STATUTORY INSTRUMENTS

2008 No. 1941

ENVIRONMENTAL PROTECTION

The Producer Responsibility Obligations (Packaging Waste) (Amendment No. 2) Regulations 2008

Made - - - - 18th July 2008

Coming into force in accordance with regulation 1(1)

These Regulations are made by the Secretary of State for Environment, Food and Rural Affairs in exercise of the powers conferred by sections 93 to 95 of the Environment Act 1995(**1**), after consultation in accordance with section 93(2) of that Act.

As these Regulations implement Article 6(2) of Council Directive 94/62/EC on packaging and packaging waste(**2**), the Secretary of State has had regard to the matters specified in section 93(6) of the Environment Act 1995 as required by section 93(5) of that Act.

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with section 93(10) of the Environment Act 1995.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) (Amendment No. 2) Regulations 2008 and come into force on the day after the day on which they are made.

(2) These Regulations extend to Great Britain.

Amendment of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007

2. The Producer Responsibility Obligations (Packaging Waste) Regulations 2007(**3**) are amended in accordance with regulations 3 to 6.

(**1**) 1995 c. 25. Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in respect of devolved matters, the Secretary of State's function in relation to implementing those obligations continues to be exercisable as regards Scotland. Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer of the relevant functions of the Secretary of State so far as they are exercisable in relation to Wales to the Welsh Ministers by virtue of Article 2 and Schedule 1 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006, the Secretary of State's function in relation to implementing obligations under Community law continues to be exercisable as regards Wales.

(**2**) OJ No. L 365, 31.12.1994, p10, as amended by Council Regulation (EC) No. 1882/2003 (OJ No. L 284, 31.10.2003, p1), Council Directive 2004/12/EC (OJ No. L 47, 18.2.2004, p26) and Council Directive 2005/20/EC (OJ No. L 70, 16.3.2005, p17).

(**3**) S.I. 2007/871, to which there are amendments not relevant to these Regulations.

3. In paragraph (2) of regulation 23 (requirement for accreditation), for "packaging waste exported by him for reprocessing to a specified reprocessing site or sites", substitute "an export of packaging waste for reprocessing".

4.—(1) Regulation 24 (application for accreditation) is amended as follows.

(2) For sub-paragraph (1)(a)(ii), substitute—

"(ii) as an exporter, in respect of the export of one or more recyclable materials for reprocessing outside the United Kingdom;".

(3) For sub-paragraph (2)(b), substitute—

"(b) an exporter, to issue PERNs for the export of one or more specified recyclable materials for reprocessing in one or more recovery operations outside the United Kingdom, or a combination of such operations,".

(4) For sub-paragraph (3)(b), substitute—

"(b) where the application is made for accreditation as an exporter and relates to—

(i) one or more reprocessing sites outside the European Community, that the requirements of Article 6(2) of the Packaging Waste Directive are met in respect of each such site; or

(ii) one or more reprocessing sites outside the European Community, but it is not possible for the applicant at the time of the application to specify the site or sites to which the export of one or more specified recyclable materials for reprocessing is taking place, that the requirements of Article 6(2) of that Directive are met in respect of each such export;".

5.—(1) Regulation 26 (suspension and cancellation of accreditation) is amended as follows.

(2) For paragraph (2), substitute—

"(2) Where the appropriate Agency is no longer satisfied that the requirements of Article 6(2) of the Packaging Waste Directive are met in relation to the export of one or more specified recyclable materials for reprocessing at one or more reprocessing sites outside the European Community, the appropriate Agency shall cancel the accreditation of an exporter to the extent that it relates to any such export which does not meet those requirements.".

(3) In paragraph (3), for "to the extent that it relates to a site or sites under" substitute "pursuant to".

6.—(1) Schedule 5 (conditions of accreditation) is amended as follows.

(2) For paragraphs 1(d) and 1(e), substitute—

"(d) PERNs shall not be issued for more than the total amount of packaging waste which an accredited exporter exports for reprocessing in the year or part of the year for which he is accredited;

(e) a PERN may only be issued once the packaging waste that it relates to has been exported for reprocessing;".

(3) For paragraph 1(r), substitute—

"(r) a PERN may only be issued in respect of packaging waste that is exported in accordance with Regulation (EC) No. 1013/2006 of the European Parliament and of the Council on shipments of waste(**4**).".

(**4**) OJ No L 190, 12.7.2006, p1.

Joan Ruddock
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

18th July 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (the "2007 Regulations"), which implement Article 6 of Council Directive 94/62/EC on packaging and packaging waste.

The 2007 Regulations impose on exporters an obligation to be accredited by the appropriate Agency (either the Environment Agency or the Scottish Environment Protection Agency) before they can issue a packaging waste export recovery note, as evidence of the export of the tonnage of packaging waste specified in the note for reprocessing outside the United Kingdom. These Regulations revise the requirements for accreditation of an exporter imposed by the 2007 Regulations, to give the Environment Agency more discretion on what constitutes sound evidence that exported packaging waste will be reprocessed under conditions that are broadly equivalent to European Community requirements.

An Impact Assessment which shows the anticipated cost of compliance to businesses and the environmental benefits in respect of these Regulations may be obtained from the Producer Responsibility Unit, Zone 6D, Ergon House, Horseferry Road, London SW1P 2AL and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.