



Windsor Framework Democratic
Scrutiny Committee

OFFICIAL REPORT (Hansard)

Regulation (EU) 2025/40:
Department of Agriculture, Environment and
Rural Affairs; Food Standards Agency

30 January 2025

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Philip McGuigan (Chairperson)
Mr David Brooks (Deputy Chairperson)
Mr Jonathan Buckley
Mr Declan Kearney
Mr Peter Martin
Ms Kate Nicholl
Ms Emma Sheerin
Mr Eóin Tennyson

Witnesses:

Mr Colin Breen	Department of Agriculture, Environment and Rural Affairs
Mrs Sharon Gilmore	Food Standards Agency

The Chairperson (Mr McGuigan): I welcome Colin Breen, assistant director of waste policy at DAERA, and Sharon Gilmore, head of standards and dietary health, Food Standards Agency (FSA). I am not sure who is going to lead, so it is over to you to present on the regulation.

Mr Colin Breen (Department of Agriculture, Environment and Rural Affairs): We had given an introduction on the regulation two weeks ago. Do you want us to run through it all again, or would you like to dig into —?

The Chairperson (Mr McGuigan): Just go through it quickly, because we have Hansard here, and the evidence will be useful to help us to decide whether to have an inquiry.

Mr Breen: OK. The packaging and packaging waste regulations replaced the packaging and packaging waste directive. That was born out of an EU aim to deliver a more circular economy, tackle the waste generated by packaging and promote reuse and refill options so that we are not always in a throwaway culture. It was changed from a directive to a regulation to ensure that it directly applied in all member states and, through the Windsor framework, in Northern Ireland.

I will outline some of the main highlights. The regulation will govern the design of packaging and require a reduction in packaging volumes, a minimisation of packaging waste and a minimisation of empty space in packaging. It will mandate some separate collection of packaging waste. It will result in the introduction of some new labelling and other requirements, such as deposit return schemes and extended producer responsibility (EPR). Those are being worked on across the four nations and the three nations respectively. The regulation will amend the single-use plastic directive.

I will turn to the main points of the EU impact assessment. In 2009 in the EU, there were 68 million tons of packaging. By 2019, that had grown to 78.5 million tons, and it is projected to continue growing over the next number of years if something is not done. One of the main plus points in the EU impact assessment is the fact that it suggests that there will be approximately 600,000 new jobs in circular economy activities as a result of the regulation. There will be an impact on a range of businesses both within and outside the EU, because there is a mirror clause in the packaging and packaging waste regulations that means that anything that anybody imports into the EU from another country will have to comply with the same requirements. There will be exemptions, particularly for SMEs etc.

As I outlined last time, there are a number of areas about which we just do not know yet. The regulation is about 200 pages long and has 70 articles, but an awful lot of information is missing that is going to be followed up with delegated acts and implementing acts. We will probably see about 1,000-plus pages of those over the years. Many of the targets are still far away — in 2040 or 2030 — so there is still a lot of information to gather. As I mentioned, there is a slant towards extended producer responsibility. That scheme is already well developed in the UK. A deposit return scheme is also being developed in the UK on, I understand, a three-nation basis.

Those are the main points by way of an introduction and some background. I am glad that the FSA has come along too. We have both provided answers to the questions. I do not know whether you want me to run through any of the answers initially or whether you want to dig into them.

The Chairperson (Mr McGuigan): We will probably take it separately. I have a few questions. We have received an updated explanatory memorandum (EM), so we are now aware of a raft of articles that are not going to apply. Can you give a bit of detail on that? They are not going to apply, so that will lessen any impact. You talked about information that is not known. I am not sure whether that relates specifically to some of the articles that are not going to apply. As for information that is not known about articles that are going to apply, we will not have that information in the next four weeks anyway. I am looking for clarification on that as well.

Mr Breen: Chair, I have not received the EM. Did you get it from the Department for Environment, Food & Rural Affairs (DEFRA) very recently? I had not received it by the end of yesterday.

The Chairperson (Mr McGuigan): I received it last night. I have it in front of me. Articles 34, 43, 29-33, 44-47, 48, 49, 50, 12, 63 and others are not going to apply. For the purposes of this regulation, they are not going to apply under article 13(3a) of the Windsor framework, which is what we are looking at today. They may apply later under an article 13(4) applicability motion. That is where we are.

Did you not receive the EM? I probably should have asked that question at the start.

Mr Breen: No, I have not received the EM. I have a list of all the articles, and I can talk you through any of them.

The Chairperson (Mr McGuigan): I ask the Clerk to come in on this point.

The Committee Clerk: I suggest that one of the secretariat team provides you with a copy of the EM. If you move to the FSA, we can then come back.

The Chairperson (Mr McGuigan): Is that all right? Sorry, Colin. We are catching you on the hop.

Mr Brooks: Chair, we have previously taken a break so that members had a chance to read an EM. Would it be appropriate to take a short break to allow the officials to read it?

The Chairperson (Mr McGuigan): I am happy. Did you not receive it?

Mrs Sharon Gilmore (Food Standards Agency): No.

The Chairperson (Mr McGuigan): OK. I am happy enough. We might — I was going to say that we could go on to other agenda items and come back to it, but no, we will suspend for five minutes.

Suspended from 10.44 am to 10.53 am.

On resuming —

The Chairperson (Mr McGuigan): We resume the meeting. Everybody has been given time to read the updated explanatory memorandum. Sharon, we will start with your evidence to the Committee.

Mrs Gilmore: Thank you, Chair and members of the Committee, for the opportunity to brief you this morning. I am here to answer your questions on food contact materials and the elements of the EU legislation. The Food Standards Agency has responsibility for the safety of food contact materials and for protecting the public from risks associated with chemicals that might transfer to food from materials that the food comes into contact with, including packaging. From an FSA perspective, the key thing to note is that all packaging that is intended to come into contact with food or is already in contact with food must meet food safety requirements. That will continue to be the case when the regulation comes into operation. In response to a documented public health concern, the regulation bans polyfluorinated alkyl substances (PFAS) from food contact packaging. That is not expected to be a significant concern for Northern Ireland-based producers. The UK Government are also actively considering that issue.

That is my main introduction. I am here to reassure the Committee that food safety requirements for food contact materials will continue. It is a highly regulated policy area in which food contact materials and the products that they contain and the processes that are used are regulated and authorised.

The Chairperson (Mr McGuigan): Thank you very much for that. Obviously, the Committee has a number of things to look at. One is the negative impact that is liable to persist. I am usually very blunt. I will just ask that question: do you see any negative impact that is liable to persist from a food standards point of view?

Mrs Gilmore: This regulation, the packaging and packaging waste regulation, takes in the whole life cycle of packaging. We are very specific and there are three key areas that we are involved in through this. One is the requirement for substances in packaging, which is mentioned in the EM today, around the prohibition of PFAS in packaging materials. Another is recycled material content in plastic packaging, and then there is the reuse and refill obligations for takeaways. In the FSA we do not see any particular concern with regard to this regulation. As the food safety requirements are in place, it does not bring into doubt any of the current safety protections for consumers.

The Chairperson (Mr McGuigan): I appreciate that. I hand back to Colin. You have now had a chance to look through the EM. I understand that it was not maybe as long as you would want to interrogate it. On the basis of now having seen it, is there anything that you want to add or delete from what you said earlier?

Mr Breen: One of the positives of the EM is that the green procurement will not apply, because that would have been a little tricky. There are some areas where — I would not go as far as to say "concern", but they will need further looking at. The UK Government have committed to trying to align where possible. For example, article 7, recycled content: whilst it is similar to the UK plastic packaging tax, it is not necessarily the same. The percentage of recycled content is slightly higher. It is also likely, although I cannot say with any certainty, that the EU one will be a hard and fast, "You must have your recycled content in", whereas, with the UK plastic packaging tax, you can pay the tax if you do not have the necessary level of recycled content in.

In the labelling of packaging, again, there is a potential risk. There was a potential risk with extended producer responsibility as well, so the UK Government delayed the labelling decision on that. They are actively looking at how to align both, because it makes sense to. Most, or a lot, of GB producers are going to be selling into the EU as well as into Northern Ireland and GB, so having one label instead of two —. However, that is an area that some of the stakeholders have said they are keeping a close eye on. Some of the bans on single-use plastics —. I said that I think there is a typo in the EM: it says "2040", and I believe that article 25 states "2030". The industry is generally moving in that direction anyway. The extra costs from extended producer responsibility are likely to mean largely that those small single-use packages are not as prevalent. However, it is just another one that we have to keep an eye on.

Those are probably the main slightly grey areas until we get the delegating and implementing acts, but the things in the EM certainly make it much more positive, because all the packaging and packaging waste regulations aim to build a circular economy and make things more environmentally sustainable. That is very good and something that I think we should all strive for. Indeed, all four nations of the UK and most nations of the EU have all publicly stated that that is what they are striving for. The

stakeholders in the industry are generally moving in that direction anyway, but a few bits of information are still needed on full alignment.

The Chairperson (Mr McGuigan): Again, I will try to condense this. Overall, the tenets of the legislation are not going to have a negative impact. On the whole, they are actually positive. The updated British Government EM says that they expect that there will be no regulatory barriers and that there is going to be no impact on trade between the North and Britain. They see no difference in product availability here and elsewhere. Are those things that you would agree with?

Mr Breen: Provided that GB aligns with the EU rules — I cannot instantly think of a good reason why it would not — yes, it will be moving in a very environmentally sustainable way, implementing a better circular economy, and this regulation will be very positive for the environment. There is always that question mark until we are sure of an alignment, but, as you said, we are not going to know that in four weeks.

Mr Brooks: What I am taking from the previous answer is that we do not have enough information to make a decision on those things. How will it affect the NI retail movement scheme and prepackaged products coming into Northern Ireland? Is there any danger that we will see a lot of products that might be available to consumers in GB using packaging that does not yet align with these regulations? As Northern Ireland is a small market relative to the rest of the UK, will such products not then be available to us in Northern Ireland? Is there likely to be an impact in that sense?

Mrs Gilmore: The legislation regarding food contact materials is included in the annex of the Windsor framework. As of now, food contact materials can come through the Northern Ireland retail movement scheme, so products that are manufactured in GB are still available in Northern Ireland. For example, cups purchased by a coffee shop from a GB manufacturer of those materials are still available in Northern Ireland.

Mr Brooks: Even if there is future divergence in the regulations relating to that packaging?

Mrs Gilmore: Yes, because the specific food contact materials regulations are included in the annex of the Windsor framework.

Mr Brooks: This is a side point, but you referred to the number of jobs that may come out of this in the circular economy. Are those largely private-sector jobs? It is positive to look at jobs, but, if those jobs represent a weight on the public sector or councils to put those processes in place, it is as much a liability as a benefit. We can talk about jobs, but, equally, that is a cost.

Mr Breen: The EU's impact assessment does not explicitly state it, and this is probably due to the fact that each country has a different way of working that sometimes —.

Mr Brooks: How many jobs did you say?

Mr Breen: Six hundred thousand.

Mr Brooks: So 600,000 jobs. If even a fraction of those were to go onto our public sector, that would be significant. That is something that we need to know before we say, "All of these jobs, isn't it wonderful". I understand what you say, but we just need to be careful when looking at jobs as a positive because it depends on who is paying for them. If it is the taxpayer, we need to bear that in mind. That is a separate issue.

The Chairperson (Mr McGuigan): I am not sure whether you were arguing against not creating jobs, David. I am not going to put words in your mouth. *[Laughter.]*

Mr Brooks: Our budgets are not great for it at the moment, Chair.

Mr Buckley: My first question is for DAERA. Is it still your position that you are unable to advise whether the regulation will have a significant impact liable to persist?

Mr Breen: I cannot fully say that. The UK Government say that their ambition is to align everywhere possible. The explanatory memorandum takes out some of the more concerning and administratively

burdensome activities. However, I cannot state with absolute certainty at this stage because there are still quite a few unknowns. Whilst the regulation is big, it does not give enough detail, and we are still not far enough along the road with regard to the UK definitely aligning with this for me to say for definite.

Mr Buckley: So DAERA's position is that it is still unable to advise whether or not the regulation will have a significant impact liable to persist. You have probably had very little time to read that updated explanatory memorandum, but is that still the position?

Mr Breen: I cannot say with full certainty say that it will not. As I have just outlined, we still cannot be entirely sure that there will be full alignment in some areas. I do not believe that any of them are so major as to impact on everyone's everyday lives, but they could impact on some people. I know the test is quite high in terms of impacting on everybody's daily life. Most of the things that I am mentioning are — I would not go as far as saying "niche", but they are things like small individual shampoo bottles being banned in hotels and things like that. They will have an impact, but I would not say that they will have a significant impact on everyday lives.

Mr Buckley: OK. Obviously, we know that it is significant legislation and differs significantly in scope. There are substance areas where currently there is no UK Government policy or it is in a very early development stage. I think of the requirement for all packaging to be placed on the EU market to be recyclable; a minimum recycled content requirement for plastic packaging; a prohibition of certain types of single-use packaging for food, condiments and cosmetic products; requirements around packaging size, space and design; targets for reusable packing in beverage transport retail sectors; restrictions on the concentration of certain chemicals in food packing; requirements for certain packaging items to be compostable; fees for producers placing packaging on the EU market for the first time; and a requirement to set up a deposit scheme for single-use packaging and metal cans, but there may be more. Are you in a position to highlight particular consumer products that that will impact on, particularly those that would transit from GB to Northern Ireland?

Mr Breen: A number of those areas are related to the extended producer responsibility and deposit-and-return schemes, which are well advanced and which the UK Government have committed to aligning with the EU on. The banning of single-use plastic packaging is largely things like sauce sachets in cafes and that sort of thing. I am not aware of exactly where they are transported to or from, but there is a possibility that their not being available in Northern Ireland would cause some people annoyance, but I do not think those sorts of things will have a major impact. That is my personal view.

On digging into the legislation a bit further, a lot of the reuse and refill parts are best endeavours as opposed to hard and fast targets. Again, they should not have a major impact; the FSA may want to say a bit more on that. I know that its thoughts are at an early stage, so I do not want to say too much — I will let Sharon come in in a second — but perhaps in a supermarket, for example, the loose fruit and veg area could be considered to be a reuse or refill area where you come back with your previous bag and refill with fruit and veg. Do you want to say anything on that, Sharon?

Mrs Gilmore: Yes. That is an example that we have considered, but we need further analysis to identify that, and further implementing regulations as well, to really see the impact of this on the retail sector, not just for food but for non-food as well. You may be aware that we are carrying out a mapping exercise at the moment on grocery retail outlets in Northern Ireland for wider policy, which includes the estimated size of the premises. That information should be available at the end of March or the beginning of April. We will work with our DAERA colleagues on it to help make an assessment of the impact of this particular article.

The Chairperson (Mr McGuigan): The reuse and refill is one of the articles that do not apply to the article that we are looking at today. Is that correct?

Mr Breen: Some of them do, and some do not. I was looking through it there.

The Chairperson (Mr McGuigan): Do 1 to 54 apply?

Mr Breen: Some of the reuse and refill articles do. I have not had a chance to go through the whole legislation, but I had a quick scan. Initially, I thought that none of them applied, but some do. Ideally, I would have had the EM a bit sooner to look at that, but there are definitely some of those reuse and refill obligations that will apply, according to this EM.

The Chairperson (Mr McGuigan): Jonathan, have you finished?

Mr Buckley: Chair, may I continue?

The Chairperson (Mr McGuigan): Yes, go ahead.

Mr Buckley: Does DAERA have a comprehensive list of potential consumer products that will be impacted by the regulation?

Mr Breen: No.

Mr Buckley: OK. This is the last question from me on this one. You talked about not having received any information from stakeholders. I think there was some loose engagement with the Food and Drink Federation. We know that there is a considerable industry out there. Is there no concern coming back to you? Why are we not seeing further engagement as to what the potential impact is?

Mr Breen: We have had some conversations. We have had a few calls with the main one, the Food and Drink Federation. They have spoken to their members, and their main area of interest and possible concern was around labelling and the risk of dual labelling. I know that the EM has now strengthened that a bit to say that the UK Government will look at harmonising all that labelling. That was the main concern that has come back there. We have been largely trying to understand the regulation ourselves over the past few weeks, and we will doing more stakeholder engagement on it.

Mr Buckley: Is it your opinion that, given some of the significant areas of policy change, the industry itself has not been able to fully scrutinise and analyse the impact on its given field?

Mr Breen: I had not seen this until this morning, so I very much doubt that the industry even knows about most of it yet. The things not applying are a positive, but you would have to look at it in its entirety to see exactly what still does apply before drawing a really good opinion. Like I said, there are so many articles: I was whizzing back and forth through the legislation to try to work out what applied and what did not apply. For example, I noted that article 34 — carrier bags — does not apply. That was one of the positives that I had: we have almost certainly met that one, so I thought that I could tick that one off as achieved, and now it is gone. We have done some good work on carrier bags, and we are not going to negate that.

Mr Buckley: Thank you, Colin; thank you, Chair.

The Chairperson (Mr McGuigan): Colin, carry on the good work. We do not need legislation to ensure that we are doing good work.

Some Members: Hear, hear.

Mr Martin: Thank you, Colin, not only for your candour this morning but for your reading of documentation that has just been provided to you. That is always challenging.

I will follow on from my colleague. We have tried to tease this out, and it is not fair to put you directly in this position, but, earlier on, you said:

"there are a number of areas about which we just do not know yet."

That could be related to what the Chair has been talking about; some of those things may or may not apply in this context. You also said that there are quite a few unknowns. I understand that, and the Committee understands that. You then went on to explain that by saying:

"the UK Government have committed to".

The current Government committed not to raise taxes before the election, and then the first thing that they did was to raise taxes, as far as I am aware. My sense this morning, and certainly the position that I have, is that there are a lot of "unknowns", to use your word, in this. My feeling is that there are a lot of things that DAERA does not know about the impact of. Jonny just asked about the scope of retail products that may or may not be affected by it. Would you say that that is the case? Is there quite a bit

that, you feel, is unknown today about the implications not only in terms of the purchase and sale of goods in Northern Ireland but in terms of what will apply?

Mr Breen: I suppose the biggest unknown — the Chair has mentioned this — is that many of these things will not come in for many years. The implementing acts and the delegated acts may not come in for many years, so there will be a lot of unknowns until 2030-plus with the legislation. It always makes me a bit uneasy to know that. There is the obvious unknown about full alignment. The UK Government have committed to it. I will not get into the other points about that; I can only take them at their word. They certainly held off on the EPR labelling when they realised that there was an issue and committed to looking at that and getting it to align. It makes sense to everybody to align. Why would you want to run two different labelling schemes when you are selling so much to the EU? Anybody in the world who is placing packaging on the market in the EU will have to comply. GB businesses placing packaging on the market in Northern Ireland will have to comply with it. Sharon talked about how the Northern Ireland retail movement scheme (NIRMS) will negate some things around food contact materials etc.

I wish that I were in a better position. Even before I received the EM about how some of the articles did not apply, there were an awful lot of unknowns in the regulations because of the way in which they are drafted, such as a lot of the things that, for example, apply within 24 months of an implementing act or else five years, whichever is later. There is an awful lot of information to come on this. It is not going to come in the next few weeks. I imagine that it is not going to come in the next few months. A lot of it may not come for a couple of years. I am going round in circles, but I have to be honest: there are definitely unknowns. That always makes me uneasy; I like to know exactly what something means.

Mr Martin: I am sure that the Committee concurs, because we are being asked to look at this and give an opinion on it. I am wary of giving sanction to something when we do not really know how it will impact. That is not good scrutiny. That has been useful.

You said that, for GB businesses selling into Northern Ireland, dual labelling would just make sense. It does not automatically follow that, just because that is right, the Government will just say, "My goodness, there has to be dual labelling here; we'll have to rationalise this and make sure that there's just one so that these goods can be sold into Northern Ireland".

Mr Brooks: Not all of them will seek to supply the EU. That is the other thing.

Mr Breen: I was talking about this yesterday with some of my colleagues. I cannot say whether it is likely that there will be the same label. In everybody's head, it makes complete common sense to do so, and I cannot see a reason why you would not. That is as much as I can say about it. It would make absolute sense to do it, and all of the industry would want to see it for something such as that, but, unfortunately, that is as far as I can take it.

Mr Martin: No, and good sense does not always translate into policy. That is my experience. I really appreciate your candour and evidence this morning.

The Chairperson (Mr McGuigan): We have to make a decision today on whether we have an inquiry. If we have an inquiry, you will be back here next week. We will be asking you the same questions, and you will not be able to answer any of the questions about alignment or implementation acts because you will not know the answers then either.

Mr Brooks: Chair, an inquiry is the mechanism by which the Committee is able to formalise and give a view on what it has heard. I understand that we hear these things before we need to because of the timeline involved in launching an inquiry. It may be that we do not need to go over everything in an inquiry again, but an inquiry is the mechanism by which we are able to give a view on something. Therefore, it may be necessary at times to have an inquiry, even if we have heard most of the evidence.

The Chairperson (Mr McGuigan): We will come to the question of an inquiry.

Mr Tennyson: Thank you, Colin and Sharon, for your evidence. It has been really insightful and helpful in guiding us through the decision.

Colin, you mentioned the work that the Department has already done on plastic bags. To what extent does potential compliance with the regulation complement or conflict with the targets that the Executive already have on issues such as recycling and the circular economy?

Mr Breen: There is nothing in it that would conflict with any of that. It would all help towards it. Some of them are more ambitious. Certainly, some of them are more ambitious than the current UK plastics pact, which DAERA and many businesses throughout the UK are signed up to. It is definitely the direction of travel of the industry. From my limited engagement, and just from talking to stakeholders informally at various events, I know that they broadly support the ambition and direction of travel.

There are some concerns. Obviously, you do not want to have two production lines set up for two sets of labelling. The UK Government have done all that they can at this stage to allay those concerns. As far as I understand, they will consult on that alignment fairly soon. I have to take them at their word because they certainly stepped up on the EPR labelling. Northern Ireland is a very small market. It would have been easy to go ahead with the EPR labelling, as it was, for 97% of the market, but they did not.

Certainly, everything in this will help towards implementing a more circular economy. Everything in it will help towards striving for more recycling. Yes, there is a bit of an administrative burden with regard to some of the targets and data reporting, but a number of those articles have not been applied. I was particularly shaky on the one on green public procurement, but it will not apply, which is good. Their direction of travel is excellent. It is ambitious. I am an environmentalist — I suppose that I have to say that — and I think that it is ambitious and noteworthy that it was agreed at such a level of ambition across the EU. That is really it.

Mr Tennyson: That is helpful, Colin. Thank you.

The Chairperson (Mr McGuigan): OK, Colin and Sharon. That has been helpful and very useful. I appreciate your giving up your time.

Members, under paragraph 8(1) of schedule 6B to the 1998 Act, the Committee must decide today whether to hold an inquiry into the published replacement EU Act that has been notified. Should the Committee fail to decide — sorry: you are free to go. *[Laughter.]*

Mrs Gilmore: Thank you.

The Chairperson (Mr McGuigan): You can stay and listen to me talking, if you want, but you are free to go. Apologies.