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STATUTORY INSTRUMENTS

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**2004 No. 1188**

**ENVIRONMENTAL PROTECTION**

**The Packaging (Essential Requirements)  
(Amendment) Regulations 2004**

<i>Made</i>	- - - -	<i>21st April 2004</i>
<i>Laid before Parliament</i>		<i>26th April 2004</i>
<i>Coming into force</i>	- -	<i>24th May 2004</i>

The Secretary of State, being a Minister designated (1) for the purposes of section 2(2) of the European Communities Act 1972 (2) relating to the management of packaging and packaging waste, in exercise of the powers conferred upon her by that section, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Packaging (Essential Requirements) (Amendment) Regulations 2004 and shall come into force on 24th May 2004.

**Amendments to the Packaging (Essential Requirements) Regulations 2003**

2.—(1) In regulation 2(2), for the definition of “packaging” there shall be substituted the following definition:

““packaging” means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer, including non-returnable items used for the same purposes, but only where the products are—

- (a) sales packaging or primary packaging, that is to say packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;
- (b) grouped packaging or secondary packaging, that is to say packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale, and which can be removed from the product without affecting its characteristics; or

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(1) S.I. 1996/266  
(2) 1972 c. 68.

- (c) transport packaging or tertiary packaging, that is to say packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packagings in order to prevent physical handling and transport damage; for the purposes of these Regulations transport packaging does not include road, rail, ship and air containers;

Provided that—

- (i) items shall be considered to be packaging if they fulfil the above definition without prejudice to other functions which the packaging might also perform, unless the item is an integral part of a product and it is necessary to contain, support or preserve that product throughout its lifetime and all elements are intended to be used, consumed and disposed of together;
- (ii) items designed and intended to be filled at the point of sale and disposable items sold, filled or designed and intended to be filled at the point of sale shall be considered to be packaging provided they fulfil a packaging function;
- (iii) packaging components and ancillary elements integrated into packaging shall be considered to be part of the packaging into which they are integrated. Ancillary elements hung directly on, or attached to, a product and which perform a packaging function shall be considered to be packaging unless they are an integral part of that product and all elements are intended to be consumed or disposed of together.

Schedule V lists illustrative examples of packaging stated in the Annex of Directive [2004/12/EC](#) of the European Parliament and of the Council amending Directive [94/62/EC](#) on packaging and packaging waste (3);”.

- (2) In Schedule II, sub-paragraph 1(c), for “regulation 7” there shall be substituted “regulation 6.”.
- (3) In Schedule III, sub-paragraph 1(b), for “regulation 7” there shall be substituted “regulation 6”.
- (4) After Schedule IV there shall be inserted Schedule V as follows:

“SCHEDULE V

(Regulation 2(1) and (4))

ILLUSTRATIVE EXAMPLES OF PACKAGING REFERRED TO IN THE  
PROVISO TO THE DEFINITION OF PACKAGING IN REGULATION 2(2)

Illustrative examples for criterion (i)

**Packaging**

Sweet boxes

Film overwrap around a CD case

**Non-packaging**

Flower pots intended to stay with the plant throughout its life

Tool boxes

Tea bags

Wax layers around cheese

Sausage skins

Illustrative examples for criterion (ii)

**Packaging, if designed and intended to be filled at the point of sale**

Paper or plastic carrier bags

Disposable plates and cups

Cling film

Sandwich bags

Aluminium foil

**Non-packaging**

Stirrer

Disposable cutlery

Illustrative examples for criterion (iii)

**Packaging**

Labels hung directly on or attached to a product

**Part of packaging**

Mascara brush which forms part of the container closure

Sticky labels attached to another packaging item

Staples

Plastic sleeves

Device for measuring dosage which forms part of the container closure for detergents.”.

*Stephen Timms,*  
Minister of State for Energy, E-commerce and  
Postal Services,  
Department of Trade and Industry

21st April 2004

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Packaging (Essential Requirements) Regulations 2003 (S.I. 2003/1951) (“the 2003 Regulations”) which implemented Articles 9 and 11 of Directive 94/62/EC of the European Parliament and the Council on packaging and packaging waste (O.J. No L365, 31.12.94, p.10) which relate to the essential requirements to be satisfied by packaging.

Regulations 2(1) and (4) implement Article 1(1) and the Annex of Directive 2004/12/EC of the European Parliament and the Council amending Directive 94/62/EC (O.J. No. L47, 18.2.04, p. 26). They provide for an amendment to the definition of “packaging” to include additional criteria for determining whether an item is packaging and provide illustrative examples of the application of these criteria.

Regulations 2(2) and 3(3) correct errors in the 2003 Regulations where reference should have been made to Regulation 6 instead of Regulation 7.

As these Regulations implement certain provisions of Directive 2004/12/EC, a transposition note (TN) setting out how the Government will transpose into UK law those elements of that Directive has been prepared. Copies of the TN are available from SD3, Bay 430, Department of Trade and Industry, 151 Buckingham Palace Road, London SW1 9SS. A copy has been placed in the libraries of both Houses of Parliament.