

# **SL(6)325 – 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.

## **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 14 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 definition of “pub operating agreement”, there is a difference in meaning between the English and Welsh texts. In the Welsh text, the phrase “on **or from the** premises” has been translated as meaning “on **or off the** premises”.

The phrase “on **and off the** premises” is used later in regulation 9(2)(b)(i) and (ii), and both language texts are equivalent in that regulation.



Therefore, further explanation is required as to whether the English text in the definition of “pub operating agreement” in regulation 2(1) is correct in using the phrase “on or from the premises”, or whether the Welsh text has incorrectly translated the meaning of the phrase here.

See section 3(2)(c) of the Public Health (Minimum Price for Alcohol) (Wales) Act 2018 (anaw 5), and paragraph 3(1)(b) of Schedule 2 to SI 2020/1149 (W. 261) for examples of where “on or from the premises” has been translated correctly in the Welsh text of legislation.

## **2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In regulation 2(1), the definition of “recovery” (“adfer”) does not appear to be used anywhere in either the English or Welsh text of this SI with the meaning given by Article 3(15) of the Waste Directive, and is therefore defective drafting.

In addition, there is an example of “recovery” used in the English text of regulation 5(4) in the context of sports drinks. Therefore, “recovery” in the English text of regulation 5(4) will bear the meaning given by regulation 2(1) as currently drafted which appears to be incorrect. The Welsh text uses a different word to convey “recovery” in regulation 5(4) compared with regulation 2(1), so this additional issue does not occur in the translation.

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

In regulation 2(1), should there be a definition of “supplies” explaining that it has the meaning given in regulation 10(1)? Other terms that are defined in later regulations have been signposted in this manner in regulation 2(1) such as “drink”, “packaging”, “licensor” and “pub operating business”.

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

In regulation 3(5), in the English text, there is an obligation to notify the UK regulator in the “country” specified in a notice given under regulation 3(3). However, the term “nation” is used elsewhere in the English text throughout the SI including in regulation 3(3). Therefore, the English text is inconsistent as regards terminology and differs from the rest of the SI. In the Welsh text, the same term “gwlad” has been used in regulation 3(3) and (5) for both “nation” and “country”, and throughout the rest of the SI for “nation”.



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

In regulation 6(1)(b), there is a difference between the English and Welsh texts. The English text includes the words “whether it is **supplied** as such to the final user or consumer”. However, the Welsh text has used “**sold**” (“ei werthu”) rather than “**supplied**” (“ei gyflenwi”) in the corresponding place in the translation. The meaning of “supply” is given by regulation 10 of these Regulations so it is a significant difference.

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

In the Welsh text of regulation 6(3), “Packaging” has been defined and translated as “Pecynwaith” in regulation 2(1) which is used throughout these Regulations. However, “Deunydd Pacio” has been used in the title of “the **Packaging** (Essential Requirements) Regulations 2015”. It's the only place where “Deunydd Pacio” has been used as a translation in these Regulations for “Packaging” and it is inconsistent with the terminology used elsewhere. This suggests to the reader of the Welsh text that it has a different meaning from “Packaging”.

In both language texts, it refers to “**the rules** set out in paragraph (2)” but if you turn to paragraph (2) of regulation 6 it describes them as “**the criteria**”. Therefore, the terminology of paragraphs (2) and (3) is inconsistent within regulation 6 of these Regulations. In addition, regulation 3(3)(a) of, and Schedule 5 to the Packaging (Essential Requirements) Regulations 2015 refer to them as criteria.

## **7. 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.

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

In regulation 8(2), the terms “brand owner” and “branded packaging” are defined and given a meaning. “Brand owner” is also listed in regulation 2(1) where it is explained that it has the meaning given in regulation 8(2). However, this isn't done for “branded packaging” and in regulation 10(3) “branded packaging” is explained as having the meaning within regulation 8(2). It is true to say that regulation 10(3) is the only other place where “branded packaging”



is used in these Regulations, but should it have been signposted in regulation 2(1) to aid the reader like the term “brand owner” ? In which case, the phrase “within the meaning of regulation 8(2)” could then have been omitted from regulation 10(3).

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

In regulation 16(2)(b)(iii) and (3)(b)(iii), there are references to “relevant packaging waste” having the same meaning as in paragraph 23(5) of Schedule 1. However, the term that appears in paragraph 23(5) of that Schedule is defined as having that meaning “In this paragraph” because it is used in paragraph 23(1) of Schedule 1. This is misleading to the reader as “relevant packaging waste” does bear the same meaning in regulation 16 as well as paragraph 23 of Schedule 1. Therefore, should that term have been defined in regulation 2(1) as having that meaning in these Regulations rather than defined in paragraph 23(5) of Schedule 1? Alternatively, should the term have been defined in regulation 2(1) as having the same meaning as in regulation 16(7), the definition added to regulation 16(7) and omitted from paragraph 23(5) of Schedule 1?

**10. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In regulation 17(2)(b), it appears that the specific year is missing in the date “1 January” in both places where it occurs. If you turn to Schedule 1, paragraph 1(b)(ii) it refers to regulation 17(2)(b) and a period beginning on 1 January **2023** and ending on 30 June 2023. Regulation 17(2)(b) is therefore defectively drafted.

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

In regulation 23(5), there is a slight difference between the English and Welsh texts. The English phrase “corrected information” has been translated as meaning “correct information”. Therefore, it could be argued that the Welsh text doesn’t fully convey the meaning of the English text.

**12. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In paragraph 1(a) of Schedule 1, the term “commencement date” is defined as having a meaning “In this Schedule”. But, the definition doesn’t appear to be used in the Schedule, so this is defective drafting.



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

In Schedule 1, in paragraph 13(2)(e), in the Welsh text, the term “conceived” has been translated as “llunio”. Elsewhere in the SI, a form of “creu” rather than “llunio” has been used in the Welsh text for “conceived”. Therefore, the translation of the term is inconsistent in this paragraph compared with the rest of the SI and it suggests to the reader that it has a different meaning from “conceived”.

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

In Schedule 1, in paragraph 15, in the opening words before sub-paragraph (a), the phrase “**unfilled** household packaging and other **unfilled** packaging” occurs where it is clear that “unfilled” applies to both the household packaging and other packaging.

Later in sub-paragraph (c), there is a duty to keep records of the weight of “**unfilled** packaging and **of** household packaging”. The construction of the sentence in English suggests that “unfilled” only applies to “packaging” in this sub-paragraph rather than to both “packaging” and “household packaging”.

In addition, the syntax of the Welsh translation of “unfilled packaging and of household packaging” in sub-paragraph (c) limits the application of “unfilled” to “packaging”. The grammatical construction of the translation doesn’t allow any possible application of “unfilled” to “household packaging”.

Therefore, the drafting and translation of paragraph 15(c) requires further explanation as to whether the intention is to place a duty to keep records of “unfilled packaging” and “unfilled household packaging”, or “unfilled packaging” and “household packaging”.

## **Merits Scrutiny**

The following 10 points are identified for reporting under Standing Order 21.3 in respect of this instrument

### **15. 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.

However, we wonder 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.

#### **16. 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.

It is unclear why these examples have not been included in a schedule to the Regulations. This would have improved accessibility, for what are already complex regulations.

#### **17. 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. Given that this is a specific request, with a relatively short timescale depending on the circumstances, it is unclear how this requirement will be highlighted/publicised, so as to enable those obliged to inform NRW to do so in good time.

#### **18. 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.

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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



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.

**19. 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 as to what such a reasonable period might be.

**20. 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 in Regulation 22 to be kept updated.

**21. 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 wonder 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.

**22. 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**

The Explanatory Memorandum at paragraph 27 explains that the approach to include an exemption for smaller business to minimise the impact on them:

*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.*

However, there is no clear explanation as to the value of smaller businesses collecting and retaining this data, if it is not to be reported to NRW. A Welsh Government response is requested to outline what benefit the collection and retention of this data will provide.

### **23. 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**

The Minister sent a letter to the Committee dated 1 March, which highlights cross referencing errors in Schedule 2 to the Regulations. This states:

*"I am writing ahead of your Committee's consideration to inform you that following the re-laying of the draft Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 in the Senedd on 14 February 2023, four minor cross-referencing errors have subsequently been identified in the following places in Schedule 2 to the Regulations:*

- Paragraph 2(2)(a) – cross-refers to regulation 11(3)(a) but should instead cross-refer to regulation 11(4)(a).*
- Paragraph 2(2)(b) – cross-refers to regulation 11(3)(b) but should instead cross-refer to regulation 11(4)(b).*
- Paragraph 5 – cross-refers to regulation 11(3)(b) but should instead cross-refer to regulation 11(4)(b).*
- Paragraph 7(1) – cross-refers to regulation 11(3)(b) but should instead cross-refer to regulation 11(4)(b).*

*The errors are very minor and I will therefore ensure that these Regulations are corrected to deal with these points prior to making.*

*In addition to notifying the Committee of my intentions I will also draw this to the attention of Senedd members in the plenary debate on the Regulations scheduled to take place on 14 March. 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..."*

### **24. 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**

This legislation relates to common frameworks. A commitment to notify the Senedd when legislation relates to a common framework was previously given to the Committee.





A letter from Julie James, the Minister for Climate Change, dated 14 February 2023 states as follows:

*I am writing to inform you that The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 which will shortly be laid before the Senedd fall under the scope of the Resources and Waste Common Framework.*

## Welsh Government response

A Welsh Government response is required to points 1 to 22.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**7 March 2023**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament

**Legislation, Justice and Constitution Committee**