confidence.

The National Audit Office report on the packaging recycling obligations highlighted the risks of non-compliance for both packaging producers and the reprocessors and exporters handling the waste packaging¹⁰⁸. The enforcement powers available under current legislation do not allow the regulators to apply graduated, proportionate enforcement – for example minor breaches by a compliance scheme may only be tackled with revocation of their approval, or placing the scheme on conditional approval, causing significant disruption to their members and other schemes.

¹⁰⁸ <https://www.nao.org.uk/wp-content/uploads/2018/07/The-packaging-recycling-obligations.pdf>

The regulators tend to use a risk based system of compliance monitoring using data supplied by organisations alongside intelligence obtained from a variety of sources. This would continue in any new system and would be expanded to include:

- more detail as there is enhanced data available in the system;
- more regular datasets providing further opportunities for intervention;
- additional stakeholders to give a more transparent picture of the financial costs flowing through the system;
- the ability to ensure that producers ultimately pay the full net costs of recovery.

Stakeholders currently pay around £4.5m per year to the regulatory authorities in fees and charges. These are used to meet the administrative and compliance costs of the system, including assessing applications, processing registrations, data management and collation, desk based compliance assessments and site inspections.

Under some of the proposed models new stakeholders may be brought into the system e.g. MRF operators. Each would require a degree of compliance monitoring and therefore would likely need to pay fees (or additional fees) to support a fully funded financially viable regulatory model. In addition, to provide greater confidence that fraud and error have been addressed, the scope and depth of regulatory activity would need to increase. Therefore, the costs to stakeholders would likely be higher than currently to account for higher costs of compliance monitoring.

Whilst the registration and accreditation application fees are stated within the regulations, enforcement of the regulations in England and Wales is funded via Grant in Aid from government. Regulators currently are not able to use fees & charges from producers and accredited operators to identify or investigate those who are avoiding compliance and have not paid fees & charges. Government will look to address legislative barriers to funding regulatory activities, including enforcement.

When identified, non-compliance is tackled using a variety of enforcement tools such as Enforcement Notices, suspensions or cancellations of accreditations, civil sanctions or criminal actions (including advice and guidance, warning letters, formal cautions, prosecutions). In the case of civil sanctions, these should be cost neutral to the regulating authorities with the offender paying the full costs of investigation as well as their estimated avoided costs. Criminal prosecution cost recovery can be supported via compensation orders payable directly to the prosecuting authority.

The current key areas of focus on non-compliance are;

- free-riders – un-registered but obligated producers
- non, late or misleading submission of required information by an obligated producer or compliance scheme
- incorrect and/or fraudulent issue of evidence
- failure to meet statutory targets
- preventing the illegal export of packaging waste

Further details of the current enforcement regime is provided in Annex 2.

Case for change

Whilst the current compliance monitoring and enforcement regime has played an important role in meeting packaging recycling targets, it is recognised that a reformed regime would require an increased level of compliance scrutiny, alongside an expanded, graduated, and proportionate set of enforcement responses.

This is because to achieve the ambitious outcomes expected of a reformed system, we would need to ensure that all relevant stakeholders comply with the regulations and do not gain advantages through non-compliance. Additionally we need to ensure those that come into the system do not abuse it to gain advantages.

There is also the reality that there is intentional non-compliance emanating from serious and organised crime. The reformed scheme needs to minimise opportunities for abuse of the system by providing data points to verify the waste and financial transactions. Supporting this are the powers given to regulating authorities to carry out quick and effective enforcement responses to remove such operators.

Our Proposals

We have set out our initial proposals below. Each section looks at the likely issues facing different stakeholders in the system and considers both likely data requirements and likely compliance and enforcement activities, however these would be subject to further detailed consideration alongside the development of a preferred approach and subject to further consultation. Within these sections there are proposals that apply to specific governance models and there are proposals that would apply irrespective of which governance model may be adopted in the future.

Producers

Data required of producers and importers

The definition of a producer could change under the reformed regulations; options were presented in Section 3. For compliance monitoring of producers, the data requirements are largely generic whichever of the alternative governance model is under consideration. Key data requirements are:

- Producer name and where applicable company number, contact details
- Legal entity address – registered office
- Audit location / packaging handling location
- Company structure (holding company, subsidiaries etc.)
- Membership of a scheme or direct registrant
- Payment of fees, including registration and communications fees
- Packaging handled information by nation
 - Material type including format e.g. polymer type, single or composite materials
 - Quantity in weight by material type
 - Activities carried out – dependant on the point of compliance
 - Imported and exported packaging

- Any backhauled packaging waste tonnages, types, qualities, grades, eligibility

If either modulated fees or deposits are adopted, the various material types may be further broken down by plastic polymer, or by grades of steel or paper as well as by format. As each material/packaging type would have a variable cost of recycling, there would need to be specific compliance checks to ensure that the material/packaging types are correctly identified and reported. Where producers collect some of their own waste, such as back hauling via distribution centres, this may be eligible to be offset against their obligation. This would also need reporting, evidencing and compliance monitoring.

Q79. Are there other datasets that will be required in order to monitor producers in any of the proposed models?

(a) Yes

(b) No

If yes please explain which datasets will be needed.

Data submission methodologies

Broadly there are four different options currently available to producers to determine the amount of packaging handled / placed on the market. These are:

- 1) Do it in-house
- 2) Contract a third party data consultant
- 3) Some compliance schemes offer a data service
- 4) Apply an agreed protocol methodology

There are 15 protocol methodologies which have been acknowledged by the regulators.

These protocol methodologies rely partly on actual measured weights of packaging items and partly on extrapolations of average weights within certain product “groups”. Placing the same set of producer sales data within these generic systems may result in variations in the obligations, but the regulator regularly requires updated information to ensure that they are reporting data that is accurate as reasonably possible.

Some stakeholders have suggested a single publicly accessible central database where all weights are entered for every packaging type/format sold on the UK market. This would mean that producers would be required to determine their obligated tonnage through a consistent and transparent methodology.

Q80. Is there a specific material, packaging type or industry sector whereby producing accurate data is an issue?

(a) Yes

(b) No

If yes, please provide further information on where producing accurate data may be an issue.

Q81. Do you think a single database, as opposed to the current range of methodologies available, would be an effective alternative?

(a) Yes

(b) No

Please briefly state the reasons for your response and provide any information to support your view.

Enforcement activities relating to producers

Depending on the alternative governance model being considered, there is the opportunity for audits on producers by both the compliance schemes (where registration of a scheme would be mandatory) and the regulators. Currently schemes would be expected to carry out their own audits. We would expect compliance schemes to continue to fulfil this function in models 1 and 3. In model 2 it would be the role of the Producer Organisation and in model 4 the scheme administrator would fulfil this function for producers that register direct, otherwise it would be the compliance schemes.

The regulators need powers and resources to enforce the regulations on obligated producers where they:

- Fail to register as a producer
- Fail to meet all of their recycling targets including for each nation
- Fail to submit information by the relevant deadline(s)
- Provide false and misleading information
- Fail to resubmit information when requested
- Fail to pay the all required fees
- Fail to meet the requirements of any Notice served upon them.

We would also look to include powers against the individual as well as body corporate where there is the evidence to show offences committed are due to consent, connivance or neglect by a responsible individual within the business.

Obligated businesses who fail to register under the current or any of the proposed governance models should be brought into compliance and any previous back duties should also be addressed to ensure that there is a level playing field in meeting the costs of compliance. The impact of free-riders is further increased where the costs of collection, treatment and recycling of packaging waste are shared across all producers. The regulators have powers under criminal and civil sanctions to bring producers into compliance but the funds recovered are not ring fenced within the system, and there may be further innovative powers to increase regulatory flexibility so regulators can quickly reduce the burden on compliant companies and increase the controls on non-compliant operators.

Further additions to regulatory powers would be to provide a broader remit under legally enforceable notices to allow the regulator to obtain information they reasonably require. For example to request information from accountants and suppliers about the financial and business activities of a suspected free-rider.

Q82. Do you agree that compliance schemes (models 1 and 3), the producer management organisation (model 2) or the scheme administrator (model 4) should be responsible for carrying out audits of producers, which should be reportable to the regulators?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

Q83. Do you support the broadening of legally enforceable notices to obtain required information?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

Q84. Are there other enforcement mechanisms that should be considered which would be timely and effective to bring producers into compliance, for example in relation to free riders?

- a) Yes
- b) No

If yes, please explain which other enforcement mechanisms should be considered.

Compliance schemes

Compliance schemes are approved by the regulators, and we have proposed that under a reformed system schemes would re-apply for approval. In model 1 oversight of their operations would be provided by a new Board; however, in all models with compliance schemes more transparency in how these schemes operate would be required. We believe that establishing clearly enforceable roles and responsibilities which schemes must comply with will assist in achieving high levels of compliance.

Currently compliance monitoring of the schemes focuses on whether they are correctly and accurately collating their members placed on the market packaging data. This data is amalgamated to calculate the recovery and recycling obligations for each scheme as a whole, and used to monitor whether the scheme meets these targets.

The regulator monitors both the data submitted to the schemes by their members and how each scheme calculates its obligations on behalf of its members. Individual members are also separately audited although practices can vary by regulator, to ensure that the schemes are providing the right advice and guidance. The schemes also have a requirement to service information obligations on behalf of their members and certify that the obligations have been met.

Schemes service their obligations by entering into contracts to purchase PRN or PERN evidence from exporters and reprocessors, and/or source their evidence from the 'spot market'.

Data required of compliance schemes

Common data likely to be required to monitor compliance schemes across models 1, 3 and 4 are:

- Application for approval of schemes (as currently)
- Members names and where applicable company number, contact details
- Producer member address – registered office
- Company structure of producer members if applicable
- Audit location of each member – where the packaging is handled if not the registered address.
- Packaging handled for each member by nation
 - Material type including format e.g. polymer type, single or composite materials
 - Quantity in weight
 - Packaging type i.e. for household/household-like applications or for commercial applications (e.g. business to business transit/distribution packaging)
 - Activities carried out – dependant on the single point of compliance
 - Any backhauled packaging waste tonnages, types, qualities, grades, eligibility
 - Obligation for each member
- Combined obligation for the scheme, and regular submission showing progression against obligation (monthly / quarterly)
- Strategic plan of compliance to meet obligations of members
- Evidence of the recycling of packaging waste by material as required by their obligation.
- Payment of all relevant fees

In addition, each model requires additional data submissions, over and above the generic data identified above, each of those requirements would need to be set out in the regulations and reflected in an enforceable condition where not provided in a timely and accurate manner.

In model 1 (*Enhanced near-to-business as usual*) the role of the schemes is similar to the current system with regard to producers, and so would require similar compliance monitoring and enforcement. However an important difference is that household/household-like and commercial/industrial packaging waste streams are split, reflecting their differing collection and recycling costs. This creates risks that household/household-like and commercial/industrial packaging waste could be mis-described depending on the financial costs and funding for each stream. This would create a requirement to have defined and auditable records relating to the two streams which the regulators could compliance monitor.

Data required for model 1 in addition to the common data:

- Quantity of evidence for household and household-like packaging waste recycling
- Quantity of evidence for commercial and industrial packaging waste recycling
- Evidence of payments to the local authorities for packaging waste recycled
- Evidence of payments to waste companies for the packaging waste recycled.
- Evidence of payments to the advisory board

In model 2 (*Single management organisation*), the producer management organisation would be accountable for meeting the packaging waste recycling targets and providing the supporting data to demonstrate that these targets had been met and the appropriate fees raised and payments made. There would be no role for the compliance schemes as currently. Producers would register their data (data requirements would be the same or similar to those outlined above for producers) signed off by their head of finance. The regulator would engage directly with the management organisation. A further consideration under this model is whether the management organisation in addition to auditing producer data should take on a wider compliance monitoring role such as identifying free riders and bringing them into the system.

Data required for model 2 in addition to the generic data:

- Producer fees charged for each tonne of packaging type
- Quantity of evidence for household and household-like packaging waste recycling and the material types
- Quantity of evidence for commercial and industrial packaging waste recycling and the material types
- Evidence of payments to the local authorities for packaging waste recycled
- Evidence of payments to waste companies for household-like packaging waste recycled

Model 3 (*Separate schemes for household/household-like packaging waste and commercial/industrial packaging waste*) places the responsibility for managing compliance for household/household-like and commercial/industrial packaging waste on different parties. Whilst the current compliance scheme model would be retained for C&I packaging wastes, a single management organisation would be concerned with the household/household-like packaging waste. Separate targets therefore are likely to be required. The schemes would have a broadly similar role to that currently, obtaining, verifying and reporting members packaging placed on the market data, and charging those producers for the evidence of recycling. However they would also levy a fee for each tonne of household/household-like packaging placed on the market, according to the modulated fee structure.

The transactions with local authorities via the single management organisation regarding the quantity and quality of packaging waste collected will require monitoring, plus those with the MRF's/sorters, reprocessors and exporters who issue the evidence of recycling.

Data required for model 3 in addition to the generic data:

- Producer fees charged for each tonne of packaging type

- Quantity of evidence for household and household-like packaging waste recycling and the material types
- Quantity of evidence for commercial and industrial packaging waste recycling and the material types
- Financial / contractual arrangements with MRF's, sorters, reprocessors and exporters
- Evidence of payments to the single management organisation

Model 4 (*Deposit-based government managed system*) could operate with the producers directly reporting to a scheme administrator established by the government. Alternatively, it could provide the option of producers joining a compliance scheme and the scheme managing compliance on their behalf. In this case the additional data requirements on schemes would be similar to those outlined for model 3.

Q85. Are there any further data that should be required to be collated / collected via compliance schemes or a single management organisation?

Please provide brief details.

Enforcement activities relating to compliance schemes

The regulatory authorities would need powers and resources to enforce the regulations on compliance schemes where they:

- Fail to register their members as necessary and within defined timelines
- Fail to provide accurate members data
- Fail to meet all of the packaging recycling targets
- Act in a way which hinders the ability of any other operator to comply
- Fail to have access to, or means to pay for the evidence required by their members to meet legal obligations.
- Fail to comply with statutory conditions placed on them. Such conditions should be more prescriptive and place clear responsibility and accountability on compliance schemes. This includes:
 - Paying all the required fees on behalf of their members to the regulator and other bodies dependent on the model
 - Informing members of significant changes in the scheme operation, approval or constitution.
 - Informing the regulator where a member enters winding up orders or voluntary determinations, receivership, administration or an Individual Voluntary Agreement.
 - Submitting information by the relevant deadline(s), both for their members and their combined obligations
 - Failure to meet any other condition of approval
 - Providing false and misleading information
 - Failure to resubmit information when requested
 - Failure to pay the fees both for the scheme subsistence and member fees
 - Failure to meet the requirements of any Notice served upon them.

Target penalties for producers and compliance schemes

Producers and schemes who do not meet their obligations in achieving the packaging recycling target(s) either individually or collectively currently can be prosecuted for missing their calculated obligation. Regulators may also seek to apply a civil sanction for failing to recover and recycle a calculated amount of packaging waste.

However, similar to the WEEE regulations, government could seek to apply a penalty with the rate of any penalty charge set each year by Ministers. This would be separate to any enforcement under the civil or criminal legislation. The penalty charge could be paid through buying a nominal PRN at a fixed price decided by government at the end of each compliance year or alternatively at an average of the PRN price throughout the year, or through a fixed fine. Producers that are members of a compliance scheme would also be required to pay the penalty if the packaging waste recycling target(s) is not met.

We recognise that any penalty charge system should avoid any unintended consequences such as the value of the charge being more palatable than full compliance or conversely the charge being so high that other competitor schemes use the system to drive competitors schemes out of business by holding evidence that they do not themselves require to meet their obligations.

Q86. Do you think a penalty charge, as described, is the correct lever to ensure packaging recycling targets are met?

- a) Yes
- b) No
- c) I don't know

Please briefly state the reasons for your response and provide any information to support your view.

Transfer Stations, MRFs and Waste Sorters

Unlike in the current system, a number of the proposed payment options for household-like packaging waste (section 4) suggest that waste sorters/materials recovery facilities and transfer stations could issue evidence of the collection and recycling of packaging waste. The point of accreditation (that is where a material is considered to be recovered or recycled or have reached a position of 'end of waste' and / or a beneficial output) under the current system is set at the reprocessor or exporter. There are defined activities regarding each material type which must be carried out to produce a material which has been treated to a level where it is either considered to be recycled or is analogous to a virgin material. Only target materials count and contamination would be netted off the figure reported.

Q87. Should stakeholders other than reprocessors or exporters be able to issue evidence of recycling?

- a) Yes
- b) No
- c) I don't know

Please briefly state the reasons for your response and provide any information to support your view.

Data requirements

These stakeholders already provide data as a requirement of their Environmental Permit. Facilities falling under the Environmental Permitting Amendment (England and Wales) 2014 Regulations Schedule 9A¹⁰⁹ and the equivalent regulations for Scotland have to regularly sample and report on the quality of both incoming and outgoing waste streams by target material types. However these data are not broken down into packaging / non packaging material types. Facilities would therefore have to provide additional data if operating as an evidence point under a reformed packaging waste system:

- Quantity and quality of collected packaging by material, for local authority household/household-like and C&I collection
- Weight, by material type, on arrival or following sorting at sorting facilities/MRFs
- Weight, by material type, on arrival at transfer/bulking station
- Weight, by material type, on arrival at reprocessor/exporter
- Contamination percentage, after sorting – before being sent for reprocessing
- Contamination percentage, after sorting – before exporting

There would need to be compliance monitoring checks on the data produced from the materials handling and sorting facilities in terms of the quality and quantity of packaging waste handled.

In the Resource & Waste Strategy the UK government has committed to working with tech firms to develop a digital waste tracking system. The purpose of the waste tracking system would be to consolidate waste movement data in one place. We will also be consulting on options to mandate the digital recording and sharing of waste movement data. This could be of great benefit to any packaging EPR system. It would make datasets more robust and waste movement data more transparent. It could also make compliance monitoring more efficient. Inconsistencies in data as waste moves along the chain could be more easily identified.

Enforcement Activities relating to transfer stations, MRF's and waste sorters

Enforcement is likely to be similar to that of exporters and reprocessors, in terms of ensuring the data is accurate, timely, detailed and provided in the correct format. The same powers of enforcement, suspension and /or cancellation should be available.

¹⁰⁹ <http://www.legislation.gov.uk/ukxi/2014/255/schedule/made>

Q88. Are there any additional enforcement powers that should be applied to waste sorters, MRFs and transfer stations handling packaging waste?

- a) Yes
- b) No

If yes, please explain which other enforcement powers should be available.

Reprocessors and Exporters

In this section we consider amendments to enforcement powers relating to reprocessors and exporters.

Enforcement amendments relating to accredited reprocessors and exporters

Civil Sanctions¹¹⁰

Civil sanctions do not apply to offences by accredited reprocessors and exporters. The regulators have indicated that extension of these powers would be useful to apply to accredited businesses to provide for a more flexible enforcement system. Fixed Monetary Penalties would offer the regulator the ability to apply a financial penalty for minor errors and omissions such as the non-supply of quarterly data. The use of Variable Monetary Penalties would allow the regulator to apply a financial penalty determined by them to businesses who consistently breach the regulations at a low level. This graduated enforcement response also would allow the regulator to take these matters into consideration when assessing whether a business should continue to hold an accreditation across compliance periods.

Suspension of operators and removal of evidence

For reprocessors and exporters, suspension should be possible when the regulator has concerns about the validity of the tonnages reported by accredited businesses where evidence has not yet been issued. For example the regulator cannot prevent fraudulent evidence being issued pre-emptively, but must wait until it is issued. Once issued, they have no prescribed powers to remove fraudulent evidence even with evidential proof. This means that evidence that is known to have been incorrectly issued may be allowed to stand, undermining the confidence in the system.

Fit and Proper Persons Test (also applies to compliance schemes)

Regulators currently lack powers to refuse and revoke accreditations. This can result in the approval of applications even where regulators have significant and demonstrable concerns over the history and background of the operator. It is then time consuming and costly to monitor operators with known or suspected problems. We propose that a fit and proper persons test is introduced for the directors/ operators of organisations seeking accreditation and to operate producer compliance schemes which requires the details of relevant history to be taken into consideration. Failure to provide the requested detail, or

¹¹⁰ Civil Sanctions are not available in Northern Ireland.

failing to meet the conditions of the test may result in refusal of any application and /or revocation of any accreditation in place, or revocation of the scheme approval.

Conditions of Accreditation

Currently only offences relating to over-issue of evidence can have formal enforcement action taken. The failure to meet any of the other conditions are punishable only by suspension or cancellation.

Q89. Do you agree with the proposed amendments to enforcement powers relating to reprocessors and exporters?

- (a) Yes
- (b) No
- (c) I neither agree nor disagree

Please briefly state the reasons for your response and provide any information to support your view.

Imported packaging waste

Increasing the financial incentives for recycling packaging could lead to packaging waste being imported for recycling and claiming evidence on such packaging, with the possible exception of model 2. The current system as well as a reformed system have as an objective the recovery of UK packaging waste and for the associated costs to be covered by those UK stakeholders who have placed the packaging on the UK market.

The import of waste, including packaging waste for recovery in the UK is not illegal. However, including data and rewarding such recovery through the current and reformed packaging system would distort UK performance on recovery of UK packaging waste.

Under the current system reprocessors are required to provide a sampling and inspection plan, a key component of this plan is to demonstrate that the packaging waste that will be received is UK derived packaging waste. Audits are undertaken to ensure that operators are following their plan and that it is sufficiently robust to demonstrate the provenance of the packaging waste being received. Under any of the proposed governance models for a reformed system this requirement would continue.

Q90. Do you have any evidence to indicate that under any of the proposed governance models the likelihood of waste packaging being imported and claimed as UK packaging waste might increase?

- (a) Yes
- (b) No

If yes, please provide information on any evidence you have.

Q91. Is the current requirement for a sampling and inspection plan and subsequent auditing by the regulator sufficient to address any misclassification of imported packaging waste?

(a) Yes

(b) No

Please briefly state the reasons for your response and provide any information to support your view.

Q92. Are there other mechanisms that could be considered that would prevent imported UK packaging waste being claimed as UK packaging waste under the proposed governance models?

a) Yes

b) No

c) If yes, please explain which other mechanisms could prevent imported packaging waste being claimed as UK packaging waste.

11. Estimated costs and benefits

An early-stage Impact Assessment accompanies this consultation¹¹¹. It considers the costs and benefits on the economy, environment and society from the proposals to reform the packaging producer responsibility system. It is intended to provide an initial assessment of the potential impact of the proposed policies. The following section is a brief summary, for further details please refer to the impact assessment document.

Beyond this consultation, the impact assessment will be revised to account for the consultation responses, underpinning evidence that is still being developed, the implication of meeting targets in each nation, and any feedback received from the government's Regulatory Policy Committee (RPC). A revised impact assessment, for which we will seek a formal RPC opinion, will be published along with the second consultation in early 2020. Primary legislation for EPR provisions will need to pass before we can bring forward regulatory measures for consultation. The second consultation will focus on our final proposals for packaging EPR and the detailed regulations. There will be opportunity for refinement through this formal consultation. A final impact assessment will be published along with the final proposed regulatory changes.

Below are some of the evidence gaps that would need to be further analysed:

- Full assessment of the impact of modulated fees across all packaging materials and the rates at which these would need to be set to drive the desired behaviour change, and a similar assessment of the deposit-fee approach.
- Additional data on the likely number of businesses that will be obligated.
- Analysis of the increase in enforcement costs that will arise from the proposed reforms.
- An assessment of the cost of setting up new IT systems.

Impact assessment approach and methodology

Given the linkages between the policy proposals on consistent municipal recycling collections in England and the proposal to introduce a Deposit Return Scheme (DRS) for drinks containers in England, Wales and Northern Ireland subject to consultation, the impact assessment has taken a layered approach.

The impact assessment assesses a single regulatory option with three scenarios for that option, against a baseline scenario for the period 2023-2032. The baseline assumes that the measures detailed in the consistent municipal recycling collections Impact Assessment¹¹² are in place and the associated costs, benefits and recycling rates for packaging materials are reflected in this baseline. This allows us to consider the impacts of introducing EPR for packaging on top of introducing the measures set out in the consistent municipal recycling collections proposals.

¹¹¹ <https://consult.defra.gov.uk/environmental-quality/consultation-on-reforming-the-uk-packaging-produce/>

¹¹² <https://consult.defra.gov.uk/environmental-quality/consultation-on-consistency-in-household-and-busin>

Scenario 1 looks at the costs and benefits of producers meeting higher recycling targets whilst funding the full net costs of managing municipal packaging waste (through cost transfer). It also looks at the costs and benefits of applying a modulated fee/deposit to make certain plastic packaging more recyclable. The assessment of modulated fee/deposit has only been partial. It only looks at reducing PVC and polystyrene packaging in favour of easily recyclable alternatives due to existing availability of evidence.

Scenarios 2 and 3 then take account of the impact of a potential DRS on kerbside collections¹¹³, as a large amount of packaging materials would be diverted to DRS return points, impacting on material revenues and costs of managing the other packaging waste¹¹⁴. This provides an indication of the impact of DRS on the costs to producers of non DRS drinks packaging that could be in-scope of any DRS. As the proposed packaging items to be managed via a DRS are already highly recyclable, their diversion from a packaging EPR system does not affect the benefits to be gained from the introduction of modulated fees or deposits. **As a result, Scenario 1 best represents the costs and benefits of packaging producer responsibility reform.** Scenarios 2 and 3 reflect the impact of a DRS scheme on the packaging EPR system. Scenario 2 considers an ‘all-in’ DRS, and Scenario 3 considers a DRS focused on capturing drinks containers consumed ‘on-the-go’.

While this analysis covers all packaging waste (household, household-like and commercial and industrial packaging), we assumed no change in the commercial and industrial packaging recycling rates given the lack of evidence on further recycling potential.

¹¹³ <https://consult.defra.gov.uk/environment/introducing-a-deposit-return-scheme>

¹¹⁴ The analysis assumes the drinks containers in-scope are those that are being consulted on in the parallel consultation for a DRS in England, Wales and Northern Ireland.

Summary of costs (+) and benefits (-)

Change over 2023-2032 (discounted¹¹⁵, against baseline)	Scenario 1: Reform the packaging producer responsibility system and introduce modulated fees / deposit payments, with no DRS	Scenario 2: Reform the packaging producer responsibility scheme, excluding packaging materials collected through an 'all-in' DRS	Scenario 3: Reform the packaging producer responsibility scheme, excluding packaging materials collected through an 'on-the-go' DRS
<i>Additional administrative costs of running a reformed packaging EPR system</i>	£25m	£25m	£25m
<i>Additional savings(-) /costs(+) of recycling collections for household and household-like packaging</i>	-£20m	£87m	-£28m
<i>Net savings from residual waste treatment (including landfill tax savings)</i>	-£117m	-£673m	-£407m
<i>Reduced landfill tax to HM government</i>	£17m	£91m	£50m
<i>Compliance costs to packaging producers (i.e. net packaging recycling and waste management cost)</i>	£8,128m for LAs (gross costs £9,587m and material revenue - £1,459m) £3,157m for NHM sector	£8,166m for LAs (gross costs £9,411m and material revenue - £1,245m) £2,113m for NHM sector	£8,125m for LAs (gross costs £9,528m and material revenue - £1,403m) £2,832m for NHM sector
<i>Savings to municipal sector from reduced packaging recycling and waste management costs</i>	-£8,128m for LAs -£3,157m for NHM sector	-£8,166m for LAs -£2,113m for NHM sector	-£8,125m for LAs -£2,832m for NHM sector
<i>Savings to producers from removing current PRN compliance costs</i>	-£769m	-£769m	-£769m

¹¹⁵ A social discount rate of 3.5 per cent is used to obtain present value estimates, see HM Treasury (2018) Green Book. Any estimate quoted (PV) or the Net Present Value (NPV) is discounted using this rate. The appraisal is over a ten-year period.

<i>Loss of funding to current PRN beneficiaries</i>	£769m	£769m	£769m
<i>Additional material revenue(-) / loss(+) to the recycling sector¹¹⁶</i>	-£74m	£790m	£249m
<i>GHGs emissions savings(-)¹¹⁷</i>	-£77m	-£77m	-£77m
<i>Net present value (+ for societal savings, - for societal costs)¹¹⁸</i>	£245m	-£243m	£187m
<i>Net cost to businesses (present value)</i>	£7,384m	£7,422m	£7,381m

The non-monetised costs and benefits are detailed in the Impact Assessment, Annex F (see link above) and are mostly generic across the options. They are non-monetised because they are either impossible to monetise or because underpinning evidence is still being developed, not because they are less important. The non-monetised costs and benefits include:

- Transition costs to government and producers
- Consumer price changes
- Full scope of modulated fees across all packaging materials
- Enforcement costs under a reformed EPR system
- A more vibrant domestic reprocessing market
- Reduced littering, use of virgin materials, use of landfill and energy-from-waste plants
- Benefits to the producer responsibility system and to stakeholders

Q93. Do you have any additional data or information that will help us to further assess the costs and benefits (monetised or non-monetised) that these reforms will have?

Q94. Do you have further comments on the associated Impact Assessment, including the evidence, data and assumptions used? Please be specific.

¹¹⁶ Under Scenarios 2 and 3, the lost material revenue from kerbside recycling collections would be a saving to producers and recycling sector reprocessing that material through the DRS. Thus, this is regarded as a transfer in societal terms, but as a cost to EPR packaging system.

¹¹⁷ Scenarios 2 and 3 reflect the savings of Scenario 1 only. The additional GHG savings achieved by a potential DRS are accounted for in the DRS Impact Assessment (£302m for Scenario 2; £52m for Scenario 3).

¹¹⁸ NPV is calculated by adding all the costs and benefits lines and switching sign so that positive NPV reflects higher savings than costs and vice versa.

12. How will we know when we've been successful?

A reformed packaging producer responsibility system should incentivise producers to use more recyclable packaging, as well as take more accountability for packaging as it goes through the waste management system. Therefore we expect to see more packaging collected for recycling and less use of difficult to recycle packaging. We also want all UK packaging waste to be managed in an environmentally responsible way whether in the UK or overseas; and for the UK to have sufficient high quality reprocessing capacity to handle increasing quantities of recyclable packaging waste in the future.

Government's intention is to make the necessary legislative changes by 2021 with a reformed packaging producer responsibility system operational by the beginning of 2023. The policy will be reviewed in 2025. Producers will be required to meet packaging waste recycling targets in each nation and the recycling rates will be reported annually. Subject to consultation, we will look to establish a baseline and metrics for the outcomes for a reformed scheme that we have identified in the Background section.

Further comments

Q95. If you have any other views or evidence that you think we should be considering when reforming the packaging waste regulations, which you have not yet shared, please add them here.

Annex 1: Waste Collection Arrangements

England

In England, the general principle regarding waste collections has been that within the parameters of existing statutory duties and legislative requirements, local authorities are best placed to determine the scope and design of household waste management services. Consequently, current provisions for collecting dry recyclable (including packaging) materials and food waste vary significantly. This means the requirements placed on householders for how they present their packaging waste for collection can differ from one authority area to another as do the packaging wastes they can recycle. Communications with householders on what to recycle are often perceived as being inconsistent and potentially confusing. For many businesses, there has been little incentive to separate recyclables other than packaging waste.

Household recycling rates in England have plateaued at 44/45% for the past five years, with few local authorities expanding and some even stopping services such as food waste collection or introducing charges for garden waste collection. Additionally, we estimate that less than 40% of municipal waste generated by businesses is recycled with few incentives currently for firms to recycle. The introduction of the separate collection requirements including the TEEP (technically, environmentally and economically practicable) test has had limited practical impact on improving material quality and there are few statutory or financial drivers to invest in additional services or communications. To improve recycling rates and achieve more ambitious recycling targets in the future, improved waste collection and recycling services for both households and businesses will be required.

In 2016 WRAP published a voluntary framework for more consistent service provision for households in England. This included recommendations for the collection of a common set of recyclable materials by all councils (glass, paper/card, metal, plastic bottles, plastic pots, tubs and trays, cartons)¹¹⁹ and for collections systems to be based on one of three approaches. Across Greater London, the Environment Strategy for London¹²⁰ has set out ambitions to achieve collections consistency from households by 2020, with councils required to collect at a minimum, the six main dry recyclable materials (glass, paper, card, metal, plastic bottles and plastic pots, tubs and trays); and for households that receive kerbside collections to also be provided with a weekly food waste collection service.

¹¹⁹ http://static.wrap.org.uk/consistency/Read_more_about_the_framework.pdf

¹²⁰ https://www.london.gov.uk/sites/default/files/london_environment_strategy.pdf

Summary of proposals for collection consistency in England

The parallel consultation on the requirement for households and businesses to present dry recyclables and food waste separately from residual waste for collection and recycling; and on a minimum service standard for local authority household waste collections includes proposals for the collection of a core set of dry recyclable materials and food waste from households and businesses. The range of materials (including packaging) proposed to be collected from households include glass, paper and card, metal, plastic bottles and plastic pots, tubs and trays. It is also proposed that all households will be offered separate food waste collections and, where appropriate, garden waste collections.

The UK government recognises that there is a good case for recommending multi-stream collections¹²¹ (where paper and card, glass, and plastics and metal are collected in three separate streams, in addition to separate food waste collections). Alternatively, where it is not practicable to introduce multi-stream collections, government is recommending keeping paper separate from glass in collections. The consultation is seeking views on the extent to which dry materials should be separated for collection and whether multi-stream collection for example should be treated as the default system for all kerbside properties (i.e. houses rather than flats).

Wales

Wales has used regulation, guidance and government funding to support local authority service improvements underpinned by a blueprint for collections¹²². It has seen significant increases in household recycling since 2010. The Welsh Government's recommended model for consistent collections from households includes:

- Weekly separate collection of dry recyclables (glass, paper/card, metal, plastic bottles and plastic pots, tubs and trays) with materials being sorted by collection staff into separate compartments on resource recovery vehicles;
- Weekly separate collection of food waste onto the same resource recovery vehicles that collect dry recyclables; collecting all materials for recycling on a single pass; and
- Fortnightly collection of residual waste with smaller wheeled bins or fewer sacks provided for residual waste storage.

There are currently 12 local authorities which align their collection services with the Collection Blueprint. Three more have been awarded capital funding from Welsh Government to support service changes to align with the Blueprint. A further two authorities are likely to change to the Blueprint soon – making a total of 17 of 22.

¹²¹ http://static.wrap.org.uk/consistency/Read_more_about_the_framework.pdf

¹²² <http://gov.wales/docs/desh/publications/.pdf>

Adoption of the Blueprint has resulted in more consistency in recycling collections and led to improvements in performance and financial savings. Neighbouring local authorities with the same approach to collections are able to exchange vehicles, use each other's bulking facilities and share the same approach to communications and awareness raising. The local authorities are also able to obtain best prices for their materials through the WRAP Collaborative Change Programme materials marketing support.

The Environment (Wales) Act 2016 provides Welsh Ministers with the powers to require businesses to present their wastes separately for collection and to require waste collectors to collect specified materials by way of separate collection. It is the intention of the Welsh Government to consult shortly on options for the introduction of Statutory Instruments to require business waste producers (including the public sector) to present specified wastes separately for collection. The materials being considered are paper, card, metal, plastic, glass, food, textiles and Waste Electrical and Electronic Equipment (WEEE).

Scotland

In Scotland, local government has voluntarily adopted a Charter for Household Recycling and an associated Code of Practice¹²³, which serves as the basis for achieving "common collection systems, as appropriate, for paper, card, glass, plastics, metals, food and other commonly recycled materials as deemed feasible (e.g. textiles, small WEEE) across Scotland" over time. To date 29 (of 32 councils) have adopted the Charter. Additionally, legislation is in place requiring businesses to separate their recyclable and food wastes for collection.

Northern Ireland

From April 2017, Northern Ireland imposed a statutory requirement on all councils to provide each household with a container for food (potentially with other bio-waste) to enable its separate collection. The predominant collection regime adopted by councils is fortnightly co-mingled food and garden waste although weekly separate food waste collections has been established in some areas within councils.

Northern Ireland councils' provide kerbside collections of dry recyclables including packaging waste with variations on two main collection systems. The majority of households are served by a fortnightly co-mingled service which as a minimum includes the core materials of paper, card, cardboard, cans, beverage cartons, plastic bottles and other rigid plastic packaging. Some councils include glass in the co-mingled service. There are examples of areas within councils which have the provision for the separate collection of glass from the kerbside to augment the co-mingled collection of the other materials.

The remaining households receive a weekly collection of at least the same core materials which having being separated by the householder are presented at the kerbside for

¹²³ <https://www.zerowastescotland.org.uk/sites/default/files/Household%20Recycling%20COP%20v2.pdf>

collection. Operatives ensure the appropriate material types remain separated by placing them into the appropriate compartments in the collection vehicle.

All councils also have a network of bring sites for the collection of glass bottles/jars etc, paper, cans and textiles.

Regardless of the collection system, the material is processed for presentation and sale to the recycling market. This service is currently undertaken by contractors.

In 2016, a Recycling Gap Analysis was commissioned by DAERA and undertaken by WRAP. This entailed an analysis of the impact of different waste and recycling collection scenarios on the recycling rate for Northern Ireland and resulted in bespoke reports for each council.

A number of forums have been established between central and local government aimed at adopting a partnership approach in respect of appropriate functions including waste. Through one of these forums, an Action Plan for central and local government to manage Northern Ireland's municipal waste was formulated and agreed by all Councils and the DAERA Board at the end of 2016. An Implementation Plan was subsequently developed. Both plans feature consideration of developing a consistent approach within Northern Ireland to implement optimum collection processes and maximise recycling volume and quality.

Annex 2: Current Regulatory Enforcement Powers

Criminal regulations may be enforced where non-compliance is identified and it is in the public interest to investigate and subsequently take an enforcement course of action. As the packaging waste regulations are within the criminal regulatory system all investigations are covered by the various legislative requirements and guidance, as well as the relevant authorities own guidance:

- Police and Criminal Evidence Act 2002 as amended
- Criminal Procedures and Investigations Act 1996
- Environment Act 1995
- Regulators Compliance Code
- Code for Crown Prosecutors
- Enforcement and Sanctions Policies of the Devolved Administrations.

All enforcement is based on one or more outcomes being achieved:

- Stop illegal activity from occurring or continuing
- Put right environmental harm or damage, also known as restoration or remediation
- Bring illegal activity under regulatory control, and so in compliance with the law
- Punish an offender and deter future offending by the offender and others

There are a wide range of offences under the current regulations, and all are 'either way' or indictable offences (that is triable in the Magistrates or Crown Court). The enforcement interventions are:

- Advice and guidance (A&G) – this is the lowest level of intervention usually used with the objective of getting an operator into compliance and staying compliant. However, other factors may mean that other enforcement interventions are required.
- Warning – either via a letter or a site warning. Again, other factors may mean that other interventions are required.
- Notices, powers and orders – the service of specific enforcement or information Notices require actions to get back into compliance, or supply information, or take any actions deemed necessary to secure compliance, or investigate as necessary.
- Civil Sanctions – A civil sanction can be imposed to get the outcomes desired.
- Formal Caution – where an offender admits the offence and consents to a caution, a caution may deter future offending.
- Prosecution under criminal law.

Civil Sanctions

Civil sanctions have proven useful as an enforcement measure within the Packaging Regulations since they were introduced through the Regulatory Enforcement Sanctions Act 2008. There are three sanctions applicable to certain regulations in the current system.

A civil sanction can only be considered when the criminal investigation provides sufficient evidence of offences at a level likely to secure a conviction, should the matter eventually go to court.

- **Fixed Monetary Penalty (FMP)** - A Fixed Monetary Penalty (FMP) is a low-level fixed penalty for minor offences. The penalty varies between £50 for an individual paying in full within 28 days, to £450 for any size of Body corporate who fails to pay within 112 days of the Notice of Intent being served
- **Variable Monetary Penalty (VMP)** - A Notice requiring an offender to pay a proportionate monetary penalty to the regulator of such amount as the regulator may determine. They are intended for the more serious cases of non-compliance where prosecution is not considered to be in the public interest. The amount is dependent upon the type of offence for which it is being applied, but is a maximum £250,000 per charge.
- **Enforcement Undertaking (EU)** - An Enforcement Undertaking is a voluntary offer from an offender containing actions dealing with the cause and effect of their offending. As the regulator, we can accept or reject the offer following a full criminal investigation.

The enforcement undertaking has been positively adopted since it was introduced in April 2010. To date 258 enforcement undertakings have been accepted in relation to the packaging regulations, resulting in **£5,386,000** being given to suitable charities with the businesses both coming into compliance and addressing their previous offending.

Civil sanctions apply to the current regulatory regime as stated below.

Offence	Civil Sanction			Criminal Sanction
	FMP	VMP	EU	A&G, Warning Letter, Formal Caution, Prosecution
Producer fails to register	Yes	Yes	Yes	Yes
Producer fails to recover/recycle.	No	Yes	Yes	Yes
Producer fails to submit certificate of compliance	Yes	No	No	Yes
Group Fails to recover / recycle	No	Yes	Yes	Yes
Group fails to submit certificate of compliance	Yes	No	No	Yes
Knowingly / recklessly supply information	No	No	No	Yes
Non-compliance with a Notice	No	No	No	Yes
Scheme fails to meet obligations	No	Yes	Yes	Yes
Unlawful issue of P(E)RN	No	No	No	Yes
Obstruction	No	Yes	No	Yes