EXPLANATORY MEMORANDUM TO

THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE) REGULATIONS 2007

2007 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Environment Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

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

2. **Description**

   2.1 A consultation exercise was undertaken in 2006 on the proposed changes, which can be summarised as:

   a. Technical changes- including amending some references in the 2005 Regulations to reflect the policy intention.

   b. Changing the Regulations to allow for electronic Packaging Waste recovery Notes (PRNs) and Packaging Waste Export Recovery Notes (PERNs), and electronic data submission, along with a proposed increase in the Agency fee to enable further development of the National Packaging Waste Database (NPWD) in 2007/8.

   2.2 This instrument therefore amends the current Producer Responsibility Obligations (Packaging Waste) Regulations 2005 S.I. 2005/3468 ("the 2005 Regulations") to make these changes.

3. Matters of special interest to the Joint Committee on Statutory Instruments

   3.1 Not applicable

4. Legislative Background

   4.1 The 2005 Regulations consolidated the 1997 Regulations and the amending statutory instruments from 1999, 2000, 2002, 2003 and 2005 (see Annex 1 for further details).

   4.2 In the course of the consolidation exercise some errors arose in the Regulations and these changes are intended to correct these. These changes do not involve any policy change. There are also some "technical" changes that we propose to make principally to take account of recommendations from the regulators (the Environment Agencies in England and Wales, Scotland and Northern Ireland) to clarify the Regulations. We are also proposing to amend the Regulations to provide that packaging data and information about recovery and recycling carried out can be provided electronically.

   4.3 The 2005 Regulations are made under the 'producer responsibility' powers in sections 93-95 of the Environment Act 1995 and section 2(2) of the European Communities Act 1972. Section 2(2) of the European Communities Act was used in 1999 (SI 1999/3447) to transpose part of Article 13 (information for users of packaging) of the Directive. A regulation was inserted into the 1997 Regulations to provide for the Secretary of State

(now the "appropriate authority" in the 2005 Regulations) ensuring that users of packaging obtain the information about the matters that are set out in Article 13 of the Directive. This provision accompanied a requirement on certain producers to inform consumers about these matters. Under section 93(2) of the Environment Act 1995 there is a statutory requirement to consult with stakeholders that are likely to be affected by the Regulations. There were public consultations before the 1997 Regulations and all subsequent amendments were made. Public consultation was carried out in 2006 on the present changes.

4.4 The 2007 Regulations will continue to implement the requirements of Council Directive 94/62/EC on packaging and packaging waste as amended by Council Regulation (EC) No 1882/2003, Council Directive 2004/12/EC and Council Directive 2005/20/EC ("the Directive"). The Directive sets packaging recovery and recycling targets for Member States to meet by 31 December 2008.

5. Extent

5.1 The 2007 Regulations extend to Great Britain.

6. European Convention on Human Rights

6.1 The Minister for Local Environment, Marine and Animal Welfare has made the following statement regarding Human Rights:

> In our view the provisions of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 are compatible with the European Convention on Human Rights.

7. Policy background

7.1 The Directive came into force in 1994. It aims to harmonise the management of packaging waste and prevent or reduce the impact of packaging and packaging waste on the environment by encouraging minimisation and reuse and by setting recovery and recycling targets . At the same time, it aims to avoid obstacles to trade and the distortion and restriction of competition within the Community.

7.2 Packaging Directive 2004/12/EC amending the Directive was published and set recovery and recycling targets to be met by the UK by December 2008. The targets are:

Minimum recovery	60%
Recycling	55% - 80%
Differentiated material-specific recycling targets of:	
Glass	60%
Paper/board	60%
Metals	50%
Plastics	22.5%
Wood	15%

7.3 The Directive was originally implemented by (i) the 1997 Regulations (as amended); and (ii) by the Packaging (Essential Requirements) Regulations 2003 (as amended).

7.4 The 2005 Regulations set annual business targets for recovery and recycling of packaging waste designed to enable the UK to meet the Directive targets. Any business handling more than 50 tonnes of packaging and with a turnover of more than £2 million is obligated if it is involved in manufacturing raw materials for packaging; converting materials into packaging; filling packaging; selling packaging to the final user, leasing out packaging or importing packaging/ packaging materials into the UK.

7.5 The UK Government in consultation with the packaging industry and users of packaging developed a market based system to achieve low cost compliance with the Directive targets. Obligated businesses are required to purchase Packaging Waste Recovery Notes (PRNs) and Packaging Waste Export Recovery Notes (PERNs) from accredited packaging waste reprocessors and exporters, respectively, as evidence that they have complied with their obligations to recover and recycle specified tonnages of packaging waste each year. Reprocessors and exporters are accredited by the appropriate Agency and only accredited reprocessors or exporters can issue PRNs or PERNs.

7.6 A producer may comply with the requirements of the 2005 Regulations individually or it may choose to register with a packaging compliance scheme. When a producer joins a scheme, the scheme takes on the producer responsibility obligations that the producer would have had but for its membership of the scheme.

7.7 The original 1997 Regulations were consolidated in 2005 with all subsequent amending Regulations including those made in Scotland and Wales in order to have consolidated GB Regulations. In the course of that exercise some errors arose in the Regulations. There are also some "technical" changes proposed, principally on the recommendation from the Environment Agencies (in England and Wales, Scotland and Northern Ireland) to clarify the Regulations in respect of some points raised by industry.

7.8 The main objective in making these changes is to improve the working of the Regulations, and provide clarity on points which, according to the regulators, are causing some confusion. These proposals have generally been supported and it is intend to take them forward.

7.9 The Government consulted on the changes it is now proposed to make including with the Advisory Committee on Packaging (ACP). The ACP is a body which represents the packaging industry and was appointed by Ministers to monitor the effectiveness of the 1997 Regulations and advise Government as and when changes are needed.

7.10 In light of this, the following changes will be made to the Regulations this year:

Technical changes

a. Additional premium payable by groups of companies in respect of small producers in a group of companies – amendment to the text to reflect the policy intention that there should be no premium payable in relation to this particular small producer because no data will be submitted by that small producer (since he will have his recycling obligation allocated instead).

b. Group registration fees – amendment to make it clear that as before, a holding company should consider the aggregate position of the whole group and not just itself when considering the threshold tests; and therefore, only if the aggregate position of the group as a whole qualified for small producer status would the £345 fee be applicable.

c. Small producers that are group subsidiaries and the allocation route – amendment to clarify that the option of having a recycling obligation allocated should be available to all small producers whether in a group of companies, a scheme or operating individually . Where small subsidiaries choose the allocation route, their allocated recycling obligations then form part of the group's overall obligation.

d. Definition of "small producer" –amendment to clarify that to be a small producer a business's turnover in its most recently available accounts would have to be "between £2,000,000 and £5,000,000 to reflect the turnover threshold in the Regulations. Thus, a subsidiary business of a group that is a small producer will be one that has turnover between £2 million and £5 million. Consequently, it is also clear that when it comes to carrying out recycling, it is only those businesses in the group that qualify as "small producers" and that have chosen the allocation route, that will have the allocated recycling obligation.

e. Audited accounts - the Regulations will be amended to require "audited" accounts or simply the latest set of "accounts" depending on what the business is required to produce by company law. This is because some small businesses do not have to produce "audited accounts",

f. Criterion for provision of an operational plan by individually registering producers – the requirements will be amended for submission of producer operational plans again, so that only those producers with an *obligation* in excess of 500 tonnes are required to submit an operational plan.

g. Submission of data monitoring plans by compliance schemes – the previous wording will be re-inserted which made this data monitoring plan requirement explicit and to require schemes to submit their monitoring plans with their operational plans by 31 January each year to the appropriate Agency, as before.

h. Involvement of environmental auditors in the independent audit – amendment to allow that reprocessors and exporters should be able to choose to use an independent environmental auditor to provide this report if they wish even if these auditors do not qualify under the Companies Act 1985.

i. Notification to the appropriate authority of scheme failure - regulation 36 is to be amended to require a compliance scheme operator itself to notify the appropriate authority if it has not discharged, numerically, the full amount of recovery and recycling that was required to be done in the previous obligation year rather than inform the Agency which then informs the appropriate authority.

j. Reports from independent auditors - the Regulations will specify that the report should be provided in a format determined by the Agencies (in consultation with the Institute of Chartered Accountants) to make what is required unambiguous. The Agencies will also have the power to request a re-submission of the report if it does not comply.

k. Agency monitoring plans - each Agency will have to i) submit its monitoring plan to the appropriate Authority by 1 December each year in relation to the monitoring activity planned for the following obligation year; and ii)publish the plan by 31 December in the year prior to that being monitored. The intention is that the draft monitoring plan will be considered by the appropriate Authority and the Advisory Committee on Packaging and any comments passed to the relevant Agency prior to the deadline for publication on 31 December.

l. Accreditation of reprocessors and exporters - the Agencies are to be provided with a power to refuse accreditation to businesses that have committed, for example, Trans Frontier Shipment of Waste Regulations (TFS) offences, or have been convicted of an offence relevant to the collection, treatment, recovery or recycling of packaging waste. The conditions of accreditation will include a specific reference to compliance with TFS requirements.

m. Exports to a specific reprocessing site - Where there is export of material for reprocessing overseas, the intention is that the destination reprocessor should be identified not just an interim recipient. This is necessary for the exporter to be able to comply with the provision in regulation 24(3)(b), which requires Article 6(2) of the Packaging Waste Directive to be complied with in respect of each site.

n. period to which the independent audit applies -The Regulations currently require that the independent audit applies to PRNs or PERNs issued "in the previous year". There have been queries as to whether this includes the carry forward period (i.e. the period of December in one year and January in the next), when deliveries of packaging waste to reprocessors or exporters in December can count either towards the obligation of that or the following year. The intention remains that the audit report issued in January of a year should relate to the previous year, i.e. the year for which that reprocessor or exporter's accreditation applied, and if there were carry-forward PRNs or PERNs issued for use in that obligation year then they should be taken into account.

o. Collation and Aggregation of Data by the Agencies - the Agencies will have a duty placed on them to collate data received (from producers, schemes, reprocessors and exporters); and the Environment Agency will be required to collate UK data (using the new online packaging database) to provide these to Defra for onward transmission to the European Commission and for publication on the Defra website. Provision of UK data to the European Commission is a Directive requirement. The data concerned include data on packaging handled, provided by producers and schemes; and the reprocessor and exporter quarterly returns and end-of-year data on recovery and recycling carried out and PRNs and PERNs issued.

p. The Public Register – the Agencies will be required to update entries in the Public Register (a statutory requirement) within 7 (calendar) days.

q. Production losses - – clarification will be made that 'production losses' (lost, for example, at the time of filling) are not included in the Regulations. The Directive has a "daughter" Commission Decision1 which stipulates that production losses are outside the scope of the Directive and may not be used to meet targets. These production losses (or process waste as it is sometimes called), are therefore also outside the scope of the Regulations.

r. Activities carried out in the UK by companies owned by overseas businesses - the Regulations will make it explicit that in cases of overseas ownership of a company carrying on business in the UK, on packaging, the company carrying out the activity will be deemed to own the packaging and will be obligated.

s. Approved persons – it is proposed to amend the Regulations so that the approved person (e.g. to sign off data or to submit certificates of compliance) for some companies could be the Company Secretary rather than a Director, or, where the business is not incorporated, the person who has control or management of the business.

Electronic issue of evidence of compliance and electronic supply of packaging data

a) For the new electronic system to be legally possible, the Regulations will be amended to provide specifically for electronic submissions of information.

b) The registration fee should will be raised to fund the further development of the on-line data system.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum at Annex 3.

8.2 Because the Regulations were consolidated in 2005, a further consolidation will be provided in 2007 for ease of reference for stakeholders.

8.3 The impact on the public sector is negligible .

9. Contact

9.1 Ian Atkinson at the Department for Environment, Food and Rural Affairs, Room 6/F5, Ashdown House, 123 Victoria Street, London SW1E 6DE, telephone: 020 7082 8780 and e-mail ian.atkinson@defra.gsi.gov.uk

[1] Commission Decision on Formats for Databases – 2005/270/EC

Annex 1

Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (S.I. 1997/648)

Producer Responsibility Obligations (Packaging Waste)(Amendment) Regulations 1999 (S.I. 1999/1361)

Producer Responsibility Obligations (Packaging Waste)(Amendment)(No 2) Regulations 1999 (S.I. 1999/3447)

Producer Responsibility Obligations (Packaging Waste)(Amendment)(England and Wales) Regulations 2000 (S.I. 2000/3375)

Producer Responsibility Obligations (Packaging Waste)(Amendment) (England) Regulations 2002 (S.I. 2002/732)

Producer Responsibility Obligations (Packaging Waste)(Amendment)(Wales) Regulations 2002 (S.I. 2002/831 (W 93))

Producer Responsibility Obligations (Packaging Waste)(Amendment)(Wales) Regulations 2003 (S.I. 2003/3238 (W 318))

Producer Responsibility Obligations (Packaging Waste)(Amendment) (England) Regulations 2003 (S.I. 2003/3294)

Producer Responsibility Obligations (Packaging Waste)(Amendment)(England and Wales) Regulations 2005 (S.I. 2005/717)

Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2000 (S.S.I. 2000/451)

Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2002 (S.S.I. 2002/147)

Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2003 (S.S.I 2003/613)

Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2005 (S.S.I. 2005/271)

Annex 2

THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE) REGULATIONS 2007 TRANSPOSITION NOTE

MEMORANDUM SHOWING IN RELATION TO ENGLAND, WALES AND SCOTLAND THE METHOD OF IMPLEMENTATION OF COUNCIL DIRECTIVE 94/62/EC ON PACKAGING AND PACKAGING WASTE

The Producer Responsibility Obligations (Packaging Waste) Regulations 2005 transpose Council Directive 94/62/EC as amended by Council Regulation (EC) No 1882/2003, Council Directive 2004/12/EC and Council Directive 2005/20/EC ("the Directive"), with respect to England, Wales and Scotland.

Background

The Directive was originally published in the Official Journal on 20 December 1994. It aims to harmonise the management of packaging waste and prevent or reduce the impact of packaging and packaging waste on the environment and set recovery and recycling targets whilst avoiding obstacles to trade and the distortion and restriction of competition within the Community.

Article 6(1) of the Directive set packaging waste targets to be met by June 2001 of 50%-65% recovery, 25%-45% recycling, and 15% recycling of specific materials. The Directive targets were implemented by the Producer Responsibility Obligations (Packaging Waste) Regulations 1997.

Article 6(3)(b) of the Directive requires that new targets be set every 5 years for the next 5 year period. Directive 2004/12/EC, which amends the Directive, was published in the Official Journal on 18 February 2004 and Article 6(1) set new recovery and recycling targets for member states to meet by 31 December 2008. The new targets are:

Minimum recovery	60%
Recycling	55% - 80%
Differentiated material-specific recycling targets of:	
Glass	60%
Paper/board	60%
Metals	50%
Plastics	22.5%
Wood	15%

The targets were initially transposed in 2003 in the Producer Responsibility Obligations (Packaging Waste)(Amendment)(England) Regulations (SI 2003/ 3294). However, following recent changes to underlying data used to calculate the targets for 2006, 2007 and 2008 that were published in 2003 (in particular the amounts of packaging entering the UK waste stream) the existing business targets in the Regulations no longer achieve the Directive targets in 2008. Following a public consultation, therefore, new targets have been included in the 2005 Regulations.

Article 3(1) of the Directive defines packaging and includes a list of illustrative examples to accompany the definition.

Article 6(1) of the Directive, as mentioned above, sets new recovery and recycling targets for Member States to meet by 31 December 2008.

Article 6(2) states that packaging waste exported out of the Community shall only count towards packaging targets if there is sound evidence that the recycling took place under conditions that are 'broadly equivalent' to those prescribed by Community legislation.

The details of how these requirements have been transposed in the 2005 Regulations in relation to England, Wales and Scotland are set out in more detail in the table below.

Directive Articles	Objectives	Implementation	Responsibility
Article 3(1)	The definition of packaging has been expanded to further clarify which items are and are not packaging, to ensure that all member states are treating items in the same way. Annex 1 includes an illustrative list of examples of packaging and non-packaging items.	Regulation 2 of the 2005 Regulations implements Article 3(1) by stating that packaging has the meaning given to it in Article 3(1) of the Packaging Directive.	Secretary of State
Article 6(1)	Requires member states to take the necessary measures to recover and recycle sufficient packaging waste in order to attain the targets set out in this Article of the Directive (as amended by Council Directive 2004/12/EC) by 31 December 2008.	Regulation 4 of the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 implements article 6(1) and places producer responsibility obligations on producers of packaging (i.e. those that meet the threshold tests in the Regulations). Regulation 5 provides that where a producer joins a registered compliance scheme he is exempt from complying with his producer responsibility obligations for the relevant year. Regulation 12(1) provides that an operator of a scheme is required to	Secretary of State Scottish Executive

		carry out the recovery and recycling obligations that its members would have had but for their membership of the scheme. Schedule 2 presents the targets that UK businesses are required to meet in order for the UK as a whole to meet the Directive targets.	
Article 6(2)	Member states are required to ensure that packaging waste exported out of the Community shall only count for the achievement of the targets in Article 6(1) if there is sound evidence that the recovery and/or recycling operation took place under conditions that are broadly equivalent to those prescribed by the Community legislation on the matter.	Regulation 24 of the 2005 Regulations implements Article 6(2) by stating that where an application is made for accreditation as an exporter and relates to one or more reprocessing sites outside the European Community, that the requirements of Article 6(2) of the Directive have been met in respect of each such site.	Secretary of State Scottish Executive







Regulatory Impact Assessment of Changes to the Producer Responsibility Obligations (Packaging Waste) Regulations 2005

Options for introducing the National Packaging Waste database (NPWD) and other technical changes into the packaging Regulations

Department for Environment, Food and Rural Affairs
Scottish Executive
Welsh Assembly Government

January 2007

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Table 2: suggested amendment to Agency fees to recover costs of further developing the NPWD system - no change to SME producer fees.

Table 3: table showing the costs and benefits of each correction and technical change to the Regulations.

Table 4: suggested amendment to Agency fees to recover costs of further developing the NPWD system - no change to SME producer fees.

Table 5: summary table showing overall quantifiable benefits associated with each option under section B (issuing of electronic evidence notes).

Table 6: summary table showing overall quantifiable costs associated with each option under section B (issuing of electronic evidence notes).

Table 7: summary table showing partial quantifiable benefits/costs associated with each option under section B (issuing of electronic evidence notes).

Executive Summary

i. This Regulatory Impact Assessment (RIA) has been amended in the light of responses received to the consultation paper entitled 'Consultation Paper on the new National Packaging Waste Database (NPWD) and technical changes' published in September 2006. It considers proposals for changes to current producer responsibility regime for packaging waste as set out in the Producer Responsibility Obligations (Packaging Waste) Regulations 2005.

ii. The proposals contained within the paper can be summarised as -

- correcting some references in the 2005 Regulations which did not accurately reflect the policy intention and making a number of technical changes; and

- changing the Regulations to allow for electronic Packaging Waste Recovery Notes (PRNs) and Packaging Waste Export Recovery Notes (PERNs).

iii. Despite the previous introduction of a de-regulatory measure to reduce the number of producers that must submit an operational plan (OP) for scrutiny by Defra and the Agencies, over 200 plans were still received, some relating to small (40t) recycling obligations. This is disproportionate and so the criterion for submission of OPs by large individually registered producers will be changed from 500t handled to 'an obligation of at least 500t. It is estimated that this change will save businesses approximately £100,000 in 2007, since they will not have to invest time and effort in preparing, gathering data and calculating obligations for their OPs.

iv. Furthermore, the Government will amend the Regulations to ensure that small producers that have chosen the allocation route and are group subsidiaries do not have to pay the fee premium intended to cover data monitoring costs, since they will not provide data on registration but will be given a recycling obligation. It was never part of the policy intention that these small businesses should pay this fee premium.

vi. The Government has estimated that the additional costs (for example, administration) associated with the "corrections and technical changes" to UK industry as a whole will be minimal, and that there would be significant benefits from reduction in administrative burden for small producers.

v. The Government has estimated that the additional funding to support the further development of the National Packaging Waste Database (NPWD) is around £34,500 a year, for 5 years, and if shared proportionately between the businesses concerned the amounts are modest, e.g. an additional £26 for a large reprocessor (on a fee of £2,590) and an additional £8 for individually registering producers on their current fee of £768. The RIA demonstrates the costs and benefits and concludes that there are some significant benefits, many of which are not quantifiable, such as the fact that packaging data will be available to industry quicker than at present, allowing them to make more informed market decisions and mitigating any risks associated with compliance. In general moving to the NPWD will save the whole packaging industry, Agencies and appropriate Authorities approximately £90,000 per annum.

Regulatory Impact Assessment

1. Introduction

1.1 This Regulatory Impact Assessment (RIA) accompanied a consultation paper entitled '*Consultation Paper on the new National Packaging Waste Database (NPWD) and technical changes'* published in September 2006.

1.2 All of the proposals are intended to enable cost effective achievement of the UK's 2008 Packaging Directive targets. In summary, the proposals contained within the paper can be summarised as -

- correcting some references in the 2005 Regulations which did not accurately reflect the policy intention and making a number of technical changes including a change to the Agency cost recovery fee; and

- changing the Regulations to allow for electronic Packaging Waste Recovery Notes (PRNs) and Packaging Waste Export Recovery Notes (PERNs).

1.3 The proposals were concerned with changes to existing legislation. In each case the consultation paper put forward one or more options for possible change and a "business as usual" option, which would have meant leaving the Regulations as they are now.

1.4 This RIA presents overall costs and benefits of the proposals consulted upon and, in particular, the costs and benefits associated with the changes being made following consultation, taking into account stakeholders views.

Background

2.2 The Producer Responsibility Obligations (Packaging Waste) Regulations 2005 obligate businesses which handle more than 50 tonnes of packaging a year and have a turnover in excess of £2 million to carry out recovery and recycling of packaging waste to target levels each year. This is to enable the UK to meet its legally binding targets under the EC Directives on Packaging and Packaging Waste 94/62/EC and 2004/12/EC.

1.2 Obligated businesses, that is "producers", are required to recover and recycle a specified amount of packaging waste each year which is determined, by

- the amount of packaging they handle;
- the activity they perform on the packaging e.g. pack/filling; and
- the business targets for that year.

1.3 Producers do not necessarily have to recycle the waste from the actual products and materials that go through their businesses, rather they have to provide evidence that an equivalent tonnage of packaging waste has been recovered or recycled. Producers demonstrate compliance with their obligations by purchasing/acquiring Packaging Waste Recovery Notes (PRNs) and Packaging Waste Export Recovery Notes (PERNs). PRNs and PERNs are issued by reprocessors and exporters respectively, which have been accredited by the appropriate Environment Agency (i.e. the Environment Agency in

England and Wales, Scottish Environment Protection Agency in Scotland and the Environment and Heritage Service in Northern Ireland). Producers may comply on their own and ensure that their obligations are discharged; or they may choose to join a compliance scheme which will carry out all their legal obligations for them.

1.4 The proposals in this document will not actually change how much recycling takes place each year. The latter is determined by the packaging targets which remain as they are now.

1.5 This partial Regulatory Impact Assessment (RIA) contains proposals by the Department for Environment, Food and Rural Affairs, the Scottish Executive and the Welsh Assembly Government on changes to the current producer responsibility regime for packaging waste as set out in the Producer Responsibility Obligations (Packaging Waste) Regulations 2005.

1.6 For ease of reference the proposals in the RIA can be summarised into the two distinct sections, which are given below:

A. correcting some references in the 2005 Regulations which did not accurately reflect the policy intention and making some technical changes (**corrections and technical changes**);
B. changing the Regulations to allow for electronic Packaging Waste Recovery Notes (PRNs) and Packaging Waste Export Recovery Notes (PERNs) (**issuing of electronic evidence notes**).

2. Proposals

2.1 This chapter of the RIA considers the purpose and intended effect of each measure. This includes sections on: the objective of the change; the background; and the risk associated with each. The costs and benefits of each option and, in particular, the changes that will be made following consultation are discussed in chapters 4 and 5.

Purpose and intended effect

A. Corrections and technical changes

i. Group fees

Objective

2.1 Correct the fee anomaly associated with small producers opting for the allocation route[2], when registering as a subsidiary business with a compliance scheme.

Background

2.2 Currently, the Regulations provide that, where there is a group registration with a compliance scheme under regulation 16(4)(b), the holding company is required to pay a fee of £558 and the appropriate additional fee, or premium, for all subsidiary businesses. This is intended to cover the costs of group data monitoring. Where, however, a subsidiary business is a small producer and has opted for the allocation route, the policy intention is that there should be no premium payable in relation to this particular "small producer" because no data will be submitted by that small producer (since he will have his recycling obligation allocated instead) and so the premium should not apply.

Rationale for government intervention

2.3 The anomaly in the present text of the Regulations needs to be amended as soon as possible so that groups do not incur greater costs than they need to. This is in line with Treasury fees and charges guidance, which suggests that the cost of registrations and licences should reflect the cost of processing them, and reduces the financial burden of the regulations on small firms. At present, in relation to the 2006 obligation year, the Environment Agency has agreed that they will only charge fees based on the Government's policy rather than what regulation 16(4)(b) of the 2005 Regulations currently erroneously requires.

Action based on consultation responses

2.4 100% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

[2] The allocation route – producers have the choice of having their obligations allocated to them, based on their turnover. E.g. a company in 2006 with a £3m turnover would have an allocated obligation of £3 x 25t = 75t. The company would therefore have to purchase 75 tonnes of recycling PRN/PERNs in the main material that it handles. Companies opting for the 'allocation option' must stick with it for at least 3 years.

ii. Group registration fees

Objective

2.5 Provide clarification in terms of regulation 16(4)(a) where a holding company that is a small producer pays only £345 to the compliance scheme with which it is registered.

Background and *Rationale* for government intervention

2.6 Regulation 16(4)(a) is not entirely clear because the current wording could be interpreted to mean that the holding company, where it itself qualifies as a small producer, only pays a fee of £345 to its compliance scheme for a group registration. However, it is, and always has been, the Government's policy that a holding company should consider the aggregate position of the whole group and not just itself and so, only if the aggregate position of the group as a whole qualified for small producer status would the £345 fee be applicable. It is proposed to amend the Regulations to clarify the position on this point.

Action based on consultation responses

2.7 93% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

iii. Small producers that are group subsidiaries and the allocation route

Objective

2.8 Provide clarity that small producers that are group subsidiaries can choose the 'allocation' approach.

Background and *Rationale* for government intervention

2.9 There has also been some uncertainty as to whether small producers that are subsidiaries of groups of companies may choose to have their obligations allocated. It is the Government's policy that the option of having a recycling obligation allocated is available to all small producers and the Regulations will be adjusted to ensure that this is clear. Where small subsidiaries choose the allocation route, their allocated recycling obligations then form part of the overall group obligation.

Action based on consultation responses

2.10 92% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

iv. Definition of "small producer" – turnover threshold test

Objective

2.11 Amend the definition of a small producer to refer to turnover "between £2,000,000 and £5,000,000" to ensure that smaller businesses that are part of group subsidiaries and have a turnover of, say, £100,000 are clear that they do not have to have a recycling obligation allocated.

Background

2.10 Currently, the definition of "small producer" in regulation 2 of the 2005 Regulations relies on a reference to turnover below £5,000,000 rather than referring to the turnover threshold test in the Regulations. Thus, a small producer is defined as a business "...whose turnover...was £5,000,000 or less". This has led to some confusion, particularly in terms of what small producers who are subsidiaries of groups of companies have to do. It is proposed to correct this and ensure that the definition refers to the turnover threshold test; thus, to be a small producer a business's turnover in its most recently available accounts would have to be "between £2,000,000 and £5,000,000". This will then make clear that a subsidiary business of a group that is a small producer will be one that has turnover between £2 million and £5 million. Consequently, it is also clear that when it comes to carrying out recycling, it is only those businesses that qualify as "small producers" that have a recycling obligation. At present, the provision in the Regulations has led to some assumptions that group subsidiaries that have turnover of, say, £100,000 must also have a recycling obligation allocated. This is not the policy intention. The Government's intention on groups of companies is -

i. for the group to consider all the packaging handled by the group and the turnover of the group as a whole - i.e. taking account of all businesses of whatever size - when considering whether it satisfies the threshold tests;

ii. for those subsidiaries in a group that qualify as "small producers" to be able to opt to have a recycling obligation allocated if they so wish;

iii. for the group not to have to calculate recovery/recycling obligations in relation to those producers in the group that, individually, have turnover below £2 million.

Rationale for government intervention

2.11 This approach is based on the Government's wish to exclude smaller businesses from the requirements set down in the Regulations, i.e. those businesses which handled less than 50 tonnes of packaging and have turnover of less than £2,000,000 in their most recently available accounts. The only occasion on which a group of companies must take account of all the businesses and subsidiaries in the group is when it is considering whether, as a group, it satisfies the two threshold tests.

Action based on consultation responses

2.12 86% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

v. Definition of "threshold test": audited accounts

Objective

2.11 Following on from paragraphs 2.8 to 2.10 above, the Government is proposing to ensure that the turnover threshold test definition should refer not to "audited" accounts but just to "accounts; and in the definition of small producer, the reference should also be just to "accounts".

Background

2.12 The definition of "small producer" in regulation 2 also places reliance on the term "audited accounts" yet some small businesses do not have to produce "audited" accounts, although they do have accounts. There is a further reference to "audited accounts" in the threshold tests set out in paragraph 3(a) of Schedule 1 to the Regulations.

Rationale for government intervention

2.13 The User's Guide deals with this situation by making clear that, for example, when considering the turnover threshold test, businesses that do not have to have "audited" accounts must consider their most recently available accounts. This guidance has been sufficient up until now, but with the introduction of the definition of "small producer" we consider that, for complete clarity, the Regulations should be amended to reflect the approach that is taken in the User's Guide. Thus it is proposed to provide that the turnover threshold test should refer not to "audited" accounts but just to "accounts; and in the definition of small producer, the reference should be just to "accounts".

Action based on consultation responses

2.14 93% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

vi. Criterion for provision of an operational plan by a larger individually registering producer

Objective

2.15 Requiring individually registered producers to submit an operational plan if their obligation is in excess of 500 tonnes.

Background

2.16 In the 2005 Regulations there is provision for independently registered producers who handle more than 500 tonnes of packaging to provide an operational plan (OP) or updated OP. This was changed from the original provision which was that producers with financial turnover in excess of £5 million had to provide the operational plan. The change was made because, according to Agency estimates, it would reduce the number of businesses having to provide plans from 463 to 110 in 2006. However Defra still received over 215 plans in 2006.

Rationale for government intervention

2.17 It is the policy intention to ensure that the operational plan requirements do not fall on small businesses where they can be excluded without jeopardising the forward planning needed on the majority of the UK national recovery and recycling obligations that will enable the UK to meet its Directive targets. Currently, even with the 500 tonnes handled test, some smaller businesses are still being captured and we are still seeing companies submitting plans with obligations as low as 40 tonnes. This is unnecessary. The Government therefore proposes to rectify this situation by amending the criterion for submission of an operational plan so that only those producers with an obligation in excess of 500 tonnes should be required to submit an operational plan. Based on Defra's records compiled in 2006, the number of plans that are required to be submitted in 2007 and thereafter should fall to approximately 115, reducing administrative burdens further,

benefiting many smaller businesses that currently have to submit an operational plan and improving the regulatory process as a whole. Historic data also suggests that the amount of packaging that is likely to no longer be the subject of an operational plan is around 18,000 tonnes - which could still impact on the UK in meeting its targets, but as a proportion of the total is not considered significant.

2.18 Based on the operational plan data submitted in 2006, reducing the number of producers submitting a plan from 215 to 115 will also have a negligible effect in terms of the tonnage concerned. In 2006 the 210 producers submitting operational plans had a combined obligation of 274,734 tonnes (4.7% of the total obligations for schemes and producers). Using the data provided solely by producers that have obligations of 500t or more, reduces this figure to 255,794 tonnes. This is 4.4% of the total obligations for schemes and producers – a negligible reduction in tonnage covered. In summary, therefore, making the change proposed and not requiring these 105 businesses to supply an operational plan will have an insignificant effect on the tonnage included in operational plans, and will have a positive impact on reducing administrative burdens. On balance the benefits of deregulation are likely to outweigh the costs, as the businesses no longer required to produce an operational plan will remain obligated so there should be no change to the rates of recycling and or recovery.

Action based on consultation responses

2.19 52% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

vii. Submission of data monitoring plans by compliance schemes

Objective

2.20 Re-insert into the Regulations, the specific requirement for scheme operators to provide their data monitoring plan as part of their operational plan when they are registering with the appropriate Agency.

Background

2.21 The 2005 Regulations inadvertently no longer contain the specific requirement for scheme operators to provide a data monitoring plan as part of their operational plan when they are registering with the appropriate Agency.

Rationale for government intervention

2.22 In practice, what is required under regulation 13(1)(a)(ii)(bb) amounts to a monitoring plan, but this is not immediately evident and is part of the approval process so it is potentially confusing. It is therefore proposed to re-insert the previous wording making this data monitoring plan requirement explicit.

Action based on consultation responses

2.23 100% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

viii. Involvement of environmental auditors in the independent audit

Objective

2.24 Amend the Regulations to allow reprocessors/exporters to use an independent environmental auditor to provide the requirements of the independent audit.

Background and *Rationale* for government intervention

2.25 Currently, the Regulations provide, in Schedule 5, paragraph 2(c), that the auditors which can be used to provide the independent audit report that reprocessors and exporters are required to provide under Schedule 5, paragraph 1(p)(i), should be one that is eligible for appointment as a company auditor under the terms of Part II of the Companies Act 1989. However, since it is the tonnages of packaging waste that are also being taken into consideration in this audit report, it is proposed that reprocessors and exporters should be able to use an environmental auditor to provide this report if they wish, provided that the auditor is independent. The necessary amendment will therefore be made.

Action based on consultation responses

2.26 75% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

ix. Notification to the appropriate authority of scheme failure

Objective

2.23 The amendment of regulation 36 to require a compliance scheme operator itself to notify the appropriate authority where it has not discharged, numerically, the full amount of recovery and recycling that was required to be done in the previous year, rather than getting the scheme to report to the Agency and the Agency to report to the appropriate Authority.

Background

2.27 Under regulation 36, where a scheme appears not to have met its recovery and recycling obligations in the previous year because the actual, full tonnage of recovery/recycling has not been carried out, the appropriate Agency is required to notify both the scheme itself, and the appropriate Authority.

2.28 It would seem unnecessary for the Agency to tell a scheme whether that scheme has or has not discharged its full obligations. The Agency will itself only know this by virtue of information provided to it by the scheme.

Rationale for government intervention

2.29 There is an unnecessary and time consuming series of information activities required here which the Government believe can be short-circuited by amending the Regulations. It is proposed, therefore, that the Regulations should be amended to require a compliance scheme operator itself to notify the appropriate authority of whether it has not discharged, numerically, the full amount of recovery and recycling that was required to be done in the previous year. It is felt to be more appropriate to put the onus on a scheme to notify the appropriate Authority direct by 31 January; and thereafter to have 14 days (as now) to submit an application for re-approval to that authority. For the

avoidance of doubt, the requirements for schemes to report compliance to the Agencies remain as they are now.

Action based on consultation responses

2.30 62% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

x. Reports from independent auditors

Objective

2.31 Amending the Regulations to ensure consistency of independent audit reports from reprocessors/exporters by ensuring that the latter adhere to a specific format or agreed content.

Background

2.32 Currently the regulations do not set out clear powers for what actions the Agencies can take where a report provided by an independent auditor on behalf of an accredited reprocessor or exporter is less than satisfactory. On the face of it, it might appear that the report will either demonstrate, as required, that the PRNs or PERNs issued by the reprocessor or exporter in the previous year are consistent with the tonnage of packaging waste received or exported for reprocessing; or it will not. However, it would appear that the reports received in January 2006 varied significantly in their content and in the degree to which the relevant information was perused. This was intended to be a relatively straightforward exercise but appears to be causing some difficulties. It may be, therefore, that some further clarification is needed. The simplest approach would be for the Regulations to specify that the report should be provided in a format provided by the Agencies; and for the Agencies to have the power to request a re-submission of the report if the relevant Agency is not satisfied with it.

Rationale for government intervention

2.33 To achieve transparency in reporting and also reduce any associated costs.

Action based on consultation responses

2.34 95% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

xi. Agency monitoring plans

Objective

2.35 For the Environment Agency to submit their monitoring plan to the appropriate Authority by 1 December each year in relation to the monitoring activity planned for the following obligation year; and to publish the plan by 31 December in the year prior to the following obligation year.

Background

2.36 Regulation 32 provides that an Agency "shall take such steps as seem to it appropriate to publish, in relation to each year" a monitoring plan. The Agencies do publish a monitoring plan each year, but this generally does not appear until well into the year to which it relates. The Advisory Committee on Packaging has made clear to the Government that, from the industry perspective, this plan appears too late to be of much use. Industry want to see the monitoring plan since the regulators' duties are of considerable significance to whether the UK's packaging waste recovery system will succeed or fail. It is therefore proposed that the Regulations should be amended to require the Agencies to -

a. submit their monitoring plan to the appropriate Authority by 1 December each year in relation to the monitoring activity planned for the following obligation year; and

b. to publish the plan by 31 December in the same year in which the plan is being submitted under (a) above.

Rationale for government intervention

2.37 The intention is that, once the draft monitoring plan has been received by the appropriate authority, the plan will be considered by the appropriate Authority and the Advisory Committee on Packaging and any comments passed to the relevant Agency prior to the deadline for publication on 31 December.

Action based on consultation responses

2.38 88% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

xii. Accreditation of reprocessors and exporters

Objective

2.39 The Agencies should be provided with the power to refuse accreditation to businesses that have committed offences such as against the Trans-frontier Shipment (TFS) requirements, or offences relevant to the collection, treatment or recovery or recycling of packaging waste; and conditions of accreditation should be extended to include compliance with TFS requirements.

Background

2.40 Currently the Agencies are obliged to grant accreditation to a reprocessor or exporter where the application is complete and includes the relevant fee. It is not clear that there is a possibility for the Agency to take any relevant convictions into account, or to take account of whether the business has adhered to, for example, the requirements of the Transfrontier Shipment of Waste Regulations (TFS). This can mean that a business that has already been convicted of fraud, for example, could expect simply to re-apply in the following year and be accredited even though this may not be in the best interests of producers or the credibility of the system.

Rationale for government intervention

2.41 It is difficult to see why businesses that have failed to adhere to TFS or packaging waste requirements should be given accredited exporter status. These points arise now because the Agencies have recently had the experience of having to grant accreditation to businesses in these sorts of circumstances. The Government therefore believes that the Agencies should be provided with the power to refuse accreditation to businesses that have committed TFS offences, or have been convicted of an offence relevant to the collection, treatment or recovery or recycling of packaging waste. At the same time, it is proposed that the conditions of accreditation should be extended to include compliance with TFS requirements.

Action based on consultation responses

2.42 96% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

xiii. Exports to a specific reprocessing site

Objective

2.43 Amend Regulations 23 and 24 to clarify that exporters can only be accredited for export for reprocessing at specified *reprocessing* site or sites, and reprocessors to be accredited for specific reprocessing sites.

Background and *Rationale* for government intervention

2.44 Where material is exported for reprocessing overseas, the intention is that the destination reprocessor should be identified. This is necessary for the exporter to be able to comply with Article 6(2) of the Packaging Waste Directive which is provided for in regulation 24(3)(b). This means that, in respect of each reprocessing site, the exporter must confirm that the recovery or recycling at that site will be undertaken in conditions that are broadly equivalent to those prescribed by European Community legislation. In the UK, the Agencies will, amongst other things, want the exporter to provide evidence that the receiving reprocessor is in possession of the necessary authorisation or licence from the domestic competent body. This means that, if an exporter chooses to export material via a broker, he must nevertheless provide the relevant Agency with evidence as to the identity of the receiving reprocessor at which the material will be recycled, that the reprocessor has obtained the necessary authorisation from the competent body of the country concerned, and that the exporter has complied with any other conditions or requirements from the relevant Agency in order to be able to comply with Article 6(2) of the Packaging Waste Directive.

2.45 What this means is that the wording that is in the Regulations (e.g. regulations 23 and 24) will be adjusted to make quite clear that the PERNs that exporters are accredited to issue relate to “packaging waste exported by him for reprocessing at specified reprocessing site or sites..”. It is not enough to give the name of a broker or other intermediary. Reprocessors must also be accredited in respect of reprocessing sites. Changes will be made to the regulations accordingly.

Action based on consultation responses

2.46 75% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

xiv. period to which the independent audit applies

Objective

2.47 Schedule 5 paragraph 1(p)(ii) to be re-phrased to include PRN/PERNs issued against tonnage received/exported in the “previous year” and because of the carry forward provisions already in the Regulations, this can include December of the previous year or January of the current year.

Background and *Rationale* for government intervention

2.48 1(p)(ii) requires that the independent audit report should demonstrate that PRN/PERNs issued in the previous year match the tonnage of waste received or exported. By specifying the "previous year", the ‘carry-over’ period (December in previous year to end January in following year) appears to be excluded. The Government therefore feels that this change is imperative.

Action based on consultation responses

2.49 100% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

xv. Collation and Aggregation of Data by the Agencies

Objective

2.50 The Regulations should be amended to place a duty on the Agencies to collate data received, make that information available between Agencies and submit it to the appropriate Authorities. Aggregated UK data provided to Defra allows the UK to report data to the European Commission as required under the Packaging Waste Directive.

Background

2.51 The 2005 Regulations do not contain a specific provision requiring the agencies to gather and collate the information submitted to them other than for Public Register purposes. It has, however, always been expected that the Agencies would carry out this exercise principally in order to discharge their duty to monitor compliance, but also to provide data to the Government for onward transmission to the European Commission in line with the requirement in the Packaging Waste Directive. For the avoidance of doubt, it is proposed that the Agencies’ Powers and Duties section of the Regulations (regulations 31-36) should be expanded to include a duty on each of the Agencies to collate data received and make that information available between the Agencies and submit it to the appropriate authorities. The Environment Agency will be required to collate UK data and provide this to Defra for onward transmission to the European Commission and for publication on the Defra website. The data concerned includes the data on packaging handled, provided by producers and schemes; as well as the reprocessor and exporter quarterly returns and end-of-year data on recovery and recycling carried out and PRNs and PERNs issued.

2.52 It is also proposed –

i. that there should be deadlines set for provision by the Agencies to the appropriate Authorities, namely 3 weeks (or 21 calendar days) after each of the four dates specified already in paragraph 1(n) of Schedule 5 to the Regulations for the quarterly reprocessing data, and by 31 March for the full year's data; and, in respect of the packaging data, by 30 June (as far as it is available then) and again, for the full data, by 31 January in the year following the obligation year.

It should be noted that in the Regulations "days" means calendar days.

Rationale for government intervention

2.53 Government intervention is required to ensure that aggregated, timely, accurate data are available to the appropriate Authorities and Industry.

Action based on consultation responses

2.54 100% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

xvi. The Public Register

Objective

2.55 to ensure that the public register is maintained and updated within 5 days.

Background and *Rationale* for government intervention

2.56 Currently, regulation 33 requires the Agencies to maintain a Public Register. If the packaging market is to function effectively, the information in the Public Register needs to be kept as up-to-date as possible and this has not always been the case. The Regulations already require the Agencies to amend the Public Register entries but gives no timescale for this. It is proposed, therefore, in light of comments from industry on the need for timely information at all times, to include a requirement in the Regulations that the entries must be updated within 5 days – and days means calendar days.

2.57 In addition, it is proposed to make a small change to the requirements for the Public Register so that what is required is the business name and address and telephone number of producers, schemes and reprocessors/exporters.

Action based on consultation responses

2.58 77% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

xvii. Production losses/Importers as end users of packaging and "deemed supply"

Objective

2.59 Clarification to be provided in the Regulations in terms of producers who import and are end users of the packaging.

Background

2.60 Questions have arisen as to whether a producer who imports packaging for the purpose of filling, and will himself fill it, is or is not obligated on any tonnages lost as 'production losses' e.g. at the time of filling. The Directive has a "daughter" Commission Decision which stipulates that production losses are outside the scope of the Directive and may not be used to meet targets. These production losses (or process waste as it is sometimes called, are therefore also outside the scope of the Regulations. Thus, production losses cannot be used to meet recycling obligations . The definition of packaging waste already makes this clear but an adjustment will also be made to paragraph 4(2)(b)(ii) of Schedule 1.

Rationale for government intervention

2.61 There have also been queries as to whether it is sufficiently clear that a producer who imports for own use is deemed to supply to himself – because first, he carries out the importing activity on the packaging and then he carries out the selling activity where he supplies the packaging to himself, as final user. Because of the queries there have been, it is proposed to make the Regulations more explicit on this point.

Action based on consultation responses

2.62 74% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

xviii. Activities carried out in the UK by companies owned by overseas businesses

Objective

2.63 To amend the Regulations to ensure that activities carried out in the UK by companies owned by overseas businesses are covered by the Regulations and contribute to the UK meeting its legally binding targets under the Packaging and Packaging Waste Directive. This includes situations where the head office of a franchisor/licensor is located overseas and it will be made clear that in these cases, the obligation on the packaging handled by de minimis franchisees in the UK should be taken by, for example, an agent or subsidiary of the franchisor/licensor who undertakes or manages the franchisor's licensing activities in the UK.

Background and *Rationale* for government intervention

2.64 There are companies in the UK that to all intents and purposes are producers in that they carry out activities on packaging and supply that packaging on to another stage in the chain or to the final user. The only difference is that the company is owned by an overseas business. These companies have been claiming therefore that they are not obligated because they do not own the packaging. There is an argument that, in fact, they could be said to own it since they are themselves owned by the same overseas company, and also because they are likely to be, themselves, incorporated in the UK to carry out business. However, given that there have been discussions on this point over some time; and given that there is a risk to the UK's ability to meet targets if obligations are not carried out, it is proposed to amend the Regulations to make it explicit that in such cases of overseas ownership of a company carrying on business in the UK, on packaging, the company carrying out the activity will be deemed to own the packaging and will be obligated. This principle applies, too, to the recently introduced franchisor/licensor

provisions and we propose to amend the Regulations so that obligations on the packaging will not be lost simply because the franchisor/licensor of the UK franchisee(s) is located overseas. The Regulations will provided that an agent or subsidiary of the overseas franchisor/licensor is obligated where they undertake or manage the franchisor's licensing activities in the UK. Thus, the obligations will be the responsibility of the franchisor/licensor or any person in the UK that acts for the franchisor in that capacity.

Action based on consultation responses

2.65 93% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

xix. Approved persons

Objective

2.66 To clarify the Regulations to ensure that the 'approved person' within a company could be the Company secretary, or the person who has control or management of the business.

Background and *Rationale* for government intervention

2.67 The Regulations refer in regulation 34 to the Agencies approving persons for the purposes of signing off data forms, and issuing certificates of compliance. These approved persons are required to be an individual, in a business that is a sole trader; a partner in a partnership, or a director of a company. However, some companies do not have directors and there have been queries as to who the approved person should be in these cases. The Regulations will clarify that the approved person in these cases could be the Company secretary, or the person who has control or management of the business. For the purposes of complete clarity, it is also proposed to make explicit that a partnership can include a Limited Liability partnership.

Action based on consultation responses

2.68 93% of the responses agreed with the Government proposal. The Regulations will be amended accordingly.

B. Issuing of electronic evidence notes

Objective

2.54 Amending the Regulations to allow industry to move to an electronic online system (the National Packaging Waste Database (NPWD)) for the management of packaging data and thereby:

- improving the timeliness of data, by enabling reprocessors and exporters to issue PRNs and PERNs electronically to producers;
- enabling the aggregation of UK data to happen far more quickly and be released to industry much sooner than is now the case;
- acting as a public register and could prove to be a more reliable register than those currently maintained by the Agencies;

- enabling producers/schemes to submit applications for registration electronically in a format acceptable to the Agencies.

Background and *Rationale* for government intervention

2.55 The Advisory Committee on Packaging is currently developing in conjunction with the three Agencies and the Government, an online system (the National Packaging Waste Database (NPWD)) for the management of packaging data. Currently, all packaging data is handled in hard copies and is sent to the Agencies. Although initially the focus was on improving the timeliness of data it has become clear that the Government can obtain further benefits from the system, such as enabling reprocessors and exporters to issue PRNs and PERNs electronically to producers; and enabling the aggregation of UK data to happen far more quickly and be released to industry much sooner than is now the case. This is important because this is the information that can affect the market. It is also possible (pending consultation responses) that producers and compliance schemes will be able to register with the Agencies online. Once businesses are registered/accredited, data which until now has been sent in by post can be submitted on line. The system also has the potential to act as a public register and could prove to be a more reliable register than those currently maintained by the Agencies.

2.56 One potential complication is that some businesses may not want to use the system/whereas others may not have the technical IT capacity to use the system; although the Government believes that these businesses will be a very small proportion of the total (at most 5%). Reprocessors and exporters who do not wish to participate directly will still have the facility to submit quarterly and annual data to the Agencies in hard copy. This information will however need to be entered into the system by the appropriate Agency and as PRN/PERN issuing will be electronic, reprocessors and exporters who do not use the system will be required to request the appropriate Agency to generate an electronic PRN or PERN on their behalf. Similarly, producers that register with the Agencies will not be required to register electronically, although if they choose not to use the system their information will be entered into the system by the appropriate Agency as part of the registration process. When these companies purchase PRNs or PERNs there will be a record within the system in addition to the production of a document detailing the issue (of the PRN) which can be made available to that producer by the company issuing the evidence.

2.57 The regulations are specific about how applications for registration as a producer must be made, specifying that applications must be "in writing" in addition to repeated references in the Regulations to "forms", "signatures" and "signing". Government policy intention is to **make the Regulations more flexible** to enable producers/schemes and reprocessors/exporters to submit applications for registration and accreditation electronically in a format acceptable to the Agencies. Where the Regulations refer to a "signature" or "signing" the Government wishes to ensure that this can be done electronically and to clarify in guidance what is and is not acceptable (see below for further details).

2.58 PRNs and PERNs are defined in the regulations as "*...a note issued by an accredited reprocessor (or exporter) on a form supplied to him by the appropriate Agency*". An expansion or change to this definition is sought, to cover the issuing of electronic evidence of recycling or recovery undertaken by an accredited reprocessor or exporter of packaging waste. Where the regulations refer to "copies" of PRNs/PERNs reference will also be made to electronic records of recovery or recycling evidence issued by an accredited reprocessor or exporter.

2.59 Producers who register directly with the Agencies are required to submit a certificate of compliance by 31 January of the year following registration along with copies of the evidence they have obtained to discharge their obligations. The NPWD will record evidence as it is issued to obligated producers and report this information to the Agencies. Consequently on 31 January each year the Agencies will be aware of how much evidence each obligated producer has obtained. Under these circumstances requiring those producers who participate directly in the online system to submit a hard copy certificate of compliance is, in the Governments' view and that of the Agencies, an unnecessary requirement. We wish, therefore, to include within the certificate of compliance provisions in the Regulations, the possibility for producers and compliance schemes who participate in the NPWD to submit an electronic statement verifying the evidence obtained, as evidence presented against the recovery and recycling obligations. However this will not be possible with the current NPWD system and further development will be required by the Environment Agency.

2. 60 The statutory conditions of accreditation contain references to PRN or PERN "forms" "books" and to "duplicate copies" in addition to submission of quarterly information on a "form" provided by the appropriate Agency. The conditions also define the issuing of evidence. It is the Government's policy intention that the conditions of accreditation should be amended to include the issuing of evidence and the submission of quarterly and annual data by electronic means; and that the definition of "issue" should be expanded to include electronic issuing of evidence. References to "forms", "books" and "duplicate copies" would be supplemented by references to the possibility of "electronic records" of evidence being issued.

2.61 It is also possible that the NPWD system will not deliver the additional functionality the agencies require to support the delivery of their regulatory duties such as on-line accreditation of reprocessors and exporters. There is scope to enhance the system that is currently being developed to include additional features, which will benefit industry, including:

- Automated Certificates of Compliance – the electronic PRN system will be expanded to link it to the on-line registration to enable the system to generate an electronic certificate of compliance. Under the current development phase the system will deliver only the issuing of electronic PRNs. Industry would still be required to provide a Certificate of Compliance to the appropriate Agency.
- The module dealing with quarterly reporting of reprocessor data will be linked to the ability to issue electronic PRNs; the latter will provide two limits on the ability to issue evidence. The first will be a limit associated with capacity - an accredited site will not be able to issue more evidence that it is physically able to generate, limited to the reprocessing capacity at the site. The second limit would be based on the quarterly submissions, which would limit the issuing of evidence to the amount of waste reported as being reprocessed. In effect a reprocessor would be required to build up a credit before evidence could be issued. Such limitations would provide some further safeguards for industry with regards to control over the issuing of evidence.
- Online accreditation.
- Electronic register of monitoring visits.

2.62 However the latter will result in further development costs of approximately £550K over 5 years. If this is to be taken forward, the Agency would have to increase its cost recovery fee. See Chapters 4 and 5 for further details.

Bank account approach

2.63 The Government and the Agencies recognise that there has been significant concern in recent years over evidence (in the form of PRNs and PERNs) that has allegedly been inappropriately issued. To help address this problem (and to be consistent with the requirements in the packaging Regulations – see below) the NPWD is being developed to act like a “bank account”. In order to issue evidence, reprocessors and exporters will first have to enter data onto the NPWD of the tonnage of packaging waste that they have received or exported, respectively. Once this information has been entered, the reprocessor or exporter will then be able to issue evidence up to this amount, but no more. Those reprocessors or exporters who remain offline will only be able to request that the Agencies issue evidence on their behalf, if they have notified the Agencies of the amount of packaging waste that they have received on site or the packaging waste they have exported.

2.64 The "bank account approach” is a key feature of the NPWD, since it will give the Agencies real time visibility of evidence as it is issued (rather than quarterly or yearly as at present), allowing the Agencies to react more quickly when there are suspicions of inappropriate issuing of evidence. The principle that businesses can only issue evidence once packaging waste has been received or exported is already in the conditions of accreditation (see Schedule 5). Schedule 5 1(b) and 1(e) state that a reprocessor may only issue evidence once packaging waste is received on site for reprocessing or an exporter may only issue evidence once packaging waste has been exported. The Government believes, therefore, that the concept of the “bank account approach” is already catered for in the Regulations and, hence, the latter does not need to be amended. The Government and the Agencies, however, will set out clearly in guidance that this is the way the NPWD should function.

Electronic signatures and Director's sign-off

Objective

2.65 To ensure that electronic signatures are allowed where a Director is required to sign off the data which is sent to the Environment Agencies.

Background

2.66 The use of electronic signatures was discussed in the '*Government's consultation on 'measures to increase the level of obligated tonnage'',* in March 2005. The relevant paragraph is detailed below -

'Director's Sign-off. There have been queries to the Agencies as to whether electronic signatures are allowed where a Director is required, as is the case now, to sign off, e.g. the data form. The Government believes that this should be possible and would refer stakeholders to the relevant legislation relating to the use of electronic signatures[19]. However, there are references to several ways of describing an electronic signature. The Government, while it does not propose to regulate on electronic signatures, will provide guidance, as will the Agencies, on what is acceptable'.

[19] *The Electronic Communications Act 2000; The Electronic Signatures Directive 1999/93/EC; Electronic Signatures Regulations 2002 SI No. 318*

Rationale for government intervention

2.67 Since the Government consulted on this issue last year, it transpires that whilst there is a belief that industry should be able to use electronic signatures because of the UK and European legislation that are referred to, in practice the Agencies do not currently accept electronic signatures. This issue must be addressed, since some compliance schemes already operate an electronic system amongst members and because once the online data system is fully functional, it should, amongst the other electronic matters such as online registration of producers and schemes etc, also allow for online signatures. The difficulty may arise from the fact that there are several ways of describing an electronic signature, but a reference to Agency guidance should suffice.

2.68 The Government therefore believes that the Regulations may need to be amended to provide clarity on this issue.

Action based on consultation responses

2.69 The Government sought views from stakeholders on the potential future developments discussed above and posed two questions in the consultation document. The first question asked stakeholders to consider whether they thought that the online system should be developed to include functions not covered in the work presently being undertaken; secondly, whether they would be prepared to pay for the addition to the fee, as proposed, in order to do this.

2.70 For the first question, 98% of responses agreed that the online system should be further developed. However, only 59% of responses to the second question were prepared to pay the additional fee.

2.71 As the majority of respondents were prepared to pay the additional fee, and an overwhelming majority of respondents want the online system to be further developed; and as Government believes that there is significant benefit both to producers and to the regulators to be derived from this system, it is clear that the Government should progress the development of the online system in line with the proposal.

3. Consultation

Within government

3.1 DTI, Treasury, Cabinet Office, the Departments of the Energy and Environment Committee Ministers, Economists, Legal, Scottish Executive, Welsh Assembly Government, Northern Ireland Administration, Environment Agency, EHS NI, SEPA, Small Business Service.

Public consultation

3.2 This RIA accompanied a Government consultation document and presented overall costs and benefits of the proposed changes. The Government invited responses from as wide an audience as possible with respect to the issues outlined in the consultation paper and accompanying RIA. As part of this process the Government invited responses from all interested parties including individually registered producers, packaging compliance schemes, reprocessors, exporters, trade associations, brokers and material organisations. The Government consulted for a period of twelve weeks and this RIA has been finalised in light of the comments received from stakeholders.

3.3 Informal consultation with compliance schemes, reprocessors, the project management group for the NPWD (consisting of Environment Agencies, Industry, Defra and reprocessors), took place in developing a number of the proposals contained within this RIA and consultation document. In addition the Advisory Committee on Packaging (ACP) and its chairman John Turner played a vital role in this process.

4. Options

A. Corrections and technical changes

4.1 For ease of reference the options relating to the 'corrections and technical changes' have been provided in table 1 at Annex A. However, it should be noted that in terms of corrections the 'Business as Usual' (BAU) option would mean leaving the Regulations as they are currently, which is not really a viable option, and in most cases there are no possible alternatives in addition to the way the Regulations are currently worded.

Action based on consultation responses

4.2 The Government asked stakeholders to consider a number of corrections and technical changes, as mentioned above. The Government received 53 responses, not all of which addressed all the issues raised with the consultation paper.

4.3 These proposals were strongly supported in the consultation responses, with between 100% and 52% support registered for the specific proposals. In light of this, the Government will take forward the proposals and amend the Regulations accordingly.

B. Issuing of electronic evidence notes

Electronic PRNs or PERNs

4.4 In 2005 following representations by industry, it was agreed that, with the financial support of industry, an electronic online data system - the National Packaging Waste Database (NPWD) would be developed for the submission of data returns from packaging producers and packaging waste reprocessors and exporters. Defra, the Environment Agency, SEPA and NI EHS all agreed to work together with industry to this end through a Project Group chaired by the chairman of the Advisory Committee on Packaging (ACP) Data Task Force. Work to develop this system started in November 2005 and it is intended that specific components of the system will be delivered between the end of 2006 and early 2007 when the system will be handed over to the Agency. The components to be delivered are:

- On-line quarterly reporting by accredited reprocessor sites and exporters;
- On-line allocation of evidence (e-PRNs and e-PERNS);
- Quarterly reprocessor and exporter data, summarised for public access.

4.5 As part of this process the packaging Regulations need to be amended to allow industry to use the system for the aforementioned tasks. **There are no new regulatory provisions being proposed here.** The Regulations will only be amended to allow industry to use the system; **there are no additional requirements**, just the fact that industry will be able to comply with the Regulations by a different means e.g. by using e-PRNs within the NPWD. There is also a further option in terms of the functionality of the database, which also needs to be consulted upon. The Government is therefore proposing 2 options under this proposal, which are as follows:

Option 1: Business as usual - Amending the Regulations to allow industry to move to an electronic online data system - the National Packaging Waste Database (NPWD) and for the issue of electronic PRNs or PERNs (eP(E)RNs), and to enable producers, schemes, reprocessors and exporters to submit applications for registration electronically in a format acceptable to the Agencies.

4.6 This option would not normally be viewed as the BAU scenario; however, given that a large portion of industry are already using the system and the fact that there are no new regulatory requirements here (the Government is merely providing businesses with an alternative means of compliance) – this option is termed business as usual. The Regulations will only be amended to allow Industry to use the system; **there are no additional requirements**, just the fact that industry will be able to comply with the Regulations by a different means i.e. by using the NPWD. The regulations would be amended to allow producers, schemes and reprocessors/exporters to use the NPWD to provide quarterly and annual data returns and would allow eP(E)RNs and producer registration to all be undertaken electronically. Taking option 1 forward would:-

- improve the timeliness of data, by enabling reprocessors and exporters to issue PRNs and PERNs electronically to producers;
- enable the aggregation of UK data to happen far more quickly and be released to industry much sooner than is now the case;
- act as a public register and could prove to be a more up to date register than those currently maintained by the Agencies;
- enable producers/schemes to submit applications for registration electronically in a format acceptable to the Agencies.

Option 2: Amending the Regulations to allow for option 1, but also raising the Agency fee for schemes, producers, reprocessors and exporters to enable the Environment Agencies to further develop the NPWD.

4.7 Under option 2, the NPWD system will not deliver the additional functionality the agencies require to support the delivery of their regulatory duties. The NPWD will not deliver online accreditation of reprocessors and exporters. Currently an annual application has to be made to the agencies for accreditation. Expanding the system to include online application for accreditation would streamline the application process. In addition, allowing linkages to be made in the system between baseline information provided with application and quarterly reporting could enable further safeguards against inappropriate issuing of evidence. Applicants making a renewal application would derive significant benefits, as only key changes to existing details would be required to enable an application to be submitted, thus saving them time and effort. The system will not provide a register of their compliance monitoring activities. Their compliance monitoring work covers both registered producers and ‘free riders’ (persons suspected of having producer responsibility obligations, but not discharging their legal obligations). The register would contain information on who has been monitored and on the outcomes. Centralising records associated with compliance work will assist the agencies in the enhancement of their risk-based approach to compliance assessment. Improvements in the targeting of their compliance work will lead to greater assurance that producers are taking on their correct obligations and also that those who hitherto have avoided their obligations are brought within the regulatory regime.

4.8 There is scope to enhance the system that is currently being developed to include additional features, which will benefit industry. These include:

- Automated Certificates of Compliance – the electronic PRN system will be expanded to link it to the on-line registration to enable the system to generate an electronic certificate of compliance. Under the current development phase the system will deliver only the issuing of electronic PRNs. Industry would still be required to provide a Certificate of Compliance to the appropriate Agency.
- The module dealing with quarterly reporting of reprocessor data will be linked to the ability to issue electronic PRNs; the latter will provide two limits on the ability to issue evidence. The first will be a limit associated with capacity - an accredited site will not be able to issue more evidence that it is physically able to generate, limited to the reprocessing capacity at the site. The second limit would be based on the quarterly submissions, which would limit the issuing of evidence to the amount of waste reported as being reprocessed. In effect a reprocessor would be required to build up a credit before evidence could be issued. Such limitations would provide some further safeguards for industry with regards to control over the issuing of evidence.
- Online accreditation.
- Electronic register of monitoring visits.

4.9 The further development of the system to deliver the functionalities outlined in paragraphs 4.5 - 4.6 would require additional funding. The development cost for these further enhancements is £172,500. The proposal is to recover the costs through an increase, on a proportionate basis, across all Agency cost recovery fees i.e. producer registration and accreditation fees. Table 2, below, sets out the current fee and what the revised fee would be to recover the cost for the proposed developments of the system. The fee increase has been based on recovering the development cost over a five year period. It is envisaged that the fee structure would be assessed in advance of that period to determine what the agencies' costs are across all of their activities under these regulations and to determine what the appropriate fee would be at that stage.

4.10 The estimated cost of £172,500 for the proposed enhancements to the Agencies' packaging IT systems for each of the four elements are:

On-line accreditation of reprocessors and exporters	£52,000
Electronic system of monitoring	£48,000
Electronic certificates of compliance	£40,000
Monitoring of reprocessor/exporter capacity data	£32,500
Total	**£172,500**

Table 2: Suggested amendment to Agency fees to recover costs of further developing the NPWD system - no change to SME producer fees

	Current Fees	No. Applications Expected	Expected income 2006	Fee proposed for 2007	Forecast Income 2007
Direct Producers - allocation method	£562	15	£8,430	£562	£8,430
Direct producers - all others	£768	441	£338,688	**£776**	£342,041
Scheme members - allocation method	£345	255	£87,975	£345	£87,975
Scheme members - all others	£558	4178	£2,331,324	**£564**	£2,354,404
Large Reprocessor	£2,590	305	£789,950	**£2,616**	£797,771
Small reprocessors	£500	86	£43,000	**£505**	£43,426

4.11 The Environment Agency has agreed that any monies received from the increase in fee will be ring-fenced for the enhancement of the IT systems to deal with packaging waste.

Bank account approach

4.12 The Government and the Agencies recognise that there has been significant concern in recent years over evidence (in the form of PRNs and PERNs) that has allegedly been inappropriately issued. To help address this problem (and to be consistent with the requirements in the packaging Regulations – see below) the NPWD is being developed to act like a "bank account". In order to issue evidence, reprocessors and exporters will first have to enter data onto the NPWD of the tonnage of packaging waste that they have received or exported, respectively. Once this information has been entered, the reprocessor or exporter will then be able to issue evidence up to this amount, but no more. Those reprocessors or exporters who remain offline will only be able to request that the Agencies issue evidence on their behalf, if they have notified the Agencies of the amount of packaging waste that they have received on site or the packaging waste they have exported.

4.13 The "bank account approach" is a key feature of the NPWD, since it will give the Agencies real time visibility of evidence as it is issued (rather than quarterly or yearly as at present), allowing the Agencies to react more quickly when there are suspicions of inappropriate issuing of evidence. The principle that businesses can only issue evidence once packaging waste has been received or exported is already in the conditions of accreditation (see Schedule 5). Schedule 5 1(b) and 1(e) state that a reprocessor may only issue evidence once packaging waste is received on site for reprocessing or an exporter may only issue evidence once packaging waste has been exported. The Government believes, therefore, that the concept of the "bank account approach" is already catered for in the Regulations and, hence, the latter does not need to be amended. The Government and the Agencies, however, will set out clearly in guidance that this is the way the NPWD should function.

4.14 Since no Regulatory changes are proposed under this 'bank account approach', and in effect this is the Business as Usual scenario, no costs and benefits have been identified and therefore does not feature in chapter 5 of this document.

Electronic signatures and Director's sign-off

Option 1: 'business as usual' option i.e. no changes to the Regulations

4.15 Under this option there would be no change to the Regulations in terms of electronic signatures, therefore, the Agencies would provide details in their guidance, of the types of electronic signatures that would be permitted, where a Director is required to sign off, e.g. the data form.

Option 2: Amending the Regulations to ensure that electronic signatures can be used

4.16 The Government believes that the use of electronic signatures should be possible for industry and as such believes that e-sigs should be explicitly mentioned in the packaging Regulations as they are in Regulation 5(3) of the Hazardous Waste (England and Wales) Regulations 2005, which state:

> *(3) In these Regulations -*
>
> > *(a) any document which is to be provided or given to any person (other than a fixed penalty notice under Part 10) may be provided or given to that person in electronic form if the text is capable of being produced by that person in a visible and legible documentary form;*
> >
> > *(b) any requirement to make, keep or retain a record or to maintain a register may be satisfied in electronic form if the text is capable of being produced by that person in a visible and legible documentary form;*
> >
> > *(c) any requirement for a signature on a notification, consignment note, schedule of carriers or multiple collection consignment note, may be satisfied by an electronic signature incorporated into the document; and*
> >
> > *(d) "electronic signature" means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.*

4.17 Further details on electronic signatures will be provided in both Agency and Defra guidance.

Action based on consultation responses

4.17 The Government sought views from stakeholders on the potential future developments discussed above and posed two questions in the consultation document. The first question asked stakeholders to consider whether they thought that the online system should be developed to include functions not covered in the work presently being undertaken. The Government received 42 responses, of which 98% (41) were in favour of the Government's preferred option, as described in the consultation document.

4.18 The second questioned asked whether stakeholders would be prepared to pay for the addition to the fee, as proposed, in order to fund the further development of the system. 34 responses were received, of which 20 (59%) were in favour of the proposal

4.19 As the majority of respondents were prepared to pay the additional fee, and an overwhelming majority of respondents want the online system to be further developed, it is clear that the Government should progress the development of the online system in line with the proposal.

4.20 Whilst there was majority support for the proposal, a number of responses commented on the lack of transparency in the Agencies' charging structure and exactly what their fee currently buys for them. Therefore, taking into account comments received, the Government intends to ensure that the additional funds are ring-fenced. This will be a good way of reassuring industry that the additional money they are paying will, in fact, be used only, and entirely, for the intended purpose of further development of the system.

5. Costs and benefits

A. Corrections and technical changes

Table 3: table showing the costs and benefits of each correction and technical change to the Regulations.

	Issue	Option 1: business as usual	Option 2: proposed change
i.	Scheme fee for small producers in a group of companies	**Sectors and groups affected:** groups of companies, compliance schemes. **Benefit:** the Government does not see any environmental, social or economic benefit of leaving the Regulations as they are currently worded i.e. small producers opting for the allocation approach, when registering as a subsidiary business do not pay any fee. **Cost:** there will be an economic cost to small producers opting for the allocation approach, when registering as a subsidiary business. The Government is not able to assign a value to this figure, but subsidiary fees are £180 (for first 4 subsidiaries), £90 (for 5th – 20th subsidiaries inclusive) and £45 (for 21st and subsequent subsidiaries).	**Sectors and groups affected:** groups of companies, compliance schemes. **Benefit:** correcting the fee anomaly associated with small producers opting for the allocation route, when registering as a subsidiary business will mean that these smaller businesses will not have to pay the fee. **Cost:** the Government does not see any environmental, social or economic costs of changing the.
ii.	Registration fee for a group of companies	**Sectors and groups affected:** groups of companies, compliance schemes. **Benefit:** the Government does not see any environmental, social or economic benefit of leaving the Regulations as they are currently worded.	**Sectors and groups affected:** groups of companies, compliance schemes. **Benefit:** correcting this anomaly will ensure that all groups are able to qualify as a small producer (and pay only £345) if the *aggregate* position (on turnover and tonnage handled) meets the definition of small producer. This could ultimately

		Cost: there could be an economic cost to groups of companies that qualify as small producers.	save these businesses money in terms of reduced admin burdens. **Cost:** Leaving the Regulations as they are currently worded means that even if groups of companies qualify as small producers they cannot go down the allocation route, which will cost them in terms of administration costs.
iii.	Schedule 8 para 5(c)	There is currently confusion as to whether a small producer subsidiary may choose to have its obligation allocated if it is part of a group registration.	The provision allowing small producers to choose to have their obligation allocated applies to all producers, including those in groups of companies. Schedule 8 will be amended to clarify this.
iv.	Definition of 'small producer'	**Sectors and groups affected:** individual producers, compliance schemes. **Benefit:** the Government does not see any environmental, social or economic benefit of leaving the Regulations as they are currently worded i.e. small producers that are group subsidiaries with a turnover 'less than £5m' will have an individual recycling obligation allocated. **Cost:** there may be an economic cost (which the Government has not been able to quantify) to small producers that are group subsidiaries with a turnover 'less than £5m' with an individual recycling obligation allocated, as these businesses will have to purchase PRNs for the totality of their obligations.	**Sectors and groups affected:** individual producers, compliance schemes. **Benefit:** Amending the definition of a small producer to refer to the turnover "between £2m and £5m" to ensure that smaller businesses that are part of group subsidiaries do not have a recycling obligation allocated has a number of economic benefits such as cost savings for the businesses concerned from not purchasing recycling PRNs. **Cost:** the Government does not see any environmental, social or economic costs of amending the Regulations as above.
v.	Reference to "audited accounts" in	**Sectors and groups affected:** individual	**Sectors and groups affected:** individual

	both definition of ‘small producer’ and the turnover threshold test	producers, compliance schemes. **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are currently. **Cost:** leaving the Regulations as they are currently worded is confusing for some businesses which do not have 'audited accounts', whereas others produce only ‘accounts’.	producers, compliance schemes’ members. **Benefit:** Amending the Regulations to ensure that the turnover threshold test definition should refer not to "audited" accounts but just to "accounts; and in the definition of small producer, the reference should be just to "accounts" will provide more clarity to industry. **Cost:** the Government does not see any environmental, social or economic costs of amending the Regulations as above.
vi.	Provision of operational plan by individually registering producers	**Sectors and groups affected:** individual producers. **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are currently worded as smaller businesses with low obligations are required to submit operational plans. **Cost:** Leaving the Regulations as they are currently i.e. requiring all individually registered producers to submit an OP provided they handle more than 500t packaging has a significant cost on a number of these smaller businesses. Reducing the requirement from 500t handled to ‘an obligation of at least 500t’ means that 115 OPs will be submitted in 2007,	**Sectors and groups affected:** individual producers. **Benefit:** Amending the criterion for submission of OPs by large individually registered producers from 500t handled to ‘an obligation of at least 500t is estimated to **save these businesses approximately £100,000**[3] in 2007, since they will not have to invest time and effort in preparing, gathering data and calculating obligations for their OPs. **Cost:** Requiring individually registered producers to submit an operational plan if their obligation is in excess of 500 tonnes will not have any additional environmental, social of economic costs.

[3] It takes individual registrants approximately 2 days to prepare their Operational Plans @ £500 per day on average (source: a range of compliance schemes and large producers). Since the Government is expecting 100 fewer OPs in 2007 the total saving will be £500x2x100 = £100,000.

		compared with 215 in 2006. Cumulatively in terms of administration, OP preparation time and data gathering there is a cost of £100,000 on these businesses, if the Regulations are not amended.	
vii.	Submission by schemes of a data monitoring plan	**Sectors and groups affected:** compliance schemes. **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are currently worded. **Cost:** Leave the Regulations as they are currently i.e. what is required under regulation 13(1)(a)(ii)(bb) amounts to a monitoring plan, but is potentially confusing.	**Sectors and groups affected:** compliance schemes. **Benefit:** Re-inserting into the Regulations, the specific requirement for scheme operators to provide a data monitoring plan as part of their operational plan when they are registering with the appropriate Agency will provide greater clarity to compliance schemes. **Cost:** the Government does not see any environmental or social costs of re-inserting this requirement into the Regulations. However, there may be an economic cost of producing this monitoring plan.
viii,	Involvement by environmental auditors in provision of independent audit	**Sectors and groups affected:** reprocessors, exporters, Agencies **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are currently worded. **Cost:** There could be a greater cost associated with auditors that are eligible to undertake company audits under Part II of the Companies Act 1989, compared with audits undertaken by environmental auditors.	**Sectors and groups affected:** reprocessors, exporters, Agencies **Benefit:** it is envisaged that amending the Regulations to allow environmental auditors to produce the Independent Audit report could save exporters/reprocessors money. **Cost:** the Government does not see any environmental, social or economic costs of amending the Regulations as above, since businesses required to provide an audit report will still have a choice of the auditor they employ.

ix.	Notification of appropriate Authority of scheme failure	**Sectors and groups affected:** compliance schemes. **Benefit:** Leaving regulation 36 as it is currently worded i.e. Agency to tell a scheme whether that scheme has or has not discharged its full obligations and the appropriate Authority by 15 February has no benefits since the scheme will already know whether or not it has failed to comply. **Cost:** Leaving the Regulations as they are currently worded is slightly confusing and makes the process of advising the appropriate Authority via the Agency slightly convoluted. Amending the Regulations would save Agencies and Schemes additional time as the amendment essentially cuts out an unnecessary stage in the process.	**Sectors and groups affected:** compliance schemes. **Benefit:** amending the Regulations will save schemes and Agencies time and therefore money, although the Government has been unable to quantify this saving. **Cost:** the Government does not see any environmental, social or economic costs of amending the Regulations in this way. However, schemes may face a cost in terms of providing a statement to the appropriate Authority as to whether or not they have discharged fully their obligations.
x.	Quality of reports from independent auditors	**Sectors and groups affected:** reprocessors and exporters. **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are currently worded. **Cost:** Leaving the Regulations as they are currently i.e. do not provide additional clarification and do not specify that the report should be provided on a template provided by the Agencies; or must have a specified	**Sectors and groups affected:** reprocessors and exporters. **Benefit:** Amending the Regulations to ensure consistency of independent audit reports from reprocessors/ exporters by ensuring that they adhere to a specific format or agreed content and for the Agencies to have the power to request a re-submission of the report if it does not comply and allow the EA to compare reports between reprocessors and exporters. **Cost:** the Government does not see any

		content means that there is no consistency between reports; some being rather vague and containing statements with little supporting evidence.	environmental or social costs of amending the Regulations in this way. However, there could potentially be resubmission costs for reprocessors.
xi.	Agency monitoring plans	**Sectors and groups affected:** Environment Agency. **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are currently worded, as this issue is not broached. **Cost:** Not amending the Regulations to require the EA to submit their plan to the appropriate Authority by 1 December, will mean that Industry will see the plan too late to be of much use to them - in terms of whether the UK's packaging waste recovery system will succeed or fail from a regulatory perspective. This could have economic implications on the packaging Industry and indirectly on the UK's ability to meet Directive targets in 2008. Failure to meet targets could result in infraction proceedings, which equate to fines based on GDP.	**Sectors and groups affected:** Environment Agency. **Benefit:** Amending the Regulations to require the Environment Agency to submit their monitoring plan to the appropriate Authority by 1 December each year in relation to the monitoring activity planned for the following obligation year; and to publish the plan by 31 December in the year prior to that being monitored will provide environmental and economic benefits to Industry and the UK Government, however, these benefits cannot be quantified. **Cost:** the Government does not see any environmental, social or economic costs of amending the Regulations in this way. .
xii.	Accreditation of exporters and reprocessors	**Sectors and groups affected:** reprocessors and exporters. **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are currently worded.	**Sectors and groups affected:** reprocessors and exporters. **Benefit:** Amending the Regulations to provide Agencies with the power to refuse accreditation to businesses that have committed TFS offences, or have been convicted of an offence relevant to the collection, treatment or recovery or recycling of

		Cost: Leaving the Regulations as they are currently i.e. no possibility for the Agency to take relevant convictions into account, or to take account of whether the business has adhered to e.g., the requirements of the TFS Regulations, could mean that a business that has been convicted by the police of fraud or theft, could expect simply to re-apply in the following year and be accredited even though this may not be in the best interests of produces or the credibility of the system. Indirectly, this could have huge economic implications on schemes, producers and the UK of meeting their legally binding targets under the packaging regulations. However, the Government has been unable to quantify these costs.	packaging waste; and conditions of accreditation to be extended to include compliance with TFS requirements, would provide a number of economic, social and environmental benefits to the packaging system as a whole. For example the UK will be more likely to meet its recycling and recovery targets (and therefore not be infracted) with businesses that have not been prosecuted previously under relevant associated legislation. This change could also reduce fraud if there is a possibility of loosing accreditation over this change. **Cost:** the Government does not see any environmental, social or economic costs of amending the Regulations in this way.
xiii.	Exports to a reprocessing "site"	**Sectors and groups affected:** reprocessors and exporters. **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are currently worded. **Cost:** Under Regulations 23 and 24 - where material is exported for reprocessing it must go to a specified overseas site. A broker may be an intermediary but the reprocessing site must be identified, if this is not included material could be exported to any reprocessor, which is not necessarily authorised by the local competent authority to reprocess material to the necessary	**Sectors and groups affected:** reprocessors and exporters. **Benefit:** Amending Regulations (23 and 24) will clarify that exporters can only be accredited for export for reprocessing at specified *reprocessing* site or sites, to ensure that these sites are acceptable in terms of the 'broadly equivalent' requirements of the Packaging Waste Directive. This may also reduce the incidence of potential acts of fraud – since the Agencies will know more surely to which sites material is being sent. **Cost:** the Government does not see any environmental, social or economic costs of amending the Regulations in this way.

		standards and operating procedures. Brokers must not be named as the reprocessing site, as they are currently.	
xiv.	Period to which the independent audit applies (para. 1(p) of Schedule 5).	**Sectors and groups affected:** reprocessors and exporters. **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are currently worded. **Cost:** Leave the Regs as they are currently worded i.e. 1(p)(ii) requires that the independent audit report should demonstrate that PRN/PERNs issued in the previous year match the tonnage of waste received or exported. By specifying the "previous year", the 'carry-over' period (December in previous year to end January in following year) is excluded – which is not truly representative of the number of PRNs/PERNs distributed.	**Sectors and groups affected:** reprocessors and exporters. **Benefit:** Regulations to be re- phrased to include PRN/PERNs issued against tonnage received / exported in the December, whether in December of the previous year or January of the current year. Therefore encompassing the whole of the obligation year and carry over period. **Cost:** the Government does not see any environmental, social or economic costs of amending the Regulations in this way.
xv.	Aggregation and provision of data to the appropriate Authority	**Sectors and groups affected:** Environment Agency, appropriate Authorities. **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are. **Cost:** If the Regulations are left as they are currently worded i.e. the Agencies are not specifically required to gather and collate data submitted to them other than for Public Register purposes, this could have economic	**Sectors and groups affected:** Environment Agency, appropriate Authorities. **Benefit:** Proposal is that the Regulations should be amended to place a duty on the Agencies to collate data received, make that information available between Agencies and submit it to the appropriate Authorities. Also propose to set deadline for provision of data to appropriate Authorities i.e. 3 weeks (or 15 working days) after each of the four dates specified in para.1(n) of Schedule 5. This will provide Industry with the

		impacts on the Packaging industry as they will not know whether targets have been met and how the PRN market has been functioning. Furthermore Defra will be unable to provide data to the European Commission.	packaging data that they require to make informed market decisions and reduce the risk associated with their producer responsibility obligations. **Cost:** the Government does not see any environmental, social or economic costs of amending the Regulations in this way.
xvi.	Upkeep of the Public Register and Content of Public Register	**Sectors and groups affected:** Environment Agency. **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are. **Cost:** Leaving the Regulation as they are currently, with an unsatisfactory updating of information in the Public Register, impacts on Industry.	**Sectors and groups affected:** Environment Agency. **Benefit:** The public register will be updated within 5 days – Industry will therefore know of any changes to the public register as soon as they occur. **Cost:** the Government does not see any environmental, social or economic costs of amending the Regulations in this way.
xvii.	Producer who imports and is end user of the packaging	**Sectors and groups affected:** packaging Industry as a whole. **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are. **Cost:** Questions have arisen as to whether such an importer is or is not obligated on tonnages lost as production losses at, e.g. the point of filling. Also does definition of "deemed supply" make sufficiently clear that an importer is deemed to supply on when he imports for own use – i.e. supplies to	**Sectors and groups affected:** packaging Industry as a whole. **Benefit:** The Commission Decision on Formats for Databases states that production losses are outside the scope of the Directive and therefore the scope of the Regulations and cannot be used to meet recycling targets. The Regulations already provide for this but will be clarified by reference to the Commission Decision. Definition of "deemed supply" will be amended to ensure complete clarity. **Cost:** the Government does not see any

		himself.	environmental, social or economic costs of amending the Regulations in this way.
xviii	Activities carried out in the UK by companies owned by overseas businesses	**Sectors and groups affected:** packaging Industry as a whole, including franchisors/ licensors. **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are. **Cost:** Some companies that carry out activities, e.g. filling, in the UK are declaring that, as they are owned by a foreign company, so too is the packaging, so they should avoid obligation; or that as franchisor is overseas, there is no obligation for franchisee packaging in UK; this has economic implications on the rest of the packaging industry and may affect reaching targets.	**Sectors and groups affected:** packaging Industry as a whole. **Benefit:** The Regulations will make clear that a company carrying out activities in the UK on packaging that ends up in the UK waste stream should not avoid obligation because it is foreign owned, which will benefit the packaging Industry. **Cost:** the Government does not see any environmental, social or economic costs of amending the Regulations in this way. However, there will be costs for companies that are currently avoiding obligation as they will now be obligated as a result of this change.
xix.	Approved persons; person to sign off data forms	**Sectors and groups affected:** packaging Industry as a whole. **Benefit:** the Government does not see any environmental, social or economic benefits of leaving the Regulations as they are. **Cost:** Regulations refer to a director of a company, but some companies do not have Directors. This change will provide additional clarity.	**Sectors and groups affected:** packaging Industry as a whole. **Benefit:** Regulations to clarify that where a company is not incorporated, the approved person could be a company secretary, or the person who has control or management of the business. Also, clarification that “Partnerships” can include Limited Liability Partnerships. **Cost:** the Government does not see any environmental, social or economic costs of amending the Regulations in this way.

B. Issuing of electronic evidence notes

Electronic PRNs or PERNs

Option 1: Business as usual - Amending the Regulations to allow industry to move to an electronic online data system - the National Packaging Waste Database (NPWD) and for the issue of electronic PRNs or PERNs (eP(E)RNs), and to enable producers, schemes, reprocessors and exporters to submit applications for registration electronically in a format acceptable to the Agencies.

5.1 This option would not normally be viewed as the BAU scenario; however, given that a large portion of industry are already using the system and the fact that there are no new regulatory requirements here (the Government is merely providing businesses with an alternative means of compliance) – this option is termed business as usual. The Regulations will only be amended to allow Industry to use the system; **there are no additional requirements**, just the fact that industry will be able to comply with the Regulations by a different means i.e. by using the NPWD. The regulations would be amended to allow producers, schemes and reprocessors/exporters to use the NPWD to provide quarterly and annual data returns and would allow eP(E)RNs and producer registration to all be undertaken electronically. Taking option 1 forward would:-

- improve the timeliness of data, by enabling reprocessors and exporters to issue PRNs and PERNs electronically to producers;
- enable the aggregation of UK data to happen far more quickly and be released to industry much sooner than is now the case;
- act as a public register and could prove to be a more up to date register than those currently maintained by the Agencies;
- enable producers/schemes to submit applications for registration electronically in a format acceptable to the Agencies.

Sectors and groups affected

5.2 The groups affected by this proposed policy change are the whole of the packaging Industry i.e. all obligated producers, compliance schemes, reprocessors, exporters, the regulators and appropriate Authorities.

Benefits

5.3 The Government has identified a substantial number of both quantifiable and non-quantifiable environmental, social and economic benefits to reprocessors, exporters, individually registered producers, compliance schemes and Environment Agencies associated with option 1.

5.4 Firstly, shifting from a paper based regime to an electronic system will have some environmental benefits in terms of climate change, sustainable consumption and production and carbon emissions, since using an online system uses far less energy compared with creating paper from its virgin material/recycling and printing; and posting out Agency forms to all of the 570 or so registered businesses and schemes obligated under the packaging Regulations (there approximately 10,000 businesses covered by the Regulations, of which 4500 register via schemes).

5.5 The NPWD will improve the timeliness of data and enable the aggregation of UK data to happen far more quickly and be released by Defra to industry much sooner than is now the case, which will benefit all obligated businesses economically, as they will be able to see how the market is functioning and whether they need to mitigate any potential problems in the future by purchasing additional P(E)RNs.

5.6 Benefits of the NPWD that are specific to the reprocessor/exporter data return module include the following:

- Ease of reporting for industry with electronic data entry;
- Reduction in time consuming manual data entry for Agency staff;
- Reduction in errors from manual data entry of hard copy forms;
- Auto-validation of operator data entered at time of entry reducing the time-consuming checking and query telephone calls for Agency staff;
- Exceptions stand out more clearly; reducing the time required identifying them;
- Data more easily collated into reports for Defra and industry.

5.7 The Environment Agency has estimated that the aforementioned benefits would equate to an approximate administrative saving of £30,000, which equates to one full time equivalent (FTE).

5.8 There will also be further cost savings and benefits for schemes and producers in using the system in terms of administration and time savings, for which the Government is unable to assign a numerical value. The Environment Agencies also estimate that a further £2,310 of administrative costs could be saved in terms of end of year producer and scheme reconciliation of data checks.

Benefits of e-P(E)RNs

5.9 A range of further benefits specific to the use of electronic PRNs and PERNs have been identified. These are as follows and apply mainly to the Environment Agencies and reprocessors/exporters:

- a saving to the EA of not having to produce PRN books (saving £2,500);
- no need to send out 400 PRN books to exporters and reprocessors, in addition to the Agencies administration time associated with this task (saving £4,310);
- in 2005 there were 6300 P(E)RN transactions (including substitutions and cancelled P(E)RNs) i.e. reprocessors/exporters writing PRNs and sending them by registered post to producers (£1.17 up to 100g for each transaction) equates to approximately £7,400 saving;
- e-P(E)RNs will reduce the likelihood of fraud; it is therefore likely that the Government would not be required to carry out ‘fact-finding missions’ as frequently and at considerable cost (usually £50,000 - £100,000);
- e-PRNs are a lot more secure than those posted via Royal Mail and as such there will be economic benefits e.g. mis-placing or un-delivered PRNs need to be replaced, which has economic implications;
- records of P(E)RN purchase have to be kept for up to 4 years. However, the NPWD will record this information so hard-copies would be superfluous if option 2 was to be adopted. This would also mean that compliance schemes would not need to maintain and utilise their P(E)RN safety deposits;
- e-PRNs will facilitate better quality data analysis and enable better targeting of the Agency’s regulatory effort;

- improve the timeliness of data, by enabling reprocessors and exporters to issue PRNs and PERNs electronically to producers;
- having to request, and wait for, a replacement P(E)RN book from the Agencies will be a thing of the past, whereas with the electronic issue of evidence notes within the NPWD, reprocessors/exporters can continue to issue recovery notes provided they have the capacity;
- benefit to the Agencies in terms of verification. Once historic packaging data has been inputted into the data system year on year trends and checks can be undertaken much easier and with greater frequency at no extra administrative cost to the Agencies.

Benefits of electronic registration

5.10 Further benefits of increasing the NPWD mean that the system could:

- act as a public register and could prove to be a more up to date and reliable register than those currently maintained by the Agencies;
- enable producers/schemes to submit applications for registration electronically in a format acceptable to the Agencies, which would be more cost effective in terms of man-hours saved, postage and transportation costs;
- the EA estimates that electronic registration would have cost savings of approximately £1,160.

5.11 Overall, the funding provided by industry together with Government and the Agencies, will allow the following elements of on-line data returns to be developed –

i. Quarterly returns by accredited reprocessors and exporters;
ii. End of year returns by accredited reprocessors and exporters;
iii. Aggregated recovery and recycling data from quarterly returns for Government and industry;
iv. On-line registration by producers and compliance schemes and submission of required packaging data;
v. Exception analysis of registration data (i.e. who has not supplied data – but this assumes the existence of some historical data);
vi. On-line logic checks of registration data (again, assumes some historical data has been entered for comparison);
vii. Report on aggregated producer data following registration publication;

5.12 In general this new system should save the Agencies money (as detailed above) – this has been estimated to equate to approximately **£90,000** (see table 5 below), thereby releasing some part of the present fee payable by producers, schemes and reprocessors/exporters for the data receipt, handling and analysis and monitoring activities. However, there will be annual maintenance costs of some £40,000 and annual hosting costs of around £50,000. The Agency will have to continue with a third party hosting system until the new system is compatible with their internal systems. **Therefore, overall, there is to be no change to the Environment Agency cost-recovery fee as a result of introducing the on-line system.**

Costs

5.13 Economically there could be costs to reprocessors, exporters and producers who wish to use the system, but do not have the IT hardware to enable them to do so. These

organizations would therefore have an initial outlay of approximately £500 to purchase a PC. However, the Government does not have an accurate figure to estimate an overall cost. Producers and reprocessors/exporters will still have the option of calling the Agencies by telephone where administrative staff will complete the e-P(E)RN documentation on their behalf online. Furthermore, the NPWD is voluntary and any costs incurred in purchasing new equipment would also be voluntary.

5.14 There may also be a cost to industry of learning to use the new system, although the Government has been unable to quantify this cost. Furthermore, it is the intention to hold a number of workshops with industry to educate them as to how to use the system, so any costs would be minimal.

Option 2: Amending the Regulations to allow for option 1, but also raising the Agency fee for schemes, producers, reprocessors and exporters to enable the Environment Agencies to further develop the NPWD.

5.15 Under option 2, the NPWD system will not deliver the additional functionality the agencies require to support the delivery of their regulatory duties. The NPWD will not deliver online accreditation of reprocessors and exporters. Currently an annual application has to be made to the agencies for accreditation. Expanding the system to include online application for accreditation would streamline the application process. In addition, allowing linkages to be made in the system between baseline information provided with application and quarterly reporting could enable further safeguards against inappropriate issuing of evidence. Applicants making a renewal application would derive significant benefits, as only key changes to existing details would be required to enable an application to be submitted, thus saving them time and effort. The system will not provide a register of their compliance monitoring activities. Their compliance monitoring work covers both registered producers and 'free riders' (persons suspected of having producer responsibility obligations, but not discharging their legal obligations). The register would contain information on who has been monitored and on the outcomes. Centralising records associated with compliance work will assist the agencies in the enhancement of their risk-based approach to compliance assessment. Improvements in the targeting of their compliance work will lead to greater assurance that producers are taking on their correct obligations and also that those who hitherto have avoided their obligations are brought within the regulatory regime.

Sectors and groups affected

5.16 The groups affected by this proposed policy change are the whole of the packaging Industry in terms of obligated producers, compliance schemes, reprocessors, the regulators and appropriate Authorities.

Benefits

5.17 The benefits of option 2 are the same as that of option 1, however, there would be further benefits in terms of future expansion of the NPWD, which include:

- Automated Certificates of Compliance – the electronic PRN system will be expanded to link it to the on-line registration to enable the system to generate an electronic certificate of compliance. Under the current development phase the system will deliver only the issuing of electronic PRNs. Industry would still be required to provide a Certificate of Compliance to the appropriate Agency.

- The module dealing with quarterly reporting of reprocessor data will be linked to the ability to issue electronic PRNs; the latter will provide two limits on the ability to issue evidence. The first will be a limit associated with capacity - an accredited site will not be able to issue more evidence that it is physically able to generate, limited to the reprocessing capacity at the site. The second limit would be based on the quarterly submissions, which would limit the issuing of evidence to the amount of waste reported as being reprocessed. In effect a reprocessor would be required to build up a credit before evidence could be issued. Such limitations would provide some further safeguards for industry with regards to control over the issuing of evidence.
- Online accreditation – including £1,730 savings to the EA for the input of data on 400 returns.
- Electronic register of monitoring visits.

Costs

5.18 The further development of the system to deliver the functionalities outlined above would require additional funding. The development cost for these further enhancements is approximately £172,500. The proposal is to recover the costs through an increase, on a proportionate basis, across all Agency cost recovery fees i.e. producer registration and accreditation fees. Table 4, below, sets out the current fee and what the revised fee would be to recover the cost for the proposed developments of the system. The fee increase has been based on recovering the development cost over a five year period. It is envisaged that the fee structure would be assessed in advance of that period to determine what the agencies' costs are across all of their activities under these regulations and to determine what the appropriate fee would be at that stage.

5.19 The estimated cost of £172,500 for the proposed enhancements to the Agencies' packaging IT systems for each of the four elements are:

On-line accreditation of reprocessors and exporters	£52,000
Electronic system of monitoring	£48,000
Electronic certificates of compliance	£40,000
Monitoring of reprocessor/exporter capacity data	£32,500
Total	**£172,500**

Table 4: Suggested amendment to Packaging waste fees to include recovery of some cost recovery of the NPWD - no change to SME producer charges

	Current Fees	No. Applications Expected	Expected income 2006	Fee proposed for 2007	Forecast Income 2007
Direct Producers - allocation method	£562	15	£8,430	**£562**	£8,430
Direct producers - all others	£768	441	£338,688	**£776**	£342,041
Scheme members - allocation method	£345	255	£87,975	**£345**	£87,975
Scheme members - all others	£558	4178	£2,331,324	**£564**	£2,354,404
Large Reprocessor	£2,590	305	£789,950	**£2,616**	£797,771
Small reprocessors	£500	86	£43,000	**£505**	£43,426

Summary tables of partial costs and benefits of each option

Table 5: Summary table showing overall quantifiable benefits associated with each option under section B (issuing of electronic evidence notes).

Benefit	Option 1	Option 2
Agencies saving from exporter/reprocessor modules	30,000	
Agencies saving from reconciliation of scheme/ producer data	2,310	
Agencies savings from eP(E)RNs	6,810	
Savings to reprocessors/exporters – postage and admin	7,400	
Agencies benefits of electronic registration and accreditation	1,160	
Savings to Agencies	£30,000 - £50,000	
Automated certificates of compliance		Non quantifiable
On-line accreditation		Non quantifiable
Electronic register of monitoring visits		Non quantifiable
Expansion of reprocessor module		Non quantifiable
Total (£) approximate	**£90,000**	**£not quantifiable**

Table 6: Summary table showing overall quantifiable costs associated with each option under section B (issuing of electronic evidence notes).

Cost	Option 1	Option 2
Increased Agency fee[4]	£0	£34,679
EA hosting and maintenance	£90,000	
Costs to reprocessors/exporters of PC	Non quantifiable	Non quantifiable
Total (£)	**£90,000**	**£34,679**

Table 7: Summary table showing partial quantifiable benefits/costs associated with each option under section B (issuing of electronic evidence notes).

Overall Benefit/cost	Option 1	Option 2
Total (£)	**£0**	**-£34,679**

5.20 The overall costs and benefits of each option have not been fully quantified since the Government has been unable to obtain estimates for a number of costs/benefits associated with the proposed policy changes. The figures provided in Table 7 are therefore partial costs and benefits.

5.21 It seems that there is an overall cost with option 2, however, this appears to be mis-leading as there would almost certainly be an overall benefit associated with the further developments associated with this option, but unfortunately the Government has been unable to obtain figures for these savings.

[4] Total cost of EA fee = (£8,430 + 342,041 + £87,975 + £2,354,404 + £797,771 + £43,426) - (£8,430 + 338,668 + £87,975 + £2,331,324 + £789,950 + £43,000) = 172,500

6. Small Firms Impact Test

6.1 Businesses that do not simultaneously satisfy the two threshold tests in the Regulations (i.e. an annual turnover in excess of £2m and handle more than 50t of packaging) are excluded from the producer responsibility obligations in the Regulations.

6.2 A number of proposals in this RIA, for example amending the requirements for which an operational plan must be submitted to the Agency with which the producer is registered and the appropriate Authority, from 500t of packaging handled to ‘an obligation of at least 500t’ means that cumulatively £100,000 will be saved by producers that are currently obligated under the packaging Regulations. One hundred fewer smaller business (i.e. with a turnover of between £2 and £5 million and with an obligation of less than 500t) will not have to spend time and effort creating an Operational Plan detailing how they are going to forward plan and comply with their legislative recycling and recovery obligations. The latter also contributes to the ‘better regulation agenda’ and simplification mechanisms for smaller businesses

6.3 Furthermore, the Government will amend the definition of ‘small producer’ to ensure that small producers that are group subsidiaries with a turnover 'less than £5m' i.e. potentially £100,000 do not have individual recycling obligation allocated to them under the ‘allocation option’, as this was never part of the under-pinning policy intention.

6.4 The Government has kept in regular contact with the Small Business Service (SBS) throughout the whole consultation process.

7. Competition assessment

7.1 The majority of the proposals in this RIA have been required to correct anomalies in the Regulations and the options relating to the National Packaging Waste Database (NPWD) will not place additional requirements on businesses, but will merely allow them to use the online system, which is currently being developed.

7.2 However, proposals have been put forward to reduce burdens placed on smaller business in terms of the submission of operational plans. One hundred of these businesses will notice a substantial cost reduction of approximately £1000 each.

7.3 The Government does not expect the proposals to affect the current market structure or change the number or size of firms. New businesses will not face higher charges than existing companies and the proposals should not restrict businesses choice of products. Although the Government is not aware of the sector being characterized by rapid technological change there may be instances where this is the case.

8. Enforcement and Sanctions

8.1 The packaging Regulations are enforced by the Environment Agency in England and Wales and by the relevant agencies in the other Devolved Administrations.

8.2 The consultation document did not include proposals for additional sanctions.

9. Monitoring and Review

9.1 The UK packaging system is monitored continually by Government, the Advisory Committee on Packaging and industry generally and the Agencies.

9.2 Accredited reprocessors and exporters are required to provide quarterly returns to the Agencies, which include data on the amount of reprocessing that has taken place that quarter. This enables the Government to track progress throughout the year against packaging targets. This data is also published on the Defra website so that industry too can monitor the UK's performance.

9.3 Each year, the Department produces a Data Note which shows current and historical packaging data including for instance the amount of reprocessing that has taken place each year and the corresponding information on PRN and PERN revenue.

9.4 Furthermore, the UK is required to provide the European Commission with data, 18 months after the end of each year.

10. Summary and Recommendation

10.1 This RIA considers a number of changes which will be made to the packaging Regulations in order to better reflect the original policy intentions, clarify certain areas and make some technical changes and corrections. It also considers changes to the Regulations to allow for electronic PRNs and PERNs, plus an increase in the Agency fees to enable further development of the National Packaging Waste Database.

10.2 The changes are designed to improve the workings of the system so as to underpin the UK system for achieving the Directive targets. The Government believes that the benefits of the proposals in the consultation paper and discussed in this RIA are significant as against the likely costs.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed Ben Bradshaw

Date 29th January 2007

Ben Bradshaw

MINISTER OF STATE (COMMONS)

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

CONTACT POINT

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Annex A

Table1: table showing the options associated with each correction and technical change to the Regulations.

	Issue	**Problem – Business as usual (BAU)**	**Change**
i.	Scheme fee for small producers in a group of companies	Legal text currently wrongly requires additional premium to be paid by a group for all subsidiaries including 'small producers'.	Groups of companies will no longer have to pay the additional premium for subsidiaries that are 'small producers' and have opted to have their recycling obligation allocated.
ii.	Registration fee for a group of companies in a scheme	Not clear that a group as a whole qualifies for 'small producer' status only if the *aggregate* position (on turnover and tonnage handled) meets the definition of small producer.	Regulations to clarify that a group qualifies as a small producer (and pays only £345) if the *aggregate* position (on turnover and tonnage handled) meets the definition of small producer.
iii.	Schedule 8 para 5(c)	There is currently confusion as to whether a small producer subsidiary may choose to have its obligation allocated if it is part of a group registration.	The provision allowing small producers to choose to have their obligation allocated applies to all producers, including those in groups of companies. Schedule 8 will be amended to clarify this.
iv.	Definition of 'small producer'	Currently the definition of small producer says the business will have "…turnover of £5,000,000 *or less..".*	The definition will be corrected to say that a 'small producer' will have " turnover of between £2,000,000 and £5,000,000".
v.	Reference to "audited accounts" in both definition of 'small producer' and the turnover threshold test	Problem is that some businesses do not have to have their accounts audited and they are not clear what is required.	Regulations need to make clear that either audited accounts are required, or just accounts where there is no requirement on the business to have these audited.
vi.	Provision of operational plan by individually registering producers	The requirement that producers who handle more than 500 tonnes of packaging should provide an operational plan was to lower the number of plans from 463 to 110 in 2006. Over 210 were submitted, some from SMEs with obligations as low as 40 t. Not the policy intention.	Regulations will be amended to change the criterion for providing a plan from "500t handled" to *having an obligation* of more than 500t". Based on 2006 figures, this should reduce the number of plans in 2007 to approximately 115 and ensure that SMEs do not have to provide one. Also, the Regulations will provide that if a "small producer" opts for the allocation system, it will not have to provide an operational plan whatever the

			size of its packaging obligation.
vii.	Submission by schemes of a data monitoring plan	Regulations inadvertently no longer specifically require schemes to provide a data monitoring plan as part of their operational plan.	Previous wording will be reinserted, making data monitoring plan requirement explicit.
viii,	Involvement by environmental auditors in provision of independent audit	Current text of the Regulations refers only to auditors that are eligible to do company audits under Part II of the Companies Act 1989. Also need Schedule 5 1(p)(ii) to require that the independent auditor's report, "reports" rather than "demonstrates" that the PRNs issued are consistent with the tonnage of packaging waste received.	Aim is to provide that environmental auditors can also be used to produce these audit reports. Text would be amended to include wording which says: " reports that the PRNs……"
ix.	Notification of appropriate Authority of scheme failure	Regulation 36 requires the Agency to notify the appropriate Authority when a scheme appears not to have met its tonnage recovery & recycling obligations in the previous year (i.e. the full tonnage has not been carried out).	Unnecessary to require Agencies to notify scheme and Authority since it will itself have to have been notified by the scheme. Proposal is that the scheme should itself notify the appropriate Authority.
x.	Quality of reports from independent auditors	In 2006, independent auditor reports varied significantly in their content but no provision for action where reports are not satisfactory.	Regulations to specify that reports should be provided in a format provided by the Agencies; Agencies to have power to request a re-submission if the report does not comply.
xi.	Agency monitoring plans	Agencies already required to publish a monitoring plan but do so mid-way through the year in question; and industry have no opportunity to provide input or comment.	Agencies to submit monitoring plans to the appropriate Authority by 1 December for monitoring activity in the following obligation year; and publish plan by 31 December.
xii.	Accreditation of exporters and reprocessors	Agencies are obliged to grant accreditation as a reprocessor or exporter where the	Agencies should be given power to refuse accreditation to companies where they are not

		application is complete and includes the fee. No possibility for them to take any relevant convictions into account, or whether the business has adhere to requirements of Trans-frontier Shipment of Waste Regulations (TFS).	satisfied that the person will comply with the conditions of accreditation. E.g. that have committed TFS offences, or have been convicted of an offence relevant to collection, treatment or recovery of packaging waste. Also proposed that the conditions of accreditation should be extended to include compliance with TFS requirements.
xiii.	Exports to a reprocessing "site"	Where material is exported for reprocessing name of overseas 'site' is required, But to comply with Article 6 of the Packaging Directive, identity of overseas reprocessor must be provided.	Regulations will clarify that exporters can only be accredited for export for reprocessing at specified *reprocessing* site or sites; and reprocessors for reprocessing sites.
xiv.	Period to which the independent audit applies (para. 1(p) of Schedule 5	1(p)(ii) requires that the independent audit should demonstrate that PRN/PERNs issued *in the previous year* match the tonnage of waste received or exported. This wording excludes the 'carry-forward' period.	Regulations to be changed to include the carry forward period.
xv.	Aggregation and provision of data to the appropriate Authority	Regulations do not specifically require Agencies to collate data other than for Public Register purposes.	Regulations to place a duty on the Agencies to collate data received, make that information available between Agencies and submit it to the appropriate Authorities; and that the Environment Agency should provide aggregated UK data to Defra. Also propose to set deadlines for provision of data to appropriate Authorities. This will be 3 weeks (21 calendar days) after each of the four dates specified in para.1(n) of Schedule 5 for quarterly reprocessing data and the final aggregated data by 31 March. For packaging data, what is available to be provided by 30 June and final data to be provided by 31 January of following year.

xvi.	Upkeep of the Public Register and Content of Public Register	Patchy updating of information in the Public Register. Uncertainty about meaning of "days" (calendar or working). Clarification needed to require only the **business** name, **address** and telephone number of reprocessor or exporter.	Agencies to be required to update the information within 5 days. Clarification to be made.
xvii.	Importer who is an end user of packaging	Questions have arisen as to whether such a business is or is not obligated on tonnages lost as production losses at, e.g. the point of filling. Also does definition of "deemed supply" make sufficiently clear that an importer is deemed to supply on when he imports for own use – i.e. supplies to himself	The Commission Decision on Formats for Databases provides that production losses are outside the scope of the Directive. Thus, they are outside the scope of the Regulations and cannot be used to meet recycling targets. The Regulations already provide for this but will be further clarified. Regulations will be amended too to ensure clarity as to producers' obligations when they import and are the finaluser.
xviii	Activities carried out in the UK by companies owned by overseas businesses	Some companies that carry out activities, e.g. filling, in the UK are declaring that, as they are owned by a foreign company, so too is the packaging, so they should avoid obligation. Also, where franchisor/licensor is overseas, some companies declaring they have no obligation for UK franchisees packaging.	The Regulations will make clear that a company carrying out activities in the UK on packaging that ends up in the UK waste stream should not avoid obligation because it is foreign owned; this to include clarification to ensure necessary obligations taken where franchisor/licensor is located overseas.
xix.	Approved persons; person to sign off data forms	Regulations refer to a director of a company, but some SMEs do not have Directors	Regulations to clarify that where a company is not incorporated, the approved person could be a company secretary, or the person who has control or management of the business. Also, clarification that "Partnerships" can include Limited Liability Partnerships