

Draft Order in Council laid before Parliament under the Northern Ireland Act 1974, Schedule 1 paragraph 1(4)(a), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

1998 No. (N.I.)

NORTHERN IRELAND

**Producer Responsibility Obligations
(Northern Ireland) Order 1998**

Made - - - - 1998
Coming into operation 1998

At the Court at , the day of 1998
Present,
The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:
Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Title and commencement

1.—(1) This Order may be cited as the Producer Responsibility Obligations (Northern Ireland) Order 1998.

(2) This Order shall come into operation on the expiration of two months from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“certificate of compliance” means a certificate issued by a person approved for the purpose by the Department to the effect that that person is satisfied that the person in respect of whom the certificate is issued is complying with any producer responsibility obligation to which he is subject;

“competition scrutiny”, in the case of any scheme, means scrutiny of the scheme for the purpose of enabling the Secretary of State to satisfy himself—

- (i) whether or not the scheme has or is likely to have the effect of restricting, distorting or preventing competition or, if it appears to him that the scheme has or is likely to have any such effect, that the effect is or is likely to be no greater than is necessary for achieving the environmental or economic benefits mentioned in Article 3(6); or
- (ii) whether or not the scheme leads or is likely to lead to an abuse of market power;

“the Department” means the Department of the Environment;

“exemption scheme” means a scheme which is (or, if it were to be registered in accordance with the regulations, would be) a scheme whose members for the time being are, by virtue of the regulations and their membership of that scheme, exempt from the requirement to comply with the producer responsibility obligation imposed by the regulations;

“operator”, in relation to an exemption scheme, includes any person responsible for establishing, maintaining or managing the scheme;

“prescribed” means prescribed by regulations;

“product” and “material” include a reference to any product or material (as the case may be) at a time when it becomes, or has become, waste;

“producer responsibility obligation” means the steps which are required to be taken by relevant persons of the classes or descriptions to which the regulations in question apply in order to secure attainment of the targets specified or described in the regulations;

“records” includes computer records and any other records kept otherwise than in a document;

“recovery”, in relation to products or materials, includes—

- (a) composting, or any other form of transformation by biological processes, of products or materials; or
- (b) the obtaining, by any means, of energy from products or materials;

“registered exemption scheme” means an exemption scheme which is registered pursuant to regulations;

“regulations” means regulations under Article 3;

“relevant persons”, in the case of any regulations or any producer responsibility obligation, means persons of the class or description to which the producer responsibility obligation imposed by the regulations applies;

“relevant targets” means the targets specified or described in the regulations imposing the producer responsibility obligation in question;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) Regulations may prescribe, in relation to prescribed products or materials, activities, or the activities, which are to be regarded for the purposes of this Order or any regulations as re-use, recovery or recycling of those products or materials.

Producer responsibility: general

3.—(1) For the purpose of promoting or securing an increase in the re-use, recovery or recycling of products or materials, the Department may by regulations make provision for imposing producer responsibility obligations on such persons, and in respect of such products or materials, as may be prescribed.

(2) The power of the Department to make regulations shall be exercisable only after consultation with persons appearing to the Department to be representative of persons whose interests are, or are likely to be, substantially affected by the regulations which it proposes to make.

(3) Except in the case of regulations for the implementation of—

(a) any obligations of the United Kingdom under the Community Treaties; or

(b) any international agreement to which the United Kingdom is for the time being a party,

the power to make regulations shall be exercisable only where the Department, after such consultation as is required by paragraph (2), is satisfied as to the matters specified in paragraph (6).

(4) The powers conferred by paragraph (1) shall also be exercisable, in a case falling within sub-paragraph (a) or (b) of paragraph (3), for the purpose of sustaining a minimum level of (rather than promoting or securing an increase in) re-use, recovery or recycling of products or materials.

(5) In making regulations by virtue of sub-paragraph (a) or (b) of paragraph (3), the Department shall have regard to the matters specified in paragraph (6); and in its application in relation to the power conferred by virtue of paragraph (4), paragraph (6) shall have effect as if—

(a) any reference to an increase in the re-use, recovery or recycling of products or materials were a reference to the sustaining of a minimum level of re-use, recovery or recycling of the products or materials in question; and

(b) any reference to the production of environmental or economic benefits included a reference to the sustaining of a minimum level of any such existing benefits,

and any reference in this Article or Article 4 to securing or achieving any such benefits shall accordingly include a reference to sustaining a minimum level of any such existing benefits.

(6) The matters mentioned in paragraphs (3) and (5) are—

(a) that the proposed exercise of the power would be likely to result in an increase in the re-use, recovery or recycling of the products or materials in question;

(b) that any such increase would produce environmental or economic benefits;

(c) that those benefits are significant as against the likely costs resulting from the imposition of the proposed producer responsibility obligation;

(d) that the burdens imposed on businesses by the regulations are the minimum necessary to secure those benefits; and

(e) that those burdens are imposed on persons most able to make a contribution to the achievement of the relevant targets—

(i) having regard to the desirability of acting fairly between persons who manufacture, process, distribute or supply products or materials; and

(ii) taking account of the need to ensure that the proposed producer responsibility obligation is so framed as to be effective in achieving the purposes for which it is to be imposed,

but nothing in head (i) of sub-paragraph (e) shall be taken to prevent regulations imposing a producer responsibility obligation on any class or description of person to the exclusion of any others.

(7) The Department shall have a duty to exercise the power to make regulations in the manner which it considers best calculated to secure that the exercise does not have the effect of restricting, distorting or preventing competition or, if it is likely to have any such effect, that the effect is no greater than is necessary for achieving the environmental or economic benefits mentioned in paragraph (6).

Producer responsibility: supplementary provisions

4.—(1) Without prejudice to the generality of Article 3, regulations may, in particular, make provision for or with respect to—

- (a) the classes or descriptions of person to whom the producer responsibility obligation imposed by the regulations applies;
- (b) the classes or descriptions of products or materials in respect of which the obligation applies;
- (c) the targets which are to be achieved with respect to the proportion (whether by weight, volume or otherwise) of the products or materials in question which are to be re-used, recovered or recycled, whether generally or in any prescribed way;
- (d) particulars of the obligation imposed by the regulations;
- (e) the registration of persons who are subject to a producer responsibility obligation and who are not members of registered exemption schemes, the imposition of requirements in connection with such registration, the variation of such requirements, the making of applications for such registration, the period for which any such registration is to remain in force and the cancellation of any such registration;
- (f) the approval, or withdrawal of approval, of exemption schemes by the Department;
- (g) the imposition of requirements on persons who are not members of registered exemption schemes to furnish certificates of compliance to the Department;
- (h) the approval of persons by the Department for the purpose of issuing certificates of compliance;
- (i) the registration of exemption schemes, the imposition of conditions in connection with such registration, the variation of such conditions, the making of applications for such registration and the period for which any such registration is to remain in force;
- (j) the requirements which must be fulfilled, and the criteria which must be met, before an exemption scheme may be registered;
- (k) the powers of the Department in relation to applications received by it for registration of exemption schemes;
- (l) the cancellation of the registration of an exemption scheme;
- (m) competition scrutiny of registered exemption schemes or of exemption schemes in whose case applications for registration have been received by the Department;
- (n) the exclusion or modification of any provision of the Restrictive Trade Practices Acts 1976 and 1977 in relation to exemption schemes or in relation to agreements where at least one of the parties is an operator of an exemption scheme;
- (o) the fees, or the method of determining the fees, which are to be paid to the Department—
 - (i) in respect of the approval of persons for the purpose of issuing certificates of compliance;
 - (ii) on the making of an application for registration of an exemption scheme;
 - (iii) in respect of the subsistence of the registration of that scheme;
 - (iv) on submission to the Department of a certificate of compliance;
 - (v) on the making of an application for, or for the renewal of, registration of a person required to register under the regulations;
 - (vi) in respect of the renewal of the registration of that person;

- (p) appeals to the Planning Appeals Commission against the refusal of registration, the imposition of conditions in connection with registration, or the cancellation of the registration, of any exemption scheme;
 - (q) the procedure on any such appeal;
 - (r) cases, or classes of case,—
 - (i) in which an exemption scheme is, or is not, to be treated as registered; or
 - (ii) in which a person is, or is not, to be treated as a member of a registered exemption scheme,pending the determination or withdrawal of an appeal, and otherwise with respect to the position of persons and exemption schemes pending such determination or withdrawal;
 - (s) the imposition on the Department of a duty to monitor compliance with any of the obligations imposed by the regulations;
 - (t) the imposition on prescribed persons of duties to maintain records, and furnish to the Department returns, in such form as may be prescribed of such information as may be prescribed for any purposes of, or for any purposes connected with, or related to, this Order or any regulations;
 - (u) the imposition on the Department of a duty to maintain, and make available for inspection by the public, a register containing prescribed information relating to registered exemption schemes or persons required to register under the regulations;
 - (v) the powers of entry and inspection which are exercisable by the Department in the performance of its functions under the regulations;
 - (w) the conferring on prescribed persons of power to require, for the purposes of or otherwise in connection with competition scrutiny, the provision by any person of any information which he has, or which he may at any future time acquire, relating to any exemption scheme or to any acts of an operator of such a scheme or of any person dealing with such an operator.
- (2) If it appears to the Department—
- (a) that any action proposed to be taken by the operator of a registered exemption scheme would be incompatible with—
 - (i) any obligations of the United Kingdom under the Community Treaties; or
 - (ii) any international agreement to which the United Kingdom is for the time being a party, or
 - (b) that any action which the operator of such a scheme has power to take is required for the purpose of implementing any such obligations or agreement,
- the Department may direct that operator not to take or, as the case may be, to take the action in question.
- (3) Persons issuing certificates of compliance shall act in accordance with guidance issued for the purpose by the Department, which may include guidance as to matters which are, or are not, to be treated as evidence of compliance or as evidence of non-compliance.
- (4) In making any provision in relation to fees, regard shall be had to the desirability of securing that the fees received by the Department under the regulations are sufficient to meet the costs incurred by the Department in the performance of its functions under the regulations.
- (5) Any fees received by the Department under regulations shall be paid into the Consolidated Fund.

Producer responsibility: offences

5.—(1) Regulations may make provision for a person who contravenes a prescribed requirement of the regulations to be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) For the purposes of this Order section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where the commission by any person of an offence under the regulations is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this Article whether or not proceedings for the offence are taken against the first-mentioned person.

Application to Crown

6.—(1) Subject to the provisions of this Article, this Order and regulations shall bind the Crown, including the Crown in right of Her Majesty’s Government in the United Kingdom.

(2) No contravention by the Crown of any provision of this Order or of regulations shall make the Crown criminally liable; but the High Court may, on the application of the Department, declare unlawful any act of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), the provisions of this Order and of regulations shall apply to persons in the public service of the Crown as they apply to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises; and in this paragraph “Crown premises” means premises held or used by or on behalf of the Crown.

Regulations and directions

7.—(1) Regulations shall be subject to negative resolution.

(2) Regulations may include incidental, consequential, supplemental or transitional provisions.

(3) Any direction given by the Department under Article 4—

- (a) shall be in writing;
- (b) may include such incidental, consequential, supplemental or transitional provision as the Department considers necessary or expedient; and
- (c) shall, on the application of the Department, be enforceable by injunction.

(4) Any power conferred by Article 4 to give a direction shall include power to vary or revoke the direction.

(5) Paragraphs (6) and (7) apply to any direction given by the Department under Article 4 being a direction to any extent so given for the purpose of implementing any obligations of the United Kingdom under the Community Treaties.

(6) A direction to which this paragraph applies shall not be varied or revoked unless, notwithstanding the variation or revocation, the obligations mentioned in paragraph (5), as they have effect for the time being, continue to be implemented, whether by directions or any other instrument or by any statutory provision.

(7) Any variation or revocation of a direction to which this paragraph applies shall be published in such manner as the Department considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—

- (a) copies of the variation or revocation shall be made available to the public; and
- (b) notice of the variation or revocation, and of where a copy of the variation or revocation may be obtained, shall be given in the Belfast Gazette.

Clerk of the Privy Council

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: Producer Responsibility Obligations (Northern Ireland) Order 1998 (revoked) No. 1762

EXPLANATORY NOTE

(This note is not part of the Order)

This Order enables the Department of the Environment to make regulations to impose obligations on certain persons to undertake the re-use, recovery and recycling of products or materials.