

This Statutory Instrument corrects errors made in S.I. 2023/219 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2024 No. 359

ENVIRONMENTAL PROTECTION

The Packaging Waste (Data Reporting) (England) (Amendment) Regulations 2024

Made - - - - - 12th March 2024
Coming into force - - - - - 1st April 2024

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2 of, and paragraphs 11, 17 and 20 of Schedule 1 to, the Pollution Prevention and Control Act 1999(a) (“the 1999 Act”).

In accordance with section 2(4) of the 1999 Act, the Secretary of State has consulted—

- (a) the Environment Agency;
- (b) such bodies or persons appearing to the Secretary of State to be representative of the interests of local government, industry, agriculture and small businesses as the Secretary of State considers appropriate, and
- (c) such other bodies or persons as the Secretary of State considers appropriate.

In accordance with section 2(8) of the 1999 Act, a draft of these Regulations has been laid before, and approved by resolution of, each House of Parliament.

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Packaging Waste (Data Reporting) (England) (Amendment) Regulations 2024.

(2) These Regulations come into force on 1st April 2024.

(3) These Regulations extend to England and Wales, and apply to England only.

Transitional provision

2.—(1) Subject to paragraph (2), a producer who is a large producer for the purposes of the Packaging Waste (Data Reporting) (England) Regulations 2023 (“the principal Regulations”) must ensure that the report submitted for the period from 1st January 2024 to 30th June 2024 complies

(a) 1999 c. 24. Section 2 was amended by section 62 of the Water Act 2014 (c. 21), and S.I. 2013/755. Schedule 1 was amended by section 70 of the Environment Act 2021 (c. 30), and S.I. 2018/942, 2019/458, and 2020/603.

with the producer's data reporting obligations under the principal Regulations as amended by these Regulations.

(2) Where a large producer does not have sufficient data to report on the period from 1st January 2024 to the date on which these Regulations came into force (the "commencement date"), the large producer—

- (a) is not required to submit a report for the period from 1st January 2024 to the commencement date, but
- (b) must submit a report for the period from the commencement date to 30th June 2024 which complies with its data reporting obligations under the principal Regulations as amended by these Regulations.

Amendment of the Packaging Waste (Data Reporting) (England) Regulations 2023

3. The Packaging Waste (Data Reporting) (England) Regulations 2023(a) are amended in accordance with these Regulations.

Interpretation

4.—(1) Regulation 2(2) is amended as follows.

(2) Omit the definition of "disposal".

(3) After the definition of "drink", insert—

““drink container” means a bottle or can which—

- (a) contains or used to contain drink;
- (b) is made wholly or mainly from polyethylene terephthalate (PET) plastic, glass, steel or aluminium;
- (c) has a capacity of at least 50 millilitres but no more than three litres of liquid;
- (d) is designed or intended to be sealed in an airtight and watertight state at the point of supply to a consumer in the United Kingdom; and
- (e) is not conceived, designed or marketed to be refilled or reused in any other way by any person;”.

(4) After the definition of "fibre-based composite material", insert—

““first UK owner” in relation to packaging which is not imported, means the first person established in the United Kingdom who takes ownership of that packaging in the United Kingdom;

“group of companies” has the meaning given in regulation 11(7)(d);”.

(5) In the definition of "importer"—

- (a) in sub-paragraph (a), omit "filled";
- (b) in sub-paragraph (b)—
 - (i) for "present", substitute "established";
 - (ii) after "first person", insert "established".

Drink

5. In regulation 5(1), omit "except in regulation 12(4)".

(a) S.I. 2023/219, amended by S.I. 2023/721.

Packaging and packaging categories

6. In regulation 6—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (c)—
 - (aa) after “tertiary packaging,” the first time it occurs, insert “which is not shipment packaging and”;
 - (bb) for “secondary packagings”, substitute “secondary packaging”;
 - (ii) in sub-paragraph (d), omit “added”;
- (b) after paragraph (6), insert—

“(7) Where a drink container consists of a number of components made of different materials—

 - (a) the drink container is to be treated as being made of the same material as the component which is predominant by weight (“the predominant component”), unless the predominant component is made of glass;
 - (b) where the predominant component is made of glass, each component of the drink container is to be treated separately for the purpose of these Regulations.”.

Household packaging

7. For regulation 7, substitute—

“Household packaging

7.—(1) In these Regulations, “household packaging” is primary or shipment packaging which is not packaging described in paragraph (2).

(2) The following primary or shipment packaging is not to be treated as household packaging—

- (a) packaging supplied to a business or to a public institution which in either case is the final user of that packaging;
- (b) packaging for a product, where—
 - (i) the product is designed only for use by a business or a public institution, and
 - (ii) the packaging for that product is not reasonably likely to be disposed of in a household bin or a public bin;
- (c) packaging imported into the United Kingdom by an importer and discarded in the United Kingdom by that importer.

(3) Packaging is not to be treated as falling within paragraph (2)(a) or (b) unless the producer supplying that packaging can provide evidence that—

- (a) in the case of paragraph (2)(a), the packaging is supplied to a business or a public institution which does not supply to any other person—
 - (i) the packaging, or
 - (ii) the product which the packaging contains in its packaged form;
- (b) in the case of paragraph (2)(b)—
 - (i) the product in question satisfies the requirement in paragraph (i), and
 - (ii) the packaging for that product satisfies the requirement in paragraph (ii).

- (4) For the purposes of paragraph (2)(b), “packaging for a product” means—
- (a) packaging supplied with a product satisfying the conditions in paragraph (2)(b) (“a business product”), and
 - (b) unfilled packaging made to be used with a business product, provided that the supplier of that packaging has evidence that the packaging will be used with a business product.

(5) For the purposes of paragraph (3)(a)(ii), 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.

(6) For the purposes of this regulation and regulation 7A, the following institutions are to be treated as public institutions—

- (a) a school, university or other educational establishment,
- (b) a hospital or the practice of a general medical practitioner or dentist,
- (c) a nursing home or other residential home,
- (d) a government department,
- (e) a relevant authority,
- (f) a court,
- (g) a person appointed by or under any enactment to discharge public functions,
- (h) a charity or other not-for-profit body,
- (i) a penal institution.

(7) In this regulation—

- (a) “dentist” means a person registered in the dentists register kept under section 14(1) of the Dentists Act 1984(a);
- (b) “general medical practitioner” means a person registered in the General Practitioner Register kept by the General Medical Council under section 34C of the Medical Act 1983(b);
- (c) “not-for-profit body” means a body which, by virtue of its constitution or any enactment—
 - (i) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes; and
 - (ii) is prohibited from directly or indirectly distributing among its members any part of its assets otherwise than for charitable or public purposes.

(8) In this regulation and in regulation 7A—

- (a) “household bin” means a receptacle designed to collect waste material from a household which is not a business or a public institution;
- (b) “public bin” means a receptacle—
 - (i) maintained by a relevant authority in a street or public place, and
 - (ii) designed to collect waste material.

(a) 1984 c. 24. relevant amending instruments are S.I. 2005/2011, 2007/3101 and 2019/593.

(b) 1983 c. 54. Section 34C was inserted by S.I. 2010/234.

Environment Agency guidance

7A.—(1) The Environment Agency must provide guidance for the purposes of regulation 7—

- (a) on the evidence which may be used by a producer to demonstrate that primary packaging or shipment packaging is supplied to a business or a public institution which in either case is the final user of the packaging;
- (b) on when—
 - (i) a product is to be treated as being designed only for use by a business or a public institution, and
 - (ii) packaging for that product is to be treated as not reasonably likely to be disposed of in a household bin or a public bin.

(2) The Environment Agency may take the following factors into account in the preparation of guidance under paragraph (1)(b)—

- (a) the size of the packaging;
- (b) the weight of the packaging;
- (c) whether the supply of a product is subject to restrictions imposed by or under primary or secondary legislation;
- (d) how available a product or its packaging is to consumers;
- (e) whether a product is likely to be used by a business in a household;
- (f) any other factor the Environment Agency considers relevant.”.

Producers

8. In regulation 8—

(a) for paragraph (1), substitute—

“(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 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 or first UK owner,
- (d) a distributor,
- (e) an online marketplace operator,
- (f) a service provider, or
- (g) a seller.

(1A) No person may be treated as performing one of the functions listed in paragraph (1) for the purposes of this regulation unless they are established in the United Kingdom.”;

(b) in paragraph (2), in the opening words—

- (i) for “(3A)”, substitute “(3)(b)(iii), (3A) or (4)”;
- (ii) for “paragraph (2C)”, substitute “paragraphs (2A) and (8A)”;

(c) in paragraph (2A)—

- (i) for “Subject”, substitute “Unless paragraph (3A) or (4) applies, and subject”;

- (ii) for “paragraph (2C)”, substitute “paragraph (8A)”;
- (iii) at the end, insert “and any packaging contained in, or forming part of, that packaging (whether or not that part of the packaging is branded)”;
- (d) omit paragraph (2C);
- (e) in paragraph (3), for sub-paragraph (b), substitute—
 - “(b) for which—
 - (i) there is no brand owner established in the United Kingdom,
 - (ii) the brand owner is not a large producer, or
 - (iii) the only brand on the packaging relates to the packaging and not to the product contained in that packaging.”;
- (f) in paragraph (3A)—
 - (i) at the end of the opening words, insert “in relation to any packaging”;
 - (ii) in sub-paragraph (a)(i), after “filled”, insert “the”;
 - (iii) in sub-paragraph (b), omit “for any packaging”;
- (g) for paragraphs (4) and (4A), substitute—

“(4) An importer (“IM”) is a producer in relation to any packaging imported into the United Kingdom to which paragraph (4A) applies—

 - (a) for which IM is the importer, and
 - (b) which is—
 - (i) filled packaging, or
 - (ii) packaging discarded by IM in the United Kingdom.

(4A) This paragraph applies to packaging—

 - (a) for which there is no brand owner established in the United Kingdom,
 - (b) where the brand owner is not responsible for the import of the packaging, or
 - (c) where the brand owner is responsible for the import of the packaging, but is not a large producer.”;
- (h) after paragraph (4A), insert—

“(4B) A first UK owner is a producer in relation to any packaging where—

 - (a) the packaging is packed or filled in the United Kingdom on behalf of a person who is not established in the United Kingdom,
 - (b) at the time it is packed or filled, no person established in the United Kingdom is or has been the owner of the packaging, and
 - (c) the filled packaging is supplied to the first UK owner.”;
- (i) in paragraph (5)—
 - (i) for sub-paragraph (b), substitute—

“(b) supplied to any person, other than a large producer who fills or packs the packaging before supplying it to any other person.”;
 - (ii) for the closing words, substitute—

“except where a large producer who is a brand owner or a packer/filler is the producer in relation to that packaging under paragraph (2), (2A), (3) or (3A) once the packaging is filled.”;

- (j) in paragraph (8) for “consumer” both times it occurs, substitute “final user”;
- (k) after paragraph (8), insert—

“(8A) Where different individual products are grouped together to be sold as a single sales unit, this regulation must be applied separately to determine the producer of—

- (a) the packaging for each individual product within the sales unit, and
- (b) the packaging for the sales unit as a whole, including any packaging within the sales unit which is not part of the packaging of any individual product within that sales unit.”.

Supply

9. In regulation 10—

- (a) in paragraph (1A)—
 - (i) after “In these Regulations” insert—

“—
 - (a) a first UK owner is to be treated as “supplying” any packaging which—
 - (i) has not been supplied, within the meaning of these Regulations, before coming into the ownership of the first UK owner, and
 - (ii) is discarded by the first UK owner in the United Kingdom;”;
 - (ii) renumber the words from “an importer” to the end as sub-paragraph (b);
- (b) omit paragraph (2);
- (c) in paragraph (3), for “regulation 8(2)”, substitute “regulation 8(2B)”.

Threshold criteria for large and small producers

10. In regulation 11(10), in the definition of “obligation year”, for “data collection requirements or data collecting and reporting requirements”, substitute “data collection obligations alone, or both data collection obligations and data reporting obligations.”.

Exempt packaging

11. In regulation 12—

- (a) in paragraph (2), for sub-paragraph (e), substitute—

“(e) packaging which is a deposit item for the purposes of a relevant deposit scheme, and for these purposes, “deposit item” includes packaging which is a scheme article under the Deposit and Return Scheme for Scotland Regulations 2020(a), or returnable packaging as provided for in regulations made under section 84 of the Climate Change (Scotland) Act 2009(b).”;
- (b) for paragraph (4), substitute—

“(4) In paragraph (2)(e), a relevant deposit scheme is a deposit scheme which—

 - (a) has been established in—
 - (i) the Deposit and Return Scheme for Scotland Regulations 2020, or

(a) S.S.I. 2020/154, amended by S.S.I. 2022/76, 2023/201 and 2023/334. “Scheme article” has the meaning given in regulation 3(2) of S.S.I. 2020/154.

(b) 2009 asp 12.

- (ii) regulations made under Schedule 8 to the Environment Act 2021^(a), or under section 84 of the Climate Change (Scotland) Act 2009, and
- (b) is in operation in any part of the United Kingdom.”;
- (c) omit paragraph (5).

Data collection obligations

- 12.** In regulation 16—
- (a) in paragraph (3)(b)—
 - (i) in sub-paragraph (i), for “23(1) and (3)”, substitute “23(1) to (4)”;
 - (ii) in sub-paragraph (ii), after “paragraph 23(5)”, insert “and (6)”;
 - (b) in paragraph (6), for “23(3)”, substitute “23(2) and (3)”.

Data reporting obligations and recycling data

- 13.**—(1) In regulation 17(1)—
- (a) in sub-paragraph (b)—
 - (i) after “importer”, insert “or first UK owner.”;
 - (ii) for “Part 3 and paragraph”, substitute “paragraphs 11 to 13, 16, 17 and”;
 - (b) in sub-paragraph (c), for “10”, substitute “11”.
- (2) After regulation 17, insert—

“Recycling data

17A.—(1) Where information in a report submitted by a producer (“LP”) under regulation 17 in relation to a period of six months ending on or after 30th June 2024 (“regulation 17 report”) concerns packaging which has already been the subject of recycling obligations under regulation 4(4)(b) of, and Schedule 2 to, the 2007 Regulations (“relevant packaging”), LP may choose to submit a report under paragraph (2) (a “regulation 17A report”).

(2) A regulation 17A report must state the proportion of relevant packaging which LP has been required to recycle under the 2007 Regulations (“P”), calculated as follows—

$$P = AP \times SP$$

where—

- (a) “AP” is the amount in kilograms of relevant packaging which has previously been taken into account to calculate the recycling obligations of a producer under the 2007 Regulations;
 - (b) “SP” is the sum of the percentages of that packaging which any class of producer has been required to recycle under the 2007 Regulations, as set out in paragraph 4 of Schedule 2 to those Regulations.
- (3) Where LP chooses to submit a regulation 17A report, LP must submit the report—
- (a) in such form and manner as the Environment Agency may direct;
 - (b) on the date on which LP submits a regulation 17 report or such other date as the Environment Agency may direct.

(a) 2021 c. 30.

(4) Where a regulation 17A report is not submitted on the same date as the regulation 17 report, the regulation 17A report must also identify which data collection period it relates to.”.

Schemes: general provisions

14. In regulation 20, after paragraph (2), insert—

“(3) OS must monitor the accuracy of information provided by a producer to the scheme for the purposes of this regulation to ensure that the information complies with the requirements in regulation 19(2)(b)(iii).”.

List of producers

15. After regulation 22 (publication of items recycled by relevant authorities), insert—

“Publication of list of large producers

22A.—(1) The Environment Agency must publish on a website a list of all large producers (“the list”) who have reported information to the Environment Agency under regulation 17.

(2) An entry for a producer on the list must contain—

- (a) the name of the producer,
- (b) the business name of the producer if different from that referred to in sub-paragraph (a),
- (c) the name and address of the registered office of the producer, or if it is not a company, its head office or principal place of business.

(3) The list must be arranged and indexed so that it is capable of being searched by a member of the public.

(4) The Environment Agency must enter information on the list as soon as practicable after the information has been received by the Environment Agency.”.

Monitoring

16. In regulation 23(3)(a), for “reporting obligation”, substitute “reporting obligations”.

Collection and reporting information

17. In Schedule 1—

(a) in the heading to Part 3—

- (i) after “brand owners”, insert “, packers/fillers”;
- (ii) after “importers”, insert “or first UK owners”;

(b) in paragraph 10—

(i) in sub-paragraph (1)—

- (aa) in paragraph (a), omit the words from “, or for” to the end;
- (bb) after paragraph (a), insert—

“(aa) packers/fillers”;

(cc) in paragraph (b), after “importers”, insert “or first UK owners”;

(ii) after sub-paragraph (1), insert—

- “(1A) A producer required by regulation 17 to report information in this Part—
- (a) must only report that information in relation to packaging for which that person is a producer of a class listed in sub-paragraph (1);
 - (b) must not report any information in relation to any packaging in relation to which the producer only performs the function of a seller or an online marketplace operator.”;
 - (iii) in sub-paragraph (2), for “regulation 16(1)”, substitute “regulation 16(2)”;
 - (iv) in sub-paragraph (3)(b)(i), for “that information”, substitute “the information set out in paragraphs 11 to 13, 16, 17 and 23”;
- (c) in paragraph 13—
- (i) omit sub-paragraph (2);
 - (ii) for sub-paragraph (3), substitute—
- “(3) Sub-paragraph (1) does not apply in relation to packaging which an importer or first UK owner is treated as supplying within the meaning of regulation 10(1A).”;
- (d) in paragraph 17(2)(a), for “, paper and straws”, substitute “and paper”;
- (e) in paragraph 18, after “and 20”, insert “for all packaging in respect of which they are a producer under regulation 8(6)”;
- (f) in paragraphs 19 and 20, for “the producer has supplied”, substitute “supplied through an online marketplace operated by the producer”;
- (g) in paragraph 21—
- (i) at the end of the opening words, insert “for all packaging in respect of which they are a producer, or, for the information in paragraph 22, a producer of a class specified in that paragraph”;
 - (ii) at the end of sub-paragraph (a), insert “where applicable”;
 - (iii) for sub-paragraphs (b) and (c), substitute—
- “(b) for large producers, the information in paragraphs 22 and 23, where applicable.”;
- (h) in paragraph 22—
- (i) in sub-paragraph (1)(b), after “the producer” the first time it is referred to, insert “imports and then”;
 - (ii) after sub-paragraph (1)(b), insert—
- “(c) all packaging the producer takes ownership of and then discards, when the producer is a first UK owner.”;
- (iii) in sub-paragraph (2)(b), after “tertiary packaging”, insert “and first UK owners who are treated as supplying secondary or tertiary packaging”.

Licensors and pub operating businesses

- 18.** In paragraph 2(2)(b) of Schedule 2, for “3 and 4”, substitute “5 and 7”.

12th March 2024

Robbie Moore
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Packaging Waste (Data Reporting) (England) Regulations 2023 (S.I. 2023/219) (the “principal Regulations”) to revise the definition of “household packaging”, and clarify the division of responsibilities between brand owners, packers/fillers, importers and first UK owners, and distributors, to require the Environment Agency to publish a list of large producers, and to make other amendments.

A full impact assessment of the effect that the principal Regulations will have on the costs of business, the voluntary sector and the public sector is available from www.legislation.gov.uk, and from the Department for Environment, Food and Rural Affairs, Seacole Building, 2 Marsham Street, London, SW1P 4DF.

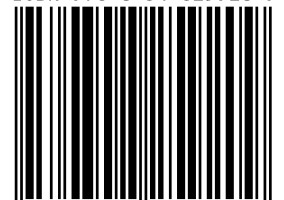
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