EXPLANATORY MEMORANDUM TO

The Packaging Waste (Data Reporting) (No. 2) (Amendment) Regulations (Northern Ireland) 2023

2023 No. 106

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs (DAERA) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under the powers conferred by Article 4(1) and paragraphs 11 and 20 of Schedule 1 to the Environment (Northern Ireland) Order 2002 and is subject to the negative resolution procedure.

2. Purpose

2.1. These Regulations amend the Packaging Waste (Data Reporting) (No. 2) Regulations (Northern Ireland) 2023 ("the Data Reporting Regulations") which came into operation on 28th February 2023. The Data Reporting Regulations require producers of packaging to collect and report data on the amount and type of packaging 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) system.

2.2. The amendments included in these amending Regulations are required to ensure that the 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. Background

3.1. The Extended Producer Responsibility (EPR) for packaging is planned to be introduced into the UK in 2024. EPR will require producers to take responsibility for 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 place on the market and to improve the recyclability of their packaging.

3.2. Producers will be required to pay an EPR fee to district councils, via a scheme administrator (SA), based on the amount and type of packaging they have placed on the market. The Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations, which will contain provisions for the introduction of EPR, are intended to be laid in early 2024. These regulations will revoke, The Packaging Waste (Data Reporting) (No.2) Regulations (Northern Ireland) 2023.

3.3. The provisions in the Data Reporting Regulations require producers to collect and report their packaging data from March 2023 (or from January 2023, 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 the relevant packaging is obligated, and to remove some loopholes in the Data Reporting Regulations.

3.4. 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 only required to collect data 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.

3.5. 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 the producers will use to report their data.

3.6. 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. 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 (Northern Ireland) 2007, this change will cause minimal inconvenience to producers.

3.7. 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).

3.8. 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.

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

4. Consultation

4.1. An initial consultation on the introduction of the Extended Producer Responsibility (EPR) for Packaging in the UK ran for 12 weeks from 18th February to 13th May 2019[1]. This was a joint consultation by the UK Government, the Welsh Government, the Scottish Government and DAERA.

[1] Consultation on reforming the UK packaging producer responsibility system (daera-ni.gov.uk)

4.2. 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[2] to this consultation was published in July 2019 and outlined our plans to proceed with the introduction of EPR for packaging.

4.3. The second consultation on EPR for packaging ran for 10 weeks from 24th March to 4th June 2021[3]. This consultation sought views on specific policy proposals for the introduction of EPR for packaging. This was part of a joint consultation by the UK Government, the Welsh Government, the Scottish Government and DAERA.

4.4. The consultation received 1,241 responses from a wide range of stakeholders. The summary of responses and the Government response[4] 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 6-month period.

5. Equality Impact

5.1. In accordance with the Department's obligations under Section 75 of the Northern Ireland Act 1998, the equality implications of the proposed Regulations have been assessed. No adverse equality impacts have been identified under the Equality and Human Rights screening procedures. The Department considers the Regulations will not result in any equality differentials amongst Section 75 groups.

6. Regulatory Impact

6.1. An impact assessment (IA) for the introduction of EPR for packaging was published alongside the Government Response to the 2021 consultation[5].

6.2. The impact of these regulations on business is due to the additional data collection and reporting requirements and familiarisation with the new requirements. The amendments included in this rule are minimal and will not introduce any significant additional burden on businesses.

6.3. There is no, or no significant, impact on charities or voluntary bodies.

6.4. These regulations will have no significant impact on the public sector. EPR for packaging, which will be introduced in 2024 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 district councils for the cost of managing household packaging.

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[2] Consultation on reforming the Packaging Producer Responsibility System - Summary of consultation responses and next steps (daera-ni.gov.uk)
[3] Extended Producer Responsibility for Packaging - Defra - Citizen Space
[4] EPR Consultation Government response template (daera-ni.gov.uk)
[5] Impact Assessment (daera-ni.gov.uk)

7. Financial Implications

7.1. The Statutory Rule is not expected to have any significant financial implications.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Regulations do not have any human rights implications, nor are they incompatible with EU law. The Regulations are therefore deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. There are no EU implications as the Packaging Waste (Data Reporting) (No. 2) (Amendment) Regulations (Northern Ireland) 2023 are merely for the collection and reporting of data. These regulations will be revoked and replaced by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations due to be made in February 2024.

10. Parity or Replicatory Measure

10.1. Producer responsibility is devolved, and the other regions of the United Kingdom are making their own regulations. This statutory rule brings Northern Ireland legislation into line with the legislative changes in England, Scotland and Wales.

11. Additional Information

11.1. These regulations are expected to be in place, until revoked and replaced by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations in February 2024.

12. 21-Day Rule

12.1. This Statutory Rule amends the Packaging Waste (Data Reporting) (No.2) Regulations (Northern Ireland) 2023 (S.R. 2023 No. 25) which was laid on 27th February 2023, coming into operation on 28th February 2023. These Regulations ensure that all relevant packaging is obligated, and loopholes are removed from S.R. 2023 No. 25, therefore, to ensure alignment with England and the collection of sufficient packaging data, these Regulations must come into operation from 30 June 2023 in breach of the 21 day rule.

13. Contact

13.1. Laurence McCann at the Department of Agriculture, Environment and Rural Affairs, (Tel: 028 90569725 or email: Laurence.McCann@daera-ni.gov.uk) can be contacted with any queries around the regulation.