

EXPLANATORY MEMORANDUM TO
The Packaging Waste (Data Reporting) Regulations (No. 2) (Northern Ireland)
2023

SR 2023 No. 25

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs (DAERA) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under the powers conferred by Article 4 and Schedule 1 to the Environment (Northern Ireland) Order 2002 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Statutory Rule requires producers of packaging to collect and report data on the amount and type of packaging they place on the market. This data is required to calculate the fees that these producers will be required to pay as part of the Extended Producer Responsibility (EPR) system which will start in 2024. These Regulations are expected to be in place for one year, after which they will be revoked and replaced by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2023, which will include equivalent provisions.
- 2.2. The Statutory Rule revokes the Packaging Waste (Data Reporting) Regulations (Northern Ireland) 2023 (S.R. 2023 No. 6).

3. Background

- 3.1. The Extended Producer Responsibility (EPR) for packaging will be introduced into the UK in 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 2023, which will contain provisions for the introduction of EPR, will not be in operation until December 2023.
- 3.3. The provisions in the Packaging Waste (Data Reporting) Regulations (No. 2) (Northern Ireland) 2023 will require producers to collect and report their packaging data from March 2023 (or from January 2023, if they have this data). This data will be required to calculate the EPR fee that producers will pay in 2024 and is therefore crucial for enabling the full implementation in 2024.

- 3.4. Under the Producer Responsibility Obligations (Packaging Waste) Regulations (No. 2) (Northern Ireland) 2023, producers with an annual turnover of £2 million, who handle more than 50 tonnes of packaging, are required to report data on the amount of packaging they place on the market.
- 3.5. These new Regulations will require producers who are above this threshold to report data on the amount and type of packaging they place on the market 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 £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.

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

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

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

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

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 consultation⁵.
- 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 introduction of the new de minimis threshold is estimated to bring an additional 1,823 businesses UK- wide into scope of the data collection obligations.
- 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 2023, 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) Regulations (Northern Ireland) 2023 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 2023.

10. Parity or Replicatory Measure

- 10.1. Producer responsibility is devolved, and the other regions of the United Kingdom have made 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 for one year, after which they will be revoked and replaced by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2023.

⁵ [Impact Assessment \(daera-ni.gov.uk\)](https://www.daera-ni.gov.uk/impact-assessment)

12. 21-Day Rule

12.1. This Statutory Rule revokes and replaces the Packaging Waste (Data Reporting) Regulations (Northern Ireland) 2023 (S.R. 2023 No. 6) which were made on 25th January 2023 and are due to come into operation on 28th February 2023. This Statutory Rule revokes and replaces S.R. 2023 No. 6 because of an error in regulation 11(4)(a) which stated an incorrect amount. This Statutory Rule also corrects a number of typographical and numbering issues in S.R. 2023 No. 6 and clarifies non-substantive drafting issues following legal advice. The content and policy of the Statutory Rule is otherwise substantively unchanged and although it will breach the 21 day rule this will ensure that S.R. 2023 No.6 is immediately revoked, and no prejudice caused by it coming into operation as those affected by the changes in the law will have a reasonable opportunity to understand the effect of the changes and what is required of them. This Statutory Rule brings Northern Ireland legislation in line with legislative changes in England, Scotland and Wales which are also due to come into operation on 28th February 2023. Producers are required to collect and report data from March 2023 and it is crucial that data is collected and reported from that date in order to calculate the correct EPR fee that producers will pay in 2024. Therefore, these Regulations must come into operation from 28th February 2023 in breach of the 21 day rule.