EXPLANATORY MEMORANDUM TO

THE PACKAGING WASTE (DATA REPORTING) (ENGLAND) (AMENDMENT) REGULATIONS 2024

2024 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"). 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 producers will be required to pay to cover the cost of managing this packaging as part of the Extended Producer Responsibility for packaging (pEPR) scheme from 2025, which will be implemented by separate legislation (see 2.3 below).

2.2 The amendments included in these Regulations are required to ensure that packaging material will be reported that would otherwise not have had a producer obligation attached to it until the implementation of a Deposit Return Scheme (DRS) in Scotland. The amendments will also ensure that packaging producers are reporting all the packaging they place on the market, enhance the clarity of some obligations, and improve other provisions in response to feedback from stakeholders, including amending the definition of household packaging.

2.3 Subject to Parliamentary approval, the Data Reporting Regulations will be replaced by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations ("the EPR Regulations") in the future.

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, Robbie Moore MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Packaging Waste (Data Reporting) (England) (Amendment) Regulations 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations amend the Data Reporting Regulations, which were amended by the Packaging Waste (Data Reporting) (England) (Amendment) Regulations 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 legislation will therefore be made in relation to Scotland, Wales and Northern Ireland by the Scottish and Welsh governments and the Department of Agriculture, Environment and Rural Affairs.

7. Policy background

What is being done and why?

7.1 pEPR will require producers to take responsibility for the environmental impact of the packaging they place on the market 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 pEPR fee to local authorities, via a Scheme Administrator, based on the amount of packaging they have supplied.

7.3 The EPR Regulations will contain provisions for the full introduction of pEPR, including placing obligations on packaging producers.

7.4 The provisions in the Data Reporting Regulations require producers to collect and report their packaging data, in preparation for the full introduction of pEPR. The amendments that these Regulations make are required to: ensure that producers submit the correct information required for calculating their obligations under the EPR Regulations, ensure that all relevant packaging is obligated, and remove the risk of double reporting. These amendments are crucial to enabling the full introduction of pEPR in the future.

Explanations

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

7.5 Under the Data Reporting Regulations, producers are required to collect and report data on the packaging they supply. Packaging producers with an annual turnover of more than £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 more than £2 million, who handle more than 50 tonnes of packaging per year, are also required to report this data from October 2023.

Why is it being changed?

7.6 Since the Data Reporting Regulations have been in force, further engagement and consultation with producers has identified a small number of necessary amendments The amendments included in these Regulations will ensure that packaging producers are reporting all the packaging they place on the market, enhance the clarity of some obligations, and improve other provisions in response to feedback from stakeholders.

What will it now do?

7.7 These amendments will capture data on packaging that would have been obligated under a DRS in Scotland. The announcement of a deferral to that DRS scheme means that, without these Regulations, a large amount of packaging would go unobligated under pEPR, whilst also not being obligated under a Scottish DRS.

7.8 These amendments will require the Environment Agency to publish a list of large producers that is accessible by the public. This list will assist producers in determining whether they are required to report certain packaging.

7.9 Under the Data Reporting Regulations, the brand owner of empty packaging picks up the obligation when that packaging is filled, even where the branding relates only to the packaging and not the goods within the packaging. These amendments will move this obligation onto the person who packs or fills the packaging.

7.10 These Regulations will place an obligation on the first owner of a packaged goods in the UK, when packaged goods are manufactured or assembled in the UK by a third party, on behalf of a foreign owner.

7.11 These Regulations will obligate packaging where a manufacturer or importer of empty packaging (a distributor) supplies unfilled packaging to a large producer, who then supplies that packaging to a small or non-obligated producer. Currently no one is required to report this packaging and these amendments will place the obligation on the distributor.

7.12 The Data Reporting Regulations require sellers to report packaging that they supply to consumers only, missing the packaging that they sell to businesses. These amendments will require sellers to report packaging supplied to businesses.

7.13 The household packaging definition is amended by these Regulations. A list of public bodies will be included in the definition, this will exclude packaging supplied to them from pEPR fees. The new definition will also allow producers to apply an additional test to establish if their packaging can be counted as non-household packaging, and therefore be excluded from pEPR fees. Without this amendment packaging designed solely for business-use, which is supplied through an intermediary, would be classed as household packaging, and would incur pEPR fees.

7.14 These amendments will obligate the importer for imported, branded packaging unless the brand owner has requested the importation of the packaging, will clarify the definition of importer, and allow the correct obligations to be placed on importers who discard empty packaging they have imported.

7.15 These Regulations will allow producers to exempt packaging from their recycling obligations in the first year of these Regulations if they can evidence that the packaging has been reported under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 This is not a consolidating instrument.

10. Consultation outcome

10.1 An initial consultation on the introduction of pEPR 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 pEPR and 88% agreeing with the proposed outcomes of the pEPR system. The summary of responses[1] to this consultation was published in July 2019 and outlined our plans to proceed with the introduction of pEPR.

10.3 A second consultation on pEPR ran for 10 weeks from 24 March 2021 to 4 June 2021. This consultation sought views on specific policy proposals for the introduction of pEPR. 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[2] 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.

10.5 A third consultation[3] on pEPR ran for 10 weeks from 28 July 2023 to 9 October 2023. This consultation sought views on how the approach set out in the government response to the second pEPR consultation published in March 2022 has been reflected in the draft Regulations and their operability. This was a joint consultation by the UK Government, the Welsh Government, the Scottish Government, and the Northern Ireland Executive.

10.6 The third consultation has closed. The responses are being reviewed and a summary of those responses is expected to be published in Spring 2024.

11. Guidance

11.1 Further guidance for producers on their reporting requirements will be published in advance of these Regulations coming into force. This aligns with the amendments we are seeking to make through these Regulations.

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.

[1] Summary of responses to first consultation: https://www.gov.uk/government/consultations/packaging-waste-changing-the-uk-producer-responsibility-system-for-packaging-waste

[2] Summary of responses to second consultation: https://www.gov.uk/government/consultations/packaging-and-packaging-waste-introducing-extended-producer-responsibility

[3] Third consultation: https://www.gov.uk/government/consultations/draft-producer-responsibility-obligations-packaging-and-packaging-waste-regulations

12.2 There is no, or no significant, impact on the public sector. pEPR which, subject to Parliamentary approval, will be introduced in full by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations, 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[4] was published alongside the draft Data Reporting Regulations on the legislation.gov.uk website. This Impact Assessment contains analysis for all pEPR reforms, but the section on producer data reporting costs (page 42) related 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 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, subject to Parliamentary approval, in the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations to be laid in Parliament in the future.

14. Monitoring & review

14.1 The UK packaging waste regime (including the Data Reporting Regulations and amendments to those Regulations) is monitored by Government, the Environment Agency, 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 draft Producer Responsibility Obligation (Packaging and Packaging Waste) Regulations 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 Angela Murhpy, 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, Robbie Moore MP at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

[4] Full Impact Assessment published alongside the draft Data Reporting Regulations: https://www.legislation.gov.uk/ukdsi/2022/9780348241549/impacts