

Net Zero, Energy and Transport Committee

35th Meeting, 2023 (Session 6)

Tuesday, 5 December 2023

Cover note: The Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2023 (2023/336)

Background

1. The Committee is due to consider the Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2023 (2023/336), which are subject to the negative procedure.

Procedure for Negative Instruments

2. 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).

3. 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. If that is also agreed to, Scottish Ministers must revoke the instrument. At present no motion to annul has been laid for this instrument.

4. 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.

5. If no motion to annul has been laid then, at the conclusion of consideration of the instrument, the Committee will be invited that agree to make no recommendation in relation to the instrument.

Recommendation

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

Clerks

Net Zero, Energy and Transport Committee

Title of Instrument: The Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2023 (2023/336)

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| Type of Instrument: | Negative |
| Laid Date: | 10 November 2023 |
| Circulated to Members: | 10 November 2023 |
| Meeting Date: | 5 December 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: | 18 December 2023 |
| Purpose: | The purpose of this SSI is to amend the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 ("the 2007 Regulations") to set the targets for recycling packaging waste that obligated producers must meet for 2024. |

7. An electronic copy of the Order is available at:
<https://www.legislation.gov.uk/ssi/2023/336/contents/made>

8. Copies of the explanatory and policy notes for SSI 2023/336 are provided below.

Delegated Powers and Law Reform Committee consideration

9. At its meeting on 21 November 2023, the DPLR 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.

- [Read the Official Report – 21 November 2023 \(Scottish Parliament\)](#)
- [Read the Committee's Report - Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 21 November 2023 \(68th Report, 2023\)](#)

Accompanying documents - The Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2023 (2023/336)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871). Those Regulations impose obligations on producers to recycle packaging waste in order to attain overall recycling and material-specific targets.

These Regulations set an overall recycling target as well as material-specific recycling targets for 2024 on obligated producers in Scotland in relation to glass (including the proportion to be recycled by re-melt), plastic, aluminium, steel, paper/board, and wood.

A full impact assessment of the effect that this instrument (in combination with similar instruments in England and Wales) will have on the costs of business, the voluntary sector and the public sector is available from the Producer Responsibility Unit at the Department for Environment, Food and Rural Affairs, Seacole Building, 2 Marsham Street, London, SW1P 4DF.

POLICY NOTE

THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE) AMENDMENT (SCOTLAND) REGULATIONS 2023

SSI 2023/336

The above instrument was made in exercise of the powers conferred by section 50 and paragraphs 1(1) and 2(2) of schedule 4 of the Environment Act 2021. The instrument is subject to the negative procedure.

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| <p>Purpose of the instrument. To amend the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (“the 2007 Regulations”) to set the targets for recycling packaging waste that obligated producers must meet for 2024.</p> |
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Policy Objectives

The 2007 Regulations apply to Great Britain. This instrument amends the 2007 Regulations for Scotland only; similar amending instruments to set the same level of targets are being made in relation to England and Wales by the UK Government. Northern Ireland has separate Regulations and will make similar changes in parallel.

The 2007 Regulations impose producer responsibility obligations, requiring producers to recycle a proportion of the packaging they place on the market to support achievement of overall recycling targets. Obligated producers are required to obtain evidence from accredited reprocessors and exporters to demonstrate that they have met these recycling targets.

Obligated producers are businesses that: manufacture raw materials for packaging; convert materials into packaging; fill packaging; sell packaging to the final user; lease out packaging; or import packaging or packaging materials into Great Britain. Businesses are exempt if they handle 50 tonnes or less of packaging, and/or have a turnover of £2 million or less.

The current recycling targets expire at the end of 2023. This instrument sets the recycling targets that obligated producers will have to meet in 2024 and is required to ensure that obligated producers continue to have producer responsibility obligations.

Along with the other UK governments, the Scottish Government is bringing forward a suite of reforms to the packaging producer responsibility system to introduce Extended Producer Responsibility (EPR) for packaging. Due to the decision to defer the introduction of packaging EPR to 2025, announced by the UK Government on 25 July 2023, the 2007 Regulations need to be updated to set overall and material-specific recycling targets for 2024.

The new packaging EPR legislation will set the recycling targets for producers once it comes into force. As this instrument is essentially an interim measure, designed to ensure that producers continue to have producer responsibility obligations for packaging until packaging EPR is established, the Scottish Government, and the other UK governments, consider that it is appropriate to maintain the targets for 2024 at the same level as for 2023, with the following exceptions:

- Wood, for which a slightly higher target has been set in response to stakeholder feedback and to reflect the recent recycling rate;
- The overall recycling target, which has been increased by 3 percentage points to increase producer responsibility overall while allowing producers a degree of flexibility over what materials to use to meet these targets;
- Glass re-melt, which has been increased by 3 percentage points to drive greater circularity in the glass sector.

Packaging EPR, once in place, will drive an increase in the quantity and quality of recycling collected across the UK.

Consultation

As set out above, these targets are being set for 2024 as an interim measure before packaging EPR comes in from 2025. Recycling targets for 2024 to 2030 were included in the public consultation on EPR carried out jointly by the Scottish Government and other UK governments, and responses were received from producers, key material organisations, trade bodies, and other stakeholders in the course of this consultation.

The proposed targets for 2024 set out in that consultation were based on the assumption that packaging EPR would be in place from 2024. This is no longer the case, as noted above.

The UK Government, on behalf of the four governments, has led on work to amend the proposed targets for 2024 to reflect this, including further informal consultation with key stakeholders. The targets set out in these regulations are based on that work and have been agreed between the four UK governments.

Impact Assessments

As this instrument is aligned with provisions being introduced by the other UK governments on the basis of a UK-wide consultation and attendant Impact Assessment, the Scottish Government does not consider it necessary to carry out Scottish-specific impact assessments for this instrument. An impact assessment for packaging EPR was published alongside the government response on 26 March 2022.¹

Financial Effects

As this instrument is aligned with provisions being introduced by the other UK governments on the basis of a UK-wide consultation and attendant impact assessment (see above), the Scottish Government does not consider it necessary to carry out a Scottish-specific Business and Regulatory Impact Assessment (BRIA).

Scottish Government
Directorate for Environment and Forestry
8 November 2023

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063588/epr-final-impact-assessment.pdf