

Extended Producer Responsibility (EPR) for packaging in the UK consultation: response from the Advisory Committee on Packaging (ACP)

- A. In general terms we laud all the governments for their ambition and are sympathetic to the difficulties imposed by Covid in co-ordination terms. However, we think **not offering at least 12 weeks to the public on such significant consultations** and not being in alignment with respect to the Consistent Collections consultation **have posed difficulties for many**. It has been appreciated that changes being consulted on involve costs of about £25bn and are not insubstantial. In addition, differences between the four jurisdictions, eg, Wales wanting an all-in deposit return scheme (DRS), without clear justification mentioned, and Scotland on the verge of starting its own DRS, have also introduced complexity for businesses and organisations that operate in more than one jurisdiction. A further complication is the number of options proposed in each consultation; the possible permutations and combinations can confuse even the strong-hearted. Many businesses and retailers operate across the UK with a roughly uniform approach to gain scale economies and enable low prices but the different options on offer involve careful consideration.
- B. We are struck that all the consultations broadly **miss the opportunity to involve citizens** or to highlight the important role they have in any reforms and waste reduction and increased recycling. Specific opportunities lay, eg, in understanding their priorities in classification of materials and packaging with regard to modulation, the link between net cost to local authorities and council-tax/rates, practicality of collection methods, **contribution to litter and its reduction**, and inclination to pay increased costs at least in the short term, albeit through taxes or government borrowing.
- C. We also believe that the current **Packaging Regulations**, although 25 years old, **work reasonably well** and have stood the test of time. One approach would have been to optimise wherever gaps were noticed. Payment of local authorities for net cost of collections is clearly a ground for complaint. A slightly less volatile operation of Packaging Recovery Note markets might be another. On the other hand the present system has the merit of involvement by most parts of the industry, local authorities and consumers and generates reasonably good value because of choice and competition dictated by markets everywhere. **Replacing these markets by a monopoly scheme administrator is of questionable value**. On the other hand we acknowledge that recycling rates of some materials might be said to have plateaued and requiring a major reform such as EPR. At the same time lessons could be learnt from materials with relatively high recycling rates such as glass and aluminium.
- D. We are not sure if the impact assessment captures all the sunk costs in these competitive markets such as Packaging Recovery Notes (PRN) marketplaces as well as benefits and positive incentives involved in markets such as local authorities negotiating with citizens for council tax/rates and with collectors, sorters and reprocessors for prices. In addition, the net benefit of a new EPR should be seen only in increased recycling rates that would not occur with previous regulations and increased material replacement to less carbon dioxide-intensive materials that otherwise would not have occurred. **The fact is that £17bn is a very large cost to the economy and even if all forecast benefits are achieved in the short term producers will have substantial adjustments to make and prices to consumers are likely to increase**.
- E. The polluter-pays principle is seductive but in effect it would move from producers paying about 75% of costs through PRNs today, since the big retailers in the UK are also producers, to 100%. Against that positive incentives for recycling to four classes of entity including raw material

producers and converters would revert to just one. Lastly, not allocating costs explicitly to the public, some of whom could be seen as polluters, is problematic. As also is the present position, whereby short-term inflationary pressures as producers inevitably reflect their costs in prices, is not acknowledged clearly. Or that **the public** are not clearly being told that what they see as the main reason for **council-tax/rates** is going to move to producers and if they **should be compensated by reductions** in those at all.

- F. Wood is the most sustainable of all the materials considered by government to be packaging (eg, plastic, aluminium). Inclusion of wood, mainly wooden pallets and packing cases, in packaging is an oddity. These are used for transporting goods (in BS ISO 445 a pallet is defined as “a horizontal platform of minimum height compatible with handling by pallet trucks, and/or forklift trucks and other appropriate handling equipment, used as a base for assembling, storing, handling and *transporting goods* and loads in factories, warehouses etc”) including packaging. There is no such thing as a “single-trip” pallet; they are repairable, reusable and ultimately recyclable. The volume of wooden packaging placed on the market is relatively small. **We recommend that wooden pallet and packing cases and crates should not be classified as packaging at all.** Wood’s reuse or recycling is a worthwhile endeavour and those could be separately measured, administered and incentivised. The likes of wooden wine boxes and corner pieces in fruit boxes should be included as these are examples of when wood will potentially appear in household waste.
- G. **Modulated fee should give premiums** as follows: reduce, reuse/refill, replace, recycle. However, better data on and understanding of reduction of packaging, reuse and refilling, and replacement of more carbon dioxide-intensive packaging by less is necessary before EPR applies. We also suggest that carbon dioxide intensity should be measured over the whole lifecycle of packaging and product contents together. We recommend **recycling** being the definer in stage 1 and other attributes coming on in stage 2.
- H. PRNs including for export were a great market innovation as choice, competition and markets are good for the public and the economy. While some concern had been raised some times about prices related to some recycled material, **retaining PRNs in some form** including concerning some other part of the supply and distribution chains, so that the consumer gains from markets and competition, should be studied. Even with full implementation of EPR as drafted, since recycling targets would remain PRNs could be used to verify their achievement – albeit their prices would be much lower since local authority net costs would have been extracted out already – and instead of a centralised scheme administrator verifying PRNs could be used to verify and obtain modulated fees based on producers’ placing of packaging on the market.
- I. The timetable for implementation by a scheme administrator is too ambitious. We suggest appointment by January 1st 2023 and **implementation from January 1st 2024.**
- J. Many claim that **commercial and industrial waste** systems work well as presently. (On the other hand government data on recycling indicate the need to increase recycling rates.) These are quite complex and in many cases involve small and medium sized operators. These **should not be brought within the purview of EPR in the beginning** but a more detailed analysis should be conducted for a revised policy. At most separation of household-like packaging from business waste streams should be attempted and value of that ascribed to producers under EPR.

- K. The modulated fee system should be linked to agreed labelling by the producer and that and its data should be subject to audit to ensure consistency. Without a link to labelling each producer could be using their own definition to qualify under modulation categories leading to the potential for disputes or lower quality. By and large we favour annual classification systems into class A, B and C packaging where modulated fees are legislated annually based on recycling content and other compliance with the waste hierarchy by the producer. Similarly, we recommend local authorities are classified into class I, II and III annually based on collection area and number of collection points and average cost incurred on collection (the former being in positive relationship and the latter inverse). More sophisticated systems will reduce credibility with the public and organisations alike.
- L. Consistency in kerbside collections by local authorities can greatly aid EPR. This would include, eg, flexible plastics being separated from paper, so that the quality of recyclate is maintained. Local authorities should be allowed to use Technical, Environmental, Economic and Practicability (TEEP) reasons for non-separation only in the most exceptional circumstances. Changes to the Duty of Care (DoC) proposals are necessary to help ensure that the public and businesses do the right thing and take responsibility for the materials they choose to discard. The introduction of digital waste tracking is considered essential to facilitate the tracking of waste that prevents fraud and crime and also empowers the granularity required by DoC.
- M. The polluter-pays principle is not easy to apply in the case of **litter given consumers' complicity**. Costs of litter before EPR starts should be clarified and not be apportioned into the new system. We recommend better data collection and understanding and sharing of litter costs between producers, retailers and local authorities while consumer habits are improved through an information campaign. The assumed cost allocation on to producers for litter thus should be refined and shared on agreement between the three entities.
- N. We recommend that markets with compliance schemes be allowed to continue and producers have the choice to enrol with any. Similarly, we recommend that each jurisdiction has at least one scheme administrator. That would **give the choice of four administrators** to producers to enrol with introducing efficiency incentives as opposed to a monopoly. That would introduce the complication of how net costs are paid to local authorities in a different jurisdiction but that could be agreed between scheme administrators and local authorities reasonably amicably. In addition, we suggest that each scheme administrator be a new company formed by industry associations so that private-sector efficiency cultures are maximised but requiring power to be vested in a board directed by government through appointees from a public appointment system. We also recommend that each scheme administrator invest in a subsidiary that concentrates on data, research and technology uses. Clear auditing requirements should be imposed on all nominated regulators.
- O. We are not sure that the three proposed systems of household-like payments and system management (options 1, 2 and 3) work well:
- Option 1 – some members liked the similarity to the municipal scheme but were concerned with the amount of work demanded of the scheme administrator and concerns were raised with regard to the complexity of data and payment distribution.
 - Option 2 – some members liked the inclusion of compliance schemes in managing the materials after the first points of consolidation but again concerns were raised on complexity, on having different material ownership change points to those in the municipal streams and the vertical integration of some of the supply chains.

- Option 3 – some members were concerned that ‘free’ bins may well not be free if the waste producers puts non obligated items or contamination in the bin, how the proposals would meet the requirements of the consistency stream collection default without usurping TEEP protocols and, as with the other schemes, the overall complexity of the proposals.

Towards the end of the consultation period Defra introduced option 4, which was a blend of zoned collections for small and micro businesses and a form of standard support for the remainder. Although little time was given to assess this option, some in the ACP favoured the separate management of micro businesses into zones and the management of those contracts by local authorities. Others were concerned with the time it would take to establish and contract zones for collection. Similar concerns with regard to free bins were also raised and were similar to those in option 3. Further, given that option 4 had not been subject to an impact study, some members were unclear of the status in the consultation process of this option.

Answers to specific questions in the consultation document:

Section 4:

6. Framework for setting packaging targets: Targets for recycling should be set UK-wide, for each jurisdiction if necessary. Rather than any scheme administrator we suggest putting the responsibility of meeting them on producers either by buying PRNs or by a verifiable reporting system into a central location. Glass re-melt targets should be retained and a total recycled with a share to be recycled in the UK introduced so that export of materials such as plastic is discouraged.

7. Business packaging waste recycling targets roll-over: Disagree. The ACP are keen that the pressure on increasing recycling is maintained. A roll-over in principle does not achieve this, even with the expected reduction in materials contribution from the Scottish DRS introduction. However, without the detail of what the net impact on the system of the Scottish DRS, it is not possible to easily calculate what the new targets should be.

17. Closed-loop recycling target for plastic: This should only be considered after the impact of the Plastic Tax and other measures has been evaluated, say, around 2025. Alternatively, great care needs to be taken that the two elements work in unison but still fairly treat plastics when compared with other materials.

18. Materials suitable for closed-loop targets: A closed loop simplifies the complex flows of packaging material in a circular economy. Plastic is possibly the only material that could gain from this approach. However, this may refer to the closed-loop definition needing refinement such that it can also include recycled or upcycled products with equal secondary resource value and seeks to differentiate against premature downcycle options.

104. Modulated fees for reuse and refill: Reuse and refill are positive concepts but need detailed thinking on practical implementation. **We suggest going with recyclability as stage one** and then reduce/reuse/refill/replace in stage two. There are already significant benefits from reuse as modulated fees are only paid when a reusable item is first placed on the market and its subsequent reuse within the system generates a market advantage over single-use which pay modulated fees each time.

Section 5:

21. Capturing all packaging and protecting small businesses: ACP opinion is split between a

combination of option 2 and 3 or option 3 on its own being recommended. The suggestion for a combination of option 2 and 3 was made since distributors are captured specifically and compliance schemes can cater for smaller businesses.

22. Reduce de minimis threshold if option 2 or 3: Yes, **the de minimis should be lowered** to capture more packaging.

27. Allocation method: Agree, this should be removed. Although the current allocation method reduces the financial and administrative burden on producers that are slightly above the current de minimis, the benefits are not large enough. Data derived from the system is significantly poorer as a consequence of the allocation method. The common view is that the concept of EPR is to ensure that producers are directly responsible for the amount and type of packaging they place on the market, so an allocation method is counter to this. The proposed options for the de minimis in the consultation should ensure small producers are not overly burdened, whilst ensuring that all packaging is captured and accurately recorded in the system.

Section 7:

30. Fair and effective modulated fees: Yes. We believe the proposed strategic framework is not overly prescriptive, and allows for flexibility in the modulation and modulation criteria. This is essential for changes in the packaging market and recycling technologies in the future. It also rightly gives much of the decision-making responsibility for this subject to the scheme administrator, who will be best placed to oversee this system. We suggest that the approach to fee modulation implemented takes account of the work currently being coordinated by WRAP and is rolled out in a phased way, starting relatively simply and becoming more granular, where necessary, as experience and data become available. Businesses should be given visibility of what the system will look like as soon as possible to ensure there is adequate time to prepare for its introduction. It will be important to get this system right and ensure it is future-proofed and **consistent with the EU**, rather than UK-specific, as systems are standard and aligned. The approach should be harmonised with any EPR policy developments at the EU level.

34. Timescales for labelling: No. These are ambitious. Producers need at least two years' notice to work to new labels and thus these should be made more realistic.

40. Consequences of approach to compostables and bio-degradables: Given the changes in the Consistency in Collections (CiC) proposals and the requirement for mandatory weekly food waste it is likely that compostable treatment solutions in in-vessel composting or dry anaerobic digestion (AD) will be limited as the proposals favour wet AD. Compostable packaging cannot be treated in anaerobic treatment systems. As such, based on the CiC's direction compostable packaging will have limited options for treatment and should be labelled as non-recyclable. It should have a high modulation fee to support the cost of residual treatment. Bio-degradable plastic should have a mandatory label: "Do not recycle. Place in food waste or residual bin".

Section 8:

41. What are necessary costs: The ACP is split on this with some agreeing and some disagreeing. Greater detail is necessary so that packaging producers do not pay for other waste collected or included in litter. We have some concerns that the definitions and boundaries of costs as outlined are very open, particularly for the **costs of litter management which need to be much more clearly defined**.

42. Payments based on good practice, benchmarks etc: Agree. Local authorities should annually be assessed for payment with amendments for those operating with cost profiles outside acceptable zones within their defined groupings.

43. Pay net of material price realised: Agree, **collection authorities should retain the incentive to realise money for material** given for sorting and recycling from the market. Concerns were raised with regard to appropriate and reliable indices for the scheme administrator to use for commodity reference prices. Care should also be taken that recycling credits between two-tier local authorities do not undermine the responsibility of collection authorities to achieve quantity and quality targets.

44. Incentives for quality and performance: Agree, collection authorities should receive incentive payments but the methodology should be published annually so that each authority could try to emulate or question the fairness of the methodology. Care should be taken that base payments are against good standards and any incentives should only be payable if performance exceeds those.

45: Give time to local authorities before incentives apply: Disagree, local authorities have not been stopped from being efficient even before EPR starts, although care needs to be taken that appropriate time for transition is allowed for those materials not required to be collected on day one.

46: Guarantee minimum payment regardless of performance: Agree, it seems to make sense that a local authority is paid a minimum fee, especially if it shows **evidence of council-tax/rates reduction** in response to EPR.

47: Incentives for exceeding recycling benchmark: Disagree, if local authorities benefit from sales of the additional materials collected. Agree, if the scheme administrator applies the commodity reference price to materials collected in excess of targets as the local authority will then only benefit from additional sales if it sells at a higher price than the reference.

48: Unallocated payments to some authorities for improvement: Disagree, there should be a simple framework for payments to authorities that is transparent and incentivises them in a fair manner, rather than discretionary payments.

49: Residual payments based on waste composition: Disagree, we recommend authorities are instead either paid based on their own composition data and costs. As compositions will vary by authority and costs for residual waste treatment can vary by more than £50/T it is not possible to define group payments that would allow simple categorisation. Further, the system of obligated packaging in residual waste payments to authorities should be constructed such that this payment does not undermine better recycling.

50: In England should two-tier authorities get paid direct: Agree, there is no benefit in having intermediaries. However, clear linkages in cost and efficiency should be established such that comparisons to unitary and/or partnerships can be established.

51: Producers should be responsible for waste: The ACP is split on this point and recommends **greater study of business waste costs** before a reformed policy comes in. Some say that polluter-pays is a seductive principle and could be reasonable for household waste since costs have been understood for some time. For business waste, however, costs as shown have significantly increased

and this needs to be evaluated over time and compliance schemes allowed to continue with their roles. Others say that producer responsibility is for all packaging placed on the market and not just that placed in bins by households. Business waste costs can be estimated per ton and the cost of delivering services estimated such that payments are between 80-100% of the total cost. Unless business household-like collections are included to support business waste services it is unlikely that government's expectations for the necessary recycling increase from businesses (~35% to ~75%) will be delivered. There was general agreement that commercial and industrial packaging (not household-like) should not be supported financially but the offset proposals may deliver an acceptable outcome.

52: Commercial and industrial packaging in scope: It is necessary to manage and account for commercial and industrial packaging but opinions are split in the ACP as to whether they should be included or not. Present systems work well and should be allowed to continue whereby better data is collected about cost and need and as such **the inclusion of commercial packaging (non-household-like) should be delayed**. Offset proposals have some potential.

53: Best approach: The ACP agree that none of the three systems proposed are sufficiently developed to prove acceptable. The ACP is split on whether business (household-like) systems should be allowed to continue or they need final support from the EPR system to deliver the increases in recycling required to meet the targets. Further complications arise between waste discarded at home and at work and between household, trade waste and private waste collections. Any system introduced should build on the current system which manages competition well. A system setting standards could promote or constrain efficiency; a 'free bin' approach could lead to contamination and is unlikely to ever be 'free' as the waste producer will need to pay for both non-obligated waste and contamination. Under zoning an exclusive operator could increase prices for other services and undermine local competition and the time and effort in setting up and letting contracts could delay implementation. Under zoning with a free bin, the commentary made earlier on free bins would also apply. 'A free' bin under option 3 or the new draft 4 would also risk undermining 4 stream collections and TEEP or lead to excessive kerbside bins.

55: No PRNs for a particular period: Yes. PRNs should continue until a new system begins. Any gap would lead to disruption in recycling markets and effect on prices paid by and to reprocessors. Even after the start of EPR data on recycling needs to be ensured. Members consider that the current calendar year accounting period should continue under the new EPR system, thereby simplifying transition and reporting which would become excessively complicated if during the transition period different accounting periods were applied. The transition between the current PRN system and the new one needs to be carefully planned with the sectors' input.

56: Sampling regime: Agree, it is essential that the correct data for what is being collected by different parties is established and material recovery facility testing is the only reliable manner of establishing such data systems.

57: First Point of Consolidation (FPoC) being responsible for sampling and reporting: Agree, it is essential that collection flows are measured and tested when first dropped to the ground. For some single stream and small FPoCs, it may be acceptable for the operator to delegate to the next point in the chain where there is not the risk of stream mixing but where testing can be done and cost-efficiencies may arise.

58: MRF de minimis: Disagree, we think that the answer to Q57 can provide adequate accommodation for small single stream facilities and others' need to comply with the requirements, else it undermines the systems of performance and standards.

60: 6-12 months to establish MRF testing: Agree, we think this is a workable timeline subject to clarity on the frequency, intensity and granularity of testing required.

67: Payments based on last year's data: Yes, this seems most practical as current data needs to be verified over some time.

Section 9:

68. Costs of litter to producers based on content in litter stream: Agree. Polluter-pay is seductive but consumers litter. Proportional payment is justified but should be **shared between producers, retailers and local authorities**. Much better data for litter and consumer engagement are necessary. Allocation of costs of litter put into outdoor-bins is more easily agreeable, eg.

70. Producers to pay for litter prevention on other land: Disagree, we believe this goes beyond the polluter-pay principle and the responsibility of landowners and people who litter.

71. Link local authority litter payments to data: Agree. Payments can only be based on data and data integrity sufficient to support £200m of payments.

72. Link payments to local cleanliness standards: Agree. This is a good principle but should be established prior to the start of payments but will need to be applied after some time so that data quality had been verified. Cleanliness standards do affect litter inversely but so does the outdoor population and an allowance needs to be made for that in the formula.

73. Management of producer obligations: Agree.

74. Which governance and administrative option do we prefer: The ACP has not achieved consensus on this point.

Section 10:

78. Timeline for scheme administrator: The ACP has not achieved consensus on this point. Some think the scheme administrator appointment should be speeded up whereas others consider the new system should not start on January 1st 2024.

79. Scheme administrator appointed January 2023, payments from October 2023: Disagree. This seems very difficult. At least one year before payments seems necessary.

81. Fit and proper tests for compliance schemes: Agree. Compliance schemes should be subject to a fit-and-proper test to ensure standards of operation and performance match responsibilities.

Section 11:

84. Reprocessors and exporters to register with a regulator: Agree. A registration system has to tie in with enforcement and incentives. The present registration system works well providing incentives for recycling. Unless enforcement and incentive mechanisms are tied in the registration system and sufficiently funded the system will not work.

85. Reprocessors and exporters to report on quantity and quality of waste: Agree.

88. Evidence of exported waste being processed by an overseas re-processor: Agree. It is essential that a UK statutory responsible partner contracts to receive the necessary reprocessor data such that can be reported into the UK system.

Section 14:

96. Scheme administrator's work for payments in 2023: Work described seems reasonable but payments should be required at least 12 months after appointment.

97. Phased implementation of EPR beginning in 2023: We suggest instead implementation from January 1st 2024 if the scheme administrator is appointed in accordance with the schedule proposed or the schedule of appointment needs to be pulled forward to give a 12-month period to establish necessary systems for payment.

98. Phased implementation with partial recovery of costs or full implementation with full recovery: We recommend the latter.

99. Data reporting: The proposal to have three different reporting requirements during the transition phase would place a significant burden on producers. We recommend that producers do not have mandatory reporting requirements in 2022 under a new single point of compliance and in advance of full reporting requirements. Furthermore, given the ACP recommends that EPR payments do not commence until 1st January 2024 (see q97), this specific information would not be required to make payments to local authorities. However, some producers may wish to understand the impending requirements placed on them, which could be encouraged on a voluntary basis. Statutory reporting requirements should continue under the current definitions until 31st December 2022, with new reporting requirements, including information required to ascertain fee modulation, starting on 1st January 2023, at which time producers would no longer need to make assessments under the current system of "shared responsibility". Producers would still be expected to report 2022 data in the first quarter of 2023 to ensure the functioning of the final year of the PRN system.