

Explanatory Memorandum to the Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023

This Explanatory Memorandum has been prepared by the Climate Change Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Climate Change
14 February 2023

PART 1

Chapter 1 – Description

1. These regulations support the implementation of the Extended Producer Responsibility (EPR) for Packaging scheme. The EPR for packaging scheme will require producers to take responsibility for the environmental impact of 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 packaging.
2. The regulations require producers of packaging to collect and, in some cases, report data on the amount and type of packaging they place on the market. This data is required in order to calculate the fees producers will need to pay under the EPR for packaging scheme. These requirements are intended to be in place for a short period, after which they will be revoked and replaced by the regulations to establish the EPR for packaging scheme, which will include the equivalent data collection and reporting provisions.

Chapter 2 - Matters of special interest to the Legislation, Justice and Constitution Committee

3. None.

Chapter 3 - Legislative background

4. These Regulations are made subject to the affirmative procedure in exercise of the powers conferred by section 2 and paragraphs 11 and 20 of Schedule 1 to the Pollution Prevention and Control Act 1999.
5. The relevant functions of the Secretary of State in the Pollution Prevention and Control Act 1999 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2005 and then to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.
6. Under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, producers with an annual turnover of £2 million who handle more than 50 tonnes of packaging each year are required to report data on the amount of packaging they place on the market.
7. These new regulations will require producers to collect and report data on the amount and type of packaging they supply and will increase the frequency of this reporting from once to twice per year. In addition, it will create a new 'de minimis' threshold, whereby producers with an annual turnover of more than £1 million who handle more than 25 tonnes of packaging per year (but who do not surpass the "upper" threshold), will be required to collect, but not report, this data.

8. This is a collective UK-wide scheme, but the powers conferred by the Pollution Prevention and Control Act 1999 are devolved to each administration and do not allow for the making of UK-wide regulations. Similar instruments will therefore be made in relation to England, Scotland and Northern Ireland by UK Government, the Scottish Government and the Northern Ireland Executive respectively.

Chapter 4 – Purpose and intended effect of the legislation

9. Most of the EPR for packaging scheme is planned to be introduced in the UK in 2024 via Regulations made under the UK Environment Act 2021. EPR will require producers to take responsibility for the impact of the packaging they supply 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 become more resource efficiency by reducing the amount of packaging they supply and to improve the recyclability of their packaging. This in turn supports the transition to a more circular economy whilst reducing emissions and other impacts on the environment.
10. Producers will be required to pay an EPR fee to local authorities, via a Scheme Administrator, based on the amount of packaging supplied. The purpose of these Regulations is to bring in the data requirements in advance of the scheme, which will be established by the main EPR for packaging regulations in due course.
11. These regulations will require producers with an annual turnover of more than £1 million who handle more than 25 tonnes of packaging each year ("small producers"), to collect data on the amount and type of packaging they place on the market. Producers with an annual turnover of more than £2 million who handle more than 50 tonnes of packaging ("large producers"), will also be required to report data on the amount and type of packaging they supply.
12. The provisions in the Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 will require large producers to report on the data they have collected for the period:
 - a. beginning with the date on which these Regulations come into force ("the commencement date") and ending with 30 June 2023, or
 - b. if the producer does have data to report on the period from 1 January to the commencement date, for the period beginning with 1 January and ending with 30 June 2023.
13. Large producers will be required to submit the report which contains this data on or before 1 October 2023. Subsequent reports must be submitted by large producers for the six months ending with 31 December, on or before 1 April in the following year and for the six months ending with 30 June, on or before 1 October in the same year. This data will be required to calculate the EPR fees that producers will pay in the first year of the reforms

and is therefore crucial to the initial implementation of the EPR scheme for packaging which will come into force after the introduction of the main regulations.

Chapter 5 – Consultation

14. A formal public consultation was held from December 2019 to April 2020 on the Circular Economy Strategy – *Beyond Recycling*, which sought views on the contents of the strategy, including the commitment to an EPR for packaging. EPR also being a key commitment within the Programme for Government and a key action in *Net Zero Wales*.
15. A specific consultation on the introduction of EPR for Packaging in the UK was also held for 12 weeks from 18 February to 13 May 2019. The consultation being undertaken jointly by the UK Government, the Welsh Government, the Scottish Government and the Northern Ireland Executive.
16. 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 responses to the consultation was published in July 2019 outlining the intention to proceed with the introduction of EPR for packaging.
17. A further consultation on EPR for packaging then ran for 10 weeks from 24 March 2021 to 4 June 2021. This consultation being held to seek views on the detailed policy proposals for the introduction of EPR for packaging. This consultation was also undertaken jointly by the UK Government, the Welsh Government, the Scottish Government and the Northern Ireland Executive.
18. The consultation received 1,241 responses from a wide range of stakeholders. The summary of responses and the collective Government response to the 2021 consultation was published in March 2022. This response outlined the proposals to require producers to collect and report their packaging data twice a year, in October and April, with each submission covering a six-month period.
19. Due to the technical nature of this element of the EPR packaging reforms, these consultations focused on engaging stakeholders within the packaging value chain, with extensive engagement and co-design continuing to take place with stakeholders across the packaging value chain following the consultation. The consultation and wider engaging leading to a number of changes being made in order to refine the policy proposals, for example, in developing the proposals to recover costs of packaging materials found in the trade or commercial waste stream.

PART 2 – REGULATORY IMPACT ASSESSMENT

Chapter 6 - Regulatory Impact Assessment (RIA)

Impact

20. A Regulatory Impact Assessment (RIA) for the introduction of the EPR scheme for packaging was published alongside the joint Government response to the 2021 consultation.
21. The EPR for packaging scheme is intended to be a UK-wide scheme. The majority of obligated businesses will be companies based in England operating across the UK. The RIA has therefore been undertaken on a UK-wide basis and a Wales-specific RIA is not necessary. The RIA sets out the costs to business of complying with their obligations under the scheme. The full RIA is available at: https://consult.defra.gov.uk/environmental-quality/consultation-on-reforming-the-uk-packaging-produce/supporting_documents/packagingepiconsultimpactassessment.pdf
22. The impact of these regulations on businesses is due to the additional data collection and reporting requirements. The introduction of a new de minimis threshold is estimated to bring an additional 1,823 businesses across the UK into scope of the data collection obligations. This equates to approximately 62 additional businesses in Wales, in addition to the estimated 250 businesses in Wales already obligated. There is no, or no significant, impact on charities or voluntary bodies.¹
23. The sole purpose of these Regulations is to enable the collection and reporting of data necessary to calculate initial producer fees for the EPR for packaging scheme.

Benefits of the scheme

24. The collection and reporting of producers' packaging data from March to December 2023 is essential to enable the subsequent implementation of the scheme and the associated circular economy benefits described in Part 1 of this Explanatory Memorandum. It will also ensure that producers' fees are set appropriately under the scheme.
25. The scheme will result in a benefit for the public sector, as producers will make payments reflecting the actual costs of the management of packaging waste.

¹ Wales estimates are based on DEFRA econometric analysis which provides a range of estimates, where the figures presented represent the central estimate. Business counts are based on registered address and does not account for individual branches where a business has multiple locations across the UK.

Regulating small business

26. This legislation applies to certain activities that are undertaken by small businesses associated with packaging.
27. To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to include a threshold within the regulations to exempt producers that do not handle more than 25 tonnes of packaging a year and have an annual turnover of more than £1 million. Producers that do not handle more than 50 tonnes of packaging a year and have an annual turnover of more than £2 million will be exempt from the reporting obligations but will still need to collect and retain data. These producers are required to collect and retain this data as they will be required to report this data under the main EPR for packaging regulations, which will come into force in due course and replace these data collection and reporting regulations.

Producer data collection and reporting costs

28. The following extract from the RIA provides an analysis of the costs to obligated producers of complying with data collection and reporting requirements under the scheme.
29. The effective implementation and operation of EPR will rely on data and evidence provided by participants across the packaging value chain. Appropriate reporting of packaging placed on the market and evidence on the mass flows of packaging through the waste management system needs to be provided to support and inform the setting of targets, fees to be paid by producers, and payments made for the costs incurred in delivering LA packaging waste management services.
30. Producers will be required to collect and report data at a more granular level than under the current system, to better inform the cost they will pay and the setting of fee rates on individual packaging types. Under changes to the obligated producers, more packaging is expected to be brought into obligation and in turn will need to be reported. This will provide better quality data on the amounts, and types, of packaging placed on the market which will help policymakers in future.
31. Under changes proposed to existing regulations in England, Wales and Scotland and new equivalent regulations or requirements in Northern Ireland, material facilities (transfer stations, bulking stations, and sorting facilities) that receive waste containing packaging will need to report on the tonnages and composition of packaging waste received, handled/sorted, lost and/or sent to other facilities. They will also be required to sample against a greater number of material categories and at a higher frequency to ensure that data reported is of high enough quality to support EPR outcomes, including accurate payments and minimising the risk of fraud.

The number of facilities to which these requirements apply are expected to increase.

32. Reporting requirements, which go beyond those already required by the Packaging Waste Regulations, will also be required of reprocessors and exporters to distinguish different types and quality of recyclate entering and leaving their facilities. However, many reprocessors already capture and use this information as part of their core business processes.
33. Under the current system, producers generally hire the services of compliance schemes², who take on their legal obligation to meet recycling targets. Compliance schemes also provide data reporting services, whereby they take raw data from their producer members and do all calculations, checks and formatting necessary to report 'placed on the market' data to the regulator. Producers are required to report packaging data by the six main packaging material categories.³
34. Under the reformed system, producers will still be required to report 'placed on the market' data, however, those obligated to make additional Full Net Cost (FNC) payments to cover household packaging will need to provide significantly more granular data. This will ensure the Scheme Administrator can accurately calculate their additional FNC fee and to apply the appropriate modulated fee rate to different types of packaging. Therefore, the number of packaging categories they need to report on will increase significantly. Producers that are only required to meet recycling obligations, and those also required to make an additional payment for household packaging, will be able to report data via the same portal, however, as stated, the latter will need to report at a higher granularity.
35. Compliance schemes will still be able to take on the legal obligation for meeting recycling obligations (and purchasing recycling evidence), including data reporting, on behalf of producers but will not have a statutory role in meeting additional obligations under FNC. Producers required to pay FNC payments may still find it beneficial to hire the services of compliance schemes to collate their data for reporting, however, they will retain the legal responsibility for the accuracy of their data submission and for making payments. For the analysis in this Impact Assessment, we assume that producers will continue to use compliance schemes to collate and report the necessary data for both elements of their obligation.
36. Generally, compliance schemes will charge a membership fee which allows members access to compliance services. Some schemes charge a fee comprising only of membership, with additional services acquired on top of this, whereas others will charge a higher fee, which includes a more comprehensive service. Based on discussions with industry experts as well as compliance schemes, we have assumed an average membership fee (including data reporting services) of £1,500 per producer. This is multiplied

² For example, in 2020 94% of obligated producers used a compliance scheme (<https://npwd.environmentagency.gov.uk/Public/PublicSummaryData.aspx>).

³ Plastic, Paper/Card, Aluminium, Steel, Glass, Wood

by the number of obligated producers in each year to estimate the total data reporting costs for producers under the baseline.

37. To gather evidence on the costs of providing these services under a reformed scheme we spoke to industry stakeholders, including compliance schemes. Further information was taken from stakeholder engagement as part of the second EPR consultation. Although compliance schemes were able to provide us with information such as the number of hours/days they spend on the average producer, the additional time taken to help newly obligated producers and the rates they charge, much of this information is sensitive. We have therefore used a range of aggregated estimates for these costs and have not named the stakeholders that were involved. Together, these stakeholders are considered representative of the industry.
38. Stakeholders generally felt that requirements to report data towards household FNC payments would be sufficiently different to reporting data for estimating recycling targets (Packaging Recovery Notice (PRNs)), that this would be the equivalent of at least the same costs again. In other words, producers would need to pay at least a further £1,500 to account for the new requirements.
39. We have therefore assumed that producers will be charged £3,000 by compliance schemes, on average, for data reporting. To account for uncertainty, we have also included a high estimate of £4,000 per producer for data reporting costs.
40. Under these regulations producers that have a turnover of more than £1 million and up to £2 million and produce more than 25 tonnes and up to 50 tonnes of packaging will only be required to collect data at basic material level rather than at the granularity of those obligated under modulated fees. They will be required to report this data when the main regulations come into force. This means their collection and reporting costs will be more in line with those under the PRN system. Compliance schemes have advised us that although there can be exceptions, on average, smaller producers tend to have less complicated data collection and reporting requirements (for example due to having fewer product lines) and therefore face lower costs. Based on these discussions we have used an estimate of £1,000 as the average cost to these producers.
41. To calculate the total data collection and reporting costs for producers under the EPR for packaging scheme, these costs are multiplied by the number of producers, which includes newly obligated online marketplaces and producers newly obligated through lowering the de minimis.
42. To support businesses to comply with these reporting obligations guidance on what would be acceptable evidence required to differentiate the different types of packaging category guidance is being published by the four UK nation environmental regulators. This is further supplemented by a series of awareness and training events for businesses to aid compliance

Cost in Wales

43. As set out in paragraph 22, 62 producers in Wales have been identified as having a turnover of more than £1 million and up to £2 million and produce more than 25 tonnes and up to 50 tonnes of packaging. These producers will be required to collect at a basic material level, with a cost (estimated in the UK IA) of £1,000. The total cost to all newly obligated businesses is therefore estimated to be £62,000 in 2023.
44. In addition, there are an estimated 250 businesses in Wales which are already obligated, but which will now need to collect and report data at a greater level of granularity. Based on the costs within the UK IA, these businesses face an additional cost of between £1,500 and £2,500 (a cost of £3,000 - £4,000 for the new requirements minus the £1,500 they currently incur). This gives a total additional cost to these businesses of £375,000 to £625,000 in 2023.
45. In total, the additional total cost to businesses in Wales in 2023 is estimated to be between £437,000 and £687,000.

Justice Impact Assessment

46. The following subordinate legislation to introduce the EPR scheme in Wales will include offences, sanctions and fines for non-compliance with data reporting arrangements.
47. Under the EPR scheme for packaging, producers will be required to collect and report data from 2023, in order to inform the calculation of fees in 2024.
48. To enable data collection and reporting from 2023 the Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2022 are therefore planned to come into force in early 2023. These regulations will be repealed and replaced by the main SI when they come into force. The sole purpose of the data collection and reporting regulations is to enable data to be collected to inform the calculation of producer fees for the introduction of the new scheme.
49. A Justice System Impact Identification (JSII) for has been completed for these regulations and it is expected that the Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 will result in virtually no impact on the justice system in Wales. On this basis, the JSII has not been sent to the Ministry of Justice for comment.
50. A Justice Impact Assessment (JIA) is also being prepared for the scheme as a whole on a UK-wide basis. This will include an assessment of the cost of putting court processes in place to deal with new offences created by the scheme, which will include an apportionment of the costs in Wales. This Justice Impact Assessment will be finalised before the UK-wide regulations putting in place the main scheme are laid.

Integrated Impact Assessment

51. A summary of the Integrated Impact Assessment for is available at:
<https://www.gov.wales/extended-producer-responsibility-packaging-1>

Resources and Waste Common Framework

52. This legislation is within the scope of the Resources and Waste Common Framework.