

Net Zero, Energy and Transport Committee

10th Meeting, 2024 (Session 6)

Tuesday, 12 March 2024

Cover note: Subordinate legislation

Background

1. The Committee is invited to consider two pieces of subordinate legislation subject to the negative procedure—
 - [The Packaging Waste \(Data Reporting\) \(Scotland\) Amendment Regulations 2024](#) (2024/42)
 - [The Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(Codes of Conduct for Members of certain Scottish Public Authorities\) Amendment Order 2024](#) (2024/39)

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 these instruments.
4. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform (DPLR) 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 exchanged 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 to 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 these instruments.

Clerks
Net Zero, Energy and Transport Committee

Title of Instrument: The Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2024 (2024/42)

Type of Instrument:	Negative
Laid Date:	9 February 2024
Circulated to Members:	9 February 2024
Meeting Date:	12 March 2024
Minister to attend meeting:	No
Motion for annulment lodged:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	Yes
Reporting deadline:	25 March 2024
Purpose:	To make a number of amendments to the Packaging Waste (Data Reporting) (Scotland) Regulations 2023 ("the data regulations"). The data regulations require producers of products to collect and/or report data on the amount and type of packaging that they place on the market as part of Extended Producer Responsibility (EPR) for packaging.

1. An electronic copy of the Regulations is available at: <https://www.legislation.gov.uk/ssi/2024/42/contents/made> ([legislation.gov.uk](https://www.legislation.gov.uk))
2. Copies of the explanatory and policy notes for SSI 2024/42 are provided below.

Background to the instrument

3. The instrument pertains to the introduction of a regime of Extended Producer Responsibility (EPR) being brought forward jointly on a UK-wide basis. EPR is a circular economy initiative which seeks to place an increased onus on producers of products for the financial costs and environmental impacts of the items they make. In doing so, the aim of EPR is to encourage producers to develop and pursue more sustainable forms of product design.
4. [An EPR on packaging](#) is the first of a number of proposed schemes being consulted on and developed by the UK Government and the Devolved Administrations.
5. As part of the roll out of EPR, in 2023 the Scottish Government brought forward [Regulations](#) that placed requirements on packaging producers to collect and report on the amount and type of packaging they supplied to the market. This information would be used to determine EPR fees paid by individual producers.

6. The Policy Note for this instrument says it will amend the prior Regulations to reflect the delay to the launch of the Scotland's Deposit Return Scheme to October 2025. In addition, it says these Regulations will make a number of technical amendments.

7. The Delegated Powers and Law Reform Committee highlighted a lack of information in the Explanatory Note for the instrument. In response, the Scottish Government said it would share further details via a correction slip. A copy of the revised Explanatory Note provided by the Scottish Government is available in **Annexe A**.

Delegated Powers and Law Reform (DPLR) Committee consideration

8. At its meeting on 5 March 2024, the DPLR Committee considered the instrument and agreed to draw the instrument to the attention of the Parliament on the general reporting ground, on the basis that the Explanatory Note is too brief. In response to the Committee's conclusion, the Scottish Government has agreed to provide further details through the issuing of a correction slip at the earliest opportunity.

- [Read the Official Report – DPLR Committee, 5 March 2024 \(parliament.scot\)](#)

9. Read an [extract of the report](#):

Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the Parliament

Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2024 (SSI 2024/42)

The instrument makes a number of amendments to the Packaging Waste (Data Reporting) (Scotland) Regulations 2023 (“the 2023 Regulations”).

The 2023 Regulations require producers of products to collect and/or report data on the amount and type of packaging that they place on the market as part of Extended Producer Responsibility for packaging.

Given the length and complexity of the regulations, the Committee asked the Scottish Government about the adequacy of the Explanatory Note for the regulations, which amounted to just one substantive paragraph.

In its response, the Scottish Government agreed upon reflection that additional information would aid the understanding of the instrument and has undertaken to amend the Explanatory Note by way of correction slip at the earliest opportunity.

The lead committee for this instrument is the Net Zero, Energy and Transport Committee.

The Committee draws this instrument to the attention of the Parliament on the general reporting ground, on the basis that the Explanatory Note is too brief.

The Committee welcomed the Scottish Government's undertaking to amend the Explanatory Note.

10. As part of its consideration of the instrument, the DPLR Committee exchanged the following [correspondence with the Scottish Government](#).

On Thursday 22nd February 2024, the Committee asked the Scottish Government:

SSIDM¹ provides that an explanatory note should help an SSI to be understood by someone unfamiliar with that area of law, and that it should be proportionate to the length and complexity of the instrument.

This instrument makes 9 pages of amendments to the principal regulations, The Packaging Waste (Data Reporting) (Scotland) Regulations 2023 and is accompanied by an explanatory note of only one substantive paragraph. Further, the policy note states that the instrument is required to amend the regulations in response to the decision to postpone the implementation of Scotland's Deposit Return Scheme to October 2025, but there is no reference in the explanatory note to those provisions which make amendments on account of that decision.

1. Please explain why you consider that this explanatory note helps the user to understand the SSI, and why you consider it to be proportionate to the length and complexity of the instrument?
2. Please also explain whether you think it is sufficiently clear from the explanatory note which amendments to the Principal Regulations relate to the decision to postpone the implementation of Scotland's Deposit Return Scheme to October 2025.

Please confirm whether any corrective action is proposed, and if so, what action and when.

On Tuesday 27th February 2024, the Scottish Government responded:

1. The explanatory note attempts to set out the operative effect of the instrument in as clear and simple a fashion as possible for the user without going into the technical details underlying each provision or provisions. With consideration to the general guidance that an explanatory note not be more than a page, the Scottish Government had been of the view that the length of this explanatory note was proportionate to instrument's length and complexity. We consider, upon reflection, that it would be helpful to provide further detail to the reader in relation to the provisions and the technical detail underlying those provisions in order to aid in the understanding of the instrument.
2. The policy decision to postpone the implementation of Scotland's Deposit Return Scheme to October 2025 underlies the reasoning for the amendment to definition of "exempt packaging" in regulation 11. We consider, upon reflection, that the explanatory note could indicate the amended definition

¹Scottish Statutory Instrument Drafting Manual (SSIDM)

related to the delay of the scheme and provide further explanation as to the amendment itself.

By way of corrective action, the Scottish Government proposes to amend the explanatory note by way of correction slip at the earliest opportunity.

Accompanying documents: SSI 2024/42

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Packaging Waste (Data Reporting) (Scotland) Regulations 2023 (S.S.I. 2023/7) (the “principal Regulations”) to revise the definitions of “household packaging” and “exempt packaging”, and to clarify the division of responsibilities between brand owners, packer/fillers, importers and first UK owners, and distributors. These Regulations additionally amend the principal Regulations to require SEPA to publish a list of large producers and produce guidance in relation to the definition of “household packaging”, to require scheme operators to monitor the accuracy of the information provided by producers to a scheme, and make other amendments. Regulation 18 is a transitional provision to address data reporting obligations for the period from 1st January 2024 to 30th June 2024.

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

POLICY NOTE

THE PACKAGING WASTE (DATA REPORTING) (SCOTLAND) AMENDMENT REGULATIONS 2024

SSI 2024/42

The above instrument was made in exercise of the powers conferred by sections 18 and 58, and paragraphs 14, 15, 17, 22, and 33 of schedule 2 of the Regulatory Reform (Scotland) Act 2014 (the “2014 Act”) and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Summary Box

To make a number of amendments to the Packaging Waste (Data Reporting) (Scotland) Regulations 2023 (“the data regulations”). The data regulations require producers of products to collect and/or report data on the amount and type of packaging that they place on the market as part of Extended Producer Responsibility (EPR) for packaging.

Policy Objectives

The data regulations require producers of products to collect and/or report data about the packaging they place on the market in the course of 2024 to support introduction of Extended Producer Responsibility (EPR) for packaging, which the Scottish Government is bringing forward alongside the other UK governments (see the policy note for the data regulations, which were laid on 19 January 2023 and came into force on 28 February 2023, for more details).

The data regulations were amended by the Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023, which came into force on 30 June 2023 and addressed minor amendments identified through industry scrutiny following the laying of the data regulations.

This SSI is required to amend the regulations in response to the decision to postpone the implementation of Scotland's Deposit Return Scheme to October 2025. It also makes a small number of other amendments to clarify and tighten the data regulations. We have developed this working alongside the other UK governments, who will be making comparable legislation in the other UK parliaments.

EU Alignment Consideration

The Producer Responsibility (Packaging Waste) Regulations 2007 ("the 2007 regulations") partially implemented European Parliament and Council Directive 94/62/EC on packaging and packaging waste and are also in line with other EU environmental and waste legislation, including Directive 2008/98/EC on waste. Directive (EU) 2018/852 made a number of amendments to Directive 94/62/EC, including an amendment obligating all Member States to set EPR schemes for packaging by 2024.

The 2007 regulations, and the data reporting regulations which this SSI amends, will be replaced by a UK SI which the Scottish Government and other UK governments are collaborating on, and intend to bring forward in autumn 2024. This SI will provide the legislative framework for the new EPR scheme on packaging which will continue our alignment with current EU law in relation to packaging and packaging waste.

There is currently a proposal for an EU Regulation on packaging and packaging waste which will replace Directive 94/62/EC; however, this has not yet been adopted and so the Scottish Government cannot comment on alignment with that Regulation at this point.

Consultation

Detailed consultation has been carried out as we have developed our policy on packaging EPR: see the policy note for the data regulations for details. The amendments set out in this SSI are being taken forward by all four UK governments in response to stakeholder feedback.

Impact Assessments

A partial Business and Regulatory Impact Assessment (BRIA) was completed for the data regulations: see those regulations for details.

Financial Effects

The direct impact of this instrument on businesses is limited. Businesses producing drinks were already required to report these under the 2007 regulations; this amendment ensures they will have to do so under the data regulations in line with the move to a new producer responsibility system. The other amendments will provide greater clarity for businesses.

For the financial impacts of the data regulations and of packaging EPR more generally, see the policy note and partial BRIA associated with those regulations.

Scottish Government
Directorate for Environment and Forestry

February 2024

Annexe - Revised Explanatory Note

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Packaging Waste (Data Reporting) (Scotland) Regulations 2023 (the “principal Regulations”).

Regulation 4 amends regulation 2 of the principal Regulations to insert new definitions of “drink container”, “first UK owner”, “relevant authority” and “waste disposal authority” and to make minor changes to existing definitions. Regulation 5 amends the definition of “drink” in regulation 5 of the principal Regulations which is consequential on the amendment made to regulation 12 of the principal Regulations. Regulation 6 amends regulation 6 of the principal Regulations, including the insertion of a new paragraph (7) dealing with drinks containers with component parts for the purposes of the meaning of packaging and packaging categories.

Regulation 7 substitutes new regulations 7 and 7A into the principal Regulations. The new regulation 7 provides a new definition of “household packaging” and of a “public institution”. Regulation 7A requires SEPA to provide guidance for the purposes of regulation 7.

Regulation 8 amends regulation 8 of the principal Regulations to clarify that a producer under regulation 8 must be established in the United Kingdom. It introduces the concept of a “first UK owner” and makes amendments in respect of brand owners and filled packaging.

Regulation 9 amends regulation 10 of the principal Regulations to substitute wording in relation to the supply of packaging by a first UK owner and an importer. Regulation 10 amends regulation 11 of the principal Regulations to make minor changes to the wording for reasons of clarity.

Regulation 11 amends regulation 12 of the principal Regulations to insert new provisions in relation to packaging which is part of deposit return schemes. It removes the definitions of “scheme packaging” in regulation 12(4) of the principal Regulations and “Scottish scheme article” in regulation 12(5) of the principal Regulations which ensured that scheme packaging under the Deposit and Return Scheme for Scotland Regulations 2020 (S.S.I. 2020/154) would have been “exempt packaging” for the purpose of the principal Regulations as these definitions are no longer required.

Regulation 12 amends regulation 16 of the principal Regulations to make minor changes to data collection obligations. Regulation 13 amends regulation 17 of the principal Regulations to make first UK owners subject to reporting obligations; it also inserts a new regulation 17A to provide that large producers who meet certain criteria may submit a report in relation to packaging that has been subject to recycling obligations under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871).

Regulation 14 amends regulation 20 of the principal Regulations to require scheme operators to monitor the accuracy of information provided to a scheme by producers who are members of that scheme.

Regulation 15 inserts a new regulation 22A into the principal Regulations to require SEPA to publish a list of large producers.

Regulation 16 amends Parts 3, 4 and 5 of schedule 1 of the principal Regulations to make minor changes to collection and information requirements imposed on producers of packaging. Regulation 17 amends paragraph 2(2)(b) of schedule 2 of the principal Regulations to correct cross-references to other paragraphs in that schedule.

Regulation 18 is a transitional provision to address circumstances where, as a result of amendments made by these Regulations to the principal Regulations, a producer may have insufficient data to address data reporting obligations for the period from 1st January 2024 to 30th June 2024. A partial Business Regulatory Impact Assessment of the effect that the principal Regulations will have on the costs of business has been placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government, Producer Responsibility Division, Area 3H South, Victoria Quay, Edinburgh EH6 6QQ, and online at legislation.gov.uk.

Title of instrument: The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Codes of Conduct for Members of certain Scottish Public Authorities) Amendment Order 2024 (2024/39)

Type of Instrument:	Negative
Laid Date:	8 February 2024
Circulated to Members:	9 February 2024
Meeting Date:	12 March 2024
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:	27 March 2024
Purpose:	This instrument inserts the National Smart Ticketing Advisory Board ("the Board") into the list of Scottish public authorities that are subject to the provision of Part 4 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

1. An electronic copy of the Order is available at:
<https://www.legislation.gov.uk/ssi/2024/39/contents/made> (legislation.gov.uk).

Copies of the explanatory and policy notes for SSI 2024/39 are provided below.

Delegated Powers and Law Reform (DPLR) Committee consideration

At its meeting on 27 February 2024, 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 – DPLR Committee, 27 February 2024 \(parliament.scot\)](#)
- [Read the Report – 14th Report, 2024 \(Session 6\) \(parliament.scot\)](#)

Accompanying documents: SSI 2024/39**EXPLANATORY NOTE***(This note is not part of the Order)*

This Order inserts the National Smart Ticketing Advisory Board into the list of public authorities in the schedule of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Codes of Conduct for Members of certain Scottish Public Authorities) Order 2006. The effect of this amendment is to require the Scottish Ministers to issue a code or codes of conduct in respect of the conduct of members of the National Smart Ticketing Advisory Board.

POLICY NOTE

THE ETHICAL STANDARDS IN PUBLIC LIFE ETC. (SCOTLAND) ACT 2000
(CODES OF CONDUCT FOR MEMBERS OF CERTAIN SCOTTISH PUBLIC
AUTHORITIES) AMENDMENT ORDER 2024

SSI 2024/39

The above instrument was made in exercise of the powers conferred by section 32(1) of the Ethical Standards in Public Life etc. (Scotland) Act 2000. The instrument is subject to negative procedure.

Summary Box

This instrument inserts the National Smart Ticketing Advisory Board (“the Board”) into the list of Scottish public authorities that are subject to the provision of Part 4 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

Policy Objectives

The Board was established by the National Smart Ticketing Advisory Board (Scotland) Regulations 2023, in fulfilment of a requirement imposed on the Scottish Ministers by section 43 of the Transport (Scotland) Act 2019 to establish an advisory committee to be known as the National Smart Ticketing Advisory Board. The function of the Board is to advise the Scottish Ministers in relation to their functions insofar as they relate to smart ticketing arrangements, and the national technological standard for smart ticketing. The Board also has the function of issuing advice and recommendations to the Scottish Ministers in relation to the strategic development of smart ticketing in Scotland. All members are appointed for a period by the Scottish Ministers. The Board is a new public body and it is intended that it should be subject to the same scrutiny and regulation as existing, similar bodies.

This instrument will subject the Board to Part 4 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

In terms of Part 4, the Scottish Ministers will be required to issue a code of conduct for members of the Board. Members will be under a duty to have regard to the

relevant code. The Scottish Ministers must have regard to the members' model code when issuing a code of conduct.

Unlike those public bodies which are included in Schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, the members of the Board will not be subject to investigation by the Commissioner for Ethical Standards in Public Life in Scotland or to sanction by the Standards Commission for Scotland. This is keeping in line with the principle of proportionality. This instrument, and the code of conduct which will be issued in consequence of this instrument, will provide for: increased openness and transparency (through a registration of interests); a clear understanding of what is expected of members in their conduct in the performance of their duties; and a cohesive set of standards for those subject to the code of conduct.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The Board has been made aware of the Scottish Ministers' proposal to make it subject to the Ethical Standards in Public Life etc. (Scotland) Act 2000, and members are aware of their duty to have regard to any relevant code issued by the Scottish Ministers in accordance with the Act.

Impact Assessments

No impact assessments have been completed for this Order. This Order adds the Board to the list of Scottish public authorities that are subject to Part 4 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, and it does not have any impacts with regards to finance, equality, child rights, island communities, inequalities, or the environment.

Financial Effects

The Minister for Transport confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Bus, Accessibility and Active Travel Directorate

February 2024