

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT PACKAGING WASTE (DATA REPORTING)
(ENGLAND) (AMENDMENT) REGULATIONS 2024

DRAFT WASTE ENFORCEMENT
(FIXED PENALTY RECEIPTS) (AMENDMENT)
(ENGLAND AND WALES) REGULATIONS 2023

Tuesday 5 March 2024

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Saturday 9 March 2024

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The Committee consisted of the following Members:

Chair: DAME MARIA MILLER

- | | |
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| † Edwards, Ruth (<i>Rushcliffe</i>) (Con) | † Morris, Anne Marie (<i>Newton Abbot</i>) (Con) |
| † Gibb, Nick (<i>Bognor Regis and Littlehampton</i>) (Con) | † Qureshi, Yasmin (<i>Bolton South East</i>) (Lab) |
| † Harrison, Trudy (<i>Copeland</i>) (Con) | † Shelbrooke, Sir Alec (<i>Elmet and Rothwell</i>) (Con) |
| † Johnson, Dr Caroline (<i>Sleaford and North Hykeham</i>) (Con) | † Slaughter, Andy (<i>Hammersmith</i>) (Lab) |
| † Jones, Ruth (<i>Newport West</i>) (Lab) | Smith, Cat (<i>Lancaster and Fleetwood</i>) (Lab) |
| † Lewer, Andrew (<i>Northampton South</i>) (Con) | † Tarry, Sam (<i>Ilford South</i>) (Lab) |
| † Loder, Chris (<i>West Dorset</i>) (Con) | Thompson, Owen (<i>Midlothian</i>) (SNP) |
| † Lynch, Holly (<i>Halifax</i>) (Lab) | † Vickers, Matt (<i>Stockton South</i>) (Con) |
| † Moore, Robbie (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>) | William Opposs, <i>Committee Clerk</i> |
| | † attended the Committee |

Second Delegated Legislation Committee

Tuesday 5 March 2024

[DAME MARIA MILLER *in the Chair*]

Draft Packaging Waste (Data Reporting) (England) (Amendment) Regulations 2024

9.25 am

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Robbie Moore): I beg to move,

That the Committee has considered the draft Packaging Waste (Data Reporting) (England) (Amendment) Regulations 2024.

The Chair: With this it will be convenient to consider the draft Waste Enforcement (Fixed Penalty Receipts) (Amendment) (England and Wales) Regulations 2023.

Robbie Moore: Laid in draft before the House on 17 January, the regulations amend the Packaging Waste (Data Reporting) (England) Regulations 2023. Since June last year, when those regulations were first amended, there have been developments in the collection and packaging reforms, including a 12-month deferral of the full implementation of the packaging extended producer responsibility scheme, to focus on stakeholder engagement, and a delay to the Scottish deposit return scheme. Those events have caused several issues that now require amendments to producers' data reporting obligations.

Let me turn to the details of the first statutory instrument. The regulations introduce two key changes, but I assure the Committee from the outset that the changes being introduced are not a change of policy intent; instead, they address the delay to the Scottish DRS and stakeholder concerns. First, the SI removes the exemption from data reporting on drinks containers that would have been obligated in a Scottish DRS. The delay to that scheme, combined with the exemption from the data reporting regulations, meant that 180,000 tonnes of packaging would have gone unobligated for a number of years under both the DRS and the EPR. The amendment accounts for the development and ensures that all packaging supplied in the UK will attract a recycling obligation. The new provisions will exempt this material again once a DRS is operational.

Secondly, the SI makes changes that address stakeholder feedback on the definition of household packaging. The amendments address two key aspects, which broaden the definition to allow for more packaging to be exempt from disposal fees. The first is where packaging or a packaged product is designed to be used only by a business. An example would be a 50-litre beer keg. Under the current definition, if the beer keg is sold to a wholesaler before being supplied to the pub that uses it, the packaging would have to be reported as household packaging. However, large beer kegs are unlikely to end up in household bins. Our amendments introduce an additional test, which offers producers the opportunity to exempt such packaging from being treated as household packaging.

The second change widens that business-only exemption to include packaging or a packaged product that is supplied to public institutions, such as hospitals or schools, that is unlikely to end up being disposed of in a household bin—for example, packaging for an ultrasound scanner or restricted medicines. The amendments allow for more packaging to be fairly exempted from being defined as household packaging and therefore not attract packaging EPR disposal cost fees. However, all packaging will remain subject to packaging EPR recycling obligations through the purchase of packaging recycling evidence notes from re-processors and exporters, as it is at present.

In addition to the two key changes that I have discussed, the regulations make a number of other changes. Four of the amendments were identified not long after the original regulations came into force in early 2023. We were not able to include them in the amendments midway through the 2023 data collection year as they would have retrospectively increased the obligations. We always intended to make the changes starting from the 2024 reporting year.

The first change clarifies that the packer or filler is obligated for branded packaging if the only brand on the packaging relates to the packaging itself and not the product inside. For example, if a packer puts their product in a branded Jiffy bag but does not add their own brand to it, the packer is obligated, not Jiffy.

The second change makes it clear that where ownership for imported packaging remains with an overseas producer until it is passed to the client by a third party—or a toll manufacturer—the first person to take ownership in the UK is obligated for that packaging. This could be a supermarket or wholesaler. The amendment ensures that such packaging does not go unobligated.

The third change addresses a loophole to ensure that distributor producers retain their obligations where they sell empty packaging to large producers who then sell that packaging onwards without filling it. For example, this could be a wholesaler that sells unfilled cups to small, independent coffee shops.

The fourth change is an amendment to the seller obligation. The regulations already require reporting by nation of packaging sold from a business to a consumer. The fix in the regulations will ensure that data is also reported on the nation in which packaging is sold from one business to another business. This was always the intention, and will help to enable the tracking of recycling rates in each nation individually.

In addition, we are making an amendment that will aid distributor producers in complying with the regulations in advance of the main packaging extended producer responsibility regulations coming into force later this year. It does this by placing an obligation on the Environment Agency to publish a list of all large producers that have reported data, thereby supporting them in identifying which of their customers are obligated producers in their own right.

Finally, the SI includes some minor amendments to correct the drafting, some provisions to accommodate the transition from the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, and some changes to help to avoid the reporting on one piece of packaging by two producers. The amending regulations will apply to England only, but similar amending regulations are being progressed in Wales, Scotland and Northern Ireland.

My officials have worked closely with the relevant Departments in the devolved Administrations on the development of this legislation.

I turn now to the draft Waste Enforcement (Fixed Penalty Receipts) (Amendment) (England and Wales) Regulations 2023, which were laid before the House on 10 January this year. Litter and fly-tipping harm the environment and blight our communities. We want to see councils making the most of their enforcement powers, including by issuing fixed penalty notices to those who litter, fly-tip or pass their household waste to someone without the proper licence. Income from such fines is retained by councils and is currently ringfenced for various functions related to waste management, including sweeping, emptying bins and household waste collection. We know, however, that in a minority of councils fixed penalty receipts are absorbed into general council budgets or spent on other neighbourhood functions.

The Government believe that the revenue received through the payment of such penalties should be reinvested into expanding or improving councils' enforcement functions and cleaning up the consequences of this antisocial behaviour. The statutory instrument achieves this goal by amending the qualifying functions on which councils can spend income from such penalties to cover enforcement and clean-up only. By improving their enforcement capabilities, councils should be able to catch more perpetrators and deter others from offending, which should lead to cleaner streets, parks and countryside. Enforcement functions could include employing more officers, investing in CCTV and signage, and improving the use of data. Clean-up functions can include collecting and disposing of litter and fly-tipping and restoring land that has been harmed.

The statutory instrument retains the ability of the Secretary of State to make provisions by future legislation about how local authorities in England use their fixed penalty receipts. Although the new ringfence will apply to councils in England only, the instrument does include consequential amendments relevant to Wales to ensure that no changes are made to how local authorities in Wales can spend fixed penalty receipts.

The statutory instrument also makes consequential amendments to the Local Government (Structural Changes) (Further Transitional Arrangements and Staffing) Regulations 2009 to ensure that arrangements pertaining to the merging of authorities in England are not affected. Consequential amendments are also made to the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018, meaning that no changes are made to how authorities can spend income from the relevant civil penalties.

To conclude, I emphasise that the measures in the first statutory instrument are crucial for enabling the effective implementation of the extended producer responsibility for packaging and realising its associated environmental benefits. The regulations in the second instrument will drive councils in England to reinvest more income from fixed penalty receipts from litter and fly-tipping into enforcement, thereby catching more offenders and keeping our communities clean. I commend the draft regulations to the Committee.

9.35 am

Ruth Jones (Newport West) (Lab): It is a pleasure to serve under your chairmanship today, Dame Maria. It is a wonderful start to the day to be talking waste

with the Minister. I reassure the Minister and the Whips that, given the technical and relatively uncontroversial nature of this legislation, we do not intend to press it to a vote.

But before everyone breathes a sigh of relief, I have a few remarks to make. I want to be very clear that His Majesty's Opposition are on the side of, and support, all measures that are aimed at promoting the better use of our natural resources and increasing reuse and recycling. Establishing the correct base data will be fundamental to the success of the extended producer responsibility scheme for packaging.

I note the important progress on recycling made by my colleagues in the Welsh Labour Government. Welsh recycling rates have now reached 65.7%, with the aim to get to at least 70% in 2024-25. That has already been met by five Welsh local authorities. In Wales, we have also now recorded the lowest ever amount of waste sent to landfill, at just 1.6%. I pay tribute to the fantastic work being done in my local communities to save usable items from landfill, by organisations such as Re:Make Newport and Wastesavers.

It is a shame that England is lagging so far behind. The lack of progress is also causing huge unnecessary costs and holding back business investment. Having made that point about landfill, and I think about all the places across England—from Hull to Newcastle-under-Lyme to Greater Manchester—where landfill sites continue to blight the lives of women, men and children of all ages and from all backgrounds.

I will take each SI in turn and then make some short concluding remarks. First, the draft Packaging Waste (Data Reporting) (England) (Amendment) Regulations 2024 are needed partly because of the Government's failure, to date, to deliver an agreed way forward for the UK's deposit return scheme, which was promised in 2018. With the Prime Minister picking a fight with the Scottish Government, we have heard from business that the DRS industry forum has now been placed in a position of postponement, with neither the January nor February meetings taking place this year. There has even been press speculation that the scheme will now be delayed until 2028.

Maybe this is just another case of the Conservatives giving up on governing because it is all too difficult? Well, the Minister will not be surprised to know my views: if they do not want to govern, they should get out of the way and let us in. Will the Minister confirm when the Government will bring in a UK-wide DRS, and when the DRS industry forum will next meet?

Meanwhile, the draft regulations will place a significant reporting burden on business, especially with the inclusion of DRS materials as part of the EPR. Will the Minister clarify whether that means that the costs of collecting and recycling drinks containers will fall to non-drinks packaging producers through EPR fees? I listened carefully to what he said, but I am still not clear whether that will happen.

Although regulations on data reporting have been introduced, the wider regulatory package for the Department's EPR scheme for packaging remains a work in progress and shrouded in mystery. There is no clear timeline or indicative fees, which industry was told to expect at the beginning of January. Does the Minister

[Ruth Jones]

accept that without indicative modulated fees, businesses are unable to budget and prepare for the introduction of EPR?

The lack of clarity and continual delay is a huge barrier to the investment and planning that we need from industry to design and roll out the packaging of the future, which must be far more reusable and recyclable. The question is about whether the draft regulations will lead to more or less recycled material. Will they encourage or discourage the refill and reuse of containers? What about retailer packaging take-back schemes? Overall, will they reduce greenhouse gas emissions?

We have heard from the all-party parliamentary group on sustainable resource that the draft regulations could actually disincentivise refillable packaging. The APPG has put forward several recommendations to enhance the EPR's effectiveness in facilitating and accelerating reuse, including the setting of fees at a level that will promote design for reuse and provide incentives for reuse infrastructure. Will the Minister confirm that those measures will be part of the wider EPR regulatory framework?

The Department's plans are far from transparent, whether for industry, English local government or the devolved Governments in Scotland, Wales and Northern Ireland. Instead of building confidence in fair charging for industry and a fair allocation of proceeds across waste authorities, there seems to be suspicion that the UK Government are trying to manipulate the finances to mask inadequate funding. When will the complete packaging EPR regulatory framework be available for industry and local authorities?

I have some further specific questions on which industry needs answers sooner rather than later. In our meetings with industry representatives, they are focused on these questions, because they cannot plan for the future unless they know the answers. How much packaging has been declared as placed on the UK market by those producers that have reported data to the new EPR system? How does that compare to the tonnage the Department expected to be declared?

What penalties will be incurred by producers that fail to submit their EPR data by 31 May? Will the penalties reflect the size of turnover or the size of the recycling obligation of an offending producer? New regulation 7A of the data reporting regulations refers to Environment Agency guidance on the definition of household packaging; when will that guidance be available to producers? It is very difficult to devise a scheme without having the guidelines.

Five years since the Government's 2018 waste strategy stated that the current packaging waste rules lacked transparency and did not

"sufficiently incentivise design for greater reuse or recyclability", what is the timetable for phasing out the packaging recovery notes system? What preparations are being made to reduce undue burdens on businesses? Finally, will the Minister explain how EPR will work for franchise businesses, as the British Retail Consortium has written to ask the Minister to allow franchisors to register, report and be charged on behalf of franchisees?

On the draft Waste Enforcement (Fixed Penalty Receipts) (Amendment) (England and Wales) Regulations 2023, I understand that their aim is to more tightly ringfence

the use of income by local authorities, as the Minister said. Will he outline how much has been received in fixed penalties and what local authorities have spent it on? How does the amount that local authorities received in fixed penalties compare with the amount they spend on street cleaning and dealing with fly-tipping? A limited consultation was undertaken with local authorities, but no responses from the west midlands were included; does the Minister know why?

Adequate and long-term funding is crucial for councils to effectively prosecute fly-tippers, develop litter strategies and implement best practice, but councils are facing financial challenges in prosecuting fly-tippers, with the fines issued by courts often lower than civil penalties. Will the Minister work with the Local Government Association to remove the cap on fixed penalty notices for fly-tipping, littering and graffiti? Has he had any discussions with the LGA to date? Will he work with the LGA to explore how more stringent court fines for the worst offenders could help councils to investigate and prosecute fly-tippers and deter repeat offenders?

A few weeks ago in a Westminster Hall debate, my hon. Friend the Member for Croydon Central (Sarah Jones) drew attention to the dangers of fly-tipping, including the feeling of dirtiness and neglect that it causes, damaging small businesses, cafes, grocers and hairdressers. She was right to say:

"Clean streets tell us that we are part of a community and that people take pride in the spaces they share, the memories they make there and the community they are part of."—[*Official Report*, 6 February 2024; Vol. 745, c. 21WH.]

Neighbourhoods across England are getting buried under an avalanche of litter and dumped rubbish, leaving communities feeling broken and powerless. In 2022-23, local authorities in England had to deal with more than 1 million incidents—that is nearly 3,000 a day. Will the Minister confirm whether the draft regulations will allow councils to use fixed penalty funds to avoid having to close recycling centres, to provide free mega-skip days and to put up CCTV at fly-tipping hotspots?

Finally, when will we see the Government's promised action on single-use vapes, 1.3 million of which are thrown away every week? I accept that I have asked lots of questions, but the Minister will appreciate that governing by statutory instrument will land us all in this situation. If he and his Parliamentary Private Secretary, the hon. Member for West Dorset, have not had time to scribble down all my questions, or the Minister cannot answer them now, I will happily put them in writing, but I wanted to give him a go at answering them today. The Opposition will not oppose the regulations but we want answers to those obvious and important questions.

9.45 am

Robbie Moore: I thank the hon. Member for Newport West for her valuable contribution to the debate. Let me address some of her points and comment on the questions that have been raised.

The first SI makes amendments that will significantly extend the household packaging exemption, but we appreciate that more work may need to be done to make it go further. In developing the definition we have reviewed and engaged heavily with stakeholders, and taken into account the established schemes that have been introduced in other countries. We are not only making sure that this legislation is rolled out here, but

working closely in conjunction with the devolved Administrations before the main SI is laid before this House by the UK Government. We are also working closely with stakeholders to ensure that the definition aligns with the policy aims and needs of the sector, while balancing the requirement to create an approach that is both enforceable and fair to local authorities.

The hon. Lady asked why the SI is necessary. It includes important amendments that take account of the deferral of the packaging EPR and the delay of the Scottish deposit return scheme. The amendments also take account of feedback. We have listened to stakeholders throughout the 2023 consultation and other engagement. Not making the amendments would result in, among other things, the Scottish DRS material being unfairly obligated; double reporting by producers; and packaging being classified as household packaging where evidence to the contrary is easily available. That is why the SI is necessary.

On timing, it is understandable that producers are keen to get clarity on fees. Under the extended producer responsibility packaging regulations, producer fee rates will be set and published by the scheme administrator. The fee rates for the 2025-26 financial year will not be known until the spring of 2025, once all the producer packaging data has been received and checked. However, in the meantime, to support producers, we aim to produce illustrative fees as soon as possible.

On the risk of significant non-compliance by producers, I assure the hon. Lady and all Members that we are doing all we can to make sure that producers that are obligated to comply with the regulations are in the best position to do so. We have a comprehensive programme of engagement that is reaching out to more than 10,000 organisations through webinars and newsletters. In addition, we have published guidance on the gov.uk website.

Dr Caroline Johnson (Sleaford and North Hykeham) (Con): I am particularly pleased that my hon. Friend is tackling fly-tipping, which my constituents have raised with me as a problem, as well as dealing with people dropping litter. What does he expect it to cost businesses to comply with the packaging regulations? Does he expect that to put prices up?

Robbie Moore: As I have said, we want to put businesses in the best position possible to have an understanding of the fees that are likely to be imposed on them. That is why we aim to give out indicative fees to businesses later this year, so that they can encompass them within their business models. It will be up to them to consider how that will impact any consumer when rolled out. As a Government, we aim to get the indicative fees out to industry as soon as possible so that they can best forward plan.

The hon. Member for Newport West referred to modulated fees. We are in the process of reviewing and collating the evidence we collected in the autumn of 2023 on the 13 broad types of packaging that will be shortlisted for higher fees, and we will engage further with stakeholders on that topic in the second half of 2024.

Ruth Jones: I understand that the Minister is talking about preparation, but industry needs certainty and clarity now; it cannot talk about things now and then put them into place with just a couple of months' notice. When will the DRS industry forum next meet? When will the complete packaging EPR framework be available for industry and local authorities?

Robbie Moore: I will come to the DRS shortly. We engage with industry constantly on EPR and, as I said, we are aiming to get the indicative fee structure out as soon as possible. On modulated fees, we have ongoing engagement with the sector and aim to provide further clarity in the first half of this year.

The hon. Lady asked about reusable and refillable packaging. Following feedback from stakeholders, we have decided that the initial focus of the packaging EPR will be to encourage the greater use of recyclable packaging and to complete the work of putting in place a cost-effective and efficient recycling system to ensure that recyclable packaging is recycled. Further obligations are to be introduced on the use of reusable packaging, in which all producers will be encouraged to get involved and engaged.

Before I move on to the DRS, I know that the hon. Lady asked about support for councils. From 2025, the extended producer responsibility for packaging will move the full cost of dealing with household packaging waste that is generated by households from local authorities to the businesses that handle and use packaging, applying the "polluter pays" principle. Once the packaging EPR is fully operational, the shift of cost from local authorities to producers is estimated to be in the order of £1.2 billion per year across local authorities in the UK.

The implementation of the DRS will be rolled out, and we are listening to and continue to work with industry to assess the feasibility of the implementation date as more detail on the implementation phases of the scheme is developed. I stress that it is incredibly important that we get the complete interoperability of the deposit return scheme across all nations. That work and those conversations are currently happening with the devolved Administrations.

Ruth Jones: The Minister is generous to give way again. He has talked up interoperability, which is crucial—we do not want glass bottles going one way across the border and plastic bottles going across the Scottish border—but when will it happen? The rumour is that it will be 2028; will the Minister confirm or deny that?

Robbie Moore: I will not get involved in commenting on rumours, but I can say that the announcement will be made shortly.

In May 2023, the UK Government published a position statement setting out that the deposit return scheme across the UK should be interoperable to reduce the complexity for businesses and consumers. That is key because not only does the scheme need to be completely interoperable but we need to bring consumers along with us. If a DRS scheme is to be completely operational and have the influence and impact that we as a Government want it to have, we have to bring consumers along with us, which is where we are focusing our efforts before we make any further announcements. The Department for Environment, Food and Rural Affairs is working closely and at pace with the devolved Administrations on the next steps to deliver interoperable schemes across the UK. As I say, we aim to provide more clarity on that shortly.

Let me turn to the second SI, on waste enforcement. As referred to in the anti-social behaviour action plan, the Prime Minister has made it clear that councils should take a tougher approach to enforcement and

[*Robbie Moore*]

make greater use of fixed penalties. The maximum fixed penalty that councils can issue has been increased from £400 to £1,000 for fly-tipping, from £150 to £500 for littering, and from £400 to £600 for householders using an unlicensed waste carrier. I reassure the hon. Member for Newport West that the Government have published new league tables to provide transparency on how councils are using their fly-tipping enforcement powers.

As I outlined, the statutory instrument will help to drive up more income from fixed penalty receipts, which will go into the building of enforcement capability and capacity in English councils, meaning that more offenders are brought to justice. As we all know, fly-tipping is a serious crime and offenders can face significant fines and imprisonment if they are convicted in court. DEFRA is working at pace on the issue. In 2021, the National Fly-Tipping Prevention Group produced a guide on how councils and others can build robust cases for prosecutions. The average court fine has increased by 12%.

On the hon. Lady's question about litter and fly-tipping fining for profit, fixed penalty notices should never be used to raise revenue, or to punish accidental littering or those who are trying to do the right thing, when education would be a better approach. The new, tighter ringfence will send a clear message to councils and members of the public that the penalties are not a moneymaking tool for councils, but rather a tool to help them to protect public spaces. We will provide statutory guidance on the use of litter penalties and will consider including advisory statements on fly-tipping.

To conclude, I hope that I have covered most of, if not all, the points raised—

Ruth Jones: The Minister is being very generous with his time. I do realise that I asked a lot of questions; would it be easier for me to write to him on certain things such as when the DRS industry forum will next meet?

Robbie Moore: I am more than happy to receive correspondence from all Members of this House, and will of course provide the response to any questions raised. I am happy to receive any questions in writing.

To conclude, I trust that Committee members understand and accept the need for the two statutory instruments, the first of which will make crucial changes to the Packaging Waste (Data Reporting) (England) Regulations 2023 that will ensure that drinks containers that are supplied in Scotland pick up an obligation in the same way that drinks containers supplied elsewhere do. The amendments will also widen the provisions that allow for some primary and shipment packaging to become exempt from being defined as household packaging. Finally, further amendments made through the regulations will provide clarification on producer reporting.

The second statutory instrument will drive councils in England to reinvest more income from fixed penalty receipts from litter and fly-tipping into enforcement, thereby catching more offenders and keeping our communities clean. I thank Members for their contributions and support. I commend the regulations to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Packaging Waste (Data Reporting) (England) (Amendment) Regulations 2024.

**DRAFT WASTE ENFORCEMENT (FIXED
PENALTY RECEIPTS) (AMENDMENT)
(ENGLAND AND WALES)
REGULATIONS 2023**

Resolved,

That the Committee has considered the draft Waste Enforcement (Fixed Penalty Receipts) (Amendment) (England and Wales) Regulations 2023.—(*Robbie Moore.*)

9.58 am

Committee rose.