

# **SL(6)363– The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023**

## **Background and Purpose**

These Regulations impose requirements on producers established in Wales to collect data on the packaging they supply to others. In some cases they will also need to report information to Natural Resources Wales (“NRW”).

Part 1 contains the interpretation and general provisions.

Part 2 sets out the obligations on producers. Schedule 1 identifies the information which producers are required to collect and report on.

Part 3 makes provision for registered schemes and exempts producers who are members of a registered scheme from their data reporting obligations under these Regulations, provided that they satisfy certain requirements. Registered schemes are required to make reports on behalf of each of their members, who satisfy these requirements. Part 3 also makes provision in relation to changes to the membership of a scheme in the middle of a relevant year.

Part 4 sets out the powers and duties of NRW under these Regulations.

Part 5 provides for a number of offences and penalties for breach of the requirements imposed by these Regulations. These Regulations are enforced by NRW.

This is the third version of these Regulations to be laid before the Senedd. Two previous versions of the Regulations have previously been withdrawn. The Chair of the Committee wrote to the Minister for Climate Change (the “Minister”) in a [letter dated 14 March 2023](#), requesting responses to matters raised in the Committee’s draft report. A [reply was received from the Minister on 23 March 2023](#), which contained responses to the matters raised in the draft report. These responses have been included in the commentary to the reporting points to which they relate, below.

## **Procedure**

Draft Affirmative

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

## **Technical Scrutiny**

The following five points are identified for reporting under Standing Order 21.2 in respect of this instrument.



### **1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In regulation 2(1), in the English text, the corresponding Welsh terms haven't been included in italics and brackets after the definitions of "the 2003 Act" and "branded packaging".

### **2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Regulation 7(1) provides the meaning of "household packaging". We do not consider that the drafting provides a clear definition of what is meant by household packaging in this context.

The Minister stated, on 23 March, in relation to this point:

*"The Welsh Government consider that the definition of "household packaging" in regulation 7(1) is sufficiently clear on the point that "household packaging" is any primary or shipment packaging which is not supplied to a business as the final user of that packaging. This is further clarified by regulation 7(2). The overall packaging Extended Producer Responsibility ("EPR") scheme is being introduced across all four nations of the UK with mirroring data reporting regulations being laid in each of the legislatures. The definition used is consistent with that used in the regulations in England, Scotland and Northern Ireland as a common definition is vital to aid compliance by businesses and ensure consistency of data collection and reporting across the UK. An amendment to address this technical scrutiny point is not considered necessary."*

### **3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

The term "brand" has been defined in regulation 8(13) as bearing a meaning **in these Regulations** but it hasn't been signposted in the list of definitions found in regulation 2(1). Both of the other definitions found in regulation 8(13), "brand owner" and "branded packaging" have been signposted in regulation 2(1) so that the readers are aware that those terms have the same meaning throughout the Regulations. As a result, the readers may not be aware that "brand" is defined as a term in these Regulations as well, and it does appear to be an inconsistent approach compared with that taken to the other defined terms found in regulation 8(13).

### **4. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In regulation 16(6), in the Welsh text, there is a significant difference between the English and Welsh texts as the word "data" is missing from the translation of the phrase "data



collection period”, in the first place it occurs in the third line of paragraph (6). It is a defined term in regulation 2(1) and therefore has been given a specific meaning in these Regulations.

#### **5. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In Schedule 1, in paragraph 15(1)(b), the reference is incorrectly described as “**sub**-paragraph (a)” but it should be referred to as “**paragraph** (a)” (paragraph 15/sub-paragraph (1)/paragraph (a)).

### **Merits Scrutiny**

The following 8 points are identified for reporting under Standing Order 21.3 in respect of this instrument

#### **6. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

Regulation 4 modifies the Waste Directive<sup>1</sup>, and in particular the modification relates to the Waste Directive’s definition of “waste”, which is key to the understanding of these Regulations. We note that the Waste Directive is available to the general public on legislation.gov.uk.

We previously queried whether there is a more accessible way of legislating in this regard to enable a reader to see the provisions on the face of these Regulations.

We received a response from the Welsh Government on 23 March on this point which stated that: *“the Welsh Government considers that the legislation is accessible since the public will have access to the Waste Directive on legislation.gov.uk. An amendment to address this merits scrutiny point is therefore not considered necessary”*.

#### **7. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

Regulation 6(3) provides that Schedule 5 to the Packaging (Essential Requirements) Regulations 2015 contains illustrative examples of packaging.

Including these examples in a schedule to the Regulations would have improved accessibility, for what are already complex regulations.

In relation to a previous draft of the Regulations, the Minister stated (on 23 March) that:

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<sup>1</sup> Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Directive (EU) 2018/851



*“the legislation is accessible since the public will have access to the Packaging (Essential Requirements) Regulations 2015 on legislation.gov.uk. An amendment to address this merits scrutiny point is therefore not considered necessary”.*

#### **8. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

Regulation 14 provides for situations where a producer dies, becomes bankrupt or incapacitated (the “first producer”). A person who carries on the activities of the first producer is required by Regulation 14(3) to inform NRW within 28 days of commencing those activities. This is a specific request, with a relatively short timescale depending on the circumstances. We queried (in relation to a previous draft of the Regulations) that it appeared to be unclear how this requirement will be highlighted/publicised, so as to enable those obliged to inform NRW to do so in good time. The Minister responded, on 23 March, by stating that the Welsh Government:

*“has already consulted with stakeholders (including NRW) on the establishment of the new EPR scheme. In addition, the introduction of these Regulations is being supported by comprehensive UK-wide stakeholder engagement. This includes a series of awareness sessions targeted at those obligated under the regulations which is already underway and on-going. These are designed to communicate these changes and support businesses in understanding the obligations placed on them. An amendment to address this merits scrutiny point is therefore not considered necessary”.*

#### **9. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

In general terms, the Regulations can be difficult to navigate through. In our view, regulation 15 is not easily accessible and this may cause difficulty for a producer to work out what their obligations are. There are essentially four steps in regulation 15. Firstly, a producer must identify which provision of regulation 15 is relevant to their business. This directs them to specific provisions of regulations 16 and 17. Secondly, the relevant provision in regulation 16/17 then directs them to specific paragraphs to the Schedule. Thirdly, those paragraphs of the Schedule direct them to further separate paragraphs of the Schedule. Finally, only then can the producer see the information they are required to collect/report, although they may have to jump between separate paragraphs to ascertain the complete list.

It would appear more appropriate if the Schedule were simplified so that it contains a separate list for each type of producer, which clearly sets out all the information required of that producer.

We do not believe that this is the most accessible means of drafting the regulations. On 23 March, in response to the Committee’s prior query on this point, the Minister stated that the Welsh Government:



*“considers that the signposting in the Regulations ensures that the Regulations are accessible and provides clarity to producers on what their obligations are under the Regulations. In addition, the introduction of these Regulations is being supported by comprehensive stakeholder engagement. This includes a series of awareness sessions targeted at those obligated under the Regulations which is already underway and on-going. These are designed to communicate these changes and support businesses in understanding the obligations placed on them”.*

#### **10. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

Regulation 19(2)(a) provides that paragraph 19(1) applies if a producer provides information the operator of a scheme requests within a *“reasonable period of receiving such a request”*. However, there is no detail on the face of the Regulations as to what such a reasonable period might be. When the Committee previously raised this issue the Minister stated (on 23 March) that:

*“it was not considered necessary to define “reasonable period” given that what may be considered reasonable will likely differ depending on the level of information requested in each individual case. An amendment to address this merits scrutiny point is therefore not considered necessary”.*

#### **11. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

Regulation 22 requires NRW to publish lists of items collected for recycling. However, there is no specific requirement on the face of the Regulations to keep these lists up to date. It is therefore unclear if the intention is for the lists published in accordance with Regulation 22 to be kept updated. On 23 March, the Minister stated in reply to a previous query on this point that:

*“these Regulations will be superseded by the main set of Extended Producer Responsibility (“EPR”) Regulations which will introduce the other aspects of the packaging EPR reforms and so this requirement is timebound. Under the EPR Regulations the responsibility to publish lists of recycled items will move from NRW to a scheme administrator which will be established to operate the regime. An amendment to address this merits scrutiny point is therefore not considered necessary”.*

#### **12. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

Regulation 25(1) enables NRW to supply a form for an approved person to apply for approval to delegate their functions to another person under regulation 24(3).



Regulation 25(2) provides for a 28 day period during which NRW may grant or refuse the application for approval.

We wondered whether a provision granting deemed consent, in circumstances where NRW does not grant or refuse the application within the specified timescale, was considered and whether it would assist applicants. On 23 March, the Minister stated in response to our query that:

*“the Welsh Government would not want a situation where deemed consent is the default position and it is important that NRW as the regulator determines the application. An amendment to address this merits scrutiny point is therefore not considered necessary.”*

### **13. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

These Regulations were laid before the Senedd on 13 June 2023. A first draft of the Regulations was laid before the Senedd on 24 January 2023, before later being withdrawn. A second draft of the Regulations was laid before the Senedd on 14 February 2023, and was also later withdrawn. It is unclear why there has been a delay in laying these Regulations, given that limited changes have been made to the form of the Regulations when compared to the previous version laid.

## **Welsh Government response**

### **Technical Scrutiny point 1:**

This point is noted. The error is very minor, and we will ensure that these Regulations are corrected to deal with this error prior to making.

The Minister for Climate Change will draw this to the attention of Senedd members in the plenary debate on the Regulations scheduled to take place on 11 July. This is in accordance with the steps that the Counsel General set out in his correspondence with you on 18 January and 15 February 2023.

### **Technical scrutiny point 3:**

Given that the term “brand” is only used in one provision, in the definitions of “brand owner” and “brand packaging” under regulation 8(13), the term “brand” is defined in the same provision. This is in accordance with paragraph 4.14(1) of the Welsh Government’s drafting guidance “Writing Laws for Wales”.

Therefore, an amendment to address this technical scrutiny point is not considered necessary.

### **Technical scrutiny points 4 and 5:**



These points are noted. These errors are very minor, and we will ensure that these Regulations are corrected to deal with these errors prior to making.

The Minister for Climate Change will draw this to the attention of Senedd members in the plenary debate on the Regulations scheduled to take place on 11 July. This is in accordance with the steps that the Counsel General set out in his correspondence with you on 18 January and 15 February 2023.

### **Merit Scrutiny point 13:**

These regulations were laid and withdrawn in March 2023 due to comments received from the Committee on the technical drafting of the text. In between withdrawing and relaying the regulations, we took time to schedule sufficient quality assurance processes in terms of legal drafting and translation in order to minimise substantive errors. We also liaised with the Scottish, Northern Ireland and UK Governments to clarify aspects of the policies in order to maintain regulatory alignment.

### **Committee Consideration**

The Committee considered the instrument and Government response at its meeting on 3 July 2023 and reports to the Senedd in line with the reporting points above.

