
Defra Consultation Response on Extended Producer Responsibility

Summary for Arun District Council

An initial public consultation on the R&W Strategy was carried out in 2019, separately considering Collection Harmonisation, Extended Producer Responsibility for packaging and options for Deposit Return Schemes. Following assessment of the feedback, the Environment Bill 2020 was published by the Government, and further consultations on EPR, DRS and Collection Harmonisation were published between March and May 2021.

Eventually published in March 2022, Defra's response to the Extended Producer Responsibility (EPR) consultation confirms how the government intends to deliver their proposals to move the full cost of dealing with packaging waste from households away from local taxpayers and Councils to the packaging producers, applying the 'polluter pays principle'.

The response also touched on elements from the Collection Harmonisation, Extended Producer Responsibility for packaging and options for Deposit Return Schemes.

1. RESOURCE & WASTE STRATEGY CLARIFICATIONS

Some elements of the R&W Strategy were incorporated in the Environment Act 2021, granted Royal Assent in November 2021. However, whilst certain elements of R&W Strategy are set out in the Act (*Section 45A: recyclable household waste must be collected separately from other household waste for recycling or composting, recyclable streams must be collected separately, food waste must be collected weekly*) the majority of the proposals in the R&W Strategy consultation will be implemented through secondary legislation (the Act confirms that the Secretary of State may issue guidance about the duties imposed by sections 45 to 45AZD), and the details of the implementation of the Act thus remain uncertain. Defra is still working on the Deposit Return Schemes and Consistency in Household and Business Recycling consultation responses, which it has suggested will be published 'by the Spring'.

However, whilst focussed predominantly on EPR, the consultation response also confirms the government's considerations on elements from the remaining consultations.

These clarifications include actions to:

- ensure producers pay the full net costs of disposal or recycling of packaging they place on the market by extending producer responsibility;
- introduce a consistent set of recyclable materials collected from all households and businesses, and consistent labelling on packaging so consumers know what they can recycle, to drive-up recycling rates;
- ensure weekly collections of food waste, which is often smelly and unpleasant, for every household;
- introduce a deposit return scheme to increase the recycling of single-use drinks containers including bottles, cans, and disposable cups filled at the point of sale;

KERBSIDE DRY RECYCLING

The consultation confirms that "Payments to local authorities for the cost of managing packaging waste generated by households, both packaging waste that is collected for recycling and packaging waste disposed of in residual waste, will be made under the packaging Extended Producer Responsibility scheme".

This aspect of the proposals covers household collection services, both kerbside dry recycling collections and residual collections, which deal with packaging waste. This means that the cost of collecting and reprocessing recyclable packaging waste will be covered by the EPR scheme. EPR will also cover the cost of managing (ie collecting and disposing of) packaging waste remaining in the residual stream.

(NB: It should be noted that the response doesn't specifically address the issue of mixed waste paper. Mixed papers collected from households consist of newspapers, magazines and writing paper but also an element of packaging such as cereal boxes and small cardboard packaging. Under the current PRN system, the national mixed paper protocol which defines the amount of claimable packaging waste in the mixed paper grade defines 34.5% of mixed papers as counting as packaging materials in the PRN system. The response is silent regarding whether all mixed paper collection and reprocessing costs will be covered under packaging EPR.)

Collections from "Street Bins" ie litter bins are included within collection schemes (described as on-the-go packaging). However, any costs of litter collection are not included.

The response states that Defra expects obligated producer costs to be around £1.7 billion each year. Around £1.2bn of this cost arises from managing household waste and currently falls on taxpayers, with around £800m household packaging recycling costs and HWRC costs, £300 million household packaging residual costs, while managing packaging in street bins is expected to cost £100m. Further systems administrations costs (including the costs of communications campaigns and regulator costs) are also expected to be around £100m. This will create a strong incentive for producers to reduce packaging and increase its recyclability, reducing the costs they incur under EPR.

The government considers that the EPR proposals are not expected to materially increase costs for consumers, based on their estimate of the total annual cost of EPR estimated at £1.7 billion, equivalent to £23-£48 per household per year.

TIMELINES

The response document confirms that Defra will implement EPR in a phased manner from 2024 (rather than 2023 as originally proposed).

This will focus on payments for household packaging waste and packaging in street bins managed by local authorities, with such payments being determined from 1 April 2024. EPR will subsequently be implemented in full in 2025.

A Scheme Administrator (SA) will be appointed. It will start to mobilise in 2023 and will be fully operational in 2024. The indicative view from HM Treasury is that the SA is likely to be classified as being within the public sector. The government is considering options to establish the SA within the public sector, but still aims to maintain significant industry involvement in the delivery of its functions. The final decision on the SA will be made by the four governments.

EXTENDED PRODUCER RESPONSIBILITY FUNDING

Payments to local authorities for the cost of managing packaging waste generated by households, *both packaging waste that is collected for recycling and packaging waste disposed of in residual waste*, will be made under the packaging Extended Producer Responsibility scheme, but limited to 'necessary costs'.

The response states that 'necessary costs' will apply to *the collection and management of packaging waste produced by households through consideration of effective and efficient services..* Costs in scope must be necessary in collecting, managing, recycling and disposing of household packaging and connected to the delivery of efficient and effective systems. Not all LA costs incurred will be necessary in that they could be considered unnecessary or unreasonable in delivering services in an efficient and effective way. This will depend on the circumstances in which that cost has arisen. The SA will determine which costs are necessary and reasonable in recycling and disposing of packaging waste, linked with their assessment of efficient and effective systems, in consideration of national policies and

local circumstances. The SA will also be required to engage with LAs, producers and other relevant stakeholders and seek agreement from Ministers where appropriate (dependent on scheme governance arrangements). Costs that go beyond those incurred by a LA in delivering their services related to packaging are not considered in scope (e.g. financial rewards or incentives).

PAYMENT METHODOLOGY AND ALLOCATION

The methodology for funding Councils' costs of collecting and recycling packaging through payments from packaging producers, brands or retailers is set out below. It should be noted that the SA will be expected to carry out extensive modelling of the costs and performance of 'efficient and effective systems'. Whilst a set of criteria is suggested, the methodology for assessing each LA's system is not clarified.

The response states that the SA will have the ability to model the costs of efficient and effective systems or use actual costs in future, where these relate to packaging waste management costs and reflect efficient and effective systems. However, no methodology for this extensive modelling is provided. This is likely to be an onerous task, and will need to be carried out annually.

The response also appears to suggest that poor performance will be penalised, and good performance rewarded. Payments to an LA may be increased where tonnages above modelled levels are collected, while there will also be a provision for the SA to adjust a LA's payment where they consider a LA is not delivering against reasonable cost and performance benchmarks of efficient and effective systems

This may result in those local authorities performing below peer-based cost and performance benchmarks receiving less than full net cost, and local authorities performing above these benchmarks receiving more than their full net costs.

The response doesn't address the issue of income received for recyclate, other than stating "We expect that a LA should receive their full net costs where they have taken all reasonable steps to establish effective and efficient systems." If this is the case, then presumably the value of collected materials would be subtracted or 'netted-off' from a local authority's payment. LAs contracting with material recycling facilities would thus continue to pay gate fees, but would need to record any income from material sales separately. This approach may mean that, as with collection costs, a local authority's modelled gate fees (net of income) costs could be higher or lower than the actual costs incurred, depending on the contractual arrangement they have with their material offtake contractor. This aspect may conflict with current MRF and disposal arrangements.

The full list of Defra decisions is:

- The SA will be required to distribute payments to LAs for the full net disposal costs of providing efficient and effective systems for managing household packaging waste and to demonstrate how these costs reflect local circumstances and policy outcomes in each devolved administration of the UK.
- In doing so the SA will be expected to monitor and report on the broad cost parity between comparable LAs in each devolved administration to ensure the fair treatment of producers and consumers across the UK.
- Defra will set in regulations a requirement for the SA to set out how it proposes to calculate costs associated with efficient and effective services, both for the recycling and residual household packaging waste streams, and what considerations should be made in assessing efficient and effective systems and LA performance (e.g. fair, objective, transparent, good practice waste management systems, local circumstances (geography, rurality, deprivation), and regulatory requirements and abilities of LAs etc).
- The SA will be responsible for determining the approach to calculating payments, in accordance with the regulations. The SA will have the ability to model the costs of efficient and effective systems or use actual costs in future, where these relate to packaging waste management costs and reflect efficient and effective systems.
- Where a LA collects tonnage above modelled efficient and effective performance benchmarks and incurs additional costs, Defra will make provision for the SA to review the LAs costs and

performance and agree to cover any additional necessary costs incurred by an LA in exceeding their benchmarks.

- Defra will make provisions for the SA to assess whether a LA is delivering an efficient and effective waste management system in calculating their costs. They will also make provision for the SA to adjust a LA's payment where they consider a LA is not delivering against reasonable cost and performance benchmarks of efficient and effective systems.
- Defra will make provisions in the regulations for an appeals process. The SA will need to demonstrate that they have engaged with individual LAs in assessing costs and calculating payments and provide them with support, guidance, and a reasonable period to achieve efficient and effective system performance benchmarks before adjusting payments to reflect the delivery of efficient and effective systems, in consideration of local circumstances and relevant national waste policy.
- Defra expect that a LA should receive their full net costs where they have taken all reasonable steps to establish effective and efficient systems. The SA will need to demonstrate that the method used to calculate performance benchmarks is sufficiently robust before considering adjustments. As a result, adjustments, where used, should not be applied in the first year of EPR implementation.
- Payments will be made directly to the LA that incurs costs associated with their waste management functions
- Disposal authorities in two-tier areas (England only) receiving the disposal cost element of the residual payment, unless other arrangements have been made between authorities.
- To ensure the SA has the data necessary to calculate LA payments, the SA will be able to request LAs to provide accurate and timely data to support their payment functions, with LAs able to recover reasonable costs in providing that data. Where an LA fails to provide this information, or the SA has concerns about the accuracy of the data provided (and the LA cannot provide sufficient evidence to address these concerns), the SA will have the ability to base payments on the data and evidence they have available.
- Defra will continue to engage and work with the sector and LAs in advance of the EPR implementation date to ensure the SA's proposed approach to modelling full net costs under conditions of effectiveness and efficiency is transparent, reliable, and reflective of local circumstances and actual costs borne by LAs.

2. Kerbside Recycling Collections

DRY RECYCLING

The Consistency consultation stated that Government wants to provide clarity to local authorities on the specific materials they will be required to collect from households through regulations and will provide further detail through statutory guidance.

The consultation proposed that the following dry materials should be collected from households: Government intention is to specify these materials in regulations so that they are required to be collected by all Waste Collection Authorities.

- Glass bottles and containers – including drinks bottles, condiment bottles, jars
- Paper and card – including newspaper, cardboard packaging, writing paper (but excluding disposable paper cups as these items are largely consumed 'on-the-go' or away from home)
- Metal packaging – steel and aluminium tins and cans
- Plastic bottles – including clear drinks containers, high-density polyethylene (HDPE; e.g. milk containers), detergent, shampoo and cleaning products : Note Defra proposes to specify, in regulation, the type of plastic bottles that should be collected for recycling, with a view to

updating and amending the regulations over time, as required, when other types of plastic become widely recyclable and can be collected.

ADDITIONAL MATERIAL STREAMS – IMMEDIATE INCLUSION

The consultation proposed that Plastic film and flexible packaging should be included in kerbside collections from 2027. The EPR response confirms that this will be required.

The government intend to introduce a DRS for drinks containers in England and Wales into law via the Environment Bill, which will introduce powers that will enable a deposit return scheme to be implemented in England, Wales and Northern Ireland from 2023.

Aimed primarily at drinks containers – plastic, cans and possibly glass - the aim of a DRS is to reduce littering and increase recycling levels for these materials by incorporating a returnable deposit into the purchase price of the goods which would be redeemable through a network of return points.

3. Deposit Return Schemes

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Aimed primarily at drinks containers – plastic, cans and possibly glass - the aim of a DRS is to reduce littering and increase recycling levels for these materials by incorporating a returnable deposit into the purchase price of the goods which would be redeemable through a network of return points.

However, the EPR consultation response confirmed that glass will be excluded from the scope of DRS in England. This means that the levels of glass collected through kerbside and bring bank schemes is likely to be unaffected.

4. Summary of Potential Impacts on Arun District Council from Harmonisation Consultation

FOOD WASTE

The Environment Bill requires (Section 45A) all Waste Collection Authorities (WCAs) in England to arrange for the collection of food waste, separately and at least once a week for recycling or composting. The consultation states that this requirement will be initiated from 2023/4. *“Given the additional costs involved in separate food waste collection, Government will ensure that local authorities are resourced to meet any new burdens arising from this policy, including up front transition costs and ongoing operational costs.”*

TIMESCALES

The Consultation states that this requirement will be effective from 2023/4; however, the Autumn Budget statement, whilst confirming funding for separate food waste collections, stated that “over £300 million will be invested into the implementation of the infrastructure across every local authority in England by 2025”, casting some doubt over the required timescale.

The Consultation also notes that the timescale could be extended to 2030/1 for local authorities with long term residual waste disposal contracts that may be affected by introducing a separate food waste collection (e.g. some Energy from Waste or Mechanical Biological Treatment contracts).

COSTS

Defra have estimated a total transition cost of approximately £74 - £138 million (over the 8 years from 2023 – 2030) to roll out separate food waste collections across England, covering the cost of additional containers and vehicles. They also estimate a further cost of £94 - £101 million to cover wider transition

costs such as project management, re-routing, communications and engagement and staff costs (although this figure covers the transition costs of all services).

The consultation states that “*Given the additional costs involved in separate food waste collection, Government will ensure that local authorities are resourced to meet any new burdens arising from this policy, including up front transition costs and ongoing operational costs.*”

In terms of the estimated ongoing operational costs, ‘Operating and Comms’ costs of £1,894 - £2,487 million have been allocated from 2023 to 2035. However, again, this is for all service changes, not just food waste. However, as noted, the Autumn Budget statement stated that “over £300 million will be invested into the implementation of the infrastructure across every local authority in England by 2025”, but doesn’t provide any breakdown regarding what costs will be covered or how the funding will be distributed.

5. Garden Waste

Garden waste is included in the Environment Bill as one of the six recyclable waste streams to be collected from households in England for recycling. Like food waste, it must be collected separately from other household waste and from other recyclable waste streams. It can, however, be collected together with food waste where separate collection of food waste is not technically or economically practicable or there is no significant environmental benefit from separate collection of food waste (see Section **Error! Reference source not found.**).

The consultation thus proposes that all local authorities will have to arrange for the universal separate collection of garden waste for recycling in the 2023/24 financial year.

Defra has not yet decided whether local authorities will be allowed to continue to charge for garden waste collections as permitted under The Controlled Waste (England and Wales) Regulations 2012. At present, 65% of local authorities operate a chargeable system.

Defra’s preferred model in their impact assessment is a free minimum garden waste collection service provided by local authorities to householders. Collections would be fortnightly utilising 240 litre wheeled bins. This preference is based on the positive carbon impacts of this approach.

Defra state that, if implemented, the costs of providing a free minimum service for collection of household garden waste (up to a specified capacity and frequency, with local authorities retaining the option to charge beyond this) would be covered through new burdens funding and subject to a new burdens assessment.

However, it is unclear whether this funding would include the lost revenue from garden charging on current charge levels. Examination of the impact assessment suggests that the lost revenue from garden waste charging (estimated as £110 million per year) will not be part of the new burden funding. This may be due to the assumption that, at present, the charge made by authorities for garden waste collections should only cover the cost of providing the service, plus associated administrative overheads. On the assumption that the new burdens funding covers the cost of providing the vehicles and containers and that the administrative costs associated with the charging process are no longer required, then Defra presumably consider that the new burden funding will cover the lost income.

From an Arun perspective, the potential requirement to provide a free garden waste service would impact the current service substantially, with the impact including both the lost income from the current charging structure and the additional cost of extending the schemes to cover all properties.

ALTERNATIVE OPTIONS TO INCREASE RECYCLING OF GARDEN WASTE - UPDATED GUIDANCE ON REASONABLE CHARGES

Defra note that many local authorities in England currently levy a charge for garden waste collections services. Defra suggest that should they provide updated guidance on reasonable garden waste charges (it should be noted that that this is described as guidance rather than being prescriptive),

allowing for variations based on rurality and density of housing, this could allow the charging option to be continued, avoiding the significant increases in terms of greenhouse gas emissions that a universal free scheme would generate without leading to the high costs associated with introducing a free minimum collection service for garden waste.

6. Statutory guidance: Minimum service standards for the collection of residual waste from households

Defra are seeking views on statutory guidance including service standards for collection arrangements and frequency.

The consultation states “We support frequent and comprehensive residual waste collections and we will provide more information on this in statutory guidance.”

Defra note that as the quantity of materials collected for recycling increases, they expect the amount of residual ‘black bag’ waste to continue to decrease. Reductions already made in the amount of residual waste mean that many local authorities now provide alternate weekly collections of residual waste, with a small number of local authorities providing collections of residual waste once every three weeks.

The consultation states that “Government wants to ensure that householders are not inconvenienced by being able to get rid of putrescent or smelly waste weekly or having insufficient capacity to recycle or to remove residual waste”. The consultation notes that weekly separate food waste collection will be mandated, and also states that Defra “*will consider whether a recommended minimum service standard of alternate weekly collection for residual waste (alongside weekly food waste collection) might be appropriate, subject to an assessment of affordability and value for money*”.

Defra state that they will be seeking views on including this in the proposed statutory guidance on minimum service standards for rubbish and recycling, and that they will assess the costs for this when consulting on statutory guidance. *They specifically note that local authorities that currently collect residual waste on a fortnightly basis should not need to reduce their capacity of collection or frequency further as a result of consistency measures.*

This aspect of the consultation appears to focus on the frequency of residual collections rather than the capacity of containment provided. Defra’s approach also fails to consider the impact of reduced residual capacity on increasing recycling rates, the successful introduction of three-weekly collections or the financial savings resulting in reducing the frequency of collections.

The Environment Bill, at 45AZE, states “*The Secretary of State may issue guidance about the duties imposed by sections 45 to 45AZD. The guidance may in particular deal with.....the frequency with which household waste other than recyclable household waste which is food waste should be collected*”.

7. New Burdens Funding

Defra recognises that the new duties will impose additional costs on local government, and it will follow the New Burdens guidance¹ to ensure the costs of new statutory duties for local authorities are covered.

In the previous consultation and in Defra’s Resources and Waste Strategy, Defra committed to fund the net additional cost to local authorities of the new statutory duties placed on them. This would be done in line with Government guidance on new burdens.

New burdens are defined as any change in a central Government policy or initiative that imposes a net cost on local government and could lead to an increase in council tax.

¹ [New Burdens Guidance](#)

(It should be noted that the new burdens guidance appears to date from June 2011 and is a Department for Communities and Local Government publication. Its underlying basis is “*In 2010, the Coalition Government agreed to freeze council tax in England for at least one year, and to seek to freeze it for a further year, in partnership with local authorities. It also agreed to give local residents the ability to veto any proposed excessive council tax increases. To deliver these agreements the Cabinet has agreed that **all new burdens on local authorities must be properly assessed and fully funded by the relevant department.** This guidance sets out the process that departments must follow when considering new burdens.*”

The guidance specifies “*To ensure that **the pressure on council tax is kept down, the net additional cost of all new burdens placed on local authorities (including parishes, police and fire and rescue authorities) by central Government must be assessed and fully and properly funded.***”

As part of the new duties imposed on local authorities in the Environment Bill, central Government will fund net additional capital costs (for example containers, vehicles), and transitional costs such as communications and re-routing vehicles, to implement the new consistent collection measures.

This would appear to cover the initial costs of revising collection methodologies ie capital costs of vehicles and containers along with any transitional costs (although the definition is vague). The subsequent costs of managing the waste appears to be covered by EPR. However, for non-packaging waste (food and garden waste) more clarity is required. Defra have been asked for clarification regarding the long-term funding of additional costs of collection and disposal, but as yet have not provided any clarity.