
DRAFT STATUTORY INSTRUMENTS

2005 No.

**The Producer Responsibility Obligations
(Packaging Waste) Regulations 2005**

**PART I
GENERAL**

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 and shall come into force on the day after the day on which they are made.

(2) These Regulations extend to Great Britain.

Interpretation and notices

2.—(1) In these Regulations—

“the Packaging Waste Directive” means Council Directive [94/62/EC](#)(1) on packaging and packaging waste as amended by—

- (a) Council Regulation [\(EC\) No 1882/2003](#)(2) adapting to Council Decision [1999/468/EC](#) the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty;
- (b) Council Directive [2004/12/EC](#)(3) amending Directive [94/62/EC](#) on packaging and packaging waste; and
- (c) Council Directive [2005/20/EC](#)(4) amending Directive [94/62/EC](#) on packaging and packaging waste;

“the Waste Directive” means Council Directive [75/442/EEC](#)(5) on waste as amended by—

- (a) Council Directive [91/156/EEC](#)(6) amending Directive [75/442/EEC](#) on waste;
- (b) Council Directive [91/692/EEC](#)(7) standardizing and rationalizing reports on the implementation of certain Directives relating to the environment;
- (c) Commission Decision [96/350/EEC](#)(8) adapting Annexes IIA and IIB to Council Directive [75/442/EEC](#) on waste; and
- (d) Council Regulation [\(EC\) No 1882/2003](#) adapting to Council Decision [1999/468/EC](#) the provisions relating to committees which assist the Commission in the exercise of its

(1) OJNo. L 365, 31.12.1994, p. 10.
(2) OJ No. L 284, 31.10.2003, p. 1.
(3) OJ No. L 47, 18.2.2004, p. 26.
(4) OJ No. L 70, 16.3.2005, p.17.
(5) OJ No. L 194, 25.7.1975, p. 39.
(6) OJ No. L 78, 26.3.1991, p. 32.
(7) OJ No. L 377, 31.12.1991, p. 48.
(8) OJ No. L 135, 6.6.1996, p. 32.

implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty;

“the 1995 Act” means the Environment Act 1995⁽⁹⁾; and

“the 1990 Act” means the Environmental Protection Act 1990⁽¹⁰⁾.

(2) In these Regulations—

“accredited exporter” means an exporter who is accredited by the appropriate Agency under regulation 24;

“accredited reprocessor” means a reprocessor who is accredited by the appropriate Agency under regulation 24;

“allocation method” means the method set out in paragraph 7 of Schedule 2 for calculating the recycling obligations of a small producer who has elected under regulation 7 to follow this method;

“appropriate Agency” means—

- (a) for the purposes of any provision of these Regulations relating to the exercise of the functions of the appropriate Agency in England or Wales, the Environment Agency;
- (b) for the purposes of any provision of these Regulations relating to the exercise of the functions of the appropriate Agency in Scotland, SEPA;
- (c) for the purposes of any provision of these Regulations relating to the obligations of any other person—
 - (i) the Environment Agency, where at the beginning of the relevant year the person’s registered office or principal place of business is in England or Wales;
 - (ii) SEPA, where at the beginning of the relevant year the person’s registered office or principal place of business is in Scotland;
 - (iii) at the election of the person, either the Environment Agency or SEPA, where at the beginning of the relevant year the person does not have a registered office or principal place of business in Great Britain; or
 - (iv) in relation to schemes, where there is more than one operator of a scheme and such operators have registered offices or principal places of business in either England or Wales and in Scotland—
 - (aa) the Environment Agency where the operators have elected to apply for approval of the scheme from the Secretary of State; or
 - (bb) SEPA where the operators have elected to apply for approval of the scheme from the Scottish Ministers;

“appropriate authority” means—

- (a) for the purposes of regulation 4(7)—
 - (i) the Secretary of State in relation to England;
 - (ii) the National Assembly for Wales in relation to Wales;
 - (iii) the Scottish Ministers in relation to Scotland;
- (b) for the purposes of regulation 7(10) relating to the obligation of a producer to submit operational plans—
 - (i) the Secretary of State where the producer is registered or is in the process of registering with the Environment Agency;

⁽⁹⁾ 1995 c. 25

⁽¹⁰⁾ 1990 c. 43

- (ii) the Scottish Ministers where the producer is registered or is in the process of registering with SEPA;
- (c) for the purposes of regulation 13 relating to the approval of schemes—
 - (i) subject to paragraph (ii), where the operator of the scheme has his registered office or principal place of business in England or Wales, the Secretary of State;
 - (ii) where the operator of the scheme has his registered office or principal place of business in Wales and the scheme relates to Wales only, the National Assembly for Wales;
 - (iii) where the operator of the scheme has his registered office or principal place of business in Scotland, the Scottish Ministers; or
 - (iv) at the election of the operator of the scheme or, where there is more than one operator, the operator stated under regulation 14(3)(h), either the Secretary of State or the Scottish Ministers where—
 - (aa) at the date of the application the operator of the scheme does not have a registered office or principal place of business in Great Britain; or
 - (bb) there is more than one operator of the scheme and such operators have registered offices or principal places of business in either England or Wales and in Scotland;
- (d) for the purposes of any provision in these Regulations relating to the exercise of functions in respect of determining appeals against decisions of the Environment Agency, the Secretary of State; and
- (e) for the purposes of any provision in these Regulations relating to the exercise of functions in respect of determining appeals against decisions of SEPA, the Scottish Ministers;

“approved person” means the person for the time being approved under regulation 34 for the purpose of issuing certificates of compliance under regulation 21 and signing the form referred to in regulation 7(4)(c) or 19(2)(b) in relation to a particular producer;

“calculation year” means the year preceding an obligation year;

“consumer information obligations” has the meaning given to it in regulation 4(4)(d);

“disposal” has the meaning given to it in Article 3(10) of the Packaging Waste Directive;

“energy recovery” has the meaning given to it in Article 3(8) of the Packaging Waste Directive;

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

“financial year” in relation to a person—

- (a) where the person is a company is determined as provided in section 223(1) to (3) of the Companies Act 1985⁽¹¹⁾; and
- (b) in any other case has the meaning given in section 223(4) of the Companies Act 1985, but as if the reference there to an undertaking were a reference to that person;

“obligation year” means, for the purposes of this regulation and Schedule 10, a year in respect of which it is being considered whether a person is a producer;

“organic recycling” has the meaning given to it in Article 3(9) of the Packaging Waste Directive;

“packaging” has the meaning given to it in Article 3(1) of the Packaging Waste Directive;

(11) 1985 c. 6 as amended by the Companies Act 1989 (1989 c. 40).

“packaging materials” means materials used in the manufacture of packaging and includes raw materials and processed materials prior to their conversion into packaging;

“packaging waste” has the meaning given to it in Article 3(2) of the Packaging Waste Directive; but does not include packaging that became waste outside the United Kingdom;

“partnership” has the meaning given in section 1 of the Partnership Act 1890⁽¹²⁾;

“PERN” means a packaging waste export recovery note issued by an accredited exporter on a form supplied to him by the appropriate Agency, as evidence of the export of the tonnage of packaging waste specified in the note for reprocessing outside the United Kingdom;

“preceding year” means the year preceding a relevant year;

“PRN” means a packaging waste recovery note issued by an accredited reprocessor on a form supplied to him by the appropriate Agency, as evidence of the receipt of the tonnage of packaging waste specified in the note for reprocessing within the United Kingdom;

“producer” has the meaning given in regulation 4 and the classes of producer are those set out in column 4 of Table 1 in Schedule 1;

“producer responsibility obligations” are the producer registration, recovery and recycling, certifying and consumer information obligations specified in regulation 4;

“recovery” means any of the applicable operations provided for in Annex IIB to the Waste Directive and for the purposes of these Regulations incineration at waste incineration plants with energy recovery shall be treated as if it is recovery; and “recover” and “recovery operation” shall be construed accordingly;

“recovery and recycling obligations” has the meaning given in regulation 4(4)(b);

“recyclable material” means—

- (a) glass;
- (b) aluminium;
- (c) steel;
- (d) paper/board;
- (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;

“recycling” has the meaning given to it in Article 3(7) of the Packaging Waste Directive; and “recycle” shall be construed accordingly;

“recycling obligations” means the obligation to recycle set out in regulation 4(4)(b)(ii);

“relevant authorisation” means—

- (a) a permit granted under regulation 10 of the Pollution Prevention and Control (England and Wales) Regulations 2000⁽¹³⁾ or regulation 7 of the Pollution Prevention and Control (Scotland) Regulations 2000⁽¹⁴⁾;
- (b) an authorisation granted under section 6 of the 1990 Act;
- (c) a waste management licence granted under section 36 of the 1990 Act; or

(12) 1890 c.39

(13) S.I. 2000/1973 as amended by the Solvent Emissions (England and Wales) Regulations 2004 (S.I. 2004/107). There are other amendments not relevant to these Regulations.

(14) S.S.I. 2000/323 as amended by the Solvent Emissions (Scotland) Regulations 2004 (S.S.I. 2004/26). There are other amendments not relevant to these Regulations.

(d) an exemption registered under regulation 18 of the Waste Management Licensing Regulations 1994⁽¹⁵⁾.

“relevant date” means—

- (a) 7th April in the obligation year; or
- (b) where an application for registration is made in a circumstance set out in regulation 7(3), or as required by paragraph 10 of Schedule 10, the date of the application;

“relevant year” means the year referred to in regulation 4(2), that is to say a year in respect of which a person is a producer;

“reprocessor” means a person who, in the ordinary course of conduct of a trade, occupation or profession, carries out one or more activities of recovery or recycling, and “reprocessing” shall be construed accordingly;

“reuse” has the meaning given to it in Article 3(5) of the Packaging Waste Directive;

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

“SEPA” means the Scottish Environment Protection Agency;

“SIC code” means a code included in “Indexes to the United Kingdom Standard Industrial Classification of Economic Activities 2003”, published by the Office for National Statistics in 2003⁽¹⁶⁾;

“small producer” means a producer whose turnover in the last financial year in respect of which audited accounts are available before the relevant date was £5,000,000 or less; and audited accounts shall be considered to be available when, where the person is a company, the annual accounts have been delivered to the registrar under section 242 of the Companies Act 1985;

“transit packaging” means—

- (a) grouped packaging or secondary packaging, as defined in paragraph (b) in Article 3(1) of the Packaging Waste Directive; or
- (b) transport packaging or tertiary packaging as defined in paragraph (c) in Article 3(1) of the Packaging Waste Directive;

“turnover” means, in relation to a person, his turnover as defined in section 262(1) of the Companies Act 1985 but as if the references to a company were references to that person; and

“year” means a calendar year beginning on 1st January.

(3) Where—

- (a) notices are to be served on a producer under regulations 7(7)(a), 10 or 11(3);
- (b) information is to be provided by a producer under regulations 7 or 8;
- (c) fees are to be paid by a producer under regulation 9(2); or
- (d) records and returns are to be maintained and furnished by a producer under regulation 20,

they shall be served on, provided, paid, or maintained and furnished by, in the case of a partnership, a partner acting on behalf of the partnership, and references in these Regulations to the producer shall be read accordingly.

⁽¹⁵⁾ S.I. 1994/1056 as amended by the Waste Management Licensing (Amendment) Regulation 1998 (S.I. 1998/606) and the Waste Management Licensing (England and Wales) (Amendment and Related Provisions) (No. 3) Regulations 2005 (S.I. 2005/1728). There are other amendments but none are relevant to these Regulations.

⁽¹⁶⁾ ISBN 0 11 621641 7.

- (4) Where there is more than one operator of a scheme—
- (a) notices to be served on the operator of the scheme under regulations 14(5), 17, 18(3) or 36(3) shall be served on the operator stated under regulation 14(3)(h);
 - (b) where information is to be provided by the operator of the scheme under regulations 14 and 15, fees are to be paid by the operator of the scheme under regulation 16, records and returns are to be maintained and furnished by the operator of the scheme under regulation 22, and appeals may be made by the operator of the scheme under regulation 27, they shall be provided, paid, or maintained and furnished, and such appeals may only be made, by the operator stated under regulation 14(3)(h),

and references in these Regulations to the operator of the scheme shall be read accordingly.

Exclusion of charities from producer responsibility obligations

3. Parts II, III and IV of these Regulations do not apply to a charity within the meaning given in section 506 of the Income and Corporation Taxes Act 1988(17).

PART II

PRODUCERS AND OBLIGATIONS

Producers and producer responsibility obligations

4.—(1) This regulation is subject to regulations 5, 37, 38 and 39 and Schedules 8, 9 and 10.

(2) In respect of a year a person is a producer of a class specified in an entry in column 4 of Table 1 in Schedule 1 if—

- (a) in that year and the preceding year he performs the relevant functions of the class of producer specified in Column 1 of that Table in relation to that entry;
- (b) in the preceding year he made supplies of the materials or products specified in Column 2 of that Table in relation to that entry of a class in Column 3 of that Table in relation to that entry; and
- (c) in relation to that year he satisfies the threshold tests as provided by paragraph 3 of that Schedule,

and the other provisions of that Schedule shall also have effect for the purposes of determining whether a person is a producer of any class.

(3) Where in respect of a year a person is a producer and satisfies the provisions of Columns 1 to 3 of Table 1 in Schedule 1 in relation to more than one class of producer specified in an entry in Column 4 of that Table, whether or not in relation to the same materials or products specified in Column 2 of that Table, or the same transaction or process, for that year that person belongs to each such class.

(4) A person who is a producer in respect of a year has producer responsibility obligations in respect of that year, that is to say he must—

- (a) be registered as provided in regulation 6 (in these Regulations referred to as the “producer registration obligation”);
- (b) where he is—

- (i) a producer, other than a small producer who has elected to follow the allocation method, recover and recycle packaging waste in relation to each of the classes of producer to which the producer belongs, as calculated under Schedule 2; or
 - (ii) a small producer who has elected to follow the allocation method, recycle packaging waste as calculated under paragraphs 2, 7 and 8 of Schedule 2,
(in these Regulations referred to as the “recovery and recycling obligations”);
 - (c) furnish a certificate of compliance in respect of his recovery and recycling obligations in accordance with regulation 21 (in these Regulations referred to as the “certifying obligation”); and
 - (d) if his main activity is that of seller, provide information to consumers of the goods sold by him about—
 - (i) the return, collection and recovery systems available to them;
 - (ii) their role in contributing to the reuse, recovery and recycling of packaging and packaging waste;
 - (iii) the meaning of related markings on packaging that he places on the market and that relates to his recovery and recycling obligations; and
 - (iv) the chapter dealing with the management of packaging and packaging waste in any strategy prepared under section 44A or 44B of the 1990 Act (national waste strategy),
(in these Regulations referred to as the “consumer information obligations”).
- (5) A producer may only demonstrate compliance with his recovery and recycling obligations through the acquisition of PRNs or PERNs or both.
- (6) A PRN or PERN that relates to packaging waste delivered or exported for reprocessing in December in a year may be relied on by a producer to demonstrate compliance with his recovery and recycling obligations either in that year or the following year.
- (7) The appropriate authority shall issue guidance as to the provision of information under paragraph (4)(d) above and shall take such steps as may be appropriate to ensure that users of packaging, including in particular consumers, obtain the necessary information about the matters referred to in paragraph (4)(d).

Producers and Scheme membership

5. Where a producer is a member of a registered scheme throughout a relevant year he is exempt from complying with his producer responsibility obligations for the relevant year.

PART III

REGISTRATION: PRODUCERS AND SCHEMES

Producer registration obligation

6. Subject to regulations 37 and 39 and Schedules 8 and 10, a producer shall be registered with the appropriate Agency in respect of a relevant year, or any part of that year, during which he is not a member of a registered scheme.

Application for producer registration

7.—(1) Subject to paragraph (3) below, a producer who is required by regulation 6 to be registered shall, on or before 7th April in a relevant year, make an application for producer registration to the appropriate Agency.

(2) Where the producer is a partnership, the application shall be made by any partner acting on behalf of the partnership.

(3) Where any of the following occurs in a relevant year—

- (a) the application for registration of a scheme of which the applicant was a member is refused;
- (b) the registration of a scheme of which the applicant was a member is cancelled;
- (c) the applicant's membership of a scheme is discontinued;
- (d) the applicant becomes a producer in respect of that year; or
- (e) an application to register made within the time limit in paragraph (1) above is refused,

an application for registration shall be made within 28 days of the occurrence.

(4) An application for producer registration shall—

- (a) be made in writing;
- (b) contain the information set out in Part I of Schedule 3;
- (c) other than in the case of a small producer who has elected to follow the allocation method under sub-paragraph (d) below and subject to paragraph (9) below, be accompanied by the following further information, on a form supplied for that purpose by the appropriate Agency and signed by the approved person, in relation to the relevant year—
 - (i) each class of producer to which the applicant belongs;
 - (ii) if he belongs to more than one class of producer, which of those classes constitutes his main activity as a producer;
 - (iii) the relevant SIC code for the class of producer to which the applicant belongs or, as the case may be, for the applicant's main activity;
 - (iv) in relation to each such class of producer—
 - (aa) the amount of packaging waste which he is required to recover by virtue of paragraph 3(1) of Schedule 2 and of this the proportion which is to be recovered by recycling by virtue of paragraph 3(2) of Schedule 2; and
 - (bb) the amount of packaging waste which he is required to recycle for each kind of recyclable material by virtue of paragraph 3(3) of Schedule 2;
 - (v) the basis on which the amounts referred to in paragraph (iv) were calculated; and
 - (vi) such other information as the appropriate Agency reasonably requires in order to determine the application and as is specified on the form;
- (d) in the case of a small producer state whether he elects to follow the allocation method, and, if he does, be accompanied by evidence as to his turnover;
- (e) be accompanied by the relevant fee for producer registration referred to in regulation 9; and
- (f) on a first application for registration where the producer handled more than 500 tonnes of packaging or packaging materials in the preceding year, be accompanied by an operational plan complying with Part III of Schedule 3, and on any subsequent application, be accompanied by a revised version of that plan unless it has already been provided pursuant to paragraph (g) in regulation 8.

(5) A small producer who has elected under paragraph (4)(d) above to follow the allocation method shall follow this method for a minimum of the year of registration and the following two years.

(6) An application for producer registration shall be granted where—

(a) the producer has complied with—

(i) paragraph (4)(a), (b) and (e) above; and

(ii) where applicable, paragraphs (4)(c), (d), (f) and (5) above; and

(b) the appropriate Agency is satisfied that the further information provided in accordance with paragraph (4)(c) above, or (9) below, has been provided in accordance with paragraph (8) below,

and shall otherwise be refused.

(7) Where an application for producer registration is granted—

(a) the appropriate Agency shall, within 28 days of it being granted confirm to the producer in writing that he is registered with it; and

(b) the producer shall be treated as having been registered—

(i) where the application was made within the time limit specified in paragraph (1), from the beginning of the relevant year;

(ii) where the application was made within the time limit specified in paragraph (3), from the date of the relevant occurrence;

(iii) in any other case, from the date specified in the confirmation,

until any cancellation of the producer's registration in accordance with regulation 11.

(8) Any information provided shall be as accurate as reasonably possible.

(9) Where the application to register is made in one of the circumstances set out in subparagraph (a), (b), (d) or (e) of paragraph (3) above, the further information referred to in paragraph (4)(c) above need not accompany the application but shall be provided within 28 days of the application being made.

(10) A producer who is required to submit an operational plan or revised operational plan in connection with his application for registration shall at the same time send a copy of it to the appropriate authority.

Conditions of registration of a producer

8. Registration of a producer shall be subject to the conditions that the producer will—

(a) comply with his obligations set out in regulation 4(4);

(b) provide any information reasonably requested by the appropriate Agency with regard to the obligations referred to in paragraph (a) above;

(c) inform the appropriate Agency 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 material change in the information provided in accordance with regulation 7(4)(b); and

(iii) any material change in the further information provided in accordance with regulation 7(4)(c), or 7(9), as the case may be,

within 28 days of the occurrence of any such change;

(d) provide records and returns to the appropriate Agency as required by regulation 20;

- (e) notify the appropriate Agency that he wishes 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;
- (f) comply with the operational plan submitted under regulation 7(4)(f) or, if a revised plan has been submitted under paragraph (g) below, with the most recent version so submitted; and
- (g) on or before 31st January in a relevant year, provide to the appropriate Agency a revised version of the operational plan.

Forms and fees for producer registration

9.—(1) The appropriate Agency shall provide the form referred to in regulation 7(4)(c) free of charge to any person requesting one.

(2) Subject to paragraphs (3) and (4) below, the fee which is to be charged by the appropriate Agency on an application for producer registration shall be—

- (a) where the producer is a small producer who has elected to follow the allocation method, £562; or
- (b) in all other cases, £768.

(3) In the case of an application where the fee in paragraph (2) above is to be treated as a fee for group registration by virtue of paragraph 5(b)(iii) of Schedule 8, in respect of each subsidiary included within that application that is not a small producer who has elected to follow the allocation method, the appropriate Agency shall charge an additional fee of—

- (a) £180 for each of the first 4 subsidiaries;
- (b) £90 for each of the 5th to the 20th subsidiaries inclusive; and
- (c) £45 for each of the 21st and subsequent subsidiaries.

(4) On each resubmission of an application which is required by reason of the producer having failed to meet the requirements of regulation 7(4) or (9) on his previous submission, the appropriate Agency shall charge an additional fee of £220.

Refusal to register producers

10. Any decision of the appropriate Agency under regulation 7(6) to refuse to register a producer shall be notified within 28 days of the decision to the producer in writing together with the reasons for the decision, a statement as to the right of appeal under Part VI of these Regulations and a statement as to the offence specified in regulation 40(1)(a).

Cancellation of registration of producers

11.—(1) The appropriate Agency may cancel the registration with it of a producer where it appears to the appropriate Agency that—

- (a) the producer is in breach of any of the conditions specified in regulation 8; or
- (b) the producer knowingly or recklessly supplied false information in connection with his application for registration, or with compliance with any of the conditions specified in regulation 8.

(2) The appropriate Agency shall cancel the registration with it of a producer where it is notified that the producer has become a member of a registered scheme or has otherwise ceased to be subject to the producer registration obligation in respect of a year.

(3) Before cancellation of a registration under paragraphs (1) or (2) above, the appropriate Agency shall serve on the producer concerned written notice of—

- (a) its decision to cancel;

- (b) the reasons for the decision;
- (c) the date when cancellation will take effect, not being earlier than—
 - (i) in the case of cancellation under paragraph (1) above, the expiration of the time limit for an appeal against the notice provided for in paragraph 2 of Schedule 6;
 - (ii) in the case of cancellation under paragraph (2) above, 5 days from the date of the notice;
- (d) the right of appeal under Part VI of these Regulations; and
- (e) where cancellation is under paragraph (1), a statement as to the offence specified in regulation 40(1)(a).

Schemes: general provisions

12.—(1) The operator of a scheme shall carry out the recovery and recycling obligations and where applicable, consumer information obligations, that every producer who is a member of the scheme that he operates would have had, but for their membership of that scheme.

- (2) The operator of a scheme shall inform the members in writing immediately if—
 - (a) he receives a notice of cancellation of the scheme’s registration under regulation 18(3), together with a copy of the notice; or
 - (b) the scheme is granted conditional approval under regulation 13(4).

(3) The operator of a scheme may only demonstrate compliance with his recovery and recycling obligations through the acquisition of PRNs or PERNs or both.

(4) A PRN or PERN that relates to packaging waste delivered or exported for reprocessing in December in a year may be relied on by the operator of a scheme to demonstrate compliance with his recovery and recycling obligations either in that year or the following year.

Application for approval of a scheme

13.—(1) An application for approval of a scheme by the appropriate authority 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) information which demonstrates that—
 - (aa) the scheme is likely to subsist for a period of at least 5 years; and
 - (bb) the operator of the scheme is likely to be able to meet its expected recovery and recycling obligations for that period; 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.

(2) Subject to paragraphs (3) and (4), an application for approval of a scheme shall within 28 days of receipt of the application be granted unconditionally where the appropriate authority is satisfied that—

- (a) the scheme is likely to subsist for a period of at least 5 years;
- (b) the operator of the scheme is likely to be able to meet its expected recovery and recycling obligations for that period,

and otherwise be refused.

(3) A further application for approval in accordance with paragraph (1) shall be made on the occurrence of—

- (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;
- (c) the receipt by the operator of the scheme of a notification under regulation 36(3); or
- (d) a failure by the operator of the scheme to comply, where applicable, with the additional conditions set out at paragraph (5) below,

within 28 days of the occurrence of an event mentioned in sub-paragraph (a), (b) or (d) above or within 14 days of the occurrence of the event mentioned in sub-paragraph (c) above.

(4) Where the appropriate Agency has provided the appropriate authority with information pursuant to regulation 36 the appropriate authority may, whether or not it is not satisfied as to the matters set out in paragraph (2) above, grant approval subject to the additional conditions set out in paragraph (5).

(5) The conditions are that—

- (a) the operator of the scheme shall comply with 50% of the total recovery and recycling obligations of the scheme before 30th June;
- (b) the operator of the scheme shall comply with a further 50% of the remaining recovery and recycling obligations before 30th September;
- (c) the operator of the scheme shall make returns to the appropriate Agency of information demonstrating compliance with the conditions set out at sub-paragraphs (a) and (b) above on or before 15th July and 15th October respectively, together with copies of the PRNs or PERNS or both;
- (d) the operator pays the fee under regulation 16(3) to the appropriate Agency; and
- (e) the operator of the scheme shall not accept any new members into the scheme.

(6) Where an application which is required by paragraph (3)(a) or (3)(b) is not received by the due date, the appropriate authority may decide to withdraw approval of the scheme and, if such a decision is taken, shall serve written notice on the operator of the scheme of—

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

(7) Where an application which is required by paragraph (3)(c) or (3)(d) above is not received by the due date, the appropriate authority 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.

(8) The appropriate authority shall consider any representations made by the operator of a scheme before the notice under paragraph (6) takes effect, and may withdraw the notice under paragraph (6) at any time.

(9) In the case of a scheme that has been granted conditional approval pursuant to paragraph (4) above, where the appropriate authority is satisfied that the operator of the scheme met its recovery and recycling obligations in the preceding year, it shall serve a notice in writing on the operator of the scheme stating that the scheme has unconditional approval for the remainder of the year (and is no longer required to meet the additional conditions set out in paragraph (5) above) and send a copy of the notice to the appropriate Agency.

(10) In the case of a scheme that has been granted conditional approval pursuant to paragraph (4) above, where the appropriate authority is satisfied by 31st January in the year following the year

for which a scheme is granted conditional approval under paragraph (4) above (for the purposes of this paragraph, “the conditional approval year”) that the operator of the scheme met its recovery and recycling obligations and the conditions in paragraph (5) above in the conditional approval year, it shall serve a notice in writing on the operator of the scheme stating that the scheme has unconditional approval for the year following the conditional approval year (and is no longer required to meet the conditions set out in paragraph (5) above).

Application for registration of a scheme

14.—(1) An application for registration of a scheme in relation to a year shall be made by the operator of the scheme, on or before 7th April in that year, to the appropriate Agency.

(2) Where the operator of the scheme is a partnership the application for registration shall be made by any partner acting on behalf of the partnership.

(3) An application for registration of a scheme shall—

- (a) be made in writing;
- (b) contain the information set out in Part II of Schedule 3;
- (c) subject to paragraph (6) below, be accompanied by the following further information, on a form supplied for that purpose by the appropriate Agency, in relation to the relevant year—
 - (i) each producer who is a member of the scheme;
 - (ii) if any producer belongs to more than one class of producer, which of those classes constitutes his main activity as a producer;
 - (iii) the relevant SIC code for the activity or, as the case may be, the main activity of each class of producer in the scheme;
 - (iv) in relation to each producer the information referred to in paragraphs (4)(c)(iv) and (v) of regulation 7;
 - (v) in relation to members who are small producers who have elected to follow the allocation method, the aggregate amount of packaging waste which is required to be recycled by virtue of paragraphs 2, 7 and 8 of Schedule 2 by those members;
 - (vi) a statement of the turnover of each small producer who is a member of the scheme; and
 - (vii) such other information as the appropriate Agency reasonably requires in order to determine the application and as is specified on the form;
- (d) be accompanied by a statement as provided in Part III of Schedule 3;
- (e) be accompanied by evidence that the scheme has been approved by the appropriate authority; but, subject to paragraph (4)(d) below, where the scheme has yet to be approved, such evidence shall be supplied to the appropriate Agency as soon as possible after receipt;
- (f) on a first application for registration be accompanied by an operational plan for the scheme that complies with Part III of Schedule 3;
- (g) be accompanied by a fee calculated under regulation 16; and
- (h) where there is more than one operator of the scheme, be accompanied by a statement signed by all of the operators of the scheme as to which operator is able to accept notices and act on behalf of all the operators of the scheme.

(4) An application for registration shall be granted where—

- (a) the operator has complied with paragraphs (3)(a), (b), (d), (f), (g) and (h) above;
- (b) the appropriate Agency is satisfied that the information provided in accordance with paragraph (3)(c) above has been provided in accordance with paragraph (7) below;

- (c) the appropriate Agency is satisfied as to the contents of the operational plan provided as required by paragraph (3)(f) above; and
 - (d) the scheme has been approved by the appropriate authority,
- and shall otherwise be refused.
- (5) Where an application for registration of a scheme is granted—
 - (a) the appropriate Agency shall, within 28 days of its decision, notify the operator of the scheme in writing of its decision; and
 - (b) the scheme shall be treated as registered from the beginning of the year in relation to which the application is made until any cancellation of the scheme's registration in accordance with regulation 18.
 - (6) The further information shall, if it does not accompany the application, be provided not later than 15th April in the year of application.
 - (7) Any information provided shall be as accurate as reasonably possible.

Conditions of registration of a scheme

- 15.** Registration of a scheme shall be subject to the following conditions—
- (a) that the operator of the scheme will comply with the obligation set out in regulation 12(1);
 - (b) that the operator of the scheme will provide any information reasonably requested by the appropriate Agency with regard to the obligation referred to in paragraph (a) above;
 - (c) that the operator of the scheme will notify the appropriate Agency in writing at intervals as required by the appropriate Agency of any change in the membership of the scheme and that any such notification will be accompanied by the additional fee calculated as provided in regulation 16(6);
 - (d) that the operator of the scheme will inform the appropriate Agency in writing of—
 - (i) 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 a scheme, any change of partners or operators;
 - (ii) any material change in the information provided in accordance with regulation 14(3)(b);
 - (iii) any material change in the further information provided in accordance with regulation 14(3)(c);
 - (iv) any change in the operator stated under regulation 14(3)(h),
within 28 days of the occurrence of any such change;
 - (e) that the operator of the scheme will provide records and returns to the appropriate Agency as required by regulation 22;
 - (f) that the operator of the scheme will comply with the operational plan submitted under regulation 14(3)(f) or, if a revised plan has been submitted under paragraph (g) below, with the most recent version so submitted; and
 - (g) that the operator of the scheme will, on or before 31st January in a relevant year, provide to the appropriate Agency and the appropriate authority a revised version of the operational plan for the scheme that complies with Part III of Schedule 3.

Forms and fees for registration of a scheme

- 16.—(1)** The appropriate Agency shall provide the form referred to in regulation 14(3)(c) free of charge to any person requesting one.

(2) Subject to paragraphs (3), (4), (5) and (6) below, the fee which is to be charged by the appropriate Agency on an application for registration of a scheme shall be—

- (a) £345 for each small producer who has elected to follow the allocation method and who is on the date of the application a member of the scheme; and
- (b) £558 for each producer who is not a small producer who has elected to follow the allocation method and is on the date of the application a member of the scheme.

(3) In the case of a scheme that has been granted conditional approval under regulation 13(4) the fee to be charged by the appropriate Agency in addition to the fee in paragraph (2) above is—

- (a) £1,540 where the operator of the scheme has an obligation to recover up to and including 24,999 tonnes of packaging waste;
- (b) £2,310 where the operator of the scheme has an obligation to recover between 25,000 and 249,999 tonnes of packaging waste; or
- (c) £3,080 where the operator of the scheme has an obligation to recover over 250,000 tonnes of packaging waste.

(4) In the case of a group of companies that is on the date of the application a member of a scheme the fee to be charged by the appropriate Agency is—

- (a) £345 where the holding company is a small producer who has elected to follow the allocation method; or
- (b) £558 where the holding company is not a small producer who has elected to follow the allocation method; and
 - (i) £180 for each of the first 4 subsidiaries;
 - (ii) £90 for each of the 5th to 20th subsidiaries inclusive; and
 - (iii) £45 for each of the 21st and subsequent subsidiaries.

(5) In the case where an application is required to be resubmitted as a result of a failure to meet the requirements of regulation 14(3)(c) or 14(6), the fee to be charged by the appropriate Agency in addition to any fee payable under this regulation is £220 for each member of that scheme in respect of whom the information resubmitted was different from that contained in the original application.

(6) The additional fee which is to be paid by an operator of a scheme in compliance with the condition referred to in paragraph (c) in regulation 15 is calculated as follows—

$$(A \times B) - (C \times D) - AF$$

where—

“A” is the number of new members of the scheme which are the subject of the notification who are not small producers who have elected to follow the allocation method;

“B” is the fee set out at sub-paragraph (2)(b) above plus the sum of £110;

“C” is the number of new members of the scheme which are the subject of the notification who are small producers who have elected to follow the allocation method ;

“D” is the fee set out at sub-paragraph (2)(a) above plus the sum of £110; and

“AF” is the additional fee.

Refusal to register a scheme

17. Any decision of the appropriate Agency under regulation 14 to refuse to register a scheme shall be notified, within 28 days of the decision, to the operator of the scheme in writing together with—

- (a) the reasons for the decision;

- (b) a statement as to the right of appeal under Part VI of these Regulations; and
- (c) a statement as to the offence specified in regulation 40(1)(a).

Cancellation of registration of a scheme

18.—(1) Subject to the right of appeal under Part VI of these Regulations, the appropriate Agency may cancel the registration with it of a scheme where it appears to the appropriate Agency that—

- (a) the operator of the scheme is in breach of any of the conditions referred to in regulation 15; or
- (b) the operator knowingly or recklessly supplied false information in connection with the application for registration, or with compliance with the conditions referred to in regulation 15.

(2) The appropriate Agency shall cancel the registration with it of a scheme if the appropriate authority withdraws approval of the scheme.

(3) Before the cancellation of a registration the appropriate Agency shall serve on the operator of the scheme written notice of—

- (a) its decision under paragraph (1) or (2) above to cancel the registration;
- (b) the reasons for the decision;
- (c) where the decision is made under paragraph (1) above, the right of appeal under Part VI of these Regulations; and
- (d) the date when cancellation will take effect, not being earlier than—
 - (i) in the case of cancellation under paragraph (1) above, the expiration of the time limit for an appeal against the notice provided for in paragraph 2 of Schedule 6; or
 - (ii) in the case of cancellation under paragraph (2) above, 5 days from the date of the notice.

Information provided to scheme operators

19.—(1) This regulation applies to information which—

- (a) is provided to the operator of a 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 14.

(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 appropriate Agency;
- (b) ensure that the form is signed by the approved person; and
- (c) ensure that the information is as accurate as reasonably possible.

PART IV

RECORDS, RETURNS AND CERTIFICATE

Producers—records and returns

20.—(1) A producer who is subject to the certifying obligation shall—

- (a) maintain, and retain for at least 4 years after the record is made, records of the information referred to in paragraph (2) below for a small producer who has elected to follow the allocation method or paragraph (3) for any other producer; and
 - (b) at the same time as he furnishes a certificate of compliance to the appropriate Agency in accordance with regulation 21, make a return to the appropriate Agency of that information.
- (2) The information to be recorded by a small producer who has elected to follow the allocation method is—
- (a) his turnover;
 - (b) the recycling allocation for the relevant year as provided in paragraph 8 of Schedule 2;
 - (c) the amount, in tonnes, of packaging waste which is to be recycled under the allocation method set out in paragraph 7 of Schedule 2; and
 - (d) the aggregate tonnage of packaging materials that have been received by an accredited reprocessor for recycling and that have been exported by an accredited exporter for recycling as set out in the PRNs or PERNs acquired.
- (3) The information to be recorded by any other producer is—
- (a) the amount in tonnes, to the nearest tonne, of packaging waste delivered respectively for recovery and for recycling to a reprocessor or exporter, by or on behalf of the producer as set out in the PRNs or PERNs acquired; and
 - (b) the total number of tonnes of each material which is the subject of the producer's recovery and recycling obligations.
- (4) The records maintained under paragraph (1)(a) above by a producer shall be made available, on demand, to the appropriate Agency.

Producers—certifying obligation

- 21.**—(1) Subject to regulations 5, 37 and 39 and Schedules 8 and 10, a producer shall furnish in accordance with this regulation a certificate of compliance to the appropriate Agency.
- (2) A certificate of compliance shall be furnished as evidence of whether or not the producer has complied with his recovery and recycling obligations for a relevant year and shall be furnished on or before 31st January in the year immediately following the relevant year.
- (3) The provisions of Schedule 4 shall apply as regards the information to be contained in a certificate of compliance.

Schemes—records and returns

- 22.**—(1) The operator of a scheme shall maintain, and retain for at least 4 years after they are made, records of the information referred to in paragraph (2) below, and make returns of that information to the appropriate Agency on or before 31st January in the year following the year to which the information relates.
- (2) For each year the information is—
- (a) the amount in tonnes, to the nearest tonne, of packaging waste delivered respectively for recovery and for recycling, to a reprocessor or exporter through the scheme as set out in the PRNs or PERNs acquired;
 - (b) the information specified in regulation 14(3)(c) and the revised operational plan referred to in paragraph (g) of regulation 15, together with any changes notified in accordance with the condition specified in regulation 15(d)(iii); and

- (c) the total number of tonnes of each material which is the subject of an obligation to recover and recycle for which the operator of the scheme is responsible under regulation 12(1).
- (3) The records maintained under paragraph (1) above shall be made available, on demand, to the appropriate Agency.

PART V

ACCREDITATION OF REPROCESSORS AND EXPORTERS

Requirement for accreditation

23.—(1) A person shall not issue a PRN unless he is at the time of the issue an accredited reprocessor or, where the PRN is of the type referred to in paragraph (6) of regulation 4 or paragraph (4) of regulation 12 was accredited at the time the material was received, and the PRN relates to packaging waste received by him for reprocessing on the site for which he is accredited.

(2) A person shall not issue a PERN unless he is at the time of the issue an accredited exporter or, where the PERN is of the type referred to in paragraph (6) of regulation 4 or paragraph (4) of regulation 12 was accredited at the time the material was received, and the PERN relates to packaging waste exported by him for reprocessing at a specified site or sites for which he is accredited under regulation 24.

Application for accreditation

24.—(1) An application for accreditation shall be made to the appropriate Agency—

- (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 and which recyclable materials he wishes that accreditation to cover; or
 - (ii) as an exporter, in respect of the export of one or more recyclable materials for reprocessing at one or more specified sites outside the United Kingdom;
 - (b) on a form made available by the appropriate Agency and including all the information specified on that form, being information which the appropriate Agency reasonably requires in order to determine the application;
 - (c) accompanied by a business plan containing information on how the funds acquired from the issue of PRNs or PERNs are to be applied including information in respect of the following matters—
 - (i) the development of capacity for the collection and reprocessing of 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 packaging waste; and
 - (iii) the strategy, including communications, to be adopted in order to achieve the matters described in paragraphs (i) and (ii) above; and
 - (d) accompanied by a fee of—
 - (i) in the case of an applicant who undertakes to issue PRNs or PERNs for not more than 400 tonnes of packaging waste in the year to which the application relates, £500; or
 - (ii) in any other case, £2590.
- (2) An application for accreditation as—

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

shall be granted where the appropriate Agency is satisfied as to the matters set out in paragraph (3) below or, in any other case, shall be refused.

(3) The matters referred to in paragraph (2) are—

- (a) the contents of the business plan referred to in paragraph (1)(c) above;
- (b) where the application is made for accreditation as an exporter and relates to one or more reprocessing sites outside the European Community, that the requirements of Article 6(2) of the Packaging Waste Directive have been met in respect of each such site; and
- (c) that the application has been duly made in accordance with paragraph (1) above.

(4) The appropriate Agency shall notify the applicant in writing of its decision under paragraph (2) no later than 12 weeks after the application was made and, if the decision is a decision to refuse accreditation, such notification shall include reasons for the decision and a statement of the right of appeal under regulation 27(3)(a).

(5) Subject to regulation 26, where accreditation is granted under paragraph (2), it shall take effect—

- (a) where the application is made in the preceding year to that in which the person wishes to be accredited—
 - (i) from 1st January where the decision to accredit was made before that date; and
 - (ii) in all other cases, from the date of the decision,and shall remain in force until 31st December in the year for which the person has applied to be accredited;
- (b) where the application is made during the year in which the person wishes to be accredited, from the date of the decision, and shall remain in force until 31st December in that year.

(6) Where a reprocessor or exporter who has given the undertaking and paid the fee specified in paragraph (1)(d)(i) subsequently breaches that undertaking, he shall from the date of that breach be liable to pay to the appropriate Agency the sum of £2090 (being the balance of the fee which would have been payable under paragraph (1)(d)(ii) had the undertaking not been given).

(7) An application to extend the accreditation of an exporter to include a further site or sites to which he wants to export packaging waste for reprocessing shall be made to the appropriate Agency on the form specified in paragraph (1) and be accompanied by a fee of £110.

(8) An application to extend an exporter's accreditation to include a further site or sites located within the European Community shall be granted by the appropriate Agency where it is satisfied that the application has been made in accordance with paragraph (7) above, and in any other case be refused.

(9) An application to extend an exporter's accreditation to include a further site or sites located outside the European Community shall be granted by the appropriate Agency where it is satisfied that each of those sites meets the requirements of Article 6(2) of the Packaging Waste Directive and is satisfied that the application was made in accordance with paragraph (7) above, and in any other case be refused.

Conditions of accreditation

25. An accredited reprocessor or exporter shall comply with the conditions specified in and under Schedule 5.

Suspension and cancellation of accreditation

26.—(1) The appropriate Agency 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 5; or
- (b) the person who is accredited has knowingly or recklessly supplied false information in his application for accreditation made under regulation 24 or in connection with compliance with any of the conditions specified in or under Schedule 5.

(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 one or more reprocessing sites located outside the European Community, the appropriate Agency shall cancel the accreditation of an exporter to the extent that it relates to that site or those sites.

(3) Where the appropriate Agency suspends or cancels an accreditation under paragraph (1) or cancels the accreditation of an exporter to the extent that it relates to a site or sites under paragraph (2), it 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 VI;
- (d) the date when the cancellation or suspension will take effect, not being earlier than the date of receipt of the notice; and
- (e) in the case of a suspension, the period of the suspension or any steps which are required to be taken in order to bring the suspension to an end.

(4) 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.

PART VI

APPEALS

Right of appeal

27.—(1) A producer may appeal to the appropriate authority against a decision of the appropriate Agency—

- (a) to refuse to grant an application for registration under regulation 7(6); or
- (b) to cancel registration under regulation 11(1).

(2) The operator of a scheme may appeal to the appropriate authority against a decision of the appropriate Agency—

- (a) to refuse to grant an application for registration under regulation 14(4); or
 - (b) to cancel registration under regulation 18(1).
- (3) A reprocessor or exporter may appeal to the appropriate authority against a decision of the appropriate Agency—
- (a) to refuse accreditation under regulation 24;
 - (b) to specify a condition pursuant to paragraph 1(q)(iii) of Schedule 5; or
 - (c) to cancel or suspend accreditation under regulation 26.

Procedure on appeals

- 28.**—(1) Where an appeal is made to the appropriate authority it may—
- (a) appoint any person to exercise on its behalf, with or without payment, the function of determining the appeal; or
 - (b) refer any matter involved in the appeal to such person as the appropriate authority may appoint for the purpose, with or without payment.
- (2) If the appellant so requests, or the appropriate authority so decides, the appeal shall be or continue in the form of a hearing.
- (3) Schedule 6 shall have effect with respect to the procedure on any such appeal.

Determination of appeals

29. Where, on such an appeal, the appropriate authority determines that the decision of the appropriate Agency shall be altered it shall be the duty of the appropriate Agency to give effect to the determination.

Status pending appeal

30. In a case falling within regulation 11(1) or 18(1), the decision appealed against shall be ineffective until the appeal is disposed of; and if the appeal is dismissed or withdrawn the decision shall become effective from the end of the day on which the appeal is dismissed or withdrawn.

PART VII

AGENCIES' POWERS & DUTIES

Monitoring

- 31.**—(1) The appropriate Agency shall monitor in accordance with this regulation—
- (a) compliance with their producer responsibility obligations by persons who are or may be producers;
 - (b) compliance by operators of schemes with the obligations referred to in regulation 12(1);
 - (c) compliance by operators of schemes with the conditions referred to in regulation 13(4);
 - (d) compliance by persons who are accredited reprocessors or exporters with the conditions specified in or under Schedule 5; and
 - (e) compliance by producers and operators of schemes with operational plans submitted under these Regulations.
- (2) The duty referred to in paragraph (1) above includes a duty to monitor—

- (a) the registration of producers as required by regulation 6;
 - (b) the accuracy of the information provided by producers pursuant to regulations 7 and 8;
 - (c) the accuracy of the returns furnished to the appropriate Agency by a producer under regulation 20;
 - (d) the accuracy of the information contained in certificates of compliance furnished to the appropriate Agency under regulation 21;
 - (e) the accuracy of the information provided by an operator of a scheme pursuant to regulations 14 and 15; and
 - (f) the accuracy of the returns provided to the appropriate Agency by an operator of a scheme under regulations 13(5)(c) and 22.
- (3) For the purposes of the discharge of its functions under these Regulations, the appropriate Agency may, by notice in writing served on—
- (a) any person who has, or who the appropriate Agency has reason to believe has, producer responsibility obligations under regulation 4;
 - (b) in relation to any person who is a member of a registered scheme, the operator of that scheme;
 - (c) any person who is, or who the Agency has reason to believe is, issuing PERNs or PRNs;
 - (d) any person who is engaged in trading in, or brokerage in relation to, PERNs or PRNs; or
 - (e) any accredited reprocessor or exporter,

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

Monitoring—publication

32. The appropriate Agency shall take such steps as seem to it appropriate to publish, in relation to each year, the following details of the monitoring carried out under regulation 31—

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

Public register

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

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

and containing the relevant information prescribed in Schedule 7.

(2) The appropriate Agency shall—

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

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

(4) The appropriate Agency shall amend the relevant entry in the register to record any change to the information entered and shall note the date on which the amendment is made.

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

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

Approval of persons to issue certificates of compliance

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

- (a) where the producer is an individual, that individual;
- (b) where the producer is a partnership, a partner; or
- (c) where the producer is a company, a director of that company.

Entry and inspection

35.—(1) A person who appears suitable to the appropriate Agency may be authorised in writing by that Agency for the purposes of its functions under these Regulations to exercise the powers of entry and inspection referred to in paragraph (2) below.

(2) The powers of entry and inspection are those set out in section 108(4)(a) to (l) of the 1995 Act (powers of enforcing authorities and persons authorised by them) and for this purpose section 108(4) shall be read as if references to the authorised person were references to a person authorised under paragraph (1) of this regulation and as if—

- (a) the words “(or, in an emergency, at any time and, if need be, by force)” in section 108(4)(a) were omitted;
- (b) the reference in section 108(4)(f) to articles or substances in relation to which samples may be taken were to records and packaging and packaging materials and as if the power in that paragraph to take samples of the air, water or land in, on, or in the vicinity of, the premises were omitted;
- (c) the power set out in section 108(4)(g) were omitted;
- (d) the reference in section 108(4)(h) to any article or substance were to any sample as is mentioned in sub-paragraph (b) above and as if the reference to an offence in section 108(4)(h)(iii) were to an offence under regulation 40;
- (e) the reference to records in section 108(4)(k)(i) were to the records and returns required to be kept and provided to the appropriate Agency under these Regulations; and
- (f) the reference to the power in section 108(1) were to the power conferred by this regulation.

(3) The provisions of section 108(6) and (7) of the 1995 Act shall apply to the powers conferred by paragraphs (1) and (2) above as they apply to the powers conferred by section 108(4) of the 1995 Act, but as if any reference to an authorised person were to a person authorised under paragraph (1) of this regulation, and as if—

- (a) in section 108(6) and (7) the words “Except in an emergency” were omitted; and

- (b) in section 108(6) the words “or to take heavy equipment on to any premises which are to be entered” were omitted.
- (4) The provisions of section 108(12) and (13) of the 1995 Act shall apply to the powers conferred by paragraphs (1) and (2) above as they apply to the powers conferred by section 108(4) of the 1995 Act.
- (5) The provisions of paragraphs 2 to 6 of Schedule 18 to the 1995 Act (supplemental provisions with respect to powers of entry) shall apply to the powers conferred by this regulation as they apply to the powers conferred by section 108 of the 1995 Act, but as if any reference—
- (a) to a designated person were to a person authorised in writing by the appropriate Agency to exercise on its behalf any power conferred by this regulation;
 - (b) to a relevant power were to a power conferred by this regulation, including a power exercisable by virtue of a warrant under the provisions of that Schedule as applied by this paragraph; and
 - (c) in paragraph 6(1) to section 108(4)(a) or (b) or (5) of the 1995 Act were to paragraph (1) of this regulation.
- (6) In this regulation “warrant” means a warrant under the provisions set out in Schedule 18 to the 1995 Act as applied by paragraph (5) above.

Provision of information to the appropriate authority

36.—(1) Where it appears to the appropriate Agency that the operator of a scheme has not met his recovery and recycling obligations in relation to the scheme in a relevant year the appropriate Agency shall, no later than 15th February in the subsequent year, provide the information relating to the scheme in paragraph (2) below to the authority that approved the scheme.

(2) The information referred to in paragraph (1) shall include the name of the scheme, the operator’s recovery and recycling obligations for the scheme (in tonnes and by material) and the extent of the operator’s compliance with those obligations by reference to the actual tonnages of recovery and recycling the scheme has demonstrated through the acquisition of PRNs or PERNs or both.

(3) The appropriate Agency shall notify the operator of a scheme that he appears not to have met his recovery and recycling obligations in relation to the scheme in a relevant year when it provides the information to the appropriate authority under paragraph (1) above.

(4) It shall only appear to the appropriate Agency under paragraph (1) above that the operator has not met his recovery and recycling obligations if in respect of the relevant year the total figure provided to the appropriate Agency by the operator of the scheme under regulation 22(2)(a) is less than the total figure provided to the appropriate Agency by the operator of the scheme under regulation 22(2)(c).

PART VIII

GROUPS OF COMPANIES, PUB OPERATING BUSINESSES AND LICENSORS AND MID-YEAR CHANGES

Packaging handled by groups of companies

37. The provisions of Schedule 8 shall apply with regard to groups of companies as defined in that Schedule.

Packaging handled by licensors and pub operating businesses

38.—(1) Where in the relevant year and in the preceding year a person is a licensor, the provisions of Schedule 9 shall apply to determine whether that person has producer responsibility obligations in that capacity.

(2) Where in the relevant year and in the preceding year a person is a pub operating business, the provisions of Schedule 9 shall apply to determine whether that person has producer responsibility obligations in that capacity.

(3) For the purposes of this regulation and Schedule 9 a person is a licensor where he is a party to a licence agreement in or under which he grants a licence to use a trade mark to another.

(4) For the purposes of this regulation and Schedule 9 a person is a pub operating business where—

(a) he is a party to a pub operating agreement in or under which he grants a lease or tenancy of premises to another; and

(b) the premises to which the pub operating agreement relates—

(i) in England or Wales, are used by the tenant in order to carry on the licensable activity of—

(aa) the sale by retail of alcohol for consumption on the premises or both on and off the premises; or

(bb) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club or both, for consumption on the premises or both on and off the premises,

and in respect of which a premises licence is in force; or

(ii) in Scotland, are used by the tenant for the sale by retail or supply of alcoholic liquor for consumption on the premises or both on and off the premises, and in respect of which a relevant licence is in force, or such premises are occupied by a registered club.

(5) In England and Wales, in the definition of pub operating business—

(i) “alcohol” has the same meaning as in section 191 of the Licensing Act 2003⁽¹⁸⁾ and ‘alcoholic’ shall be construed accordingly;

(ii) “premises licence” has the same meaning as in section 11 of the Licensing Act 2003;

(iii) “supply of alcohol” has the same meaning as in section 14 of the Licensing Act 2003; and

(iv) “sale by retail” in relation to any alcohol has the same meaning as in section 192 of the Licensing Act 2003.

(6) In Scotland, in the definition of pub operating business—

(i) “alcoholic liquor” has the same meaning as in section 139 of the Licensing (Scotland) Act 1976⁽¹⁹⁾;

(ii) “registered club” has the same meaning as in section 139 of the Licensing (Scotland) Act 1976; and

(iii) “relevant licence” means a public house licence, an hotel licence (including a restricted hotel licence), a restaurant licence, a refreshment licence or an entertainment licence all as defined in Schedule 1 of the Licensing (Scotland) Act 1976.

(7) For the purposes of this regulation and Schedule 9—

⁽¹⁸⁾ 2003 c. 17

⁽¹⁹⁾ 1976 c. 66

“licence agreement” means an agreement or number of related agreements in or under which the licensor grants the licensee a licence that allows the licensee to use a trade mark as the name under which the licensee sells from premises goods that are associated with that trade mark, and includes an obligation (whether expressed as a positive or as a negative obligation) on the licensee that relates to the presentation of those premises;

“licensee” means the party to a licence agreement to whom a licence to use a trade mark is granted;

“premises” means any sales outlet on which packaging is handled and includes any land, vehicle, vessel, mobile plant and stall;

“pub operating agreement” means an agreement or number of related agreements in or under which one person (the pub operating business) grants a tenancy or lease of premises to another person (the tenant) that includes an obligation (whether expressed as a positive or as a negative obligation) on the tenant to purchase some or all of the alcohol or alcoholic liquor (as the case may be), to be sold or supplied on or from the premises, from the pub operating business or from a person or persons nominated or authorised by or on behalf of that business;

“tenant” means the party to a pub operating agreement to whom the lease or tenancy of premises is granted; and

“trade mark” has the same meaning as in section 1 of the Trade Marks Act 1994(20).

Mid-year changes

39. The provisions of Schedule 10 shall apply with regard to changes in a year in respect of a person who is a producer in respect of that year and any changes in membership of a scheme or group of companies , or other event affecting a producer in the relevant year.

PART IX OFFENCES

Offences and penalties

40.—(1) A producer who contravenes a requirement of—

- (a) subject to paragraph (2) below, regulation 4(4)(a);
- (b) regulation 4(4)(b); or
- (c) regulation 4(4)(c),

is guilty of an offence.

(2) A producer is not guilty of an offence under paragraph (1)(a) above in respect of any period during which, under regulation 7(7), he is treated as having been registered.

(3) An operator of a scheme who fails to comply with his recovery and recycling obligations in contravention of regulation 12(1) is guilty of an offence.

(4) A person who contravenes a requirement of regulation 23 or who is in breach of either of the conditions specified in paragraph 1(a) or 1(d) of Schedule 5 is guilty of an offence.

(5) A person who furnishes any information to the appropriate Agency in connection with its functions under these Regulations or furnishes information to which regulation 19 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.
- (6) A person who fails without reasonable excuse to comply with any requirement imposed in a notice under regulation 31(3) shall be guilty of an offence.
- (7) A person who intentionally delays or obstructs a person authorised by the appropriate Agency in the exercise of powers referred to in regulation 35 is guilty of an offence.
- (8) Where in accordance with Schedule 8 there is a group registration the holding company is guilty of an offence if—
- (a) it does not comply with its recovery and recycling obligations referred to in paragraph 5(c) of Schedule 8; or
 - (b) it does not furnish a certificate of compliance in accordance with paragraph 5(d) of Schedule 8.
- (9) A person guilty of an offence under any of paragraphs (1) to (8) above shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.
- (10) Where an offence under these Regulations is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of, or have been attributable to neglect on the part of, any partner or a person who was purporting to act as such, that person as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

PART X

REVOCATION AND TRANSITIONAL PROVISION

Revocation and transitional provision

41.—(1) The Regulations specified in Schedule 11 are revoked.

(2) Any step taken before commencement of these Regulations which has effect under any provision of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 shall be treated on or after commencement as having effect under any equivalent provision of these Regulations.

(3) Where the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 specified a time period and part of that period had elapsed under those Regulations before revocation of those Regulations, that part of the period shall be treated on commencement as having elapsed under the equivalent provision of these Regulations.

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

[] 2005