Extended Producer Responsibility (EPR) Packaging Waste Regulations Reform

Summary

FOR VALPAK MEMBERS ONLY

Background

The UK Government's Department for the Environment, Food and Rural Affairs (Defra) proposals for reforming the Producer Responsibility (Packaging Waste) Regulations will see principles of extended producer responsibility introduced to the UK's packaging waste management sector.

In February 2022, Defra announced that the changes are expected to come into effect from 2024, applying on a **UK-wide** basis.

The **EPR Proposals** have been subject to two rounds of public consultation, once when they were first published in Spring 2019, and again when Defra announced updated proposals in Spring 2021. We now await Government's summary of the EPR consultation responses which is expected to be published in Q1 2022.

If you have any queries about the proposals, please contact Valpak's Policy team.

Full Net Cost Recovery

The central ambition of EPR is to require **packaging producers to fund 100% of the costs associated with the waste management of packaging** they place onto the UK market.

This concept, known as full net cost recovery, will require obligated businesses to fund the operations that collect and sort packaging waste from households and businesses, the costs to recyclers of reprocessing waste packaging material, as well as the costs associated with collecting and disposing of packaging waste arising in the household residual waste stream.

Packaging producers will be required to fund the rollout of **new national communications campaigns** aimed at reducing littering and increasing recycling, the **clean-up of littered packaging waste** primarily by local authorities, and the **enhanced monitoring and system administration** activities undertaken by environmental regulators.

Full net cost recovery under EPR stands in stark contrast to the financial requirements placed on packaging producers under current regulations, where obligated producer businesses are only required to contribute to the recycling of a portion of the packaging they have helped to place onto the UK market, done through purchasing Packaging Waste Recovery Notes (PRNs). With the Government estimating that the **contributions** made by packaging producers to the PRN system cover around 7% of the total costs associated with dealing with UK packaging waste, producer responsibility costs under EPR are expected to rise by factors exceeding 10 times current costs.

New Definitions of Packaging

Under EPR packaging will be defined by where it arises as waste. This stands in contrast to the current system where packaging is defined as either primary (around individual units at the point of sale), secondary (used for collating individual units) or tertiary (outer packaging used for the shipment and distribution of goods).

Looking ahead, EPR will adopt three new definitions of packaging:

1. **Household** - All consumer (take-home) packaging that arises as household waste (includes consumer delivery packaging);
2. **Household-like** - All consumer (take-home) packaging that usually arises as household waste but instead arises as business waste, and;
3. **Commercial & Industrial (C&I)** - Delivery and transit packaging arising as waste from businesses.

Most primary packaging will fall into the Household or Household-like categories, with the majority of secondary and tertiary packaging falling into the C&I category.

It is proposed that EPR's full net cost recovery principle will apply to all three new packaging categories, similar to the current system where producers acquire personal packaging waste recycling targets, known as **'obligations'** that depend on how much primary, secondary and/or tertiary packaging they placed onto the UK market in the previous calendar year.

NOTE: The full net cost recovery obligation will not apply to drinks packaging in scope of the Scottish DRS, itself due for implementation from 16th August 2023. The full net cost recovery obligation will apply to drinks packaging to be in scope of the Rest of UK DRS, currently proposed to be implemented in late 2024. Once those DRS systems are implemented, producers of in-scope products will pay towards the management of that packaging waste through contributions to the DRS administrator, not through payments to the reformed EPR system.

Separate per-tonne payments are likely to be payable for household packaging waste, typically collected by local authorities and for business waste (Household-like and C&I packaging) typically collected by private waste management companies.

Counting the Cost of EPR

In 2019, Government estimated the combined impact the full net cost recovery obligation for household and household-like packaging and those new financial obligation will require the contributions made by obligated producers businesses to total **£1.8 billion in the first year** of the system.

In 2021, with the full net cost recovery principle newly proposed to be **extended to cover commercial and industrial packaging**, plus a revision of the estimated **management costs of binned & littered** packaging, Government now estimate that the contributions that will need to be made by obligated producer businesses will need to total **£2.7bn in the first year** - £1bn of this relating to household packaging waste management, £1.5bn for business packaging waste, and £200m for the management of packaging litter. Figures are **not inclusive of** the costs to individual businesses may incur as a result of the the **Plastic Packaging Tax** or meeting the financial obligations applicable to **their DRS packaging.**

Broadly speaking, the amounts payable by liable businesses will be dependent on an estimated overall system cost for each main category of packaging and dividing that figure by the overall tonnage of material placed on the market by liable producers to generate a per tonne rate. There will be **no price-variable PRNs** or their export equivalent (PERNs) within the reformed EPR system from 2024 onwards.

Where liable businesses backhaul of their own packaging waste and personally arrange for its collection and recycling/ disposal, the tonnage of this **waste will be eligible to be offset** against their EPR obligation. Offsetting will be packaging type-dependent (i.e. evidence of the private management of C&I packaging can only be used to offset a producer's C&I packaging obligation).

Point of Responsibility: Who will need to comply?

The point of responsibility **determines which businesses are obligated to comply with the UK's producer responsibility regulations, and under EPR will dictate who must directly shoulder the newly enhanced financial responsibilities** associated with dealing with packaging waste, amongst other financial obligations.

The UK's current producer responsibility system for packaging waste features shared producer responsibility, where businesses playing different roles within the packaging supply chain acquire differing portions of responsibility to finance the recycling of packaging placed onto the UK market. The closer a business's role is to the supply to the end user of the packaging, the greater the responsibility acquired. Businesses only have to comply with current regulations if they have an annual turnover of £2 million and handle more than 50 tonnes of packaging a year.

Extended Producer Reponsibility will move from this shared system to single party responsibility. **Primarily, UK brand owners and importers of non-UK branded filled packaging will be obligated** the full net waste management costs associated with their packaging.

If packaging is imported unfilled, the UK-based filler will acquire the obligation. Any packaging that has been filled or imported and subsequently been exported without being placed on the market in the UK becomes exempt from this financial obligation.

As not all packaging placed on the UK market may fit into this structure, the full net cost recovery obligation may apply to a number of other businesses, such as:

- **Fillers of unbranded tertiary packaging;**
- **UK-based online marketplaces operators** for filled packaging sold to UK consumers through their sit by non-UK businesses, not products sold through them packaged by UK-based businesses, or sales of goods between private households;
- **Suppliers of reusable packaging** will **also take on the full-net cost recovery obligation** for packaging being placed on the UK market for the first time.

Defra also asked industry to consider the merits and drawbacks of either **altering or removing the current £2million and 50 tonnes *de minimis* exemption thresholds**, the impact of which would be to bring more packaging producer businesses into the scope of the reformed Regulations.

Defra have tabled 3 options.

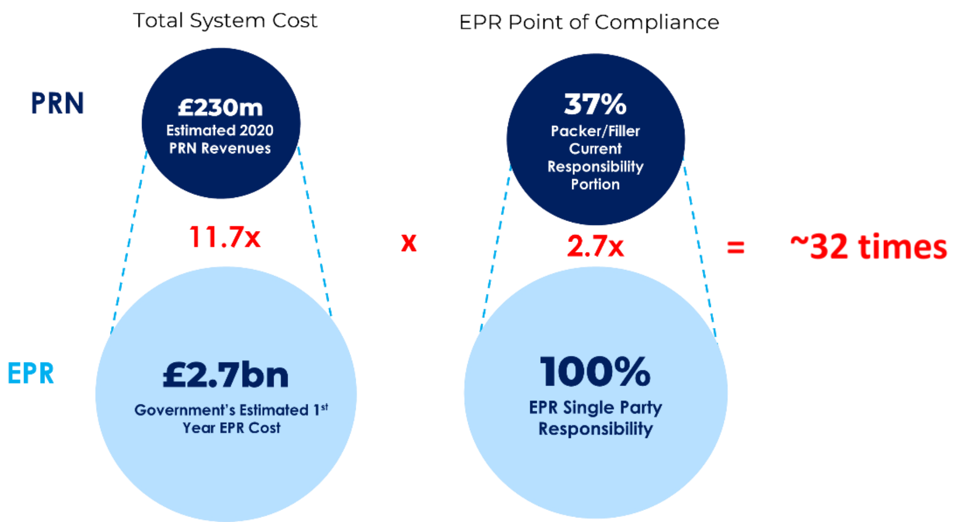
1. **Lower the exemption thresholds to £1m and 25 tonnes**
2. Place the full net cost recovery obligation on **wholesalers** supplying unfilled packaging sold to businesses below the existing or reduced thresholds,
3. Place the full net cost recovery obligation on **manufacturers or importers selling unfilled packaging to businesses below the retained or reduced de-minimis thresholds.** This is the Government's preferred option.

The **Allocation Method** used for small businesses with annual turnovers between £2-5m is **proposed to be removed**.

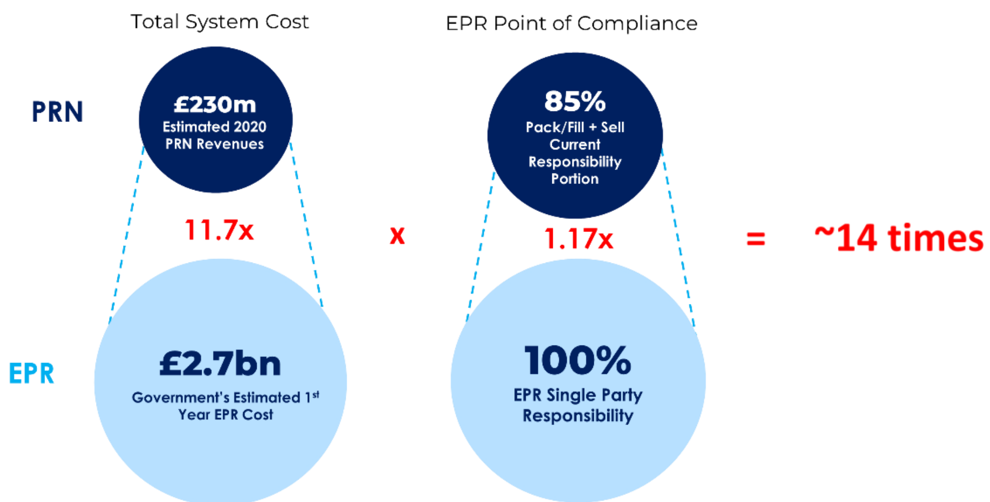
EPR Cost Increases in Perspective

When considering the combined impact of EPR's full net cost recovery obligation adding costs to businesses that are going to be liable to contribute to the reformed system and the shift away from a system based upon shared producer responsibility to one of single party responsibility, Valpak have undertaken significant financial forecasting to identify the expected EPR cost liabilities of our members.

For example, businesses that put goods into packaging that is sold under their brand by another party, therefore currently classed as a packer/filler by current regulations, may see the producer responsibility costs associated with their EPR-liable packaging rise by around 30 times.



Similarly, businesses that put goods into packaging that they sell to consumers under their brand, therefore are classed as both a packer/filler and seller by current regulations, may see the producer responsibility costs associated with their EPR-liable packaging rise by around 14 times. This is because they supply are packaging to end users under current regulations. which financially obligates them more than those businesses just filling packaging.



Modulated Fees: Recyclability will be key

Currently, liable producer businesses pay a negotiated price to packaging recyclers to obtain PRNs that enable them to meet their obligations. PRN prices differ for each of the 6 main packaging materials distinguished in the regulations, however they do not depend on the specific type of packaging material that business actually placed onto the UK market.

This is set to change under EPR, as per the Resources & Waste Strategy, EPR will see producers “incentivised to design and make packaging that is recyclable, and to reduce (the use of) unnecessary and problematic (to recycle) packaging”.

A system of modulated placed on the market (POM) fees will see obligated producers pay **different fees for placing specific types or formats** of packaging onto the UK market.

Whilst unconfirmed at the time of writing, it is believed **fee modulation criteria will be based primarily on the recyclability of packaging**.

Fee modulation will financially incentivise businesses placing packaging onto the UK market to use of packaging designs, materials and formats that are widely collected and cost-effectively recycled in the UK through packaging materials and designs that are not as easily or cost-effectively recycled as others within a broad material group incurring higher fees payable to the EPR administrator.

Fee modulation **likely to operate within the broad packaging material categories** to balance the full net economic costs associated with collecting, sorting, and recycling different packaging formats or materials, for example within plastic where polymer type or colour can affect recyclability.

The modulated fees system will first apply to producer’s EPR bills **from April 2024, based on the characteristics of the packaging those businesses placed on the market in the previous calendar year**. The final fee modulation mechanism is proposed to be **adjusted annually**.

UK Government and the Devolved Administrations have initiated a project in partnership with trade bodies and industry to develop an approach to modulated fees that the Scheme Administrator could choose to adopt. This project is ongoing throughout 2021.

Whilst the Government intends to consult on specific proposals for **re-usable and refillable packaging** with a view to introducing **obligations from 2025 onwards**, for the meantime, packaging that is re-useable will be treated the same as it is by the current Packaging Waste Regulations.

EPR Governance: How will obligated businesses comply?

Under the current PRN-based system, most obligated producer businesses choose to join a packaging compliance scheme who will take on their legal requirement to meet their PRN obligation, with the ensuring the producer’s ongoing compliance with the producer responsibility regulations. Compliance schemes are seen as beneficial to the system due to the complexities associated with packaging data collection and reporting as well as PRN procurement and their ability to offer wider environmental compliance services. There many competing compliance schemes obligated producer businesses can work with.

Under EPR, this compliance scheme market may be set to change dramatically. In their second public consultation in Q2 2021, Defra asked industry to consider the respective merits and drawbacks of two proposed compliance systems:

1. A more regulated **competing compliance scheme-based** approach with a new small administrative to oversee the market, distribute fees for waste management and report on national performance, often known as a **hybrid approach**, or;
2. A **single national scheme** administrator approach, where a new centrally managed body undertakes all producer responsibility compliance activities, as well as being responsible for setting, collecting and distributing fees from obligated businesses and reporting on national performance.

Government has not indicated a preference, however a final decision is hoped to be communicated in **Q1 2022**.

It is hoped an Administrator will be **appointed across 2022 and 2023 in time for mobilisation in mid-2024.**

Additional Reform Proposals

Mandatory On-Pack Recycling Labelling

The current approach of allowing producers to voluntarily adopt one of a variety of labels on their packaging to inform consumers of its compatibility with UK recycling systems confuses the abilities of consumers to participate effectively in recycling. As a result, the Government intends to implement a mandatory binary label system that will see packaging either be labelled as 'recyclable' or 'not recyclable', **making it easier for consumers to dispose of packaging waste in the correct manner**.

It is Government's preference that **approved labels** be used, **as opposed to enforcing a single standardised labelling method**.

This system would **apply by the end of the 2024/25 financial year to all primary packaging** and all **consumer delivery packaging** (both home delivery and 'click and collect' packaging) and to plastic films and flexible packaging by the end of the 2026/27 financial year.

Note: Mandatory labelling may not apply to secondary or tertiary packaging. In addition, a different labelling system will apply to drinks packaging in scope of deposit return schemes.

Mandatory Takeback of Disposable Cups

A mandatory takeback obligation on sellers of filled disposable paper cups **by the end of 2023, irrespective of brand or where the drink was purchased**.

An **initial de minimis exemption** threshold to this requirement is being considered, however it is expected that **all sellers will be obligated by the end of 2025**.

Packaging Data Reporting

From 2024, it is highly likely that the proposed implementation of a packaging fee modulation system will require liable **producer businesses to report their packaging data in**

far greater detail to that which is currently required, likely by factors affecting the recyclability of packaging. As a result, producers are likely to need to record packaging placed onto the UK market by factors that affects its recyclability of across 2023, in advance of reporting that data to the EPR system in 2024.

Further, in order for the devolved administrations of the UK to meet their respective national recycling targets, it is proposed that there will be an additional data reporting burden on **sellers and distributors in 2024 to report packaging placed on the market in 2023 by UK nation**.

Recycling Targets

As part of the introduction of EPR, the Government propose to **freeze 2023 business recycling targets at the rates already set for 2022, with new EPR recycling targets coming into effect from January 2024**. New long-term packaging waste recycling targets have also been proposed for 2025 and 2030. Interestingly, these long-term targets **exceed the EU's for both 2025 and 2030.**

Packaging material	2022 Business Target (to be retained for 2023)	2024 EPR Recycling Target	2030 EPR Recycling Target
Paper & card	83%	76%	85%
Glass	82%	71% (non-DRS material)	81% (non-DRS material)
Aluminium	69%	30% (non-DRS material)	30% (non-DRS material)
Steel	87%	85% (non-DRS material)	92% (non-DRS material)
Plastic	61%	41% (non-DRS material)	56% (non-DRS material)
Wood	35%	38%	39%
Recycling rate these targets should deliver	**66%**	**63%**	**73%**

Note: As the recycling of drinks containers in-scope of DRS systems will not contribute to these targets, some future targets are lower than 2022 current targets, however the attainment of those longer term targets will require the greater recycling of packaging that continues to arise within kerbside systems.

Enhanced Monitoring

Defra are keen to **increase producer registration fees in order to facilitate enhanced enforcement activities**. The fees payable **may differ for certain producers** "based on the resource and challenges that their regulation…might pose", for example for online marketplaces.

Further, with UK regulators not currently funded sufficiently to carry out detailed checks on overseas sites, instead relying on information provided by the accredited exporter, fees may be especially higher for waste exporters specifically in order to enable the UK regulators to **appoint and fund third party inspectors to monitor overseas recycling operations**.

Implementing EPR: A Phased Approach no longer

During the spring 2021 consultation, it was proposed that the new packaging EPR regulations would be implemented in a phased manner **beginning in 2023**. However, as a result of significant delay to the announcement of next steps in the reform process, Defra recently announced that they have abandoned this phased approach and will instead seek to implement reforms in full from January 2024.

- **Across 2023, the current PRN-based system will continue to operate,** with contributions towards PRNs by obligated businesses helping to cover UK packaging waste recycling costs.

From 2024, EPR begins:

- The PRN system ceases to operate.
- **All producers liable under EPR begin to cover the full net costs of managing all packaging** placing onto the UK market (minus packaging in scope of DRS if live) as well as other EPR system costs.
- First quarterly EPR bills to be received in April 2024, will represent a quarter of the net waste management costs associated with the material placed onto the UK market in 2023. These bills will be subject to packaging fee modulation.

Valpak's expected EPR implementation timeline is overleaf. Please note this timeline may be subject to change.

Implementing Reforms

EPR Implementation in Full from 2024

PRN system continues throughout 2023

Producers' contributions cover recycling costs
of all packaging across 2023

Jan 2023

Jan 2024

PRN System

EPR System **Phase 2**

Full EPR from 2024

Single party responsibility for
full net waste management costs
of all non-DRS packaging

1st full EPR bill in April 2024