**EXPLANATORY MEMORANDUM TO**

**THE PACKAGING WASTE (DATA REPORTING) (ENGLAND) REGULATIONS 2022**

**2022 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 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 which is planned to start in 2024. The EPR for packaging scheme will be created by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2023, which will include equivalent provisions on the collection and reporting of data replacing these Regulations.

## 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) Regulations 2022 are compatible with the Convention rights."

## 6. Legislative Context

6.1 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.

6.2 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 Wales, Scotland and Northern Ireland by the Welsh Government, the Scottish Government and the Northern Ireland Executive.

6.3 These regulations will require producers to report data on the amount and type of packaging they supply. This information is crucial for enabling the full introduction of EPR for packaging, which will be introduced under the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2023. These data reporting regulations need to be in force prior to the introduction of the EPR Regulations.

## 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 (LAs), via a Scheme Administrator (SA), based on the amount of packaging they have supplied. The Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2023, which will contain provisions for the introduction of EPR, will not be in force until December 2023.

7.3 The provisions in the Packaging Waste (Data Reporting) (England) Regulations 2022 will require producers to collect and report their packaging data from March 2023 (or from January, if they have this data). This data will be required to calculate the EPR fees that producers will pay and is therefore crucial for enabling the full implementation of EPR.

***Explanations***

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

7.4 Under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, producers with an annual turnover of £2 million, who handle more than 50 tonnes of packaging each year, are required to report data on the amount of packaging they recycle.

*Why is it being changed?*

7.5 More detailed information on the amount and type of packaging that is placed on the market by producers is required in order to calculate the EPR fees that producers will pay once the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2023 are in force.

*What will it now do?*

7.6 These new regulations will require producers with an annual turnover of £2 million, who handle more than 50 tonnes of packaging each year, to report data on the amount and type of packaging they supply. It will also increase the frequency of this reporting from once to twice per year. In addition, it will create a new ‘de minimis’ threshold, whereby producers with an annual turnover of £1 million, who handle more than 25 tonnes of packaging per year (but who do not surpass the “upper” threshold), will be required to collect (but not report) this data.

## 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.

10.5 These regulations are expected to be in place for one year, after which they will be revoked and replaced by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2023.

## 11. Guidance

11.1 Further guidance for producers on their reporting requirements will be published in advance of these regulations coming into force. 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 The impact of these regulations on business is due to the additional data collection and reporting requirements, and familiarisation with the new regulations. The introduction of a new de minimis threshold is estimated to bring an additional 1,823 businesses into scope of the obligations, when compared with the current regulations. There is no, or no significant, impact on charities or voluntary bodies.

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 is submitted with this memorandum and published alongside the Explanatory Memorandum 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 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 do not handle more than 50 tonnes of packaging a year and an annual turnover of more than £2 million will be exempt from the reporting obligations but will still need to collect and retain data.

## 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 the Packaging Waste Regulations 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 2023 come into force, as these regulations will replace and revoke these regulations.

14.3 A statutory review clause is included in the instrument.

## 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 Minister Rebecca Pow at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.