

Net Zero, Energy and Transport Committee
Tuesday 7 October 2025
30th Meeting, 2025 (Session 6)

UK subordinate legislation: consideration of consent notification

Introduction

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to the following proposed UK statutory instrument (SI):
 - the Producer Responsibility Obligations (Packaging and Packaging Waste) (Amendment) Regulations 2025
2. The process for how the Scottish Parliament considers consent notifications is set out in the [SI Protocol](#). See **Annexe A** for further details.

The Producer Responsibility Obligations (Packaging and Packaging Waste) (Amendment) Regulations 2025

3. On 17 September, the Cabinet Secretary for Climate Action and Energy wrote to the Committee to give notice that the Scottish Government proposed to consent to this SI. Her letter is in **Annexe B** and the formal SI notification is in **Annexe C**. The notification sets out that the UK Government would lay the SI on 3 November 2025 with a coming into force date of 1 January 2026. The Committee has been asked to respond by **30 October**.
4. This instrument proposed in the notification relates to extended producer responsibility (EPR) for packaging. Packaging EPR (pEPR) requires producers of products to pay the full net cost of managing their packaging at end of life, creating a source of funding to local authorities to provide efficient and effective household packaging collection and disposal services, and placing financial responsibility on the producer in line with the "polluter pays" principle.
5. The instrument would amend the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024, on which the Committee took evidence [on 3 September 2024](#). The amendments would enable the appointment of a producer responsibility organisation (PRO). The notification states that this has been a critical request from industry and aligns with international best practice for EPR schemes to be producer led. It states that the PRO will be a "producer-led organisation set up to take on certain responsibilities for the operation of the pEPR scheme".
6. The notification also sets out that the UKSI will make a range of other changes to seek to improve efficiency and clarity of pEPR.

7. The key powers being used here to legislate in devolved areas can be used by UK Ministers only if the Scottish Ministers consent. These powers are available to either the UK Ministers or Scottish Ministers (known as “concurrent”). The notification sets out that the Scottish Government proposes to consent because the instrument will amend a UK-wide instrument and apply across the four UK nations. The notification states that the UK wide approach to producer responsibility for packaging waste is familiar to producers and regulators. It also highlights a “collaborative approach taken to the development of the amendments in this proposed SI which take into account input from the Scottish Government (and the other UK nations) through the drafting process”.

Next steps

8. If the Committee wishes to approve the proposal to consent to the SI, it may, in doing so, set out in its letter to the Scottish Government any observations or concerns that it thinks are relevant.
9. If the Committee is not content with the proposal, it should include in its letter to the Scottish Government one of the following recommendations:
 - That the Scottish Government should not consent to the provision being made in a UK SI and that the Scottish Government should instead take forward an alternative Scottish legislative solution; or
 - That the provision should not be made at all (that is, that the Scottish Government should not consent to the provision being included in a UK SI, nor should the Scottish Government take forward an alternative Scottish legislative solution).

Clerks to the Committee
October 2025

Annexe A: Process for parliamentary scrutiny of consent notifications in relation to UK statutory instruments

1. The Protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain subordinate legislation made by the UK Government: specifically, UK Government subordinate legislation on matters within devolved competence in areas formerly governed by EU law. It sets out a proportionate scrutiny approach and categorises SI notifications as 'type 1' or 'type 2'.
2. Type 2 applies where all aspects of the proposed instrument are clearly technical (e.g., they merely update references in legislation that are no longer appropriate following EU exit) or do not involve a policy decision. These are notified retrospectively, after the Scottish Government has given its consent.
3. All other proposals are type 1. In this case, the Scottish Parliament's agreement is sought before the Scottish Government gives consent to the UK Government making subordinate legislation in this way. Each type 1 notification must be considered by the relevant Committee.
4. **The Committee's role in relation to type 1 notifications is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making Regulations within devolved competence, in the manner that the UK Government has indicated to the Scottish Government.**
5. If Members are content for consent to be given, the Committee will write to the Scottish Government accordingly. The Committee may also wish to note any issues in its response or request that it be kept up to date on any relevant developments.
6. If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not give its consent. In that event, the Scottish Ministers have 14 days under the Protocol to respond to the Committee's recommendation. They could—
 - Agree. If so, the Scottish Ministers would then withhold their consent.
 - Not agree. If so, the Parliament will debate the issue.
7. If the Parliament agrees to the Committee's recommendation that the Scottish Ministers should not consent, the Protocol provides that the Scottish Ministers should "normally not consent" to the UK SI. However, the Protocol also provides that if the Scottish Ministers consider that the Committee's proposed alternative cannot be achieved, they may consent to the UK SI. If so, they must explain why they are doing so to the Scottish Parliament.

Annexe B: Correspondence from the Cabinet Secretary for Climate Action and Energy – 17 September 2025

Dear Edward,

THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING AND PACKAGING WASTE) (AMENDMENT) REGULATIONS 2025

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and the Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you by 30 October 2025.

Yours sincerely,

GILLIAN MARTIN

Annexe C: Notification to the Scottish Parliament

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Producer Responsibility Obligations (Packaging and Packaging Waste) (Amendment) Regulations 2025

Is the notification Type 1 or Type 2

This is a Type 1 notification.

Brief overview of the SI (including reserved provision)

This SI is the Producer Responsibility Obligations (Packaging and Packaging Waste) (Amendment) Regulations 2025.

These regulations will amend the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 which established extended producer responsibility (EPR) for packaging.

Packaging EPR requires producers of products to pay the full net cost of managing their packaging at end of life, creating a source of funding to local authorities to provide efficient and effective household packaging collection and disposal services, and placing financial responsibility on the producer in line with the “polluter pays” principle.

The amendments in this SI are required to enable the appointment of a producer responsibility organisation (PRO), supporting closer producer involvement in the pEPR scheme. The amendments also enable producers to deduct tonnage of recycled food grade plastics packaging waste from their pEPR obligations, where they have collected it directly from consumers and sent it for reprocessing in a closed loop recycling system where it is turned back into food grade recyclate. The amendments also improve the operational efficiency of the scheme and provide greater clarity to producers on where obligations sit. This includes resolving potential loopholes and removing ambiguity, improving the approach to local authority costs modelling, and removing barriers to compliance and enforcement, including updating regulator charges.

EU alignment

This SI aligns with European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (PPWD); and Regulation (EU) 2025/40 on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (PPWR).

The PPWD (94/62/EC) aims to improve the quality of the environment by preventing and reducing the impact of packaging and packaging waste on the

environment. It covers all packaging placed on the European market and all packaging waste. To meet these objectives, it requires member states to take measures, such as extended producer responsibility schemes, targets, or deposit return schemes to prevent the generation of packaging waste and to incentivise the development of less environmentally harmful packaging based on the "polluter pays" principle. Additionally, it sets overall and material-specific recycling and recovery targets for packaging waste.

The PPWD will be repealed by the PPWR which applies from August 2026. Amongst other things, the PPWR establishes further requirements for extended producer responsibility, packaging waste prevention, such as the reduction of unnecessary packaging and the re-use or refill of packaging, as well as the collection and treatment, including recycling, of packaging waste. This instrument aligns with many aspects of the new PPWR.

The SI is expected to be laid before the UK Parliament by 3 November 2025 in order to come into force by 1 January 2026.

Details of the provisions that Scottish Ministers are being asked to consent to.

Summary of the proposals

As the packaging EPR scheme has progressed into delivery, the four nations have worked closely with all stakeholders impacted by the packaging EPR Regulations. The amendments in this SI are being introduced in order to address concerns raised by producers and stakeholders, improve the operability of the scheme, and align with international best practices. They aim to ensure the Regulations are fair and effective in delivering the intended environmental outcomes.

The amendments in this SI include provisions to enable the appointment of a producer responsibility organisation (PRO) from 2026. In October 2024, ministers from the four nations wrote an open letter confirming their commitment to greater producer and industry leadership, including the appointment of a PRO. This has been a critical request from industry and aligns with international best practice for EPR schemes to be producer led. The PRO will be a producer-led organisation set up to take on certain responsibilities for the operation of the pEPR scheme.

Some producers collect their food grade plastics waste directly from consumers and send it for reprocessing in a closed loop recycling system that turn the waste back into valuable food grade recyclate. Using this system decreases reliance on virgin plastics. These companies collect their own food grade plastic waste and send it to recycling at no cost to taxpayers. The amendments in this SI will allow producers using closed loop recycling systems to offset the food grade plastic

packaging waste they collect and send for recycling against their household disposal cost fees. This approach supports our ambition to reduce reliance on virgin plastic and move toward a circular economy.

The amendments also introduce several changes in order to improve the operational efficiency of the scheme and provide greater clarity to producers on where obligations sit. These amendments cover five areas, including:

- Amending the fibre-based composite (FBC) material definition for packaging EPR by introducing a threshold such that some FBCs are included under paper and card, where the layers of plastic are not more than 5% of the packaging material by mass. This amendment provides greater clarity for producers on the distinction between FBC and paper/card that is required for reporting and fee calculations.
- Clarity on how obligations apply to each class of producer obligated by the Regulations, including how obligations are transferred when companies are merged or ownership of a business or brand is transferred.
- Removing barriers to compliance and enforcement: providing the Scheme Administrator new powers to charge historic freeriders, and updating regulator. fees. It includes amendments to offence provisions so as to enable uniform enforcement across the UK.
- Efficiency and Effectiveness: minor changes to provide flexibility in the approach to modelling, and more accurately model local authority costs for running an efficient waste management service
- Drafting improvements: resolving potential loopholes, removing ambiguity, and correcting an error in the regulation fee equations.

This SI will amend the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 which established the four nations packaging EPR and therefore applies in Scotland.

The bulk of the provisions within this amending SI fall within devolved competence - there are no powers to legislate conferred on the Scottish Ministers.

However, the new provisions in this SI governing the interaction between the Scheme Administrator and the PRO give certain powers to the Scottish Ministers as a relevant national authority - acting in common with the other nations under packaging EPR.

The amendments to offence provisions ensure that SEPA will be able to fully enforce packaging EPR regulations in Scotland, including by way of civil sanctions.

Does the SI relate to a common framework or other scheme?

The Scottish Government has been working closely with the UK Government, Welsh Government, and Department of Agriculture, Environment, and Rural Affairs in Northern Ireland on design and delivery of packaging EPR. There is a dedicated programme structure with decision-making representation from all four governments. This structure sits within the Resources and Waste Common Framework and any issues may be escalated to this Common Framework for resolution.

Summary of stakeholder engagement/consultation

Along with the other UK governments, we have carried out two consultations on the proposals for packaging EPR. The first ran from February-May 2019 and received 679 responses. The second ran from March-June 2021 and received 1,241 responses. The four governments published our response to the second consultation on 26 March 2022, setting out our policy intentions for packaging EPR.

As part of the development of the main SI, the four governments jointly consulted on the text of an earlier draft of the SI. This consultation ran from July-October 2023.

Following the 2023 consultation, we received feedback from several stakeholders asking that we consider a provision to allow producers operating 'closed loop' recycling systems to offset packaging collected through these systems against their household disposal cost fee obligations. In response, we are introducing a longer-term narrow expansion to offsetting provisions in this SI to support producers who have developed closed loop recycling systems for food grade plastics that meet the environmental aims of extended producer responsibility.

The four nations have continued to engage closely with industry on the refinement of packaging EPR and supporting the development of the proposals in this SI through a Scheme Administrator Steering Group (SASG). Co-Design sessions were held on the 18th October and the 6th November 2024 with members of industry that included all stakeholders in the value chain e.g. producers and local authorities. These sessions focused on the operational and strategic functions of a Producer Responsibility Organisation, the risks and opportunities presented by a single and multiple Producer Responsibility Organisations, how this organisation could interact with the Scheme Administrator, and how it could interact with the packaging industry value chain. The outputs of these sessions were collated and reviewed to influence policy development.

A note of other impact assessments, (if available)

These provisions are refinements of the existing packaging EPR policy, we have provided links to the relevant impact assessments to support these regulations.

A separate Impact Assessment has not been prepared by the UK Government for this instrument. Instead, a proportionate level of analysis has been undertaken by the UK Government in the form of a de minimis assessment (DMA).

Other relevant Impact Assessments:

- UK Government Introducing EPR for Packaging Impact Assessment¹
- The Scottish Government has published the following impact assessments:
- A Equality Impact Assessment²
 - A Fairer Scotland Duty Assessment³
 - A Island Communities Impact Assessment⁴
 - A Business and Regulatory Impact Assessment⁵

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

UK-wide regulations are appropriate as this is amending a UK wide instrument and the proposed changes apply across the four UK nations . This UK wide approach to producer responsibility for packaging waste continues the approach in the Producer Responsibility (Packaging Waste) Regulations 2007 with which producers and regulators are familiar. This four nation approach to packaging EPR is also reflected in the collaborative approach taken to the development of the amendments in this proposed SI which take into account input from the Scottish Government (and the other UK nations) through the drafting process

Intended laying date (if known) of instruments likely to arise

The intended laying date is 3 November 2025.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

Not applicable.

Information about any time dependency associated with the proposal

¹ [The Producer Responsibility Obligations \(Packaging and Packaging Waste\) Regulations 2024](#)

² [Packaging - extended producer responsibility: equality impact assessment - gov.scot](#)

³ [Background - Packaging - extended producer responsibility: Fairer Scotland Duty assessment - gov.scot](#)

⁴ [Footnotes - Packaging - extended producer responsibility: island communities impact assessment - gov.scot](#)

⁵ [Packaging - extended producer responsibility: full business and regulatory impact assessment \(BRIA\) - gov.scot](#)

The instrument must come into force by 1 January 2026 to ensure provisions come into force with delivery timelines of the scheme.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

As set out above, the four governments have established a programme structure to oversee delivery of packaging EPR, with any issues escalated to the Resources and Waste Common Framework for resolution.

Any significant financial implications?

No major financial implications for the Scottish Government.

SI NOTIFICATION: SUMMARY

Title of Instrument
The Producer Responsibility Obligations (Packaging and Packaging Waste) (Amendment) Regulations 2025
Proposed laying date at Westminster
3 November 2025
Date by which Committee has been asked to respond
30 October 2025
Power(s) under which SI is to be made
<p>The Environment Act 2021:</p> <ul style="list-style-type: none"> • Sections 50, 51, 52, 142(1) and (6), and 143(1); • Paragraphs 1 to 5, 7, and 12 to 19 of schedule 4; • Paragraphs 1 to 9 and 11 to 17 of schedule 5; • Paragraphs 1, 4, and 7 to 13 of schedule 6.
Categorisation under SI Protocol
Type 1
Purpose
<p>To introduce amendments to the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 which established the extended producer responsibility scheme for packaging. These are mostly minor operability amendments, such as introducing an exemption for producers who operate closed loop recycling systems and amending the definition of fibre based composite packaging. The most significant provision being introduced allows for the scheme administrator to appoint a Producer Responsibility Organisation (PRO) and delegate functions to it.</p>
Other information
<p>The amending SI must be made before the end of 2025 for changes to come into effect by April 2026 (commencement of year two of the scheme).</p>
SG Policy contact: