

NILGA response to the UK Government (Defra via DAERA) consultation on Extended Producer responsibility for Packaging

4th June 2021

The following response has been prepared in liaison with council technical advisors, and further to policy discussions with relevant industry representatives, government officials and council officers in England, Northern Ireland and Wales. NILGA would particularly like to thank NAWDO, LARAC, TAG(NI) and arc21 for their invaluable assistance.

Derek McCallan
Chief Executive

4th June 2021

1.0 INTRODUCTION

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of the 11 Northern Ireland district councils and is supported by all the main political parties. Waste management (including collection, disposal, recycling and treatment) is a key issue for local government due to the huge impact it has on our resources, economy and environment.

Resource and waste management have potential for job creation, combined with a positive environmental impact through modernising processes and infrastructure. NILGA is pleased to be able to have an opportunity to comment on the proposals on Extended Producer Responsibility for Packaging (EPR); we trust that our comments will be taken into account when developing the final proposals.

For further details on this response, please contact NILGA office@nilga.org.

2.0 GENERAL COMMENTS

NILGA welcomes this consultation on an Extended Producer Responsibility scheme for Packaging, given our member councils' commitment to recycling, their role as the principal domestic waste and recycling provider in Northern Ireland, and the sizable impact that any extended Packaging Producer Responsibility Scheme (EPRS) will have on councils and their waste management services.

Further to response to the 2019 EPRS consultation, which ran during a period of heightened political sensitivity in Northern Ireland, our members and officers have now had opportunity to consider the direction of travel on recycling and waste management. It should be noted however, that several

pieces of policy are referenced in or are otherwise pertinent to the consultation document that have not been finalised and are not available. These include:

- Northern Ireland Environment Strategy – initial consultation closed February 2020
- Future of Recycling and Separate Collection of Waste – consultation closed October 2020
- DAERA policy confirmation on TEEP ‘technically, environmentally and economically practical’
- Climate Strategy/Legislation/Policy
- Circular Economy Strategy /policy
- Materials Recycling Facility code of conduct

Although we acknowledge that COVID -19 has required a government focus and has caused delays in policy delivery, the lack of clarity arising locally from this policy vacuum presents difficulty in fully replying to the current consultation.

It will also be necessary, the contemporisation of policy and delivery on packaging notwithstanding, to explore how to better manage other materials, such as textiles and hazardous waste. We look forward to an ongoing policy conversation with DAERA and DEFRA as policy develops.

3.0 NILGA POSITION ON AN EXTENDED PACKAGING PRODUCER RESPONSIBILITY SCHEME

The choice and design of a reformed PRS must make a significant improvement towards national recycling targets, a zero waste culture and circular economy ambitions.

Councils in Northern Ireland have invested for decades in improving kerbside recycling, although recycling rates across NI have more recently been impacted by the change to lifestyles brought about by COVID 19. In 2019/20 they reached an average 51.3%, but are currently showing a downturn, with a quarterly provisional figure of 47.3% for Q3 2020 published recently.

Local government, as the principal domestic, and largest Northern Irish waste and recycling management provider, needs to have an influential role in development of and in the governance of any future scheme, looking at investment decisions, mitigating between financial risks, practicalities and national ambitions and addressing potential future changes required of the scheme.

Northern Ireland local government needs to have a seat at the table when the responses to this consultation are being assessed and decisions on a system designed to include Northern Ireland are being taken. Local government in Northern Ireland is open to adjusting and restructuring its waste services in light of change, but this needs to be a two-way conversation, shaping both existing waste services and an EPRS in light of what is feasible, effective and desirable. The wider regional context will need to be considered in shaping this policy including the limitations of the NI planning system (currently under review) and the mandatory coalition required for regional decision-making.

It is imperative that councils in Northern Ireland are afforded their fair share of resources coming out of these changes, and that they don't fall foul of a shift in practice which will extract high value recyclates from the system, before they ever reach councils. Councils will need to be adequately

protected against a system which could leave them with the low value, expensive/ impossible to recycle materials at the end of the line. Direct lines of communication and financial mechanisms must be set up between the scheme administrator and councils in Northern Ireland in the event of these proposals being taken forward.

Given the past experience of how landfill tax formed part of the NI 'block' funding and has never been appropriately returned to councils here, NILGA would urge Defra to ensure that the direct financial relationship between the scheme administrator and councils is robust, without diversion of responsibility to the devolved administration.

The scheme needs to allow for the geography of Northern Ireland and its social set-up. It needs to address the challenges presented by the border, and by the physical separation from the other nations participating in the scheme. This presents significant issues particularly with regard to transfers, transport and possible illegal activity; there is growing concern in relation to the potential for fraud – particularly in relation to the Deposit Return Scheme (DRS) - and NILGA will refer to this in detail in our response to the concurrent DRS consultation.

The scheme must also not disadvantage vulnerable social groups. The outworking of this consultation will shape the relationship with citizens, and necessary communications messages, including labelling decisions.

Principles

NILGA is broadly in agreement with the overarching and governing principles set out on pages 26 and 27 of the consultation document. We particularly welcome the intent to develop a more coherent system, to incentivise businesses and to have the full net cost of managing packaging borne by producers. We also welcome the intent to enable flexibility of scheme implementation as appropriate for each UK region.

Further to our comments above regarding the policy vacuum currently being experienced in Northern Ireland, NILGA highlights Governing Principle 5 as presenting difficulty for all involved in recycling delivery in Northern Ireland, particularly in the short term. We trust that DAERA colleagues are using their good offices to ensure that the outstanding policies and strategies are finalised as soon as possible.

NILGA is also keen to highlight Governing Principle 7 as needing particular consideration for Northern Ireland due to the potential for fraud and waste crime related to the land border with Republic of Ireland, and the elevated levels of waste crime in Northern Ireland generally. NILGA supports the establishment of an appropriately resourced independent Environment Agency in Northern Ireland to improve environmental compliance and enforcement in the region.

4.0 RESPONSES TO CONSULTATION QUESTIONS

Q1. Your name?

Karen Smyth

Q2. Your email address?

office@nilga.org

Q3. Which best describes you?

Please provide the name of the organisation/ business you represent and an approximate size/number of staff (where applicable).

Northern Ireland Local Government Association, representing the interests of the 11 district councils in Northern Ireland.

NILGA has 9 members of staff. The 11 councils we represent have approximately 10,100 staff (FTE).

- Local Government

Q4. Would you like your response to be confidential? NO

If you answered 'Yes', please provide your reason.

Q5. Government will need to understand the needs of users to build digital services for Extended Producer Responsibility.

Would you like your contact details to be added to a user panel for Extended Producer Responsibility so that we can invite you to participate in user research (e.g. surveys, workshops and interviews) or to test digital services as they are designed and built? You can read a Privacy Notice that explains how your information is safeguarded in relation to user research, what we will and won't do with it, how long it will be kept and how to opt out of user research if you change your mind.

NO

Principles, Outcomes and Targets

Q6: Do you agree or disagree with the proposed framework for setting packaging targets?

NILGA is broadly supportive of the proposed framework, with the caveat that there is currently no clarity in Northern Ireland on the future collections systems required (consultation closed October 2020). This is already impacting on council contracts, and while we accept that the systemic change on the way is massive, it would be helpful to iron out these details at an early stage in the change process.

We would also highlight that Northern Ireland also has no Materials Recycling Facility (MRF) code of conduct, which again adds to the lack of clarity locally.

Q7: Do you agree or disagree that the business packaging waste recycling targets set for 2022 should be rolled over to the calendar year 2023?

Agree - NILGA is of the view that a transition year to the new system will be necessary, will allow the Scottish system to bed in and to allow more time for an appropriate data and evidence system to be in place.

Table 3 - Proposed recycling targets for packaging in scope of Extended Producer Responsibility

EPR Packaging Materials	2024	2030
Plastic	41%	56%
Wood	38%	39%
Aluminium*	30%	30%
Steel*	85%	92%
Paper/Card	76%	85%
Glass	71%	81%
Recycling rate delivered by targets	63%	73%

Notes:

i. Excludes materials proposed to be in scope of deposit return schemes (Scottish and England, Wales and Northern Ireland)

*ii. Includes some provision for metals recovered for recycling from incinerator bottom ash**

iii. Targets are not comparable with the recycling rates achieved under the current scheme.

Q8: Do you agree that the recycling target to be met by 2030 for aluminium could be higher than the rate in Table 3?

Agree - Once clarity is attained on the outworking of this and the Future of Recycling in NI consultations, and contracts awarded accordingly, it should be possible to increase the recycling figure for aluminium. It should be noted however, that there is currently no local authority incinerator provision in Northern Ireland, and materials exported for incineration in other countries (e.g. Republic of Ireland) will result in metals being lost from the system in the UK.

Q9: Do you agree or disagree with the proposed minimum target to be met by 2030 for glass set out in Table 3?

Unsure - The uplift to a figure of 81% for 2030 in Table 3 seems ambitious, given the potential impact is as yet unknown, of the two Deposit Return Schemes for the UK.

NILGA would also urge Defra and DAERA to consider the potential impact and skewing of figures due to fraud resulting from the major differences between the proposed DRS for Northern Ireland, and that for the Republic of Ireland. The Republic of Ireland Scheme is not proposed to include glass, which could see an uplift of cross-border glass recycling with the purpose of financial gain. It will be vital to ensure that packaging producers are aware of this issue, and are supported by government both sides of the border, to develop the necessary labelling or other mechanisms preventing fraudulent glass 'returns' in Northern Ireland.

Q10: What should the glass re-melt target for 2030 for non-bottle packaging be set at?

NILGA has no view on this issue.

Q11: Do you agree or disagree with the proposed minimum target to be met by 2030 for plastic set out in Table 3?

Agree – provided the necessary work takes place to improve film and flexible plastic packaging. Clear labelling of different types of plastic may be required to assist the public in understanding how best to recycle, and to help develop further improvements in separation practice.

Q12: Do you think a higher recycling target should be set for wood in 2030 than the minimum rate shown in Table 3?

Unsure - NILGA would prefer to wait for the recommendations of the cross-sector working group in relation to future targets. Although a 1% increase in the target seems to be unambitious, the potential for unintended consequences in this area of work is accepted.

Q13: If higher recycling targets are to be set for 2030, should a sub-target be set that encourages long term end markets for recycled wood?

Unsure – this will again depend on the recommendations of the cross-sector working group, but NILGA agrees that wood packaging waste should be sent to the most environmentally beneficial use, including longer term applications. For example, locally, councils in Northern Ireland are working with community groups to reuse wood waste (e.g. old pallets) through building benches, garden planters etc. for use in community gardens and alley-gating schemes.

Q14: Do you agree or disagree with the proposed minimum target to be met by 2030 for steel set out in Table 3?

Agree - Once clarity is attained on the outworking of this and the Future of Recycling in NI consultations, and contracts awarded accordingly, it should be possible to increase the recycling figure for steel. It should be noted however, that there is currently no local authority incinerator provision in Northern Ireland, and materials exported for incineration in other countries (e.g. Republic of Ireland) will result in metals being lost from the system in the UK.

Q15: Do you agree or disagree with the proposed minimum target to be met by 2030 for paper/card set out in Table 3?

Agree – provided the necessary work is done to review the mixed grade protocols to monitor changes in the mix of packaging and non-packaging paper.

Q16: Do you agree or disagree with the proposal to set recycling targets for fibre based composites?

Agree- if still believed to be appropriate further to the publication of the report on the ongoing research, and data gathered for 2022 and 2023.

Q17: Do you agree or disagree that there may be a need for 'closed loop' recycling targets for plastics, in addition to the plastics packaging tax?

Agree- NILGA accepts that closed loop recycling targets may be necessary, but we would be keen to ensure 'quality' is properly clarified, with agreed materials standards in place, particularly given the link to payments to waste management services providers. We welcome the intent to assess the impact of the introduction of new measures prior to potentially introducing new targets.

Q18: Please indicate other packaging material that may benefit from closed loop targets.

NILGA is of the view that the list of such materials may develop over time, as technology and infrastructure develops; as such it will be necessary to keep this area under review.

Producer Obligations for Full Net Cost Payments and Reporting

Q19: Do you agree or disagree that Brand Owners are best placed to respond effectively and quickly to incentives that are provided through the scheme?

- a. Agree.

Q20: Are there any situations where the proposed approach to imports would result in packaging being imported into the UK which does not pick up an obligation (except if the importer or first-owner is below the de minimis, or if the packaging is subsequently exported)?

Unsure

Q21: Of options 2 and 3, which do you think would be most effective at both capturing more packaging in the system and ensuring the smallest businesses are protected from excessive burden?

- b. Option 3, would on the face of it, appear to be the least complex most easily understood system. In the face of such drastic change to the resource management and recycling arrangements in the UK, this would be preferable as a 'starter' system. Should it become evident further down the line (further to review), that a more complex system would be more effective and/or better protect small businesses, then a change could be introduced at that stage.

Q22. If either Option 2 or Option 3 is implemented, do you consider there to be a strong case to also reduce the de-minimis threshold as set out in Option 1.

The additional complexity, and resulting administration and enforcement accompanying lowering of the de-minimis threshold would suggest that the case for reduction is fairly weak. Again however, once the new system 'beds in' and is more widely understood, and as the UK ambitions towards a zero waste approach strengthen, there may be room for review.

Q23. Do you think that Online Marketplaces should be obligated for unfilled packaging in addition to filled packaging?

- a. Yes, provided there is a threshold set. There is a high probability that small and micro-businesses are using online marketplaces to supply their packaging materials – for example

micro-food businesses (e.g. operating from domestic premises and selling at markets) purchasing catering packaging.

Q24. Do you foresee any issues with Online Marketplaces not being obligated for packaging sold through their platforms by UK-based businesses?

- c. Unsure

Q25: This proposal will require Online Marketplaces to assess what packaging data they can collate and then, where there are gaps to work together to create a methodology for how they will fill those gaps. Do you think there are any barriers to Online Marketplaces developing a methodology by the start of the 2022 reporting year (January 2022)

- a. Yes – this timeline is overly ambitious in the context of the time need for legislative passage and confirmation of legislative requirements. It may be the case that the Online Marketplaces are already collaborating on this issue, but January 2022 leaves very little room for manoeuvre.

Q26: Is there any packaging that would not be reported by the obligation as proposed? (except for packaging that is manufactured and sold by businesses who sit below the de-minimis)

- b. Close attention will need to be paid to the cross-border business activity in Ireland, particularly for businesses such as the dairy, food and drinks businesses which employ multiple border crossings in the course of their production processes. This may be also be complicated by the NI Protocol.

Q27: Do you agree or disagree that the allocation method should be removed?

- c. Neither agree nor disagree. Careful consideration will be required in relation to increasing administrative burdens on small businesses, particularly in the current (Covid-related) economic circumstances. A cost-benefit analysis may be necessary to ensure the benefits of removing the allocation method outweigh the costs – both administrative and environmental, given the small percentage of producers and tonnage involved.

Producer Disposable Cups Takeback Obligation

Q28: Do you agree or disagree that a mandatory, producer led takeback obligation should be placed on sellers of filled disposable paper cups?

- a. Yes, but it is vital that a takeback scheme is supplemented by fees to cover the costs of litter infrastructure and control. The issue with disposable cups is that they are frequently transported to beauty spots, parks or other areas that attract outdoor activity, or discarded by roadsides in more rural areas, rather than remaining in the environs of the seller. Pragmatic, solutions-oriented conversations will be required with councils in relation to management of the cups that are not captured through takeback arrangements.

Q29: Do you agree or disagree with the proposed phased approach to introducing any takeback obligation, with larger businesses/sellers of filled disposable paper cups obligated by the end of 2023, and the obligation extended to all sellers of filled disposable paper cups by the end of 2025?

- a. Agree

Modulated Fees and Labelling

Q30: Do you think that the proposed strategic frameworks will result in a fair and effective system to modulate producer fees being established.

- c. Unsure. For example, discussions with local government and other service providers will be necessary in relation to the circumstances where modulation provides for “targeted additional funding to be raised against a specific packaging format to fund improvements to collection, sorting or reprocessing infrastructure”.

Q31: Do you agree or disagree that the Scheme Administrator should decide what measures should be taken to adjust fees if a producer has been unable to self-assess, or provides inaccurate information? This is in addition to any enforcement action that might be taken by the regulators.

- a. Yes

Q32: Do you agree or disagree with our preferred approach (Option 1) to implementing mandatory labelling?

- a. Agree, but it is noted that the assessment, monitoring and compliance activity required will be a sizeable task for the operator of the scheme, and will take some time to establish and to come into operation.

Q33: Do you agree or disagree with the proposal that all producers could be required to use the same ‘do not recycle’ label?

- a. Agree.

Q34: Do you think that the timescales proposed provide sufficient time to implement the new labelling requirements?

- c. Unsure. It is noted that the assessment, monitoring and compliance activity required will be a sizeable task for the operator of the scheme, and will take some time to establish and to come into operation.

Q35: Do you agree or disagree that the labelling requirement should be placed on businesses who sell unfilled packaging directly to small businesses?

- a. Agree

Q36: Do you think it would be useful to have enhancements on labels, such as including ‘in the UK’ and making them digitally enabled?

- a. Yes. A label specifying 'in the UK' would be more widely used, and a greater aid to consumer understanding than digital enablement, although NILGA is not opposed to digital enablement.

Q37: Do you agree or disagree that local authorities across the UK who do not currently collect plastic films in their collection services should adopt the collection of this material no later than the end of financial year 2026/27?

The current lack of clarity on the future of recycling in Northern Ireland results in this question being more difficult to answer than it should otherwise be.

- a. Agree. March 2027 appears to give ample lead-in time for a change of this nature; to source potential contractors, award contracts and ensure appropriate equipment is available.

Q38: Do you agree or disagree that collections of plastic films and flexibles from business premises across the UK could be achieved by the end of financial year 2024/25?

- c. Neither agree nor disagree

In Northern Ireland, council collections from business premises are limited, and it would be inappropriate for NILGA to comment on collection possibilities in other jurisdictions.

Q39: Do you think there should be an exemption from the 'do not recycle' label for biodegradable / compostable packaging that is filled and consumed (and collected and taken to composting/anaerobic digestion facilities that accept it), in closed situations where reuse or recycling options are unavailable?

- c. Neither agree nor disagree. It is noted that there are only limited numbers of facilities that can accept this material. It may be the case that such use in Northern Ireland would require the used packaging to be shipped elsewhere for treatment, potentially triggering issues with the NI Protocol.

Q40. Do you consider that any unintended consequences may arise as a result of the proposed approach to modulated fees for compostable and biodegradable packaging?

- c. Unsure

Payments for Managing Packaging Waste

Q41. Do you agree or disagree with the proposed definition and scope of necessary costs?

- a. Agree, with caveats outlined below.

The list of necessary costs is very broad and seemingly comprehensive, which is encouraging for councils. It includes covers services that are already in place (i.e. not just newly introduced services) and support/staff costs associated with running and improving the services, including communications with residents.

It is noted that retrospective payment looks unlikely for services introduced in the past, and although this seems fair, we would seek clarity on whether transitional costs will be covered. It is also highlighted that councils may be investing in necessary changes now (depending on contract cycles), and NILGA would be keen to see Government note this and work with producers and the eventual Scheme Administrator to ensure councils in this position are adequately recompensed. NILGA is keen to ensure that early adopters are not discouraged in this regard, and to counter the risk of inertia due to councils delaying until EPR payments are confirmed service changes. We would also highlight the potential for inflation of necessary costs, should all councils implement service changes at the same time.

We would seek clarity on consequential costs of removing recyclables from disposal/recovery: calorific value, tonnages, and trust that service change costs necessary to implement efficiencies, such as modelling, route optimisation, will be appropriately taken into account by Government

NILGA has some concerns in relation to the additional officer time that will be required for contract management, data (WasteDataFlow returns), compliance, procurement, transition for contracts/facilities. Our councils will need to adequately prepare for this and the likely need for much more rigorous monitoring/accountability to ensure producers are provided with the evidence they require.

NILGA would also urge Defra and DAERA to consider the following:

- Additional disposal contract costs related to failure to achieve guaranteed minimum tonnages (assuming significant waste decreases) and changes in calorific value
- Development of greater clarity in relation to optimisation and calculation of support/staff costs, and the mechanism used. NILGA notes the potential for use of CIPFA figures in this regard.
- Cost of contract change: how will this be calculated? When is a contract change deemed necessary and would be paid? How will Government or the Scheme Administrator differentiate between costs that an LA would incur anyway and those incurred as a result of the change mandated.

Payments for managing packaging waste from households

Q42: Do you agree or disagree that payments should be based on good practice, efficient and effective system costs and relevant peer benchmarks?

Agree

If you disagree, please detail any issues you think there are with this approach and how you think payments should instead be calculated.

NILGA agrees with basing payments on good practice. We are keen to ensure that the number of categories established is pragmatic, to ensure councils have an incentive to improve. We noted,

however that the tool developed by Government/WRAP is completely advisory, whereas the future scheme administrator will determine what the system should be. It would therefore be helpful for the approach to be pre-agreed, in collaboration with local government and producers, before delivery commences.

Again, NILGA notes the potential impact on council contracts and the likely need to vary or terminate long term arrangements. Advice from Government on when contractual change will be appropriate and how costs of such change will be met would be extremely helpful, as a priority area of work. Likewise, advice would be welcome on the transition period and how flexible this may be.

In the experience of NILGA, enforced attempts to improvement council practice can be counter-productive, in contrast to our preferred approach of continuous self-improvement. NILGA is of the view that often the most useful benchmark for any council is their own performance, as resident behaviours differ between council areas (we note that the Waste Data Flow system is already used to inform performance improvement). There should be monitoring of system performance as opposed to scheme benchmark (i.e. pre-EPR performance).

While we acknowledge that benchmarking may be a positive driver for value for money, in terms of councils that have not invested previously we believe that there may be reluctance to be assigned 'family groups'. More work will be needed by government to drive better local government understanding and acceptance of family groups; councils must have confidence that they are representative. NILGA would support system design which builds in opportunity for councils to challenge their categorisation. It is likely that councils will view imposed standardisation as unfair, due to the disparities that always exist, and the considerable differences that can be seen between authorities (via nearest neighbour analysis. In this regard we would also query the rurality 'grouping' of local authorities, which we note has already required increase in number from 6 to 9.

Q43. Do you agree or disagree that the per tonne payment to local authorities for packaging materials collected and sorted for recycling should be net off an average price per tonne for each material collected?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please detail how material value should be netted-off a local authority's payment.

NILGA supports the reform by which producers would bear the brunt of price volatility of materials, and trust that payments will be set up to enable the system to account for market fluctuations. There will be contract winners and losers - contractors and councils – and the material ownership issue may have implications for existing contracts. It will be necessary for government to be aware of the nuances to existing council MRF contracts, in terms of fixed value, rebates, differing risk share % etc.

The most appropriate approach for handling material value to packaging waste from households seems to be to net off material value from a local authority's payment, however we would query whether a quarterly adjustment to this price (to reflect market fluctuation) would be sufficient, or whether a longer period would provide greater certainty for investment decisions. Netting off should not take place in anticipation of projected income. We note that a view has been expressed that the proposed approach incentivises authorities to achieve a higher price than the average in order to achieve surplus income.

Q44. Do you agree or disagree that the Scheme Administrator should have the ability to apply incentive adjustments to local authority payments to drive performance and quality in the system?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please detail why you think the ability to apply an incentive adjustment should not apply.

NILGA agrees that this could help achieve objectives and that the Scheme Administrator will be best placed to do this (once they better understand how waste services work).

Q45. Do you agree or disagree that local authorities should be given reasonable time and support to move to efficient and effective systems and improve their performance before incentive adjustments to payments are applied?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please provide the reason for your response.

Q46. Should individual local authorities be guaranteed a minimum proportion of their waste management cost regardless of performance?

- Agree
- No
- Unsure

Please provide the reason for your response.

Authorities should receive a payment for their authority 'grouping' based on the optimum performance for the group. If they perform badly, then the EPR payment will not come close to covering their costs.

Q47. Do you agree or disagree that there should be incentive adjustments or rewards to encourage local authorities to exceed their modelled recycling benchmarks?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please detail why you think incentive adjustments should not be applied to encourage local authorities to exceed their recycling performance benchmarks.

As above, the incentive to authorities should be to reduce costs below the optimum payment for their group, so that they get a surplus. It should be up to the Scheme Administrator to determine if further incentives/rewards are required.

Q48. Do you agree or disagree that unallocated payments should be used to help local authorities meet their recycling performance benchmarks, and contribute to Extended Producer Responsibility outcomes through wider investment and innovation, where it provides value for money?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please detail how you think any unallocated payments to local authorities should be used.

Agree, but it is not clear why there would be unallocated costs.

Q49. Do you agree or disagree that residual payments should be calculated using modelled costs of efficient and effective systems based on the average composition of packaging waste within the residual stream?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please detail how you think residual waste payments should instead be calculated.

Residual waste composition does (and could continue to) vary considerably between authorities. This is an opportunity to understand these differences far better by funding regular composition analyses for each authority. This must be fully funded under EPR. It should lead to composition analyses becoming more efficient through economies of scale and technological advancement (e.g. AI).

The results of the composition analyses could then be combined to create a reasonable optimised composition for each authority 'grouping', on which payments should be based.

Q50. Do you agree or disagree that a disposal authority within a two-tier authority area (England only) should receive the disposal element of the residual waste payment directly?

- Agree**
 Disagree
 Neither agree nor disagree

This question does not apply to Northern Ireland, but this proposal would be logical because the disposal authority incurs the costs,

Payments for managing packaging waste from businesses

Q51. Do you agree or disagree that there remains a strong rationale for making producers responsible for the costs of managing packaging waste produced by businesses?

- Agree**
 Disagree
 Neither agree nor disagree

If you disagree, please provide the reason for your response.

Q52. Do you agree or disagree that all commercial and industrial packaging should be in scope of the producer payment requirements except where a producer has the necessary evidence that they have paid for its management directly?

- Agree**
 Disagree
 Neither agree nor disagree

If you disagree, please provide the reason for your response.

Q53. Which approach do you believe is most suited to deliver the outcomes being sought in paragraph 8.84?

- Option 1**
 Option 2
 Option 3
 All could work
 Do not know enough to provide a view

Paragraph 8.84 seeks to:

- *Improve the effectiveness of packaging waste collection services*
- *Increase the efficiency of packaging waste collection services*
- *Be fair and transparent*
- *Be deliverable and enforceable on the ground*

Option 1, also known as the 'per tonne approach' is the option that is best linked to the producer pays principle and the actual costs of managing the waste. Option 2 involves compliance schemes, which adds complication. Option 3 is a 'free bin' option which appears to have potential for exploitation, i.e. contamination of the free bin.

Q54. Do you disagree strongly with any of the options listed in the previous question?

- Yes
- No
- Unsure

If you answered 'yes', please explain which and provide your reason.

Option 3 appears to have potential for exploitation, i.e. contamination of the free bin.

Q55. Do you think there will be any issues with not having either Packaging Recovery Notes/Packaging Export Recovery Notes or the business payment mechanism (and as a result recycling targets) in place for a short period of time?

- Yes
- No
- Unsure

If you answered 'yes', please detail what issues you think there will be.

Payments for managing packaging waste: data and reporting requirements

Q56. Do you agree or disagree with the proposal to introduce a sampling regime for packaging as an amendment to the MF Regulations in England, Wales and Scotland and incorporation into new or existing regulations in Northern Ireland?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please detail why you think the proposed sampling regime for packaging waste should not be incorporated as an amendment to MF Regulations in England, Wales and Scotland and incorporated into new or existing regulations in Northern Ireland.

Building on, and improving, the existing legislation seems logical.

Q57. Do you agree or disagree with the proposal to require all First Points of Consolidation to be responsible for sampling and reporting in accordance with a new packaging waste sampling and reporting regime?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please detail who you think should be required to meet the packaging sampling and reporting regime for Extended Producer Responsibility purposes.

Sampling should take place as early as possible in the process so that contamination issues can be linked to the source and addressed.

Q58. Do you agree or disagree that the existing MF Regulations' de-minimis threshold of facilities that receive 1000 tonnes or more per annum of mixed waste material would need to be removed or changed to capture all First Points of Consolidation?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please detail why you think a de-minimis threshold is required.

As previously stated, NILGA is of the view that more composition analyses should take place and these should be fully funded by EPR payments.

Q59. Do you think the following list of materials and packaging formats should form the basis for a manual sampling protocol?

- Yes
- No
- Unsure

If you answered 'no', what other materials, format categories or level of separation should be included as part of the manual sampling protocol?

The current list appears simplistic, but NILGA would query whether we should be specifying it at this stage. It may be best for producers (the Scheme Administrator) to determine this.

Q60. Do you think it is feasible to implement more rigorous sampling arrangements within 6-12 months of the regulations being in place?

- Yes
- No
- Unsure

If you answered 'no', please provide the reason for your response and detail what should be considered in determining an appropriate implementation period.

Again, this may be best left to the Scheme Administrator to determine.

Q61. Do you think visual detection technology should be introduced from 2025 to further enhance the sampling regime?

- Yes
- No
- Unsure

If you answered 'no', please detail why you think it should not be considered as a medium to long-term method of sampling.

More work is clearly needed to see if this is technically feasible and cost effective, but a target date should serve to speed up development of the technology.

Q62. Do you think existing packaging proportion protocols used by reprocessors would provide a robust and proportionate system to estimate the packaging content of source segregated materials?

- Yes
- Yes, with refinement
- No
- Unsure**

If you answered 'no', please detail why you think these would not be suitable to use to determine the packaging content in source segregated material.

It should be established quickly, if existing packaging proportion protocols are robust enough to provide accurate data.

Q63. Do you agree or disagree that minimum output material quality standards should be set for sorted packaging materials at a material facility?

- Agree
- Disagree**
- Neither agree nor disagree

If you disagree, please provide the reason for your response.

The market should determine if material from a MRF is of sufficient quality. This will be reflected in cost/income for the material, which should work its way through the system.

Q64. Do you agree or disagree that material facilities that undertake sorting prior to sending the material to a reprocessor or exporter should have to meet those minimum standards in addition to just assessing and reporting against them?

- Agree
- Disagree**
- Neither agree nor disagree

If you disagree, please provide the reason for your response.

See above.

Q65. Do you think any existing industry grades and standards could be used as minimal output material quality standards?

- Yes

- No
 Unsure

If you answered 'yes' please provide evidence of standards you think would be suitable for use as minimal output material standards.

Payments for managing packaging waste: reporting and payment cycles

Q66. Do you agree or disagree that local authority payments should be made quarterly, on a financial year basis?

- Agree
 Disagree
 Neither agree nor disagree

If you disagree, please provide the reason for your response and/or suggest any alternative proposals.

Q67. Do you agree or disagree that household and business packaging waste management payments should be based on previous year's data?

- Agree
 Disagree
 Neither agree nor disagree

If you disagree, please provide any concerns you have with the proposed approach and/or any alternative proposals.

This delay is too long and the risk is that the payment becomes divorced from reality, reducing the incentive for improvements in performance. This is an opportunity to incentivise the waste sector to increase the speed and efficiency of waste data reporting.

Litter payments

Q68. Do you agree or disagree that the costs of litter management should be borne by the producers of commonly littered items based on their prevalence in the litter waste stream as determined by a composition analysis which is described in option 2?

- Agree
 Disagree
 Neither agree nor disagree

If you disagree, please provide the reason for your response and/or provide an alternative approach to litter management costs being based on a commonly littered basis.

NILGA believes that on the face of it, this proposal is fair and in-line with the producer pays principle; the producer of frequently littered products will be incentivised to find ways to reduce littering, and should become more aware of and involved in litter prevention. (We are aware that there is an

alternative view, that costs should be distributed evenly across the system to avoid over-complication).

However, there are a number of issues that NILGA would be keen to see government consider, including how this is linked to costs associated with flytipping as well as litter clean-up.

It will be important to ensure that consumers – i.e. users /disposers of the packaging - are held responsible for their actions as part of the new system, and thought should be given as to how to use the system to drive up recyclability of materials. It is also noted that formal funding streams are available, and producers could be encouraged to help local volunteer groups, and to fund anti-litter campaigns and enforcement.

It will also be important to avoid duplication and over-complication within the system e.g. overlap between different items.

It will also be important to consider how would this work for smaller businesses – particularly retailers - to ensure the burden of costs and bureaucracy are not excessive, and to maximise the benefits of their more direct relationship with consumers.

Q69. In addition to local authorities, which of the following duty bodies do you agree should also receive full net cost payments for managing littered packaging? Please select all that apply.

- Other duty bodies**
- Litter authorities**
- Statutory undertakers**
- None of the above
- Any other(s) - please specify**

If you selected 'Any other(s)' - please specify here.

All organisations that incur costs from managing litter should receive full net cost payments for managing littered packaging, including voluntary and community sector organisations, schools and landowners. The scheme may be more effective with input from councils, in relation to demonstration of support for community groups via litter picking kits, collecting litter etc.

Q70. Do you agree or disagree that producers should contribute to the costs of litter prevention and management activities on other land?

- Agree**
- Disagree
- Neither agree nor disagree

If you disagree, please provide the reason for your response.

This is fair and in-line with the producer pays principle, but may be hard to measure and open to interpretation. Again, consideration will need to be given to how the scheme is linked to flytipping.

To ensure a fair approach to producers is maintained over time, a focus on enforcement and discouraging undesirable behaviour may be helpful.

Q71. Do you agree or disagree that local authority litter payments should be linked to improved data reporting?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please detail why you think litter payments should not be linked to improved data reporting.

Good data reporting should form part of an 'optimised system' for litter collection and management. Therefore this should be factored in to the EPR payment received for litter. Consideration will need to be given to resourcing increased separation of materials within litter bin provision, and more generally, to cost recovery for additional separation, time requirements etc. A budget for compositional analysis would also be welcome, in acknowledgement of the recording difficulties presented by the 'mixed' nature of litter.

NILGA would welcome improvement of statutory definitions of 'litter' and 'flytipping'

Q72. Do you agree or disagree that payments should be linked to standards of local cleanliness over time?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please provide the reason for your response.

This proposal could result in unnecessary over complication - with associated costs, and potential disincentivisation of councils. If the payment is linked to tonnage of litter collected and managed, the onus is on the local authority to collect litter to the extent that it deems sufficient for its residents. Additionally, payment linked to cleanliness over time is unlikely to be fair on councils where cleanliness is an issue and which may be struggling - more support is needed in these areas. Introduction of cleanliness monitoring standards, where a large number of councils have perhaps dropped this, will also have associated costs.

Scheme administration and governance

Q73. Do you agree or disagree that the functions relating to the management of producer obligations in respect of household packaging waste and litter including the distribution of payments to local authorities are managed by a single organisation?

- Agree
- Disagree
- Neither agree nor disagree

The appointment and governance of the Scheme Administrator (SA) is critical to making the EPR scheme work, so that producers meet the full net costs of managing the packaging that they produce and that the waste management systems put in place are efficient and effective. NILGA is of the view that the SA should be a not for profit organisation although it is difficult to see who might be interested in operating it as such unless they had a vested interest – in which case it would not be an independent body.

The governance structure of the SA needs to reflect the stakeholders involved in the system and hence it is essential that local government is appropriately included given it is such a key player in the success of this scheme. Little detail has been provided around governance arrangements but there should be a seat for a local government representative on any governing Board. Proper consideration will need to be given as to the involvement of local government from the devolved administrations. It is not clear how managing the SA through a contractual arrangement with Government allows for stakeholder engagement and feedback to both producers and local authorities. The process for award is to be competitive but it is not clear how bids will be assessed and what criteria will be used for awarding the contract. Also there is insufficient detail given around performance management of the SA and KPIs. Interested SAs are expected to outline how stakeholders will be represented as part of the scheme management but it is unclear how much of a role local authorities will have on the overall scheme administration or indeed in developing the 'Invitation to Tender' documentation so that their interests are truly represented.

Q74. Overall which governance and administrative option do you prefer?

- Option 1**
- Option 2
- Neither Option 1 nor Option 2

Please provide the reason for your response.

Option 1 provides clarity of purpose for the Scheme Administrator with its role and responsibilities being able to be clearly defined. Introducing compliance schemes as an interface with producers to meet their obligations introduces another layer of complexity and it's hard to see what value it would add to the arrangements that will need to be put in place to deliver the objectives of the scheme.

Q75. How do you think in-year cost uncertainty to producers could be managed?

- A reserve fund**
- In-year adjustment to fees
- Giving individual producers flexibility to choose between options 1) and 2)
- No preference
- Need more information to decide

A reserve fund managed by the Scheme Administrator would minimise the risk to producers of in-year fluctuations in cost. However producers would need to contribute to set up the fund and hence a mechanism to enable this to happen would need to be devised and agreed.

Q76. Under Option 1, does the proposed initial contract period of 8-10 years (2023 to 2030/32) provide the necessary certainty for the Scheme Administrator to adopt a strategic approach to the management and delivery of its functions and make the investments necessary to deliver targets and outcomes?

Option 1 - Scheme Administrator delivers all functions.

- Yes
- No
- Unsure

If you answered 'no', please detail what you think would be an appropriate contract length.

This time period is long enough to give stability to all parties involved in the scheme allowing confidence in the necessary investment without being so long that it will not have the flexibility to grow & adapt with the changing landscape.

Q77. Under Option 2, does the proposed initial contract period of 8-10 years (2023 to 2030/32) provide the necessary certainty for the Scheme Administrator to adopt a strategic approach to the management and delivery of its functions and make the investments necessary to deliver targets and outcomes?

Option 2 - Scheme Administrator delivers functions related to household packaging waste and litter.

- Yes
- No
- Unsure

If you answered 'no', please detail what you think would be an appropriate contract length.

This time period is long enough to give stability to all parties involved in the scheme allowing confidence in the necessary investment without being so long that it will not have the flexibility to grow & adapt with the scheme.

Q78. Do you agree or disagree with the timeline proposed for the appointment of the Scheme Administrator?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please provide the reason for your response.

The timeline for launching the procurement process to appointment of the SA seems ambitious given the complexity of all that is involved from preparation of the 'Invitation to Tender', evaluation of bids and mobilisation of the awarded SA. It is not clear how much float has been built into the programme to allow for unforeseen hiccups or even a potential challenge to the bidding process.

Q79. If the Scheme Administrator is appointed in January 2023 as proposed, would it have sufficient time to mobilise in order to make payments to local authorities from October 2023?

- Yes
- No
- Unsure**

If you answered 'no' please provide the reason for your response.

NILGA is keen to see government and the successful bidder avoid optimism bias in this area of work. The SA has an incredible amount of administration work to undertake from Jan 2023 to be able to make any payments with confidence to local authorities in Oct 2023. Prospective bidders should be asked to submit their own programmes to demonstrate how this timeline could realistically be met recognising the number of local authorities and producers involved & the systems that would need to be established in realistic timescales.

Q80. Do you agree or disagree with the approval criteria proposed for compliance schemes?

- Agree**
- Disagree
- Neither agree nor disagree

If you disagree, please provide the reason for your response.

Q81. Should Government consider introducing a Compliance Scheme Code of Practice and/or a 'fit and proper person' test?

- A Compliance Scheme Code of Practice
- A 'fit and proper person' test for operators of compliance schemes
- Both**
- Neither
- Unsure

Please provide the reason for your response.

In order to give confidence in the compliance schemes that are established there needs to be a Code of Practice which includes the need for a 'fit and proper person' test to be an operator of a compliance scheme.

Q82. Do you agree or disagree with the proposed reporting requirements for Option 1?

- Agree**
- Disagree
- Neither agree nor disagree

Q83. Do you agree or disagree with the proposed reporting requirements for Option 2?

- Agree
 Disagree
 Neither agree nor disagree

Reprocessors and exporters

Q84.. Do you agree or disagree with the proposal that all reprocessors and exporters handling packaging waste will be required to register with a regulator?

- Agree
 Disagree
 Neither agree nor disagree

If you disagree, please provide the reason for your response and detail any exemptions to the registration requirement that should apply.

This is essential to ensure that the scheme is managed and monitored effectively and all packaging is accounted for.

Q85. Do you agree or disagree that all reprocessors and exporters should report on the quality and quantity, of packaging waste received?

- Agree
 Disagree
 Neither agree nor disagree

This is essential to ensure that the scheme is managed and monitored effectively and all packaging is accounted for.

Q86. What challenges would there be in reporting on the quality and quantity of packaging waste received at the point of reprocessing and/or export?

Please also provide specific detail on any processes, measures and/or costs that would be necessary to address these challenges.

Reporting accurately on quality and quantity of packaging is key to ensuring the success of the scheme and flow of payments. Robust systems will need to be put in place in order that this is achieved.

Additional challenges may present as a result of the ongoing outworking of the UK's exit from the EU, particularly in relation to border crossings on the island of Ireland and movements between GB and NI.

Q87. Do you think contractual arrangements between reprocessors and material facilities or with waste collectors and carriers are a suitable means for facilitating the apportionment and flow of recycling data back through the system to support Extended Producer Responsibility payment mechanisms, incentives and targets?

- Yes
 No
 Unsure

If you answered 'no', please provide the reason for your response and suggest any alternative proposals for using the quantity and quality data reported to support payments, incentives and targets.

Supply of accurate and timely data is key to having confidence in the EPR system and trying to eliminate fraud. Contractual arrangements set out the obligations of the parties

Q88. Do you agree or disagree that exporters should be required to provide evidence that exported waste has been received and processed by an overseas reprocessor?

- Agree
 Disagree
 Neither agree nor disagree

If you disagree, please detail why you think exporters should not have to provide this evidence.

Ensuring accurate data for all packaging waste that has genuinely been recycled is a core principle behind the success of the scheme

Q89. Do you agree or disagree that only packaging waste that has achieved end of waste status should be able to be exported and count towards the achievement of recycling targets?

- Agree
 Disagree
 Neither agree nor disagree

If you disagree, please detail why you think it would not be necessary for waste to meet end of waste status prior to export.

It is not clear how this would work in practice – end of waste classification is usually obtained by the material going through a treatment process. Hence it is unclear how waste that has yet to be actually recycled could be classified as ‘end of waste’ prior to export. It could also potentially be open to abuse.

Q90. Do you agree or disagree that there should be a mandatory requirement for exporters to submit fully completed Annex VII forms, contracts and other audit documentation as part of the supporting information when reporting on the export of packaging waste?

- Agree
 Disagree
 Neither agree nor disagree

If you disagree, please detail why you think these additional registration requirements on exporters are not required.

Ensuring accurate data for all packaging waste that has genuinely been recycled is a core principle behind the success of the scheme

Q91. Do you agree or disagree that regulators seek to undertake additional inspections of receiving sites, via 3rd party operators?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please detail why you think it would not be necessary to undertake additional inspections and provide any alternative arrangements which could be implemented.

This will help to give confidence in the recycling of materials as well as verifying data to be accurate.

Compliance and enforcement

Q92. Do you agree or disagree with the proposed approach to regulating the packaging Extended Producer Responsibility system?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please detail any perceived problem or issues with the proposed regulation of the system and provide comments on how the system could be regulated more effectively.

The Regulator will need to have sufficient resources and funding to be able to undertake this role effectively. NILGA is aware that the Northern Ireland Enforcement Agency is already experiencing significant resource pressures so provision of adequate funding is key to ensuring regulation of the system in Northern Ireland. Resource will also be required to guard against potential cross-border fraud (e.g. arising from abuse of the forthcoming Deposit Return Scheme). NILGA would be keen to see the establishment of an independent regulator in Northern Ireland, to assist in improving environmental regulation in the region more generally.

Q93. Do you have further suggestions on what environmental regulators should include in their monitoring and inspection plans that they do not at present?

Please answer here

NILGA has nothing further to add at present, but looks forward to ongoing discussions with local government as policy on this area of work develops.

Q94. In principle, what are your views if the regulator fees and charges were used for enforcement?

It seems appropriate that enforcement is covered by these fees, but it is noted that in the experience of local government in Northern Ireland, costs of enforcement are rarely covered by the

fees and charges in place – particularly over time. For an effective system with fit for purpose regulation, all enforcement costs should be covered and this issue subject to regular review.

Q95. Would you prefer to see an instant monetary penalty for a non-compliance, or another sanction as listed below, such as prosecution?

The level of penalty should be proportionate to the level of non-compliance ranging from a fixed penalty notice for minor breaches to prosecution for major offences.

Implementation timeline

Q96. Do you agree or disagree with the activities that the Scheme Administrator would need to undertake in order to make initial payments to local authorities in 2023 (as described above under Phase 1)?

- Agree
- Disagree
- Neither agree nor disagree

If you disagree, please provide the reason for your response.

The activities highlighted all appear to be required in order to make payments to councils from 2023 but it is not clear whether this is comprehensive and whether other activities will be required. As part of the Invitation to Tender submission, bidders should be asked to set out all of the activities that are required along with a realistic timeline, so that this can be assessed.

Q97. Do you think a phased approach to the implementation of packaging Extended Producer Responsibility, starting in 2023 is feasible and practical?

- Yes
- No
- Unsure

If you answered 'no', please provide the reason for your response and detail any practical issues with the proposed approach.

The timeline is very tight and relies on the necessary legislation being in place and the SA being appointed. Ideally it would be preferable if full net costs could be met in 2023 but realistically this will be very difficult to achieve, so NILGA would encourage a prudent approach. Making payments to councils to collect additional packaging materials for recycling beyond the core materials needs to be tempered with markets being available for those materials – citing packaging film is a good example where there are currently very limited markets and little evidence to suggest that this will have changed by 2023.

Q98. Do you prefer a phased approach to implementing Extended Producer Responsibility starting in 2023 with partial recovery of the costs of managing packaging waste from households or later

implementation, which could enable full cost recovery for household packaging waste from the start?

- Phased approach starting in 2023**
- Later implementation
- Unsure

Flow of funding to support the cost of managing packaging in the waste stream by producers should be forthcoming from 2023 recognising the limitations are such that full net cost recovery will not be possible until 2024. NILGA would defer to the views expressed by colleagues in England in relation to the preferred approach for two-tier authorities.

Q99. Of the options presented for reporting of packaging data for 2022 which do you prefer?

- Option 1
- Option 2**
- Neither

If you answered 'neither' please suggest an alternative approach.

Option 1 would only include the packaging for which producers would be obligated to meet full net costs, but a complete view of all packaging managed by producers would be seen under Option 2.

Q100. Are there other datasets required to be reported by producers in order for the Scheme Administrator to determine the costs to be paid by them in 2023?

- Yes
- No
- Unsure**

If you answered 'yes', please detail which datasets will be needed.

NILGA does not have detailed insight into all information that may be required by the SA to determine the full costs.

Questions from Annex 1 to Consultation Document

Q101. Which of the definitions listed below most accurately defines reusable packaging that could be applied to possible future reuse/refill targets or obligations in regulations?

Further information to help answer this question (and the 4 that follow) can be found in Annex 1 of the consultation document.

- Definition in The Packaging (Essential Requirements) 2015
- Definition in The Packaging and Packaging Waste Directive (PPWD)
- Definition adopted by The UK Plastic Pact/The Ellen MacArthur Foundation**
- None of the above

If you selected 'none of the above', please provide the reason for your response, including any suggestions of alternative definitions for us to consider.

Q102. Do you have any views on any of the listed approaches, or any alternative approaches, for setting reuse and refill targets and obligations? Please provide evidence where possible to support your views.

NILGA is aware of the difficulties associated with monitoring and measuring waste prevention and of the huge disparities in practice from consumer to consumer. It is likely that an element of 'business ownership' will enhance the system and encourage consumers to increase reuse, but it will be extremely important to communicate well, the key messages to the public required to effect substantive change.

Q103. Do you agree or disagree that the Scheme Administrator should proactively fund the development and commercialisation of reuse systems?

- Agree
- Disagree
- Neither agree nor disagree**

Please provide the reason for your response.

Discussions with local government and other service providers will be necessary in relation to the circumstances where the Scheme Administrator proactively funds the development and commercialisation of reuse systems.

Q104. Do you agree or disagree that the Scheme Administrator should look to use modulated fees to incentivise the adoption of reuse and refill packaging systems?

- Agree
- Disagree
- Neither agree nor disagree**

Please provide the reason for your response.

Discussions with local government and other service providers will be necessary in relation to the circumstances where modulation provides for targeted additional funding to be raised against a specific packaging format to incentivise the adoption of reuse and refill packaging systems.

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