

Net Zero, Energy and Transport Committee

5th Meeting, 2023 (Session 6)

Tuesday 7 February 2023

SSI cover note for: Packaging Waste (Data Reporting) (Scotland) Regulations 2023 (SSI 2023/007)

Title of Instrument: [Packaging Waste \(Data Reporting\) \(Scotland\) Regulation 2023 \(2023/007\)](#)

Type of Instrument: Negative

Laid Date: 19 January 2023

Circulated to Members: 20 January 2023

Meeting Date: 7 February 2023

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 6 March 2023

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.

Background

2. Businesses involved with packaging consumer goods have obligations to ensure good practice is being followed around recycling. Under these Regulations, producers of packaging will now be required to collect and share data on how much

packaging they are supplying. This information will help local authorities to determine what waste management fees they should charge for disposing of packaging.

3. This instrument is an initial step towards the introduction of a UK-wide Extended Producer Responsibility for packaging which 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. Governments across the UK intend to bring forward further measures later in the year.

4. An electronic copy of the Regulation is available at:
<https://www.legislation.gov.uk/ssi/2023/7/contents/made>

5. A copy of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

Purpose

6. To require producers of products to collect and report data on the amount and type of packaging that they place on the market. These data are required to calculate the fees that these producers will be required to pay to cover the cost of managing this packaging as part of Extended Producer Responsibility (EPR) for packaging which is planned to start in 2024.

Delegated Powers and Law Reform Committee consideration

7. At its meeting on 31 January 2023, the Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Procedure for Negative Instruments

8. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

9. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can

usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Clerks
Net Zero, Energy and Transport Committee

Annexe A

Scottish Government Explanatory Note

These Regulations impose requirements on producers who are established in Scotland to collect data on the packaging they supply to others, and, in some cases, to report some of that information to the Scottish Environment Protection Agency (SEPA).

Part 1 (regulations 1 to 14) contains the interpretation and general provisions for the instrument. Part 2 (regulations 15 to 18) sets out the obligations on producers. Schedule 1 identifies the information which producers are required to collect and report on. Schedule 2 determines whether licensors or pub operating businesses are subject to obligations on producers. Part 3 (regulations 19 to 21) makes provision for registered schemes and exempts producers who are members of a registered scheme from their data reporting obligations under these Regulations provided that they satisfy the requirements in regulation 19(2). Registered schemes are required to make reports on behalf of each of their members who satisfy these requirements. Part 3 also makes provision in relation to changes to the membership of a scheme in the middle of a relevant year.

Part 4 (regulations 22 to 27) sets out the powers and duties of SEPA under these Regulations. Part 5 (regulations 28 and 29) provides for a number of offences and penalties for breach of the requirements imposed by these Regulations.

A partial Business Regulatory Impact Assessment of the effect that this instrument will have on the costs of business has been placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government, Environmental Quality Division, Area 3H South, Victoria Quay, Edinburgh EH6 6QQ, and online at legislation.gov.uk.

Scottish Government Policy Note

POLICY NOTE

THE PACKAGING WASTE (DATA REPORTING) (SCOTLAND) REGULATIONS 2023

SSI 2023/7

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by sections 18 and 58, and paragraphs 14, 17, 19, 22, 31, 32 and 33 of schedule 2 of the Regulatory Reform (Scotland) Act 2014 and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Purpose of the instrument. To require producers of products to collect and report data on the amount and type of packaging that they place on the market. These data are required to calculate the fees that these producers will be required to pay
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to cover the cost of managing this packaging as part of Extended Producer Responsibility (EPR) for packaging which is planned to start in 2024.

Policy Objectives

Together with the other UK administrations, the Scottish Government is working to introduce Extended Producer Responsibility (EPR) for packaging, which 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.

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 Scottish Government and other UK administrations intend to make new regulations making provision for the introduction of packaging EPR in late 2023, with the intention that these should be in force in December 2023. These regulations will be in the form of a UK Statutory Instrument, for which there will be notification to, and scrutiny by, the Scottish Parliament in advance of formal consent being granted by the Scottish Ministers to the making of the instrument by the Secretary of State. It is anticipated that this process will take place in autumn 2023.

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

These new regulations will require producers with an annual turnover of more than £2 million, and handling 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 minimum threshold, whereby small producers with an annual turnover of more than £1 million, who handle more than 25 tonnes of packaging per year (but who do not surpass the “upper” thresholds for turnover and packaging), will be required to collect these data in 2023 to support reporting in 2024 once packaging EPR is fully in force.

A separate instrument, the Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2023, has also been made to give SEPA the power to apply civil penalties in respect of offences committed under these Regulations.

Consultation

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 Scottish Government, the UK Government, the Welsh Government, and the Northern Ireland Executive.

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.

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 Scottish Government, the UK Government, the Welsh Government, and the Northern Ireland Executive.

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.

Impact Assessments

A partial Business and Regulatory Impact Assessment (BRIA) has been completed for this instrument and is attached. Business impacts are set out below.

Financial Effects

A partial BRIA has been completed and is attached.

The direct impact of this instrument on businesses is limited to the cost of collecting and reporting the relevant data. These costs are proportionate to the policy intervention because the data collected and reported are all necessary for operating packaging EPR and/or monitoring the functioning of the UK packaging recycling system. The changes simply expand on the existing system, extending the level of detail producers are required to report, and bringing more producers within scope of collection and/or reporting.

The impact of packaging EPR taken as a whole will be more significant. In line with the principle of producer responsibility, packaging EPR will see producers bearing the cost of efficient and effective local-authority collection systems for packaging waste. That is a significant benefit to taxpayers who currently bear this burden, estimated at around £1.1bn per annum UK-wide. Placing this financial burden on producers aligns with the principle of “polluter pays” and creates a significant incentive on them, as the actors with most control over packaging design decisions, to make more responsible choices in how they use packaging. A final BRIA will be published at the time of notification to the Scottish Parliament of the UK Statutory Instrument that will provide for the introduction of packaging EPR, as referred to above.

Scottish Government
Directorate for Environment and Forestry

January 2023

Scottish Government - Other documents

- [Partial Business and Regulatory Impact Assessment \(BRIA\)](#)