EXPLANATORY MEMORANDUM TO

THE PACKAGING WASTE (DATA REPORTING) (ENGLAND) (AMENDMENT) REGULATIONS 2023

2023 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Packaging Waste (Data Reporting) (England) Regulations 2023 ("the Data Reporting Regulations"), which came into force on 28 February 2023. The Data Reporting Regulations require producers of packaging to collect and report data on the amount and type of packaging that they place on the market. This data is required to calculate the fees that these producers will be required to pay to cover the cost of managing this packaging as part of the Extended Producer Responsibility (EPR) for packaging scheme from 2024.

2.2 The amendments included in these amending Regulations are required to ensure that packaging producers submit all the information required for calculating their 2024 obligations, to ensure that all relevant packaging is obligated, and to remove some loopholes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Rebecca Pow MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Packaging Waste (Data Reporting) (England) (Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations amend the Data Reporting Regulations, which came into force on 28 February 2023.

6.2 The Secretary of State makes these Regulations in exercise of powers conferred by section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999.

6.3 This is a UK-wide policy, but the powers conferred by the Pollution Prevention and Control Act 1999 do not allow for the making of UK-wide regulations. Similar instruments will therefore be made in relation to Scotland and Northern Ireland by the Scottish Government and the Northern Ireland Executive. The amendments in this instrument will also be included in the Packaging Waste (Data Reporting) (Wales) Regulations 2023, which will come into force later this year.

7. Policy background

What is being done and why?

7.1 Extended Producer Responsibility (EPR) for packaging will require producers to take responsibility for the environmental impact of the packaging they supply by obligating them to pay for the collection and disposal costs of this packaging when it becomes waste. This will provide a financial incentive for producers to reduce the amount of packaging they supply and to improve the recyclability of their packaging.

7.2 Producers will be required to pay an EPR fee to local authorities, via a Scheme Administrator, based on the amount of packaging they have supplied. The Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations, which will contain provisions for the introduction of EPR, will be laid in Parliament later this year.

7.3 The provisions in the Data Reporting Regulations require producers to collect and report their packaging data from March 2023 (or from January, if they have this data). The amendments to these Regulations are required to ensure that producers submit all the information required for calculating their 2024 obligations, ensure that all relevant packaging is obligated, and to remove some loopholes in the Data Reporting Regulations.

Explanations

What did any law do before the changes to be made by this instrument?

7.4 Under the Data Reporting Regulations, producers are required to collect and report data on the packaging they supply from March 2023. Producers with an annual turnover of £1 million, who handle more than 25 tonnes of packaging per year, are required to collect this data only at this stage. Producers with an annual turnover of £2 million, who handle more than 50 tonnes of packaging per year, are also required to report this data in October 2023.

Why is it being changed?

7.5 Since the Data Reporting Regulations were laid, further engagement with producers has identified a small number of necessary amendments. These will ensure producers submit all the information required for calculating their 2024 obligations, remove some loopholes in the Data Reporting Regulations, and ensure the reporting requirements are fully aligned with the digital system that producers will use to report their data.

What will it now do?

7.6 These amendments will make some minor changes to the way in which producers report their data and ensure that they are reporting data on all relevant packaging which is not currently included in the Data Reporting Regulations.

7.7 This includes packaging which is imported into the UK and subsequently discarded by the importer. This relates to an estimated one million tonnes of packaging, and so represents a significant gap in the reported data. As collection of this data is already required under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, this change will cause minimal inconvenience to producers.

7.8 These amendments will also provide further clarification on the obligated producer in instances where packaging carries two or more brands, or for brands that sell products that include other brands (such as food hampers).

7.9 These amendments will provide further clarification on the data reporting requirements for reusable and refillable packaging and simplify this reporting for producers. They will allow producers that have instituted re-use systems to be able to offset the packaging at its end of life, where they have it reprocessed.

7.10 The amendments also include some minor corrections to the drafting and fix some incorrect cross-references.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 An initial consultation on the introduction of Extended Producer Responsibility (EPR) for Packaging in the UK ran for 12 weeks from 18 February to 13 May 2019. This was a joint consultation by the UK Government, the Welsh Government, the Scottish Government, and the Northern Ireland Executive.

10.2 This consultation received 679 responses from a wide range of stakeholders. Responses were largely supportive of the proposals, with 80% of respondents agreeing with the principles proposed for packaging EPR and 88% agreeing with the proposed outcomes of the EPR system. The summary of responses to this consultation was published in July 2019 and outlined our plans to proceed with the introduction of EPR for packaging.

10.3 A second consultation on EPR for packaging ran for 10 weeks from 24 March 2021 to 4 June 2021. This consultation sought views on specific policy proposals for the introduction of EPR for packaging. This was a joint consultation by the UK Government, the Welsh Government, the Scottish Government and the Northern Ireland Executive.

10.4 The consultation received 1,241 responses from a wide range of stakeholders. The summary of responses and the Government response to the 2021 consultation was published in March 2022. This response outlined our proposals to require producers to

report their packaging data twice a year, in October and April, with each submission covering a six-month period.

11. Guidance

11.1 Further guidance for producers on their reporting requirements has been published in advance of these Regulations coming into force. This aligns with the changes and clarifications we are seeking to make through these Regulations. We are developing a digital platform that will allow producers to register and report their data; relevant data will be shared with the regulators.

11.2 Defra will continue to engage with key stakeholders to increase awareness of the new reporting requirements ahead of the Regulations coming into force.

12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies. The impact of the Regulations on business is due to the additional data collection and reporting requirements, and familiarisation with the new Regulations. The amendments included in this instrument are minimal and will not introduce any significant additional burdens on businesses.

12.2 There is no, or no significant, impact on the public sector. EPR for packaging, which will be introduced in full by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2023, will result in a net gain for the public sector, as producers make payments to local authorities for the costs of managing household packaging waste.

12.3 A full Impact Assessment was published alongside the draft Data Reporting Regulations on the legislation.gov.uk website. This Impact Assessment contains analysis for all EPR for packaging reforms, but the section on producer data reporting costs (page 42) relates directly to this legislation.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to include a threshold within the Data Reporting Regulations to exempt producers that do not handle more than 25 tonnes of packaging a year and have an annual turnover of more than £1 million. Producers that are above this threshold but do not handle more than 50 tonnes of packaging a year and have an annual turnover of more than £2 million will need to collect and retain, but not report, this data. An annual reporting obligation will then be introduced in the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations to be laid in Parliament later this year.

14. Monitoring & review

14.1 The UK packaging waste regime is monitored by Government, the Environment Agencies, the Advisory Committee on Packaging (ACP) and industry generally. The ACP, which includes representatives of the packaging industry, as well as retailers and local authorities, also monitors the effectiveness of legislation dealing with packaging waste and advises Government as and when they consider changes may be needed.

14.2 These Regulations are only expected to be in force until the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations (which will be laid in Parliament later this year) replace and revoke these Regulations.

14.3 A statutory review clause is included in the Data Reporting Regulations.

15. Contact

15.1 Zack Ollerton at the Department for Environment, Food and Rural Affairs, Telephone: 02084152954 or email: zack.ollerton@defra.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Chris Preston, Deputy Director for Resources and Waste, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State for the Environment Rebecca Pow MP, at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.