

SCHEDULE 9

Regulation 38

LICENSORS AND PUB OPERATING BUSINESSES

1. A head organisation has producer responsibility obligations in the situations set out in paragraph 3(1) below where the conditions in paragraph 3(2) below are met and, where a head organisation has producer responsibility obligations, paragraphs 6 and 7 below apply to determine those obligations.

2. Paragraph 6 below applies to determine the producer responsibility obligations of a licensor and paragraph 7 below applies to determine the producer responsibility obligations of a pub operating business.

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

- (a) the head organisation and one or more of his members would, but for a failure to satisfy one or both of the threshold tests in paragraph 3 of Schedule 1, each have producer responsibility obligations under these Regulations;
- (b) two or more members of the head organisation would, but for a failure to satisfy one or both of the threshold tests in paragraph 3 of Schedule 1, each have producer responsibility obligations under these Regulations; or
- (c) the head organisation has producer responsibility obligations under these Regulations and one or more of his members would, but for a failure to satisfy one or both of the threshold tests in paragraph 3 of Schedule 1, each have producer responsibility 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 paragraph 3(a) of Schedule 1; and
- (b) subject to paragraphs 4 and 5 below, the head organisation and one or more of his members, or his members alone, in one of the situations in paragraph 3(1)(a), (b) or (c) above, together satisfy the threshold test relating to packaging handled in paragraph 3(b) of Schedule 1.

4. Where the head organisation is a licensor, for the purposes of the threshold test in paragraph 3(b) of Schedule 1, packaging or packaging materials handled in one of the situations in paragraph 3(1)(a), (b) or (c) above shall only include—

- (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 licence to use such 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.

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5. Where the head organisation is a pub operating business, for the purposes of the threshold test in paragraph 3(b) of Schedule 1, packaging or packaging materials handled in one of the situations in paragraph 3(1)(a), (b) or (c) above shall only include 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.

6. Where the head organisation is a licensor—

- (a) where there is a situation falling in paragraph 3(1)(a) or (b) above and the conditions in paragraph 3(2) above have been met, the head organisation is deemed to be a producer of a class or classes specified in an entry in Column 4 of Table 1 in Schedule 1 and has producer responsibility obligations in respect of his own activities, where applicable, and those of his members in respect of the packaging or packaging materials set out in paragraph 4; or
- (b) where there is a situation falling in paragraph 3(1)(c) above and the conditions in paragraph 3(2) above have been met, the head organisation, in addition to having producer responsibility obligations as a producer in respect of his own activities, is deemed to be a producer of a class or classes specified in an entry in Column 4 of Table 1 in Schedule 1 and has producer responsibility obligations in respect of the activities of his members in respect of the packaging or packaging materials set out in paragraph 4.

7. Where the head organisation is a pub operating business—

- (a) where there is a situation falling in paragraph 3(1)(a) or (b) above and the conditions in paragraph 3(2) above have been met, the head organisation is deemed to be a producer of a class or classes specified in an entry in Column 4 of Table 1 in Schedule 1 and has producer responsibility obligations in respect of his own activities, where applicable, and those of his members in respect of the packaging or packaging materials set out in paragraph 5; or
- (b) where there is a situation falling in paragraph 3(1)(c) above and the conditions in paragraph 3(2) above have been met, the head organisation, in addition to having producer responsibility obligations as a producer in respect of his own activities, is deemed to be a producer of a class or classes specified in an entry in Column 4 of Table 1 in Schedule 1 and has producer responsibility obligations in respect of the activities of its members in respect of the packaging or packaging materials set out in paragraph 5.

8. Where the head organisation does not have the information necessary for the purposes of paragraphs 4 to 7 above he shall use his best endeavours to obtain such information; and where despite having used his best endeavours he nevertheless does not have such information he shall produce his best estimate and that estimate shall be used for the purposes of paragraphs 4 to 7 above.

9. Where the head organisation is a licensor and does not have a registered office or principal place of business in Great Britain the obligations of the head organisation under this Schedule shall be performed by a person who carries out or manages the functions of the head organisation in Great Britain and has a registered office or principal place of business in Great Britain.

10. For the purposes of this Schedule—

- (a) “head organisation” means a licensor or pub operating business as defined in regulation 38; 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 38; or

- (ii) where the head organisation is a pub operating business, a tenant being the person granted a lease or tenancy by the pub operating business as provided for in regulation 38.