

BRIEFING

Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024

Proposed in 2019 as the flagship policy of the suite of measures to address the environmental impacts of packaging placed on the market (known as The Collection and Packaging Reforms (CPR)), the Extended Producer Responsibility for Packaging Scheme (pEPR) leans on the “polluter pays” environmental legal principle to ensure producers are financially responsible for 100 per cent of the costs for managing the recovery, recycling and disposal of packaging at its end-of-life. While costs have fluctuated and increased in recent years, it is estimated that the existing producer responsibility scheme historically has only contributed ten per cent of the total costs incurred by local authorities, with the bulk of burden ultimately falling on taxpayers. By adopting a *bonus-malus* approach for modulating fees based on the recyclability of packaging, pEPR aims to incentivise producers to adopt better practices relating to packaging design and material choices, thereby resulting in increased packaging recycling rates.

Wildlife and Countryside Link (Link) and Green Alliance are strongly supportive of these UK-wide reforms and commend the government and devolved administrations for the work that has gone into developing this extensive piece of legislation. However, there are several points where the explanatory material laid in support provides insufficient information about intended implementation, how the policy objectives will be delivered and how greater ambition could be delivered over time.

A missed opportunity to drive an overall reduction in the use of packaging materials and enable reuse systems

The government should be aiming to achieve a significant reduction in the use of packaging. We are therefore concerned that it has not taken the opportunity to use the extensive powers in the Environment Act 2021 to drive the best environmental outcomes and support the efficacy of reusable packaging systems.

In recent years, European Union extended producer responsibility schemes have sought to move beyond incentivising recycling by introducing drivers and, in some cases, targets for reducing and reusing packaging waste through their packaging regulations. Similarly, the Environment Act 2021 powers enable the UK government to make regulations for the purposes of “preventing a product or material becoming waste” and of “sustaining a minimum level of... re-use” (Schedule 4, Part 1).

However, unlike in the EU, the UK packaging targets set out in this legislation are only for recycling. As yet, there is no clarity on how the UK government intends to deliver against the Regulations’ stated aims around reduction and reuse, such as the principles in schedule 7, clause 2(c) and the definition of “environmentally sustainable” in part 5, chapter 3, clause (64)(6), and whether targets for these should be included in future.

As noted in the Secondary Legislation Scrutiny Committee's (SLSC) 6th report, published on 7th November,¹ the Regulations allow for the modulation of producer fees to be based on a broad set of environmental factors beyond recyclability, including reduction and reuse. However, currently there is a lack of clarity as to how the scheme will explicitly support overall reduction and enable reuse systems.

Avoiding unintended consequences of reuse and refill packaging systems

Where reusable packaging is included in the current legislation, it is sometimes in the form of exemptions whereby producers are not liable to pay the same producer fees as those putting non-reusable packaging on the market. While the legislation is aiming to increase the uptake of reusable packaging systems, these systems are not yet operating at scale, nor is it clear such systems will automatically deliver environmental benefits. Reusable packaging requires more material and therefore is heavier than single use equivalents, so it is possible that systems of reuse that do not enable the required number of use cycles to negate the higher levels of embodied environmental impacts. Perversely, this could lead to an increase in the amount of packaging material used overall.

Therefore, it is crucial that the overarching system is guided by the need to reduce material use and its impacts (including through targets), yet this does not appear to be reflected in the legislation as it stands.

While we welcome measures to incentivise reusable packaging within the scheme, Defra's response in the Secondary Legislation Scrutiny Committee (SLSC) [report](#) does not comprehensively address these concerns. As it stands, the legislation does not require tracking of the use cycles for producers to qualify for the one-time fee associated with placing reusable packaging on the market.

Ensuring effective monitoring and enforcement

The effective implementation of this legislation will rely on adequate monitoring and enforcement, yet this is seriously at risk given the strong possibility that Defra's budget could be cut. This cut could affect the ability of arm's length bodies, such as the Environment Agency (EA), to carry out the necessary enforcement in the UK. When the National Audit Office last examined the packaging recycling system in England in 2018, it found that the Environment Agency was only carrying out around a third of the compliance visits to recyclers and exporters it was meant to and only managed three unannounced site visits to accredited English recyclers and exporters over the course of a year.

The SLSC report includes clarification from Defra on how the EA is funded and provides assurances that increased charges in the Regulations will provide additional funding to reflect the new duties placed on the regulators as a result of this legislation. However, **there remains a concern that after years of funding being eroded, the increase will not be sufficient to support the necessary enforcement and auditing required by the scheme.**

Evidencing recycling of materials from producer-led closed loop and take-back collections

The Regulations include the principle that producers can offset fees for packaging they place on the market where they collect and recycle that packaging through self-funded initiatives (Regulation 62,

¹ SLSC 6th Report, 7th November [House of Lords - Sixth Report - Secondary Legislation Scrutiny Committee](#)

paragraph (2) (b)). There is a risk that producers could claim they have collected and recycled packaging where this is not in fact the case. This is a particular concern given recent research shows 70% of soft plastic packaging waste collected by supermarkets for recycling is in fact incinerated.² In the SLSC report, Defra's response states that the Regulations require producers to evidence that relevant packaging waste has been recycled. However, the EA will not stipulate the exact evidence required and will leave it open to producers to ensure there is a process in place and that they can provide documents based on what is available to them from their material reproducers. **Given the current lack of transparency relating to these producer-led material, this lack of rigour around evidence remains an issue.**

Accounting for commonly binned and littered items

The requirement (under Schedule 4, paragraph 10) for producers to report how much packaging they supply which consists of commonly binned or littered items is a welcome inclusion. If the data shows producers are not reducing supply of these items, it is important there is a mechanism available, as part of the modulation of fees, to incentivise producers to do so. The initial proposals for pEPR included an obligation on producers to contribute to cover the cost burden on local authorities (around £1 billion per year) associated with managing litter. There is also a link to the Government's Safer Streets Mission, where street cleanliness contributes to safer neighbourhoods and community pride. However, the litter payment element of the obligation fell away during the lengthy consultation process and instead, these items are accounted for within household recycling collections.

Defra recognises that incorporating these costs into the pEPR scheme would further incentivise producers to reduce the amount of commonly binned and highly littered packaging items placed on the market and address the environmental harms caused by littered waste. **The policy is still under development 5 years after it was first proposed with no indication as to when it may be introduced.**

It would also be useful to understand how the measures set out in this legislation will be complemented with measures to incentivise reduced littering, including more effective enforcement activities around littering and improved use of recycling and reuse services by the public, potentially through variable charging services for the public. If the public is offered comprehensive reuse and recycling services for packaging, rightly paid for by producers, there need to be incentives – financial and otherwise – for them to use them correctly. Variable charging of the public, where they would pay little or nothing for their recycling services, and more for their residual waste, are common in high recycling societies, but not in the UK. As part of a move to an efficient system, this should be revisited.

² <https://eia-international.org/wp-content/uploads/EIA-UK-2024-The-Hard-Truth-About-Soft-Plastic-Summary.pdf>