
STATUTORY RULES OF NORTHERN IRELAND

2007 No. 198

The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007

PART 7

POWERS AND DUTIES OF THE DEPARTMENT

Monitoring

- 31.**—(1) The Department shall monitor in accordance with this regulation—
- (a) compliance with their producer responsibility obligations by persons who are or may be producers;
 - (b) compliance by operators of schemes with the obligations referred to in regulation 12(1);
 - (c) compliance by operators of schemes with the conditions referred to in regulation 13(4);
 - (d) compliance by persons who are accredited reprocessors or exporters with the conditions specified in or under Schedule 5; and
 - (e) compliance by producers and operators of schemes with operational plans submitted under these Regulations.
- (2) The duty referred to in paragraph (1) above includes a duty to monitor—
- (a) the registration of producers as required by regulation 6;
 - (b) the accuracy of the information provided by producers pursuant to regulations 7 and 8;
 - (c) the accuracy of the returns furnished to the Department by a producer under regulation 20;
 - (d) the accuracy of the information contained in the certificates of compliance furnished to the Department under regulation 21;
 - (e) the accuracy of the information provided by an operator of a scheme pursuant to regulations 14 and 15; and
 - (f) the accuracy of the returns provided to the Department by an operator of a scheme under regulations 13(5)(c) and 22.
- (3) For the purposes of the discharge of its functions under these Regulations, the Department may, by notice in writing served on—
- (a) any person who has, or who the Department has reason to believe has, producer responsibility obligations under regulation 4;
 - (b) in relation to any person who is a member of a registered scheme, the operator of that scheme;
 - (c) any person who is, or who the Department has reason to believe is, issuing PERNs or PRNs;
 - (d) any person who is engaged in trading in, or brokerage in relation to, PERNs or PRNs; or

- (e) any accredited reprocessor or exporter,

require him to maintain such records, and furnish such returns to the Department, of such information specified in the notice as the Department reasonably considers it needs for those purposes, in such form and within such period following service of the notice, or at such time, as is so specified.

Monitoring – publication

32. The Department shall provide in relation to each year, by 1st December in the preceding year, a report setting out its proposed monitoring plan including the following details of the monitoring to be carried out under regulation 31—

- (a) the Department’s policy in relation to the monitoring it is required to carry out under regulation 31; and
- (b) an indication of the minimum numbers of persons which it proposes to monitor in the course of that year.

Public register

33.—(1) The Department shall maintain and make available in accordance with this regulation a register relating to—

- (a) the producers and schemes registered with it in accordance with Part 3; and
- (b) the reprocessors and exporters accredited by it in accordance with Part 5,

and containing the relevant information prescribed in Schedule 7.

(2) The Department shall—

- (a) secure that the register is open for inspection at its principal office by members of the public free of charge at all reasonable working hours; and
- (b) permit members of the public to obtain copies of entries in the register on payment of reasonable charges.

(3) The register may be kept in any form but shall be indexed and arranged so that members of the public can readily trace information contained in it.

(4) The Department shall amend the relevant entry in the register to record any change to the information entered within 5 days of receipt of the information and shall note the date on which the amendment is made.

(5) Nothing in this regulation shall require a register maintained by the Department to contain information relating to, or to anything which is the subject-matter of, any criminal proceedings (including prospective proceedings) at any time before those proceedings are finally disposed of.

(6) Nothing in this regulation shall require a register maintained by the Department to contain any information which has been superseded by later information after 4 years have elapsed from that later information being entered in the register.

Approval of persons to issue certificates of compliance

34. For the purposes of issuing certificates of compliance and signing the form referred to in regulation 7(4)(c) or 19(2) (as the case may be) the Department may approve—

- (a) where the producer is an individual, that individual;
- (b) where the producer is a partnership, a partner; or
- (c) where the producer is a company registered in Northern Ireland, a director or company secretary of that company; or

- (d) where the producer is an unincorporated body or does not have a registered office in Northern Ireland, an individual who has control or management of the body.

Entry and inspection

35.—(1) An authorised person may exercise the powers referred to in paragraph (2) below.

(2) The powers of entry and inspection are—

- (a) to enter at any reasonable time any premises which he has reason to believe it is necessary for him to enter;
- (b) to make such examination and investigation as may in any circumstances be necessary;
- (c) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (b);
- (d) to take such photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (b);
- (e) to take samples, or cause samples to be taken, of any records and packaging and packaging materials found in or on any premises which he has power to enter; delete
- (f) in the case of any such records and packaging and packaging materials as are mentioned in paragraph (e), to take possession of them and detain them for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine them, or cause them to be examined, and to do, or cause to be done, to them anything which he has power to do delete under that paragraph,
 - (ii) to ensure that they are not tampered with before examination of them is completed,
 - (iii) to ensure that they are available for use as evidence in any proceedings for an offence under regulation 40;
- (g) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (b) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
- (h) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any record and return—
 - (i) which are required to be kept and provided to the Department under regulations 20, 22 and 25, or
 - (ii) which it is necessary for him to see for the purposes of an examination or investigation under paragraph (b), and to inspect and take copies of, or of any entry in, the records and returns; and
- (i) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this regulation.

(3) In any case where it is proposed to enter any premises used for residential purposes, any entry shall only be effected—

- (a) after the expiration of at least seven day's notice of the proposed entry given to a person who appears to the authorised person to be in occupation of the premises in question; and
- (b) either—

- (i) with the consent of a person who is in occupation of those premises, or
- (ii) when a justice of the peace by warrant under his hand authorises the authorised person to enter the premises in question.

(4) Where it is shown to the satisfaction of a justice of the peace on complaint on oath that an authorised person proposes to enter any premises and—

- (a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry; or
- (b) he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry;

an entry on to those premises shall only be effected under the authority of a warrant by virtue of Schedule 8.

(5) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(g) shall be admissible in evidence in Northern Ireland against that person in any proceedings.

(6) Nothing in this regulation shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

(7) In this regulation “authorised person” means a person who is authorised in writing by the Department for the purposes of its functions under these Regulations and “warrant” means a warrant under the provisions set out in Schedule 8 as applied by paragraph (4).

Provision of information to the Department

36.—(1) If in respect in the relevant year the total figure provided to the Department by the operator of the scheme under regulation 22(2)(a) is less than the total figure under regulation 22(2)(c) then it shall appear to the Department that the operator of a scheme has not met his recovery and recycling obligations and paragraph (2) shall apply.

(2) Where, in accordance with paragraph (1) above, it appears to the Department that the operator of a scheme has not met his recovery or recycling obligations in relation to the scheme in a relevant year the Department shall notify the operator of that fact.