
DRAFT STATUTORY INSTRUMENTS

2005 No.

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

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 sub-paragraph (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.