

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

Use this template to gather input from across your organisation. Responses should then be submitted through the online consultation page:

<https://consult.defra.gov.uk/extended-producer-responsibility-team/consultation-on-the-draft-producer-responsibility>

The draft Statutory Instrument and consultation overview can be found on the online consultation page linked above.

Questions

1: Would you like your response to be confidential?

No

2: What is your name?

Association of Directors of Environment, Economy, Planning and Transport (ADEPT)

3: What is your email address?

Wendy.barratt@devon.gov.uk

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

Other –

The Association of Directors of Environment, Economy, Planning and Transport (ADEPT) represents Place Directors from county, unitary and metropolitan authorities, along with Directors of Local Enterprise Partnerships and corporate partners drawn from key service sectors. ADEPT members are at the very heart of maximizing sustainable growth in communities throughout the UK. We deliver the projects that are key to unlocking broader economic success and creating more resilient communities, economies and infrastructure

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

Yes

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

No – any packaging waste disposed through household disposal routes should be covered at no cost to the Local Authority or taxpayer. Secondary or even tertiary packaging waste can find its way into the household waste stream, examples being bulk buying by householders of certain products, supermarket provision of boxes for their customers. This needs to be full net cost recovery for all packaging that enters the household waste stream

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

No – the full net costs of all packaging should be included unless they are specifically exempted. All potential DRS packaging should be included until it is specifically included within a DRS especially when the current timescales are uncertain. In addition packaging in food waste collections should be included – it is unreasonable to expect Local Authorities (LA) to pick up these costs – full net cost recovery of all packaging means exactly that.

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

8: Are producers recycling obligations clear?

Yes/No/ **Don't Know not applicable to LAs**

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

9: Are the obligations on each type of producer clear?

Yes/No/ **Don't Know not applicable to LAs**

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

10: Are the obligations on all types of packaging clear?

Yes/No/ **Don't Know not applicable to LAs**

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

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

Yes/No/ **Don't Know not applicable to LAs**

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

12: Is the relationship between a Packaging Compliance Scheme and its members clear?

Yes/No/ **Don't Know not applicable to LAs**

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

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

Yes/No/ **Don't Know not applicable to LAs**

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

14: Are the requirements for the provision of recycling information and packaging labelling clear?

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

No

Until Simpler Recycling is published & timescales for implementation have been clarified there is lack of clarity around which materials will be deemed to be recyclable and whether all of these are collected – hence there is the possibility that some materials may bear the recycling labelling but might not be collected in all areas.

Products entering the UK should bear UK labelling and this should be a requirement to sell these products in the UK including online suppliers.

Packaging that is subject to a DRS should be required to have labelling such that it is clear that it is part of a DRS scheme

Coffee cups should be labelled such that it is clear they are only recyclable as part of a take back scheme

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

15: Are you likely to use a third-party organisation to conduct packaging recyclability assessments?

Yes/No/Unsure/not decided **Don't Know not applicable to LAs**

However ADEPT believes that independent verification is essential to the scheme.

Please provide a reason for your response.

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

Yes, approved by the Scheme Administrator/ Yes, accredited by UKAS/ **Yes, other (please specify)**/ No accreditation scheme **Don't Know not applicable to LAs**

Please explain the reason for your response.

ADEPT believes that it should be by an independent expert panel that is able to make the accreditation assessment.

17: Are the functions of the Scheme Administrator as outlined in the draft Regulations clear?

Yes/☒No/Don't Know

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

The functions of the SA are generally well set out and clear but there is a complete lack of clarity over how the SA will determine what is an 'efficient and effective' service. CI 72 (5) states an efficient service is where the costs 'are as low as reasonably possible' taking account of some listed factors but there is no clarity how these costs will actually be assessed. Schedule 5 2(d) states the 'need to support an increase in the effectiveness and efficiency of waste management services' but there is no clarity on what this means and how it will be delivered or measured. Similarly Schedule 5 6 (b) (i) refers to delivering 'efficient & effective services' but there is no clarity on what this actually means.

Schedule 5 (4) refers to the Scheme Administrator conducting public information campaigns. There is little detail around this, how it will interact with other campaign bodies such as WRAP and RECOUP nor whether it will be national, regional or locally targeted campaigns at specific packaging materials.

18: Do the draft Regulations allow for the Scheme Administrator to accurately apportion fees to producers?

Yes/☒No/Don't Know

If no, please detail why.

Materials included within a potential DRS should be included within pEPR until they are specifically excluded or there is a risk that LAs will continue to bear this burden – this needs to be full net cost recovery of all packaging

Deductions made under 74(7) where a Local Authority is not providing an efficient and effective service should be used by the SA to help LAs improve their services through improvement plans – it seems inappropriate to hand this money back to the producers as proposed under CI 63 (1 D) when it should be used to help LAs improve their services to become efficient and effective (particularly when the barriers to achieving this relate to the availability of suitable sorting and treatment infrastructure).

Under CI 80(4) the SA will only make payments in line with what has been received from the producers regardless of disposal costs incurred by the LAs – there needs to be a mechanism to meet LA costs regardless of any errors made by the SA and hence a contingency fund should be established. Under CI 83(2) the Regulations allow the SA to make a recalculation of disposal costs and producer payments but it is not clear when the shortfall to the LAs would be paid leaving the LA potentially underfunded for the waste services for managing packaging that it provides

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

Yes/No/**Don't Know** **not applicable to LAs**

If no, how can this be made clear?

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

Yes/No/**Don't Know** – **not applicable to LAs**

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

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

Yes/No/**Don't Know** **not applicable for LAs**

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

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

Yes/**No**/**Don't Know**

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

The regulations are clear in several areas, however there are some omissions which need to be included

1. A clear definition of what constitutes an efficient and effective service must be provided to establish a baseline upon which LAs can develop any service variations. There is currently no clarity on how this will be determined.
- 2.
3. Clarity needs to be provided on how the SA will determine the amount of packaging in the overall waste stream and what compositional analysis will be used.
4. It needs to be clear it is only the proportion of income that is applicable to in scope packaging that can be considered, and this varies depending on the contracting arrangements that are in place for each LA. In addition recycle markets are volatile and influenced by global factors.
5. Capital costs of infrastructure need to be included as LAs manage their capital costs in different ways and all of these need to be accounted for.
6. The SA has significant powers to determine payments to LAs but currently there is no clarity around what the established SA will look like. The Steering Group for the SA is currently being established but it only has one seat for English LAs which is a cause for concern. ADEPT would ask that the role of the LAs is as

critical to making the scheme work and hence should be part of the governance of the SA.

7. When assessing costs a number of factors need to be considered as well as those listed. Transience of population, diversity and housing type will all influence both efficiency and effectiveness of waste services.
8. Exclusion of DRS materials needs to be reconsidered, binned waste should be included in 2025 and contaminated packaging found in food waste should be in scope
9. Payments in two tier areas need to be clarified around recycling credits or other cost sharing mechanisms. A WDA would not expect to continue to pay recycling credits to WCAs for packaging unless the cost of doing so is met by the producers as part of full net cost recovery. Similarly arrangements within Statutory Waste Disposal Authorities will need to be clarified.

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

Yes/**No**/Don't Know

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

1. Efficient and effective is not defined therefore currently it is difficult to measure. It is also not clear how this potentially relates to TEEP or Simpler Recycling
2. It appears **there** is only a deduction for not achieving efficient & effective, rather than an incentive for having done so. ADEPT would suggest that LAs should be incentivized to improve and the SA should set up a contingency fund to be able to support this, rather than return funds back to the producers as outlined in CI 74(7)

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

Yes/**No**/Don't Know

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

There is complete lack of clarity how the SA will determine what these costs will be and whether they will be based on national, regional or local initiatives.

The regulations make no provisions for the Scheme Administrator incurring monitoring and evaluation costs as part of delivering public information services. .

It is not entirely clear how the public information services costs will be allocated to different producers and/or groups of producers associated with particular packaging materials.

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

Yes/☒No/Don't Know

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

The principles within the regulations are suitable for unitary waste authorities, but there are issues relating to two-tier areas that need to be addressed.

Clarity needs to be provided about how payments will be made to Statutory Joint Waste Disposal Authorities as well as two tier areas and waste partnerships where either recycling credits are paid or there are other cost sharing mechanisms.

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

Yes/☒No/Don't Know

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

The Regulations do not set the criteria by which environmental sustainability will be assessed, nor how they will be agreed prior to the start of fee modulation.

The fee modulation needs to take into account the practical realities of recycling different materials with some being much easier to recycle than others.

It is also imperative that a robust and transparent methodology is identified and implemented to assess the relative environmental impacts of different packaging materials and composites that can be converted into a modulated fee structure. We suggest this is essential to gain and maintain the confidence of all stakeholders including the public.

Local authorities are now also facing significant additional costs in the future for using energy recovery facilities to treat residual waste (under the Emissions Trading Scheme). The details of how this will be implemented are awaited, but there are indications that it may include a need to sample waste for fossil fuel-based content that would be subject to the ETS fees. Given that we rely on residents to segregate

waste for recycling, local authorities will inevitably continue to have a notable quantity of packaging waste being disposed of via residual waste collections, particularly from flats where it is harder to influence behaviour change. ADEPT would therefore contend that the use of fossil-based materials in packaging should attract higher fees once the ETS regime is in place, subject to the final details of its implementation.

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

Yes ☒ No/Don't Know

If yes, please specify which materials

No materials should be exempted from the scope as all materials require collection and processing and hence incur a cost to do so.

DRS scope materials should be included until a DRS is established.

If yes, please specify which materials

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

Yes ☒ No/Don't Know

If no, which grounds are missing?

1. LAs should not have their payments reduced due to miscalculation by the SA of its charges to producers or of its payments to LAs, as LA's will still have to collect and process the in-scope packaging. This is a full net cost recovery scheme and as such all costs should be met.
2. Efficient and effective need to be defined to allow any measurement against it.
3. Material income is difficult to assess and may not be separately identified depending on contractual arrangements that are in place. It can be volatile and therefore any adjustments should only be calculated at the point of calculating the following year's payment.
4. LAs need budget certainty – any adjustments will need to be in the following assessment year with at least 6 months notice being given.

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

Yes ☒ No/Don't Know

If no, how can the process be made clearer?

1. The notice period needs to be defined and should be a minimum of 6 months to allow LAs the time to readjust budgets for the following financial year.
2. The appeal process should be less protracted and needs to be better defined, including timescales for responses etc. It must also refer to a dispute process to cover occasions whereby the outcome of appeal is not agreed.

30: Are the new registration requirements for reprocessors and exporters handling packaging waste clear?

Yes/No/ **Don't Know not applicable to LAs**

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

31: Are the new conditions and reporting requirements for accredited reprocessors and exporters clear?

Yes/No/ **Don't Know not applicable to LAs**

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

32: Do the draft Regulations adequately capture the decisions that can be appealed?

Yes/No/ Don't Know

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

33: Do the draft Regulations set out an adequate appeals process?

Yes/**No**/ Don't Know

If no, how could this process be made clear?

ADEPT is concerned that the complaints procedure to be established by the Scheme Administrator is not defined, and as such is not able to determine how effective the appeals process set out in the Regulations will be. A key issue is the timescale for the complaints procedure, given a local authority could be facing a budget shortfall during this period that may result in services having to be curtailed.

It is not clear whether the appeals bodies named in the regulations will have sufficient expertise or capacity to make effective judgements, and would welcome further information from the Government on how this is going to be ensured.

The Regulations do not appear to provide grounds for appeals by 'relevant authorities' on any matters other than the disposal costs they are being allocated (and associated issues relating to recalculations and payments). Given the critical role that LAs will play they should have similar grounds of appeal as the producers particularly around any decisions made by the SA that they do not agree with.

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

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

The efficiency and effectiveness of the Scheme Administrator – is it delivering what it needs to such that we move to full net cost recovery for all packaging included littered items? Are LAs being fairly represented on the SA? Are the public information campaigns value effective and deliver value for money?

The interaction & delivery timescales of pEPR and other Government policies including Simpler Recycling and DRS considered in the wider context of the RAWS2018 ambitions to deliver waste reforms. This also includes future waste policy as we move towards net zero and the banning of biodegradable waste to landfill as well as inclusion of energy from waste plants in the UK ETS.

The role of pEPR in moving us towards a more Circular Economy including increasing re-use and changing product design such that materials can be more easily recycled – how effective has the modulated fees been? This includes consideration of fossil fuel content of packaging as we transition to net zero.

35: Overall, how satisfied are you with our online consultation tool?

Answer in online form. N/A