

2024 No. 42

ENVIRONMENTAL PROTECTION

**The Packaging Waste (Data Reporting) (Scotland) Amendment
Regulations 2024**

<i>Made</i>	- - - -	<i>7th February 2024</i>
<i>Laid before the Scottish Parliament</i>		<i>9th February 2024</i>
<i>Coming into force</i>	- -	<i>1st April 2024</i>

The Scottish Ministers make the following Regulations 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”) (a) and all other powers enabling them to do so.

In accordance with section 19(1) of the 2014 Act, the Scottish Ministers have consulted the Scottish Environment Protection Agency and such other persons as they thought fit, including such persons appearing to them to be representative of the interests of local government, industry, agriculture, fisheries or small businesses as they considered appropriate.

Citation and commencement

1. These Regulations may be cited as the Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2024 and come into force on 1 April 2024.

Interpretation

2. In these Regulations, “the principal Regulations” means the Packaging Waste (Data Reporting) (Scotland) Regulations 2023(b).

Amendment of the principal Regulations

3. The principal Regulations are amended in accordance with regulations 4 to 17.

Interpretation

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

- (a) omit the definition of “disposal”,
- (b) after the definition of “drink”, insert—
 - ““drink container” means a bottle or can, which—
 - (a) contains or used to contain drink,

(a) 2014 asp 3. Paragraph 22 of schedule 2 was amended by S.S.I. 2019/436.
(b) S.S.I. 2023/7, as amended by S.S.I. 2023/160.

- (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,
 - (e) is not conceived, designed or marketed to be refilled or re-used in any other way by any person,”
- (c) 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,”
- (d) in the definition of “importer”—
- (i) in sub-paragraph (a), omit “filled”,
 - (ii) in sub-paragraph (b)—
 - (aa) for “present”, substitute “established”,
 - (bb) after “first person”, insert “established”,
- (e) after the definition of “registered scheme”, insert—
- ““relevant authority” means—
- (a) a waste collection authority,
 - (b) a waste disposal authority,
 - (c) a district council established under section 1 of the Local Government Act (Northern Ireland) 1972^(a)
 - (d) the Council of the Isles of Scilly”,
- (f) in the definition of “waste collection authority”, for “30(3)(c)”, substitute “30(3)”,
- (g) after the definition of “waste collection authority”, insert—
- ““waste disposal authority” has the meaning given in section 30(2) of the Environmental Protection Act 1990,”.

Drink

5. In regulation (5)(1) (drink), omit “except in regulation 12(4),”.

Packaging and packaging categories

6. In regulation 6 (packaging and packaging categories)—
- (a) in paragraph (1)—
 - (i) in sub-paragraph (c), after “tertiary packaging”, the first time it appears, insert “which is not shipment packaging and”,
 - (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,

(a) 1972 c. 9 (N.I.).

- (b) where the predominant component is made of glass, each component of the drink container is to be treated separately for the purposes of these Regulations.”.

Household packaging

7. For regulation 7 (household packaging), 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 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 the 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,
 - (ii) the product which the packaging contains in its packaged form,
- (b) in the case of paragraph (2)(b)—
 - (i) the product satisfies the requirement in head (i), and
 - (ii) the packaging for the product satisfies the requirement in head (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 such a 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 or tribunal,
- (g) a person established, or 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—

“dentist” means a person registered in the dentists register kept under section 14(1) of the Dentists Act 1984(a),

“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),

“government department” includes—

- (a) any part of the Scottish Administration,
- (b) a Northern Ireland department,
- (c) the Welsh Government,

“not for profit body” means a body which, by virtue of its constitution or any enactment—

- (a) 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
- (b) 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—

“household bin” means a receptacle designed to collect waste from a household which is not a business or a public institution,

“public bin” means a receptacle—

- (a) maintained by a relevant authority in a street or public place, and
- (b) designed to collect waste.

SEPA guidance

7A.—(1) SEPA must provide guidance for the purposes of regulation 7 on the following matters—

- (a) the evidence which may be used by a producer to demonstrate that primary packaging or shipment packaging is supplied to a business or 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) SEPA 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 SEPA considers relevant.”.

(a) 1984 c. 24. Section 14 was substituted by S.I. 2005/2011 and amended by S.I. 2007/3101 and S.I. 2019/593.

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

Producers

8. In regulation 8 (producers)—
- (a) in paragraph (1)(c), after “importer”, insert “or first UK owner”,
 - (b) after paragraph (1), insert—

“(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.”,
 - (c) in paragraph (2)—
 - (i) for “(3A)”, substitute “(3)(b)(iii), (3A) or (4)”,
 - (ii) for “paragraph (2B)”, substitute “paragraphs (2A) and (8A)”,
 - (d) in paragraph (2A)—
 - (i) for “Subject to paragraph (2B)”, substitute “Unless paragraph (3A) or (4) applies, and subject to paragraph (8A)”,
 - (ii) 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).”,
 - (e) omit paragraph (2B),
 - (f) for paragraph (3)(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.”,
 - (g) in paragraph (3A)—
 - (i) at the end of the opening words, insert “in relation to any packaging”,
 - (ii) in sub-paragraph (b), omit “for any packaging”,
 - (h) 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.”,
 - (i) 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.”,
 - (j) 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.”,
- (k) in paragraph (8) for “consumer” both times it occurs, substitute “final user”,
- (l) 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 (supply)—
 - (a) for paragraph (1A), substitute—
 - “(1A) In these Regulations—
 - (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,
 - (b) an importer is to be treated as “supplying” packaging or packaging materials which the importer imports into and discards in the United Kingdom,”
 - (b) omit paragraph (2).

Threshold criteria for large and small producers

10. In regulation 11(10), 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 (exempt packaging)—
 - (a) for paragraph (2)(e), substitute—
 - “(e) where paragraph (4) applies, packaging which is—
 - (i) scheme packaging as defined in regulation 3(2) of the Deposit and Return Scheme for Scotland Regulations 2020(a), or returnable packaging as provided for in any other regulations made under section 84 of the Climate Change (Scotland) Act 2009(b), or
 - (ii) a deposit item for the purposes of regulations made under section 50 of, and schedule 8 of, the Environment Act 2021(c),”
 - (b) for paragraph (4), substitute—

(a) S.S.I. 2020/154 as amended by S.S.I. 2022/76, 2023/201 and 2023/334.
 (b) 2009 asp 12.
 (c) 2021 c. 30.

“(4) This paragraph applies where the packaging referred to in paragraph (2)(e) can be returned in exchange for payment of a sum equal to the amount of a deposit—

- (a) under a deposit and return scheme established by—
 - (i) the Deposit and Return Scheme for Scotland Regulations 2020,
 - (ii) regulations made under section 84 of the Climate Change (Scotland) Act 2009, or
- (b) under a deposit scheme established by regulations made under section 50 of, and Schedule 8 of, the Environment Act 2021.”,
- (c) omit paragraph (5).

Data collection obligations

12. In regulation 16 (data collection obligations)—

- (a) in paragraph (3)(b)(i), for “23(1) and (3)”, substitute “23(1) to (4)”,
- (b) in paragraph (6), for “23(3)”, substitute “23(2) and (3)”.

Data reporting obligations

13.—(1) In regulation 17(1) (data reporting obligations)—

- (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 30 June 2024 concerns packaging which has been the subject of recycling obligations under regulation 4(4)(b) and schedule 2 of the 2007 Regulations (“relevant packaging”), LP may choose to submit a report under this regulation.

(2) A report under this regulation 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—

“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,

“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 of those Regulations.

(3) Where LP chooses to submit a report under this regulation, LP must submit the report—

- (a) in such form and manner as SEPA may direct, and
- (b) on the date on which LP submits a report under regulation 17 or such other date as SEPA may direct.

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

Schemes: general provisions

14. After regulation 20(2) (schemes: general provisions), insert—

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

Publication of list of large producers

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

“Publication of list of large producers

22A.—(1) SEPA must publish on SEPA’s website a list of all large producers (“the list”) who have reported information to SEPA 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) SEPA must enter information on the list as soon as practicable after the information has been received by SEPA.”.

Collection and reporting information

16. In schedule 1 (collection and reporting information)—

(a) in the heading to Part 3, after “importers”, insert “or first UK owners”,

(b) in paragraph 10—

(i) in sub-paragraph (1)—

(aa) in head (a), omit “or for” to the end,

(bb) after head (a) insert—

“(aa) packer/fillers,”,

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

(ii) after sub-paragraph (1), insert—

“(1A) A producer required by regulation 17 to report information under this Part—

(a) must only report that information in relation to packaging for which that producer performs the functions 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 functions of a seller or an online marketplace operator.”,

(iii) in sub-paragraph (2), for “16(1)” substitute “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 occurs, 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

17. In paragraph 2(2)(b) of schedule 2, for “3 and 4”, substitute “5 and 7”.

Transitional provision

18.—(1) Subject to paragraph (2), a producer who is a large producer for the purposes of the principal Regulations must ensure that the report under regulation 17 of the principal Regulations submitted for the period from 1 January 2024 to 30 June 2024 complies 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 1 January 2024 to the date on which these Regulations come into force (the “commencement date”), the large producer—

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

LORNA SLATER

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
7th February 2024

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.

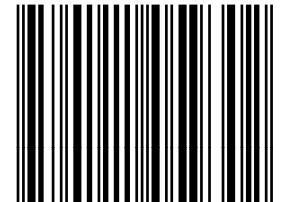
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