

SCHEDULE 2

Regulation 15(8)

Licensors and Pub Operating Businesses

PART 1

General

1.—(1) A head organisation is subject to data collection obligations under regulation 16(4) in the situations set out in paragraph 2(1) below where the conditions in paragraph 2(2) below are met.

(2) Where a head organisation has such obligations—

- (a) paragraph 6 below applies to determine the obligations of a licensor, and
- (b) paragraph 8 below applies to determine the obligations of a pub operating business.

2.—(1) The situations referred to in paragraph 1 above are that—

- (a) the head organisation and one or more of its members would, but for the fact that they do not satisfy one or both of the tests for the threshold criteria in regulation 11(2), each have obligations under these Regulations;
- (b) two or more members of the head organisation would, but for not satisfying one or both of the tests for the threshold criteria in regulation 11(2), each have obligations under these Regulations; or
- (c) the head organisation has obligations under these Regulations and one or more of its members would, but for the failure to satisfy one or both of the tests for the threshold criteria in regulation 11(2), each have obligations under these Regulations.

(2) The conditions referred to in paragraph 1 above are that—

- (a) the head organisation satisfies the threshold test relating to turnover in regulation 11(2)(a);, and
- (b) subject to paragraphs 3 and 4, below the head organisation and one or more of its members, or its members alone, in one of the situations in sub-paragraph (1)(a), (b) or (c) above, together satisfy the threshold test relating to packaging handled in regulation 11(2)(b).

3. Where the head organisation does not have the information necessary for the purposes of Parts 2 and 3 the organisation—

- (a) must use its best endeavours to obtain such information; and
- (b) where despite having used its best endeavours it nevertheless does not have such information it must produce its best estimate and that estimate must be used for the purposes of Parts 2 and 3.

4. For the purposes of this Schedule—

- (a) “head organisation” means a licensor or pub operating business as defined in regulation 9; and
- (b) “member” means—
 - (i) where the head organisation is a licensor, a licensee being the person granted a licence to use a trade mark by the licensor under a licence agreement as provided for in regulation 9; or
 - (ii) where the head organisation is a pub operating business, a tenant being the person granted a lease or a tenancy by the pub operating business as provided for in regulation 9.

PART 2

Licensors

5. Where the head organisation is a licensor for the purposes of determining whether the condition in regulation 11(1)(b) is met, only the following packaging or packaging materials are to be taken into account—

- (a) packaging or packaging materials that bear a trade mark of the head organisation for which a licence to use such trade mark has been granted under the licence agreement,
- (b) packaging associated with goods that bear a trade mark of the head organisation for which a license to use such a trade mark has been granted under the licence agreement; and
- (c) where the member is obliged to—
 - (i) purchase goods in packaging,
 - (ii) purchase goods and associated packaging or packaging materials to be used to contain or protect such goods or to facilitate the handling of or for the presentation of such goods,
 - (iii) purchase packaging or packaging materials to be used to contain or protect such goods or to facilitate the handling of or for the presentation of such goods,

from the head organisation or, where the head organisation has negotiated some or all of the terms of the supply, a supplier nominated or authorised by the head organisation under the licence agreement, such packaging or packaging materials.

6. Where the head organisation is a licensor—

- (a) where there is a situation falling in paragraph 2(1)(a) or (b) above and the conditions in paragraph 2(2) above have been met, the head organisation—
 - (i) is deemed to be a producer of a class or classes specified in regulation 8, and
 - (ii) has data collection obligations in respect of its own activities, where applicable, and those of its members in respect of the packaging or packaging materials set out in paragraph 5;
- (b) where there is a situation falling in paragraph 2(1)(c) above and the conditions in paragraph 2(2) above have not been met, the head organisation—
 - (i) has obligations as a producer in respect of its own activities,
 - (ii) is deemed to be a producer of one or more classes specified in regulation 8, and
 - (iii) has data collection obligations in respect of the activities of its members in respect of packaging or packaging materials set out in paragraph 5.

PART 3

Pub operating businesses

7.—(1) Where the head organisation is a pub operating business, for the purposes of determining whether the condition in paragraph 11(1)(b) is met, only packaging or packaging materials specified in sub-paragraph (2) are to be taken into account.

(2) The packaging or packaging materials referred to in sub-paragraph (1) are packaging or packaging materials that contain the goods that are the subject of the obligation to purchase from the head organisation or person nominated or authorised by that head organisation under the pub operating agreement, whether or not the goods have been packed or filled in the packaging or packaging materials when they are purchased by the member.

8. Where the head organisation is a pub operating business—
 - (a) where there is a situation falling in paragraph 2(1)(a) or (b) above and the conditions in paragraph 2(2) above have been met, the head organisation—
 - (i) is deemed to be a producer of one or more classes specified in regulation 8; and
 - (ii) has data collection obligations in respect of its own activities, where applicable, and those of its members in respect of the packaging or packaging materials set out in paragraph 5; or
 - (b) where there is a situation falling in paragraph 2(1)(c) above and the conditions in paragraph 2(2) above have been met, the head organisation—
 - (i) has obligations as a producer in respect of its own activities;
 - (ii) is deemed to be a producer of one or more classes specified in regulation 8; and
 - (iii) has data collection obligations in respect of the activities of its members in respect of the packaging or packaging materials set out in paragraph 7(2).