

2004 No. 106

PUBLIC HEALTH

**The Producer Responsibility Obligations (Packaging Waste)
(Amendment) Regulations (Northern Ireland) 2004**

Made - - - - - *11th March 2004*

Coming into operation *5th April 2004*

The Department of the Environment, in exercise of the powers conferred on it by Articles 2 to 5 and 7(2) of the Producer Responsibility Obligations (Northern Ireland) Order 1998(a), for the implementation of Article 6(1) of Directive 94/62/EC(b) on packaging and packaging waste and of every other power enabling it in that behalf, after consultation in accordance with Article 3(2) of that Order, and after having regard to the matters specified in Article 3(6) as required by Article 3(5) of that Order, and after having regard to the matters specified in Article 4(4) of that Order, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations (Northern Ireland) 2004 and shall come into operation on 5th April 2004.

(2) In these Regulations, “the principal Regulations” means the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 1999(c).

Amendment of the principal Regulations

2. The principal Regulations shall be amended in accordance with the following regulations.

Amendment of Part I (General)

3.—(1) In regulation 2(1) (interpretation and notices) –

(a) there shall be inserted at the appropriate places in alphabetical order –

“ “accredited exporter” means an exporter who is accredited by the Department under regulation 21B;”;

“ “accredited reprocessor” means a reprocessor who is accredited by the Department under regulation 21B;”;

“ “approved person” means the person for the time being approved under regulation 27 for the purpose of issuing certificates of compliance under regulation 23 and signing the form referred to in regulation 6(4)(c) or 17A(2) in relation to a particular producer;”;

(a) S.I. 1998/1762 (N.I. 16)

(b) O.J. No. L365, 31.12.94, p. 10; the Directive was amended with effect from 20th November 2003 in Article 21 (Committee Procedure) by paragraph 53 of Annex III (Regulatory Procedure) to Regulation (EC) No. 1882/2003 of the European Parliament and of the Council (O.J. No. L284, 31.10.2003, p. 1)

(c) S.R. 1999 No. 115; as amended by S.R. 1999 No. 496 and S.R. 2002 No. 239

““exporter” means a person who, in the ordinary course of a trade, occupation or profession, owns and exports UK packaging waste for reprocessing outside the United Kingdom;”;

““PERN” means a packaging waste export recovery note issued by an accredited exporter for the purposes of Part IVA of these Regulations, on a form supplied to him by the Department, as evidence of the export of the tonnage of UK packaging waste specified in the note for reprocessing outside the United Kingdom;”;

““PRN” means a packaging waste recovery note issued by an accredited reprocessor for the purposes of Part IVA of these Regulations, on a form supplied to him by the Department, as evidence of the receipt of the tonnage of UK packaging waste specified in the note for reprocessing within the United Kingdom;”;

(b) for the definition of “recyclable material” there shall be substituted –

““recyclable material” means –

- (a) glass;
- (b) aluminium;
- (c) steel;
- (d) paper/fibreboard;
- (e) plastic; or
- (f) wood;

and packaging materials composed of a combination of any of those materials are to be treated as made of the material which is predominant by weight;”;

(c) in the definition of “SIC Code” for the references to “1992” and “1997”, in each case there shall be substituted “2003”; and

(d) the definition of “special producer” shall be omitted.

(2) In regulation 2(2) for “undertaking” there shall be substituted “condition”.

(3) In regulation 2(3)(a) for “17(3), 31(5) and (10)” there shall be substituted “and 17(3)”.

Amendment of Part II (Producers and Obligations)

4.—(1) In regulation 3 (producers and producer responsibility obligations) –

(a) in paragraph (5)(b) for “for the year 2000 and subsequent years” there shall be substituted “for each year for which he has producer responsibility obligations”;

(b) after paragraph (5A) there shall be inserted –

“(5B) The operator of a scheme shall take reasonable steps to carry out the recovery and recycling obligations that every producer who is a member of the scheme that he operates would have had, but for their membership of that scheme.”; and

(c) paragraph 6 shall be omitted.

(2) In regulation 4 (exclusions and limitations), paragraph (4) shall be omitted.

Amendment of Part III (Registration)

5.—(1) In regulation 5 (producer registration obligation), “4(3) and (4),” shall be omitted.

(2) In regulation 6 (application for producer registration) –

(a) in paragraph (1) “and who is not registered” shall be omitted;

(b) paragraph (3)(a) shall be omitted;

(c) in paragraph (3)(b)(v) “or sub-paragraph (a)” shall be omitted;

(d) in paragraph (4)(c) after “by the Department” there shall be inserted “and signed by the approved person”;

(e) paragraph (4)(c)(ii) shall be omitted;

(f) in paragraph (4)(c)(v) “(excluding special producer)” shall be omitted;

(g) at the end of paragraph (4)(c)(vi) there shall be inserted “and”; and

(h) after paragraph (4)(c)(vi) there shall be inserted –

“(vii) such other information as the Department reasonably requires in order to determine the application and as is specified on the form.”;

(i) in paragraph (4)(dd) –

(i) at the beginning of the sub-paragraph there shall be inserted “on a first application for registration”; and

(ii) for “a plan setting out the steps intended to be taken to comply with the producer’s recovery and recycling obligations” there shall be substituted “an operational plan complying with Part IV of Schedule 4”;

(j) at the end of paragraph (5)(a) “and” shall be inserted;

(k) at the end of paragraph (5)(b) “and” shall be omitted;

(l) paragraph (5)(c) shall be omitted; and

(m) for paragraph (7) there shall be substituted –

“(7) The further information provided shall be as accurate as reasonably possible.”.

(3) For regulation 7 (Requirements for producer registration) there shall be substituted –

“Conditions of registration of a producer

7. Registration of a producer shall be subject to the conditions that the producer will –

(a) inform the Department of –

(i) any change in the circumstances of the producer which relate to the registration of the producer, and where the producer is a partnership, any change of partners;

(ii) any change in the person who is the partner who is able to accept notices and act on behalf of the partnership as stated as required in regulation 6(4)(e);

(iii) any material change in the initial information provided in accordance with regulation 6(4)(b); or

(iv) any material change in the further information provided in accordance with regulation 6(4)(c), or (8) as the case may be,

within 28 days of the occurrence of any such change;

(b) provide records and returns to the Department as required by regulation 22;

(c) apply to the Department to cancel his registration where he has become a member of a registered scheme or has ceased to be a producer in respect of a year;

(d) comply with the operational plan submitted under regulation 6 or, if a revised plan has been submitted under paragraph (e), with the most recent version so submitted; and

(e) on or before 31st January in a relevant year, provide to the Department a revised version of the operational plan.”.

(4) Regulation 8 (continuation of producer registration) shall be omitted.

(5) In regulation 9 (forms and fees for producer registration), for paragraph (2) there shall be substituted –

“(2) The fee which is to be charged by the Department on an application for producer registration shall be £950 and in addition –

(a) in the case of an application where the fee is to be treated as a fee for group registration by virtue of paragraph 5(b)(iii) of Schedule 9, in respect of the subsidiaries included within that application, a fee of –

(i) £100 for each of the first 4 subsidiaries; or

(ii) £50 for each of the 5th and subsequent subsidiaries; and

(b) on each resubmission of an application which is required by reason of its having failed to meet the requirements of regulation 6(4) or (7) on its previous submission, £220.”.

(6) In regulation 11 (cancellation of registration of producers) –

(a) paragraph (1)(a) shall be omitted;

(b) in paragraph (1)(b)(i) for “undertakings referred to in regulation 7 and given to him by the Department,” there shall be substituted “conditions specified in regulation 7; or”;

- (c) in paragraph (1)(b)(ii) for “undertaking referred to in regulation 7, or with regulation 8” there shall be substituted “conditions specified in regulation 7”;
- (d) paragraph (1)(b)(iii) shall be omitted; and
- (e) in paragraph (3) –
 - (i) at the end of sub-paragraph (3)(b), “and” shall be omitted;
 - (ii) at the end of sub-paragraph (3)(c), for “.” there shall be substituted “; and”; and
 - (iii) after sub-paragraph (3)(c) there shall be inserted –
 - “(d) the right of appeal under Part IV of these Regulations.”.
- (7) In regulation 12 (application for registration of a scheme) –
 - (a) in paragraph (1) “Subject to paragraph (8),” shall be omitted;
 - (b) in paragraph (3)(c)(i) “class of” shall be omitted;
 - (c) paragraph (3)(c)(ii) shall be omitted;
 - (d) in paragraph (3)(c)(v) “(excluding special producer)” shall be omitted;
 - (e) after paragraph (3)(c)(vi) there shall be inserted –
 - “and
 - (vii) such other information as the Department reasonably requires in order to determine the application and as is specified on the form;”;
 - (f) at the beginning of paragraph (3)(e) there shall be inserted “on a first application for registration” and for “as provided in” there shall be substituted “complying with”;
 - (g) paragraph (3)(f) shall be omitted;
 - (h) at the end of paragraph (3)(g) “and” shall be omitted;
 - (i) at the end of paragraph (3)(h) “and” shall be inserted;
 - (j) after paragraph (3)(h) there shall be inserted –
 - “(i) be accompanied by a monitoring plan which demonstrates how information to which regulation 17A applies is to be monitored so that the operator of the scheme can meet his obligation under paragraph (7).”;
 - (k) after paragraph (4) there shall be inserted –
 - “(4A) An application for approval of a scheme by the Department shall be made in writing by the operator of the scheme and shall –
 - (a) contain the following information –
 - (i) the name and address of the person who proposes to operate the scheme; and
 - (ii) any other information which demonstrates that the scheme is likely to subsist for a period of at least 5 years and will assist the objectives of the United Kingdom in relation to the recovery and recycling of packaging waste; and
 - (b) be accompanied by the following documentation –
 - (i) a copy of the constitution of the scheme;
 - (ii) a copy of the rules with which a member of the scheme is obliged to comply; and
 - (iii) a copy of the procedures under which the operator of the scheme would enforce the rules against a member of the scheme.
 - (4B) An application for approval of a scheme by the Department shall be granted where the Department is satisfied that the scheme is likely to subsist for a period of at least 5 years and will assist the objectives of the United Kingdom in relation to the recovery and recycling of packaging waste, and shall otherwise be refused.
 - (4C) A further application for approval in accordance with paragraph (4A) shall be made within 28 days of the occurrence of any of the following –
 - (a) a change in the person who is the operator of the scheme;
 - (b) a conviction of the operator of the scheme for an offence under these Regulations; or
 - (c) a failure by the operator of the scheme to comply with the obligation referred to in regulation 3(5B).

(4D) Where an application which is required by paragraph (4C) is not received by the due date, the Department may decide to withdraw approval of the scheme, and if it so decides shall serve written notice on the operator of the scheme of –

- (a) its decision to withdraw approval of the scheme;
- (b) the reasons for the decision;
- (c) the date when the withdrawal will take effect, not being earlier than 28 days from the date of the notice.

(4E) The Department shall consider any representations made before the notice takes effect by the operator of the scheme, and may withdraw the notice under paragraph (4D) at any time.”;

- (l) in paragraph (5)(a) for “and (h),” there shall be substituted “(h) and (i)”;
 - (m) in paragraph (6)(b) “, except that for the purposes of regulations 32 and 33 the scheme shall be treated as registered from the date of notice until any such cancellation” shall be omitted;
 - (n) in paragraph (7), for sub-paragraphs (a) and (b) there shall be substituted “be as accurate as reasonably possible”; and
 - (o) paragraph (8) shall be omitted.
- (8) In regulation 13 (conditions of registration of a scheme) –
- (a) for paragraph (a) there shall be substituted –
“(a) that the obligation in regulation 3(5B) is complied with;”;
 - (b) in paragraph (d)(iv) for “regulations 12(3)(c) or 14” there shall be substituted “regulation 12(3)(c)”;
 - (c) paragraph (e) shall be omitted;
 - (d) at the end of paragraph (f) “and” shall be omitted; and
 - (e) after paragraph (f) there shall be inserted –
“(g) that the operator of the scheme will comply with the operational plan submitted under regulation 12(3)(e) or, if a revised plan has been submitted under sub-paragraph (h), with the most recent version so submitted; and
(h) that the operator of the scheme will on or before 31st January in a relevant year provide to the Department a revised version of the operational plan for the scheme.”.
- (9) Regulation 14 (continuation of registration of a scheme) shall be omitted.
- (10) In regulation 15 (forms and fees for registration of a scheme), for paragraph (2) there shall be substituted –
- “(2) The fee which is to be charged by the Department on an application for registration of a scheme shall be £760 for each producer (or group of producers where the group is a group of companies within the meaning of Schedule 9) who is on the date of the application a member of the scheme and in addition –
- (a) in a case where part of the fee is calculated on the basis of a group of companies, a fee of the following amount for each subsidiary within that group apart from the holding company –
 - (i) £100 for each of the first 4 subsidiaries; or
 - (ii) £50 for each of the 5th and subsequent subsidiaries;
 - (b) in the case of an application which is received after 7th April in any year, £110; and
 - (c) on each resubmission of an application which is required by reason of its having failed to meet the requirements of regulation 12(3) and (7), on its previous submission, £220.”.
- (11) In regulation 17 (cancellation of registration of a scheme) –
- (a) paragraph (1)(a) shall be omitted;
 - (b) at the end of paragraph (1)(b)(i) there shall be inserted “or”;
 - (c) in paragraph (1)(b)(ii) “, or with regulation 14, or” shall be omitted; and
 - (d) paragraph (1)(b)(iii) shall be omitted.

(12) After regulation 17 there shall be inserted –

“Information provided to scheme operators

17A.—(1) This regulation applies to information which –

- (a) is provided to the operator of the scheme by a producer who is a member of that scheme at the time the information is provided; and
- (b) is information which the operator of the scheme will need to rely upon for the purposes of his application for registration of a scheme under regulation 12.

(2) A producer who provides to the operator of the scheme information to which this regulation applies shall –

- (a) provide that information on a form supplied for the purpose by the Department;
- (b) ensure that the form is signed by the approved person; and
- (c) ensure that the information is as accurate as reasonably possible.”.

Amendment of Part IV (Registration of Schemes – Appeals)

6.—(1) For the heading to Part IV, there shall be substituted “Appeals”.

(2) For regulation 18 (right of appeal) there shall be substituted –

“Right of appeal

18.—(1) A producer may appeal to the Planning Appeals Commission against a decision of the Department –

- (a) to refuse to grant an application for registration under regulation 6(5); or
- (b) to cancel registration under regulation 11(1).

(2) The operator of the scheme may appeal to the Planning Appeals Commission against a decision of the Department –

- (a) to refuse to grant an application for registration under regulation 12(5); or
- (b) to cancel registration under regulation 17(1).

(3) A reprocessor or exporter may appeal to the Planning Appeals Commission against a decision of the Department –

- (a) to refuse accreditation under regulation 21B(2);
- (b) to specify a condition pursuant to paragraph 1(n)(iii) of Schedule 2A; or
- (c) to cancel accreditation under regulation 21D.”.

(3) In regulation 19 (procedure of appeals) –

- (a) for “operator of the scheme” there shall be substituted “appellant”; and
- (b) “(which may, if the person hearing the appeal so decides be held or held to any extent in private)” shall be omitted.

(4) In regulation 21 (status pending appeal) for “regulation 17(1), the decision to cancel registration” there shall be substituted “regulations 11(1), 17(1) or 21D, the decision appealed against”.

Insertion of new Part IVA (Accreditation of reproprocessors and exporters)

7. After regulation 21 there shall be inserted –

“PART IVA

ACCREDITATION OF REPROCESSORS AND EXPORTERS

Requirement for accreditation

21A.—(1) A person shall not at any time after 31st December 2004 issue a PRN unless he is at the time of the issue an accredited reprocessor and the PRN relates to UK packaging waste received by him for reprocessing on the site for which he is accredited.

(2) A person shall not at any time after 31st December 2004 issue a PERN unless he is at the time of the issue an accredited exporter and the PERN relates to UK packaging waste exported by him for reprocessing outside the United Kingdom.

Application for accreditation

21B.—(1) An application for accreditation shall be made to the Department –

- (a) in the case of a person wishing to be accredited –
 - (i) as a reprocessor, in respect of each site for which he wishes to be accredited and stating which of the applicable recovery operations specified in Part II of Schedule 3 and which recyclable materials he wishes that accreditation to cover;
 - (ii) as an exporter, in respect of the export of one or more recyclable materials for reprocessing in one or more applicable recovery operations outside the United Kingdom;
- (b) before 30th September in the year immediately prior to that for which the reprocessor or exporter wishes to be accredited, the latter being a year not earlier than the year 2005;
- (c) on a form made available by the Department and including all the information specified on that form, being information which the Department reasonably requires in order to determine the application;
- (d) accompanied by a business plan containing information on how the funds acquired from the issue of PRNs or PERNs are to be applied including in respect of the following matters –
 - (i) the development of capacity for the collection and reprocessing of UK packaging waste and the development of new markets for materials or goods which have been made from recycled packaging waste;
 - (ii) arrangements for the collection and sorting of UK packaging waste; and
 - (iii) the strategy, including communications to be adopted in order to achieve the matters described in (i) and (ii) above; and
- (e) accompanied by a fee of –
 - (i) in the case of an applicant who undertakes to issue PRNs or PERNs for 400 tonnes or less of packaging waste in the year to which the application relates, £500; or
 - (ii) in any other case, £2,590.

(2) The Department shall –

- (a) where it is satisfied as to the contents of the business plan referred to in paragraph (1)(d) above, and where it is otherwise satisfied that the application has been duly made in accordance with paragraph (1), grant accreditation to –
 - (i) a reprocessor, to issue PRNs for the receipt of one or more specified recyclable materials at a specified site and for reprocessing in one or more specified applicable recovery operations; or
 - (ii) an exporter, to issue PERNs for the export of one or more specified recyclable materials for reprocessing in one or more applicable recovery operations outside the United Kingdom,

and in each case subject to the conditions imposed by or under regulation 21C; or

- (b) in any other case, refuse the application.

(3) The Department shall, unless otherwise agreed with the applicant, notify him in writing of its decision under paragraph (2) before 30th November in the year in which the application is made.

(4) Where the decision notified under paragraph (3) is a decision to refuse accreditation, the notification shall include reasons for that decision.

(5) Subject to regulation 21D, where accreditation is granted under paragraph (2), it shall take effect at the beginning of the year following that in which the application is made and shall remain in force for the duration of one year.

(6) Where a reprocessor or exporter who has given the undertaking and paid the fee specified in sub-paragraph (e)(i), subsequently breaches that undertaking, he shall from the date of that breach be liable to pay to the Department the balance of the fee which would have been payable under paragraph (1)(e)(ii), that is to say, the sum of £2,090.

Conditions of accreditation

21C. An accredited reprocessor or exporter shall comply with the conditions specified in and under Schedule 2A.

Suspension and cancellation of accreditation

21D.—(1) The Department may suspend or cancel the accreditation of a reprocessor or exporter where it appears to it that –

- (a) the person who is accredited has failed to comply with any of the conditions specified in or under Schedule 2A; or
- (b) the person who is accredited has knowingly supplied false information in his application for accreditation made under regulation 21B or in connection with compliance with any of the conditions specified in or under Schedule 2A.

(2) Before suspending or cancelling an accreditation under paragraph (1), the Department shall serve on the reprocessor or exporter concerned written notice of –

- (a) its decision to cancel or suspend (as the case may be) the accreditation;
- (b) the reasons for the decision;
- (c) the right of appeal under Part IV of these Regulations;
- (d) the date when the cancellation or suspension will take effect, not being earlier than 28 days from the date of the notice; and
- (e) in the case of a notification of suspension, the period of the suspension or any steps which are required to be taken in order to bring the suspension to an end.

(3) The accreditation of a reprocessor or exporter shall be deemed to be cancelled –

- (a) on the date on which either of the following occurs –
 - (i) the person who is accredited ceases to be the holder of a relevant authorisation; or
 - (ii) the person who is accredited ceases to be a reprocessor or exporter; or
- (b) in a case where the person who is accredited requests that his accreditation should be cancelled, with effect from the date for cancellation specified by that person.

(4) For the purposes of paragraph (3) “relevant authorisation” means –

- (a) a permit granted under regulation 10 of the Pollution Prevention and Control Regulations (Northern Ireland) 2003(a);
- (b) a waste management licence granted under Article 8 of the Waste and Contaminated Land (Northern Ireland) Order 1997(b); or
- (c) an exemption registered under regulation 18 of the Waste Management Licensing Regulations (Northern Ireland) 2003(c).”.

Amendment of Part V (Records, Refunds and Certificate)

8.—(1) In regulation 22 (producers – records and returns) –

- (a) in paragraph (2) –
 - (i) “in respect of the year 2000 and subsequent years” shall be omitted;
 - (ii) in sub-paragraph (a), for “provided to a reprocessor” there shall be substituted “delivered respectively for recycling and for recovery”;
 - (iii) in sub-paragraph (b) “and” shall be omitted;

(a) S.R. 2003 No. 46
(b) S.I. 1997/2778 (N.I. 19)
(c) S.R. 2003 No. 493

- (iv) at the end of sub-paragraph (c) “.” shall be omitted and “; and” shall be inserted; and
- (v) after sub-paragraph (c) there shall be inserted –
 - “(d) the total number of tonnes of each material which is the subject of both the producer’s recovery obligations and his recycling obligations;
 - (e) the number of PRNs or PERNs acquired; and
 - (f) a statement which demonstrates how the producer has complied with his operational plan (where he has one), for the period in question.”;
- (b) in paragraph (3) “for the year 2000 and subsequent years,” shall be omitted.
- (2) In regulation 24 (schemes – records and returns) –
 - (a) in paragraph (1) –
 - (i) for “paragraphs (2) and” there shall be substituted “paragraph”; and
 - (ii) for sub-paragraphs (a) and (b) there shall be substituted “on or before 31st January in the year immediately following the year to which the information relates”;
 - (b) paragraph (2) shall be omitted;
 - (c) in paragraph (3) –
 - (i) for “In respect of the year 2000 and subsequent years the information is, in addition to the information referred to in paragraph (2) –” there shall be substituted “For each year the information is –”;
 - (ii) in sub-paragraph (a) after “provided” there shall be inserted “respectively for recycling and for recovery”;
 - (iii) at the end of sub-paragraph (c) “and” shall be omitted;
 - (iv) for sub-paragraph (d) there shall be substituted –
 - “(d) for each producer who is a member of the scheme in that year, the information specified in regulation 12(3)(c) and the revised operational plan referred to in regulation 13(h), together with any changes notified in accordance with the condition specified in regulation 13(d)(iv);
 - (e) the total number of tonnes of each material which is the subject of both the recovery and recycling obligations for which the operator of the scheme is responsible under regulation 3(5B);
 - (f) the number of PRNs or PERNs acquired by the operator of the scheme; and
 - (g) a statement which demonstrates how the scheme has complied with its operational plan in the period in question.”; and
 - (d) in paragraph (4) for the words “for the year 2000 and subsequent years packaging materials” there shall be substituted “packaging material”.

Amendment of Part VI (Powers and Duties of the Department)

- 9.—**(1) In regulation 25 (monitoring) –
- (a) in paragraph (1) for sub-paragraph (b) there shall be substituted –
 - “(b) compliance by operators of schemes with the obligation referred to in regulation 3(5B); and
 - (c) compliance by persons who are accredited reprocessors or exporters with the conditions specified in or under Schedule 2A.”;
 - (b) in paragraph (2) –
 - (i) in sub-paragraph (b) for “regulations 6 and 8” there shall be substituted “regulation 6” and for “undertakings” there shall be substituted “conditions”;
 - (ii) in sub-paragraph (c) “or Part V of Schedule 3” shall be omitted;
 - (iii) in sub-paragraph (e) for “regulations 12 and 14” there shall be substituted “regulation 12”;
 - (iv) at the end of sub-paragraph (e) “and” shall be omitted;
 - (v) at the end of sub-paragraph (f) “and” shall be inserted; and
 - (vi) after sub-paragraph (f) there shall be inserted –

“(g) the compliance by accredited reprocessors and exporters with the conditions specified in or under Schedule 2A.”;

(c) in paragraph (3) –

(i) at the end of sub-paragraph (a), “or” shall be omitted;

(ii) at the end of sub-paragraph (b), for “,” there shall be substituted “; or”; and

(iii) after sub-paragraph (b), there shall be inserted –

“(c) any person who is engaged in trading in, or brokerage in relation to, PERNs or PRNs.”.

(2) In regulation 25A (monitoring – publication) –

(a) the words “commencing with 2000” shall be omitted; and

(b) for paragraph (a) there shall be substituted –

“(a) the Department’s policy in relation to the monitoring it is required to carry out under regulation 25; and”.

(3) In regulation 26 for paragraph (1) there shall be substituted –

“(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 regulations 5 to 16; and

(b) the reprocessors and exporters accredited by it in accordance with Part IVA,

and containing the relevant information prescribed in Schedule 7.”.

(4) In regulation 27 (approval of persons to issue certificates of compliance) after “compliance” there shall be inserted “and signing the form referred to in regulation 6(4)(c) or 17A(2) (as the case may be)”.

(5) In regulation 28 (entry and inspection) in paragraph 2, sub-paragraph h(i) for “regulations 22 and 24 and Part V of Schedule 3” there shall be substituted “regulations 21C, 22 and 24”.

Amendment of Part X (Offences)

10. In regulation 34 (offences and penalties) –

(a) after paragraph (2) there shall be inserted –

“(2A) An operator of a scheme who contravenes a requirement of regulation 3(5B) is guilty of an offence.

(2B) A person who contravenes a requirement of regulation 21A or who is in breach of either of the conditions specified in paragraph 1(a) or (b) of Schedule 2A is guilty of an offence.”; and

(b) for paragraph (3) there shall be substituted –

“(3) A person who furnishes any information to the Department in connection with its functions under these Regulations or furnishes information to which regulation 17A applies to an operator of a scheme, shall be guilty of an offence if, in furnishing the information he –

(a) knows the information to be false or misleading in a material particular; or

(b) furnishes such information recklessly and it is false or misleading in a material particular.

(3A) A person who fails without reasonable excuse to comply with any requirement imposed in a notice under regulation 25(3) shall be guilty of an offence.”.

Amendment to Schedule 1 (Producers)

11. In Schedule 1 –

(a) for paragraph 3(a) there shall be substituted –

- “(a) his turnover in the last financial year in respect of which audited accounts are available before the relevant date was more than £2,000,000; and”; and
- (b) for paragraph 4(1)(c)(i) and (ii) there shall be substituted –
 “7th April in the obligation year; and”.

Amendment to Schedule 2 (Recovery and Recycling Obligations)

- 12.**—(1) In Schedule 2 –
- (a) for paragraph 2(2) there shall be substituted –
 “(2) The proportion of the packaging waste referred to in sub-paragraph (1) above which is to be recovered by recycling is, in relation to a class of producer to which the producer belongs –
 (a) in the years 2004, 2005 and 2006, not less than 94%;
 (b) in the years 2007 and 2008, not less than 95%,
 of the amount by tonnage of packaging waste represented by “Z” in sub-paragraph (1) above;”;
- (b) for paragraph 4 there shall be substituted –
 “(4) The following is prescribed as the recovery target “X” –
 (a) for the year 2004, 63%;
 (b) for the year 2005, 65%;
 (c) for the year 2006, 67%;
 (d) for the year 2007, 69%; and
 (e) for the year 2008 and any subsequent year, 70%.”;
- (c) for paragraph 5 there shall be substituted –
 “5. The following percentages are prescribed as the recycling target “Y” in respect of the recyclable material specified in the first column in relation to the years indicated at the head of the subsequent columns –

Table: Recycling targets

<i>Material</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008 and any subsequent year</i>
Glass	49	55	61	66	71
Aluminium	26	28	30.5	33	35.5
Steel	52.5	55	58	60	61.5
Paper/fibreboard	65	66	68	69	70
Plastic	21.5	22	22.5	23	23.5
Wood	18	19	20	20.5	21

and

- (d) in paragraph 6 –
- (i) in sub-paragraph (1)(iv) “or” shall be omitted after paper/fibreboard;
- (ii) in sub-paragraph (1)(v) “,” shall be omitted after plastic and “; or” shall be inserted;
- (iii) at the end of sub-paragraph (1) there shall be inserted –
 “(vi) wood,” and
- (iv) sub-paragraph (3) shall be omitted.

Insertion of new Schedule 2A (Conditions of accreditation)

- 13.** After Schedule 2 there shall be inserted –

“SCHEDULE 2A
REGULATIONS 21C, 25(1)(C), 25(2)(G) AND 34(2B)

Conditions of Accreditation

1. The conditions referred to in regulation 21C are the following –
 - (a) PRNs and PERNs shall relate to packaging waste received or exported, as the case may be, in a specified year and shall not be issued after 31st January in any year in respect of packaging waste received or exported in the previous year;
 - (b) all PRNs and PERNs which have not been issued before 1st February of the year following that in which the packaging waste to which they relate was received, shall be returned to the Department before 15th February immediately following that 1st February;
 - (c) PRNs shall be issued for no more than the total amount of packaging waste which –
 - (i) is received for reprocessing on the site of an accredited reprocessor for the year for which he is accredited; and
 - (ii) will be capable of being reprocessed on the site for which he is accredited by not later than the end of the year following that for which he is accredited;
 - (d) PERNs shall be issued for no more than the total amount of packaging waste which an accredited exporter exports for reprocessing in the year for which he is accredited;
 - (e) PRNs and PERNs which have not been issued and which have expired shall remain the property of the Department at all times and shall be returned to the Department on demand;
 - (f) the weight of packaging waste recorded on a PRN or PERN shall be rounded up to the nearest tonne;
 - (g) duplicate copies of all PRNs and PERNs issued shall be retained and made available for inspection by the Department at all reasonable times;
 - (h) PRNs and PERNs shall only be issued to producers or operators of schemes, or to the representatives of producers or operators of schemes;
 - (i) substitute PRNs or PERNs shall be issued on request to the holder of original PRNs or PERNs in exchange for those originals, provided that the value of the substitute PRNs or PERNs so issued remains equal to those exchanged and that no substitutes which relate to packaging waste received for reprocessing in any given year are issued after 31st January in the following year;
 - (j) records shall be maintained for each quarter year on a form made available for the purpose by the Department and shall be retained for at least 4 years after the end of the year in which the record is made;
 - (k) reports shall be provided to the Department before each of the 21st days of April, July, October and February in respect of the previous quarter year on –
 - (i) the tonnage of packaging waste received or exported for reprocessing in that quarter;
 - (ii) the tonnage of packaging waste reprocessed in that quarter; and
 - (iii) the number of PRNs or PERNs issued in that quarter together with copies of those notes;
 - (l) a report shall be provided to the Department before 28th February in each year which sets out –
 - (i) all the information provided in the quarterly reports which relate to the whole of the previous year;
 - (ii) the amount of revenue received in the previous year from the sale of PRNs or PERNs and a statement of what it has been spent on;
 - (m) except in the case of a reprocessor or exporter who has made the undertaking specified in regulation 21B(1)(e)(i), a report shall be provided to the Department before 28th February in any year which –
 - (i) is from an independent auditor; and

- (ii) demonstrates that the PRNs or PERNs issued by the reprocessor or exporter in the previous year are consistent with the tonnage of packaging waste received or exported for that year;
 - (n) a reprocessor or exporter must –
 - (i) take reasonable steps to implement the business plan referred to in regulation 21B(1)(d);
 - (ii) undertake sampling and inspection of packaging waste received or exported, in accordance with a plan approved by the Department; and
 - (iii) comply with such other conditions as the Department may specify in the notification of a grant of accreditation.
2. For the purposes of this Schedule –
- (a) “issue” in relation to a PRN or PERN means to sell or otherwise supply to a producer or operator of a scheme or to the representative of a scheme or operator of the scheme, and a reprocessor or exporter may issue a PRN or PERN to himself;
 - (b) “quarter year” means the first, second, third, and fourth three months of the year; and
 - (c) “independent auditor” means an auditor who would be eligible for appointment as company auditor of the reprocessor or exporter under chapter V of the Companies (Northern Ireland) Order 1986(a).”.

Amendment of Schedule 3 (Definition of Waste)

14.—(1) In the shoulder note to Schedule 3 for “Regulation 2” there shall be substituted “Regulation 2(1)”.

- (2) For the list R1 to R13 in paragraph 2 of Schedule 3 there shall be substituted –
- “R1 Use of waste principally as a fuel or for other means of generating energy;
 - R2 Reclamation or regeneration of solvents;
 - R3 Recycling or reclamation of organic substances which are not used as solvents, including composting and other biological transformation processes;
 - R4 Recycling or reclamation of metals and metal compounds;
 - R5 Recycling or reclamation of other inorganic materials;
 - R6 Regeneration of acids or bases;
 - R7 Recovery of components used for pollution abatement;
 - R8 Recovery of components from catalysts;
 - R9 Re refining, or other reuses, of oil which is waste;
 - R10 Land treatment resulting in benefit to agriculture or ecological improvement;
 - R11 Use of wastes obtained from any of the operations listed as R1 to R10 in this paragraph;
 - R12 Exchange of wastes for submission to any of the operations listed as R1 to R11 in this paragraph;
 - R13 Storage of waste pending any of the operations listed in this paragraph, but excluding temporary storage, pending collection, on the site where it is produced.”.
- (3) Parts III, IV and V of Schedule 3 shall be omitted.

Amendment of Schedule 4 (Information)

15. In Part IV of Schedule 4 –

(a) S.I. 1986/1032 (N.I. 6)

- (a) in the title for “Schemes Operational Plan” there shall be substituted “the Operational Plans of Schemes and Producers”; and
- (b) for the reference to “Regulation 12(3)(d) and (e)” there shall be substituted “Regulations 6(4)(dd) and 12(3)(d) and (e)”;
- (c) in paragraph 11 –
 - (i) “schemes” shall be omitted and for “regulation 12(3)(e)” there shall be substituted “regulations 6(4)(dd) and 12(3)(e)”;
 - (ii) in sub-paragraph (a) for “scheme’s members referred to in regulation 4(1)(b) to be discharged through the scheme” there shall be substituted “producer or the obligation of the operator of the scheme under regulation 3(5B) (as the case may be).”;
 - (iii) for sub-paragraph (b) there shall be substituted –
 - “(b) that the arrangements for recovery and recycling take account of any statement which contains the Department’s policies in relation to the recovery and disposal of waste and which is made under Article 19 of the Waste and Contaminated Land (Northern Ireland) Order 1997(a);”;
 - (iv) sub-paragraph (c) shall be omitted;
 - (v) in sub-paragraph (d) for “of its members referred to in regulation 4(1)(b)” there shall be substituted “or the obligation of the operator of the scheme under regulation 3(5B) (as the case may be)”;
 - (vi) in sub-paragraph (d)(iii) “who is a member of the scheme” shall be omitted;
 - (vii) at the end of sub-paragraph (d)(v) “and” shall be omitted;
 - (viii) in sub-paragraph (e) for “of the scheme’s members” there shall be substituted “or the obligation of the operator of the scheme under regulation 3(5B) (as the case may be)” and for “any member of the scheme, or any other producer” there shall be substituted “any producer”; and
 - (ix) after sub-paragraph (e) there shall be inserted –
 - “(f) the number of PRNs or PERNs which are expected to be acquired in each quarter of the three years immediately following registration, and the type of recyclable material to which they are expected to relate;
 - (g) the quantity of packaging waste which it is expected to be acquired during the three years immediately following registration;
 - (h) the amounts to the nearest tonne of the recovery and recycling obligations in respect of each recyclable material that are expected to have to be discharged in each of the three years immediately following registration;
 - (i) a statement indicating the contracts anticipated to be made with reprocessors and packaging waste suppliers in the three years immediately following registration;
 - (j) a statement as to the purposes for which it is intended to apply funds supplied to reprocessors for the acquisition of PRNs or PERNs in the three years immediately following registration, including the amounts to be applied to the following matters –
 - (i) increasing the capacity for the collection and reprocessing of packaging waste;
 - (ii) encouraging the development of markets for materials or goods made from recycled packaging waste;
 - (iii) the strategy, including communications, to be adopted in order to achieve the objectives described in sub-paragraphs (i) and (ii) above.”.

Amendment of Schedule 5 (Procedure on appeals)

16.—(1) In paragraph 1 of Schedule 5 –

(a) S.I. 1997/2778 (N.I. 19)

- (a) in sub-paragraph (1), for “operator of a scheme” there shall be substituted “person”;
 - (b) in sub-paragraph (2)(b) for “regulation 16” there shall be substituted “regulation 6(5) or 16”; and
 - (c) in sub-paragraph (2)(c) for “regulation 17(1)” there shall be substituted “regulation 11 or 17”.
- (2) In paragraph 2 for “six months” there shall be substituted “two months”.

Amendment of Schedule 6 (Information in certificate of compliance)

17.—(1) In paragraph (d) of Schedule 6, “and regulation 8” shall be omitted and for “undertakings” there shall be substituted “conditions”.

- (2) After paragraph (f) of Schedule 6 there shall be inserted –
- “(g) copies of all PRNs or PERNs acquired in the year to which the certificate relates, save that a PRN or PERN which is acquired in December of any year may be included in the certificate of compliance for either that year or the following year.”.

Amendment of Schedule 7 (Public Register)

18. For Schedule 7 there shall be substituted –

“SCHEDULE 7
PUBLIC REGISTER

Regulation 26

1. The name and address of the registered office or principal place of business of –
 - (a) each registered producer;
 - (b) each registered operator of a scheme and each member of the scheme for which he is the operator; and
 - (c) each accredited reprocessor and accredited exporter.
2. A statement in relation to each registered producer and each relevant year as to whether a certificate of compliance has been furnished.
3. A statement in relation to each registered operator of a scheme as to whether he has complied with his obligation under regulation 3(5B).”.

Amendment of Schedule 10 (Mid-year Changes)

19.—(1) In paragraph 16(a) of Schedule 10 for “each holding company shall comply with the requirements of a proportion of the company’s recovery and recycling obligations, such proportion being calculated as provided in paragraph 17(2)” there shall be substituted “the first group shall comply with the requirements of the company’s recovery and recycling obligations for the year in which the company ceases to be a member of that group and the second group shall comply with those requirements in the following and any subsequent year in which the company is a member of the second group”;

- (2) In paragraph 17(2) “(a)” shall be omitted.

Amendment of Schedule 11 (United Kingdom’s Recovery and Recycling Targets)

20. Schedule 11 shall be omitted.

Sealed with the Official Seal of the Department of the Environment on 11th March 2004.

(L.S.)

Judena Goldring
A Senior Officer of the Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 1999 (“the principal Regulations”).

Regulation 3 makes amendments to regulation 2 of the principal Regulations by way of inserting a number of new definitions and amending others.

Regulation 4 introduces a new obligation of operators of schemes to take reasonable steps to discharge the recovery and recycling obligations which the members of the schemes would have had but for their membership of the schemes.

Regulation 5 makes a number of amendments to Part III of the principal Regulations concerning registration, including in particular –

- (a) a requirement for forms of application for registration to be signed by an approved person;
- (b) provision for the Department to include additional information requirements within the application form;
- (c) requirements for producers above certain turnover and tonnage thresholds and for operators of schemes to comply with the operational plans they are required to have submitted;
- (d) alignment of the conditions of registration applying to producers and operators of schemes;
- (e) a change in the date by which revised operational plans are to be submitted to 31st January in each year;
- (f) the introduction of new charges are as follows –
 - (i) for each subsidiary within a group of companies:
 - £100 for each of the first 4 subsidiaries;
 - £50 for the 5th and subsequent subsidiaries.
 - (ii) for late registration of scheme applications £110 and for those producers or scheme applications requiring data correction and resubmission, £220 per registration for each occurrence;
- (g) a requirement on operators of schemes to submit monitoring plans relating to the steps they propose to take to ensure the accuracy of the information they receive from scheme members;
- (h) new procedural requirements for obtaining the approval of the Department to a scheme;
- (i) requirements relating to the submission of information by scheme members to operators of schemes.

Regulation 6 introduces rights of appeal for producers and for reproprocessors and exporters.

Regulation 7 inserts a new Part IVA into the principal Regulations in order to require the accreditation of reproprocessors and exporters to issue packaging waste recovery notes and packaging waste export recovery notes.

Regulation 8 amends Part V of the principal Regulations in order to require additional records and returns to be submitted to the Department by producers and operators of schemes.

Regulation 9 amends Part VI of the principal Regulations in order to ensure that the monitoring obligations which apply to the Department include monitoring the new obligations placed on operators of schemes and accredited reproprocessors and exporters; and to increase the scope of the Department’s power to serve notices on persons requiring the submission of information to the Department.

Regulation 10 amends Part X of the principal Regulations in order to introduce new offences for which operators of schemes, scheme members, reprocessors and exporters may be liable.

Regulation 11 makes minor consequential amendments to Schedule 1 of the principal Regulations.

Regulation 12 amends Schedule 2 of the principal Regulations in order to apply new recovery and recycling targets reflecting the anticipated revisions to the Directive targets.

Regulation 13 inserts a new Schedule 2A into the principal Regulations setting out the conditions of accreditation referred to in the new regulation 21C inserted by regulation 6 of these Regulations.

Regulation 14 amends the list of recovery operations set out in Schedule 3 of the principal Regulations in order to reflect amendments made by the Commission Decision 96/350/EEC (O.J. No. L135, 6.6.1996, p. 32).

Regulation 15 amends Schedule 4 of the principal Regulations in order to amplify the information required to be contained in the operational plans which producers and operators of schemes are required to submit to the Department.

Regulation 16 amends Schedule 5 of the principal Regulations in order to make provision for producer, reprocessor and exporter appeals and to reduce the period in which appeals may be made from six months to two months.

Regulation 17 amends Schedule 6 of the principal Regulations in order to amplify the information which must be contained in the certificate of compliance required by regulation 23 of the principal Regulations.

Regulation 18 amends Schedule 7 of the principal Regulations in order to require information in relation to accredited reprocessors and exporters to be placed on the public register.

Regulation 19 amends Schedule 10 of the principal Regulations in order to simplify the arrangements for mid-year changes affecting groups of companies who have obligations under the Regulations.

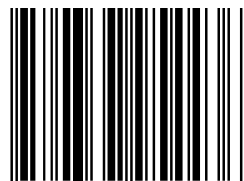
Regulation 20 removes Schedule 11 which sets out the recovery and recycling obligations of the United Kingdom under the Directive.

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