
DRAFT STATUTORY INSTRUMENTS

2005 No.

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

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).