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**Agriculture, Environment
and Rural Affairs**

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Reforms to the Packaging Waste Recycling Note (PRN) and Packaging Waste Export Recycling Note (PERN) System and Operator Approval

Consultation Document

Date: 26 March 2022

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

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



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Any enquiries regarding this publication should be sent to us at

packaging@defra.gov.uk

www.gov.uk/defra

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Part 1: Introduction

1.1 Background

The [Government Response](#) to the 2021 consultation on Extended Producer Responsibility (EPR) for packaging (the Government Response), which ran from 24 March to 4 June, was published on 26 March 2022. The consultation received 1,241 responses. While there was strong support for the principles underpinning the reforms, and for many of the proposals set out in the consultation, there was less agreement on a viable payment mechanism for non-household packaging waste. None of the proposed options received majority support, and 63% of respondents strongly disagreed with one or more of the options put forward. These objections related to the complexity and value for money of introducing a new payment mechanism, given that obligated sectors already bear much of this cost, and the potential for fraud in the proposed systems.

In addition, almost three times as many consultation respondents (47%) agreed that there would be issues in not continuing with the existing 'PRN/PERN system' until a new, comprehensive payment mechanism could be put in place, compared to 17% who did not see any issues with this (a further 35% were unsure). Under this existing system, packaging producers that have an annual turnover of more than £2 million and handle more than 50 tonnes of packaging per year must demonstrate that they have met their statutory recycling obligations each year. This is achieved through the purchasing of evidence notes, called Packaging Waste Recycling Notes (PRNs) and Packaging Waste Export Recycling Notes (PERNs), which are issued by accredited recycling processors or exporters for each tonne of packaging waste recycled. PRNs and PERNs can be purchased directly by packaging producers or, more commonly, by compliance schemes acting on behalf of their producer members. This is a market-based system, with the price of PRNs fluctuating based on supply and demand.

Based on these responses to the consultation and additional stakeholder engagement, the four governments have decided to make provisions for the continuation of the PRN/PERN system in the new Extended Producer Responsibility Regulations for all (household and non-household) packaging waste as an interim solution. These Regulations will revoke the current Producer Responsibility Obligations (Packaging Waste) Regulations 2007, and parallel Northern Ireland regulations, but will contain similar provisions. There will be a new separate payment made by producers to local authorities for managing the collection and sorting of household packaging waste, with the PRN system continuing to cover costs relating to the recycling of all packaging waste, to ensure the full net costs of managing the packaging they place on the market that is likely to end up in households are met. Producers will not have to make additional payments for managing the costs of non-household packaging waste. This approach will be reviewed in 2026/27. This approach is addressed in more detail in the Government Response.

While wider EPR measures (including full net cost payments for household packaging, modulated fees, mandatory labelling and enhanced communications) should address many of the shortcomings of the current producer responsibility arrangements, there are several improvements that may be necessary to further improve the functioning of the PRN/PERN market in the short term. The current system has been criticised¹ for the volatility and unpredictability of PRN/PERN prices, a lack of transparency, the potential for fraud in the issue of PRNs/PERNs and producer dependency on exports to meet recycling targets. This consultation seeks views on several proposals to address these issues and improve the overall effectiveness of the system, including suggestions from the Advisory Committee on Packaging (ACP) and other industry bodies.

Several reforms outlined in the Government Response will help to address a number of these criticisms. For example:

- We will introduce a mandatory requirement for all reprocessors and exporters that recycle or export packaging waste to register with a regulator. Those that wish to issue PRNs/PERNs will need to become accredited and will be required to report information and evidence in addition to that required through registration. The regulators will publish guidance to help reprocessors and exporters understanding of the requirements relating to registration and accreditation. We will also introduce an accredited operator competence test and continue to explore opportunities presented by electronic digital waste tracking to better link collection and sorting of packaging to the issuing of PRNs and PERNs. Combined, these are intended to help reduce fraud in the system and improve accountability.
- We will introduce additional requirements on accredited exporters, including acquiring evidence that the shipment was received at the destination site and evidence of recycling by the overseas reprocessor. We will further consider what additional evidence exporters should be required to provide that packaging waste has been received and processed by an overseas reprocessor, or, where that is not possible, that packaging waste was of an acceptable quality prior to export. We recognise that there are often difficulties in acquiring evidence of recycling from overseas sites and will continue to work with the regulators to consider how to address this issue.
- Exporters will also be required to submit Annex VII forms (the export documentation that accompanies green list waste) and/or other relevant supporting documents for packaging waste to the regulator prior to the waste being shipped. We will introduce a mandatory requirement for inspections of overseas sites by third party operators in the Regulations.

¹ See <https://www.nao.org.uk/report/the-packaging-recycling-obligations/>

- We will set out the specific responsibilities and duties of the regulators and ensure that they have access to a wide range of sanctions. This will give regulators enhanced powers to monitor and enforce, to ensure that obligations are being met.

1.2 Purpose of the consultation

The 2021 consultation on reforms to the producer responsibility system for packaging waste included the continuation of the PRN/PERN system, established by the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, as an interim solution for complying with recycling targets. As discussed in the Government Response, we are now proposing to retain these arrangements until at least 2026/27.

We are seeking views on several technical and administrative amendments to the way in which the PRN/PERN system and compliance schemes operate to address the issues of price volatility, lack of transparency and potential for fraudulent issuing of PRNs/PERNs. The responses to this consultation will inform decisions on our approach to the PRN/PERN system as part of our wider proposals for EPR.

In particular, we are focusing on the following areas for reform:

- Reporting requirements on the sales of PRNs/PERNs
- Reporting requirements on how the revenue from PRN/PERN sales is used
- Timeframes for the trading of PRNs/PERNs
- The introduction of a 'technical competence' test for compliance scheme operators and accredited reprocessors/exporters
- The interface with the introduction of the Deposit Return System (DRS)

We are also asking for additional views and evidence on other proposed changes to the PRN/PERN system, including:

- The introduction of a compliance fee for producers that fail to meet their obligations

It is intended that any proposals taken forward following this consultation will be introduced alongside legislation on our wider EPR reforms, with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 remaining in place until revoked by the Extended Producer Responsibility Regulations.

1.3 Geographical extent

Producer responsibility and waste policy is a devolved matter. The four governments have agreed to a UK-wide approach to packaging extended producer responsibility.

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

Scottish Government, the Welsh Government and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

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

References to Ministers are references to Ministers from each government. References 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) unless stated otherwise. References to 'local authorities' includes district councils in Northern Ireland.

1.4 Audience

Responses to this consultation are welcomed from:

- Businesses involved in the design, production and specification of packaging
- Businesses who manufacture products and put these products into packaging, or who have products put into packaging on their behalf, and who place these products on the UK market
- Retailers, online marketplaces and importers of packaged products
- Packaging compliance schemes
- 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

1.5 Responding to the consultation

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

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

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

By email to: packaging@defra.gov.uk

In writing to:

Consultation Coordinator, Defra
2nd Floor, Foss House, Kings Pool

1-2 Peasholme Green
York
YO1 7PX

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

The Devolved Administrations 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: ResourceEfficiencyAndCircularEconomy@gov.wales

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

1.6 Consultation period

This consultation will run for 8 weeks. The consultation opened on 26 March 2022 and closes on 21 May 2022.

1.7 Confidentiality and data protection information

A summary of the responses to this consultation and the Government Response will be published and placed on government websites at www.gov.uk/defra, www.daera-ni.gov.uk, www.gov.scot and www.gov.wales. An annex to the consultation summary will list all organisations that responded but will not include personal names, addresses or other contact details.

Defra may publish the content of your response to this consultation to make it available to the public without your personal name and private contact details (e.g. home address, email address, etc).

If you answer 'Yes' in response to the question asking if you would like anything in your response to be kept confidential, you are asked to state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality. The reason for this is that information in responses to this consultation may be subject to release to the public or other parties in accordance with the access to information law (these are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA)). We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances. In view of this, your explanation of your

reasons for requesting confidentiality for all or part of your response would help us balance these obligations for disclosure against any obligation of confidentiality. If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances.

If you answer 'No' in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won't make your personal name and private contact details publicly available.

There may be occasions when Defra will share the information you provide in response to the consultation, including any personal data with external analysts. This is for the purposes of consultation response analysis and provision of a report of the summary of responses only.

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>

1.8 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,
Department for Environment, Food and Rural Affairs,
1C, Nobel House,
17 Smith Square,
London SW1P 3JR

Part 2: Consultation

2.1 About you

Q1. What is your name?

Q2. What is your email address?

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

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

Q4. Would you like your response to be confidential? Please see the confidentiality and data protection information in Section 1.7 of this document.

Yes / No

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

2.2 Proposals

The PRN/PERN system was introduced in 1997 under the Producer Responsibility Obligations (Packaging Waste) Regulations as the means of evidencing compliance with recycling targets, and has remained relatively unchanged since then. In its current form, the PRN/PERN system has been criticised for a lack of transparency, the opportunities for fraudulent issuing of PRNs/PERNs, and the asymmetry of information available to producers and reprocessors and exporters, which distorts the market and contributes to

the volatility in PRN/PERN prices seen throughout the year. This volatility has in turn discouraged investment in UK recycling infrastructure and led to an increased dependence on export markets.

The following proposals seek to address these criticisms and improve the overall functioning of the system.

2.2.1 Data Reporting

Under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, producers, compliance schemes, reprocessors and exporters are obligated to report certain data to the regulator at various points during the compliance year. For reprocessors and exporters, this includes the number of PRNs/PERNs that have been issued, the total revenue obtained through the sale of PRNs/PERNs and the uses to which this revenue has been put. However, there are currently no requirements for reprocessors and exporters to publish data on the availability of PRNs/PERNs or the prices paid by producers or compliance schemes.

We are introducing changes to producers' obligations² to report on packaging data under our wider EPR proposals. We are developing a digital platform that will allow producers to register and report their data, and relevant data will be shared with the Scheme Administrator and the regulators. Producers will be required to report on the amount and type of packaging they have placed on the market, and information about the recyclability of this packaging.

Producers will be required to report packaging data twice a year, in October and April, with each data submission covering a six-month period. Producers will have three months to collate and report this data: for example, the April submission would require data from the last six months of the previous calendar year (i.e. July to December). This increased data reporting will provide the collection and reprocessing sector with information about the level of demand for evidence, and so help them to make operational decisions for the compliance year.

As part of this consultation, we are proposing several additional changes to data reporting, which should help to improve market transparency:

Proposal 1: Mandatory monthly reporting of reprocessing/export data

Under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, accredited reprocessors and exporters are required to upload data on packaging waste

² As part of our wider EPR reforms, packaging producers with an annual turnover of £1 million or more, and which place 25 tonnes or more packaging on the market each year, will be obligated to report their packaging data from 2024. More details on this can be found in the Government Response.

accepted and the amount of evidence issued onto the National Packaging Waste Database (NPWD) on a quarterly basis. Whilst some operators will upload data in real time, many will do a bulk upload at the end of each quarter. This means that there can be a significant time gap between the waste packaging being received on site and the market being made aware of those tonnages.

We are proposing that this reporting is required to be monthly, with an appropriate sanction for non-compliance, in order to provide more up to date data for producers and compliance schemes. A formal dynamic report would be published monthly by the regulators, providing a more accurate and timely picture of the market and overall compliance position against the total obligation. This would help producers and compliance schemes to inform their strategy for compliance and plans for the acquisition of evidence.

Q5. Do you agree or disagree with the introduction of mandatory monthly reporting for reprocessing/export data?

- a. Agree
- b. Disagree
- c. Neither agree nor disagree

Please provide the reason for your response.

Proposal 2: Mandatory monthly reporting of PRN/PERN prices and revenue data

Under the market conditions created by the 2007 Regulations, it is estimated that only 10-15% of all PRN/PERN purchases each year take place on the 'open market', via a trading platform. Price information from these trades is made available, via the trade press and various websites, and is often used as a benchmark by compliance schemes (and direct registrants) and reprocessors and exporters when negotiating prices.

The vast majority of trades (85-90%), however, are bilateral exchanges between reprocessors or exporters and compliance schemes based on annual or quarterly contracts for supply of evidence, where no reporting of prices is required. This means that public information on the supply and demand of PRNs/PERNs on the market is limited, and reprocessors and exporters have an information advantage over producers and compliance schemes.

In order to improve the transparency of the market and the information about the price and availability of PRNs/PERNs throughout the year, we are proposing to make monthly reporting on the sales of PRNs/PERNs by reprocessors and exporters mandatory. This could be in addition to the monthly volume reporting proposed in Proposal 1, and would include data on the prices charged and paid by producers and compliance schemes for evidence. This information would be reported to, and managed confidentially by, the regulator(s), who would collate, process and anonymise the transactions data and publish the aggregated tonnage totals and price averages. This would result in the relevant market

information being made available without compromising commercially sensitive information.

Q6. Do you agree or disagree with the introduction of mandatory monthly reporting of PRN/PERN prices and revenue data?

- a. Agree
- b. Disagree
- c. Neither agree nor disagree

Please provide the reason for your response.

2.2.2 Revenue Reporting

One of the long-standing criticisms of the PRN system is the lack of visibility into how the revenue associated with the sale of PRN/PERNs is used. Currently, under regulation 24(1)(c)(i) of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, as part of the accreditation process reprocessors and exporters are required to provide a breakdown of how they have used the revenue received for the development of increased capacity for collection and reprocessing, as well as the development of new markets.

The current reporting is against the following categories³:

- Infrastructure and capacity
- Funding collection
- Reduction in price and developing new markets
- Costs of complying with the regulations
- Retained for future investment
- Developing communication strategies

Under the system which will be established by the EPR reforms outlined in the Government Response, there will be more transparency regarding the funding of the management of packaging waste, specifically through the functions of the Scheme Administrator and direct payments to local authorities to cover their costs in collecting and sorting of household packaging waste.

In order to increase transparency of the revenue associated with the sale of PRNs/PERNs, we propose to amend the reporting categories and introduce sub-categories in order to make the reporting more detailed and meaningful. The suggestions for the new reporting areas are:

- Infrastructure

³ See <https://npwd.environment-agency.gov.uk/>

- Purchase of new assets
- Support and maintenance of reprocessing/exporting infrastructure
- Reprocessing/Exporting
 - Price support for material (buying)
 - Price support for material (selling)
- Collection and Sorting
 - Price support for material (buying)
 - Price support for material (selling)
 - Support for business collections
 - Support for household collections
- Comms
 - Local campaigns (with Local Authorities)
 - National campaigns (with Scheme Administrator/other)
 - Comms related to specific material
 - Direct contacts with suppliers
- Market Development
 - UK market development
 - Overseas market development
 - Use of the revenue to develop new overseas/exports markets and/or new uses for the recycle

We would also seek to publish detailed guidance on what is intended to be included in each of the new categories.

Q7. Do you agree or disagree with the proposed approach to revenue reporting for reprocessors and exporters?

- a. Agree
- b. Disagree
- c. Neither agree nor disagree

Please provide the reason for your response.

Q8. Please suggest any other categories/sub-categories that you think should be included

2.2.3 Timeframes

Currently, under the 2007 Regulations, producers (or their compliance schemes) are required to provide evidence that they have met their recycling obligations on an annual basis, and must obtain sufficient PRNs/PERNs to show they have met these obligations

(expressed as targets) by 31 January in the following year (e.g. 31 January 2023 for the 2022 compliance year). They can continue to buy PRNs/PERNs in January, issued on packaging waste recycled or exported for recycling during the previous year.

If all producers have met their 2021 targets and there is 'excess' evidence, then there is some flexibility given to producers and compliance schemes, as they are permitted to buy PRNs/PERNs from waste reprocessed or exported in December of the previous year (e.g. December 2021 for the 2022 compliance year) to meet their obligations in the given compliance year (commonly known as 'carry over'). This effectively 'extends' the compliance period to 13 months.

Another criticism of the existing arrangements is the considerable volatility seen in PRN/PERN prices throughout the year, due to cyclical changes in supply and demand. Previous analysis has shown that this volatility increases at the end of the compliance year, due to the uncertainty around the availability of remaining PRNs/PERNs. This can be exacerbated, in some instances, by reprocessors and exporters withholding PRNs/PERNs from the market until the end of the year, when demand is likely to be highest, in order to inflate prices. This could be partly addressed by the proposals in Section 2.2.1 of this consultation, which would require reprocessors and exporters to upload data on packaging waste received more frequently. This would mean producers and schemes would know how much material is potentially available for evidence, thereby improving market transparency.

The options below regarding changes to the timeframes for compliance have also been identified to help address the cyclical changes in supply and demand and the issues at year end. These options, which could be used together or separately, include:

1. **Setting a time limit on the issue of evidence** – there have been criticisms from producers on the lack of availability of evidence, some of which is believed to be held back from sale by reprocessors and exporters in the expectation of price rises towards the end of the compliance year. To avoid this, it has been suggested that it should be a condition that PRNs/PERNs should be issued within a set time period from the point of waste acceptance (the date on which packaging waste is received on site for reprocessors, or the date the waste is actually exported for exporters). The suggested time periods are one month or three months from date of receipt. It should be noted that this date of receipt is not necessarily linked to the actual date of reprocessing. This option would mean that reprocessors and exporters would make evidence available to the market in a timely fashion. This would increase the information available to producers and compliance schemes on the current availability of evidence, thereby allowing them to make better decisions for managing their compliance. To make this viable for small reprocessors and exporters, a threshold could be set which would trigger the issuing of evidence (e.g. when they had generated 50 or 100 tonnes of evidence per quarter; this could be adjusted by material type).

2. **Allow an extension to the current compliance period** – another option would be to allow for an extended compliance period (two to three months extension). This would allow a ‘re-balancing’ between two compliance years if there is a shortage of evidence for a specific material type in a given year, by allowing packaging waste received in January and/or February of ‘Year 2’ to be used to generate evidence for ‘Year 1’ (effectively a ‘carry-back’). This would reduce pressure at the end of the compliance year and increase liquidity. It should be noted that this would then require ‘additional’ collection and reprocessing in Year 2, to ensure that the shortage is not simply brought forward again into Year 3. The extension would also be intended to act as a signal to the market that there would be a need for increased evidence in Year 2. This option was put forward by the Packaging Scheme Forum (PSF).
3. **Moving to a rolling/multi-year system** – to alleviate the ‘end of year’ deadline, it has been suggested that targets move to a rolling or multi-year basis. Multi-year targets are used in other producer responsibility regimes (e.g. batteries) and could be used to allow producers to meet their targets over an extended period. This would give producers and reprocessors and exporters more time to respond to price changes in the market and to invest in improvements to their collection and reprocessing capacity.

These options are explored in more detail below.

Option 1: Reducing the timescale over which PRNs/PERNs can be traded from an annual to a monthly or quarterly system

As noted above, the PRN/PERN market is asymmetrical in that buyers (producers and compliance schemes) are obligated to purchase a certain volume of PRNs/PERNs, while sellers (reprocessors and exporters) are not obligated to sell. One of the issues identified with the current annual compliance timeframe is the potential for reprocessors and exporters to withhold PRNs/PERNs from the market until prices are highest, usually at the end of the compliance year.

By reducing the timescale over which PRNs/PERNs can be sold from the date of receipt or time of export of the packaging waste, the value of PRNs/PERNs would become more stable as reprocessors and exporters would be less able to withhold evidence until prices are highest. As evidence is made available in a more regular pattern, there would be fewer cyclical changes in supply and demand. If mandatory monthly reporting of PRN/PERN sales was also introduced (see Section 2.2.1, Proposal 2), there would be more information available on the supply of PRNs/PERNs on the market each month.

If PRNs/PERNs remain unsold after the set time period from the receipt of the waste, the evidence could be held in the NPWD (or other electronic system) against the end of year compliance. At this point the regulator would make the decision to ‘release’ all un-sold

evidence; to ensure fairness, these sales would need to be at the average market prices for PRN/PERNs for that material in that year.

There have been several high-profile examples of reprocessors and exporters withholding PRNs/PERNs from sale and causing disruptions to the market, and a number of complaints from schemes and producers regarding this in recent years. It is not clear how common the practice of withholding PRNs/PERNs until the end of the year is, especially among smaller reprocessors and exporters, as they then risk not being able to sell this evidence at all (if all producers and compliance schemes have met their requirements). It is assumed that only reprocessors and exporters with sufficient cash flow can afford to withhold evidence, and some would prefer to sell their available PRNs/PERNs at the earliest opportunity. This measure would therefore help guard against market disruption by larger reprocessors and exporters in the future.

Q9. Do you agree or disagree with the proposal to reduce the timescale over which PRNs/PERNs can be traded?

- a. Agree
- b. Disagree
- c. Neither agree nor disagree

Please provide the reason for your response.

Option 2: Extending the flexibility of the current compliance period

Industry groups, including the Packaging Scheme Forum (PSF), have suggested an 'extension mechanism' which would provide additional flexibility at the end of the compliance year. This proposal would allow tonnages of packaging waste received in January (and possibly February) to be used to generate evidence for recycling obligations in the previous year. This was proposed as a way to address potential shortfalls in available evidence in a given compliance year, allowing a re-balancing across two compliance years. It would only apply to those waste streams which were experiencing difficulties. This shortfall in supply of PRNs/PERNs could be caused by, for example, a global reduction in demand for recyclate due to recession, or – as was the case during the Covid-19 pandemic – a reduction in packaging waste collection levels. This arrangement would only operate for the specified period (i.e. one or two months) and is intended to improve the liquidity in the market, by providing additional flexibility in years where there is evidence of a possible shortfall.

The current compliance timeframe set in the 2007 Regulations gives a small amount of flexibility to producers and compliance schemes to meet their annual recycling obligations. Producers and compliance schemes are permitted to buy PRNs/PERNs issued on packaging waste received or exported in December of the previous year to meet their obligations in the next, if it is not needed to meet targets (known as 'carry over'). They are able to buy PRNs/PERNs until the end of January of the following year (issued on

packaging waste recycled or exported for recycling during the previous year) to meet their obligations in the previous compliance year.

Producers and compliance schemes, and reprocessors and exporters, are also only able to trade their own 'physical' requirements for each tonne of packaging. This makes the PRN/PERN market different from many other commodity markets, in which financial or speculative as well as physical traders can trade as frequently as they like. There is usually more flexibility in such markets, allowing sales to be banked for future years or borrowed from future years. These 'futures markets' allow for the risk to be shared from those that do not want it to those that do, or are best able to manage it. However, as targets under the current system are set on an annual basis, based on the amount of packaging handled in a given year, 'banking' and 'borrowing' between years makes it difficult to know if targets have been achieved.

The industry proposal was that the reported recycling data should be monitored carefully by industry groups (possibly the Advisory Committee on Packaging (ACP)) to ascertain whether the market is on track to meet compliance or identify any potential disruptions. This could be done at key stages throughout the year (monthly or quarterly), to forecast any likely supply side issues. If there was agreement that the predicted shortfall was unrecoverable within the year, an application for an extension of the timeframe for compliance would be submitted to the relevant authority.

There is a degree of industry support for this suggestion. However, it is likely to be administratively complex and the details of how an extension mechanism would operate within the regulatory framework need to be further developed. If this proposal were to be taken forward, we consider there would need to be a clear set of objective criteria regarding the difficulties within the market that would be used as the basis for triggering an extension of the timeframe for compliance. These criteria would need to be outlined in the regulations to provide certainty and transparency over when the extension mechanism would be engaged, and to ensure that the mechanism is used consistently.

One way an extension mechanism could operate would be for industry, via an agreed forum, to make an application to the regulators (or the appropriate authority in the regulations) for an extension of the time period for compliance. This would be as a result of any difficulties within the market in a given year, such as reductions in collections or closure of reprocessing facilities, which impact the level of supply of PRN/PERNs. If the application demonstrated that the criteria were met, the extension would apply for that year.

As the PRN system works on a market basis, there is an amount of normal fluctuation regarding the relative supply and demand for PRNs/PERNs during the year. For example, there could be short term shipping issues which reduce PERN evidence available early in the compliance year. This could lead to forecasts indicating a shortfall, even though the market is responding with increased activity to ensure suitable supply. In addition, any use of PRNs/PERNs from January or February for compliance for the previous year could

mean that the shortage is simply 'carried forward' into the new compliance year. This could lead to a rolling issue, where the market is unable to supply the additional tonnages of PRNs/PERNs used to cover the original shortfall. It is therefore not clear under what circumstances and criteria use of the extension mechanism may be needed.

Therefore, we would welcome views on the introduction of an extension mechanism, and the specific criteria or conditions that should apply for triggering the use of the extension.

Q10. Do you agree or disagree that there should be a mechanism for extending the compliance period for the trading of PRNs/PERNs?

- a. Agree
- b. Disagree
- c. Neither agree nor disagree

Please provide the reason for your response.

Q11. Please provide details of the conditions or criteria you think would be appropriate to trigger an extension of the compliance period.

Option 3: Increasing the timescale over which PRNs/PERNs can be traded from an annual to a multi-year or rolling system

In a normal market system, changes in supply and demand should lead to changes in behaviour which act as a balancing mechanism to regulate prices over time. For example, increases in price would lead to consumers buying less (therefore reducing demand) and producers increasing supply. In the PRN/PERN market, however, demand is fixed by producers' obligations to obtain a set volume of PRNs/PERNs by the end of the year, giving them fewer opportunities to influence the market on the demand side. Reprocessors and exporters are also limited in the number of PRNs/PERNs they can sell in a given year by the targets on producers but are not obligated to sell, so have more flexibility to issue PRNs/PERNs at a point where the price is likely to be at its highest (i.e. Q4 of the compliance year).

In theory, producers can respond to increases in PRN/PERN prices by reducing the amount of packaging they place on the market. Regulations 8(c) and 9(4) in Part III of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 allow producers to update their information during the compliance year, meaning that producers could respond to high PRN/PERN prices by taking steps to reduce the amount of packaging they use (or change formats, etc.) and, therefore, the number of PRNs/PERNs they are obligated to purchase in the following compliance year. This would also provide an incentive for producers to reduce the amount of packaging they place on the market - a key objective of the EPR reforms.

In practice, however, it would be difficult for producers to significantly reduce the amount of packaging they handle in the short timeframe available for compliance. By moving to a

multi-year system, it is suggested that this would give producers more time to respond to high prices by producing less packaging and, as a result, reducing their obligation and the number of PRNs/PERNs they need to obtain.

On the supply side, reprocessors are limited in their ability to produce additional PRNs by their physical capacity to recycle packaging waste and their capacity to acquire waste for recycling (which is a function of the level of collection). In principle, higher PRN prices would make the recycling of lower quality packaging waste more cost-effective and enable reprocessors to increase the supply of PRNs. Moving from a single to a multi-year compliance timeframe could give reprocessors more time to increase their investment in infrastructure and improve their capacity in response to high PRN prices.

Wider reforms to waste collection, including the introduction of consistent household recycling collections and increased funding to local authorities for waste collection, will increase the amount of packaging waste available for recycling. Improved incentives for producers to increase the recyclability of packaging through the EPR reforms will also mean that a higher proportion of this collected waste is able to be recycled.

Setting targets over a two- or three-year or rolling period would be administratively more complex, requiring calculations of obligations across multiple years, but may allow for the increased elasticity in supply and demand that would address some of the market volatility issues which currently exist.

The mechanism would require the use of 'historic data', based on the packaging handled submissions from previous years to calculate each producer's obligation. This may be problematic as the definition of producer is subject to change under EPR and with it the data that companies would submit, meaning there may be no data on which to base the rolling targets. It would also require more frequent in-year updates as producers submit new and/or revised data.

Due to the complexity and issues outlined with this proposal, we are not considering progressing with this approach at this stage unless there is significant support or evidence provided for it in the responses to this consultation. If this option were to be progressed, we would need to seek further stakeholder input on the setting of multi-year recycling targets.

Q12. Do you agree or disagree with the proposal to increase the timescale over which PRNs/PERNs can be traded to a multi-year or rolling system?

- a. Agree
- b. Disagree
- c. Neither agree nor disagree

Please provide the reason for your response.

Q13. Which approach do you believe is the most suitable for addressing the issues of price volatility in the PRN/PERN market?

- a. Option 1
- b. Option 2
- c. Option 3
- d. All could work
- e. None of the above
- f. I do not know enough to provide a view

Please provide the reason for your response.

2.2.4 Interface with Deposit Return Schemes (DRS)

As part of our wider packaging waste reforms, the four governments intend to introduce Deposit Return Schemes (DRS) for drinks containers⁴. We expect the introduction of DRS to reduce littering of drinks containers, increase recycling rates of containers and provide higher quality recyclate for manufacturers. We recognise, however, that once the DRSs are in operation there is a risk that DRS material remaining in kerbside collections could undermine the effective functioning of the PRN/PERN market. This would occur if reprocessors and exporters were not able to clearly and robustly exclude DRS items that remain mixed with EPR packaging waste when issuing PRNs/PERNs. This could result in an oversupply of evidence and therefore depress the PRN/PERN prices. This is a particular risk for aluminium and plastic, as these are the main materials in scope of the DRS.

We have carried out modelling on the potential impacts of the DRS rollout on the availability of waste materials and subsequent effects on PRN/PERN prices. In the first few years of DRS operations, when the collection rate is expected to be lower - and under the assumption that DRS material cannot be distinguished from other packaging once collected for recycling with EPR packaging waste - our analysis shows that there is a significant impact on the availability of PRN/PERNs. This is particularly the case for aluminium, for which there would be an estimated 245% oversupply of PRN/PERN evidence (based on a 70% DRS capture rate in its first year of operation⁵), which would lead to a reduction of PRN/PERN prices. Plastic, glass and steel are also impacted in our model, with an oversupply of PRN/PERN evidence estimated at 22%, 9% and 7% respectively. This impact would be significantly increased if for any reason DRS were to have a later commencement date than EPR, and PRNs could be issued for DRS containers.

Once a DRS is fully operational and capturing 90% of in-scope packaging⁶, the impact of DRS packaging collected outside of DRS on EPR recycling rates is largely nullified for all materials except aluminium. For aluminium, there is an estimated oversupply of PRN/PERN evidence of 23%, while for plastic, steel and glass this is estimated at 1-2%. It

⁴ Scottish DRS will be implemented from 16 August 2023.

⁵ The DRS in Scotland is expected to have an 80% capture rate in Year 1.

⁶ Modelled for Year 2 for Scotland's DRS and currently proposed to be Year 3 for the other UK DRS.

is likely, therefore, that DRS packaging captured at kerbside would have minimal impact on the PRN/PERN prices and hence the availability of evidence for plastic, steel and glass by this point. There could still be a noticeable fall in the aluminium PRN/PERN price, however this would be expected to be less than in the period before the DRS is fully operational.

Q14. Do you think that the issuing of PRNs/PERNs on DRS materials that remain in kerbside collections would have an impact on the PRN/PERN market? If yes, what impact would this have, and if no, why not?

- a. Yes
- b. No
- c. Unsure

Please provide the reason for your response.

We have identified several options for addressing this potential issue:

Option 1: Find a means to prevent PRNs/PERNs being issued on DRS material collected alongside EPR materials

As noted above, the modelling on the impacts of the DRS assumes that DRS packaging cannot be distinguished from other packaging once collected for recycling. If reprocessors are able to accurately differentiate between EPR and DRS packaging, and only issue PRNs/PERNs on EPR material, the effects on PRN/PERN prices would be reduced and DRS material would not contribute to meeting EPR recycling targets.

It may be possible to use an approach in which an estimate is made of the proportion of packaging in the kerbside stream that is DRS material, based on sampling and modelling. This could be in the form of a single or multiple protocols.

This could be based on:

- data that producers and the Deposit Management Organisations (DMO) (called the 'DRS scheme administrator' in Scotland) are required to report, setting out the number of DRS articles placed on the market and the number of articles it collects in a given year; and,
- compositional sampling by reprocessors and exporters.

Individually or combined this data could be used to issue PRNs/PERNs on the corresponding proportion of packaging.

We acknowledge this approach could pose challenges. This is because:

- For some materials - aluminium and steel in particular - bales are tightly compacted and it may not be possible to separate them and undertake compositional analysis.
- Compositional analysis may need to be more frequent in the early years of EPR and DRS schemes as waste composition could change quickly and significantly.

- Regulators already face challenges in verifying evidence is issued accurately. Effective enforcement would become more challenging under this option.

In the future it may be possible to reduce the need for compositional analysis at reprocessors and exporters through: 1) improvements to the Material Facilities (MF) regime, which will see more frequent and detailed composition monitoring (including the split of DRS and EPR materials), and 2) the introduction of digital waste tracking. However, the effectiveness of such an approach is uncertain.

This option would require DRS producers to report on the tonnages of packaging they place on the market in 2023 under the EPR SI.

If this proposal is taken forward, we will work with stakeholders (including reprocessors, exporters, obligated producers, DMOs, and regulators) to establish the detailed requirements for data from reprocessors and exporters to underpin the protocols.

Q15. Do you agree with a sampling and modelling approach?

- a. Yes
- b. No
- c. Unsure

Please provide the reason for your response.

Q16. Do you think reprocessors and exporters will be able to differentiate between DRS and EPR packaging materials in issuing evidence?

- a. Yes
- b. No
- c. Unsure

Please provide the reason for your response.

Option 2: Place a recycling obligation on DRS producers for packaging waste that is in scope of the DRS, but not collected by the Deposit Management Organisations (DMOs)

Under this option, producers of packaging that is in scope of DRS would have a recycling obligation based on the proportion of DRS packaging that is not collected by the mechanisms established by the DMOs and remains in kerbside and other collections. Producers would need to meet their obligation(s) by acquiring PRNs/PERNs. As noted above, these drinks containers will impact the availability of packaging waste for recycling and the supply of PRNs/PERNs. This is particularly the case for aluminium, but there will also be an impact on the PRN/PERN markets for plastic, steel and glass (in Scotland and Wales). This could lead to a reduction in PRN/PERN prices for these materials and mean there is less incentive for this material to be collected and recycled.

While we predict that a relatively low proportion of DRS packaging will remain in kerbside collections once DRS is fully operational⁷, there could still be an impact on PRN/PERN prices for aluminium, with an estimated 23% oversupply of PRN/PERN evidence.

By obligating DRS producers to contribute to the recycling of a proportion of the DRS materials that remain in kerbside collections, through the purchase of PRNs/PERNs, we would effectively ensure that all packaging waste that is not recycled through a DRS system attracts a producer responsibility obligation. This would mean that producer responsibility obligations would be in line with the actual amount of material available for the generation of evidence. This should help stabilise the costs in the PRN/PERN market for producers with a recycling obligation under EPR but would increase costs for DRS producers. However, it could lead to producers paying costs under both schemes for different elements of the cost of managing the packaging they place on the market: once through their DRS producer fee (for the collection and sorting of the item where it has been collected through the DRS mechanism), and once through the requirement to purchase PRNs/PERNs (for the recycling of the item where it has not been collected by the DRS mechanism).

As with Option 1, this would require DRS producers to report on the tonnages of packaging they place on the market in 2023 under the EPR SI.

This option would also be more robust against error and fraudulent issuing of PRNs/PERNs on DRS material, as producers' obligations would be in line with the actual amount of additional material available for the generation of PRNs/PERNs. If this proposal is taken forward, the next stage would be to design a fair mechanism to determine the share of the additional obligation each producer would need to meet.

Option 3: Increase EPR producer recycling obligations to include DRS packaging not collected through the DRS routes

In this scenario, the recycling obligations on producers of EPR packaging would be increased to reflect DRS material that is not collected by DRS routes, remaining in LA or commercial collections.

The obligations on EPR producers for the affected materials would be increased in line with the proportion of materials that remain in kerbside collections, to reflect the anticipated over-supply of PRN/PERNs (caused by the DRS items being recycled with non-DRS packaging waste). Therefore, EPR producers would be required to purchase sufficient PRNs/PERNs to meet these higher targets. This is not dissimilar to the current 'business targets' approach for packaging from small producers under the de-minimis threshold who do not need to buy PRNs/PERNs, however, for materials such as aluminium, the increase would be significantly greater.

⁷ Around 10% by Year 2 of DRS being in place in Scotland and Year 3 for the rest of the UK.

This increase in the targets (particularly before DRS is operating at optimum capacity) is intended to ensure there is no change in supply and demand dynamics in the PRN market and limit the expected price reduction in PRNs/PERNs.

Therefore, a consequence of successfully maintaining the value of a PRN/PERN would be that EPR producers would have a higher obligation and hence their cost of compliance would be more than it would be if no DRS materials remained in kerbside collections. In the example of aluminium above, this could result in the total cost of compliance for EPR producers being more than double (245%) what it would otherwise be in the first year of DRS (assuming a 70% deposit return rate), and 23% more in the third year of DRS when operating at an expected 90% deposit return rate.

As with Options 1 and 2, this will require DRS producers to report on the tonnages of packaging they place on the market in 2023.

Q17. Which of the above options do you prefer?

- a. Option 1
- b. Option 2
- c. Option 3

Please provide the reason for your response.

Q18. Do you think there will be any issues in the practical implementation of:

Option 1?

- a. Yes
- b. No
- c. Unsure

Option 2?

- a. Yes
- b. No
- c. Unsure

Option 3?

- a. Yes
- b. No
- c. Unsure

If you answered 'yes' to any of the above, please provide your reason.

2.2.5 'Operator Competence' test for compliance schemes, reprocessors and exporters

In the responses to the 2021 EPR consultation, it was raised that there are currently no provisions in the 2007 Regulations for regulators to refuse or revoke approvals in relation to compliance schemes based on an assessment of operator competence. This can result in the approval of applications even where regulators have significant and demonstrable concerns over the history and background of the compliance scheme operator. The same problem can arise when considering applications for accreditation by reprocessors and exporters. It is then time consuming and costly to monitor operators with known or suspected problems.

In the 2021 consultation, we proposed the introduction of a Code of Practice and/or a 'technical competence' test for compliance scheme operators. These proposals received a high level of support, with 81% of respondents supporting the introduction of both a Code of Practice and a competence test. The Government Response states our commitment to introduce an operator competence test as a requirement of approval for compliance schemes, and to engage with the PSF and the regulators regarding the development of a new Code of Practice. In continuing with the PRN system we also want to extend the competence test to reprocessors and exporters.

We propose that an operator competence test is introduced for organisations seeking approval to operate producer compliance schemes and for reprocessor and exporter accreditation. This would require the details of relevant history, such as not meeting permit conditions or breaches of other relevant legislative requirements such as in the case of exporters breaches of Waste Shipment Regulations, to be taken into consideration. Failure to provide the requested detail, or failure to meet the conditions of the test, would potentially result in refusal of any application and/or cancellation of any accreditation in place, or revocation of the scheme approval. The test is intended to increase the level of competence within the sector, thereby reducing the risks to scheme members of non-compliance with the additional conditions and requirements introduced under the EPR reforms. As applied to reprocessors and exporters it will be additional scrutiny to the process of accreditation of those operators issuing PRNs and PERNs.

A Director and/or Partner should have overall responsibility for ensuring there is a 'competent' person in the business. This is because we would like the responsibility for ensuring the operator has suitable technical expertise to be tied to someone in charge of the company, and the Directors and/or Partners may not be best placed if they are not responsible for day-to-day operations.

The test would form part of the approval process to operate a compliance scheme, or as an accredited reprocessor/exporter and would require that the operator demonstrates that it:

- has an adequate management system;
- has adequate technical competence;
- has adequate financial competence;

- does not have a record of poor behaviour, previous non-compliance with regulatory requirements, fraud or other relevant convictions.

The test could form part of the annual scheme registration or accreditation and would need to cover any material changes that would impact the competency of the operator.

Q19. Do you agree or disagree with the introduction of an operator competence test for compliance schemes?

- Agree
- Disagree
- Neither agree nor disagree

Please provide the reason for your response.

Q20. Do you agree or disagree with the introduction of an operator competence test for accredited reprocessors and exporters?

- Agree
- Disagree
- Neither agree nor disagree

Please provide the reason for your response.

2.3 Call for Evidence

In addition to the reforms proposed above, we are seeking additional information on other options for addressing the issues identified with the current PRN/PERN system under the 2007 Regulations. This includes views on previous suggestions from stakeholders, such as the introduction of a compliance fee for producers who fail to meet their obligations.

2.3.1 Compliance Fee

The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 are enforced by regulators in each of the four nations (the Environment Agency (EA), Natural Resources Wales (NRW), the Scottish Environment Protection Agency (SEPA) and the Northern Ireland Environment Agency (NIEA)). Producers must register with the relevant regulator and pay a registration fee (either directly or through membership of a registered compliance scheme) which goes towards funding monitoring. Producers and compliance schemes that fail to comply with the Regulations may be subject to a civil sanction or prosecuted, and reprocessors and exporters may have their accreditation suspended or cancelled.

Prior to the 2021 consultation, a number of stakeholders called for the introduction of a form of compliance fee for the packaging system, similar to the one that operates for the WEEE system. This would be a mechanism to allow producers and schemes to meet their

obligations by paying a 'fee' rather than obtaining PRNs/PERNs, in the event that there are shortages of evidence, and to avoid enforcement action for non-compliance. This was proposed, for example, in 2020 during the Covid-19 pandemic and following the restrictions on plastic exports to China in 2019, when there was predicted to be an insufficient number of PRNs/PERNs on the market for producers to reach their targets (despite their best efforts). Producers and compliance schemes have suggested that there is a need for a compliance fee mechanism due to the possibility of shortages of available PRNs/PERNs and any ensuing high prices, which could cause distress to obligated businesses and compliance schemes. Powers to introduce a compliance fee are included in the Environment Act 2021.

The primary argument for a compliance fee mechanism is that it would mitigate against large fluctuations in the prices of PRNs/PERNs, acting as a form of pressure valve, and therefore the possibility of large-scale non-compliance by compliance schemes or producers in the event that there are insufficient PRNs/PERNs generated (in a market where the seller doesn't need to sell, but the buyer needs to buy to ensure compliance). There is a civil sanction option (an Enforcement Undertaking – EU) for schemes that fail to meet their obligations to avoid prosecution, though it is a formal sanction. The difference between a compliance fee mechanism and an EU is that, under the EU route, the scheme has to make all reasonable efforts to comply with their obligations to obtain PRNs/PERNs and can only apply for an EU after it has failed to do so. There has been concern that the compliance fee would allow the schemes to effectively 'opt out' and cease to make efforts to obtain PRNs/PERNs (and support recycling) when they feel the costs are excessive.

Critics of these proposals have suggested that a compliance fee could be viewed by producers as an easier option than acquiring PRNs/PERNs, undermining the basis of the market-based system and leading to lower levels of recycling and a failure to meet recycling targets. A fine balance would be required in setting pricing to ensure that failure to comply with obligations to obtain PRNs/PERNs and using the compliance fee mechanism is always more costly than purchasing PRNs/PERNs. This will prevent disadvantaging those who have been able to obtain sufficient PRNs/PERNs and will discourage producers from 'planning to fail'.

Many of the arguments for the introduction of a compliance fee (price volatility; potential PRN shortages) are addressed in the other proposals put forward in this consultation. For example, the options proposed in Section 2.2.3 (including extending the flexibility of the current compliance period and/or setting time limits on the sales of PRNs/PERNs) seek to reduce cyclical price fluctuations in the PRN market and address potential shortfalls in available evidence in a given compliance year. If taken forward, these proposals may render a compliance fee mechanism unnecessary, and the introduction of a compliance fee mechanism could also affect the operation of the other proposals, such as extending the compliance year (Section 2.2.3, Option 2).

Wider EPR packaging waste proposals, including more frequent data reporting and additional reporting requirements for reprocessors and exporters, will also increase the transparency of the market and provide producers with more information on the availability of evidence. We are therefore inclined to delay a decision on the introduction of a compliance fee until these other measures have come into effect, unless there is significant support or evidence provided for it in the responses to this consultation.

Q21. Do you agree or disagree with the introduction of a compliance fee for producers who do not obtain sufficient PRNs/PERNs to meet their obligations?

- a. Agree
- b. Disagree
- c. Neither agree nor disagree

Please provide the reason for your response.

Q22. Do you think the introduction of a compliance fee would still be necessary in addition to the proposals (outlined in Section 2.2) to address the issues around price volatility?

- a. Yes
- b. No
- c. Unsure

If you answered 'yes', please provide the reason for your response.

If you have any other suggestions for improvements to the operation of the PRN/PERN market, please include details here