

EXPLANATORY MEMORANDUM TO
The Packaging Waste (Data Reporting) (No.2) (Amendment) Regulations
(Northern Ireland) 2024

SR 2024 No. 80

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture Environment and Rural Affairs to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 4(1) and (3) and paragraphs 11 and 20 of Schedule 1 to, the Environment (Northern Ireland) order 2002 (“the 2002 order”) and now vested in it and is subject to the negative resolution procedure.

2. Purpose

- 2.1. These Regulations amend the Packaging Waste (Data Reporting) (No.2) (Northern Ireland) Regulations 2023 (“the Data Reporting Regulations”). The Data Reporting Regulations require producers of packaging to collect and report data on the amount and type of packaging that they place on the market. This data is required to calculate the fees that producers will be required to pay to cover the cost of managing this packaging as part of the Extended Producer Responsibility for packaging (pEPR) scheme from 2025, which will be implemented by separate legislation.(see 2.3)
- 2.2. The amendments included in these Regulations are required to ensure that packaging material will be reported that would otherwise not have had a producer obligation attached to it until the implementation of a Deposit Return Scheme (DRS) in Scotland. The amendments will also ensure that packaging producers are reporting all the packaging they place on the market, enhance the clarity of some obligations, and improve other provisions in response to feedback from stakeholders, including amending the definition of household packaging.
- 2.3. Subject to Parliamentary approval, the Data Reporting Regulations will be replaced by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations (“the EPR Regulations”) in the future.

3. Background

- 3.1. The Extended Producer Responsibility (EPR) for packaging is planned to be introduced into the UK in October 2024. EPR will require producers to take responsibility for 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 their packaging.
- 3.2. Producers will be required to pay an EPR fee to district councils, via a scheme administrator (SA), based on the amount and type of packaging

they have placed on the market. The Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations, which will contain provisions for the introduction of EPR, are intended to be laid in 2024. These regulations will revoke, The Packaging Waste (Data Reporting) (No.2) Regulations (Northern Ireland) 2024.

- 3.3. These amendments will capture data on packaging that would have been obligated 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 go unobligated under pEPR, whilst also not being obligated under a Scottish DRS.
- 3.4. These amendments will require the Department of Agriculture, Environment and Rural Affairs to publish a list of large producers that is accessible by the public. This list will assist producers in determining whether they are required to report certain packaging.
- 3.5. Under the Data Reporting Regulations, the brand owner of empty packaging picks up the obligation when that packaging is filled, even where the branding relates only to the packaging and not the goods within the packaging. These amendments will move this obligation onto the person who packs or fills the packaging.
- 3.6. These Regulations will place an obligation on the first owner of a packaged goods in the UK, when packaged goods are manufactured or assembled in the UK by a third party, on behalf of a foreign owner.
- 3.7. These Regulations will obligate packaging where a manufacturer or importer of empty packaging (a distributor) supplies unfilled packaging to a large producer, who then supplies that packaging to a small or non-obligated producer. Currently no one is required to report this packaging and these amendments will place the obligation on the distributor.
- 3.8. The Data Reporting Regulations require sellers to report packaging that they supply to consumers only, missing the packaging that they sell to businesses. These amendments will require sellers to report packaging supplied to businesses.
- 3.9. The household packaging definition is amended by these Regulations. A list of public bodies will be included in the definition, this will exclude packaging supplied to them from pEPR fees. The new definition will also allow producers to apply an additional test to establish if their packaging can be counted as non-household packaging, and therefore be excluded from pEPR fees. Without this amendment packaging designed solely for business-use, which is supplied through an intermediary, would be classed as household packaging, and would incur pEPR fees.
- 3.10. These amendments will obligate the importer for imported, branded packaging unless the brand owner has requested the importation of the packaging, will clarify the definition of importer, and allow the correct obligations to be placed on importers who discard empty packaging they have imported.
- 3.11. These Regulations will allow producers to exempt packaging from their recycling obligations in the first year of these Regulations if they can

evidence that the packaging has been reported under the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007.

4. Consultation

- 4.1. An initial consultation on the introduction of the Extended Producer Responsibility (EPR) for Packaging in the UK ran for 12 weeks from 18th February to 13th May 2019¹. This was a joint consultation by the UK Government, the Welsh Government, the Scottish Government and DAERA.
- 4.2. 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 responses² to this consultation was published in July 2019 and outlined our plans to proceed with the introduction of EPR for packaging.
- 4.3. The second consultation on EPR for packaging ran for 10 weeks from 24th March to 4th June 2021³. This consultation sought views on specific policy proposals for the introduction of EPR for packaging. This was part of a joint consultation by the UK Government, the Welsh Government, the Scottish Government and DAERA.
- 4.4. The consultation received 1,241 responses from a wide range of stakeholders. The summary of responses and the Government response⁴ 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 6-month period.

5. Equality Impact

- 5.1. In accordance with the Department's obligations under Section 75 of the Northern Ireland Act 1998, the equality implications of the proposed Regulations have been assessed. No adverse equality impacts have been identified under the Equality and Human Rights screening procedures. The Department considers the Regulations will not result in any equality differentials amongst Section 75 groups.

6. Regulatory Impact

- 6.1. An impact assessment (IA) for the introduction of EPR for packaging was published alongside the Government Response to the 2021 consultation.
- 6.2. The impact of these regulations on business is due to the additional data collection and reporting requirements and familiarisation with the new requirements. The amendments included in this rule are minimal and will not introduce any significant additional burden on businesses.

¹ [Consultation on reforming the UK packaging producer responsibility system \(daera-ni.gov.uk\)](https://daera-ni.gov.uk/consultation-on-reforming-the-uk-packaging-producer-responsibility-system)

² [Consultation on reforming the Packaging Producer Responsibility System - Summary of consultation responses and next steps \(daera-ni.gov.uk\)](https://daera-ni.gov.uk/consultation-on-reforming-the-packaging-producer-responsibility-system-summary-of-consultation-responses-and-next-steps)

³ [Extended Producer Responsibility for Packaging - Defra - Citizen Space](https://www.gov.uk/extended-producer-responsibility-for-packaging-defra-citizen-space)

⁴ [EPR Consultation Government response template \(daera-ni.gov.uk\)](https://daera-ni.gov.uk/epr-consultation-government-response-template)

- 6.3. There is no, or no significant, impact on charities or voluntary bodies.
- 6.4. These regulations will have no significant impact on the public sector. EPR for packaging, which will be introduced in 2024 by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations, will result in a net gain for the public sector, as producers make payments to district councils for the cost of managing household packaging.

7. Financial Implications

- 7.1. The Statutory Rule is not expected to have any significant financial implications.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Regulations do not have any human rights implications, nor are they incompatible with EU law. The Regulations are therefore deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. There are no EU implications as the Packaging Waste (Data Reporting) (No. 2) (Amendment) Regulations (Northern Ireland) 2024 are merely for the collection and reporting of data. These regulations will be revoked and replaced by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations due to be made in 2024.

10. Parity or Replicatory Measure

- 10.1. Producer responsibility is devolved, and the other regions of the United Kingdom are making their own regulations. This statutory rule brings Northern Ireland legislation into line with the legislative changes in England, Scotland, and Wales.

11. Additional Information

- 11.1. These regulations are expected to be in place, until revoked and replaced by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations in 2024.

12. Contact

- 12.1. Laurence McCann at the Department of Agriculture, Environment and Rural Affairs, (Tel: 028 90569725 or email: Laurence.McCann@daerani.gov.uk) can be contacted with any queries around the regulation.