SCOTTISH STATUTORY INSTRUMENTS

2023 No. 160

ENVIRONMENTAL PROTECTION

The Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2023

Made - - - - 23rd May 2023
Laid before the Scottish
Parliament - - - 25th May 2023
Coming into force - 30th June 2023

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 18 and 58, and paragraphs 14, 22 and 33 of schedule 2 of the Regulatory Reform (Scotland) Act 2014 (the "2014 Act")(1) 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 2023 and come into force on 30 June 2023.

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

2. The Packaging Waste (Data Reporting) (Scotland) Regulations 2023(**2**) are amended in accordance with regulations 3 to 11.

Interpretation

- 3. In regulation 2(1)—
 - (a) after the definition of "approved person", insert—
 - ""brand" means a brand name, trade mark or other distinctive mark,",
 - (b) for the definition of "brand owner", substitute—

^{(1) 2014} asp 3.

⁽²⁾ S.S.I. 2023/7.

- "brand owner" means, subject to regulation 8(2A), a person whose brand appears on an item of filled packaging,",
- (c) after the definition of "brand owner", insert—
 - ""branded packaging" means packaging on which the brand owner's brand appears,",
- (d) omit the definition of "premises",
- (e) omit the definition of "recovery".

Packaging and packaging categories

4. In regulation 6(3), for "rules" substitute "application of the criteria".

Producers

- 5. In regulation 8—
 - (a) for paragraph (2), substitute—
 - "(2) Unless paragraph (3A) applies, and subject to paragraph (2B), a brand owner is a producer in relation to—
 - (a) filled packaging on which that person's brand appears, and
 - (b) any part of the packaging contained in, or forming part of, branded packaging, whether or not that part of the packaging is branded.",
 - (b) after paragraph (2), insert—
 - "(2A) Subject to paragraph (2B), where more than one brand appears on filled packaging, the owner of the brand who makes the first supply of the filled packaging is to be treated as the brand owner and producer in relation to that packaging.
 - (2B) Where different individual branded products, unbranded products or both are grouped together to be sold as a single sales unit—
 - (a) the brand owner for an individual branded product within the sales unit is a producer in relation to the branded packaging on that individual product,
 - (b) the packer/filler is a producer in relation to any unbranded packaging within the sales unit which is filled by the packer/filler.",
 - (c) after paragraph (3), insert—
 - "(3A) A packer/filler is also a producer—
 - (a) where—
 - (i) the packer/filler has filled packaging,
 - (ii) the packer/filler has put a brand on the packaging to assist with distribution, not at the request of the brand owner, and
 - (iii) there is no other brand on the packaging,
 - (b) for any packaging which the packer/filler adds to branded packaging otherwise than at the request of the brand owner.",
 - (d) in paragraph (4)(b) for head (iii), substitute—
 - "(iii) where the brand owner is responsible for the import of the packaging, but is not a large producer under these Regulations,
 - (iv) where the brand owner is not established in the United Kingdom.",
 - (e) after paragraph (4), insert—

"(4A) An importer is also a producer in relation to any packaging imported by the importer into, and discarded by them in, the United Kingdom.".

Supply

- **6.** In regulation 10—
 - (a) after paragraph (1), insert—
 - "(1A) In these Regulations, an importer is to be treated as "supplying" packaging or packaging materials which the importer imports into and discards in the United Kingdom.",
 - (b) in paragraph (2), for "performs any of the functions", substitute "does any of the actions",
 - (c) in paragraph (3), omit "within the meaning of regulation 8(2),",
 - (d) in paragraph (4)(a)(ii), for "market", substitute "marketplace".

Threshold criteria for large and small producers

7. In regulation 11(9)(a) and (b), for "and (4)(b)" substitute, ", (4)(b), (5)(b) and (6)(b)".

Data reporting obligations

8. In regulation 17(2)(b), after "1 January" insert "2023".

Approved persons

- 9. In regulation 24(2), after sub-paragraph (b), insert—
 - "(ba) is a limited liability partnership, a member of that partnership,".

Entry and inspection

10. In regulation 26(7), after the definition of "the 1995 Act" insert— ""premises" has the meaning given in section 108(15) of the 1995 Act,".

Schedule 1: collection and reporting information

- 11. Schedule 1 is amended as follows—
 - (a) in paragraph 1, omit sub-paragraph (a),
 - (b) in paragraph 6, after "partnership", insert "or a limited liability partnership",
 - (c) in paragraph 10(3)(b), omit sub-head (ii),
 - (d) in paragraph 13—
 - (i) in sub-paragraph (1), for "reporting" substitute "relevant",
 - (ii) after sub-paragraph (2), insert—
 - "(3) Sub-paragraph (1) does not apply in relation to imported packaging which has been discarded in the United Kingdom by an importer.",
 - (e) omit paragraph 14,
 - (f) in paragraph 15(c), before "household", insert "unfilled".
 - (g) in paragraph 16—
 - (i) renumber the existing paragraph as sub-paragraph (1),

- (ii) in sub-paragraph (1), as renumbered—
 - (aa) in the opening words, for "reusable primary", substitute "reusing reusable",
 - (bb) in head (a), for "reporting" substitute "relevant",
 - (cc) omit head (c),
- (iii) after sub-paragraph (1), insert—
 - "(2) the information provided in sub-paragraph (1) must be given for each packaging category supplied by the producer in the relevant period,
 - (3) the producer need only include information on reusable household packaging in the year in which it is first supplied.",
- (h) in paragraph 17(1), after "the producer" insert "in the relevant period in each packaging category,",
- (i) for paragraph 22(2), substitute—
 - "(2) For the purposes of reports submitted in relation to the relevant years 2024, 2025 and 2026, producers who are—
 - (a) sellers who supply secondary or tertiary packaging may estimate the amount of packaging which has been supplied to a nation in the United Kingdom in order to calculate the weight of packaging supplied to that nation,
 - (b) importers who import secondary or tertiary packaging may estimate the amount of packaging discarded in a nation of the United Kingdom in order to calculate the weight of packaging discarded in that nation.",
- (j) in paragraph 23—
 - (i) in sub-paragraph (1), at the end, insert "and sent for recycling",
 - (ii) after sub-paragraph (6), insert—
 - "(7) In sub-paragraph (5), "relevant packaging waste" includes reusable packaging which has been reused and has become waste, whether or not it is collected from households for recycling by more than 75% of relevant authorities in Scotland responsible for waste collection."

St Andrew's House, Edinburgh 23rd May 2023

LORNA SLATER
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made to correct minor errors in the Packaging Waste (Data Reporting) (Scotland) Regulations 2023 (S.S.I. 2023/7) ("the first Regulations"), to make further provision clarifying when a brand owner is a producer in relation to packaging, and to assign responsibility for certain packaging to packer/fillers, rather than brand owners, and to importers.

A partial Business Regulatory Impact Assessment of the effect that the first Regulations will have on business has been placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government, Circular Economy Division, Area 3H South, Victoria Quay, Edinburgh EH6 6QQ, and online at legislation.gov.uk.