

Submission from Green Alliance on the draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 and response by the Department for Environment, Food and Rural Affairs (Defra)

We welcome the opportunity to comment on Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024.

We strongly support the reform of producer responsibility obligations in the UK and commend the government and devolved administrations for the work that has gone into developing this extensive piece of legislation.

This reform is urgently needed as the new system aims to make producers financially responsible for the lifecycle impacts of their goods. This approach is fairer than the system that it is replacing, where councils and, ultimately, taxpayers bear most of the costs. Although there has been considerable fluctuation in recent years, UK packaging producers have historically only been responsible for around ten per cent of the costs of disposing of or recycling their products. The move to ensure they cover 100 per cent of costs is therefore welcome.

However, 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 improve the efficacy of systems for reuse.

Most extended producer responsibility schemes have focused on recycling and waste management fees, although in recent years, the European Union has sought to introduce 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 targets for packaging in the UK set out in this legislation are only for recycling. **We therefore suggest it would be helpful for the committee to ask the department:**

1. how it intends to deliver against the regulation’s 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
2. whether targets for these should be included in future?

Defra’s response

1. *With regards to Part 5, chapter 3, 64. (6), when considered alongside 64.(7) this provides a broad remit for the Scheme Administrator to modulate producer fees to account for a range of factors beyond the recyclability of the packaging, including reuse and reduction. This provides a flexible policy lever to drive the desired environmental outcomes in Schedule 7, 2. (c), (e) & (f).*

As pEPR producer fees are charged according to the weight of packaging a producer supplies, this incentivises obligated businesses to reduce the amount of packaging they use as a means to lower their fees.

Under the regulations the use of reusable packaging is also incentivised through two other mechanisms. Through the scheme producers will only be required to report and pay disposal cost fees for household packaging the first time it is placed on the market. Additionally, at the end of life reusable/refillable household packaging can be offset against household disposal cost fees if it is collected from consumers and sent for recycling by the producer.

2. The initial focus under the Extended Producer Responsibility scheme for packaging is on increasing the recycling of packaging whilst signalling our desire for the use of more reusable and refillable packaging. The Circular Economy Taskforce is expected to explore future policy options to further promote the adoption of reusable and refillable packaging.

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 we support the idea that the legislation is therefore aiming to increase the uptake of reusable systems, we would caution that it is not yet clear such systems will automatically deliver environmental benefits. Reusable packaging often is heavier and more material intense than single use varieties, so it is possible that systems of reuse that do not operate as intended could accidentally increase the amount of packaging material used. This is why we believe it is crucial that the overarching system is guided by the need to reduce material use and its impacts (including through targets), but we do not believe this is reflected in the legislation as it stands.

We believe the effective implementation of this legislation will rely on adequate monitoring and enforcement and draw attention also to the issue of enforcement and note the strong possibility that Defra's budget could be cut. We would be concerned if this affected arm's length bodies and the ability of the Environment Agency to deliver the necessary enforcement in the UK. We note that when the National Audit Office last examined the packaging recycling system in England in 2018, it found that the Environment Agency was carrying out only 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. **It would be helpful for the committee to ask the department for reassurance that the new system will benefit from adequate monitoring and enforcement activity and resourcing.**

Defra's response

As is currently the case, the monitoring and enforcement activity for producer responsibility regime by the regulators will be funded by the associated charges in the Regulations, for example for registration and accreditation. The charges operate on a cost-recovery basis.

Charges in the Regulations have been increased from the 2007 Regulations to reflect the new duties placed on the regulators and the increased level of monitoring and audit activities.

28 & 30 October 2024

Submission from Wildlife and Countryside Link on the draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 and response by the Department for Environment, Food and Rural

Whilst Link is in principle very supportive of the regulations, there are a number of points where the explanatory material laid in support provides insufficient information about intended implementation. There is a risk that the Regulations could imperfectly achieve their policy objectives

- i) The Regulations include the principle that producers are able to offset fees for packaging that they produce where they collect and recycle packaging themselves (Regulation 62). We are concerned that producers could claim that 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.¹ We would therefore be grateful if the committee could ask the department:
 - **In regard to Regulation 62, paragraph (2)(b) what evidence it intends to require from producers to prove that any packaging waste they have collected has been recycled in order to justify a reduction in their fee obligations?**

Defra's response: In relation to the requirement for producers to evidence that relevant packaging waste has been recycled (Regulation 34(3)), the Environment Agency would not usually stipulate specific documents but would provide examples and principles acknowledging every producer is different therefore may have access to different evidence. A producer could obtain written confirmation from their reprocessor outlining what % of the materials that were collected and sent for recycling was actually recycled; this would need to outline the reprocessor's method of determining this value and we could expect the producer to have a documented process in place for validating this data.

- ii) We fully support the possibility introduced by the Regulations to “modulate” fees (that is, increase or decrease the fees) based on how “environmentally sustainable” the packaging is (Regulation 64). However, it is not clear from the regulations and the material laid in support when policy will be brought forward to facilitate this modulation of fees. Currently the government has only proposed to modulate fees based on how recyclable packaging is.² We would therefore be grateful if the committee could ask the department:
 - **When it intends to publish criteria for modulating household packaging waste disposal fees on the basis of the factors set out in Regulation 64, paragraph (7)?**

¹ <https://eia-international.org/wp-content/uploads/EIA-UK-2024-The-Hard-Truth-About-Soft-Plastic-Summary.pdf>

² <https://www.gov.uk/guidance/extended-producer-responsibility-for-packaging-who-is-affected-and-what-to-do#information-about-fees>

Defra's response: Schedule 7, Paragraph 8 (7)(a) obligates the Scheme Administrator to publish a statement of the policy with regards to modulation of fees as soon as practicable after it has been appointed. Our current working assumption is that that will be early in 2025 and development of the statement is already underway.

iii) We welcome the inclusion of the requirement (under Schedule 4, paragraph 10) for producers to report how much packaging they supply which consists of commonly binned or littered items. If this data shows producers are not reducing supply of commonly binned and littered items, it is important there is a mechanism available, as part of the modulation of fees, to incentivise producers to reduce supply of these items. We would therefore be grateful if the committee could ask the department:

- **Whether it intends to use the powers under Regulation 64 to modulate fees on commonly binned and littered items to incentivise reductions in the supply of these items?**

Defra's response: We are currently considering future amendments to incorporate the disposal costs of commonly binned or littered packaging items into pEPR. The intention is that this will further incentivise producers to reduce packaging material input and help address the environmental harm of littered waste. This policy is still in development and therefore the decision on whether it will require the use of powers under Regulation 64 to modulate fees is outstanding.

Link supports the submission to SLSC on these regulations from Green Alliance, highlighting the missed opportunity to drive overall resource consumption reduction and reuse.

31 October & 1 November 2024