EXPLANATORY MEMORANDUM TO

THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING AND PACKAGING WASTE) REGULATIONS 2024

2024 No. 0000

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs ('Defra') 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, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs, confirms that this Explanatory Memorandum meets the required standard.

2.2 Emma Bourne OBE, Director for Resources & Waste 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 This statutory instrument imposes an obligation on businesses (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 it shifts 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).

4.2 It also places 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.

4.3 Collectively these measures will reduce the impact of packaging on the environment and encourage businesses to use less packaging and packaging that is easier to recycle or which can be used more than once. This in turn will support the move to a circular economy where materials and products are kept in use for longer.

Where does the legislation extend to, and apply?

4.4 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.

4.5 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 A system of packaging producer responsibility has been in place in all parts of the UK since 1997, latterly implemented through the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 which extended to and applied in Great Britain and the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 which extended to and applied in Northern Ireland (together "the 2007 Regulations"). This system required producers as defined in the 2007 Regulations to meet a share of the annual UK packaging waste recycling targets. A producer's contribution was based on their role in the supply chain, the amount of packaging (split by material) they used or supplied in the preceding year and the recycling targets set by government in any year. Producers met their recycling obligations by obtaining evidence of recycling and providing this to the regulator.

5.2 Whilst this system contributed to the UK packaging waste recycling rate increasing from 25% in the late 1990s to 64.9% in 2023, it did not incentivise producers to use less packaging or to use packaging which is easily recycled. Nor was it set up to recover all costs associated with the management of packaging waste, rather it enabled financial support to the recycling sector.

5.3 Government is of the view that businesses should take responsibility for the environmental impact of the materials and products they place on the market throughout their entire life cycle from their design and manufacture to their use and disposal at end of life. Public consciousness and desire for action on waste and excess packaging has increased significantly in recent years driven by growing awareness of the global issue of plastic waste in our oceans.

5.4 Actions to shift society away from a make, take, throw linear economy towards one which is more circular and sustainable, and measures to incentivise businesses to use and manage resources more efficiently, underpin the resources and waste management policies of the UK Government and the devolved governments. The measures introduced by this instrument support the transition to a circular economy and provide wider economic benefits through the supply of higher quality recycled material for use in the manufacture of new products, added to this are the wider social and environmental benefits from the more sustainable use of natural resources.

5.5 Extended producer responsibility is a well-established policy approach adopted by countries around the world, across a broad range of products and materials. It places financial responsibility, and in some cases operational responsibility, on businesses (producers) for the cost of managing their products once they reach end of life. In doing so it incentivises businesses to design products to make it easier for them to be re-used or dismantled and recycled at the end of their life, and to use less materials.

5.6 This instrument introduces Extended Producer Responsibility for packaging (pEPR). It makes producers responsible for the environmental impact of the packaging they supply and use, and financially responsible for the full costs of collecting and managing household packaging waste. This is in line with the "polluter pays" principle, one of the five environmental principles embedded in the Environment Act 2021 (section 17(5)).

5.7 This instrument provides 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 to administer elements of pEPR. It sets out the functions of the Scheme Administrator and the principles it must follow in delivering its functions. The Scheme Administrator can determine its own administrative and operational costs and recover these costs from producers.

5.8 Whilst this instrument revokes the 2007 Regulations, producers still need to meet recycling obligations and higher recycling targets are set for each packaging material for each year to 2030. The individual material targets achieve a UK packaging recycling rate of 75% by 2030.

5.9 New offences are created by this instrument. These offences are required to ensure that producers register, keep records, report data, meet their recycling obligations, pay disposal cost fees, and comply with the requirements in the Regulations. The offences that apply to compliance schemes and reprocessors/exporters of packaging waste are consistent with those in the 2007 Regulations. The environmental regulators will seek to bring an offender back into compliance as a first response and where enforcement action is necessary, civil sanctions are also available. Regulators can choose from a range of sanctions depending on the nature of the breach, such as a compliance notice or a variable monetary penalty. Only in a minority of cases or where a civil sanction is not complied with would a criminal sanction be expected to be applied. For these new offences, the penalty is a fine.

What was the previous policy, how is this different?

5.10 The 2007 Regulations required producers to acquire evidence to demonstrate that tonnages equivalent to their individual recycling obligations were recycled during the year. This evidence is known as PRN (Packaging Waste Recycling Note) or where the packaging waste is recycled overseas a PERN (Packaging Waste Export Recycling Note). The cost of evidence notes was determined by the market based on the supply of material for recycling and the demand for recycled materials. The revenues raised by reprocessors in supplying evidence supported the recycling of packaging waste and investment in new reprocessing capacity. The 2007 Regulations allowed for a producer to comply directly with its obligations or join an approved (by a regulator) compliance scheme that took on its legal obligations on its behalf. Most producers chose to join a compliance scheme.

5.11 Elements of the previous policy whereby obligations are placed on producers to recycle a proportion of the packaging they supply (as described in section 5.1) are retained. This includes for producers to continue to obtain PRNs or PERNs to demonstrate they have met their recycling obligations and includes recycling targets for each category of packaging for each year from 2025 to 2030. Producers can continue to meet their packaging recycling obligations directly or join a compliance scheme. The instrument makes provision for the approval and registration of compliance schemes, which are in the most part consistent with those in the 2007 Regulations.

5.12 This instrument places new requirements on reprocessors who recycle packaging waste at reprocessing sites in the UK, and exporters who export packaging waste to be recycled at overseas reprocessing sites, to register with a regulator (the Environment Agency, Natural Resources Wales, the Department of Agriculture, Environment and Rural Affairs of Northern Ireland or the Scottish Environment Protection Agency) and submit data on a regular basis in relation to that waste. Accreditation of reprocessors

and exporters to issue PRNs and PERNs respectively remains voluntary, however accredited reprocessors and exporters now report data monthly instead of quarterly, and exporters must retain evidence that exports of packaging waste have been received at the final overseas reprocessing site and the material recycled at that site.

5.13 Consistent with the wider pEPR policy outlined in section 5.1, new obligations are introduced by this instrument which place responsibility for the costs of managing household packaging on the producers who use and supply this packaging. New measures also require producers to assess packaging to determine its recyclability.

5.14 The instrument specifies the producers, and classes of producers which have obligations and, in relation to each class of producer, the packaging for which producers of that class may have obligations. The producers and the classes of producer with obligations has changed compared to the 2007 Regulations, and the principle of shared responsibility (where costs are shared throughout the supply chain, rather than sitting with a single producer) no longer applies. This means that obligations in relation to a single item of packaging fall to a single producer, typically the business that makes the packaging available for the first time on the UK market.

5.15 Large producers, producers with an annual turnover of more than £2m and supplying more than 50 tonnes of packaging, are required to report their packaging data annually. Based on this data they pay disposal cost fees for any household packaging they supply and meet recycling obligations on all the packaging they supply.

5.16 Small producers are producers which do not meet the large producer thresholds, but which have an annual turnover of more than £1million and supply more than 25 tonnes of packaging. They report their total tonnes of packaging supplied annually by packaging material. This data will provide a more complete picture of packaging placed on the UK market and inform future reviews of this instrument.

5.17 Large producers pay a disposal fee based on the costs incurred by local authorities in collecting and managing household packaging waste streams. The amount of fee each producer pays will depend on factors such as how much packaging they supply, the type of packaging materials they supply (plastic, glass, etc) and if the packaging is recyclable or not. Producers obligated to pay disposal cost fees pay these fees to a Scheme Administrator who in turn is responsible for making payments to local authorities for the provision of efficient and effective services to manage household packaging waste.

5.18 The Scheme Administrator is being 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 Scheme Administrator 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 Scheme Administrator exercising this power.

5.19 The Scheme Administrator assesses local authorities' costs of managing household packaging waste and the efficient costs and effectiveness of a local authority's packaging waste management service. It subtracts income earned by a local authority from recycling to calculate the net disposal costs to be met by large producers.

5.20 Based on this assessment, the Scheme Administrator calculates a producer's disposal cost fees. The Scheme Administrator is to vary disposal cost fees from 2026 based on the environmental sustainability of a producers' packaging. If a producer can demonstrate they have collected and recycled packaging waste not ordinarily collected

by local authorities for recycling, the Scheme Administrator can offset these tonnages from a producer's disposal cost obligations.

5.21 Principles on how the Scheme Administrator is to discharge its functions are set out. The Scheme Administrator cannot make a profit, must act fairly and transparently, and take account of the differences in context and circumstances across the UK. It has a wider role to incentivise the use of more environmentally sustainable packaging, the prevention of packaging becoming waste, increasing the re-use of packaging, and reducing the disposal of packaging. The Scheme Administrator must also support the provision of efficient and effective local authority waste management services.

5.22 To ensure good governance the Scheme Administrator is to publish a Strategy setting out its longer-term objectives and how it will contribute to the wider objectives of the policy. The strategy is to be reviewed every 5 years. It must also prepare an annual Operational Plan with annual forecasts and operational activities and publish an Annual Report setting out achievements in the previous 12 months.

5.23 Ministers either acting collectively or individually, where the matter concerns a function that only relates to a specific part of the UK, can issue a direction to the Scheme Administrator but only once a joint Policy Statement has been published. A direction can be issued only when it is considered that either an action or failure to take an action by the Scheme Administrator is likely to have an adverse impact on the environmental outcomes which the pEPR policy is intended to achieve, as set out in the joint Policy Statement.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument introduces new obligations on businesses that supply and use packaging. The Defra Secretary of State makes these Regulations in exercise of powers conferred by sections 50, 51, 142(1) and (6) and 143(1) of, and paragraphs 1 to 5, 7 and 12 to 19 of Schedule 4 and paragraphs 1 to 9 and 11 to 17 of Schedule 5 Schedule 6 to, the Environment Act 2021.

6.2 The powers provided by the Environment Act 2021 are new powers in relation to producer responsibility for disposal costs and updated powers relating to producer responsibility obligations. This is the first time these new and updated powers have been used.

6.3 This instrument 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").

6.4 This instrument revokes the 2007 Regulations and associated amending Regulations. The 2007 Regulations require businesses (referred to as producers) which supply packaging to another business or to the end user to recycle packaging waste to meet UK packaging recycling targets. A producer's recycling obligations are calculated based on the packaging they supplied in the preceding year, the recycling targets set by government and the producers' role in the packaging supply chain.

6.5 This instrument also revokes the Packaging Waste (Data Reporting) (England) Regulations 2023 (as amended) and the equivalent Regulations (as amended) in Northern Ireland, Scotland and Wales (together "the Data Reporting Regulations") and associated amending Regulations. The Data Reporting Regulations require businesses to collect and report data on the amount and type of packaging that they

supply. The Data Reporting Regulations were introduced ahead of this instrument to ensure that the necessary data required to determine the disposal fees that large producers are required to pay in financial year 2025/26 and producer recycling obligations for 2025 are available when this instrument comes into force.

6.6 Whilst this instrument revokes the 2007 Regulations and the Data Reporting Regulations, it includes transitional provisions which, among other things, require persons to continue to keep the records which they were required to keep under those Regulations, and require producers to report the data for 2024 which they would have been required to report under the Data Reporting Regulations if they had not been revoked.

Why was this approach taken to change the law?

6.7 The changes introduced by this instrument include changes to the definition of producers and the obligations on producers, changes to the duties of the environmental regulators, and appointing organisations such as the Scheme Administrator. These changes are considerable and would have required extensive amendments to the 2007 Regulations, which have already been amended several times since 2007. Given the scale and complexity of the changes, incorporating those new requirements into the existing legislation would not have been feasible. A new standalone instrument provides for the introduction of the new requirements and the updating of those elements of the 2007 Regulations which are retained, but also, importantly, enables the implementation of pEPR as a single UK-wide scheme. This would not have been possible by amending the 2007 Regulations, or by introducing four separate instruments for each part of the UK.

7. Consultation

Summary of consultation outcome and methodology

7.1 Several public consultations were held to inform the policy. All consultations were joint consultations by the previous UK Government, the Welsh Government, the Scottish Government, and the Department of Agriculture, Environment and Rural Affairs, Northern Ireland. The responses were also joint and agreed by the four governments. The consultations were open to a broad base of stakeholders including those directly impacted by the proposals. They included businesses who make, use or supply packaging or packaging materials, local authorities, businesses who collect, sort and reprocess packaging waste, environmental organisations, trade bodies and professional organisations, and other interested parties. Relevant documents were available in the Welsh language.

7.2 An initial consultation on reforming the current Packaging Producer Responsibility System[1] in the UK ran for 12 weeks from 18 February to 13 May 2019. This consultation received 679 responses from a wide range of stakeholders. Responses were supportive of the proposals put forward, with 80% of respondents agreeing with the principles proposed for pEPR and 88% agreeing with the proposed outcomes. The summary of responses[2] to this consultation was published in July 2019 and outlined the four governments' plans to proceed with the introduction of pEPR.

[1] https://consult.defra.gov.uk/extended-producer-responsibility/consultation-on-reforming-the-uk-packaging-produce/

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819467/epr-consult-sum-resp.pdf

7.3 A second consultation on the introduction of pEPR[3] ran for 10 weeks from 24 March to 4 June 2021. This consultation sought views on specific policy proposals for the introduction of pEPR. The consultation received 1,241 responses from a cross section of stakeholders. The summary of responses and the four governments' response[4] to the 2021 consultation was published in March 2022. This response outlined how government intended to implement pEPR, including on a phased basis focusing initially on producer payments for household packaging waste.

7.4 A third consultation[5] on reforms to the current Packaging Recycling Note system (as implemented by the 2007 Regulations) ran for 8 weeks from 26 March to 26 May 2022. This followed from the decision set out in the 2022 response to the 2021 consultation (the second consultation) to retain aspects of the current producer responsibility system, in particular the requirement for producers to meet packaging recycling obligations. This consultation sought views on proposals which could help improve the functioning of the market for PRNs and PERNs. The consultation received 129 responses. The summary of responses and the Government response[6] was published in October 2022. This response outlined the changes to be taken forward as part of the implementation of pEPR.

7.5 A fourth consultation[7] on the draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 ran for 10 weeks from 28 July to 9 October 2023. 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 informed amendments to the draft Regulations. Amendments included revisions to terms, definitions, and formulae to provide greater clarity on disposal fees and costs, public information costs and administration fees. Other amendments clarified the approach to disposal cost fee setting, and the definition of environmentally sustainable packaging.

8. Applicable Guidance

8.1 Guidance for producers on who are affected by this instrument is published on gov.uk[8]. 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.

8.3 This instrument makes provision for the environmental regulators to jointly publish:

[3] https://consult.defra.gov.uk/extended-producer-responsibility/extended-producer-responsibility-for-packaging/
[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063589/epr-consultation-government-response.pdf
[5] https://consult.defra.gov.uk/packaging-extended-producer-responsibility/reforms-to-the-prn-and-pern-systems/
[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063589/epr-consultation-government-response.pdf
[7] https://consult.defra.gov.uk/extended-producer-responsibiity-team/consultation-on-the-draft-producer-responsibility/
[8] Guidance is available at: https://www.gov.uk/guidance/extended-producer-responsibility-for-packaging-who-is-affected-and-what-to-do

(i) guidance for producers about the evidence they may use to demonstrate that their packaging is not household packaging and hence is packaging to which disposal cost fees should not apply[9].

(ii) guidance on the criteria the regulators will apply in determining whether a person is a fit and proper person for the purposes of being a scheme operator of a compliance scheme, and an accredited reprocessor or exporter. This guidance will be published by 1 January 2025.

(iii) list of protocols for packaging waste recycling that specify, for each category of packaging waste, the percentage that can be applied to determine packaging waste recycled for the purposes of issuing PRNs or PERNs. These are available here[10].

8.4 The Scheme Administrator is required to publish the following as soon as practicable after its appointment:

(a) guidance on the methodology and procedure it will use to assess the net disposal costs of local authorities which are chargeable to producers, and how it will determine whether to adjust, and how it will adjust the net efficient disposal costs of local authorities to reflect the effectiveness of their services.

(b) guidance on the methodology for producers to use to assess the recyclability of their packaging and guidance on the use of this methodology.

(c) a statement of its policy for modulating the disposal costs paid by large producers to incentivise producers to use environmentally sustainable packaging.

The Scheme Administrator may choose to publish guidance on the following:

(a) for producers, further guidance on their disposal cost obligations or matters related to these obligations.

(b) for local authorities, any information it needs to assess their chargeable disposal costs; the delivery of efficient and effective services; and how to increase the amount of packaging waste they collect separately for recycling.

8.5 The four governments are to jointly publish a statement setting out the intended environmental effects of the pEPR policy. Through the delivery of its functions the Scheme Administrator must support the achievement of the effects set out in the Policy Statement. The statement is to be published at the earliest available opportunity.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 The impact on producers is due to the requirements to collect and report data on packaging/packaging waste, to pay disposal cost fees for the management of household packaging waste and for familiarisation with the new regulations. While many producers are required to meet recycling obligations under the 2007

[9] Guidance is available at: https://www.gov.uk/guidance/extended-producer-responsibility-for-packaging-how-to-assess-household-and-non-household-packaging

[10] https://www.gov.uk/guidance/packaging-waste-apply-to-be-an-accredited-reprocessor-or-exporter#Agreed-set-percentages

Regulations, this instrument places higher recycling targets on producers over the period 2025 to 2030, and changes have been made to the producers who are obligated. The equivalent annual, net direct cost impact to businesses is estimated at £1,352m (2020 prices, 2025 present value)

9.3 There is no impact on charities or voluntary bodies because charities are excluded and most voluntary bodies which are producers will not exceed the thresholds referred to below.

9.4 The legislation does impact small or micro businesses.

9.5 To minimise the impact of the requirements on small and micro businesses, a threshold has been included within the instrument to exempt producers that do not supply more than 25 tonnes of packaging a year or do not have an annual turnover of more than £1 million from data reporting, from the disposal cost fees and from meeting recycling obligations.

9.6 Producers that supply more than 25 tonnes of packaging a year and have an annual turnover of more than £1 million, but do not supply more than 50 tonnes of packaging a year and do not have an annual turnover of more than £2 million (referred to in the instrument as 'small producers') are required to collect, retain and report annually packaging data. These producers are exempt from the disposal cost obligations and from meeting recycling obligations. The reporting of packaging data by small producers is necessary to improve data on the total amount of packaging placed on the UK market and to inform future reviews of the policy.

9.7 The impact on the public sector is a transfer of costs for the collection, sorting, treatment and disposal of household packaging waste from the public sector to the producers who use and supply this packaging. The public sector faces additional costs relating to Scheme Administrator set up, including IT system set up costs. Overall, there is a net gain to the public sector from the reforms with local authorities estimated to receive a net benefit of £11bn across the appraisal period of 2025-2034 from the transfer payment from producers for the collection and treatment of household packaging waste (2020 prices, 2025 present value).

9.8 There are also wider societal benefits resulting from greenhouse gas emissions savings from a reduction in the creation of new packaging and more packaging being recycled instead of disposed to landfill and incineration. These increases in tonnes of packaging recycling and the reduction of packaging going to residual waste disposal sites estimates a net benefit of £189m in monetised greenhouse gas emissions savings across the appraisal period of 2025-2034 (2020 prices, 2025 present value).

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The packaging and packaging waste regime is 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 the Scottish Government's Making Things Last, Programme for Government 2020-2021; for Wales the Welsh Government's Beyond Recycling, A strategy to make a circular economy in Wales a reality; and for Northern Ireland the 2019 Waste Management Plan" and draft Environmental Strategy 2021.

10.3 A statutory review clause is included in the instrument. 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 Response 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 Most of this instrument comes into force on the 21st day after the day on which the instrument is made, but a small number of provisions, listed in regulation 1(3), come into force on the day after the instrument is made. The early commencement of these provisions will not have any effect on businesses or individuals and its purposes are: to enable a scheme administrator to be appointed under regulation 58, and to begin preparing to carry out its functions, before the rest of the instrument comes into force, and to enable the early publication by the appropriate authorities of the policy statement required by regulation 127.

12. European Convention on Human Rights

12.1 Mary Creagh CBE, Parliamentary Under-Secretary of State, has made the following statement regarding Human Rights:

"In my view the provisions of the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 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").