EXPLANATORY MEMORANDUM TO

THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING AND PACKAGING WASTE) (AMENDMENT) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Mary Creagh CBE MP, Parliamentary Under-Secretary of State at the Department of Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Emma Bourne OBE, Director for Circular Economy at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Dexter Davis at the Department for Environment, Food and Rural Affairs: email: packaging@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations amend The Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 ("the pEPR Regulations"). The pEPR Regulations impose an obligation on businesses which supply packaging or packaged goods (referred to as producers) to pay the costs of dealing with household packaging waste and of the provision of public information about the disposal of packaging waste. In doing so, they shift the costs of managing household packaging waste from taxpayers and local authorities to those businesses who use and supply the packaging (applying the 'polluter pays' principle). They also place obligations on producers to ensure that a proportion of the packaging they supply by material type (card, glass, plastic, metal, etc) is recycled and to provide evidence of recycling to the regulator.

4.2 The amendments in these Regulations are required to enable the appointment of a producer responsibility organisation (PRO), supporting closer producer involvement in the pEPR scheme. The amendments in these Regulations also enable producers to deduct tonnage of recycled food grade plastics packaging waste from their pEPR obligations, where they have collected it directly from consumers and sent it for reprocessing in a closed loop recycling system where it is turned back into food grade recyclate. The amendments also improve the operational efficiency of the scheme and provide greater clarity to producers on where obligations sit. This includes resolving potential loopholes and removing ambiguity, improving the approach to local

authority costs modelling, and removing barriers to compliance and enforcement, including updating regulator charges for the reasons outlined in paragraph 10.1 below.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales, Northern Ireland and Scotland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, Northern Ireland and Scotland.

5. Policy Context

What is being done and why?

5.1 As the pEPR scheme has progressed into delivery, the four nations have worked closely with all stakeholders impacted by the pEPR Regulations. The amendments in these Regulations are being introduced in order to address concerns raised by producers and stakeholders, improve the operability of the scheme, and align with international best practices. They aim to ensure the Regulations are fair and effective in delivering the intended environmental outcomes.

5.2 The amendments in these Regulations include provisions to enable the appointment of a producer responsibility organisation (PRO) from 2026. In October 2024, ministers from the four nations wrote an open letter confirming their commitment to greater producer and industry leadership, including the appointment of a PRO. This has been a critical request from industry and aligns with international best practice for EPR schemes to be producer-led. The PRO will be a producer-led organisation set up to take on certain responsibilities for the operation of the pEPR scheme.

5.3 Some producers collect their food grade plastics waste directly from consumers and send it for reprocessing in a closed loop recycling system that turn the waste back into valuable food grade recyclate. Using this system decreases reliance on virgin plastics. These companies collect their own food grade plastic waste and send it to recycling at no cost to taxpayers. The amendments in these Regulations will allow producers using closed loop recycling systems to offset the food grade plastic packaging waste they collect and send for recycling against their household disposal cost fees. This approach supports the ambition to reduce reliance on virgin plastic and move toward a circular economy.

5.4 The amendments in these Regulations also introduce several changes in order to improve the operational efficiency of the scheme and provide greater clarity to producers on where obligations sit. These amendments cover five areas, including:

- Amending the fibre-based composite (FBC) material definition for pEPR by introducing a threshold such that some FBCs are included under paper and card, where the layers of plastic are not more than 5% of the packaging material by mass. This amendment provides greater clarity for producers on the distinction between FBC and paper/card that is required for reporting and fee calculations.
- Clarity on how obligations apply to each class of producer obligated by the Regulations, including how obligations are transferred when companies are merged or ownership of a business or brand is transferred.
- Removing barriers to compliance and enforcement: providing the Scheme Administrator with new powers to charge historic “freeriders” (business that

meet the producer thresholds and are therefore subject to regulatory obligations, but which have failed to register or report the required data and are therefore not contributing to the costs associated with recycling their waste, and as a consequence are gaining an unfair advantage over compliant competitors) and updating regulator fees for reasons outlined in 10.1 below.

- Efficiency and Effectiveness: Minor changes to provide flexibility in the approach to modelling efficient disposal costs to ensure that payments support environmental outcomes. Drafting improvements: resolving potential loopholes, removing ambiguity, and correcting an error in the regulation fee equations.

What was the previous policy, how is this different?

5.5 The pEPR Regulations provide for the joint appointment by the Defra Secretary of State, Welsh Ministers, Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs ('the four governments') of a Scheme Administrator (SA) to administer elements of pEPR. They set out the functions of the SA and the principles it must follow in delivering its functions. The SA can determine its own administrative and operational costs and recover these costs from producers. The pEPR SA has been set up within the public sector due to the nature of the functions it is required to undertake, however producers as well as local authorities and other impacted parties are to be involved in its governance arrangements. The SA can use the services of other organisations – in the private or public sectors – to undertake functions on its behalf. Where appropriate and following due process the four governments are supportive of the SA exercising this power.

5.6 The amendments in these Regulations allow for the delegation of most of the core responsibilities of scheme operation previously held by the SA to a private sector PRO, excluding only the sovereign functions - any functions limited to ownership of and development of the model that calculates the rate of tax and also responsibility of taking action on non-payment of tax. The functions taken on and the fixed term of the PRO will be agreed by the four nations. The appointment will be subject to conditions which will set clear expectations of the PRO's performance and conduct. The organisational design of the PRO will ensure that any PRO appointed by the SA remains an independent private sector body which can work in close partnership with the four nations and the SA to deliver the scheme. The public sector will remain engaged in delivering the scheme, with the PRO working in close cooperation with the SA to mutually agreed governance arrangements to ensure the PRO continues to be able to deliver the functions it is delegated. Where a PRO consistently fails to meet the expectations set out in its conditions of appointment, the SA can, with the consent of the four nations, revoke the appointment of that PRO. The SA would then make arrangements for temporary administration of the scheme until a new PRO is appointed.

5.7 The pEPR Regulations include provisions such that if a producer can demonstrate they have collected and recycled packaging waste that is either reusable packaging or packaging not ordinarily collected by local authorities for recycling, the SA can offset these tonnages from a producer's disposal cost obligations.

5.8 The amendments in these Regulations extend the offsetting provisions such that the SA can also offset tonnages of food grade plastics packaging waste that a producer has evidence they have collected and recycled in a closed loop recycling system, where it has been turned back into food grade recyclate. Eligible producers will be

able to re-submit data for the reporting year 2024 and receive a revised reduced invoice for their 2025 assessment year fees.

5.9 The amendments in these Regulations also implement several technical changes to improve the operational efficiency of the pEPR scheme. These do not introduce any changes to the policy itself, but the clarity with which those policies are set out in the Regulations and the effectiveness with which they can be delivered.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the pEPR Regulations. It applies across the whole of the UK and, where it relates to devolved matters, is being laid with the consent of the Welsh Ministers, the Scottish Ministers and the Department of Agriculture, Environment, and Rural Affairs, Northern Ireland ("DAERA").

6.2 This instrument is made principally under powers in Schedules 4 and 5 to the Environment Act 2021. Amendments relating to producers' obligations to pay disposal fees, and the administration of such fees, are made under Schedule 5. In particular, paragraph 4(3) of Schedule 5 enables regulations to confer on the scheme administrator functions involving the exercise of discretion, and paragraph 4(4) envisages that a scheme administrator appointed by or under the regulations may in turn appoint another person to carry out functions. Those powers are relied on for the amendments to enable the scheme administrator to appoint a PRO.

6.3 This instrument includes transitional provisions which, among other things, enable producers in certain cases to amend data which they have already reported to the regulators before this instrument comes into force, and instead to report it in accordance with their reporting obligations as amended by this instrument. Data reported by producers for one calendar year is used in calculating their disposal fees for the following assessment year, so this approach enables producers who amend their data for a period in accordance with these transitional provisions to have their disposal fees for the next assessment year calculated in accordance with the amended data.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes. The Regulations amend provisions that are already set out in secondary legislation.

7. Consultation

Summary of consultation outcome and methodology

7.1 Several public consultations were held to inform the pEPR Regulations, details of which are set out in the Explanatory Memorandum to those Regulations. In the joint response of the four governments to the main policy consultation, published in March 2022[1], the four nations committed to establishing the Scheme Administrator (SA) as a public sector organisation, while providing opportunities for industry to deliver some of the SA's functions through a PRO.

[1] https://assets.publishing.service.gov.uk/media/623efd11e90e075f08be413e/epr-consultation-government-response.pdf

7.2 A consultation on the draft pEPR Regulations ran for 10 weeks from 28 July to 9 October 2023[2]. The consultation gathered views on how the approach set out in the Consultation Response of March 2022 was implemented through the draft Regulations, and the operability of the arrangements set out in the draft Regulations. Feedback obtained through this consultation informs the main amendments which this instrument makes to the pEPR Regulations.

7.3 Following the 2023 consultation, we received feedback from several stakeholders asking that we consider a provision to allow producers operating 'closed loop' recycling systems to offset packaging collected through these systems against their household disposal cost fee obligations. In response, we are introducing a longer-term narrow expansion to offsetting provisions to support producers who have developed closed loop recycling systems for food grade plastics that meet the environmental aims of extended producer responsibility.

7.4 The four nations have continued to engage closely with industry on the refinement of pEPR through a Scheme Administrator Steering Group (SASG). Co-Design sessions were held on the 18th of October and the 6th of November 2024 including all stakeholders in the value chain e.g. producers and local authorities. These sessions focused on the operational and strategic functions of a Producer Responsibility Organisation, the risks and opportunities presented by a single and multiple Producer Responsibility Organisations, how this organisation could interact with the Scheme Administrator, and how it could interact with the packaging industry value chain. The outputs of these sessions were collated and reviewed to influence policy development.

8. Applicable Guidance

8.1 Guidance for producers on who are affected by this instrument is published on gov.uk[3]. This guidance is kept under review and updated when necessary.

8.2 A digital platform – Report Packaging Data – is available to producers to fulfil their legal obligations to register with an environmental regulator (the Environment Agency, Natural Resources Wales, the Northern Ireland Environment Agency or the Scottish Environment Protection Agency) and report packaging data either directly or by a compliance scheme on their behalf.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the Equivalent Annual Net Direct Cost to Business (EANDCB) is estimated to fall below the de minimis threshold of ± £10 million, thereby exempting this regulatory provision from Regulatory Policy Committee (RPC) scrutiny. Instead, a proportionate level of analysis has been undertaken in the form of a de minimis assessment (DMA). The estimated EANDCB from the DMA is £0.12m.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the scope of the policy is narrow.

[2] https://consult.defra.gov.uk/extended-producer-responsibiity-team/consultation-on-the-draft-producer-responsibility/
[3] https://www.gov.uk/guidance/extended-producer-responsibility-for-packaging-who-is-affected-and-what-to-do

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is negligible, with Defra covering the first year short fall of funding to UK Local Authorities from closed loop recycling.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is as part of the packaging and packaging waste regime monitored by the UK Government and the devolved governments. The environmental regulators are responsible for monitoring compliance and are the enforcement agencies for most provisions.

10.2 Each government will monitor and evaluate this policy as part of their respective strategies and individual contexts. Evaluation will comprise data collection and process evaluations which will inform the ongoing monitoring of the policy. For Scotland it will be against Scotland's circular economy and waste route map to 2030[4]; for Wales the Welsh Government's Beyond Recycling, A strategy to make a circular economy in Wales a reality[5]; and the Environmental Improvement Plan for Northern Ireland[6] which came into force in July 2022.

10.3 A statutory review clause is included in the instrument that this instrument amends; the pEPR Regulations. The first review is due to be completed by December 2028; thereafter reviews are to be conducted and published at intervals not exceeding 5 years. The requirement to publish the first review by December 2028 reflects the commitment in the 2022 Government Response to consultation to conduct a review of pEPR two years after the introduction of the new arrangements. The review may include policy updates or additions, alongside a review of implementation arrangements; for example, the structure of the Scheme Administrator and the involvement of the value chain in delivering its functions.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The amendments in these Regulations will update the current regulator charges and introduce new charges. This is required to reflect the regulator activities and services that will be provided from January 2026. The increase in charges is due to uplifts in both costs and activity across a few key areas: the Recyclability Assessment Methodology, digital service capital costs, compliance activity, and National Insurance and inflationary impacts.

11.2 The introduction of an offset for food grade plastics waste that is collected and sent for recycling will have negligible impact on pEPR fees but is important recognition of the investments some businesses have already made in circularity. For the 2025 assessment year, any cost adjustment for any business within the UK will be absorbed within Defra's operating budget to avoid the need for broader fee recalculation.

[4] https://www.gov.scot/publications/scotlands-circular-economy-waste-route-map-2030/
[5] https://www.gov.wales/sites/default/files/publications/2021-03/beyond-recycling-strategy-document.pdf
[6] https://www.daera-ni.gov.uk/sites/default/files/publications/daera/Environmental Improvement Plan for Northern Ireland.PDF

12. European Convention on Human Rights

12.1 Mary Creagh CBE MP has made the following statement regarding Human Rights: "In my view the provisions of The Producer Responsibility Obligations (Packaging and Packaging Waste) (Amendment) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").