

Explanatory Memorandum to the Packaging Waste (Data Collection and Reporting) (Wales) (Amendment) Regulations 2024

This Explanatory Memorandum has been prepared by the Climate Change Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Packaging Waste (Data Collection and Reporting) (Wales) (Amendment) Regulations 2024. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Climate Change
20 February 2024

PART 1

Chapter 1 – Description

1. The Packaging Waste (Data Collection and Reporting) (Wales) (Amendment) Regulations 2024 (“these Regulations”) amend the Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 (“the principal Regulations”). The principal Regulations (which came into force on 17 July 2023) support the implementation of the Extended Producer Responsibility for Packaging (EPR) scheme. The EPR scheme will require producers to take responsibility for the 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 place on the market and to improve the recyclability of packaging.
2. The principal Regulations require producers of packaging to collect and, in some cases, report data on the amount and type of packaging they place on the market. This data is required in order to calculate the fees producers will need to pay under the EPR scheme. The principal Regulations are intended to be in place for a short period of time, after which it is intended, they be revoked and replaced by the regulations to establish the EPR scheme (“the EPR Regulations”), which will include the equivalent data collection and reporting provisions.
3. These Regulations are required to ensure that packaging material will be reported that would otherwise not have had a producer obligations attached to it until the implementation of a Deposit Return Scheme (“DRS”) in Scotland. The amendments also ensure that packaging producers are reporting all of the packaging they place on the market, improve the clarity of some obligations and clarify provisions in response to feedback from stakeholders, including an amendment to the definition of household packaging.

Chapter 2 - Matters of special interest to the Legislation, Justice and Constitution Committee

4. None.

Chapter 3 - Legislative background

5. These Regulations are made subject to the affirmative procedure in exercise of the powers conferred by section 2(1) to (3) of, and paragraphs 2, 11, 17 and 20(1)(b) of Schedule 1 to the Pollution Prevention and Control Act 1999.
6. The relevant functions of the Secretary of State in the Pollution Prevention and Control Act 1999 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2005 and

then to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

7. This is a collective UK-wide scheme, but the powers conferred by the Pollution Prevention and Control Act 1999 are now devolved. Similar data reporting and collection legislation to the principal Regulations have been made in relation to England, Scotland and Northern Ireland and the other administrations across the UK are also making equivalent subordinate legislation to the amending Regulations.

Chapter 4 – Purpose and intended effect of the legislation

8. The main EPR scheme is planned to be introduced in the UK in late 2024 via the EPR Regulations made pursuant to the Environment Act 2021. The EPR scheme will require producers to take responsibility for the 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 become more resource efficient by reducing the amount of packaging they supply and to improve the recyclability of their packaging. This in turn supports the transition to a more circular economy whilst reducing emissions and other impacts on the environment.
9. Producers will be required to pay a EPR fee to local authorities, via a Scheme Administrator, based on the amount of packaging supplied. The purpose of the principal Regulations is to start collecting the data required to set those fees in advance of the scheme, which will be established by the EPR Regulations.
10. Since the introduction of the principal Regulations, engagement with obligated businesses has identified areas where amendments are required to better align the operation of the principal Regulations with the original policy intent. These Regulations will amend the principal Regulations to better reflect the policy intent and do not represent new policy. The following list is a summary of the key changes addressed by these Regulations:
 - a. amend the principal Regulations to require NRW to compile a list of large producers who have reported data under these Regulations. This was due to be introduced by the EPR Regulations, which have since been delayed. The list is necessary for Distributors, Importers and Online Marketplace Operators to identify Large Producers.
 - b. amend the principal Regulations so that when empty branded packaging is sold to a packer/filler who fills it with their own products and sends to the customer without adding their own branding to the packaging, the packer/filler picks up the obligation, not the manufacturer of the packaging. This reflects the original policy intention.
 - c. amend the principal Regulations to ensure that a UK-based manufacturer picks up obligations where packaging has been imported by a foreign brand owner who retains ownership of the

packaging, such that the packaging would go unobligated as the foreign-brand owner is not established in the UK.

- d. amend the principal Regulations so that, if a Distributor is selling unfilled packaging to a Large Producer who is not going to then pack/fill that packaging, the Distributor should pick up the obligation. The drafting, as it is, means that no one is obligated where a distributor supplies unfilled packaging (which they imported or manufactured) to a large producer, who then goes on to supply it unfilled to a small/non-obligated producer.
- e. amend the principal Regulations to extend the scope of what Sellers must report to include packaging sold between businesses. As the drafting stands, Sellers are only obligated with regards to packaging that they sell to consumers who are not businesses. This was unintentional and does not align with the policy intent of Sellers reporting packaging sold both between two businesses (B2B) and from a business to a non-business/citizen (B2C).
- f. amend the principal Regulations to include a test to allow producers to assess whether their packaging is intended for 'business use only', or 'dual use'. We have been getting increasing criticism that some packaging that is highly unlikely to end up in household bins is classed as household packaging when supplied through third parties (e.g. large beer kegs, drums of industrial chemicals, large computer servers etc).
- g. amend the principal Regulations to include a list of public institutions alongside "businesses", such as a school or hospital. Currently, any packaging supplied by producers to these other types of organisations cannot be exempted from being classified as household packaging, as it can when being sold to businesses who are the final user.
- h. amend the principal Regulations to avoid the double reporting of the same packaging by Brand Owners and Importers. Currently, the drafting may result in double reporting where an importer imports products into the UK not at the request of the brand owner.
- i. amend the principal Regulations to allow producers to exempt any packaging that they can evidence has already been reported under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 ("the 2007 Regulations") from recycling obligations.
- j. amend the definition of importer in the principal Regulations to "any packaging" rather than "filled packaging" to align with the provision on imported and discarded packaging.
- k. amend the principal Regulations to add a requirement for compliance schemes to monitor the accuracy of information supplied by members, to align with equivalent provisions in the 2007 Regulations and in the proposed EPR Regulations.
- l. amend the principal Regulations to require reporting on packaging that would have been required 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 not be

required in the EPR scheme, whilst also not being required under the Scottish DRS.

11. As EPR is a UK-wide scheme, data needs to be collected and reported consistently across the UK. If amendments are not made to the principal Regulations, then there will be differences between obligations on producers (and others) in Wales and the rest of the UK, which may make it harder for those subject to the principal Regulations to understand their obligations across the UK. This could result in a producer who complied with amended obligations in England, Northern Ireland, and Scotland, committing an offence in Wales.

Chapter 5 – Consultation

12. A specific consultation on the introduction of the EPR scheme in the UK was held for 12 weeks from 18 February to 13 May 2019. The consultation was undertaken jointly by the UK Government, the Welsh Government, the Scottish Government and the Northern Ireland Executive.
13. 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 the consultation was published in July 2019 outlining the intention to proceed with the introduction of EPR for packaging.
14. A second consultation on the EPR scheme ran for 10 weeks from 24 March 2021 to 4 June 2021. This consultation was held to seek views on the detailed policy proposals for the introduction of the EPR scheme. This consultation was also undertaken jointly by the UK Government, the Welsh Government, the Scottish Government and the Northern Ireland Executive.
15. The consultation received 1,241 responses from a wide range of stakeholders. The [summary of responses and the collective Government response](#) to the 2021 consultation was published in March 2022. This response outlined the proposals to require producers to collect and report their packaging data twice a year, in October and April, with each submission covering a six-month period.
16. Due to the technical nature of this element of the EPR packaging reforms, these consultations focused on engaging stakeholders within the packaging value chain, with extensive engagement and co-design continuing to take place with stakeholders across the packaging value chain following the consultation. There has been ongoing targeted engagement with key stakeholders following the introduction of the principal Regulations, which has helped to identify the amendments in these Regulations.

PART 2 – REGULATORY IMPACT ASSESSMENT

Chapter 6 - Regulatory Impact Assessment (RIA)

Impact

17. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. It was not considered necessary to carry out an RIA as to the likely costs and benefits of complying with these Regulations on the basis that the EPR scheme RIA contained a full analysis of the impacts of the EPR reforms, and the amendments being made are minimal. A full [Regulatory Impact Assessment](#) (RIA) for the introduction of the EPR scheme was published alongside the joint Government response to the 2021 consultation. A summary of the costs imposed by the principal Regulations can be found in the [Explanatory Memorandum](#) accompanying those Regulations. They have also been summarised below under the Benefits of the EPR Scheme and the Cost in Wales.
18. The EPR scheme is intended to be a UK-wide scheme. The majority of obligated businesses will be companies based in England operating across the UK. The RIA for the EPR scheme was undertaken on a UK-wide basis. It set out the costs to business of complying with their obligations under the scheme.
19. The impact of the principal Regulations on businesses is due to the additional data collection and reporting requirements. The introduction of a new de minimis threshold is estimated to bring an additional 1,823 businesses across the UK into scope of the data collection obligations. This equates to approximately 62 additional businesses in Wales, in addition to the estimated 250 businesses in Wales already obligated. There is no, or no significant, impact on charities or voluntary bodies.¹

Benefits of the EPR scheme

20. The collection and reporting of producers' packaging data is essential to enable the subsequent implementation of the EPR scheme and the associated circular economy benefits. It will also ensure that producers' fees under the EPR scheme are set appropriately and in line with the original policy intentions. The EPR scheme will result in a benefit for the public sector, as producers will make payments reflecting the actual costs of the management of packaging waste.

Cost in Wales

21. 62 producers in Wales have been identified as having a turnover of more than £1 million and up to £2 million and produce more than 25 tonnes and up to 50 tonnes of packaging. These producers will be required to collect at
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a basic material level, with a cost (estimated in the UK impact assessment) of £1,000. The total cost to all newly obligated businesses is therefore estimated to be £62,000 in 2023.

22. In addition, there are an estimated 250 businesses in Wales which are already obligated, but which will now need to collect and report data at a greater level of granularity. Based on the costs within the UK impact assessment, these businesses face an additional cost of between £1,500 and £2,500 (a cost of £3,000 - £4,000 for the new requirements minus the £1,500 they currently incur). This gives a total additional cost to these businesses of £375,000 to £625,000 in 2023.

23. In total, the additional total cost to businesses in Wales in 2023 is estimated to be between £437,000 and £687,000.

Justice Impact Assessment

24. A Justice System Impact Identification (JSII) was completed for the principal Regulations and it is expected that they will result in virtually no impact on the justice system in Wales. On this basis, the JSII has not been sent to the Ministry of Justice for comment.

25. A Justice Impact Assessment (JIA) is also being prepared for the EPR scheme as a whole on a UK-wide basis and will be finalised before the EPR Regulations are made.

Integrated Impact Assessment

26. A summary of the Integrated Impact Assessment for the EPR scheme is available at [Annex 3](#).

Resources and Waste Common Framework

27. This legislation is within the scope of the Resources and Waste Common Framework.