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STATUTORY INSTRUMENTS

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**2016 No. 241**

**The Producer Responsibility Obligations (Packaging Waste) (Miscellaneous Amendments) Regulations 2016**

**PART 2**

**Amendment of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007**

**Regulation 2**

- 3.** In regulation 2 (interpretation and notices)<sup>(1)</sup>—
- (a) in paragraph (1), at the appropriate place, insert—
    - ““PRONIR” means the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007;”;
  - (b) in paragraph (2)—
    - (i) in the definition of “appropriate agency”—
      - (aa) for each “agency”, substitute “Agency”;
      - (bb) in paragraph (d)—
        - (i) in sub-paragraph (v)(aa), for “the Secretary of State”, substitute “that Agency”;
        - (ii) in sub-paragraph (v)(bb), for “the Scottish Ministers”, substitute “that Agency”;
        - (iii) in sub-paragraph (vi)(aa), for “the Secretary of State”, substitute “that Body”;
        - (iv) in sub-paragraph (vi)(bb), for “the Scottish Ministers” substitute “that Agency”;
      - (v) for sub-paragraphs (vii) and (viii), substitute—
        - “(vii) 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 England and in Wales (but not in Scotland)—
          - (aa) the Environment Agency, where the operators have elected to apply for approval of the scheme from that Agency; or
          - (bb) the Natural Resources Body for Wales, where the operators have elected to apply for approval of the scheme from that Body;

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<sup>(1)</sup> In regulation 2, the definition of “appropriate Agency” was amended by [S.I. 2013/755](#) and the definition of “appropriate authority” was amended by [S.I. 2013/755](#) and 1821.

- (viii) 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 England, in Scotland and in Wales—
  - (aa) the Environment Agency, where the operator has elected to apply for approval of the scheme from that Agency;
  - (bb) SEPA, where the operator has elected to apply for approval from that Agency; or
  - (cc) the Natural Resources Body for Wales, where the operator has elected to apply for approval from that Body;”;
- (ii) in the definition of “appropriate authority”, omit paragraphs (b) and (c);
- (iii) at the appropriate place, insert—
  - ““DOENI” means the Department of the Environment in Northern Ireland;”;
- (c) in paragraph (4)(a), for “regulations 14(5), 17 or 18(3)”, substitute “regulation 13, 13A, 13B, 13C, 14 or 17”.

#### **Regulation 7**

- 4. In regulation 7 (application for producer registration)(2), omit paragraphs (4)(f) and (10).

#### **Regulation 8**

- 5. In regulation 8 (conditions of registration of a producer)(3)—
  - (a) after paragraph (d), insert “and”;
  - (b) omit paragraphs (f) and (g).

#### **Regulation 12**

- 6. In regulation 12 (schemes: general provisions), for paragraph (2), substitute—
  - “(2) The operator of a scheme shall inform the members in writing immediately if—
    - (a) the operator receives a notice of withdrawal of the scheme’s approval under regulation 13C(3); or
    - (b) the scheme is approved pursuant to regulation 13(4).
  - (2A) The operator shall provide a copy of the notice of withdrawal of the scheme’s approval with the written notice provided pursuant to paragraph (2).”.

#### **Regulation 13**

- 7. In regulation 13 (application for approval of a scheme)(4)—
  - (a) in paragraph (1), for “authority”, substitute “Agency”;
  - (b) in paragraph (2), for “unconditionally where the appropriate authority”, substitute “where the appropriate Agency”;
  - (c) after paragraph (2), insert—

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(2) Regulation 7 was amended by [S.I. 2010/2849](#).

(3) Regulation 8 was amended by [S.I. 2010/2849](#).

(4) Regulation 13 was amended by [S.I. 2010/2849](#).

- “(2A) Where an application for approval is granted, the appropriate Agency shall notify the operator of the scheme in writing of its decision within 28 days of making that decision.”;
- (d) in paragraph (3)—
- (i) in sub-paragraph (c), for “authority”, substitute “Agency”;
  - (ii) in sub-paragraph (d), for “at paragraph (5) below”, substitute “in regulation 13A(2)”;
- (e) in paragraph (4)—
- (i) for each “authority”, substitute “Agency”;
  - (ii) for “paragraph (5)”, substitute “regulation 13A(2)”;
- (f) for paragraphs (5) to (10), substitute—
- “(5) Where the conditions in paragraph (7) are met, an operator may elect to make an application for approval by DOENI under paragraph (1).
- (6) Where an operator so elects—
- (a) functions of the appropriate Agency in relation to the application under this regulation shall be carried out by DOENI on behalf of the appropriate Agency; and
  - (b) until the application has been determined, the operator may not make an application to the appropriate Agency under paragraph (1) in relation to the same or substantially the same scheme.
- (7) The conditions are—
- (a) the operator’s registered office or principal place of business is in Northern Ireland; and
  - (b) the operator proposes to apply to DOENI in relation to the same year for approval of the scheme under regulation 13(1) of PRONIR.
- (8) For the purposes of these Regulations, an act of DOENI performing the functions of the appropriate Agency pursuant to paragraph (6)(a) is to be treated as an act of the appropriate Agency.”.

### **New regulations 13A, 13B and 13C**

8. After regulation 13, insert—

#### **“Conditions of approval of a scheme**

**13A.**—(1) Approval of a scheme under regulation 13 is subject to the following conditions—

- (a) the operator of the scheme complies with the obligations set out in regulation 12(1);
- (b) the operator of the scheme monitors the accuracy of information to which regulation 19 applies, so that the operator may reasonably discover when a scheme member has not complied with regulation 19(2)(c);
- (c) the operator of the scheme acquires PRNs or PERNs in a manner which least hinders the ability of any other operator to acquire PRNs or PERNs pursuant to regulation 12(3);
- (d) the operator of the scheme maintains sufficient financial resources to acquire PRNs or PERNS pursuant to regulation 12(3);

- (e) the operator of the scheme maintains access to, and sufficient financial resources to pay for, the expertise necessary for the purposes of calculating the recovery and recycling obligations referred to in regulation 12(1);
  - (f) the operator of the scheme provides any information reasonably requested by the appropriate Agency for the purposes of monitoring compliance pursuant to regulation 31(1)(b) or (c);
  - (g) in relation to any year in which the scheme is registered under regulation 14—
    - (i) the operator of the scheme informs the appropriate Agency in writing of—
      - (aa) 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;
      - (bb) any material change in the information provided in accordance with regulation 14(3)(b);
      - (cc) any material change in the further information provided in accordance with regulation 14(3)(c); and
      - (dd) any change in the operator stated under regulation 14(3)(h), within 28 days of the occurrence of any such change; and
    - (ii) the operator of the scheme complies with the requirement set out in regulation 15A; and
  - (h) the operator of the scheme provides records and returns to the appropriate Agency as required by regulation 22.
- (2) Approval of a scheme pursuant to regulation 13(4) is subject to the following additional conditions in relation to any year in which the scheme is registered under regulation 14—
- (a) the operator of the scheme complies with 50% of the total recovery and recycling obligations of the scheme before 30th June;
  - (b) the operator of the scheme complies with a further 50% of the remaining recovery and recycling obligations before 30th September;
  - (c) the operator of the scheme makes returns to the appropriate Agency of information demonstrating compliance with the conditions set out at subparagraphs (a) and (b) on or before 15th July and 15th October respectively;
  - (d) the operator pays the fee under regulation 16(3) to the appropriate Agency; and
  - (e) the operator of the scheme does not accept any new members into the scheme.
- (3) The additional conditions set out in paragraph (2) cease to apply at the beginning of the year following the approval year if the appropriate Agency is satisfied that in the approval year the operator complied with—
- (a) the obligations under regulation 12(1); and
  - (b) the additional conditions set out in paragraph (2).
- (4) If the additional conditions set out in paragraph (2) cease to apply by virtue of paragraph (3), the appropriate Agency shall serve written notice of the cessation within 28 days of the date on which the appropriate Agency is satisfied in accordance with paragraph (3).
- (5) In paragraph (3), “approval year” means the year for which approval was granted pursuant to regulation 13(4).

### **Refusal to grant approval of a scheme**

**13B.** Where the appropriate Agency decides under regulation 13 to refuse to grant approval of a scheme, it shall serve on the operator of the scheme, within 28 days of making the decision, written notice of—

- (a) the decision under regulation 13;
- (b) the reasons for the decision; and
- (c) the right of appeal under regulation 27(2)(a).

### **Withdrawal of approval of a scheme**

**13C.—**(1) The appropriate Agency may withdraw approval of a scheme where it appears to it that—

- (a) the operator of the scheme is in breach of any of the conditions referred to in regulation 13A(1) or (2); or
- (b) the operator knowingly or recklessly supplied false information in connection with the application for registration, or in connection with compliance with the conditions referred to in regulation 13A(1) or (2).

(2) The appropriate Agency shall cancel any registration of a scheme under regulation 14 if it withdraws approval of the scheme and such cancellation shall take effect on the date on which the withdrawal of approval takes effect.

(3) Before the withdrawal of approval, the appropriate Agency shall serve on the operator of the scheme written notice of—

- (a) its decision under paragraph (1) to withdraw approval;
- (b) the reasons for the decision;
- (c) the right of appeal under regulation 27(2)(b) and (c); and
- (d) the date on which the withdrawal takes effect, not being earlier than the expiration of the time-limit for an appeal against the notice provided for in paragraph 2 of Schedule 6.

(4) Where an application under regulation 13(3)(a) or (b) is not received by the due date, the appropriate Agency may decide to withdraw approval of the scheme and, if such a decision is taken, shall serve on the operator of the scheme written notice of—

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

(5) Where an application under regulation 13(3)(c) or (d) is not received by the due date, the appropriate Agency 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.

(6) The appropriate Agency shall consider any representations made by the operator of a scheme before the notice under paragraph (4) takes effect, and may withdraw the notice under paragraph (4) at any time.

(7) An operator of a scheme in relation to which approval is withdrawn under this regulation shall, within 14 days of the withdrawal taking effect, serve on each scheme member written notice containing the following information—

- (a) a statement that approval of the scheme has been withdrawn and the date when the withdrawal takes effect;

- (b) the reasons for the withdrawal; and
- (c) the obligation of a producer under regulation 6.”.

#### **Regulation 14**

**9.** In regulation 14 (application for registration of a scheme)(5)—

- (a) in paragraph (3)—
  - (i) in sub-paragraph (e), for “authority”, substitute “Agency”;
  - (ii) omit sub-paragraph (f);
- (b) in paragraph (4)—
  - (i) in sub-paragraph (a), omit “(f),”;
  - (ii) omit sub-paragraph (c);
  - (iii) in sub-paragraphs (d) and (e), for “authority”, substitute “Agency”;
- (c) in paragraph (5)(b), for “regulation 18”, substitute “regulation 13C(2)”;
- (d) after paragraph (8), insert—

“(9) Where the conditions in paragraph (11) are met, an operator may elect to make an application to DOENI for registration under paragraph (1).

- (10) Where an operator so elects—
  - (a) functions of the appropriate Agency in relation to the application under this regulation and under regulations 16, 17 and 19(2)(a) shall be carried out by DOENI acting on behalf of the appropriate Agency; and
  - (b) until such time as the application has been determined, the operator may not make an application to the appropriate Agency under paragraph (1) in relation to the same or substantially the same scheme.
- (11) The conditions are—
  - (a) the operator’s registered office or principal place of business is in Northern Ireland; and
  - (b) the operator proposes to apply to DOENI in relation to the same year for registration of the scheme under regulation 14(1) of PRONIR.

(12) For the purposes of these Regulations, an act of DOENI performing the functions of the appropriate Agency pursuant to paragraph (10)(a) is to be treated as an act of that Agency.”.

#### **Regulation 15 and new regulation 15A**

- 10.**—(1) Omit regulation 15 (conditions of registration of a scheme).
- (2) Before regulation 16, insert—

##### **“Notification of change of membership**

**15A.** In relation to the year in which registration is granted, the operator of the scheme shall notify the appropriate Agency in writing at intervals as required by the appropriate Agency of any change in the membership of the scheme and any such notification shall be accompanied by the additional fee calculated in accordance with regulation 16(6).”.

### **Regulation 16**

11. In regulation 16 (forms and fees for registration of a scheme)—
- (a) in paragraph (3), for “conditional approval under”, substitute “approval pursuant to”;
  - (b) in paragraph (6), for “condition referred to in paragraph (c)”, substitute “obligation set out”.

### **Regulation 17**

12. In regulation 17(b) (refusal to register a scheme), for “Part VI of these Regulations”, substitute “regulation 27(2)(d)”.

### **Regulation 18**

13. Omit regulation 18 (cancellation of registration of a scheme).

### **Regulation 22**

14. In regulation 22 (schemes—records and returns)(6)—
- (a) in paragraph (2), omit sub-paragraph (b);
  - (b) in paragraph (4), for “authority”, substitute “Agency”.

### **Regulation 27**

15. For regulation 27(2) (right of appeal), substitute—
- “(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 approval under regulation 13;
  - (b) to withdraw approval under regulation 13C(1) or (5);
  - (c) after the notice referred to in paragraph 13C(4)(c) takes effect, to withdraw approval under regulation 13C(4); or
  - (d) to refuse to grant an application for registration under regulation 14(4).”.

### **Regulation 30**

16. In regulation 30 (status pending appeal), for “regulation 11(1) or 18(1)”, substitute “regulation 11(1) or 13C(1), (4) or (5)”.

### **Regulation 31**

17. In regulation 31 (monitoring)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (c), for “regulation 13(4);”, substitute “regulation 13A(1) and (2); and”;
    - (ii) omit sub-paragraph (e);
  - (b) in paragraph (2)(f), for “regulations 13(5)(c) and 22”, substitute “regulations 13A(2)(c) and 22”.

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(6) Regulation 22 was amended by [S.I. 2010/2849](#).

## **Regulation 34 and new regulation 34A**

18. After paragraph (3) of regulation 34 (approved persons), insert—

“(4) Subject to regulation 34A, the appropriate Agency may approve the delegation by an approved person of the person’s functions to any other person.

(5) An approved person who has delegated functions under paragraph (4) may continue to perform those functions.

(6) For the purposes of these Regulations, an act of a delegate performing the functions of an approved person on that person’s behalf is to be treated as an act of the approved person.

(7) In this regulation, and in regulation 34A, “functions” means the functions referred to in paragraph (1)(a) and (b).

### **Delegation of approved persons’ functions: procedure**

**34A.**—(1) An approved person who proposes the delegation of the person’s functions to another person under regulation 34(4) shall apply for approval to the appropriate Agency on a form supplied for that purpose by that Agency, signed by the approved person.

(2) An application for approval under paragraph (1) shall, within 28 days of receipt of the application—

(a) be granted where the appropriate Agency is satisfied that the proposed delegate, taking into account the factors specified in paragraph (3), is capable of carrying out the functions on behalf of the approved person; or

(b) otherwise be refused.

(3) The factors mentioned in paragraph (2)(a) are—

(a) if the proposed delegate is an employee of the producer or the operator of the scheme, the proposed delegate’s level of seniority;

(b) if the proposed delegate is not an employee of the producer or the operator of the scheme, the nature of the proposed delegate’s relationship with the approved person;

(c) the degree of the proposed delegate’s knowledge of, or access to, information necessary for the purposes of carrying out the functions on behalf of the approved person; and

(d) any other factor which the appropriate Agency reasonably thinks is relevant.

(4) An approval granted in accordance with paragraph (2)(a) may be for such period, or subject to such other conditions, as the appropriate Agency may specify.

(5) Where an application for approval is granted in accordance with paragraph (2)(a), the appropriate Agency shall notify the approved person in writing of this, and of any conditions it has imposed pursuant to paragraph (4), within 28 days of its decision.

(6) The appropriate Agency may decide to withdraw approval granted under paragraph (2)(a) and, if such a decision is taken, shall serve on the approved person written notice of—

(a) the decision to withdraw approval;

(b) the reasons for the decision; and

(b) the date on which the withdrawal takes effect, not being earlier than 28 days from the date of the notice.



(7) If an approved person proposes to revoke a delegation granted under paragraph (2) (a), the person shall serve written notice on the appropriate Agency of this and of the date when the revocation takes effect, not being earlier than 28 days from the date of the notice.”.

### **Schedule 3**

**19.** In Schedule 3 (information)(7), omit paragraphs 12 and 13.

**Changes to legislation:**

There are currently no known outstanding effects for the The Producer Responsibility Obligations (Packaging Waste) (Miscellaneous Amendments) Regulations 2016, PART 2.