

# **SL(6)456 – The Packaging Waste (Data Collection and Reporting) (Wales) (Amendment) Regulations 2024**

## **Background and Purpose**

These Regulations amend the Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 (“the principal Regulations”). The purpose of these Regulations is to clarify the division of responsibilities between brand owners, packers/fillers, importers and first UK owners and distributors, and to place a requirement upon Natural Resources Wales to produce guidance in respect of household packaging and to publish a list of large producers. These Regulations also provide a number of miscellaneous amendments including clarification of sentences and amendment of typographical errors.

## **Procedure**

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 12 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.**

Regulation 5(b) inserts a definition of “group of companies” in regulation 2(1) of the principal Regulations, which is the interpretation provision for terms that have a meaning throughout those Regulations. This definition is only used in regulation 11 of the principal Regulations and regulation 11(9) states that the definitions are for the purposes of that regulation. Other terms which have been defined within a provision and only used within that provision have not been signposted in this way.

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

In regulation 5(c)(i) and (ii) ‘sub-paragraph’ should be ‘paragraph’ as they are the first divisions within the definition of “importer”, as opposed to divisions of paragraph (1) of regulation 2 of the principal Regulations.



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

In regulation 8, in new regulation 7(3)(b)(i) and (ii) the references to “the requirement in paragraph (i)” and “the requirement in paragraph (ii)” do not adequately identify the location of those paragraphs in the principal Regulations. They should refer to paragraph (2)(b)(i) and paragraph (2)(b)(ii), respectively to give the reader certainty.

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

In regulation 8, in new regulation 7(6), a list is provided of institutions and persons that are to be treated as public institutions for the purposes of regulation 7 and regulation 7A. There is no signpost to this list in regulation 7A, which could lead to the reader being unaware of how to interpret ‘public institutions’ when reading regulation 7A alone.

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

In regulation 8, in new regulation 7(6), at sub-paragraph (a) in the list of institutions and persons that are to be treated as public institutions “a school, university, or other educational establishment” is included. Can the Welsh Government provide examples of institutions that would come under “other educational establishment” and explain whether it considers it is clear enough for those potential establishments to be identified for the purposes of regulation 7 and regulation 7A of the principal Regulations.

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

In regulation 8, in the new regulation 7(8), the terms “household bin” and “public bin” are defined for both regulation 7 and new regulation 7A of the principal Regulations. The reader may not be aware of terms that have been defined in a preceding regulation (see Writing Laws for Wales: A guide to legislative drafting 4.8(4), in respect of prospective definitions). We ask whether the terms should have been included as general definitions in regulation 2(1) of the principal Regulations, as has been done with other defined terms used in more than one regulation.

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

In regulation 8, in new regulation 7(8)(b), in the definition of “public bin”, there is a difference between the Welsh and English texts. In paragraph (ii) of the definition, the English text states “collect waste material” which does not appear to make sense without any additional words, but the Welsh text has translated the meaning as “designed to collect waste material”. In this regard, the phrase “designed to collect waste material” is used in the definition of “household bin” in the English text of new regulation 7(8)(a). Therefore, it appears that the Welsh text is



correct in the definition of “public bin” and that the words “designed to” are missing from the English text of the new regulation 7(8)(b).

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

In regulation 9, in new regulation 7A(2), in sub-paragraph (d), in the Welsh text, “consumers” has been translated as “defnyddiwr”. However, the term “consumer” has been defined in the Welsh text of regulation 2(1) of the principal Regulations as “treuliwr”. Elsewhere in the principal Regulations, “defnyddiwr” has been used as the translation of “user” to distinguish that term from “consumer” (“treuliwr”). Therefore, the Welsh text has failed to use the correct defined term for “consumer” in the translation of this provision.

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

Regulation 10(b) amends paragraph (2) of regulation 8 of the principal Regulations. There remains a reference to “paragraph (4)” in that paragraph, which is omitted by regulation 10(d) of these Regulations.

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

- (i) In regulation 17, in new regulation 17A(1), it states “Where information in a report submitted by a producer (“LP”) under regulation 17...”. However, it should state by “a large producer (“LP”)” because only a “large producer (“LP”)” is subject to the obligations found in regulation 17. Both “producer” and “large producer” are defined terms found in regulation 2(1) of the principal Regulations, therefore there is a significant difference by using “producer” rather than “large producer” in the new regulation 17A(1).
- (ii) This also occurs in regulation 19, in the new regulation 22A where “large producer” is correctly used in paragraph (1), but “producer” is subsequently used in paragraph (2) of that new regulation.

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

In regulation 20(e), it states “in paragraph 17, in paragraphs (a) and (b)” but it should state “in sub-paragraphs (a) and (b)”.

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

Regulation 20(g) amends paragraph 20 of Schedule 1 to the principal Regulations. Sub-paragraph (i) of regulation 20(g) states ‘at the end of the opening words’, however there are no opening words to paragraph 20(a). We believe that the words ‘sub-paragraph (a)’ should be removed from the wording preceding paragraph (i) as the amendment appears to be



relevant to the opening words of paragraph 20, and not sub-paragraph (a). Further, not all the amendments in regulation 20(g) are made to text in sub-paragraph (a) of paragraph 20 of Schedule 1 to the principal Regulations.

## Merits Scrutiny

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

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

These Regulations have been laid under section 2(8) of the Pollution Prevention and Control Act 1999 and are therefore subject to the affirmative procedure. Section 2(9) of that Act lists the regulations to which subsection (8) applies. We ask that the Welsh Government confirms which paragraph of subsection (9) it considers is relevant to these Regulations.

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

In relation to consultation, the following is noted at paragraph 16 of the Explanatory Memorandum:

*There has been ongoing targeted engagement with key stakeholders following the introduction of the principal Regulations, which has helped to identify the amendments in these Regulations.*

We note that the Explanatory Memorandum does not make reference to the consultation undertaken in relation to these Regulations in accordance with section 2(4) of the Pollution Prevention and Control Act 1999, which is referred to in the preamble to the Regulations.

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

It is noted that a regulatory impact assessment has not been undertaken in relation to these Regulations. The following is stated at paragraph 17 of the Explanatory Memorandum:

*The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. It was not considered necessary to carry out an RIA as to the likely costs and benefits of complying with these Regulations on the basis that the EPR scheme RIA contained a full analysis of the impacts of the EPR reforms, and the amendments being made are minimal.*

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

It is noted that the Minister for Climate Change, in a [letter](#) to this Committee dated 16 February 2024, gave notification that these Regulations fall under the scope of the Resources and Waste Common Framework.



## Welsh Government response

A Welsh Government response is required to reporting points 1 to 14.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**28 February 2024**



Senedd Cymru

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

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Welsh Parliament

**Legislation, Justice and Constitution Committee**