Reforming the UK packaging producer responsibility system

Partial Business and Regulatory Impact Assessment (BRIA)

March 2021

Scottish Government
Riaghaltas na h-Alba
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Contents

List of Tables

1.0 Title of proposal: Reforming the UK packaging producer responsibility system

1. This is the partial Business and Regulatory Impact Assessment (BRIA) assessing the impact on Scotland of proposed reforms to the existing UK packaging producer responsibility system.

2. The BRIA was written subject to the most up-to-date information at the time and accompanies a joint four-countries consultation document. Much of the information included in this document is closely aligned with the Impact Assessment prepared by DEFRA,[1] which was undertaken on a UK-wide basis, hereafter referred to as the UK IA.

3. The final BRIA, which will be published at the same time as secondary legislation, will be informed by information gathered through consultation with businesses and the public.

2.0 Purpose and intended effect

2.1 Background

4. According to the Scottish Environment Protection Agency (SEPA), more than 10 million tonnes of packaging waste is produced every year in the UK.[2] Separate information is not available for waste packaging in Scotland. A substantial part of packaging waste ends up in residual waste, two-thirds of which could instead be recovered, resulting in avoidable environmental costs.

5. Extended producer responsibility (EPR) schemes can be implemented to ensure that producers' responsibility for their products is extended to the post-use phase. This includes financial responsibility and can apply to, for example, the environmental or waste management costs of the products they place on the market. This incentivises producers to design for key circular economy outcomes such as reduced consumption of resources, reuse, repair and recycling.

6. The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended),[3] hereafter referred to as 'the Packaging Waste Regulations', have been in place since 1997 and operate UK-wide.[4] Under these regulations, businesses which make or use packaging are obligated to contribute towards the cost of recycling and recovery of a proportionate amount of packaging they have placed on the market. The objectives of this system are to:

[1] https://consult.defra.gov.uk/extended-producer-responsibility/extended-producer-responsibility-for-packaging

[2] SEPA: Packaging waste

[3] The Producer Responsibility Obligations (Packaging Waste) Regulations 2007

[4] The Producer Responsibility Obligations (Packaging Waste) Regulations 1997

- Reduce the amount of packaging produced.
- Reduce the amount of packaging waste going to landfill.
- Increase the amount of packaging waste that is recycled and recovered.

7. The Scottish regulator is SEPA. Along with the environmental regulators in the other nations of the UK, SEPA administers the National Packaging Waste Database and monitors compliance with the regulations.

8. The responsibility to prove that producers have met their recycling obligations is currently fulfilled through the purchase of Packaging Waste Recovery Notes (PRNs) or Packaging Export Recovery Notes (PERNs) which are sold by accredited reprocessors or exporters. Obligated businesses must buy sufficient PRNs to offset their obligations, in line with the 'polluter pays' principle.[5] PRNs and PERNs act as evidence that an equivalent amount of similar packaging has been recycled.

9. Scotland remains committed to achieving circular economy outcomes. In February 2016, *Making things last: A circular economy strategy for Scotland* was published.[6] This overarching strategy integrated the key elements of the *Zero waste plan*[7] and *Safeguarding Scotland's resources,*[8] and built on Scotland's zero-waste and resource efficiency agendas. The strategy set out how a more circular economy would benefit:

   - **The environment** – cutting waste and carbon emissions and reducing reliance on scarce resources.
   - **The economy** – improving productivity, opening up new markets and improving resilience.
   - **Communities** – more, lower cost options to access the goods we need with opportunities for social enterprise.

10. As part of the commitment to circular economy outcomes, the Scottish Government has acted to address the negative externalities associated with single-use disposable products through the introduction of the single-use carrier bag charge in 2014 and its pending increase; the ban of microbeads in 2018; the ban of plastic-stemmed cotton buds from October 2019; and the pending implementation of legislation introducing restrictions on specific single-use plastic items, in line with Article 5 of the European Union (EU)'s Single Use Plastics Directive. The Scottish Parliament also voted in May 2020 to

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[5] Obligated businesses are those who place more than 50 tonnes of packaging and have a turnover of more than £2 million per year.

[6] Making Things Last

[7] Zero Waste Plan

[8] Safeguarding Scotland's Resources

implement a Scottish Deposit Return Scheme (DRS) from July 2022, to increase recycling rates and reduce littering of single-use drinks containers.[9]

11. The central aim of extended producer responsibility (EPR) is to ensure that producers bear financial responsibility for the impacts of products they place on the market and are incentivised to reduce these impacts. This provides the opportunity to assess the whole lifecycle of a product – a concept which is central to Scotland's circular economy strategy.

12. Scotland is working jointly with the UK, Welsh and Northern Irish governments on reforming the packaging regulations and expanding the UK-level EPR schemes. The governments of all the nations are working together to ensure that the revised packaging EPR scheme aligns with existing policies as far as possible, and allows some variation based on local needs and priorities. This will help to maximise the influence on producers and the supply chain.

2.2 Objective and rationale

13. The current UK EPR system for packaging has helped the UK meet its national and EU packaging recycling target while keeping the cost to businesses low. However, there are some shortcomings of this system, which suggest a need to strengthen EPR policy:[10]

- It is estimated that the current system covers only around 10% of the total cost of managing post-use packaging waste,[11] which means that most of the cost is borne by local authorities, other public authorities and businesses who consume packaged goods. Additionally, there is significant fluctuation of revenue raised through PRNs.
- Concerns over system transparency, including the actual fate of materials and the visibility producers have of how their PRN fees are used.
- Lack of a level playing field for domestic reprocessing, due to an over-reliance on export markets.
- Limited direct consumer communications to encourage packaging recycling.
- Lack of incentive for producers to design for greater recyclability or re-use, as the price of PRNs is not linked to recyclability or environmental impacts of materials. This means that materials are often reprocessed

[9] The Deposit and Return Scheme for Scotland Regulations 2020

[10] For a more detailed explanation of the Packaging Waste Regulations and its shortcomings, please refer to the UK IA.

[11] House of Commons Environmental Audit Committee Report, December 2017 https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/339/339.pdf

into much lower-value goods, or lost to landfill or incineration after just one use.

- Lack of granularity in data reported by producers, as this currently only includes the type of material and does not include the packaging or polymer type.

It is clear that the current packaging EPR system does not fully align with the polluter pays principle, in that producers do not bear full financial responsibility for the impacts of products they place on the market, and are therefore not strongly incentivised to reduce these impacts.

14. The objectives of reforming the UK packaging EPR system (driven by a number of policy considerations as set out below) are to:

- Increase packaging recycled.
- Increase the recyclability of packaging.
- Reduce unnecessary packaging (not qualified in this BRIA).[12]
- Improve the environment, including a reduction in litter.
- Increase domestic recycling and reprocessing capacity.
- Enhance data reporting.

15. An amendment to the EU Waste Framework Directive sets out a 70% packaging recycling target for 2030.[13] DEFRA and the devolved administrations are aiming to meet or exceed this target with the UK-wide packaging EPR scheme. Minimum targets have been proposed for six materials, which, as noted in the consultation, equate to an overall EPR packaging recycling target equivalent to 73% by 2030.

16. The circular economy contributes directly to the Environment and Economy outcomes under the National Performance Framework. Directly applicable National Indicators include:[14]

- Carbon footprint.
- Natural capital.
- Greenhouse gas emissions.
- Waste generated.
- Clean seas.
- Scotland’s reputation.

[12] For the purposes of this BRIA a precise definition of ‘unnecessary packaging’ is not adopted.

[13] Directive (EU) 2018/852

[14] National Indicator Performance

- Perception of local area.
- Condition of protected nature sites.

17. Resource use and waste generation are recognised as key sources of greenhouse gas generation, and the Scottish Government reports on progress against both territorial and consumption emissions. The reform of UK packaging EPR policy will contribute to objectives set out in the Climate Change (Scotland) Act 2009,[15] as amended through the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019;[16] and the Climate change plan: Third report on proposals and policies 2018-2032 (RPP 3).[17] The legislation establishes a target of achieving net-zero emissions by 2045, while RPP 3 sets out plans to decarbonise the economy in the period to 2032. An update to RPP 3 (Update to the climate change plan 2018-2032), which set out the importance of a green recovery from the pandemic, was published in 2020.[18]

18. In 2015, the Scottish Government signed up to support the United Nations Sustainable Development Goals. The ambition behind the goals is to end poverty, protect the planet and ensure prosperity for all as part of a new sustainable development agenda. An enhanced packaging EPR policy will have a positive impact on a number of these goals, most directly Goal 12: Responsible Consumption and Production.

19. In May 2018 the European Commission's Circular Economy Package (CEP) was approved. The legislation aims to move supply chains towards a circular economy maintaining the value of products, materials and resources in the economy for as long as possible. This includes more ambitious recycling targets and full recovery of net recycling costs from producers. The Scottish Government has committed to meeting or exceeding the EU's environmental standards after leaving the EU.[19] An enhanced packaging EPR policy will contribute to meeting this commitment.

3.0 Consultation

3.1 Consultation within government

20. In reforming the 1997 Packaging Waste Regulations, the Scottish, UK, Welsh and Northern Irish Governments want to design a packaging EPR scheme that has a positive long-term impact, is consistent and works well for all citizens. This requires a joint approach while respecting devolved powers. The UK and

[15] Climate Change (Scotland) Act 2009
[16] Climate Change (Emissions Reduction Targets) (Scotland) Act 2019
[17] Climate change plan: Third report on proposals and policies 2018-2032
[18] Update to the climate change plan 2018-2032
[19] Department for Environment, Food and Rural Affairs (Defra), the Department of Agriculture, Environment and Rural Affairs (DAERA), the Welsh Government and the Scottish Government (30 July 2020). Circular Economy Package policy statement.

devolved governments are therefore closely collaborating on a redesign of the system. The governments will also engage specifically with local authorities, as a key stakeholder within the proposed system.

21. As the proposed regulators of the scheme, SEPA and the environmental regulators in the other nations of the UK have been closely involved in design of the scheme to date, and will continue to play a significant role as we move forward through policy development and implementation.

3.2 Public consultation

22. Between February 18th and May 13th 2019, the UK, Scottish, Northern Irish and Welsh governments undertook a joint consultation on reforming the UK packaging producer responsibility system.[20] It discussed the rationale for reforming the current system, set out the key principles and features of a revised EPR system for packaging, proposed packaging waste recycling targets to 2030, and presented different governance options for a future system – without putting forward a preferred option.

23. The summary of responses notes that 679 separate responses and 34 campaign responses were received. Overall, respondents were positive about the intent to improve the current system and for packaging EPR to form part of a coherent system that is understandable and fair to businesses and consumers. Based on the strong support from respondents for the principles and outcomes of a reformed packaging EPR scheme, the governments committed to progressing the policy proposals and to introducing a new EPR scheme for packaging.[21]

24. This partial BRIA accompanies a second consultation document produced jointly by the UK, Scottish, Welsh, and Northern Irish governments which puts forward more concrete options for a reformed EPR scheme for packaging. The consultation will be open for submissions from [date] until [date] and the results will inform the final BRIA.

3.3 Business consultation

25. A wide range of engagement (within the restrictions imposed by COVID-19 and the period prior to the election to the Scottish Parliament on 6 May 2021) is planned at both a Scottish and UK level. This is intended to inform a wide range of affected businesses and trade associations about the proposals and seek their feedback.

26. Within this context, we will carry out more focused engagement with a group of 6-12 businesses to inform the Scottish Firms Impact Test and Competition Assessment.

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[20] Consultation on reforming the UK packaging producer responsibility system.

[21] Consultation on reforming the UK packaging producer responsibility system: Summary of responses and next steps.

27. The consultation with businesses will take place during and after the public consultation process. The form of engagement will depend on COVID-19 restrictions at the time, but it is expected that it will include:

- Questionnaires.
- Virtual interviews and possibly workshops.
- Email correspondence.

28. Between 6-12 affected businesses, representative organisations and trade unions of varying sizes and sectors will be consulted on the proposed changes. The results will be published in the final BRIA. This process will help to establish:

- Any anticipated impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world.
- The number of businesses and the sectors likely to be impacted by the change.
- The likely cost or benefit to business.

4.0 Options

29. A number of alternative policy options have been considered to ensure that an EPR scheme is the correct delivery mechanism for Scotland. These options are aligned with those considered for the rest of UK, and the scenarios that are set out in the UK IA. The scenarios must achieve the following strategic objectives:

- Increase packaging recycled.
- Increase the recyclability of packaging.
- Reduce unnecessary packaging[22]
- Improve the environment, including a reduction in litter.
- Increase domestic recycling and reprocessing capacity.
- Enhance data reporting.

30. These objectives are ambitious and will aid Scotland in meeting our circular economy goals. Any option considered as an alternative to an EPR scheme would therefore need to deliver in equal measure on these strategic objectives.

31. The policy intention is to align Scotland (and the UK) with the aims of EU Article 8a of the Waste Framework Directive regarding producer responsibility, as amended by the CEP.[23] The alternative policy options provide additional

[22] As above, for the purposes of this BRIA a precise definition of 'unnecessary packaging' is not adopted.
[23] DIRECTIVE EU 2018/851 amending Directive 2008/98/EC on waste

scenarios for a potential EPR scheme. A non-regulatory option was not appraised, as the aim is to reform the existing regulatory framework.

32. The options considered are:

- **Option 1.** No policy change: continuation of the existing packaging producer responsibility regime in its current form, adjusted for DRS.
- **Option 2.** EPR scheme: full net cost recovery, modulated fees and mandatory labelling.
- **Option 3.** EPR scheme: full net cost recovery, modulated fees, mandatory labelling and plastic film collection for recycling.
- **Option 4.** EPR scheme: Full net cost recovery, modulated fees, mandatory labelling, plastic film collection for recycling, plus mandatory reporting and takeback of disposable fibre-based cups.

33. It is important to note here that in the UK IA only variations of the Packaging EPR scheme are numbered as options, while the baseline option is without a number. Therefore, Option 2, Option 3 and Option 4 in this BRIA are Option 1, Option 2 and Option 3 in the UK IA, respectively.

34. In the UK IA, a preliminary analysis of the costs and benefits of the various EPR Options for the UK has already been conducted. The analysis does not, however, set out specific costs for Scotland.

35. Estimates of the net cost to business and Net Present Value (NPV) at a UK level for Options 2-4 are presented below. These are taken directly from the UK IA carried out by DEFRA and should be considered for the purposes of this partial BRIA as indicative only.

36. The final cost-benefit analyses, which will be presented in the final BRIA, will need to take into account the Scottish policy landscape and Scotland-specific developments, for instance regarding the recycling rate. We will work ahead of the final BRIA to understand where costs and benefits in Scotland may differ from a simple proportional share of UK figures, including reflecting fully any interactions with Scotland's DRS.

37. It is assumed that all three packaging EPR options will affect the same stakeholders, including:

- Raw material manufacturers.
- Packaging designers.
- Packaging manufacturers or converters.
- Product manufacturers or pack fillers.
- Distributors.

- Retailers (food and non-food).
- Wholesalers.
- Waste management organisations; brokers; exporters.
- Reprocessors.
- Brand owners.
- Importers.
- Third sector organisations, including public interest groups.
- Scottish Government.
- Local authorities.
- Regulators.
- Consumers.

38. When calculating full net cost recovery, the value generated from sales of materials are counted as a positive income stream, and disposal costs for packaging in the residual stream as a negative. Supporting measures that require improved data on packaging materials (e.g. tonnes collected and placed on the market) and that encourage better recycling and reduced littering are also counted as costs. Management and administration costs of any compliance scheme are met by obligated businesses.

4.1 Option 1. No policy change – business as usual

39. This option is the baseline against which the costs and benefits of the alternative EPR scheme options are compared. It assumes that the Deposit Return Scheme (DRS) for Scotland is introduced and the Single Use Plastics Directive is transposed, but that there is no change in waste and recycling policy. EPR obligated producers will not be obligated to pay for the costs of collecting DRS materials not returned to designated DRS collection points.

40. Owing to a small annual population increase, if no further action is taken via regulation or commercial initiatives, a modest upward trend would be expected in household (HH) and non-household municipal packaging waste.[24] However, it is expected that there will be some shift from harder-to-recycle to more widely-recycled packaging materials due to voluntary initiatives such as the UK Plastics Pact. Please refer to the UK IA for more information.

[24] Packaging waste arising at public sector and commercial outlets, such as restaurants and offices.

41. The UK IA notes that on-pack recycling labels (OPRLs) already have traction with consumers and are the most widely-used labels on packaging in the UK.[25] It notes that all national supermarkets are members of OPRL Ltd, which reports that 7 in 10 consumers recognise and act on its labels.[26] Under this Option, a steady increase in the voluntary uptake of OPRL labels and other on-pack labels is assumed.

4.2 Option 2. EPR scheme: full net cost recovery, modulated fees and mandatory labelling.

42. This option covers household and commercial packaging and would see the requirement to pay the full net costs of managing such packaging at the post-use stage placed on producers. This includes the cost of collection, recycling, disposal, the clear-up of littered and fly-tipped packaging, and communications relating to recycling and tackling littering. It would also include the implementation of modulated fees, which is the mechanism to recover costs of post-use management from producers and reflects the costs of managing different types of packaging in order to incentivise packaging choices that lead to better circular-economy outcomes.

43. Mandatory labelling would be implemented in a manner that supports the wider approach to packaging EPR, whilst minimising additional compliance costs for businesses. The intention is to mandate UK-wide labelling of packaging to provide clear information on the recyclability of any item of packaging and to help consumers dispose of packaging waste appropriately. It is proposed that producers would label their packaging as 'Recycle' or 'Do Not Recycle', informed by the approved list of recyclable packaging materials/formats that would also be used to set modulated fees. The labelling may also support messages that direct consumers to dispose of packaging via specific routes, such as front-of-store recycling.

44. Labelling measures would be complemented by producer funding for local and national communications and education initiatives, to advise consumers on how to recycle and the consequences of making the wrong disposal choices. These costs would be included as part of full net cost payments.

45. This option would meet policy objectives, as it would drive the increased recyclability of packaging and increased recycling of packaging waste, as well as reducing packaging as a component of residual waste. It is estimated to result in net costs to business of £1,103.7m and NPV of £157.2m at the UK

[25] OPRL is a business-led UK labelling scheme that has been operating for over 10 years. Over 550 brands across all sectors use the label on their packaging products. The OPRL is based on what technically can be recycled as well as what is collected for recycling through local recycling services. The threshold for the widely recycled label is 75% for UK local authorities offering a collection service.

[26] OPRL https://www.oprl.org.uk/about-oprl; this is supported by surveys carried out by WRAP, which show that OPRL labels are generally better understood than other recycling symbols currently on packaging.

level over ten years. Please refer to the UK IA for more details on the elements and expected effects of this option.

4.3 Option 3. EPR scheme: full net cost recovery, modulated fees, mandatory labelling and plastic film collection for recycling.

46. Option 3 includes all elements of Option 2 but adds the costs of collecting and sorting plastic film packaging for recycling. This would mean that plastic film was part of the core set of packaging materials to be collected from households and businesses for recycling. Producers would therefore need to pay for the cost of collecting and sorting this material, in line with other packaging materials.

47. Although some plastic film is technically recyclable, services for the collection and sorting of film plastics are poorly developed and to date there has been limited incentive for investment in UK reprocessing capacity. Tonnages collected for recycling from households and the municipal sector are low (estimates are that in the UK only 10% of LAs collect plastic film packaging) and much of this material is of poor quality and hence of low value.

48. This option would meet policy objectives as it would drive the increased recyclability of packaging and increased recycling of packaging waste, as well as reducing packaging as a component of residual waste. An increase in the recycling of plastic film is expected to happen gradually, as the higher quantity and quality of waste film collected drives investment in reprocessing infrastructure. This option is estimated to result in net costs to business of £1,125.1m and NPV of £218.0m at the UK level over ten years. Please refer to the UK IA for more details on the elements and expected effects of this option.

4.4 Option 4. EPR scheme: Full net cost recovery, modulated fees, mandatory labelling, plastic film collection for recycling, plus mandatory reporting and takeback of disposable fibre-based cups.

49. This option is the same as Option 3, with the addition of mandating all retailers of disposable fibre-based cups[27] to:

    i) report what they place on the market and

    ii) facilitate their separate collection for recycling.[28]

50. These producers could have the flexibility to establish their own collection systems and determine how best to maximise the collection and recycling of disposable fibre-based cups or financially support a cup-collection system. It is assumed that retailers would provide disposable cup bins, reprocessors would

[27] Our definition of fibre-based cups includes disposable cups for hot drinks (tea and coffee) and cold drinks (milkshakes)

[28] The point of compliance and de minimis threshold for this element of the EPR reform has not been finalised. For the purposes of this analysis we have assumed that no de minimis is in place.

invest in infrastructure to reprocess this material and finally consumers would dispose of cups in the appropriate bins.

51. The benefits of introducing a mandatory reporting obligation on disposable cup producers, and a requirement on producers to take back used disposable cups for recycling, include:

- Building on existing good practice and tested systems demonstrated in industry voluntary measures.
- Reducing litter and disposable cup waste, by encouraging producers to invest in infrastructure and communication campaigns to influence consumer behaviour.

52. Data on fibre-based cup collection is limited. More information and a firmer policy proposal will be developed through further research and feedback from consultations with the public and businesses. This will be presented in the final UK IA and Scottish BRIA.

53. This is the preferred option, as it includes a material that is not currently recycled and therefore would meet the policy objective to increase packaging that is recycled. It is estimated to result in net costs to business of £1,131.0m and NPV of £275.4m at the UK level over ten years. Please refer to the UK IA for more details on the elements and effects of this option.

54. This should be seen the context of our work to consider how the damage caused by single-use items can be addressed by the introduction of minimum charges. The Scottish Government has committed to take action on a range of single use plastic materials, including a ban on cups made of expanded polystyrene, as well as charges for cups that are wholly or partly made of plastic, as per the requirements of the EU Single Use Plastics Directive. Measures being introduced through EPR to improve takeback and recycling, and improve data provision, should complement charging.

5.0 Scottish Firms Impact Test

55. This section of the BRIA addresses the key challenge of thinking and gathering evidence about the impact on specific industries, firm types and businesses of different sizes.

56. Along with wider consultation and engagement with affected businesses and trade associations, between 6-12 affected businesses, representative organisations and trade unions of varying sizes and sectors will be consulted on the proposed changes. The results will be published in the final BRIA. This process will help to establish:

- Any anticipated impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world.

- The number of businesses and the sectors likely to be impacted by the change.
- The likely cost or benefit to business.

6.0 Competition Assessment

57. This section helps to consider the impact of a regulation or policy on competition between producers, wholesalers, retailers and importers in the Scottish Market. The assessment will follow the Competition and Market Authority guidelines, which outline how to determine any competition impact.[29][30] These guidelines recommend considering four key questions in order to assess whether a proposed policy would have an impact on competition.

58. A first assessment is set out in Table 1 below, but the final assessment will be informed by information gathered through the consultation with businesses.

Table 1. Competition Assessment Questions.

Will the measure directly or indirectly limit the number or range of suppliers?
No.
Will the measure limit the ability of suppliers to compete?
The fees to be paid under the reformed system will be set nationally by the scheme administrator. Producers may then make the decision to switch material and/or improve recyclability. The policy is intended to incentivise producers (and other market actors), through modulated fees, towards the use of packaging formats that are more compatible with circular-economy outcomes. The impact of this on producers' ability to compete will be investigated once more details about the system for fee modulation are known.
Will the measure limit suppliers' incentives to compete vigorously?
No.
Will the measure limit the choices and information available to consumers?
No. On the contrary, one component of the reformed packaging EPR system is better consumer communication and mandatory recyclability labelling to

[29] Competition and Markets Authority (2015). Competition Impact Assessment.

[30] Office of Fair Trading (2007). Completing competition assessments in Impact Assessments: Guideline for Policy Makers

provide a clear and concise message to the disposer. This is expected to benefit consumers in that they would be better informed on what packaging is recyclable, potentially influencing buying decisions and improving recycling rates.

7.0 Consumer Assessment

59. It is important to consider the impact of our proposals on consumers of affected packaging products. The Scottish Government definition of a consumer is "anyone who buys goods or digital content or uses goods or services either in the private or public sector, now or in the future".

60. The Scottish Government Consumer and Competition Policy Unit specifies the questions below when determining the impact of proposed legislation on consumers. While a first assessment has been conducted here (see Table 2), the final assessment will be informed by the public consultation.

Table 2. Consumer Assessment Questions.

Does the policy affect the quality, availability or price of any goods or services in a market?
The reformed packaging EPR system will not directly affect consumers as its aim is to recover the full net costs of the collection, recycling and management of municipal packaging waste from packaging producers. However, as acknowledged in the UK IA, it is possible that of any additional costs placed on producers through the reform, a certain amount could be passed on to consumers through an increase in the price of products. This potential effect will be further considered for the final BRIA, as it cannot be quantified at this stage.
Does the policy affect the essential services market, such as energy or water?
No.
Does the policy involve storage or increased use of consumer data?
No.
Does the policy increase opportunities for unscrupulous suppliers to target consumers?
No. The risk of suppliers placing packaging on the Scottish market without paying the legally required scheme fees is minimal and would not affect consumers. In fact, increased transparency means that the likelihood of this happening is lower than in the current system.
Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

No negative impact on consumers is expected in this respect. On the contrary, one component of the reformed packaging EPR system is better consumer communication and mandatory recyclability labelling to provide a clear and concise message to the disposer. This is expected to benefit consumers in that they would be better informed on what packaging is recyclable, potentially influencing buying decisions and improving recycling rates.

Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

No.

8.0 Test run of business forms

61. Additional administration will be required for a reformed UK packaging producer responsibility system. This will likely include new Scheme Administrator forms, though details are not known at this stage.

62. Once the final details of how the EPR scheme will operate in practice is known, a series of workshops will be undertaken with the relevant stakeholders to test run proposed documentation. It is expected, however, that there will not be a significant net increase in the time required for stakeholders to fill in forms, as forms under the packaging EPR will replace those under the current PRN system.

9.0 Digital Impact Test

63. Changes to policy, regulation or legislation can often have unintended consequences, should government fail to consider advances in technology and the impact this may have on future delivery. This digital impact test is a consideration of whether the changes being made can still be applied effectively should business/government processes change – such as services moving online. Table 3 below details the evaluation of the proposed market restrictions on current and future digital developments. Overall, we consider that the proposed legislation will not have an adverse impact on digital technology developments.

64. In addition to the questions below, it should also be noted that the reform of the packaging EPR scheme will require new IT systems to facilitate the running of this scheme. As outlined in the UK IA, this will include carrying out functions such as tracking the packaging placed on the market, charging producers, and making the necessary payments from scheme administrators to stakeholders that are eligible for payments for managing packaging waste. These costs will be borne by the scheme administrator, with costs ultimately passed on to

producers through the administrative fees paid to the scheme administrator and/or the regulators.

Table 3. Digital Impact Test Questionnaire.

Question 1. Does the measure take account of changing digital technologies and markets?
Potential changes in digital technologies and markets are being accounted for during the development of this legislation.
Question 2. Will the measure be applicable in a digital/online context?
Any legislation would apply equally to all obligated producers of affected packaging sold on the Scottish market, regardless of whether this packaging is sold digitally or through traditional offline channels. The running of the scheme will be facilitated by new IT systems.
Question 3. Is there a possibility the measures could be circumvented by digital/online transactions?
No.
Question 4. Alternatively, will the measure only be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?
Although digital technologies will be used to facilitate the running of the scheme, it is not expected that this will have an adverse impact on traditional or offline businesses. All businesses will be expected to comply with the new system.
Question 5. If the measure can be applied in an offline and online environment will this in itself have any adverse impact on incumbent operators?
No.

10.0 Legal Aid Impact Test

65. No impact on Legal Aid is expected, but this will be tested with the Scottish Government's Access to Justice Team as we develop the final BRIA.

11.0 Enforcement, sanctions and monitoring

66. As outlined in the UK IA, it is expected that the reforms will see more money in the system and additional obligations placed on producers, while the system will also be made more transparent. This means regulators will have to carry out additional compliance monitoring and enforcement duties. For indications of how compliance may be monitored and enforced, please refer to the UK IA.

67. These costs cannot be monetised at the moment, but more detail will be provided in the final BRIA and UK IA.

12.0 Implementation and delivery plan

68. This partial BRIA accompanies a joint UK consultation. Results from the consultation and engagement with Scottish businesses and other stakeholders will inform the development of the final BRIA.

69. The Scottish Government will set out a timetable for implementation and will work closely with the UK government, other devolved administrations and with Scottish packaging producers.

13.0 Summary and recommendation

70. A system of producer responsibility for packaging has been in place since 1997 in the UK. This has helped to significantly increase the recycling of packaging waste and helped meet the UK's and EU's packaging waste recycling targets. However, due to several shortcomings a reformed producer responsibility system for packaging is needed.

71. Extended producer responsibility (EPR) is a well-established principle adopted by many countries around the world, across a broad range of products and materials. It places responsibility on producers for the cost of managing their products once they reach end of life and gives producers an incentive to design their products to make it easier for them to be re-used or dismantled and recycled at end of their life.

72. We are exploring ways in which to design and introduce an extended producer responsibility system for packaging and have evaluated three options, all of which will be compared to Option 1 (baseline).

- **Option 2.** EPR scheme: full net cost recovery, modulated fees and mandatory labelling.
- **Option 3.** Option 2 + plastic film collection for recycling.
- **Option 4.** Option 3 + mandatory reporting and takeback of disposable fibre-based cups.

73. Option 4 is the preferred option as it goes one step further than the other options as it includes a material that is not currently recycled and therefore would meet the policy objective to increase packaging that is recycled. In the UK IA it delivers the highest NPV.

74. Some elements of the reformed producer responsibility system still have to be decided upon following the consultation and will be considered further in the final BRIA. These include:

- Governance model

- De minimis
- Approach to modulation
- Point of compliance

14.0 Declaration and publication

75. I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact will be assessed with the support of businesses in Scotland.

Signed:

Date:18/03/2021

Minister's name Roseanna Cunningham MSP

Minister's title Cabinet Secretary for the Environment, Climate Change and Land Reform

Scottish Government Contact point: Donald McGillivray

Signed:

Date: 18/03/2021

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St Andrew's House
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ISBN: 978-1-80004-785-3 (web only)

Published by The Scottish Government, March 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS834946 (03/21)