

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

The Consultation is available on [GOV.UK](https://www.gov.uk). The deadline for responses is 9 October 2023.

Q6. Do you agree that we should work towards excluding packaging that is designed only for use by a business from the payment of household disposal cost fees?

- Yes
- No
- Do not know

Under the current definition of household packaging, a significant proportion of packaging that will never end up as household waste may be subject to household waste disposal costs. However, business-to-business packaging should be treated separately to household waste, regardless of the supply chain through which it passes. Many products associated with the cosmetics and personal care industry, such as raw ingredients, will never reach the consumer and therefore the packaging should be exempt from household disposal costs. Likewise, finished products that are designed only for professional use, in salons for example, that will not be sold to consumers, should also be excluded, provided the producer can distinguish between professional and consumer packaging in its data submissions. However, greater clarity is required as to what constitutes sufficient evidence to demonstrate that packaging will not end up as household waste.

Q7. Do the draft Regulations ensure all types of packaging, which is not exempt packaging, are subject to recycling obligations?

- Yes
- No
- Do not know

If 'no', please detail which types of packaging are missed.

The definition of "recycling obligations" is unclear. Part 2, Chapter 1, s.16(3)(c) states "*recycle packaging waste in each packaging category...*" This suggests that producers will be recycling the packaging waste themselves. In practice, however, producers will be paying the costs of recycling rather than recycling the packaging themselves.

Whilst the packaging in scope of Deposit Return Schemes (DRS) falls out of scope of CTPA's remit, CTPA responded to a previous consultation on DRS, to voice its concerns that the principles of DRS will detract from an improved kerbside recycling system. However, for this consultation CTPA feels greater clarity is also required regarding DRS. The draft Regulations state that packaging is exempt if it is subject to a deposit scheme. Although Part 1, s.13(4)(b) stipulates that a deposit scheme is a scheme which "*is in operation in any part of the United Kingdom*", if DRS has not been set up in all four Devolved Nations, this may lead to missed capture of drinks containers that are excluded under DRS in only part of the UK. Furthermore, as it currently stands, glass will only be obligated under

DRS in Wales; without harmonisation across all four Devolved Nations, this will likely lead to instances where glass is either paid for twice, or not at all.

Additionally, Part 1, Section 8(1)(b) states that household packaging waste does not include “*any packaging waste which is discarded together with food waste in a receptacle for food waste...*” The implications of this text are unclear. Not all local authorities collect food waste, and although the intention to obligate local authorities to collect food waste was outlined in the [2021 Consistent Collections](#) consultation, a response to this consultation has not yet been published. Therefore, there is no timeline for implementing such measures. Defra has stated that consistent collections will not be implemented until after the Extended Producer Responsibility for packaging (EPR), which means that certain types of packaging will be obligated in some councils and not others.

Q8. Are producers recycling obligations clear?

- Yes
- **No**
- Do not know

If ‘no’, please provide details of anything that is unclear.

Part 2, Chapter 1, section 16(3) states that LP (Large Producer) must “recycle packaging waste”. This wording is unclear. Producers are obligated financially to pay household disposal costs and PRNs/PERNs; however, in many cases they will not be recycling the materials themselves. This text should be amended to make it clear that producers are obligated to report packaging data and pay for the recovery of that packaging.

Furthermore, where businesses manage the recycling of packaging themselves, for example, via an in-store take-back scheme for small cosmetic packaging that cannot be recycled kerbside but can be recycled via other means, greater detail is required on how to report and offset costs than is currently outlined in Schedule 4, Part 4, s.14.

Many businesses operating cosmetic take-back schemes abide by the On-Pack Recycling Label (OPRL) principles to be able to use the OPRL label and encourage consumers to recycle the packaging via a take-back scheme. One of the OPRL principles in relation to take-back schemes is that the take-back scheme “must be accessible to at least 75% of UK population”. This is a barrier to many smaller businesses. Schedule 4, Part 4, s.14(5)(b) of the draft Regulations states that “*relevant packaging waste*” means “*...any other packaging waste which is collected from households for recycling by less than 75% of the relevant authorities in the UK responsible for waste collection*”. CTPA supports this development. Allowing business that operate take-back schemes to qualify for offsetting household disposal costs because they recycle packaging that is not collected by 75% of Local Authorities, rather than having to demonstrate that a particular take-back scheme could reach 75% of the population, allows for businesses that may not necessarily reach 75% of the UK population to operate a take-back scheme if appropriate to do so.

In November 2021, CTPA convened a stakeholder roundtable to discuss take-back schemes for small cosmetic packaging. The roundtable brought together key stakeholders including Resources and Waste Minister at the time, Jo Churchill, MP. The ultimate goal of the industry would be that no cosmetic packaging ends up as waste. Whilst many CTPA members have or are considering take-back schemes, where consumers return the packaging to dedicated collection points, CTPA recognises that with a more industry-wide approach, the awareness of such schemes and quantity of packaging

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recovered can be increased and maximum value added to the material that is recovered. However, in order to proceed with an industry-wide approach, greater clarity regarding how take-back schemes will operate with EPR in practice, is required. CTPA has a position paper on take-back schemes which is available to [download](#).

Additionally with regard to take-back schemes, “take back scheme” for the purposes of the Regulation is defined specifically as “*a scheme whose members are sellers of filled fibre-based composite cups...*” However, as other types of take-back scheme will also play a role in EPR, such as take-back schemes for small cosmetic packaging as referred to above, the definition of the term “take back scheme” should be less specific, as it may lead to confusion. When referring to a fibre-based composite cup take-back scheme, it would be helpful to phrase it as “cup take back scheme” or equivalent.

Q9. Are the obligations on each type of producer clear?

- Yes
- **No**
- Do not know

If ‘no’, please state the type of producer and how the obligation is unclear.

Nation Data obligations are unclear. Producers are confused about who is responsible for reporting Nation Data and for what packaging. It is likely that this will lead either to under-reporting or to over-reporting for certain types of packaging. Furthermore, producers are not always in control of where the packaging that they have supplied is disposed. To obtain such granular information from customers will be extremely challenging. Some businesses suggest that the only type of producer that would be able to accurately determine where packaging is disposed of, would be a distributor that supplies to the end user. Therefore, greater clarity is required on how to report Nation Data when there is some uncertainty over where the packaging ends up. In this instance, one solution would be to report where the packaging has been supplied, rather than where it has been disposed of, which is the methodology that many businesses currently use to report their packaging obligations.

CTPA has also been informed that there are concerns regarding unbranded packaging that has been reused, and how to prevent the same piece of packaging from being reported on and paid for more than once.

Please note, there is a typing error in Schedule 4, Part 2, s.6(2) “*imported by an imported*”.

Q10. Are the obligations on all types of packaging clear?

- Yes
- **No**
- Do not know

If ‘no’, please give examples of any packaging types where the obligations are unclear.

Nation Data obligations are unclear. As highlighted in Q9, producers are confused about who is responsible for reporting Nation Data and for what packaging. It is likely that this will lead either to

under-reporting or to over-reporting for certain types of packaging. Furthermore, producers are not always in control of where the packaging that they have supplied is disposed. To obtain such granular information from customers will be extremely challenging. Therefore, greater clarity is required on how to report Nation Data when there is some uncertainty over where the packaging ends up. In this instance, one solution would be to report where the packaging has been supplied, rather than where it has been disposed of, which is the methodology that many businesses currently use to report their packaging obligations.

Greater clarity is also required as to how producers should report on composite materials that are not fibre-based. For example, should the entire weight of the packaging be reported under the material-type for the main material by weight? Should the weight of each material be reported separately? Or should the weight of entire packaging be reported under “other materials”?

CTPA members have highlighted that ‘shipment packaging’ is a term widely used for tertiary packaging by manufacturers and could inadvertently result in household waste management fees being paid. Members have suggested that the Regulations should be revised so that an alternative, unambiguous phrase is used to describe “shipment packaging”.

There are also concerns regarding unbranded packaging that has been reused, and how to prevent the same piece of packaging from being reported on and paid for more than once.

Q11. Are there any areas in which two producers may be obligated for the same item of packaging?

- Yes
- No
- Do not know

If ‘yes’, please set out clear examples to demonstrate this.

In instances where packaging has no brand, or where there are multiple steps in a supply chain which involves both large and small producers, there is great confusion over which producer is obligated for reporting packaging data and paying fees. Producers are also extremely confused over who is obligated to report Nation of Sale Data and for what packaging. It is highly likely that producers will mistakenly feel they are obligated and report on or pay for the same piece of packaging. CTPA members feel it would be beneficial to have a list of example scenarios across a range of supply chains, which make it clear where each producers’ responsibilities lie, including online sales sold through a third-party website.

Furthermore, although there is reference in Part 1, s.9(3), members are still unclear over who is responsible for reporting and paying for packaging that contains more than one brand. Greater clarity is required on this point.

Q12. Is the relationship between a Packaging Compliance Scheme and its members clear?

- Yes
- No
- Do not know

If ‘no’, please provide details of anything that is unclear.

Part 3, s.30(1,2) states that a producer that is a member of a registered compliance scheme is exempt from complying with its registration obligations. However, in relation to the Report Packaging Data system, Defra has previously stated that producers must register themselves and then select the compliance scheme that will be submitting data on their behalf. CTPA seeks greater clarity regarding whether or not producers that are a member of a registered compliance scheme need to comply with registration obligations.

Furthermore, with regards to Approved Persons and Delegated Authority, producers that are obligated under EPR are required to create an account on the new Report Packaging Data (RPD) service; however, before data can be submitted, the environmental regulator must approve the account and authorise ‘approved person’ status, making it one person’s legal responsibility to ensure that the data that the organisation submits is as accurate as reasonably possible. The approved person is the only person that can delegate authority to another person or verify their organisation’s data submission via the RPD. CTPA members have expressed concern that this puts undue burden on one person, particularly in a large organisation with multiple subsidiaries, and therefore suggest that the regulations should state that any approved persons of an obligated producer can undertake such actions, or delegate authority to others to undertake those actions, on behalf of the approved persons of the company. To provide a relevant example, under the UK Cosmetics Regulation, it is a legal requirement that all cosmetic products placed on the UK market must have their own Responsible Person (RP). The RP may be a natural (i.e. individual) or more commonly a legal entity (i.e. a company). Therefore, generally it is not an individual who takes responsibility for ensuring that every cosmetic product placed on the market is safe and complies with all the requirements of the UK Cosmetics Regulation.

CTPA members have also expressed concern regarding the need for compliance schemes and would like to emphasise that it should remain a commercial decision as to whether an obligated producer chooses to use a compliance scheme. Producers should maintain the flexibility to choose whether to manage their own obligations or use the services of a compliance scheme.

Additionally, the definitions within the Regulations are confusing. “Scheme” could mean “compliance scheme” or “take back scheme”. In order to prevent any misunderstanding, the wording should be changed to make it clear to which type of scheme is being referred. Similarly, the terminology “compliance scheme” versus “registered compliance scheme” is unnecessarily confusing.

Q13. Are the obligations that a Packaging Compliance Scheme assumes on behalf of its members clear?

- Yes
- **No**
- Do not know

If ‘no’, please provide details of obligations that are unclear.

Part 3, s.30(1,2) states that a producer that is a member of a registered compliance scheme is exempt from complying with its registration obligations. However, in relation to the Report Packaging Data system, Defra has previously stated that producers must register themselves and then select the compliance scheme that will submitting data on their behalf. CTPA seeks greater

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clarity regarding whether or not producers that are a member of a registered compliance scheme need to comply with registration obligations.

Additionally, the definitions within the Regulations are confusing. “Scheme” could mean “compliance scheme” or “take back scheme”. In order to prevent any misunderstanding, the wording should be changed to make it clear to which type of scheme is being referred. Similarly, the terminology “compliance scheme” versus “registered compliance scheme” is unnecessarily confusing.

CTPA also supports the point made by the Industry Council for Packaging and the Environment (INCPEN) with respect to the importance of producers having as much clarity and visibility as possible on business recycling targets for packaging waste for 2024 and beyond, to support company planning/budgeting and ongoing compliance with recycling obligations.

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

- Yes
- **No**
- Unsure

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

Accompanying Guidance

Defra has stated that basic labelling requirements will be outlined in the Regulation and greater detail will be issued in accompanying guidance. Without having access to the guidance, the requirements for the provision of recycling information and packaging labelling are unclear. As currently stands, businesses would struggle to implement the provisions.

Timeline

The timeline for labelling is unclear. Firstly, dates have been omitted from the draft Regulation, which makes it impossible to comment on the feasibility of the proposed timeline. Secondly, there is no detail as to what the deadlines relate. For example, do the deadlines relate to the date that the packaging is produced, to prevent existing stocks from having to be withdrawn or modified? Or do they relate to an on-shelf date, and if so, what will happen to existing stocks?

The purpose of the Regulation is to increase recycling and improve the “environmental sustainability” of packaging. It would go against the sustainability intentions to have to withdraw safe and otherwise compliant stocks from the market. Therefore, there should be a transition period from the date that all three of the following are in place: the Regulations have been enforced, the labelling guidelines have been published and the Recycling Assessment Methodology has been prescribed. Until all three are in place, businesses cannot make the required changes to their packaging, and given the significant lead times associated with designing and producing packaging, the date of implementation for mandatory labelling provisions should be clarified as soon as possible.

Producers must be allowed adequate transition periods, and this should reflect the outcome of the Recycling Assessment Methodology (RAM) and the complexity of the assessment methodology that will need to be applied to all products across a producer’s portfolio.

To provide an example, since the UK left the EU, cosmetics companies must amend their packaging to include the address of a UK Responsible Person. The original deadline for this was 31 December 2024, but the deadline has since been extended to 31 December 2027. This means that businesses will have had a total of seven years to implement the labelling changes, despite being much less complicated than the recyclability labelling that is being introduced through EPR.

As a last resort, businesses should also be able to utilise stickers to affix the required information, so that existing packaging, or packaging that is sold globally, can be made compliant. However, the environmental and financial impacts of over-labelling must be considered should Defra make a comparison between the potential outcomes of selling off existing stock without labels, and utilising stickers to make existing stock compliant. For example, to re-label existing stocks, every unit on every pallet received from international factories would need to be unpacked. Individual products may also need to be unwrapped. Stickers would need to be manufactured and applied. Everything would then need to be re-packed. This would generate additional waste, and producers would have an added burden of capturing the waste; including extra wrapping and sealing material disposed of in the opening phase, as well as that then produced in the closing phase. This is why CTPA requests that sufficient transitions periods are in place when producers have access to all the information necessary to make changes to their labels.

Existing stocks that do not display the mandatory recycling information should be allowed to be sold indefinitely until the stock is completely depleted, to avoid unnecessary waste.

Surface Area

Chapter 2, s.3(b)(i) states that the provision of recycling information does not apply in relation to *“any packaging where the surface area of the largest surface of packaging is less than 25 square centimetres”*. However, it is important to note that some shapes of packaging may have a largest surface area that is greater than 25cm² but a total surface area that is not much larger than that. For example, cylindrical, spherical or tube-shaped packaging. Many small items of cosmetic packaging that cannot be recycled kerbside but can be recycled via a take-back scheme, would fit this description. Therefore, a potential solution would be to make the entire category of ‘colour cosmetics’ i.e., makeup, exempt. If this were the case, a definition of ‘colour cosmetics’ should be prescribed to avoid any ambiguity, and producers should communicate the recycling instructions at point of sale and via their website, or other digital channels, with information on how consumers can locate their nearest take-back scheme.

Alternatively, for packaging that does not have a standard square/rectangular surface, exemptions could be based on the amount of product in the packaging in millilitres. In Italy, for example, small packaging is defined as packaging with the largest surface area of 25cm², or packaging with a capacity of up to 125ml. The Italian Ministry of Ecological Transition clarified that where either of these is the case and there are physical or technological limitations to practically affixing environmental labelling to the packaging, the information may be conveyed through digital channels.

Otherwise, it is necessary to include information as to how to calculate the size of the largest surface area for cylindrical, spherical, or tube-shaped packaging, so that they are not disproportionately affected by the requirements despite having a smaller total surface area than other packaging that does not reach this threshold.

Recycling information to be displayed “on or in relation to packaging”

Chapter 2, s.20 states *““recycling information” means the information required by this Chapter to be displayed on or in relation to packaging”*. CTPA is seeking clarity as to what is meant by “in relation to packaging”. For example, does this mean that businesses may have the flexibility to choose how to communicate recyclability to the consumer, for example, online, at point of sale, via a QR code, via an accompanying leaflet, via a peel and read label, etc. If so, does this flexibility apply to all producers or is there a threshold under which a producer must be to utilise digital or other methods of communication? Digital channels provide opportunities for producers to provide detailed instructions on how to dispose of packaging responsibly. For example, if the packaging is recyclable via a take-back scheme, information could also be provided as to how the consumer can find their nearest take-back scheme. Similarly, accompanying leaflets could be utilised to provide more detailed recycling information, for example for cosmetic products where the leaflet is essential for consumers to use the product, such as at-home hair colorant kits.

Furthermore, many producers sell not only in the UK, but also across the EU and/or internationally. Selling products in multiple markets means that there will be different regulatory requirements, both in terms of cosmetic-specific labelling requirements, and in terms of environmental labelling requirements. Digital labelling would allow producers to use one website address or QR code to convey the requirements of multiple countries in which the product is being sold, and in multiple languages. It should be considered that specific on-pack labelling requirements for products sold in the UK may act as a hindrance to overseas companies selling products in the UK. Likewise, further guidance is required for packaging that is sold internationally, to ensure that producers are not penalised for confusing or misleading consumers in countries that do not follow the same recycling instructions as the UK.

Minimum Size Requirements

Defra should engage with cross-sector stakeholders as to the minimum size requirements for the logo and text. Article 19 of the UK Cosmetics Regulation establishes on-pack labelling requirements. The information required on-pack includes:

- The UK address of the Responsible Person
- Country of origin*
- Declared quantity of contents*
- ‘Best before...’ date*
- Period After Opening (PAO)*
- Warning statements and precautionary information*
- Batch code
- Function of the product*
- Declaration of ingredients

*Where required

This information is required to be indelible, easily legible, and visible. Having prescribed size requirements for recyclability labelling, means that in some cases for small packaging, the recycling information may appear larger than the safety warnings.

Additionally, minimum size requirements of 7mm and 9.5mm for the logo seem excessive, particularly where accompanying text is also required. To provide a comparable example of another

mandatory mark, the UK Conformity Assessed (UKCA) mark that is required on products such as aerosol dispensers, is required to be 5mm in height.

Recycling Instructions - Take-Back Schemes

Many small items of cosmetic packaging are technically recyclable, but cannot be recycled kerbside due to size, as the packaging falls through the gaps in the trolleys at waste management facilities. In order to prevent this packaging from going to landfill or incineration, several companies have implemented take-back schemes for small cosmetic packaging so that it can be recycled via alternative routes. In the draft Regulations there is no indication as to the wording that will be acceptable as recycling instructions for such packaging that can be recycled via take-back schemes.

CTPA members have suggested that there could be an alternative logo specifically designed for take-back schemes, which makes it clear to consumers that the packaging cannot be recycled kerbside but can be recycled via alternative means. An alternative logo would ensure consistent communication, whilst separating consumers from the mindset that this type of packaging should be treated in the same way as other household packaging.

There is also no indication of how the Recycling Assessment Methodology (RAM) will work for such packaging that cannot be recycled kerbside but can be recycled via alternative routes.

Professional Products

Chapter 2, s.21(3)(b) states that the Chapter applies to primary and shipment packaging. However, some primary packaging, such as raw ingredients packaging and professional products packaging should be excluded from this requirement. This type of packaging will be managed directly by businesses and will not reach consumers or end up in household waste.

Refillable Packaging

There is no information regarding how to label refillable packaging, to encourage consumers to refill the packaging rather than recycle it after one use, if appropriate. CTPA guidance on Refills and Re-use Models - Key Considerations is available to [download](#).

Recycling Assessment Methodology (RAM)

Until the RAM has been published, businesses cannot start to make changes to their packaging because they cannot determine whether the packaging is classed as recyclable or not. This not only prevents accurate changes to labelling, but it also prevents businesses from making informed decisions when designing or modifying packaging components. It is essential that the RAM is published as soon as possible, and that the timeframe in which it is published is taken into account when determining transition periods for recyclability labelling.

Consistent Collections

Until Consistent Collections have been implemented, the materials collected by local authorities for recycling will continue to vary depending on the council. This makes it very difficult to make recyclability claims when recyclability varies from one local authority to another. Defra has stated that Consistent Collections will be implemented after EPR, but CTPA cannot see how the RAM can be developed or businesses can implement labelling changes, without Consistent Collections being in place.

Q15. Are you likely to use a third-party organisation to conduct packaging recyclability assessments?

- Yes
- No
- **Unsure/not decided**

Please provide the reason for your response.

Producers cannot make an informed decision over whether they will require a third-party organisation to conduct the recyclability assessments until the RAM has been prescribed. If the RAM is straightforward, producers may choose to conduct the assessments themselves; however, some producers may still prefer to use a third party. It is likely that third-party organisations will be required generally, but producers are not in a position to be able to confirm whether they will carry out the assessments themselves or not.

In relation to the RAM, it is essential that producers are able to access the methodology as soon as possible, in order to make changes to their packaging and labels to ensure that products are compliant with the requirements of EPR. Producers would greatly benefit from a free tool developed as part of the RAM, to make determining packaging recyclability easier. If a tool is developed, it is important that producers are consulted to understand how information should be input into the system in the most automated and efficient way possible.

Furthermore, it is still unclear how take-back schemes for small cosmetic packaging that cannot be recycled kerbside, but can be recycled through other means, will be factored into the RAM, and what implications that has for labelling.

Q16. If you answered yes to Q14, should there be a mandatory accreditation scheme for third-party organisation(s) who undertake recyclability assessments?

- **Yes, approved by the Scheme Administrator**
- **Yes, accredited by UKAS**
- **Yes, other (please specify)**
- **No accreditation scheme**

Please explain the reason for your response.

If third-party organisations are used, it is essential that they are accredited by a mandatory accreditation scheme. All organisations must follow the same protocol, which should be decided with input from multiple stakeholders. This work should be undertaken by the Scheme Administrator in parallel with the UK Accreditation Service (UKAS). Any accreditation scheme must also include auditing.

CTPA would, however, like to emphasise that accessibility and ease of use of the RAM should be a mandatory requirement, to allow all businesses to access data without the need to pay third-party organisations to help navigate. When legal obligations are in place, producers should not be forced to pay for third-party organisations to interpret the methodology on their behalf, whilst also having to pay EPR fees.

Q17. Are the functions of the Scheme Administrator as outlined in the draft Regulations clear?

- Yes
- **No**
- Do not know

If 'no', please provide examples of where the draft Regulations are not clear.

Part 6, s.59(2), states “Where paragraphs (3) and (4) apply, a single appropriate authority may direct the scheme administrator – (a) to take the action specified in the direction, or (b) to refrain from taking the action specified in the direction.” This text allows the Scheme Administrator to be overruled by a single authority which is counter intuitive to Schedule 5 “2(a) that the scheme administrator must act fairly in – ... (ii) the treatment of relevant authorities and producers across the United Kingdom”. A single authority should only be able to overrule the Scheme Administrator if the actions of the Scheme Administrator only impact the nation in which the authority has purview, and the UK Government has assessed that the authority's direction is necessary and appropriate.

Chapter 3, s.74(8) states “The scheme administrator may not under this regulation reduce the amount of the payments it makes to that authority in respect of its disposal costs to an amount which is less than 80% of the net efficient disposal costs of the relevant authority, as determined under regulation 73(2).” This limits the scheme administrator’s power and provides little incentive for local authorities to improve their collections.

Furthermore, it is not clear what the benchmark for “efficient” and “effective” will be, and whether this will differ between nations.

Q18. Do the draft Regulations allow for the Scheme Administrator to accurately apportion fees to producers?

- Yes
- **No**
- Do not know

If no, please detail why.

Whether the Scheme Administrator can accurately apportion fees to producers is reliant on many factors, including that all producers report their data accurately. At this stage, there is no information on how much producers will be charged for each material type or how the funds will be distributed. Until the Scheme Administrator is mobilised, and more information is shared, it is impossible to agree that the Scheme Administrator can apportion fees accurately.

Furthermore, the draft Regulations introduce a requirement for the Scheme Administrator to modulate fees based on the environmental sustainability of packaging; however, CTPA would like to highlight that recyclability is just one environmental characteristic and there are many other environmental impacts that must be considered, such as impacts on water and biodiversity.

CTPA would also like to highlight that the modulated fees aspect of EPR does not necessarily align with Net Zero goals. Modulated fees will mean that materials that are easier to recycle will attract lower fees than materials that are difficult to recycle; however, materials that are easier to recycle are not necessarily materials with lower carbon emissions than their difficult-to-recycle counterparts. For example, glass is infinitely recyclable and therefore a choice material for creating

a circular economy; however, it also requires extreme temperatures during production, and generates high carbon emissions during transport owing to its heavy weight. In addition, glass may not be suitable to package certain cosmetic products from a safety point of view – for products intended to be used in the shower, for example. To account for the environmental impacts of materials across their full life cycle, multidisciplinary Life Cycle Assessments (LCAs) should be used in decision-making in order to avoid potential regrettable substitutions; the cosmetics industry has recognised the importance of LCAs and has formed an [EcoBeautyScore Consortium](#) to develop an environmental impact assessment and scoring system tailored to cosmetic products. LCAs should also be utilised when the Government revisits refill/re-use requirements in future years. CTPA guidance on Refills and Re-use Models - Key Considerations is available to [download](#).

Q19. If your organisation collects and recycles packaging waste, do you understand if you would qualify for off-setting under the draft Regulations?

- Yes
- **No**
- Do not know

If no, how can this be made clear?

Where businesses manage the recycling of packaging themselves, for example, via a take-back scheme for small cosmetic packaging that cannot be recycled kerbside but can be recycled via other means, greater detail is required on how to report and offset costs than is currently outlined in Schedule 4, Part 4, s.14.

Furthermore, if, instead of multiple cosmetic take-back schemes operated by different producers, there were to be an industry-wide take-back scheme, whereby all the material is collated to obtain maximum quality and quantity, there is no detail as to how offsetting might work in that situation. It would be preferable to have an industry-wide scheme to drive consumer behaviour but concerns over EPR makes it very difficult to progress with such a scheme. CTPA has a position paper on take-back schemes which is available to [download](#).

The Regulations also currently state that packaging can only be offset if it is not collected by 75% of local authorities. However, provided the packaging is being effectively and efficiently recycled, it should not matter whether this is a closed loop system or whether it is carried out by local authorities. In some instances, closed loop systems may have a lower environmental impact and should therefore be considered to qualify for offsetting.

Q20. Do you think the offsetting provisions should be extended as part of future reforms to EPR?

- **Yes**
- No
- Do not know

If yes, please detail how you think these offsetting provisions should be extended and why.

Provided the packaging is being effectively and efficiently recycled, it should not matter whether it is in a closed loop system or whether it is carried out by local authorities. If the packaging does not end up in household waste, then it should qualify for offsetting against household waste disposal

costs. EPR should also allow for innovation, and offsetting provisions should be equipped to accommodate this.

It is, however, important to understand how the existing offsetting provisions, for example for take-back schemes for small cosmetic packaging, will work in practice. There has been little information as to how this will work, and although there is reference to it in Schedule 4, Part 4, s.14, greater clarity is required.

Q.21. Do the draft Regulations provide appropriate safeguards for compliant producers, including with regards to the impact producer non-compliance may have on producer disposal fees?

- Yes
- No
- Do not know

If no, please provide details of your concerns.

Chapter 3, s.74(8) states that local authorities will receive at least 80% of disposal costs regardless of their waste management performance. This contradicts the principle of ensuring that the costs to producers are in proportion to the quality of the service provided by the local authorities in respect of the collection of packaging.

Additionally, with regards to Part 6, Chapter 1, s.66(3), CTPA seeks clarification as to whether this is a non-compliant fee and if so, whether it applies in relation to all the producer’s packaging, or whether it applies only in relation to the packaging for which there is insufficient information.

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?

- Yes
- No

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

Chapter 3, s.74(8) states *“The scheme administrator may not under this regulation reduce the amount of the payments it makes to that authority in respect of its disposal costs to an amount which is less than 80% of the net efficient disposal costs of the relevant authority, as determined under regulation 73(2).”* This limits the Scheme Administrator’s power and provides little incentive for local authorities to improve their collections.

Furthermore, it is not clear what the benchmark for “efficient” and “effective” will be, and whether this will differ between nations.

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?

- Yes

- **No**
- Do not know

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

Chapter 3, s.74(8) states “*The scheme administrator may not under this regulation reduce the amount of the payments it makes to that authority in respect of its disposal costs to an amount which is less than 80% of the net efficient disposal costs of the relevant authority, as determined under regulation 73(2).*” This limits the scheme administrator’s power and provides little incentive for local authorities to improve their collections. At present, it is unclear whether EPR will improve recycling rates.

Q24. Do the draft Regulations make it clear what the Scheme Administrator is required to do and consider in assessing Scheme Administrator public information costs and administration costs?

- Yes
- **No**

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

It is unclear how costs will be assessed and whether they will be fair to large producers. There is no explicit mention of public information campaigns having to relate to the promotion of the packaging recycling.

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

- Yes
- **No**
- Do not know

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

It is not clear how disposal cost payments will be distributed to local authorities.

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?

- Yes
- **No**

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

Producers have not yet been informed of the material base fees and there is no information on what the modulation mechanisms will be. The only information that producers have is that the fees will be modulated based on recyclability; however, the draft Regulations state that fees will be modulated based on the environmental sustainability of packaging. Environmental sustainability includes “one or more” of the factors listed under Chapter 2, s.66(2), yet there has only been reference to recyclability thus far.

Furthermore, it is unclear how often the Scheme Administrator can adjust the modulation factors; this should be frequent enough to reflect the real amount of packaging placed on the market, but not too frequent as to hinder the planning for business to forecast costs.

It is also unclear if or how producers can appeal the decision of the Scheme Administrator regarding the sustainability of packaging. Packaging is an innovative industry, so it is particularly important for the new developments in this space in terms of new, and more environmentally-friendly, packaging materials and formats.

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

- Yes
- No

If yes, please specify which materials.

It is CTPA's position that all materials should have a dedicated stream to allow for collection and recycling and there should be no exemptions in terms of modulation; however, environmental impacts other than just recyclability should be considered. Fees should decrease over time as recycling infrastructure improves and local authorities implement more efficient systems.

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

- Yes
- No
- Do not know

If no, which grounds are missing?

Clarity is required as to what timescales are permitted for the Scheme Administrator to recalculate the costs and fees. Information as to what supporting evidence would be required to justify recalculations is also required.

CTPA members have also expressed concerns that online marketplaces are exempt from modulated fees. CTPA would seek some clarification as to why this is the case as this could disadvantage other obligated organisations.

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

- Yes
- No
- Do not know

If no, how can the process be made clearer?

Clarity is required as to what timescales are permitted for the Scheme Administrator to recalculate the costs and fees. Information as to what supporting evidence would be required to justify recalculations is also required.

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

- Yes
- **No**
- Do not know

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

The ability to appeal a decision regarding the determination of sustainability of packaging is not adequately captured. Packaging design and materials is an extremely innovative space and there should be a route to appeal decisions made by the Scheme Administrator regarding the sustainability of packaging. This is extremely important considering the Scheme Administrator has the power to determine environmental sustainability based on just one of the criteria listed under Chapter 2, s.66(2).

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

- Yes
- **No**
- Do not know

If no, how could this process be made clear?

The ability to appeal a decision regarding the determination of sustainability of packaging is not adequately captured. Packaging design and materials is an extremely innovative space and there should be a route to appeal decisions made by the Scheme Administrator regarding the sustainability of packaging. This is extremely important considering the Scheme Administrator has the power to determine environmental sustainability based on just one of the criteria listed under Chapter 2, s.66(2).

Q34. Please raise up to three areas of EPR packaging policy that you would like us to consider in the first review and rank in order of priority.

1) Recyclability, including:

- Labelling
- RAM
- Modulated Fees

2) Offsetting, including:

- Via take-back schemes for packaging that cannot be recycled kerbside
- Via closed-loop systems

3) Alignment of EPR, Consistent Collections and DRS, including:

- Labelling impacts
- Costs
- Infrastructure plans