

2016 No. 79

ENVIRONMENTAL PROTECTION

**The Producer Responsibility Obligations (Packaging Waste)
(Amendment) Regulations (Northern Ireland) 2016**

Made - - - - - *26th February 2016*

Coming into operation - - - - - *21st March 2016*

The Department of the Environment makes the following Regulations in exercise of the powers conferred by Article 3(1) and Article 4(1) of the Producer Responsibility Obligations (Northern Ireland) Order 1998(a).

The Department makes the following Regulations—

- (a) after consultation in accordance with Article 3(2) of the Producer Responsibility Obligations (Northern Ireland) Order 1998;
- (b) being satisfied as to the matters specified in Article 3(6) of that Order ; and
- (b) in accordance with the duty in Article 3(7) of that Order.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations (Northern Ireland) 2016 and shall come into operation on 21st March 2016.

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

2. The 2007 Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007(b) are amended in accordance with regulations 3 to 21.

(a) S.I. 1998/1762 (N.I. 16) as relevantly amended by 2011 c.5(N.I.)
(b) S.R. 2007 No. 198 relevant amending Regulations are S.R.2008 No. 77, S.R.2008 No. 373, S.R.2010 No. 396 and S.R.2013 No. 262.

PART 2

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

Amendment of regulation 2

3. In regulation 2(4)(a) (Interpretation and notices), for “regulations 14(5), 17, 18(3) or 36(3)” substitute “regulations 13, 13A, 13B, 13C, 14 or 17”.

Amendment of regulation 7

4. In regulation 7 (Application for producer registration)(a)—
- (a) at the end of paragraph (4)(d) omit “;” and insert “.”;
 - (b) in paragraph (4) omit sub-paragraph (f); and
 - (c) omit paragraph (10).

Amendment of regulation 8

5. In regulation 8 (Conditions of registration of a producer)(b)—
- (a) at the end of sub-paragraph (d), insert “and”;
 - (b) at the end of sub-paragraph (e) omit “;” and insert “.”;
 - (c) omit sub-paragraph (f); and
 - (d) omit sub-paragraph (g).

Amendment of regulation 12

- 6.—(1) In regulation 12 (Schemes: general provisions), for paragraph (2) substitute—
- “(2) The operator of a scheme shall inform the members of the scheme by notice in writing immediately if—
- (a) the operator receives a notice of withdrawal of the scheme’s approval in accordance with regulation 13C(3); or
 - (b) the scheme is approved pursuant to regulation 13(4).”.

(2) After paragraph (2) insert—

“(2A) The operator shall provide a copy of the notice of withdrawal of the scheme’s approval in accordance with regulation 13C(3) with the notice in writing provided in accordance with paragraph (2).”.

Amendment of regulation 13

7. In regulation 13 (Application for approval of a scheme)(c)—
- (a) in paragraph (2) omit “unconditionally”;
 - (b) after paragraph (2), insert—
- “(2A) Where an application for approval is granted in accordance with paragraph (2), the Department shall by notice in writing inform the operator of the scheme of its decision within 28 days of making that decision.”;
- (c) in paragraph (3)(d), for “at paragraph (5) below”, substitute “in regulation 13A(2)”;

(a) Regulation 7 as relevantly amended by S.R. 2010 No. 396

(b) Regulation 8 as relevantly amended by S.R. 2010 No.396

(c) Regulation 13 as amended by S.R. 2010 No.396 to which there are amendments not relevant to these Regulations

- (d) in paragraph (4) for “paragraph (5)”, substitute “regulation 13A(2)”.

Insertion of regulations 13A, 13B and 13C

8. After regulation 13 (Application for approval of a scheme), insert—

“Conditions of approval of a scheme

13A.—(1) Approval of a scheme in accordance with regulation 13 is subject to the following conditions—

- (a) the operator of the scheme complies with the obligations set out in regulation 12(1);
- (b) the operator of the scheme monitors the accuracy of information to which regulation 19 applies, so that the operator may reasonably discover when a scheme member has not complied with regulation 19(2)(c);
- (c) the operator of the scheme acquires PRNs or PERNs in a manner which least hinders the ability of any other operator to acquire PRNs or PERNs in accordance with regulation 12(3);
- (d) the operator of the scheme maintains sufficient financial resources to acquire PRNs or PERNs in accordance with regulation 12(3);
- (e) the operator of the scheme maintains access to, and sufficient financial resources to pay for, the expertise necessary for the purposes of calculating the recovery and recycling obligations referred to in regulation 12(1);
- (f) the operator of the scheme provides any information reasonably requested by the Department for the purposes of monitoring compliance in accordance with regulation 31(1)(b) or (c);
- (g) in relation to any year in which the scheme is registered in accordance with regulation 14—
 - (i) the operator of the scheme informs the Department in writing of—
 - (aa) any change in the person who is the operator of the scheme and, in the case where the operator of the scheme is a partnership or where there is more than one operator of the scheme, any change of partners or operators;
 - (bb) any material change in the information provided in accordance with regulation 14(3)(b);
 - (cc) any material change in the further information provided in accordance with regulation 14(3)(c);
 - (dd) any change in the operator stated in accordance with regulation 14(3)(h),
within 28 days of the occurrence of any such change; and
 - (ii) the operator of the scheme complies with the requirement set out in regulation 15A; and
- (h) the operator of the scheme provides records and returns to the Department in accordance with regulation 22.

(2) Approval of a scheme in accordance with regulation 13(4) is subject to the following additional conditions in relation to any year in which the scheme is registered in accordance with regulation 14—

- (a) the operator of the scheme complies with 50% of the total recovery and recycling obligations of the scheme before 30th June;
- (b) the operator of the scheme complies with a further 50% of the remaining recovery and recycling obligations before 30th September;

- (c) the operator of the scheme makes returns to the Department of information demonstrating compliance with the conditions set out at sub-paragraphs (a) and (b) on or before 15th July and 15th October respectively;
- (d) the operator pays the fee in accordance with regulation 16(3) to the Department; and
- (e) the operator of the scheme does not accept any new members into the scheme.

(3) The additional conditions set out in paragraph (2) cease to apply at the beginning of the year following the approval year if the Department is satisfied that in the approval year the operator complied with—

- (a) the obligations in accordance with regulation 12(1); and
- (b) the additional conditions set out in paragraph (2).

(4) If the additional conditions set out in paragraph (2) cease to apply by virtue of paragraph (3), the Department shall serve written notice of the cessation within 28 days of the day on which the Department is satisfied in accordance with paragraph (3).

(5) In paragraph (3), “approval year” means the year for which approval was granted pursuant to regulation 13(4).

Refusal to grant approval of a scheme

13B. Where the Department decides in accordance with regulation 13(2) to refuse to grant approval of a scheme, it shall serve on the operator of the scheme, within 28 days of making the decision, written notice of—

- (a) the decision in accordance with regulation 13(2);
- (b) the reasons for the decision; and
- (c) a statement of the right of appeal in accordance with regulation 27(2)(a).

Withdrawal of approval of a scheme

13C.—(1) The Department may withdraw approval of a scheme where it appears to it that—

- (a) the operator of the scheme is in breach of any of the conditions referred to in regulation 13A(1) or (2); or
- (b) the operator knowingly or recklessly supplies false information in connection with the application for registration, or in connection with compliance with the conditions referred to in regulation 13A(1) or (2).

(2) The Department shall cancel any registration of a scheme granted in accordance with regulation 14 if it withdraws approval of the scheme and such cancellation shall take effect on the date on which the withdrawal of approval takes effect.

(3) Before the withdrawal of approval in accordance with paragraph (1), the Department shall serve on the operator of the scheme written notice of—

- (a) its decision in accordance with paragraph (1) to withdraw approval;
- (b) the reasons for the decision;
- (c) a statement of the right of appeal in accordance with regulation 27(2)(b) and (c); and
- (d) the date on which the withdrawal takes effect, not being earlier than the expiration of the time-limit for an appeal against the notice in accordance with paragraph 2 of Schedule 6.

(4) Where an application in accordance with regulation 13(3)(a) or (b) is not received by the date specified in regulation 13(3), the Department may withdraw approval of the scheme.

(5) Before the withdrawal of approval in accordance with paragraph (4), the Department shall serve on the operator of the scheme written notice of—

- (a) its decision in accordance with paragraph (4) to withdraw approval;
- (b) the reasons for the decision;
- (c) the date on which the withdrawal takes effect, not being earlier than 28 days from the date of the notice; and
- (d) the right to make representations in relation to the decision to withdraw approval within 28 dates from the date of the notice.

(6) Where an application in accordance with regulation 13(3)(c) or (d) is not received by the date specified in regulation 13(3), the Department shall serve written notice on the operator of the withdrawal of approval of the scheme, which shall take effect from the date of the notice.

(7) The Department shall consider any representations made by the operator of a scheme before the notice in accordance with paragraph (5) takes effect, and may withdraw the notice in accordance with paragraph (5) at any time.

(8) An operator of a scheme in relation to which approval is withdrawn in accordance with this regulation shall, within 14 days of the withdrawal taking effect, serve on each scheme member written notice containing the following information—

- (a) a statement that approval of the scheme has been withdrawn and the date upon which the withdrawal takes effect;
- (b) the reasons for the withdrawal; and
- (c) the obligation of a producer in accordance with regulation 6.”.

Amendment of regulation 14

9. In regulation 14 (Application for registration of a scheme)(a)—

- (a) in paragraph (3), omit sub-paragraph (f);
- (b) in paragraph (4)—
 - (i) in sub-paragraph (a), omit “(f),”; and
 - (ii) omit sub-paragraph (c); and
- (c) in paragraph (5)(b), for “regulation 18”, substitute “regulation 13C(2)”.

Omission of regulation 15

10. Omit regulation 15 (Conditions of registration of a scheme).

Insertion of regulation 15A

11. Before regulation 16, insert—

“Notification of change of membership

15A. In relation to the year in which registration is granted, the operator of the scheme shall notify the Department in writing at intervals as required by the Department of any change in the membership of the scheme and any such notification shall be accompanied by the additional fee in accordance with regulation 16(6).”.

Amendment of regulation 16

12. In regulation 16 (Forms and fees for registration of a scheme)—

(a) Regulation 14 as relevantly amended by S.R. 2010 No.396

- (a) in paragraph (3), for “conditional approval under”, substitute “approval in accordance with”; and
- (b) in paragraph (6), for “condition referred to in paragraph (c) in regulation 15”, substitute “notification required in accordance with regulation 15A”.

Amendment of regulation 17

13. In regulation 17(b) (Refusal to register a scheme), for “Part 6 of these Regulations”, substitute “regulation 27(2)(d)”.

Omission of regulation 18

14. Omit regulation 18 (Cancellation of registration of a scheme).

Amendment of regulation 22

15. In regulation 22 (Schemes – records and returns), in paragraph (2)—
- (a) in sub-paragraph (a), after “;”, insert “and”; and
 - (b) omit sub-paragraph (b).

Amendment of regulation 27

16. In regulation 27 (Right of appeal) for paragraph (2), substitute—
- “(2) The operator of a scheme may appeal to the Planning Appeals Commission against a decision of the Department—
- (a) to refuse to grant an application for approval in accordance with regulation 13;
 - (b) to withdraw approval in accordance with regulation 13C(1) or (6);
 - (c) to withdraw approval in accordance with regulation 13C(4); or
 - (d) to refuse to grant an application for registration in accordance with regulation 14(4).”.

Amendment of regulation 30

17. In regulation 30 (Status pending appeal) for “regulation 11(1) or 18(1)”, substitute “regulation 11(1) or 13C(1), (4) or (6)”.

Amendment of regulation 31

18. In regulation 31 (Monitoring) —
- (a) in paragraph (1)—
 - (i) in sub-paragraph (c), for “regulation 13(4);”, substitute “regulation 13A(1) and (2); and”;
 - (ii) in sub-paragraph (d), for “; and”, substitute “.”; and
 - (iii) omit sub-paragraph (e); and
 - (b) in paragraph (2)(f), for “regulations 13(5)(c) and 22”, substitute “regulations 13A(2)(c) and 22”.

Amendment of regulation 34

19. In regulation 34 (Approval of persons to issue certificates of compliance)(a), after paragraph (3), insert—

“(4) In accordance with regulation 34A, the Department may approve the delegation by an approved person of that approved person’s functions to any other person.

(5) An approved person who has delegated functions in accordance with paragraph (4) may continue to perform those functions.

(6) For the purposes of these Regulations, an act of a delegate performing the functions of an approved person on that approved person’s behalf is to be treated as an act of the approved person.

(7) In this regulation, and in regulation 34A, “functions” means the functions referred to in paragraph (1)(a) and (b).”.

Insertion of regulation 34A

20. After regulation 34, insert—

“Delegation of approved persons’ functions: procedure

34A.—(1) An approved person who proposes the delegation of that approved person’s functions to another person in accordance with regulation 34(4) shall apply for approval to the Department on a form supplied for that purpose by the Department and signed by the approved person.

(2) An application for approval in accordance with paragraph (1) shall, within 28 days of receipt of the application—

- (a) be granted where the Department is satisfied that the proposed delegate, taking into account the factors specified in paragraph (3), is capable of carrying out the functions of the approved person; or
- (b) otherwise be refused.

(3) The factors referred to in paragraph (2)(a) are—

- (a) if the proposed delegate is an employee of the producer or the operator of the scheme, the proposed delegate’s level of experience;
- (b) if the proposed delegate is not an employee of the producer or the operator of the scheme, the nature of the proposed delegate’s relationship with the approved person;
- (c) the degree of the proposed delegate’s knowledge of, or access to, information necessary for the purposes of carrying out the functions on behalf of the approved person; and
- (d) any other factor which the Department reasonably considers to be relevant.

(4) An approval granted in accordance with paragraph (2)(a) may be for such a period, or subject to such conditions, as the Department may specify.

(5) Where an application for approval is granted in accordance with paragraph (2)(a), the Department shall notify the approved person in writing of such approval, and of any conditions it has imposed in accordance with paragraph (4), within 28 days of its decision.

(6) The Department may decide to withdraw approval granted in accordance with paragraph (2)(a) and, if such a decision is taken, shall serve on the approved person written notice of—

- (a) the decision to withdraw approval;

(a) Regulation 34 was amended by S.R. 2010 No. 396

- (b) the reasons for the decision; and
- (c) the date on which the withdrawal takes effect, not being earlier than 28 days from the date of the notice.

(7) If an approved person proposes to revoke a delegation granted in accordance with paragraph (2)(a), the person shall serve written notice on the Department of this and of the date when the revocation takes effect, not being earlier than 28 days from the date of the notice.”.

Amendment of Schedule 3

21. In Schedule 3 (Information)(a) omit paragraphs 12 and 13.

Sealed with the Official Seal of the Department of the Environment on 26th February 2016.



Dave Foster

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) 2007(S.R. 2007 No. 198) (“the 2007 Regulations”). The 2007 Regulations impose on producers and schemes the obligation to recover and recycle packaging waste in order to attain the recovery and recycling targets set out in Article 6(1) of Council Directive 94/62/EC on packaging and packaging waste (OJ No. L 365, 31.12.1994, p.10), as last amended by Commission Directive 2013/2/EU (OJ No. L 37, 8.2.2013, p10).

These Regulations amend regulations 7 and 14 of the 2007 Regulations to remove provisions requiring submission of an operational plan. They set out conditions of approval of a scheme, confer power to withdraw approval of a scheme and provide for the cancellation of registration of a scheme.

These Regulations set out the requirement for an operator of a scheme to notify the Department of changes in membership of the scheme and pay a fee in respect of this.

These Regulations insert new rights of appeal for an operator of a scheme in relation to a refusal to grant an application for approval or withdrawal of approval.

These Regulations insert a provision for the delegation by an approved person of functions to another person.

A copy of the assessment of the impact that these Regulations will have on the costs to business and the voluntary sector may be obtained by writing to the Producer Responsibility Unit, Level 2, Nobel House, 17 Smith Square, London SW1P 3JR.

(a) Schedule 3 was amended by S.R. 2010 No. 396

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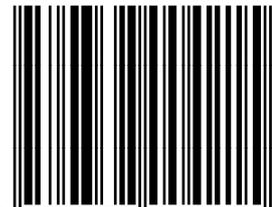
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