

SCOTTISH STATUTORY INSTRUMENTS

2023 No. 7

The Packaging Waste (Data Reporting) (Scotland) Regulations 2023

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Packaging Waste (Data Reporting) (Scotland) Regulations 2023 and come into force on 28 February 2023.

Commencement Information

11 [Reg. 1](#) in force at 28.2.2023, see [reg. 1](#)

Interpretation

2.—(1) In these Regulations—

“the Waste Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste⁽¹⁾ read in accordance with regulation 4,

“the 2007 Regulations” means the Producer Responsibility Obligations (Packaging Waste) Regulations 2007⁽²⁾,

“approved person” means the person for the time being approved under regulation 24 for the purpose of verifying information provided by a producer—

(a) to SEPA under regulation 17(1),

(b) to the operator of a scheme under regulation 19(2)(a),

[^{F1}“brand” means a brand name, trade mark or other distinctive mark,]

[^{F2}“brand owner” means, subject to regulation 8(2A), a person whose brand appears on an item of filled packaging,]

[^{F3}“branded packaging” means packaging on which the brand owner’s brand appears,]

“bring site” has the meaning given in section 45C(7) of the Environmental Protection Act 1990⁽³⁾,

(1) OJ L 312, 22.11.2008, p. 3, as amended by [Commission Regulation \(EU\) No 1357/2014](#) (OJ L 365, 19.12.2014, p. 89), [Commission Directive \(EU\) 2015/1127](#) (OJ L 184, 11.7.2015, p. 13), [Council Regulation \(EU\) 2017/997](#) (OJ L 150, 14.6.2017, p. 1) and [Directive \(EU\) 2018/851](#) (OJ L 150, 14.6.2018, p. 109). [Commission Directive \(EU\) 2015/1127](#) was corrected by [Corrigendum](#) (OJ L 297, 13.11.2015, p. 9) and [Commission Regulation \(EU\) No 1357/2014](#) was corrected by [Corrigendum](#) (OJ L 42, 18.2.2017, p. 43).

(2) [S.I. 2007/871](#); relevant amendments are [S.I. 2008/1941](#), [S.I. 2010/2849](#), [S.S.I. 2011/226](#), [S.S.I. 2012/360](#), [S.I. 2016/241](#), [S.I. 2016/696](#), [S.I. 2019/188](#), [S.I. 2020/904](#), [S.S.I. 2020/387](#) and [S.S.I. 2022/330](#).

(3) 1990 c. 43.

“consumer” means an individual acting for purposes which are outside that individual’s trade, business, craft or profession,

“data collection obligations” means the obligations in regulation 16,

“data collection period” has the meaning given in regulation 16(7),

“data reporting obligations” means the obligations in regulation 17,

“disposal” has the meaning given in Article 3(19) of the Waste Directive,

“distributor” means a person who manufactures or imports unfilled packaging and supplies that packaging to another person,

“drink” has the meaning given in regulation 5,

“exempt packaging” means packaging which is exempt in relation to a producer in accordance with regulation 12(2),

“fibre-based composite material” means packaging material which is made of paperboard or paper fibres, laminated with plastic, and which may also have layers of other materials, to form a single unit that cannot be separated by hand,

“household packaging” has the meaning given in regulation 7,

“importer” means—

- (a) the person responsible for importing filled packaging into the United Kingdom, whether or not that packaging ends up being supplied, or
- (b) where the person referred to in paragraph (a) of this definition is not present in the United Kingdom, the first person in the United Kingdom who takes ownership of the packaging,

“large producer” means a producer who satisfies the criteria in—

- (a) regulation 11(1),
- (b) regulation 11(3),

“licence agreement” has the meaning given in regulation 9(3),

“licensee” has the meaning given in regulation 9(3),

“licensor” has the meaning given in regulation 9(1),

“online marketplace operator” means the operator of a website, or any other means by which information is made available over the internet, which facilitates the sale of goods through the website or other means by persons other than the operator, whether or not the operator also sells goods through the online marketplace,

“operator” in relation to an online marketplace, means the person who controls access to, and the contents of, the online marketplace provided that the person is involved in—

- (a) determining any terms and conditions applicable to the sale of goods,
- (b) processing, or facilitating the processing, of payment for the goods, and
- (c) the ordering or delivery, or facilitating the ordering or delivery, of the goods,

“packaging” has the meaning given in regulation 6,

“packaging category” means one of the categories referred to in regulation 6(4),

“packaging materials” means materials used in the manufacture of packaging and includes raw materials and processed materials prior to their conversion into packaging,

“packaging waste” means any packaging or packaging material which is waste, but does not include packaging which is discarded and becomes waste outside the United Kingdom,

“packer/filler” means a person who puts goods into packaging,

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...

“primary packaging” has the meaning given in regulation 6(1)(a),

“producer” has the meaning given in regulation 8,

“pub operating agreement” has the meaning given in regulation 9(3),

“pub operating business” has the meaning given in regulation 9(2),

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“recycling” has the meaning given in Article 3(17) of the Waste Directive,

“registered scheme” means a scheme which is registered in accordance with the 2007 Regulations,

“relevant year” means a calendar year in respect of which a person is a producer,

“reuse” has the meaning given to it in Article 3(13) of the Waste Directive,

“reusable packaging” means packaging which has been designed to be used multiple times by being refilled or reused for the same purpose for which it was conceived,

“scheme” means a scheme which is (or if it were registered in accordance with the 2007 Regulations would be) a scheme whose members for the time being are, by virtue of Part 3 of these Regulations and their membership of that scheme, exempt from the requirement to comply with their data reporting obligations,

“secondary packaging” has the meaning given in regulation 6(1)(b),

“seller” means a person who supplies packaging to a user or a consumer of that packaging, whether or not the packaging has been filled at the time of the supply,

“SEPA” means the Scottish Environment Protection Agency,

“service provider” means a person who supplies reusable packaging to a user of that packaging where the supply is made by hiring out or lending the packaging,

“shipment packaging” has the meaning given in regulation 6(1)(d),

“small producer” means a producer who satisfies the criteria in —

- (a) regulation 11(2), but not those in regulation 11(1),
- (b) regulation 11(4), but not those in regulation 11(3),

“tenant” has the meaning given in regulation 9(3),

“tertiary packaging” has the meaning given in regulation 6(1)(c),

“trade mark” has the same meaning as in section 1(1) of the Trade Marks Act 1994(4),

“turnover” means, in relation to a person, their turnover as defined in section 539 of the Companies Act 2006(5) but as if the references to a company were references to that person,

“UK regulator” means —

- (a) in relation to England, the Environment Agency,
- (b) in the relation to Wales, the Natural Resources Body for Wales,
- (c) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs for Northern Ireland

“waste” has the meaning given in Article 3(1) of the Waste Directive, read with Articles 5 and 6 of that Directive,

(4) 1994 c. 26; section 1(1) was amended by S.I. 2018/825.

(5) 2006 c. 4; to which there are amendments not relevant to these Regulations.

“waste collection authority” has the meaning given in section 30(3)(c) of the Environmental Protection Act 1990(6),

(2) For the purposes of the definition of “online marketplace operator” an online marketplace facilitates the sale of goods if it allows a person to—

- (a) offer goods for sale, and
- (b) enter into a contract for the sale of those goods.

(3) In these Regulations—

- (a) any document which is to be provided or given to any person may be provided or given to that person by electronic means if the document is capable of being reproduced by that person in legible form,
- (b) any requirement to make, keep or retain a record or to maintain a register may be satisfied in electronic form if the text is capable of being produced by the person subject to the requirement in a legible documentary form,
- (c) any requirement for a signature may be satisfied by an electronic signature incorporated into the document, and for these purposes, “electronic signature” means data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign.

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| <p>F1 Words in reg. 2(1) inserted (30.6.2023) by The Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023 (S.S.I. 2023/160), regs. 1, 3(a)</p> <p>F2 Words in reg. 2(1) substituted (30.6.2023) by The Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023 (S.S.I. 2023/160), regs. 1, 3(b)</p> <p>F3 Words in reg. 2(1) inserted (30.6.2023) by The Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023 (S.S.I. 2023/160), regs. 1, 3(c)</p> <p>F4 Word in reg. 2(1) omitted (30.6.2023) by virtue of The Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023 (S.S.I. 2023/160), regs. 1, 3(d)</p> <p>F5 Word in reg. 2(1) omitted (30.6.2023) by virtue of The Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023 (S.S.I. 2023/160), regs. 1, 3(e)</p> |
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Commencement Information

- I2** [Reg. 2](#) in force at 28.2.2023, see [reg. 1](#)

Establishment in Scotland and the United Kingdom

3.—(1) In these Regulations, a person is established in—

- (a) Scotland if—
 - (i) that person is habitually resident in Scotland,
 - (ii) the registered office of that person, or if they do not have a registered office, their head office, or principal place of business, is in Scotland,
 - (iii) paragraph (2) applies.
- (b) the United Kingdom if—
 - (i) that person is habitually resident in the United Kingdom,
 - (ii) the registered office of that person, or if they do not have a registered office, their head office, or principal place of business, is in the United Kingdom.

(6) [1990 c. 43](#); section 30(3)(c) was amended by the Local Government etc. (Scotland) Act 1994, c. 39, schedule 13, paragraph 167(3).

- (2) This paragraph applies if—
- (a) the registered office of that person, or if they have no registered office, their head office or principal place of business of that person is outside the United Kingdom,
 - (b) the person has a branch or postal address in Scotland, and
 - (c) the person has not given notice to SEPA under paragraph (3).

(3) Where a person to whom paragraph (2)(a) applies has a branch or postal address in Scotland and in one or more other nations in the United Kingdom, that person may elect to be treated as established in one of those other nations instead of Scotland by giving notice to SEPA.

(4) A notice given under paragraph (3) must specify the nation in which the person giving the notice wishes to be treated as established for the purposes of these Regulations.

(5) When SEPA receives notice of an election under paragraph (3), SEPA must notify the UK regulator in the nation specified in the notice.

Commencement Information

I3 [Reg. 3](#) in force at 28.2.2023, see [reg. 1](#)

Modifications of the Waste Directive

4.—(1) For the purposes of these Regulations, the Waste Directive is to be read in accordance with this regulation.

(2) A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the authority, agency or local authority which, immediately before IP completion day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of Scotland.

- (3) Article 5 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted,
 - (b) after paragraph 1 there were inserted—
 - “**1A.** Any decision as to whether a substance or object is a by-product must be made—
 - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects, and
 - (b) having regard to any guidance published by the Scottish Ministers or SEPA for the purposes of this Article.”,
 - (c) paragraphs 2 and 3 were omitted.

- (4) Article 6 is to be read as if—
- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted,
 - (b) after paragraph 1 there were inserted—
 - “**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste, and

- (b) having regard to any guidance published by the Scottish Ministers or SEPA for the purposes of this Article.”,
- (c) in paragraph 2—
 - (i) the first subparagraph were omitted,
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”,
 - (iii) the third and fourth subparagraphs were omitted,
- (d) paragraph 3 were omitted,
- (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), SEPA,”,
 - (bb) the second sentence were omitted,
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “SEPA,”
 - (bb) “by competent authorities” were omitted.

Commencement Information

I4 [Reg. 4](#) in force at 28.2.2023, see [reg. 1](#)

Drink

- 5.—(1) For the purposes of these Regulations, except in regulation 12(4), drink means—
- (a) water suitable for human consumption,
 - (b) a beverage suitable for human consumption,
 - (c) a sports drink suitable for human consumption,
 - (d) a liquid which, when prepared in a specified manner, constitutes a beverage suitable for human consumption (including, for example, a fruit cordial or a fruit squash) or a sports drink.
- (2) For the avoidance of doubt, paragraph (1)(d) does not apply to a liquid which is used only as a flavouring or sweetener in another liquid which itself constitutes a beverage suitable for human consumption.
- (3) A liquid is prepared in a specified manner if it is—
- (a) diluted,
 - (b) combined with crushed ice, or processed so as to create crushed ice,
 - (c) combined with carbon dioxide,
 - (d) prepared by way of a process that involves any combination of the processes mentioned in sub-paragraphs (a) to (c).
- (4) In this regulation “sports drink” means a drink which is advertised or marketed as a product to enhance physical performance, accelerate recovery after exercise or build bulk, or other similar drink.

Commencement Information

15 Reg. 5 in force at 28.2.2023, see reg. 1

Packaging and packaging categories

6.—(1) “Packaging”, for the purposes of these Regulations, means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer, including non-returnable items used for the same purposes, but only where the products are—

- (a) primary packaging, which is packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase,
- (b) secondary packaging, which is packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is supplied as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale, and which can be removed from the product without affecting the product’s characteristics,
- (c) tertiary packaging, which is packaging conceived so as to facilitate handling and transport of a number of sales units or secondary packaging in order to prevent damage from physical handling and transport damage, and for the purposes of these Regulations, tertiary packaging does not include road, rail, ship and air containers,
- (d) shipment packaging, which is packaging, added in addition to primary packaging, on items which are sold online or by mail order which are either delivered direct to the purchaser or collected by the purchaser from a shop or other collection point after they have been purchased.

(2) The following items are also to be treated as packaging on the basis of the criteria set out below—

- (a) items that fulfil the definition in paragraph (1), without prejudice to other functions which the item may perform, unless the item is an integral part of a product and it is necessary to contain, support or preserve that product throughout its lifetime and all elements are intended to be used, consumed or disposed of together,
- (b) items designed and intended to be filled at the point of sale and disposable items supplied, filled, or designed and intended to be filled, at the point of sale, provided they fulfil a packaging function described in paragraph (1),
- (c) packaging components and ancillary elements integrated into packaging are considered to be part of the packaging into which they are integrated, and ancillary elements hung directly on, or attached to, a product which performs a packaging function are considered to be packaging unless they are an integral part of the product and all elements are intended to be used, consumed or disposed of together.

(3) Schedule 5 of the Packaging (Essential Requirements) Regulations 2015⁽⁷⁾ contains illustrative examples of the [F6application of the criteria] set out in paragraph (2).

(4) For the purpose of these Regulations, packaging and packaging waste is to be treated, subject to paragraphs (5) and (6), as falling into one of the following packaging categories, depending on the material from which the packaging is made—

- (a) aluminium,
- (b) fibre-based composite materials,

(7) S.I. 2015/1640.

- (c) glass,
- (d) paper or board,
- (e) plastic,
- (f) steel,
- (g) wood,
- (h) other materials.

(5) Packaging materials composed of a combination of the materials referred to in paragraph (4) (“paragraph (4) materials”) are to be treated as made of the material which is predominant by weight, unless paragraph (6) applies.

(6) Where packaging materials are composed of a combination of different paragraph (4) materials in equal proportions, each material of which the packaging materials are comprised is to be treated separately for the purpose of these Regulations.

F6 Words in [reg. 6\(3\)](#) substituted (30.6.2023) by [The Packaging Waste \(Data Reporting\) \(Scotland\) Amendment Regulations 2023 \(S.S.I. 2023/160\)](#), regs. 1, 4

Commencement Information

I6 [Reg. 6](#) in force at 28.2.2023, see [reg. 1](#)

Household packaging

7.—(1) In these Regulations, “household packaging” is primary or shipment packaging which is not supplied to a business which is the final user of that packaging.

(2) All primary packaging and shipment packaging is to be treated as household packaging unless the producer supplying that packaging can provide evidence that it has been supplied to a business which does not supply to any other person—

- (a) the packaging,
- (b) the product which the packaging contains in its packaged form.

(3) For the purposes of paragraph (2), a product is to be treated as being supplied in its packaged form unless all packaging is removed from the product before it is supplied to the final user of that product.

(4) SEPA may issue guidance on the evidence which may be used to demonstrate that primary packaging or shipment packaging is supplied to a business which is a final user of the packaging.

Commencement Information

I7 [Reg. 7](#) in force at 28.2.2023, see [reg. 1](#)

Producers

8.—(1) A person is a producer in relation to the packaging specified in this regulation if they perform in any nation of the United Kingdom the functions of one or more of the following classes in relation to packaging, either on their own behalf, or through an agent acting on their behalf, and in the course of business—

- (a) a brand owner,
- (b) a packer/filler,

- (c) an importer,
- (d) a distributor,
- (e) an online marketplace operator,
- (f) a service provider,
- (g) a seller.

[^{F7}(2) Unless paragraph (3A) applies, and subject to paragraph (2B), a brand owner is a producer in relation to—

- (a) filled packaging on which that person's brand appears, and
- (b) any part of the packaging contained in, or forming part of, branded packaging, whether or not that part of the packaging is branded.]

[^{F8}(2A) Subject to paragraph (2B), where more than one brand appears on filled packaging, the owner of the brand who makes the first supply of the filled packaging is to be treated as the brand owner and producer in relation to that packaging.

(2B) Where different individual branded products, unbranded products or both are grouped together to be sold as a single sales unit—

- (a) the brand owner for an individual branded product within the sales unit is a producer in relation to the branded packaging on that individual product,
 - (b) the packer/filler is a producer in relation to any unbranded packaging within the sales unit which is filled by the packer/filler.]
- (3) A packer/filler is a producer in relation to any filled packaging—
- (a) which is filled by the packer/filler, and
 - (b) for which there is no brand owner.

[^{F9}(3A) A packer/filler is also a producer—

- (a) where—
 - (i) the packer/filler has filled packaging,
 - (ii) the packer/filler has put a brand on the packaging to assist with distribution, not at the request of the brand owner, and
 - (iii) there is no other brand on the packaging,
- (b) for any packaging which the packer/filler adds to branded packaging otherwise than at the request of the brand owner.]

(4) An importer is a producer in relation to any filled packaging imported into the United Kingdom by the importer which is—

- (a) secondary packaging or tertiary packing,
- (b) any other packaging—
 - (i) for which there is no brand owner,
 - (ii) where the brand owner is not responsible for the import of the packaging,
 - [^{F10}(iii) where the brand owner is responsible for the import of the packaging, but is not a large producer under these Regulations,
 - (iv) where the brand owner is not established in the United Kingdom.]

[^{F11}(4A) An importer is also a producer in relation to any packaging imported by the importer into, and discarded by them in, the United Kingdom.]

(5) A distributor is a producer in relation to any unfilled packaging which is—

- (a) manufactured or imported by the distributor, and
- (b) supplied to a person who is not a large producer subject to obligations under regulation 15(3),

except where a brand owner is treated as the producer of that packaging once it is filled.

- (6) An online marketplace operator is a producer in relation to—
 - (a) any packaging on items which are sold on their online marketplace by a person, acting in the course of business, who is not established in the United Kingdom,
 - (b) any unfilled packaging supplied on their online marketplace—
 - (i) by a person, acting in the course of business, who is not established in the United Kingdom,
 - (ii) to a business which is not a large producer subject to obligations under regulation 15(3),

provided that the packaging is received in the United Kingdom.

(7) A service provider is a producer in relation to any reusable packaging, the first time that packaging is supplied, but not otherwise.

(8) A seller of filled packaging to the consumer of that packaging is a producer in relation to that packaging, and for these purposes, the consumer is the person who last uses the packaging in question before discarding it.

(9) Where a person performs the functions of more than one of the classes in sub-paragraph (1), whether or not in relation to the same packaging, or the same transaction or process, that person belongs to each class.

(10) For the purposes of this regulation, a person acts “in the course of business” if they act in the ordinary course of conduct of a trade, business, craft or profession.

- F7** Reg. 8(2) substituted (30.6.2023) by [The Packaging Waste \(Data Reporting\) \(Scotland\) Amendment Regulations 2023 \(S.S.I. 2023/160\)](#), regs. 1, **5(a)**
- F8** Reg. 8(2A)(2B) inserted (30.6.2023) by [The Packaging Waste \(Data Reporting\) \(Scotland\) Amendment Regulations 2023 \(S.S.I. 2023/160\)](#), regs. 1, **5(b)**
- F9** Reg. 8(3A) inserted (30.6.2023) by [The Packaging Waste \(Data Reporting\) \(Scotland\) Amendment Regulations 2023 \(S.S.I. 2023/160\)](#), regs. 1, **5(c)**
- F10** Reg. 8(4)(b)(iii)(iv) substituted for reg. 8(4)(b)(iii) (30.6.2023) by [The Packaging Waste \(Data Reporting\) \(Scotland\) Amendment Regulations 2023 \(S.S.I. 2023/160\)](#), regs. 1, **5(d)**
- F11** Reg. 8(4A) inserted (30.6.2023) by [The Packaging Waste \(Data Reporting\) \(Scotland\) Amendment Regulations 2023 \(S.S.I. 2023/160\)](#), regs. 1, **5(e)**

Commencement Information

- I8** Reg. 8 in force at 28.2.2023, see [reg. 1](#)

Licensors and pub operating businesses

9.—(1) For the purposes of these Regulations, a person (“L”) is a licensor where L is a party to a licence agreement in or under which L grants a licence to use a trade mark to another.

- (2) For the purposes of these Regulations, a person (“P”) is a pub operating business where—
 - (a) P is a party to a pub operating agreement in or under which P grants a lease or tenancy of premises in Scotland to another, and

- (b) those premises are used by the tenant in order to carry on the activity of the sale of alcohol for consumption on the premises or both on and off the premises and in respect of which a premises licence is in force.

(3) In this regulation—

“alcohol” has the same meaning as in section 2 of the Licensing (Scotland) Act 2005⁽⁸⁾,

“licence agreement” means an agreement or number of related agreements in or under which the licensor grants the licensee a licence that allows the licensee to use a trade mark as the name under which the licensee sells from premises goods that are associated with that trade mark, and includes an obligation (whether expressed as a positive or as a negative obligation) on the licensee that relates to the presentation of those premises,

“licensee” means the party to a licence agreement to whom a licence to use a trade mark is granted,

“premises” means any sales outlet on which packaging is handled and includes any land, vehicle, vessel, mobile plant and stall,

“premises licence” has the same meaning as in section 17 of the Licensing (Scotland) Act 2005,

“pub operating agreement” means an agreement or number of related agreements in or under which one person (the pub operating business) grants a tenancy or lease of premises to another person (the tenant) that includes an obligation (whether expressed as a positive or as a negative obligation) on the tenant to purchase some or all of the alcohol to be sold or supplied on or from the premises, from the pub operating business or from a person or persons nominated or authorised by or on behalf of that business,

“sale of alcohol” includes the circumstances described in section 3 of the Licensing (Scotland) Act 2005,

“tenant” means the party to a pub operating agreement to whom the lease or tenancy of premises is granted.

Commencement Information

I9 Reg. 9 in force at 28.2.2023, see **reg. 1**

Supply

10.—(1) In these Regulations, a person “supplies” packaging or packaging materials if that person does any of the following, either themselves or through an agent acting on their behalf, in relation to packaging or packaging materials owned by that person—

- (a) selling, hiring out or lending,
- (b) providing in exchange for any consideration other than money,
- (c) providing in or in connection with the performance of any statutory function,
- (d) giving as a prize or otherwise making a gift.

[^{F12}(1A) In these Regulations, an importer is to be treated as “supplying” packaging or packaging materials which the importer imports into and discards in the United Kingdom.]

(2) Where the packaging or packaging materials are owned by a person who does not have a registered office or principal place of business in the United Kingdom, a supply takes place when a person who is established in the United Kingdom [^{F13}does any of the actions] in paragraph (1)(a) to (d) on behalf of the owner in relation to that packaging or packaging materials.

(8) 2005 asp 16; section 2 was amended by the Air Weapons and Licensing (Scotland) Act 2015 (asp 10), section 54.

(3) Where the packaging is branded packaging, ^{F14}... the brand owner is to be treated for the purposes of these Regulations as supplying that packaging even if the brand owner does not do any of the actions listed in paragraph (1) in relation to the packaging.

(4) Paragraph (3) does not apply in relation to—

(a) any packaging which is imported into the United Kingdom by—

(i) an importer, unless the importer is acting as an agent for the brand owner,

(ii) an online [^{F15}marketplace] operator,

(b) any reusable packaging supplied by a service provider.

F12 Reg. 10(1A) inserted (30.6.2023) by The Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023 (S.S.I. 2023/160), regs. 1, **6(a)**

F13 Words in reg. 10(2) substituted (30.6.2023) by The Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023 (S.S.I. 2023/160), regs. 1, **6(b)**

F14 Words in reg. 10(3) omitted (30.6.2023) by virtue of The Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023 (S.S.I. 2023/160), regs. 1, **6(c)**

F15 Word in reg. 10(4)(a)(ii) substituted (30.6.2023) by The Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023 (S.S.I. 2023/160), regs. 1, **6(d)**

Commencement Information

I10 Reg. 10 in force at 28.2.2023, see [reg. 1](#)

Threshold criteria for large and small producers

11.—(1) A person satisfies the criteria in this paragraph if—

(a) that person's turnover in the last financial year—

(i) in respect of which audited accounts are available,

(ii) where audited accounts are not required for that person, in respect of which accounts are available,

before the relevant date was more than £2,000,000, and

(b) in the calculation year the person handled in aggregate more than 50 tonnes of packaging or packaging materials.

(2) A person satisfies the criteria in this paragraph if—

(a) that person's turnover in the last financial year—

(i) in respect of which audited accounts are available,

(ii) where audited accounts are not required for that person, in respect of which accounts are available,

before the relevant date was more than £1,000,000, and

(b) in the calculation year the person handled in aggregate more than 25 tonnes of packaging or packaging materials.

(3) Each company in a group of companies which is a producer satisfies the criteria in this paragraph if—

(a) the aggregate of the turnovers of the companies in the group which are producers was more than £2,000,000 in the last financial year in respect of which audited accounts are available before the relevant date, and

- (b) in the calculation year the aggregate of the amounts of packaging or packaging materials handled by each such company is more than 50 tonnes of packaging or packaging materials.
- (4) Each company in a group of companies which is a producer satisfies the criteria in this paragraph if—
- (a) the aggregate of the turnovers in the last financial year in respect of which audited accounts are available before the relevant date of the companies in the group which are producers was more than £1,000,000, and
- (b) in the calculation year the aggregate of the amounts of packaging or packaging materials handled by each such company is more than 25 tonnes of packaging or packaging materials.
- (5) Where the person (“MB”) is a corporate body which has been formed by the merger of two or more corporate bodies—
- (a) MB’s turnover in the year of the merger is to be calculated for the purposes of this regulation as the sum of the turnovers in the last financial year of each company which has been merged, and
- (b) MB is to be treated as having handled in the year of the merger the sum of the amount of packaging or packaging materials handled by each of those companies in the calculation year.
- (6) Where the assets and liabilities of a corporate body (“CB”) have been divided between two or more corporate bodies (“new bodies”), and no audited accounts are yet available for the new bodies—
- (a) each new body is to be treated as having a turnover equal to—

$$\frac{A}{XA} \times XT$$

where—

- (i) “A” is the value of the assets of the new body following the division,
- (ii) “XA” is the value of the assets of CB before the division,
- (iii) “XT” is the turnover of CB in the year preceding the division year, and
- (b) each new body is to be treated as having handled an amount of packaging or packaging materials equal to—

$$\frac{A}{XA} \times XP$$

where “A” and “XA” have the meaning given in sub-paragraph (a), and “XP” means the amount of packaging or packaging materials handled by CB in the year preceding the division year.

- (7) For the purposes of this regulation—
- (a) audited accounts are to be treated as being available, where the person is a company, where annual accounts have been delivered to the registrar under section 441 of the Companies Act 2006⁽⁹⁾,
- (b) “the division year” is the calendar year in which the assets and liabilities of CB were divided between two or more companies,

(9) 2006 c. 46; section 441 was amended by S.I. 2008/393 and S.I. 2012/2301.

- (c) the “relevant date” is 7 April in an obligation year,
 - (d) a “group of companies” means a holding company and one or more subsidiaries, and for this purpose, “subsidiary” and “holding company” have the same meanings as they have in section 1159 of the Companies Act 2006.
- (8) For the purposes of this regulation, the amount of packaging or packaging materials handled by a person (“P”) is the amount supplied in any nation in the United Kingdom in respect of which P is a producer under regulation 8, calculated in tonnes to the nearest tonne—
- (a) including packaging or packaging materials which were imported into the United Kingdom by P or an agent acting on P’s behalf (and for these purposes, packaging includes reusable packaging on the first occasion that packaging is used),
 - (b) excluding exempt packaging.
- (9) If P performs two or more functions as producer under regulation 8 in relation to the packaging—
- (a) subject to sub-paragraph (b), all packaging in relation to which P performs a function is to be taken into account for the purposes of paragraphs (1)(b), (2)(b), (3)(b) [^{F16}, (4)(b), (5)(b) and (6)(b)],
 - (b) if the functions P performs are performed in relation to the same packaging, that packaging is only to be taken into account once for the purposes of paragraphs (1)(b), (2)(b), (3)(b) [^{F17}, (4)(b), (5)(b) and (6)(b)].
- (10) In this regulation—
- “calculation year” means the calendar year preceding an obligation year,
 - “obligation year” means a calendar year in respect of which it is being considered whether a person is subject to data collection requirements or data collecting and reporting requirements under these Regulations.

F16 Word in [reg. 11\(9\)\(a\)](#) substituted (30.6.2023) by [The Packaging Waste \(Data Reporting\) \(Scotland\) Amendment Regulations 2023 \(S.S.I. 2023/160\)](#), regs. 1, 7

F17 Word in [reg. 11\(9\)\(b\)](#) substituted (30.6.2023) by [The Packaging Waste \(Data Reporting\) \(Scotland\) Amendment Regulations 2023 \(S.S.I. 2023/160\)](#), regs. 1, 7

Commencement Information

I11 [Reg. 11](#) in force at 28.2.2023, see [reg. 1](#)

Exempt packaging

12.—(1) A producer is not subject to data collection obligations or data reporting obligations in relation to any packaging or packaging materials which are exempt in relation to that producer.

(2) Packaging and packaging materials are exempt in relation to a producer (“P”) for the purposes of these Regulations, where the packaging or packaging materials are—

- (a) reused packaging which is primary packaging,
- (b) production residues from the production of packaging or packaging materials or from any other production process occurring before, during or after P handled the packaging or packaging materials,
- (c) any packaging or packaging materials exported from the United Kingdom by P, including packaging or packaging materials which were exported through an agent acting on P’s behalf or which to P’s reasonable knowledge were otherwise exported from the United

Kingdom (with the exception of any packaging or packaging materials exported from the United Kingdom to a marine installation),

- (d) reused secondary or tertiary packaging, with the exception of any such reused packaging imported into the United Kingdom.
- (e) packaging which is scheme packaging.

(3) In paragraph (2)(c),

“marine installation” means any artificial island, installation or structure at sea, other than a vessel.

(4) In paragraph (2)(e), “scheme packaging” means the packaging for a Scottish scheme article that is conceived or designed to come in direct contact with a drink (within the meaning of regulation 2 of the Deposit and Return Scheme for Scotland Regulations 2020)⁽¹⁰⁾ and does not include packaging conceived or designed to group together multiple components in a multipack.

(5) For the purposes of paragraph (4), a “Scottish scheme article” means a “scheme article” within the definition given in regulation 3(2) of the Deposit and Return Scheme for Scotland Regulations 2020, read as if, in sub-paragraph (b) of that definition, for “16 August 2023” there were substituted “1 January 2023”.

Commencement Information

I12 Reg. 12 in force at 28.2.2023, see [reg. 1](#)

Exclusion of charities from data collection and data reporting obligations

13. These Regulations do not apply to a charity, and for these purposes, “charity” includes any body entered in the Scottish Charity Register kept under section 3 of the Charities and Trustee Investment (Scotland) Act 2005⁽¹¹⁾.

Commencement Information

I13 Reg. 13 in force at 28.2.2023, see [reg. 1](#)

Incapacity etc.

14.—(1) Where in a relevant year a producer dies, becomes bankrupt, or incapacitated (“the first producer”), that person ceases to be subject to any obligations under these Regulations for that year.

(2) Any person who carries on the activities of the first producer following that event is to be treated as a producer and to have the obligations of the producer for that year and subsequent years.

(3) Any person carrying on the activities of the first producer referred to in paragraph (1) must within 28 days of commencing to do so inform SEPA in writing of that fact and the date of the death, or the date of bankruptcy as the case may be, or the nature of the incapacity and the date on which it began.

(4) A producer which is a body corporate becomes bankrupt or incapacitated when it—

- (a) goes into liquidation,

⁽¹⁰⁾ S.S.I. 2020/154, amended by S.S.I. 2022/76.

⁽¹¹⁾ 2005 asp 10.

- (b) enters administration under Part 2 of the Insolvency Act 1986⁽¹²⁾ or Part 3 of the Insolvency (Northern Ireland) Order 1989⁽¹³⁾,
 - (c) has an administrative receiver (as defined in section 251 of the Insolvency Act 1986) appointed in respect of it.
- (5) A producer who is an individual becomes bankrupt or incapacitated when the individual –
- (a) becomes subject to a bankruptcy restrictions order under section 155 of the Bankruptcy (Scotland) Act 2016⁽¹⁴⁾,
 - (b) becomes incapacitated (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000⁽¹⁵⁾),
 - (c) starts to serve a sentence of imprisonment or is remanded in custody in the United Kingdom,
 - (d) is detained in hospital under the Mental Health (Care and Treatment) (Scotland) Act 2003⁽¹⁶⁾.
- (6) A producer who is an individual or a partnership becomes bankrupt or incapacitated when the estate of that person –
- (a) is sequestrated under the Bankruptcy (Scotland) Act 2016,
 - (b) is made subject to a protected trust deed (see section 163 of the Bankruptcy (Scotland) Act 2016).
- (7) A body corporate, individual or partnership which, or who, is subject to the laws of a jurisdiction other than Scotland becomes bankrupt or incapacitated on the occurrence of circumstances analogous to those described in paragraphs (4) to (6).

Commencement Information

I14 Reg. 14 in force at 28.2.2023, see [reg. 1](#)

⁽¹²⁾ 1986 c. 45.

⁽¹³⁾ 1989 No. 2405 (N.I. 19), to which there are amendments not relevant to these Regulations.

⁽¹⁴⁾ 2016 asp 21.

⁽¹⁵⁾ 2000 asp 4.

⁽¹⁶⁾ 2003 asp 3.

Changes to legislation:

There are currently no known outstanding effects for the The Packaging Waste (Data Reporting) (Scotland) Regulations 2023, PART 1.