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

Consultation Document

28 July 2023

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

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



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packaging@defra.gov.uk

www.gov.uk/defra

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1. Executive summary

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

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

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

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

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

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

2. Introduction

Purpose of the consultation

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

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

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

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

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

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

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

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

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

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

Audience

Responses to this consultation are welcomed from:

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

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

Responding to the consultation

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

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

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

By email to: packaging@defra.gov.uk

In writing to:

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

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

Defra is managing the consultation process on behalf of Government.

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

Scotland: producerresponsibility@gov.scot

Wales: wastestrategy@gov.wales

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

Consultation period

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

After the consultation

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

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

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

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

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

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

Compliance with the consultation principles

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

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

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

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

Or in writing to:

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

About you

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

Q1. Would you like your response to be confidential?

No

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

Q2. Your name?

Jennifer Stephens, Belfast City Council

Q3. Your email address?

stephensj@belfastcity.gov.uk

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

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

- *Local authority*

Q5. Government will need to understand the needs of users to build digital services for EPR for packaging. Would you like your contact details to be added to a user panel for EPR for packaging so that we can invite you to

participate in user research (e.g., surveys, workshops and interviews) or to test digital services as they are designed and built?

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

No - arc21 will be providing their contact details, acting on behalf of it's member local authorities, including Belfast City Council.

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3. The draft Regulations explained

Overview of the legislation implementing the EPR for packaging reforms

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

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

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

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

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

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

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

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

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

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

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

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

What is not included in the draft Regulations and future reforms

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

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

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

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

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

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

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

Yes, however, we would have concerns that some of this packaging stream might still be making its way into the household waste stream and that local authorities could potentially be bearing the treatment fees. Also, there needs to be an assurance mechanism in place to ensure that this “excluded packaging” category will still be covered somewhere under the Producer Pays Obligations – for example through PRNs or elsewhere within the legislative requirements. We would ask if the proposed Deposit Return Scheme fits into this category of exclusion?

We also support arc21's response that "arc21 would however like to draw the Department's attention that this is not likely to be achievable for some time as many households buy items in bulk online or in discount stores (e.g. washing powder, toothpaste, pet food, &c). These items are frequently sold in their tertiary packaging and are consequently disposed of by the householder in their domestic bins/boxes. From a local government perspective, it is important that the Regulations recognize this prospect and ensure full net cost recovery is provided to local authorities for the collection and recovery of such packaging.

Furthermore, as novel [composite?] packaging continues to be developed and rolled-out to become part of the household waste stream, arc21 recommend that those within the value stream should contribute to the development of relevant infrastructure if these materials are not easily recoverable using the existing facilities. Otherwise, EPR will not successfully apportion the relevant costs to those which commission, produce and distribute these materials. For example, this was particularly apparent when Vegware and other biodegradable plastics were launched without any investment in new infrastructure and caused confusion amongst householders and others"

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

Overview of the draft Regulations

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

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

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

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

Regulations (which in turn refer to relevant Schedules in the draft Regulations) are provided with the questions.

Obligations on producers

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

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

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

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

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

No

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

We would raise the question - what is the definition of "exempt packaging"? Also, what assurances will be in place, for example to local authorities, that none of this packaging will end up in the household waste stream? The draft guidance document notes that Government will work to provide assurances for producers that local authorities will spend producer payments on packaging waste services. However, we would like to see reference made to supporting local authorities and to provide assurances to them. The regulations must ensure that full recovery costs are determined and provided to local authorities for the collection and recovery of all applicable packaging.

The draft regulations would appear inherent to sway producers to avoid costs. This could lead to producers using more soft plastics, for example, to reduce weight. Cumulatively this could lead to more packaging not being recycled and a poorer quality, less valuable recyclate.

It is also worth noting that wood is not being included - this would have its own unique issue in Northern Ireland due to bonfire season when considered for inclusion in any future scheme amendment.

Consideration must also be paid to packaging being exported to outside of the UK and the carbon impact of this operation.

We also support arc21's response that "arc21 applaud the intention to ensure that EPR is contextualized within the Circular Economy and would ask that similar consideration is given to framing how it could also assist with meeting other Government objectives, such as waste prevention and Net Zero.

arc21 recognises that packaging is frequently integral to the use of the item (e.g. coffee pods) but in this instance, we do not believe that the recycling obligations are sufficiently clear. The spirit of EPR is that Producers pay for the waste management costs of managing such single-use items and, in this case, it would appear to have missed the mark.

arc21 is also concerned that there are Deposit/Return Scheme (DRS) material which may sit outside of the EPR and we would ask what happens to such items should the DRS be further delayed [or gets shelved entirely]? Can materials which will be included within the DRS at a later stage be included as part of the EPR in the first instance as a default with a revision made to the Regulations at once the DRS has been successfully introduced?

These views and others have been raised within the National Audit Officer (NAO) report which included questioning the value for money on the implementation of the DRS¹.

In this regard, arc21 would recommend that Government should include all packaging materials within the EPR by default, unless they are explicitly excluded".

Q8. Are producers recycling obligations clear?

No

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

We support arc21's comment that "As above [Q7], the interaction between the EPR and DRS regarding drinks containers would benefit from greater consideration. The potential for a gap between the implementation of EPR and the DRS should be considered.

Non-kerbside collected packaging needs greater clarity. For example, where Household Recycling Centres are required for collection for recycling how would these qualify to be counted as recyclable and how would the producer fulfil their obligation?

Greater definition and determination of recyclability is required in particular for those that do not fit within a standard definition and do not rely on kerbside collection, fulfilling their obligation through takeback or other mechanisms".

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

No

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

¹ See <https://www.nao.org.uk/press-releases/the-governments-resources-and-waste-reforms-for-england/>

We support arc21's comments that "It is ambiguous how non-DRS drinks containers will be managed under these Regulations. arc21 would also like to see that a DRS obligated item is still labelled as recyclable as although return for deposit is the preferred option, recycling at kerbside is better than residual disposal.

In addition, this labelling would futureproof against any lack of alignment between different aspects of legislation.

It is ambiguous as to what can go in food waste (8b)"

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

No

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

We would query where compostable/biodegradable type packaging and also composite packaging material fit in to the obligations. There is a degree of uncertainty around the recyclability and treatment options of some of these materials as well as their carbon impact and where they would sit within a waste/carbon hierarchy.

The draft introduces the obligation to label "do not recycle" (page 27), then instructs progressive recycling targets to adhere to (pg 98, 99). It would be evident that the scheme would nudge producers to follow the waste hierarchy, reducing waste. Then reusing (e.g.. exempt Q6.), especially with the planned Deposit Return Scheme. Also, producers will likely greatly increase the percentage of compostable packaging that will be labelled "do not recycle". Furthermore, the large producers are likely to be nudged into collecting more packaging themselves for recycling. It would appear counterintuitive and unfair to impose progressive recycling targets on Councils as part of the proposed scheme.

We agree with arc21's comments that "As per Government guidance on applying the waste hierarchy², arc21 consider that the Regulations should seek to drive material up the hierarchy, as far as possible. arc21 note that reusable packaging has been rightly exempted, and the Regulations have adopted a clear focus on recycling but has the opportunity to promote the repair of packaging for reuse been overlooked?"

*See comments to Q9 above: it is also unclear how producers are expected to report upon:
- Non-fibre composite packaging – the difference between functional paper and fibre composite is a fine one arising from which there is considerable scope for confusion particularly as under current best practice, paper with <15% coatings and board with <10% coatings is classed as paper, is collected as such and can be processed in a standard paper mill.*

Throughout the discussions on the cup takeback scheme, there has been an assumption that this refers to cups that are used for drinks however there is also reference to those that hold food –(28(8)) this would therefore include a number of retail sales such as soup, noodles, porridge &c where a takeback scheme would not be practical as the items are generally not consumed on the go.

As per Q7 above, arc21 would re-emphasise that the recent NAO report which expressed

² See <https://www.gov.uk/government/publications/guidance-on-applying-the-waste-hierarchy>

concerns regarding the lack of long-term Government plans to reduce wastes which contributes to climate change. As above, arc21 would reiterate that Government should include all packaging materials within the EPR by default, unless they are explicitly excluded.”

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

Do not know

Compliance schemes

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

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

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

Do not know

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

No

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

We agree with arc21's comment that "The definitions and terminology needs to be tightened. For example, both compliance schemes and registered compliance schemes are referred to and the differences between these two schemes is not made clear in the Regulations."

Provision of recycling information and labelling

(Refer: draft Regulations Part 2, Chapter 2)

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

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

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

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

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

No

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

Chapter 2 (Section 20 (C)) states that “recycling instructions” means instructions as to how packaging may be collected for recycling, other than collection by a relevant authority. We seek clarity on this statement and an example of under what circumstances a relevant authority wouldn't be collecting this packaging material for recycling. Again, in section 23 (3), it states, “Where there are methods to collect packaging for recycling other than collection by a relevant authority, the producer must include recycling instructions in English on the label”. We reiterate our point above and seek clarity on the circumstances where such packaging material would not be collected by a relevant authority.

We seek clarity and further guidance around flexible plastics, which currently cannot be easily collected or recycled by local authorities, although some supermarket chains offer an in-store consumer takeback scheme for this material stream. Under the proposed labelling guidance, would such materials be labelled with the “Recycle” or “Do not Recycle” label? We also note that in Section 22(3), it refers to plastic packaging that is not rigid. We seek a definition of what this means.

It is worth noting the current inconsistent approach to household recycling across the UK as a whole. (e.g., in terms of material streams, receptacles and mixed vs segregated material collections) We would highlight the fact that that we are still awaiting government guidance on a consistency approach to household waste collection schemes across Northern Ireland.

“The Not-Sure Box” trialled by Dorset Council in conjunction with the WRAP Behaviour Change team would suggest that consumers are still unsure what can be recycled and such a trial would inform the operator what packaging has insufficient labelling, increase recycling rates, reduce contamination and increase value of recycle.

We support arc21's comments that “The obligations within the Regulations are largely clear, but 22(3) – the definition of “rigid” in relation to plastic packaging is not.

Concerns within local government have previously been expressed regarding the ongoing lack of release of the results and recommendations arising from the Consistency of Collection consultation exercise.³ This report had been pending for some considerable time now and its delay is having a detrimental impact upon the ability of many councils to

³ See <https://consult.defra.gov.uk/waste-and-recycling/consistency-in-household-and-business-recycling/>

progress their planning and contracting arrangements to meet the statutory recycling targets. The Prime Minister's press release and proposals to introduce "Simpler Recycling" risk exacerbating what is already becoming an untenable position for local government. Clarity is needed to allow new contracts to be let.

In relation to collection, questions are increasingly being asked within local government regarding whether certain materials are "recyclable" in the absence of a consistent approach to collection systems across the country which will have to address many of the local circumstances which may impact upon this agenda. We ask that guidance arising from "Simpler Recycling" be provided as a priority.

Views have also been expressed that there is a loophole in the current Regulations in that they appear to omit online suppliers. arc21 would enquire of the Department, how could this be addressed?

Outwith the EPR, arc21 is mindful that the DRS is all about driving consumer and attitude changes but, in thinking about packaging from their perspective, does the current interaction between the two schemes stack up? For example, is there likely to be competing messaging regarding the labelling of these schemes? 23:4 (coffee cups) – should not carry the recycling symbol, as the recycling logo should only be for waste materials included within the household collection arrangements. For DRS materials which are part of a take-back scheme, this would need to be separately badged".

Recyclability assessments

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

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

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

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

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

Unsure

Please provide the reason for your response.

It would appear that this is a question posed for small to medium sized enterprises (producers), where they would hire a consultant rather than in house staff. However, inevitably it would appear to be Local Authorities, who would notice and assess when unsatisfactory / non complaint packaging waste enters the market –Is this the case? As many local authorities are receiving a lot of black food trays with no labelling.

We agree with arc21's comment that "...to ensure objectivity of the material in the packaging chain, we believe that independent verification of an item's recyclability is essential to ensure that it truly is recyclable in practice".

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

Yes, (b) accredited by UKAS

Please explain the reason for your response.

We agree with arc21's comment that "As per Q15 above, arc21 considers that accreditation by an independent panel consisting of trusted representatives from all stages in waste collection, transport and treatment right through to the end destination would be beneficial to ensure that recyclability is proven. Such an approach would give the greatest assurance that the packaging item could/would realistically be recycled through kerbside waste services"

Mandatory takeback and recycling of fibre-based composite cups

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

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

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

business has a particular interest in these requirements and would like to be part of these engagement opportunities.

Scheme Administrator establishment

(Refer: draft regulations Part 6 and Schedule 5)

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

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

As indicated in the March 2022 Government Response we have taken the decision to host the Scheme Administrator, at least initially, in the public sector. This is based on advice from HM Treasury which considered the type of functions to be undertaken by the Scheme Administrator and that the Regulations will require producers to pay disposal costs. For example, setting disposal fee rates, collecting fees from producers, and then making payments to local authorities are considered sovereign-type functions, in other words functions typically undertaken by government. We are continuing to work on the Scheme Administrator design including through co-design sessions and are reflecting on feedback from stakeholders and international best practice. We are considering which functions should be performed by the Scheme Administrator and which could better be performed by a sector-led organisation or outsourced. The draft Regulations provide for the Scheme Administrator to enter into an agreement(s) with an organisation(s) to perform functions on its behalf. Whether the Scheme Administrator chooses to do so or not, and the nature of any agreement is not set out in the draft Regulations, however the Scheme Administrator must obtain the consent of relevant Ministers and DAERA before doing so.

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

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

No

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

We agree with arc21 comments “arc21 considers that the functions of the Scheme Administrator are largely defined except that there is a lack of clarity over how it [the Scheme Administrator] 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 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 again there is no clarity on what this means in practice and how it will be measured.

Similarly, Schedule 5 6 (b) (i) refers to delivering “efficient & effective services” but there is no clarity on what this means.”

In addition to arc21’s comments, we note the following:

Schedule 5, 9 (1) also refers to this: 9.— (1) The scheme administrator must before the end of the period of 6 months beginning with the date on which it is appointed under regulation 58(1) publish a strategy setting out—

(i) (e) how, by performing its functions, it will contribute to—

(ii) supporting the delivery of efficient and effective waste management services by relevant authorities, and the collection of a common set of packaging materials for recycling from households.

Schedule 5, 9 (2) states that “Before publishing the strategy, the scheme administrator must send the draft of it’s proposed strategy to each appropriate authority and allow the authority at least one month to make representations to the scheme administrator on the strategy” We would advise that a longer period than one month would probably be required by local authorities in which to respond and make representations to the scheme administrator, particularly if decision making is required and internal governance protocols to be followed.

The regulations state that circumstances including those down to geography will be taken into consideration but again there is a lack of clarity around the criteria that will be used and who is to judge its fairness. Belfast is a city with a demographic with few comparators in it’s geographic location, NI as a whole is also an Island (or part of) off an Island and as such it will have its own complications which will need to be accounted for.

The producer offset option could lead to major waste stream and market changes. If a laissez faire nudge creates a waste economy where major producers attain the valuable waste streams and leave local authorities with mainly low value recycle. (For example, some retailers could profit from cardboard/other material intake, this could make Council revenues greatly depleted even with increased revenues from the Scheme Administrator).

Scheme Administrator calculation of producer disposal and administration fees

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

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

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

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

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

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

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

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

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

No

If no, please detail why.

Is this system going to affect the weight and nature of waste streams? Will local authorities be left with surplus of certain waste streams and a shortfall in others? Large producers will likely opt to reduce packaging weight, quickly. There is also the option to offset, again large producers will likely move to avail of this as essentially a tax saving. The market will therefore likely be much different post scheme implementation than what it is at present. This would mean the Scheme Administrator would have no historic accurate data to apportion fees, it would need to be a live dataset, that would be a significant piece of work in the early years of the scheme. Further planned changes to the waste market such as a

deposit return scheme would further skew waste data and waste streams.

As per our response to Q17, the regulations state that circumstances including those down to geography will be taken into consideration but again there is a lack of clarity around the criteria that will be used and who is to judge its fairness. Belfast is a city with a demographic with few comparators in its geographic location, NI as a whole is also an Island (or part of) off an Island and as such it will have its own complications which will need to be accounted for. It is likely that NI and Belfast in particular will have additional cost pressures based on infrastructure and geography in comparison to GB.

As per 70 (1) (b) “The scheme administrator must update that list at least once every two years after the list is first published, and if the scheme administrator considers it necessary, more often”. It is unclear how the Scheme Administrator will do this. Also, the initial list of items will be informed by extensive waste composition analysis. What are the analyses required on a regular basis, in order to maintain this list and what role with local authorities play in this sampling process?

How will campaign costs be apportioned for different packaging categories?

We also agree with arc21 comments that “arc21 considers that there is a lack of clarity around those materials which may later be included in a DRS scheme. We have already proposed that these should be included within pEPR until the DRS is introduced.

Further, the Regulations state that deductions will be made under 74(7) where a local authority is not providing an efficient and effective service but arc21 consider that these monies should be used by the Scheme Administrator to help local authorities improve their services through improvement plans. arc21 believe to return this money to producers creates a perverse incentive [as proposed under Cl63 (1 D)]. Under Cl 80(4), it appears that the Scheme Administrator will only make payments in line with what has been received from the producers regardless of the disposal costs which have been incurred by local authorities – arc21 believes that there needs to be a mechanism to meet the costs local authorities bear regardless of any errors made by the Scheme Administrator and hence arc21 consider that any “surplus” monies should be used to establish a contingency fund.

In this regard, arc21 believe that “surplus” monies could be reinvested into local authorities’ improvement plans which could contribute to increasing the efficiency and effectiveness of the services provided.

Other questions arise regarding “surplus” monies and the interface with the DRS, when introduced as well as around contingency and that there may be an inadvertent geographical discrimination introduced concerning consistency of collection, size of local authorities, access to markets, &c. The Scheme Administrator will have to consider these matters carefully to avoid this outcome.

On the matter of calculating the total tonnage of packaging, building upon the issue of geographical differences, arc21 would request that the department provide further information regarding how this will be re-allocated/apportioned according to the producer and/or material type (i.e. Amazon deliveries may be commensurately greater in the islands than they are in the inner cities – how will this be assessed and re-distributed?)”

Q19. If your organisation collects and recycles packaging waste, do you understand

if you would qualify for off-setting under the draft Regulations?

Not applicable

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

Do not know

*What are the expected timescales involves for reviewing these considerations?
This will probably need to be considered at some stage. However, not to the detriment of council waste services, through for example, the quality or supply of material collected by local authorities. These services warrant as little disruption as possible and extending the provisions could potentially reduce the quality and supply to established markets relied on under local authority contracts.*

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

Do not know.

Producers would be best placed to respond to this question.

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

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

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

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

plans, where produced, before taking the decision to make reductions to efficient cost payments.

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

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

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

No

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

It is not clear what the Scheme Administrator is required to do and consider in assessing local authority efficient net disposal costs and service effectiveness. There is no definition of 'efficient net disposal costs and service effectiveness.'

We also agree with arc21's comments that "The Regulations are clear in several areas, however there are omissions which arc21 considers need to be included, such as (i) what constitutes a clear definition of an "efficient" and "effective" service, especially in the context of the urban/rural divide (ii) the Regulations need to be clear of the level of income that is applicable to in-scope packaging (iii) the Scheme Administrator should understand that local authorities only receive a proportion on the packaging material as income subject to their individual contracts. In many arrangements, material income will be difficult to assess as it will be integral to the contract price, the income itself may not be transparent and indeed it may be commercially confidential.

In General, arc21 considers that the costs outlined in the Regulations are described in overly broad terms which the development of an appropriate framework which incorporates these items above could help identify what constitutes minimum service requirements and, by default, this could assist in determining what "efficient and effective service" are [note, due to the local variables, these may not be consistent across the UK nations and regions].

Under CI75(6), the Regulations state that any debt owed to a local authority may be offset by any amount the local authority owes to the Scheme Administrator, but arc21 considers that this is hard to envisage given it [the Scheme Administrator] should be paying local authorities. A scenario when the reverse occurs would be useful to improve understanding for all involved.

The Regulations also refer to the annual redistribution of monies from the EPR. arc21 would highlight that this is likely to prove problematic for local authorities as they do not provide "floats" within their budgets to ensure that contractors are paid or other expenses are sorted on the basis that there will be an end-of-year adjustment provided from the Scheme

Administrator's payments. Indeed, after many years of financial constraint, councils are increasingly struggling to balance their budgets and the "promise" of a late payment in one service area [waste] may not stack up against other council priorities meaning that there is not enough money to continue to provide the necessary "efficient" and "effective" service operations [see comments earlier re developing a framework]. The Scheme Administrator needs to identify all the costs against which payment will be received along with any conditions which may influence or restrict the release of these payments. As it stands, the Regulations appear too vague and the "promise" of payment for local authorities appears to be based on the opinion of what is currently a weakly defined body [the Scheme Administrator]. arc21 also has grave concerns arising from C75(3) which indicates that the Scheme Administrator will simply inform local authorities as to the scale of payment they will receive in the first assessment year and there does not appear to be any mechanisms to engage on the matter. Adopting this approach would set a concerning precedent for local government"

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

No

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

It is not clear how the Scheme Administrator will incentivise the delivery of efficient and effective packaging waste management services by local authorities. Nor is there a comprehensive definition of what an 'efficient and effective packaging waste management' service is. Will each packaging category be assessed individually? For local authorities, will they be assessed by group and for each individual packaging category? What are the packaging categories? Can a local authority be "efficient" in one packaging area but not another?

As per our response to Q17, the regulations state that circumstances including those down to geography will be taken into consideration but again there is a lack of clarity around the criteria that will be used and who is to judge its fairness. Belfast is a city with a demographic with few comparators in its geographic location, NI as a whole is also an Island (or part of) off an Island and as such it will have its own complications which will need to be accounted for. It is likely that NI and Belfast in particular will have additional cost pressures based on infrastructure and geography in comparison to GB.

We also agree with arc21's comments that "arc21 has already commented on the lack of clarity regarding (i) "efficient" and "effective" service [Q17 and Q22] which we believe is needed in order to measure local authority performance, (ii) the way the Regulations present this requirement appears to indicate that there is only a penalty for not achieving this state, rather than an incentive for having achieved it (iii) there does not appear to be a recognition that local authorities may perform differently for the recovery of some packaging versus others (i.e. can a local authority be effective and efficient for some types of packaging but not others, what happens in practical circumstances, such as when there is low citizen participation which then requires increased communication campaigns/additional support –

surely the local authority should not simply be penalized?) – greater clarity on how the Scheme Administrator will assess this would be appreciated.

It is also unclear how/if EPR payments will increase collection rates for recycling and how the better and enhanced reprocessing infrastructure will be funded under this scheme.

arc21 would also highlight that within the Regulations, there is no reference to how the TEEP (technically environmentally and economically practicable) assessment will be undertaken – is this something which the Scheme Administrator will assess as part of their “efficient” and “effective” service review⁴? Similarly, arc21 would ask where the quality of the recyclable materials recovered under EPR is assessed – is this too part of the [efficient and effective] review?

arc21 also highlighted at the outset of this response the need to frame EPR within the broader context of Governments objectives around the Circular Economy and Net Zero – this remains the case”

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

No

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

As stressed in previous answers, we do not know what “efficient and effective is” How can we be efficient if we don’t know what this looks like? Potential external factors, such as the nature of material streams and infrastructure could affect our “efficiency and effectiveness.” For a joined-up NI-wide approach, we will need to ensure that all councils can deliver, otherwise this could lead to “inefficiencies” Not just geographical differences across the province but socio-demographical factors to consider too. As per our response to Q17, the regulations state that circumstances including those down to geography will be taken into consideration but again there is a lack of clarity around the criteria that will be used and who is to judge its fairness. Belfast is a city with a demographic with few comparators in its geographic location, NI as a whole is also an Island (or part of) off an Island and as such it will have its own complications which will need to be accounted for. It is likely that NI and Belfast in particular will have additional cost pressures based on infrastructure and geography in comparison to GB.

Latest press from (GB) government indicates that the common collection guidance across the UK has to be simple. Will this be reflected in the forthcoming guidance from DAERA?

We also agree with arc21’s comments that “The scope is clear but arc21 would ask for clarity regarding how the allocation of packaging charges/costs against specific producers work in practice, particularly eligibility and proportionality? We have already highlighted the potential benefits from developing a framework [Q22] which could prove critical for the successful implementation of the EPR.

arc21 has also highlighted reasons why some local authorities may struggle to achieve

⁴ arc21 recognises that this may change following the Prime Minister’s comments on 20 September – but we also consider that further details on how TEEP will be framed in the context of EPR and the Scheme Administrator is essential.

higher recycling rates due to local circumstances [Q23] and due to geographical differences mentioned [Q18] and, as such, we would welcome hearing about how the Scheme Administrator will work with local authorities to develop communications plans not just to target the universal packaging materials which are widespread, but the items which may have a greater weighting in certain areas over others. In reviewing the Regulations, it does not appear that the costs of monitoring and evaluating these campaigns are included within the scope of payments from the Scheme Administrator.

arc21 would be wary that these issues will need to be clearly communicated to others within the packaging chain which otherwise may only feel that they should only be funding the highest performing local authorities”.

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

No

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

In early summer 2023, Belfast City Council submitted performance information to DEFRA which was to go on to inform how councils might rank in terms of an effective and efficient local authority. To date, we have received no feedback or indication as to how this data has been used or where BCC might be ranked in terms of the sample data. Government should feedback to the Council's involved to inform us where potential improvement areas might be found. As it stands, we have no idea as to how this is going to be determined. In Northern Ireland there is little clarity on the subject and DAERA appears to be taking its steer from DEFRA.

We suggest that consideration needs to be given to a redirection towards a carbon-focused hierarchy rather than a statutory weight-based approach driven by the Waste Hierarchy (e.g. 65% by 2035). We will continue to be driven by and focus on waste tonnages until DEFRA tell us to do differently.

We would ask for further information and guidance on packaging that needs to be composted.

It is worth noting the delays in introducing legislation such as EPR and DRS whilst increasing recycling targets for local authorities as the years go on. It is now confirmed that producers will not be charged until 2025. There will be a general election between then and this may lead to further drift in the legislative timescale or indeed a reversal of current plans, creating further uncertainty for the industry.

Q26. Do the draft Regulations make it clear how the Scheme Administrator will adjust (modulate) fees to account for the environmental sustainability of household packaging?

No

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

This will require regular reviews given that the nature of household packaging is likely to change over time.

We also agree with arc21's comments that "arc21 would highlight that the Regulations do not provide clarity regarding the fossil fuel content of some of the packaging materials and that, with the introduction of the UK Emissions Trading Scheme (ETS), where additional costs arising from managing this type of material will be reflected. Is this something which the Scheme Administrator will be assessing as part of their ongoing review? Can other elements of full net costs recovery also be flagged with the Scheme Administrator as they emerge?"

Also, given the pace of change in packaging, we consider that a three-year review by the Scheme Administrator will be insufficient to keep up with this level of innovation likely to be experienced in this industry"

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

Yes

If yes, please specify which materials.

We agree with arc21's comments that "arc21 considers that no packaging materials should be exempted from the scope of the EPR as all materials require collection and processing and hence local authorities incur a cost to provide these services.

We believe that the Regulations should provide greater clarity on compostable packaging which by its very nature may be capable of being disposed of alongside food waste and therefore it would not be required to be collected as part of recycling.

Similarly, we consider that packaging which is sent by on-line sellers [Q18] should not be exempt from the being included within packaging modulation"

Recalculation of costs and fees

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

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

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

No

If no, which grounds are missing?

We agree with arc21's comments that "Local authorities should not have their payments reduced due to miscalculation of the charges for producers by the Scheme Administrator or for the subsequent payments due to local authorities, as they [local authorities] will continue to be statutorily obligated to collect and process the in-scope packaging materials.

arc21 considers the issue of stating what is an "efficient and effective service" need to be defined to allow any measurement against these standards [Qs 17, 22, 23].

Also, the income arising from the sale of packaging material needs better calculation. It should also be noted this can be extremely volatile and therefore any adjustments should only be calculated at the point of calculating the following year's payment. This intersects with the comments above regarding how a "float" would be managed [Q22]"

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

No

If no, how can the process be made clearer?

The system does not seem to come into force for local authorities until the next year. It will take twelve to 24 months –for the scheme to effectively bed in. We need clarity and an indication on banding and classifications etc., taking into account geographical locations, demographics and social make up of council areas rather than just a tonnage-based approach.

We also agree with arc21's comments that "arc21 believes that the notice period needs to be clearly defined within the Regulations and should be a minimum of 12 months to allow local authorities time to set and adjust their budgets accordingly. Government is aware that local authorities operate according to annual budget cycles which have to be prepared well in advance, so 12 months is realistically the minimum period that local authorities can operate to without the risk of severe disruption to service delivery. arc21 has highlighted above [Q22] the pressures facing local authorities' current prioritization processes and posed a question regarding the prospect of "floats".

In terms of the appeal process, this 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. arc21 is concerned that the appeals process appears to only serve the producers and a process for local authorities appears to have been omitted. arc21 considers that there needs to be parity accorded to both producers and local authorities regarding an appeals process.

Reprocessors and Exporters

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

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

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

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

Not applicable

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

Not applicable

Appeals

(Refer: draft Regulations, Part 8)

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

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

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

Do not know

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

We would anticipate that the scheme ends up with less exporting. In terms of carbon, make a better product and keep it local and thus retain value.

We also agree with arc21's comments that "It seems unusual in the case of NI, that the Planning Appeals Commission (PAC) would be used. As far as arc21 is concerned, the PAC

has little or no prior knowledge of the packaging value chain, although we understand that their remit is being expanded on an ongoing basis.

arc21 would also highlight that the Regulations provide greater clarity regarding the appeals process for producers, but less attention appears to have been paid to the mechanism for councils in the event that the Scheme Administrator makes a determination [a review] which is detrimental to a local authority. arc21 would request that the Department consider the detail of how this would work in practice [including some consideration of the likely costs which may be borne in undertaking such an appeal – will these be recoverable?]

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

Do not know

If no, how could this process be made clear?

We agree with arc21's comments that "Given the caseload around the appeals agencies, arc21 would be concerned that a producer could continue to undertake activities which the regulator had deemed unsatisfactory but which had subsequently been appealed, thereby granting a stay of execution for the producer until such times as the appeal is granted, dismissed or withdrawn. arc21 would request that consideration be weighted in favour of the regulator with a compensation mechanism in the place in cases where the appeals were upheld.

arc21 would reiterate the points made above [Qs 29, 32] regarding the lack of an appeals process for local authorities".

Regulators

(Refer: draft Regulations, Part 10)

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

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

Future development of EPR for packaging

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

- The sufficiency of EPR measures, in the context of wider collection and packaging reforms and in the delivery of the stated environmental objectives
- The outcomes of further work on material ownership and disposal costs for business packaging waste and related implications for the 'PRN system'

- The form and operational arrangements of the Scheme Administrator
- The sufficiency of arrangements to ensure the efficiency and effectiveness of local authority packaging waste collection and recycling services
- The scope to continuously improve the scheme design and regulatory framework based on international best practice.

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

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

We agree with arc21's suggested three areas as follows:

1. *The sufficiency of EPR measures, in the context of wider collection and packaging reforms and in the delivery of the stated environmental objectives*

As stated at the outset, arc21 would draw attention to the importance of nesting these proposals within the context of both the Circular Economy as well as the need to deliver Net Zero/Waste Prevention. The Regulations do not appear to frame these Government objectives, nor outline how implementation of these Regs will contribute to these [Government policies].

2. *The form and operational arrangements of the Scheme Administrator*

This is a critical function upon which EPR will stand or fall. It is also fundamental to the delivery of not just EPR for packaging and packaging waste. arc21 strongly advocate for a considerable increase in the number of materials which should be covered under EPR-type economic instruments and therefore it is critical that the form and operational arrangements for the Scheme Administrator are successfully developed and delivered.

3. *The sufficiency of arrangements to ensure the efficiency and effectiveness of local authority packaging waste collection and recycling services*

While much of the focus of the consultation has been upon how to ensure the delivery and implementation of the EPR, arc21 is wary that undue focus is being placed upon local authorities which have faced considerable financial pressures since 2007. Further emphasis upon local authorities without adequate mechanisms to re-distribute the monies arising from this scheme will condemn its introduction to, at best, a faltering start. Local authorities have distinct local flavours and characteristics which, in the absence of the results of the consistency of collection consultation, arc21 is unclear how EPR and the Scheme Administrator will gauge performance and which could lead to arbitrary and unhelpful determinations regarding efficiency and effectiveness.

Given the work completed previously around technically, economically and environmentally practicable (TEEP) collection arrangements [Q23], arc21 would recommend that this mechanism is clearly referenced within the Regulations [albeit this may need to be updated to reflect the Prime Minister's statement on 20 September, 2023]. There are similar issues

regarding the inclusion of packaging materials which have a high fossil fuel load and how they may be captured within the UK's ETS [Q26] and how the Scheme Administrator will account for both this, and other developments to ensure that local authorities continue to receive full net cost recovery into the future.

Next steps

Next steps on the implementation of the draft Regulations

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

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

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

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