

# **Reforming the UK packaging producer responsibility system**

**Partial Business and Regulatory Impact Assessment  
(BRIA)**



**Scottish Government**  
Riaghaltas na h-Alba  
gov.scot

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## **1.0 Title of proposal: Reforming the UK packaging producer responsibility system**

1. This is a partial Business and Regulatory Impact Assessment (BRIA) for proposed secondary legislation which forms part of the introduction of extended producer responsibility (EPR) for packaging.
2. This legislation is in the form of two Scottish Statutory Instruments which will require producers to collect and report data about packaging they place on the market in the course of 2023, and set civil penalties for non-compliance:
  - The Packaging Waste (Data Reporting) (Scotland) Regulations 2023 (“the data regulations”);
  - The Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2023 (“the enforcement order”).
3. This document expands on the partial BRIA published in March 2021 alongside a public consultation;<sup>1</sup> it is written subject to the most up-to-date information at the time. The Scottish Government is working jointly with the other UK administrations to introduce packaging EPR, and a UK Impact Assessment was published in March 2022 alongside the government response to the consultation;<sup>2</sup> much of the information included in this partial BRIA is closely aligned with that Impact Assessment, hereafter referred to as the UK IA.
4. The main legislative vehicle for introducing packaging EPR will be a UK Statutory Instrument for which there will be notification to, and scrutiny by, the Scottish Parliament in advance of formal consent being granted by the Scottish Ministers to the making of the instrument by the Secretary of State. This process is intended to take place in autumn 2023, at which point a final BRIA will be published.

## **2.0 Purpose and intended effect**

### **2.1 Background**

5. According to the Scottish Environment Protection Agency (SEPA), more than 10 million tonnes of packaging waste is produced every year in the UK.<sup>3</sup> Separate information is not available for waste packaging in Scotland.
6. Extended producer responsibility (EPR) schemes are a common tool to ensure that producers’ responsibility for their products is extended to the post-use phase. This includes financial responsibility and can apply to, for example, the

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<sup>1</sup> [Reforming the UK packaging producer responsibility system - Partial Business and Regulatory Impact Assessment \(BRIA\) \(www.gov.scot\)](https://www.gov.scot/publications/assessments/2021/03/10/summary/summary.pdf)

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1063588/ep-r-final-impact-assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063588/ep-r-final-impact-assessment.pdf)

<sup>3</sup> [SEPA: Packaging waste](https://www.sepa.gov.uk/waste/packaging-waste)

environmental or waste management costs of the products they place on the market. This incentivises producers to design for key circular economy outcomes such as reduced consumption of resources, reuse, repair and recycling.

7. A producer responsibility system for packaging has operated UK-wide since 1997; at present it is governed by the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended),<sup>4</sup> hereafter referred to as 'the Packaging Waste Regulations'.<sup>5</sup> Under these regulations, businesses which make or use packaging are obligated to contribute towards the cost of recycling and recovery of a proportionate amount of packaging they have placed on the market. The objectives of this system are to:
  - Reduce the amount of packaging produced;
  - Reduce the amount of packaging waste going to landfill;
  - Increase the amount of packaging waste that is recycled and recovered.
8. The Scottish regulator is SEPA. Along with the environmental regulators in the other nations in the UK, SEPA administers the National Packaging Waste Database and monitors compliance with the regulations.
9. The responsibility to prove that producers have met their recycling obligations is currently fulfilled through the purchase of Packaging Waste Recycling Notes (PRNs) or Packaging Waste Export Recycling Notes (PERNs) which are sold by accredited reprocessors or exporters. Obligated businesses must buy sufficient PRNs to demonstrate they have met their obligations, in line with the 'polluter pays' principle.<sup>6</sup> PRNs and PERNs act as evidence that an equivalent amount of similar packaging has been recycled.
10. The central aim of extended producer responsibility (EPR) is to ensure that producers bear financial responsibility for the impacts of products they place on the market and are incentivised to reduce these impacts. This provides the opportunity to assess the whole lifecycle of a product – a concept which is central to Scotland's circular economy strategy.
11. The Scottish Government is working jointly with the UK, Welsh and Northern Irish governments to reform the packaging producer responsibility system, creating genuine Extended Producer Responsibility. The governments of all four nations are working together to ensure that the revised packaging EPR scheme aligns with existing policies, and allows some variation based on local needs and priorities. This will help to maximise the influence on producers and the supply chain.

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<sup>4</sup> [The Producer Responsibility Obligations \(Packaging Waste\) Regulations 2007](#)

<sup>5</sup> [The Producer Responsibility Obligations \(Packaging Waste\) Regulations 1997](#)

<sup>6</sup> Obligated businesses are those who place more than 50 tonnes of packaging and have a turnover of more than £2 million per year.

## 2.2 Objective and Rationale

12. The current producer responsibility system for packaging has provided a limited degree of producer responsibility while keeping the cost to businesses low. However, the system has significant shortcomings which will be addressed by the introduction of packaging EPR.
13. Most significantly, it is estimated that the current system covers less than 10% of the total cost of managing post-use packaging waste,<sup>7</sup> which means that most of the cost is borne by local authorities, other public authorities and businesses who consume packaged goods. Additionally, there is significant fluctuation of revenue raised through PRNs.
14. Additional issues include:
  - Concerns over system transparency, including the actual fate of materials and the visibility producers have of how their PRN fees are used.
  - Lack of a level playing field for domestic reprocessing, due to an over-reliance on export markets.
  - Limited direct consumer communications to encourage packaging recycling.
  - Lack of incentive for producers to design for greater recyclability or re-use, as the price of PRNs is not linked to recyclability or environmental impacts of materials. This means that materials are often reprocessed into much lower-value goods, or lost to landfill or incineration after just one use.
  - Lack of granularity in data reported by producers, as this currently only includes the type of material and does not include the packaging type or, for plastics, polymer type.
15. It is clear that the current packaging producer responsibility system does not fully meet the “polluter pays” principle, in that producers do not bear the full financial responsibility for the impacts of products they place on the market and are therefore not strongly incentivised to reduce these impacts.
16. Voluntary initiatives for recycling labels and fibre-based composite cup recycling exist but are insufficient. Variation in the design and information provided by voluntary labelling is confusing for consumers. Voluntary fibre-based composite cup collection schemes have made some progress in increasing the recycling rate of fibre-based composite cups however, the recycling rate remains low.
17. Placed on the market packaging data for paper cups and other types of fibre-based composite packaging are not reported currently as a separate packaging material stream, nor are accurate data available on recycling and capture rates

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<sup>7</sup> House of Commons Environmental Audit Committee Report, December 2017, p17  
<https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/339/339.pdf>

for cups. Intervention would be required to obtain better data so that government and industry are better able to understand the challenge and scope for improved management of this packaging stream.<sup>8</sup>

18. The objectives of reforming the UK packaging producer responsibility system are to:
- Avoid unnecessary packaging (packaging not required to protect a product, or excess packaging);
  - Replace single-use packaging with reusable or refillable packaging;
  - Incentivise design of packaging for recyclability;
  - Increase the quantity of packaging recycled;
  - Increase the quality of packaging recycled;
  - Reduce litter (together with Scotland's Deposit Return Scheme, also an example of extended producer responsibility).
19. An amendment to the EU Waste Framework Directive sets out a 70% packaging recycling target for 2030.<sup>9</sup> The Scottish Government and the other UK administrations are aiming to exceed this target with the UK-wide packaging EPR scheme. Minimum targets will be set to equate to an overall EPR packaging recycling target equivalent to 76% by 2030.<sup>10</sup>
20. The circular economy contributes directly to the Environment and Economy outcomes under the National Performance Framework. Directly applicable National Indicators include:<sup>11</sup>
- Carbon footprint.
  - Natural capital.
  - Greenhouse gas emissions.
  - Waste generated.
  - Clean seas.
  - Scotland's reputation.
  - Perception of local area.
  - Condition of protected nature sites.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1063588/epr-final-impact-assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063588/epr-final-impact-assessment.pdf)

<sup>9</sup> [Directive \(EU\) 2018/852](#)

<sup>10</sup> [EPR Consultation Government response template \(publishing.service.gov.uk\)](#) p16

<sup>11</sup> [National Indicator Performance](#)

21. Resource use and waste generated are recognised as key sources of greenhouse gas generation, and the Scottish Government reports on progress against both territorial and consumption emissions. The reform of UK packaging EPR policy will contribute to objectives set out in the Climate Change (Scotland) Act 2009,<sup>12</sup> as amended by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019;<sup>13</sup> and the Climate Change Plan: Third report on proposals and policies 2018-2032 (RPP 3).<sup>14</sup> The legislation establishes a target of achieving net-zero emissions by 2045, while RPP 3 sets out plans to decarbonise the economy in the period to 2032. An update to RPP 3 (Update to the climate change plan 2018-2032), which set out the importance of a green recovery from the pandemic, was published in 2020.<sup>15</sup>
22. In 2015, the Scottish Government signed up to support the United Nations Sustainable Development Goals. The ambition behind the goals is to end poverty, protect the planet and ensure prosperity for all as part of a new sustainable development agenda. An enhanced packaging EPR policy will have a positive impact on a number of these goals, most explicitly Goal 12: Responsible Consumption and Production.
23. Scotland is transitioning to a circular economy. In February 2016, *Making things last: A circular economy strategy for Scotland* was published.<sup>16</sup> The Scottish Government has completed consultations on a Circular Economy Bill and a Waste Route Map. We will bring forward the bill, which will establish the legislative framework to support Scotland's transition to a zero waste and circular economy, significantly increase reuse and recycling rates, and modernise and improve waste and recycling services, before summer recess 2023. The Route Map will also be published in 2023 and will set out how we intend to deliver our system-wide, comprehensive vision for Scotland's circular economy, including product stewardship.
24. The Scottish Government implemented Article 5 of the EU Single-Use Plastics Directive (SUPD) on 1 June 2022. The regulations introduced market restrictions for single-use plastic cutlery, plates, beverage stirrers, straws and balloon sticks as well as single-use food containers and cups made of expanded polystyrene
25. Scotland's Deposit Return Scheme (DRS) will be implemented from 16 August 2023.<sup>17</sup> Deposit return schemes are examples of extended producer responsibility and Scotland's DRS for drinks containers will be complementary to

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<sup>12</sup> [Climate Change \(Scotland\) Act 2009](#)

<sup>13</sup> [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Act 2019](#)

<sup>14</sup> [Climate change plan: Third report on proposals and policies 2018-2032](#)

<sup>15</sup> [Update to the climate change plan 2018-2032](#)

<sup>16</sup> [Making Things Last](#)

<sup>17</sup> <https://www.gov.scot/policies/managing-waste/deposit-return-scheme/>

packaging EPR.

### **3.0 Consultation**

#### **3.1 Consultation within government**

26. The Scottish Government, along with the other UK administrations, wants to design a packaging EPR scheme that has a positive long-term impact, is consistent and works well for all citizens. We have taken the view that this is best delivered by working with the other administrations to deliver a UK-wide scheme while respecting devolved powers. We are therefore closely collaborating with the UK Government, Welsh Government, and Northern Ireland Executive on the design of the system. We are also engaging with local authorities, as a key stakeholder within the new system.
27. As the regulators of the scheme, SEPA and the environmental regulators in the other nations of the UK have been closely involved in the design of the scheme to date and will continue to play a significant role as we move forward through policy development and implementation.

#### **3.2 Public consultation**

28. Between 18 February and 13 May 2019, the Scottish Government and the other UK administrations undertook a joint consultation on reforming the UK packaging producer responsibility system.<sup>18</sup> It discussed the rationale for reforming the current system, set out the key principles and features of a revised EPR system for packaging, proposed packaging waste recycling targets to 2030, and presented different governance options for a future system – without putting forward a preferred option.
29. The summary of responses notes that 679 separate responses and 34 campaign responses were received. Overall, respondents were positive about the intent to improve the current system and for packaging EPR to form part of a coherent system that is understandable and fair to businesses and consumers. Based on the strong support from respondents for the principles and outcomes of a reformed packaging EPR scheme, the governments committed to progressing the policy proposals and to introducing a new EPR scheme for packaging.<sup>19</sup>
30. A second consultation on EPR for packaging ran for 10 weeks from 24 March 2021 to 4 June 2021. This consultation sought views on specific policy proposals for the introduction of EPR for packaging. Again, this was a joint consultation carried out in partnership with the UK Government, the Welsh Government, and

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<sup>18</sup> [Consultation on reforming the UK packaging producer responsibility system.](#)

<sup>19</sup> [Consultation on reforming the UK packaging producer responsibility system: Summary of responses and next steps.](#)



the Northern Ireland Executive.

31. The consultation received 1,241 responses from a wide range of stakeholders. The summary of responses and the Government response to the 2021 consultation was published in March 2022.<sup>20</sup> The government response set out our policy intentions across all the components of packaging EPR and, in particular, set out our intentions in respect of the data that producers would be required to provide in the course of 2023 to support implementation.

### **3.3 Business consultation**

32. The Scottish Government and the other UK administrations have engaged closely with businesses as the policy on packaging EPR has been developed, and this has taken account of feedback from a range of businesses and trade bodies.
33. A large number of businesses responded to each consultation referred to above, in particular the second consultation on the details of the policy, which received (among others) 140 responses from trade bodies and over 500 from individual businesses. Full consideration was given to the consultation responses in arriving at the final policy.
34. We and the other UK administrations have continued to engage directly with industry through the policy-development and into the implementation phase for packaging EPR. This has taken the form of frequent meetings with key trade bodies and representative industry experts (e.g. via the Advisory Council on Packaging). A number of webinars for industry with 1,000 attendees each have been held and we have convened "sprint groups" to bring industry expertise directly into the policy-making process on key themes such as fee modulation.
35. As we develop the final BRIA which will be laid alongside the legislation that gives effect to packaging EPR later in 2023, we will carry out more focussed engagement with a group of 6-12 businesses to inform the Scottish Firms Impact Test and Competition Assessment.
36. The consultation with businesses will take place during and after the public consultation process. The form of engagement will include:
- Questionnaires.
  - Virtual and/or in-person interviews and possibly workshops.
  - Email correspondence.
37. The 6-12 affected businesses, representative organisations and trade unions of varying sizes and sectors will be consulted on the proposed changes. The results

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<sup>20</sup> [EPR Consultation Government response template \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

will be published in the final BRIA. This process will help to establish:

- Any anticipated impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world.
- The number of businesses and the sectors likely to be impacted by the change.
- The likely cost or benefit to business.

#### 4.0 Options

38. Alternative policy options have been considered to ensure that an EPR scheme is the correct delivery mechanism for Scotland. These options are aligned with those considered for the rest of UK and must achieve the following strategic objectives:
- Avoid unnecessary packaging (packaging not required to protect a product, or excess packaging);
  - Replace single-use packaging with reusable or refillable packaging;
  - Incentivise design of packaging for recyclability;
  - Increase the quantity of packaging recycled;
  - Increase the quality of packaging recycled;
  - Reduce litter (together with Scotland's Deposit Return Scheme, also an example of extended producer responsibility).
39. The policy intention is to align Scotland (and the UK) with the aims of Article 8a of the amended Waste Framework Directive regarding producer responsibility, as amended by the Circular Economy Package.<sup>21</sup> The alternative policy options provide additional scenarios for a potential EPR scheme. A non-regulatory option was not appraised, as the aim is to reform the existing regulatory framework.
40. The options considered are:
- **Baseline.** No policy change: continuation of the existing packaging producer responsibility regime in its current form, adjusted for the introduction of DRS in Scotland (and subsequently for the different DRS in England, Wales and Northern Ireland).
  - **Option 1.** EPR scheme: reform the packaging producer responsibility system so full net costs of household packaging waste are covered by producers and introduce modulated fees on packaging and mandatory recycling labelling.

<sup>21</sup> [DIRECTIVE EU 2018/851 amending Directive 2008/98/EC on waste](#)

- **Option 2.** As Option 1 plus mandatory collection of fibre-based composite cups for recycling.

41. The UK IA sets out an analysis of the costs and benefits of these options at a UK level. The analysis does not set out specific costs for Scotland, but it does reflect the different approaches to DRS: glass included in Scotland and Wales but excluded in England and Northern Ireland.

42. Estimates of the net cost to business and Net Present Value (NPV) at a UK level are presented below. These are taken directly from the UK IA carried out by DEFRA.

43. It is assumed that all the packaging EPR options will affect the same stakeholders, including:

- Raw material manufacturers.
- Packaging designers.
- Packaging manufacturers or converters.
- Product manufacturers or pack fillers.
- Distributors.
- Retailers (food and non-food).
- Wholesalers.
- Waste management organisations; brokers; exporters.
- Reprocessors.
- Brand owners.
- Importers.
- Third sector organisations, including public interest groups.
- Scottish Government.
- Local authorities.
- Regulators.
- Consumers.

44. When calculating full net cost recovery, the value generated from sales of materials are counted as a positive income stream, and disposal costs for packaging in the residual stream as a negative. Supporting measures that require improved data on packaging materials (e.g. tonnes collected and placed on the market) and that encourage better recycling and reduced littering are also counted as costs. Management and administration costs of any compliance scheme are met by obligated businesses.

#### **4.1 No policy change – business as usual**

45. This is the baseline against which the costs and benefits of the alternative EPR scheme options are compared. The Single Use Plastics Directive has been transposed and it assumes that the Deposit Return Scheme (DRS) for Scotland is introduced in August 2023, but that there is no change in waste and recycling policy. EPR obligated producers will not be expected to pay for the costs of collecting DRS materials not returned to designated DRS collection points.
46. Owing to a small annual population decrease, a modest downward trend is expected in household (HH) and non-household municipal packaging waste.<sup>22</sup> However, it is expected that there will be a shift from harder-to-recycle to more widely-recycled packaging materials due to voluntary initiatives such as the UK Plastics pact. Please refer to the UK IA for more information.<sup>23</sup>
47. The UK IA notes that on-pack recycling labels (OPRLs) already have traction with consumers and are the most widely used labels on packaging in the UK.<sup>24</sup> It notes that all national supermarkets are members of OPRL Ltd, which reports that 7 in 10 consumers recognise and act on its labels.<sup>25</sup> Under this Option, a steady increase in the voluntary uptake of OPRL labels and other on-pack labels is assumed.

#### **4.2 Option 1. EPR scheme: reform the packaging producer responsibility system so full net costs of household packaging waste are covered by producers and introduce modulated fees on packaging and mandatory recycling labelling.**

48. This option covers household packaging and would see the requirement to pay the full net costs of managing such packaging at the post-use stage (whether placed in kerbside recycling or residual or street bins) placed on producers. It also includes the implementation of modulated fees, which is the mechanism to recover costs of post-use management from producers and reflects the costs of managing different types of packaging in order to incentivise packaging choices that lead to better circular-economy outcomes.
49. Mandatory labelling would be implemented in a manner that supports the wider approach to packaging EPR, whilst minimising additional compliance costs for businesses. The intention is to mandate UK-wide labelling of packaging to provide clear information on the recyclability of any item of packaging and to help consumers dispose of packaging waste appropriately. It is proposed that

<sup>22</sup> Packaging waste arising at public sector and commercial outlets, such as restaurants and offices.

<sup>23</sup> [Impact Assessment \(publishing.service.gov.uk\)](#) p2

<sup>24</sup> OPRL is a business-led UK labelling scheme that has been operating for over 10 years. Over 550 brands across all sectors use the label on their packaging products. The OPRL is based on what technically can be recycled as well as what is collected for recycling through local recycling services. The threshold for the widely recycled label is 75% for UK local authorities offering a collection service.

<sup>25</sup> OPRL <https://www.oprl.org.uk/about-oprl>; this is supported by surveys carried out by WRAP, which show that OPRL labels are generally better understood than other recycling symbols currently on packaging.

producers would label their packaging as 'Recycle' or 'Do Not Recycle', informed by the approved list of recyclable packaging materials/formats that would also be used to set modulated fees.

50. Labelling measures would be complemented by producer funding for local and national communications and education initiatives, to advise consumers on how to recycle and the consequences of making the wrong disposal choices. These costs would be included as part of full net cost payments.
51. This option would meet policy objectives in a limited way, as it would drive the increased recyclability of packaging and increased recycling of packaging waste, as well as reducing packaging as a component of residual waste. It is estimated to result in net costs to business of £1,201m and NPV of £12m at the UK level over ten years. Please refer to the UK IA for more details on the elements and expected effects of this option.

#### **4.3 Option 2. As Option 1 plus mandatory collection of fibre-based composite cups for recycling.**

52. This option is the same as Option 1 with the addition of mandatory reporting and take back obligations on retailers of filled disposable paper cups - replicating and building on current good practice within the industry.
53. Voluntary industry initiatives to increase the collection and recycling of paper cups have had a positive impact so far, but understandably a relatively small impact compared to levels of ambition. Indeed, in 2019 the UK fibre-based composite cup recycling rate was estimated at 2.8%.<sup>26</sup> In addition, it is difficult to quantify the impact of voluntary measures with no mandatory reporting in place.
54. It is proposed that sellers of filled disposable cups provide collection points instore or at front of shop and arrange for the collection and recycling of these cups (the requirement will likely depend on the size of the business or store). This will increase the supply of separately collected disposable cups, which in turn could make the recycling of disposable cups (and other fibre-based composite material) more financially viable.
55. Disposable paper cups (and other fibre-based composite material) require more intensive reprocessing – when the supply of fibre-based composite material is low, reprocessors are less likely to run the more costly reprocessing operations or invest in the necessary infrastructure in the first place.
56. This will give government the data necessary to monitor recycling performance

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<sup>26</sup> [Impact Assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) p15

and set future recycling targets. In turn this would inform the deployment of further measures by the sector (such as collection points at transport hubs or outside office blocks) that may be necessary to increase recycling rates to meet future targets.

57. This is the preferred option, as it adds the benefits of increased recycling of fibre-based composite cups to those set out in Option 1. It meets the policy objectives. It would result in net costs to business of £1,207m and NPV of £1m at the UK level over ten years
58. Please refer to the UK IA for more details on the elements and effects of this option.

### **Producer data reporting requirements, and monitoring and enforcement**

59. Compared to the current system, producers will be required to report data at a more granular level to inform the cost they will pay and the setting of fee rates on individual packaging types.

#### Producers in scope

60. Under the current packaging producer responsibility system, a producer is obligated to report data on the packaging it places on the market in a given year if it, or a group of companies it is part of, handles more than 50 tonnes of packaging materials and has a turnover of more than £2 million in that year.<sup>27</sup> It must buy PRNs or PERNs to demonstrate that it has met its recycling obligations. Under packaging EPR, these “large producers” will be obligated to pay fees to cover disposal costs from 2024 onwards, in addition to purchasing PRNs/PERNs; they will have to report data six-monthly rather than annually from 2023 onwards.
61. A producer below the “large producer” threshold will have to report data on the packaging it places on the market in a given year from 2024 onwards if it, or a group of companies it is part of, handles more than 25 tonnes of packaging materials and has a turnover of more than £1 million in that year. In 2023 these “small producers” are obligated to collect these data to facilitate reporting in 2024. Small producers will remain exempt from the obligation to pay fees to cover disposal costs, or purchase PRNs or PERNs, until at least 2026, at which point this will be reviewed.

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<sup>27</sup> [Packaging waste: prepare for extended producer responsibility - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/packaging-waste-prepare-for-extended-producer-responsibility)

62. Table 1 below summarises producers' obligations from 2024 onwards.

Table 1: Thresholds for data reporting requirements

Waste Cost and Recycling Obligations		Turnover		
		< £1m	£1m - £2m	> £2m
Packaging Tonnage	< 25 tonnes	No Obligation	No Obligation	No Obligation
	25 - 50 tonnes	No Obligation	Reporting Only	Reporting Only
	> 50 tonnes	No Obligation	Reporting Only	Full Obligation

63. The types of producers which will be in scope are:

- Brand owners – Businesses whose name, trademark, or other distinctive mark appears on an item of filled packaging.
- Packer/fillers – Businesses who put goods into packaging for which there is no brand owner.
- Importers – These are the producer for filled secondary or tertiary packaging they import, and for other filled packaging they import where: there is no brand owner, the brand owner is not responsible for the packaging being imported, or the brand owner is not a large producer.
- Service providers – Businesses who supply reusable packaging to a user

of that packaging where the supply is made by hiring out or lending the packaging. They are the producer for all reusable packaging the first time it is supplied.

- Distributors – Businesses who sell unfilled packaging to producers who are below the large producer obligation threshold and take on the obligation for that packaging.
- Online marketplaces – Businesses registered in the UK who operate a website through which persons based outside of the UK, other than the operator, are able to offer packaging for sale in the UK.
- Sellers – Businesses in the UK who sell any filled packaging to a consumer.

#### Data reporting obligations

64. Organisations will be required to submit separately the weight of packaging which is likely to end up in household waste streams, and the residual amount likely to end up in non-household waste streams. That is because (subject to review in 2026-27) disposal costs will only be payable in respect of household packaging. All primary packaging or shipment packaging (see definitions below) will be assumed to be household packaging unless the producer can provide evidence that the final user of the packaging was a business which did not supply the packaging to the consumer.
65. Packaging data is separated into four main types:
- Primary – Direct contact with the product sold. Constitutes a sales unit to the final user or consumer at first point of purchase.
  - Secondary – Used to group several individual sales units for selling or handling purposes.
  - Tertiary – Used to group sales units or secondary packaging units together to facilitate their transport and to protect them while being transported or handled. (But does not include road, rail, ship, and air containers.)
  - Shipment – Packaging for shipping single or multiple sales units which have been purchased online or by mail order to customers.
66. Under the new EPR regulations, producers will be required to report on these packaging types separately. For the household waste streams primary and shipment are the only categories required, whereas for non-household primary, secondary, shipment, and tertiary are the categories required.



67. Under the current system, producers report their placed-on-market data in broad terms. Packaging products are categorised into seven categories:
- Plastic
  - Paper
  - Glass
  - Aluminium
  - Steel
  - Wood
  - 'Other'
68. Reporting for 2023 will still be in these categories but once the system is more mature, producers will be required to report on material type in greater detail. While subject to change, this may include packaging dimensions, format, colour, or, for example, different types of polymers. Where a producer supplies packaging under multiple materials that would be categorised as 'other', they must report each weight separately. This will facilitate fee modulation to promote more responsible packaging design choices.
69. The current data reporting requirements provide the information necessary to assess progress on recycling targets, but they do not reflect recyclability or compatibility with waste collection infrastructure. Access to more detailed packaging data will make it easier for businesses to identify materials that are harder to recycle and make effective changes, with the potential benefit of reducing their compliance fees for making better designed packaging which is more easily recyclable.
70. Drinks containers must be reported as a separate packaging type under the new EPR regulations, but packaging that is a scheme article for the purposes of Scotland's DRS (or would be if placed on the market on or after 16 August 2023) is exempt entirely.
71. In addition to packaging waste discarded in household and non-household waste streams, data must also be submitted regarding the weight of packaging likely to end up in street bins. A full description of the range of packaging in-scope for street bin waste is available on guidance from the UK Government on producer

responsibilities for packaging waste.<sup>28</sup>

72. Obligated producers (other than brand owners) must also submit data on the tonnage of packaging in each category they have supplied (or, in the case of an importer, discarded) in each nation of the UK.

### 5.0 Scottish Firms Impact Test

73. As set out in section 2.3 above, we will supplement the extensive industry engagement we have carried out so far with additional targeted consultation with 6-12 affected businesses, representative organisations and trade associations of varying sizes and sectors on the proposed changes. The results will be published in the final BRIA. This process will help to establish:

- Any anticipated impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world.
- The number of businesses and the sectors likely to be impacted by the change.
- The likely cost or benefit to business.

### 6.0 Competition Assessment

74. This section helps to consider the impact of a regulation or policy on competition between producers, wholesalers, retailers and importers in the Scottish Market. The assessment will follow the Competition and Market Authority guidelines, which outline how to determine any competition impact.<sup>29,30</sup> These guidelines recommend considering four key questions in order to assess whether a proposed policy would have an impact on competition.

75. A first assessment was carried out in Table 22 below, but the final assessment will be informed by information gathered through the further consultation with businesses referred to above.

Table 2. Competition Assessment Questions.

<b>Will the measure directly or indirectly limit the number or range of suppliers?</b>
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No.
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<sup>28</sup> [Packaging waste: prepare for extended producer responsibility - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>29</sup> [Competition and Markets Authority \(2015\). Competition Impact Assessment.](#)

<sup>30</sup> [Office of Fair Trading \(2007\). Completing competition assessments in Impact Assessments: Guideline for Policy Makers](#)

<p><b>Will the measure limit the ability of suppliers to compete?</b></p>
<p>The fees to be paid under packaging EPR will be set UK-wide by the scheme administrator and will be set based on specific packaging formats. Producers may then make the decision to switch material and/or improve recyclability.</p> <p>The policy is intended to incentivise producers (and other market actors), through modulated fees, towards the use of packaging formats that are more compatible with circular-economy outcomes. The impact of this on producers' ability to compete will be investigated once more details about the system for fee modulation are known.</p> <p>The requirements to collect and report data and pay full net cost are tiered based on turnover and tonnage of packaging handled, as set out in section 4. That means that a business's obligations are directly linked to its size and contribution to the volume of packaging that must be managed at end of life. We consider that to be a proportionate intervention which will not limit competition.</p>
<p><b>Will the measure limit suppliers' incentives to compete vigorously?</b></p>
<p>No.</p>
<p><b>Will the measure limit the choices and information available to consumers?</b></p>
<p>No. On the contrary, one component of the reformed packaging EPR system is better consumer communication and mandatory recyclability labelling to provide a clear and concise message to the disposer. This is expected to benefit consumers in that they will be better informed on what packaging is recyclable, potentially influencing buying decisions and improving recycling rates.</p>

## 7.0 Consumer Assessment

77. It is important to consider the impact on consumers of affected packaging products. The Scottish Government definition of a consumer is "anyone who buys goods or digital content or uses goods or services either in the private or public sector, now or in the future".
78. Scottish Government Consumer and Competition Policy Unit specifies the questions below when determining the impact of proposed legislation on consumers. While a first assessment has been conducted here (see Table 33), the final assessment will be informed by further research and consultation.

Table 3. Consumer Assessment Questions.

<p><b>Does the policy affect the quality, availability or price of any goods or services in a market?</b></p>
<p>The reformed packaging EPR system will not directly affect consumers as the aim is to place responsibility for the full net costs of the collection, recycling and management of municipal packaging waste with the packaging producer.</p> <p>However in amending business models to incorporate disposal costs, producers may choose to pass on some of this cost to consumers through increasing the price of their products. This impact could potentially also vary by product type – for example, packaging which cannot be redesigned to be made easier to recycle could have a greater cost pass through impact. Any such decision would be a commercial one for industry to take, but this ‘cost pass through’ effect will be further considered for the final BRIA.</p>
<p><b>Does the policy affect the essential services market, such as energy or water?</b></p>
<p>Packaging EPR will support the effective delivery of waste collection services (specifically packaging waste) by local authorities by creating a new source of funding for these activities and incentivising local authorities to delivery efficient and effective services. We have engaged, and will continue to engage, with local authorities, waste-management companies, and other key stakeholders as they adjust their services to prepare for the introduction of packaging EPR.</p>
<p><b>Does the policy involve storage or increased use of consumer data?</b></p>
<p>No.</p>
<p><b>Does the policy increase opportunities for unscrupulous suppliers to target consumers?</b></p>
<p>No. Effective regulation should minimise the risk of suppliers placing packaging on the Scottish market without paying the legally required scheme fees; such behaviour would not affect consumers. In fact, increased transparency means that the likelihood of this happening is lower than in the current system.</p>
<p><b>Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?</b></p>
<p>Yes, positively. One component of the reformed packaging EPR system is better consumer communication and mandatory recyclability labelling to provide a clear and concise message to the disposer. This is expected to benefit consumers in that they would be better informed on what packaging is recyclable, potentially influencing buying decisions and improving recycling rates.</p>
<p><b>Does the policy affect routes for consumers to seek advice or raise</b></p>

<b>complaints on consumer issues?</b>
No.

### **8.0 Test run of business forms**

79. Producers will be required to submit up to 57 types of data, each split by 8 material types (456 fields) to inform future packaging obligations. This is an increase from 117 fields under the existing producer responsibility scheme.
80. Producers will be required to submit up to a further 136 fields on self-managed waste, and up 1,280 fields on the nation of disposal for packaging supplied. Where producers of packaging use large quantities of materials classified as “other”, these figures may be higher.
81. It is important to note that consultation with affected businesses indicates that it is likely only a small subset of these fields will be required by any individual organisation. For example, an organisation that operates in Scotland only will be required to provide a maximum of 320 fields on the nation of disposal for packaging.
82. This data will be submitted via a file upload. Organisations will be able to utilise a template provided by government or to develop their own, using a provided data specification.
83. Defra has been leading development of the digital system on behalf of the four administrations. Both the template and the data specification have been tested with organisations involved in submitting data in the current regime, and packaging data experts in industry. The feedback provided indicates this option is adequate to enable compliance with the requirements imposed under these regulations.

### **9.0 Digital Impact Test**

84. Changes to policy, regulation or legislation can often have unintended consequences, should government fail to consider advances in technology and the impact this may have on future delivery. This digital impact test is a consideration of whether the changes being made can still be applied effectively should business/government processes change – such as services moving online. Table 44 below details the evaluation of the proposed market restrictions on current and future digital developments. Overall, it is considered that the proposed legislation will have a positive impact on capacity for digital technology developments, as a new digital reporting system will be developed and this will be required to meet UK government standards of digital service delivery.
85. In addition to the questions below, it should also be noted that the reform of the packaging EPR scheme will require new IT systems to facilitate the running of this scheme. As outlined in the UK IA, this will include carrying out functions such

as tracking the packaging placed on the market, charging producers, making the necessary payments from scheme administrators to stakeholders that are eligible for payments for managing packaging waste and aiding producers in understanding their regulatory obligations depending on their business size.

Table 4. Digital Impact Test Questionnaire.

<p><b>Question 1. Does the measure take account of changing digital technologies and markets?</b></p>
<p>Compliance with the regulations will be supported via a digital service. The existing producer responsibility regime uses a legacy digital service that is being replaced and will be decommissioned. The new service is being delivered to current standards and technology.</p>
<p><b>Question 2. Will the measure be applicable in a digital/online context?</b></p>
<p>The reporting requirements apply equally to all obligated producers of affected packaging sold on the Scottish market, regardless of whether this packaging is sold digitally or through traditional offline channels.</p> <p>As set out in the answer to question 1, the reporting will be via a new digital service allowing businesses to upload their data.</p>
<p><b>Question 3. Is there a possibility the measures could be circumvented by digital/online transactions?</b></p>
<p>Packaging is placed on the market through online sales as well as through traditional retail sales, so the regulations have been developed so as to ensure that both types of sale are captured.</p> <p>In particular, the regulations will place data collection and reporting obligations on operators of online marketplaces, who do not have obligations under the existing packaging producer responsibility scheme—this will bring them into line with other businesses ensuring a level playing field.</p>
<p><b>Question 4. Alternatively, will the measure only be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?</b></p>
<p>Research conducted with obligated organisations (by Defra who are developing the digital service on behalf of the four administrations) indicates an above average level of digital confidence for users of the new service.</p> <p>To support those who may not have the requisite level of digital skill, the service will provide an assisted digital option. Tasks have been identified where support may be required, for example in completing an online form. The delivered service will provide capabilities for SEPA to support</p>

	<p>obligated organisations through these tasks in the service as required, for example by providing offline documentation or through direct conversations to assist users in submitting packaging data.</p>	
	<p><b>Question 5. If the measure can be applied in an offline and online environment will this in itself have any adverse impact on incumbent operators?</b></p>	
	<p>No.</p>	
<p><b>10.0 Legal Aid Impact Test</b></p> <p>86. No impact on Legal Aid is expected, but this will be tested with the Scottish Government’s Access to Justice Team as we develop the final BRIA.</p>		
<p><b>11.0 Enforcement, sanctions and monitoring</b></p> <p>87. As set out in section 4, packaging EPR will see more producers brought in scope and a wider range of data reported. This means regulators will have to carry out additional compliance, monitoring and enforcement duties.</p> <p>88. If organisations do not uphold their new obligations in line with the packaging EPR regulations, enforcement action will be taken with the possibility of sanctions including monetary fines. SEPA will have the option of pursuing a criminal conviction or imposing civil sanctions that are being set in legislation through the enforcement order in line with the approach taken to similar schemes such as DRS.</p>		
<p><b>12.0 Implementation and delivery plan</b></p> <p>89. The two Scottish Statutory Instruments to which this partial BRIA applies are being laid before the Scottish Parliament on 19 January 2023. Subject to Parliamentary procedure, the data regulations will come into force on 28 February 2023 and the enforcement order on 23 March 2023.<sup>31</sup> The requirement to collect and report data created by these instruments will support delivery of packaging EPR from 2024.</p>		
<p><b>13.0 Summary and recommendation</b></p> <p>90. Extended producer responsibility (EPR) is a well-established principle adopted by many countries around the world, across a broad range of products and materials. It places responsibility on producers for the cost of managing their products once they reach end of life and gives producers an incentive to design their products to make it easier for them to be re-used or dismantled and</p>		

<sup>31</sup> The data regulations are made under the negative procedure so come into force unless Parliament votes to annul them. The enforcement order is made under the affirmative procedure so requires Parliament’s approval to come into force.

recycled at end of their life.

91. A system of producer responsibility for packaging has been in place since 1997 in the UK. This has helped to significantly increase the recycling of packaging waste and helped meet the UK's and EU's packaging waste recycling targets. However the current system is unable to meet full net packaging disposal costs and a reformed system is required.
92. Along with the other UK Administrations, the Scottish Government is proceeding on the basis of Option 2 (see section 4 above) and laying these two instruments will support effective delivery of this option.

#### **14.0 Declaration and publication**

93. I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed: Lorna Slater**

**Date: 17 January 2023**

**Minister's name: Lorna Slater**

**Minister's title: Minister for Green Skills, Circular Economy and Biodiversity**

**Scottish Government Contact point: Charles Holmes**