

Transport and Environment Committee

10.00am, Thursday, 14 September 2023

Response to Consultation on the draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024

Executive/Routine
Wards

Routine
All

1. Recommendations

- 1.1 Committee is asked to approve the Council's draft response to the UK Government's consultation on the draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024, set out in Appendix 1.

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Response to Consultation on the draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024

2. Executive Summary

- 2.1 The report sets out the Council's draft response to the UK Government's consultation on the draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 for approval.

3. Background

- 3.1 Following a previous consultation on the reform of the UK's producer responsibility legislation for packaging waste, the UK Government has recently published a draft Bill to reform the legislation and is consulting on behalf of itself and the devolved administrations.

4. Main report

- 4.1 The producer responsibility legislation for packaging waste is the means by which the packaging industry contributes to the cost of managing the waste it generates in household waste and recycling. The legislation is out of date and no longer fit for purpose.
- 4.2 The UK government and devolved administrations have previously consulted on the principles they would follow, and a draft Bill has been published. The focus of this new consultation is on the contents of the Bill, not on the principles which sit behind it.
- 4.3 A number of the questions are intended for the producers; therefore, the draft response is focused on the elements of the consultation which are relevant to the Council.
- 4.4 The primary aims of the legislation are to:
- Ensure that producers of packaging waste (manufacturers, retailers, importers and distributors) pay the full cost of managing the waste generated;

- Introduce a system of direct payment to local authorities for managing this material; and
- Incentivise the minimisation of waste at source, and the use of recyclable materials through the use of charges for all packaging materials, and higher charges for non-recyclable materials.

- 4.5 It is expected that the direct payments to local authorities would be ring-fenced to contribute to this element of managing household waste, acknowledging that packaging is only one element of both the non-recyclable and recyclable waste streams. The income from this source may potentially be offset by a reduction in block grant, but this has not yet been confirmed.
- 4.6 Ultimately it is likely that Councils will have to realign their collection services to demonstrate that they are operating “efficient and effective” collection systems and to comply with the requirements of the scheme (including the addition of plastic films to household collections by 2027), as well as to accommodate the introduction of UK wide deposit return schemes for drinks containers (also 2027) and other legislative changes.
- 4.7 Some changes, such as the introduction of a drinks cup takeback and recycling scheme by retailers, may also have implications for some Council services.
- 4.8 The Council’s response to the previous consultation was supportive. The primary focus of this response is to ensure fair treatment for local authorities who face higher costs of managing waste for entirely legitimate reasons (such as housing stock).

5. Next Steps

- 5.1 Subject to Committee’s approval, the draft response will be submitted prior to the consultation closing on 9 October 2023.

6. Financial impact

- 6.1 The implementation of a direct payment system for the packaging element of household waste is beneficial to the provision of waste and cleansing services but may be offset by a reduction in grant funding to local authorities. This is not yet confirmed by the UK Government or Scottish Government.
- 6.2 The actual costs associated are yet to be clearly set out. It is expected that the payments to each authority will be set based on the costs which are being incurred by similar authorities.

7. Equality and Poverty Impact

- 7.1 This report responds to a UK Government consultation on a Bill to change legislation in respect of Extended Producer Responsibility, and therefore would not be expected to directly impact on equality, human rights (including children's rights) and socio-economic disadvantage implications, therefore an Integrated Impact Assessment is not required. The UK Government will be responsible for assessing the impacts of any changes in legislation prior to implementation of the new Bill.
- 7.2 In essence the Governments are proposing to move the costs associated with managing waste packaging from the tax system to producers, and this should ultimately result in a reduction in the use of non-recyclable packaging, and packaging generally so that they can minimise their own costs in a competitive environment.

8. Climate and Nature Emergency Implications

- 8.1 As a public body, the Council has statutory duties relating to climate emissions and biodiversity. The Council

“must, in exercising its functions, act in the way best calculated to contribute to the delivery of emissions reduction targets”

(Climate Change (Emissions Reductions Targets) (Scotland) Act 2019), and

“in exercising any functions, to further the conservation of biodiversity so far as it is consistent with the proper exercise of those functions”

(Nature Conservation (Scotland) Act 2004)

- 8.2 The City of Edinburgh Council declared a Climate Emergency in 2019 and committed to work towards a target of net zero emissions by 2030 for both city and corporate emissions and embedded this as a core priority of the Council Business Plan 2023-27. The Council also declared a Nature Emergency in 2023.

Environmental Impacts

- 8.3 The impacts of this report have been considered in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties and the outcomes are summarised below.
- 8.4 Steps to encourage the minimisation of packaging, and non-recyclable packaging, and to support recycling through better labelling and consistent approaches is expected to be beneficial in terms of carbon emissions and resource use more widely. These serve to reduce environmental impact.
- 8.5 There are no direct impacts resulting from this report or in terms of climate change adaptation or resilience, but overall, the objectives are consistent with the Council's Climate Emergency declaration, and its Nature Emergency declaration for the reasons set out above.

9. Risk, policy, compliance, governance and community impact

- 9.1 As this report relates to a consultation by the UK Government, there is no need for the Council to engage the community.
- 9.2 The key risk for the Council is that in practice the Scheme Administrator may fail to fully consider the specific challenges faced by a specific Council, and not fully reimburse the costs associated with managing packaging waste. The response to the consultation seeks to address this issue.
- 9.3 There are no health and safety, governance, compliance, or regulatory implications associated with this report.

10. Background reading/external references

- 10.1 The [UK Government's previous consultation](#).
- 10.2 The [Draft Bill and current consultation](#) are both published by the UK Government.

11. Appendices

- 11.1 Appendix 1 Consultation on the draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations [2024]- Draft Consultation Responses

Appendix 1- Extract of Consultation on the draft Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations [2024] - Draft Consultation Responses to the elements which would impact on the Council

Q14. Are the requirements for the provision of recycling information and packaging labelling clear?

b. No

If 'no' or 'unsure', please explain the reason for your response and provide examples.

It is assumed that the exemption for any drink container relates to the deposit return schemes however, at present, they are only expected to include metal cans and PET bottles. HDPE milk bottles, glass bottles and tetrapak type containers should still therefore be required to carry the recycling labelling.

The requirements of the provision seem clear otherwise, although the exemption for “any packaging where the surface area of the largest surface of packaging less than 25 square centimetres” might be too large. Many packaging types are smaller than that and already carry the labelling (chocolate bars, etc).

Q22. Do the draft Regulations make it clear what the Scheme Administrator is required to do and consider in assessing local authority efficient net disposal costs and service effectiveness?

b. No

If no, how could these be made clear and what do you consider is missing?

The City of Edinburgh Council welcomes the intention to cap any reductions for services which are not deemed to be “efficient and effective”. While the Council appreciates that the producers would not be expected to support poorly run services, the cost of service provision across local authorities will vary widely for entirely legitimate reasons (including travel distances, distance from end market, housing types and demographic differences). These can also be exacerbated by market conditions at the time contracts were put in place. Predominantly urban, rural or island authorities face particular challenges and there can also be very significant differences between authorities who appear outwardly similar (e.g. percentages of communal bin collections among urban authorities.) Some of these are mentioned in the draft legislation, but some are not.

For example, in Edinburgh, approximately half of collections are to flats, using communal collections, and approximately half of the collection bins are sited on the public highway as a result of historic building designs. This is coupled with a young and mobile population who move frequently, with often limited storage space to segregate waste within the home. These factors present very specific challenges for the Council in terms of engagement, contamination and collection (some bins are currently collected every two days as a result of housing density). Other authorities will have different challenges which will impact on their costs in different ways. It does not mean they are less “efficient”.

It was originally proposed that the pEPR scheme would be linked to the local authorities' participation in the individual national codes of practice across in UK. In Scotland, there is currently a voluntary charter and code of practice which is intended to become statutory. Given that ultimately the decision on whether to recycle is the choice and responsibility of the householder, assessment of the local authorities' effectiveness and efficiency could begin with compliance with that, rather than whether or not individual households use the services correctly.

While it is accepted that the regulations themselves might not be the best place to capture this, it is important to emphasise the importance of ensuring transparency over how the Scheme Administrator will implement this provision so that it treats authorities fairly. Without knowing this, it is not possible to be sure that the regulations are sufficiently clear.

Q23. Do the draft Regulations make appropriate provision for how the Scheme Administrator will incentivise the delivery of efficient and effective packaging waste management services by local authorities?

b. No

If no, please detail why and explain what is missing.

While the effort made in the legislation to address this is acknowledged and that a clear procedure does seem to be set out, the Council remains concerned that it appears biased towards the Scheme Administrator whose objective will be to minimise costs and may not therefore accept all of the issues a local authority may genuinely face. Some type of independent arbitration process would be welcomed to resolve such disputes, as the legal process set out is likely to be costly to all parties. See also response to Q32.

Q25. Do the draft Regulations make appropriate provision for how the Scheme Administrator will distribute disposal cost payments to local authorities?

a. Yes

Q.26 Do the draft Regulations make it clear how the Scheme Administrator will adjust (modulate) fees to account for the environmental sustainability of household packaging?

b. No

If no, how could these be made clear and what do you consider is missing?

The Scheme Administrator should also make provision for the use to which the packaging has been put. This is because some materials e.g. (paper and card) are theoretically recyclable, the use in a food contact application can render it non-recyclable.

Q27. Do you have views on any materials that should be exempted from the scope of modulating fees?

a. Yes

If yes, please specify which materials.

In principle it should be quite clear whether a packaging material is recyclable and so there should be no need for exemptions on this basis. If there are any exceptions to this, these need to be kept to a minimum.

Q28. Do the draft Regulations provide the necessary grounds to allow the Scheme Administrator to recalculate the costs and fees?

a. Yes

Q29. Do the draft Regulations set out clearly the process the Scheme Administrator must follow in making fee and cost recalculations?

a. Yes

Q32. Do the draft Regulations adequately capture the decisions that can be appealed?

b. No

If no, what decisions are not adequately captured or missing?

It appears that a local authority would not be able to appeal a decision whereby it considers it has been unfairly treated, because of its specific circumstances, and has therefore been deemed not to be operating an “efficient and effective” service. While it is acknowledged the effort made in the legislation to address this and that a clear procedure does seem to be set out, the Council remains concerned that it appears biased towards the Scheme Administrator whose objective will be to minimise costs and may not therefore accept all the issues the local authority may genuinely face. The Council would welcome some type of independent arbitration process to resolve such disputes, as the legal process set out is likely to be costly to all parties.

Q33. Do the draft Regulations set out an adequate appeals process?

b. No

If no, how could this process be made clear?

It appears as if a local authority would not be able to appeal a decision whereby it considers it has been unfairly treated, because of its specific circumstances, and has therefore been deemed not to be operating an “efficient and effective” service. While the effort made in the legislation to address these issues is acknowledged and that a clear procedure does seem to be set out, the Council remains concerned that it appears biased towards the Scheme Administrator whose objective will be to minimise costs and may not therefore accept all the issues the local authority may genuinely face. The Council would welcome some type of independent arbitration process to resolve such disputes, as the legal process set out is likely to be costly to all parties.