

**2007 No. 871**

**ENVIRONMENTAL PROTECTION**

# The Producer Responsibility Obligations (Packaging Waste) Regulations 2007

*Made - - - - - 15th March 2007*

*Coming into force in accordance with regulation 1(1)*



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These Regulations are made by the Secretary of State for Environment, Food and Rural Affairs as respects England, Scotland<sup>(a)</sup> and Wales<sup>(b)</sup> in exercise of the powers conferred upon him by section 2(2) of the European Communities Act 1972<sup>(c)</sup> and sections 93 - 95 of the Environment Act 1995<sup>(d)</sup>.

These Regulations implement Article 6(1) of Council Directive 94/62/EC on packaging and packaging waste.

The Secretary of State for Environment, Food and Rural Affairs is designated<sup>(e)</sup> for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the prevention, reduction and elimination of pollution caused by waste and the management of packaging and packaging waste.

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- (a) Under section 57 of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in respect of devolved matters, the function of the Secretary of State in relation to implementing those obligations continues to be exercisable by him as regards Scotland.
  - (b) Under paragraph 5 of Schedule 3 of the Government of Wales Act 1998 (c. 38), despite the transfer of the relevant functions of the Secretary of State so far as they are exercisable in relation to Wales to the National Assembly for Wales by virtue of Article 2 and Schedule 1 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/ 672), the function of the Secretary of State in relation to implementing obligations under Community law continues to be exercisable by him as regards Wales.
  - (c) 1972 c. 68.
  - (d) 1995 c. 25.
  - (e) S.I. 1996/266.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with section 93(10) of the Environment Act 1995.

Accordingly, after consultation in accordance with section 93(2) of the Environment Act 1995, and after having regard to the matters specified in section 93(6) of that Act as required by section 93(5) of that Act, the Secretary of State for Environment, Food and Rural Affairs makes the following Regulations:

## PART I GENERAL

### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and shall come into force on the day after the day on which they are made.

(2) These Regulations extend to Great Britain.

### **Interpretation and notices**

2.—(1) In these Regulations—

“the Packaging Waste Directive” means Council Directive 94/62/EC(a) on packaging and packaging waste;

“the Waste Directive” means Council Directive 2006/12/EC(b) on waste;

“the 1995 Act” means the Environment Act 1995(c); and

“the 1990 Act” means the Environmental Protection Act 1990.

(2) In these Regulations—

“accredited exporter” means an exporter who is accredited by the appropriate Agency under regulation 24;

“accredited reprocessor” means a reprocessor who is accredited by the appropriate Agency under regulation 24;

“allocation method” means the method set out in paragraph 7 of Schedule 2 for calculating the recycling obligations of a small producer who has elected under regulation 7 to follow this method;

“appropriate Agency” means—

(a) for the purposes of any provision of these Regulations relating to the exercise of the functions of the appropriate Agency in England or Wales, the Environment Agency;

(b) for the purposes of any provision of these Regulations relating to the exercise of the functions of the appropriate Agency in Scotland, SEPA;

(c) for the purposes of any provision of these Regulations relating to the obligations of any other person—

(i) the Environment Agency, where at the beginning of the relevant year the person’s registered office or principal place of business is in England or Wales;

(ii) SEPA, where at the beginning of the relevant year the person’s registered office or principal place of business is in Scotland;

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(a) OJ No. L 365, 31.12.1994, p. 10, as last amended by Council Directive 2005/20/EC, OJ No. L 70, 16.3.2005, p.17.

(b) OJ No. L 114, 27.4.2006, p. 9.

(c) 1995 c. 25.

- (iii) at the election of the person, either the Environment Agency or SEPA, where at the beginning of the relevant year the person does not have a registered office or principal place of business in Great Britain; or
- (iv) 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 either England or Wales and in Scotland—
  - (aa) the Environment Agency where the operators have elected to apply for approval of the scheme from the Secretary of State; or
  - (bb) SEPA where the operators have elected to apply for approval of the scheme from the Scottish Ministers;

“appropriate authority” means—

- (a) for the purposes of regulation 4(7)—
  - (i) the Secretary of State in relation to England;
  - (ii) the National Assembly for Wales in relation to Wales;
  - (iii) the Scottish Ministers in relation to Scotland;
- (b) for the purposes of regulation 7(10) relating to the obligation of a producer to submit operational plans—
  - (i) the Secretary of State where the producer is registered or is in the process of registering with the Environment Agency;
  - (ii) the Scottish Ministers where the producer is registered or is in the process of registering with SEPA;
- (c) for the purposes of regulation 13 relating to the approval of schemes—
  - (i) subject to paragraph (ii), where the operator of the scheme has his registered office or principal place of business in England or Wales, the Secretary of State;
  - (ii) where the operator of the scheme has his registered office or principal place of business in Wales and the scheme relates to Wales only, the National Assembly for Wales;
  - (iii) where the operator of the scheme has his registered office or principal place of business in Scotland, the Scottish Ministers; or
  - (iv) at the election of the operator of the scheme or, where there is more than one operator, the operator stated under regulation 14(3)(h), either the Secretary of State or the Scottish Ministers where—
    - (aa) at the date of the application the operator of the scheme does not have a registered office or principal place of business in Great Britain; or
    - (bb) there is more than one operator of the scheme and such operators have registered offices or principal places of business in either England or Wales and in Scotland;
- (d) for the purposes of any provision in these Regulations relating to the exercise of functions in respect of determining appeals against decisions of the Environment Agency, the Secretary of State; and
- (e) for the purposes of any provision in these Regulations relating to the exercise of functions in respect of determining appeals against decisions of SEPA, the Scottish Ministers;

“approved person” means the person for the time being approved under regulation 34 for the purpose of issuing certificates of compliance under regulation 21 and signing the form referred to in regulation 7(4)(c) or 19(2)(b) in relation to a particular producer;

“calculation year” means the year preceding an obligation year;

“common database” means the electronic database held jointly by the Environment Agency and SEPA in which information under regulation 36(1) and (2) is placed.

“consumer information obligations” has the meaning given to it in regulation 4(4)(d);

“disposal” has the meaning given to it in Article 3(10) of the Packaging Waste Directive;

“energy recovery” has the meaning given to it in Article 3(8) of the Packaging Waste Directive;

“exporter” means a person who, in the ordinary course of conduct of a trade, occupation or profession, owns and exports packaging waste for reprocessing outside the United Kingdom;

“financial year” in relation to a person—

(a) where the person is a company is determined as provided in section 223(1) to (3) of the Companies Act 1985(a); and

(b) in any other case has the meaning given in section 223(4) of the Companies Act 1985, but as if the reference there to an undertaking were a reference to that person;

“obligation year” means, for the purposes of this regulation and Schedule 10, a year in respect of which it is being considered whether a person is a producer;

“organic recycling” has the meaning given to it in Article 3(9) of the Packaging Waste Directive;

“packaging” has the meaning given to it in Article 3(1) of the Packaging Waste Directive;

“packaging materials” means materials used in the manufacture of packaging and includes raw materials and processed materials prior to their conversion into packaging;

“packaging waste” has the meaning given to it in Article 3(2) of the Packaging Waste Directive; but does not include packaging that became waste outside the United Kingdom;

“partnership” has the meaning given in section 1 of the Partnership Act 1890(b);

“PERN” means a packaging waste export recovery note issued by an accredited exporter on a form supplied to him by the appropriate Agency, as evidence of the export of the tonnage of packaging waste specified in the note for reprocessing outside the United Kingdom;

“preceding year” means the year preceding a relevant year;

“PRN” means a packaging waste recovery note issued by an accredited reprocessor on a form supplied to him by the appropriate Agency, as evidence of the receipt of the tonnage of packaging waste specified in the note for reprocessing within the United Kingdom;

“producer” has the meaning given in regulation 4 and includes a small producer unless otherwise stated, and the classes of producer are those set out in column 4 of Table 1 in Schedule 1;

“producer responsibility obligations” are the producer registration, recovery and recycling, certifying and consumer information obligations specified in regulation 4;

“recovery” means any of the applicable operations provided for in Annex IIB to the Waste Directive and for the purposes of these Regulations incineration at waste incineration plants with energy recovery shall be treated as if it is recovery; and “recover” and “recovery operation” shall be construed accordingly;

“recovery and recycling obligations” has the meaning given in regulation 4(4)(b);

“recyclable material” means—

(a) glass;

(b) aluminium;

(c) steel;

(d) paper/board;

(e) plastic; or

(f) wood,

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(a) 1985 c. 6 as amended by the Companies Act 1989 (1989 c. 40).  
(b) 1890 c.39.

and packaging materials composed of a combination of any of those materials are to be treated as made of the material which is predominant by weight;

“recycling” has the meaning given to it in Article 3(7) of the Packaging Waste Directive; and “recycle” shall be construed accordingly;

“recycling obligations” means the obligation to recycle set out in regulation 4(4)(b)(ii);

“relevant authorisation” means—

- (a) a permit granted under regulation 10 of the Pollution Prevention and Control (England and Wales) Regulations 2000<sup>(a)</sup> or regulation 7 of the Pollution Prevention and Control (Scotland) Regulations 2000<sup>(b)</sup>;
- (b) an authorisation granted under section 6 of the 1990 Act;
- (c) a waste management licence granted under section 36 of the 1990 Act; or
- (d) an exemption registered under regulation 18 of the Waste Management Licensing Regulations 1994<sup>(c)</sup>.

“relevant date” means—

- (a) 7th April in the obligation year; or
- (b) where an application for registration is made in a circumstance set out in regulation 7(3), or as required by paragraph 10 of Schedule 10, the date of the application;

“relevant year” means the year referred to in regulation 4(2), that is to say a year in respect of which a person is a producer;

“reprocessing site” means a site at which reprocessing takes place;

“reprocessor” means a person who, in the ordinary course of conduct of a trade, occupation or profession, carries out one or more activities of recovery or recycling, and “reprocessing” shall be construed accordingly;

“reuse” has the meaning given to it in Article 3(5) of the Packaging Waste Directive;

“scheme” means a scheme which is (or, if it were to be registered in accordance with these Regulations would be) a scheme whose members for the time being are, by virtue of these Regulations and their membership of that scheme, exempt from the requirement to comply with their producer responsibility obligations and “registered scheme” means a scheme which is registered with the appropriate Agency in accordance with these Regulations;

“SEPA” means the Scottish Environment Protection Agency;

“SIC code” means a code included in “Indexes to the United Kingdom Standard Industrial Classification of Economic Activities 2003”, published by the Office for National Statistics in 2003<sup>(d)</sup>;

“small producer” means a producer who satisfies the threshold tests in paragraph 3 of Schedule 1 but whose turnover in the last financial year—

- (a) in respect of which audited accounts are available; or
- (b) where audited accounts are not required, in respect of which accounts are available, before the relevant date was £5,000,000 or less; and where audited accounts are required they shall be considered to be available when the annual accounts have been delivered to the registrar under section 242 of the Companies Act 1985;

“transit packaging” means—

- (a) grouped packaging or secondary packaging, as defined in paragraph (b) in Article 3(1) of the Packaging Waste Directive; or

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(a) S.I. 2000/1973 as amended S.I. 2004/107. There are other amendments not relevant to these Regulations.

(b) S.S.I. 2000/323 as amended S.S.I. 2004/26. There are other amendments not relevant to these Regulations.

(c) S.I. 1994/1056 as amended by S.I. 1998/606 and S.I. 2005/1728. There are other amendments but none are relevant to these Regulations.

(d) ISBN 0 11 621641 7.



(b) transport packaging or tertiary packaging as defined in paragraph (c) in Article 3(1) of the Packaging Waste Directive;

“turnover” means, in relation to a person, his turnover as defined in section 262(1) of the Companies Act 1985 but as if the references to a company were references to that person; and

“year” means a calendar year beginning on 1st January.

(3) Where—

(a) notices are to be served on a producer under regulations 7(7)(a), 10 or 11(3);

(b) information is to be provided by a producer under regulations 7 or 8;

(c) fees are to be paid by a producer under regulation 9(2); or

(d) records and returns are to be maintained and furnished by a producer under regulation 20, they shall be served on, provided, paid, or maintained and furnished by, in the case of a partnership, a partner acting on behalf of the partnership, and references in these Regulations to the producer shall be read accordingly.

(4) Where there is more than one operator of a scheme—

(a) notices to be served on the operator of the scheme under regulations 14(5), 17 or 18(3) shall be served on the operator stated under regulation 14(3)(h);

(b) where information is to be provided by the operator of the scheme under regulations 14 and 15, fees are to be paid by the operator of the scheme under regulation 16, records and returns are to be maintained and furnished by the operator of the scheme under regulation 22, and appeals may be made by the operator of the scheme under regulation 27, they shall be provided, paid, or maintained and furnished, and such appeals may only be made, by the operator stated under regulation 14(3)(h),

and references in these Regulations to the operator of the scheme shall be read accordingly.

(5) In these Regulations—

(a) any document which is to be provided or given to any person may be provided or given to that person by electronic means if the document is capable of being reproduced by that person in legible form;

(b) any requirement to make, keep or retain a record or to maintain a register may be satisfied in electronic form if the text is capable of being produced by the person subject to the requirement in a legible documentary form;

(c) any requirement for a signature may be satisfied by an electronic signature incorporated into the document; and

(d) “electronic signature” means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.

### **Exclusion of charities from producer responsibility obligations**

3. Parts II, III and IV of these Regulations do not apply to a charity within the meaning given in section 506 of the Income and Corporation Taxes Act 1988(a).

## **PART II**

### **PRODUCERS AND OBLIGATIONS**

#### **Producers and producer responsibility obligations**

4.—(1) This regulation is subject to regulations 5, 37, 38 and 39 and Schedules 8, 9 and 10.

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(a) 1988 c. 1.

(2) In respect of a year a person is a producer of a class specified in an entry in column 4 of Table 1 in Schedule 1 if—

- (a) in that year and the preceding year he performs the relevant functions of the class of producer specified in Column 1 of that Table in relation to that entry;
- (b) in the preceding year he made supplies of the materials or products specified in Column 2 of that Table in relation to that entry of a class in Column 3 of that Table in relation to that entry; and
- (c) in relation to that year he satisfies the threshold tests as provided by paragraph 3 of that Schedule,

and the other provisions of that Schedule shall also have effect for the purposes of determining whether a person is a producer of any class.

(3) Where in respect of a year a person is a producer and satisfies the provisions of Columns 1 to 3 of Table 1 in Schedule 1 in relation to more than one class of producer specified in an entry in Column 4 of that Table, whether or not in relation to the same materials or products specified in Column 2 of that Table, or the same transaction or process, for that year that person belongs to each such class.

(4) A person who is a producer in respect of a year has producer responsibility obligations in respect of that year, that is to say he must—

- (a) be registered as provided in regulation 6 (in these Regulations referred to as the “producer registration obligation”);
- (b) where he is—
  - (i) a producer, other than a small producer who has elected to follow the allocation method, recover and recycle packaging waste in relation to each of the classes of producer to which the producer belongs, as calculated under Schedule 2; or
  - (ii) a small producer who has elected to follow the allocation method, recycle packaging waste as calculated under paragraphs 2, 7 and 8 of Schedule 2,(in these Regulations referred to as the “recovery and recycling obligations”);
- (c) furnish a certificate of compliance in respect of his recovery and recycling obligations in accordance with regulation 21 (in these Regulations referred to as the “certifying obligation”); and
- (d) if his main activity is that of seller, provide information to consumers of the goods sold by him about—
  - (i) the return, collection and recovery systems available to them;
  - (ii) their role in contributing to the reuse, recovery and recycling of packaging and packaging waste;
  - (iii) the meaning of related markings on packaging that he places on the market and that relates to his recovery and recycling obligations; and
  - (iv) the chapter dealing with the management of packaging and packaging waste in any strategy prepared under section 44A or 44B of the 1990 Act (national waste strategy),(in these Regulations referred to as the “consumer information obligations”).

(5) A producer may only demonstrate compliance with his recovery and recycling obligations through the acquisition of PRNs or PERNs or both.

(6) A PRN or PERN that relates to packaging waste delivered or exported for reprocessing in December in a year may be relied on by a producer to demonstrate compliance with his recovery and recycling obligations either in that year or the following year.

(7) The appropriate authority shall issue guidance as to the provision of information under paragraph (4)(d) above and shall take such steps as may be appropriate to ensure that users of packaging, including in particular consumers, obtain the necessary information about the matters referred to in paragraph (4)(d).

## **Producers and Scheme membership**

5. Where a producer is a member of a registered scheme throughout a relevant year he is exempt from complying with his producer responsibility obligations for the relevant year.

## **PART III**

### **REGISTRATION: PRODUCERS AND SCHEMES**

#### **Producer registration obligation**

6. Subject to regulations 37 and 39 and Schedules 8 and 10, a producer shall be registered with the appropriate Agency in respect of a relevant year, or any part of that year, during which he is not a member of a registered scheme.

#### **Application for producer registration**

7.—(1) Subject to paragraph (3) below, a producer who is required by regulation 6 to be registered shall, on or before 7th April in a relevant year, make an application for producer registration to the appropriate Agency.

(2) Where the producer is a partnership, the application shall be made by any partner acting on behalf of the partnership.

(3) Where any of the following occurs in a relevant year—

- (a) the application for registration of a scheme of which the applicant was a member is refused;
- (b) the registration of a scheme of which the applicant was a member is cancelled;
- (c) the applicant's membership of a scheme is discontinued;
- (d) the applicant becomes a producer in respect of that year; or
- (e) an application to register made within the time limit in paragraph (1) above is refused,

an application for registration shall be made within 28 days of the occurrence.

(4) An application for producer registration shall—

- (a) be made in writing;
- (b) contain the information set out in Part I of Schedule 3;
- (c) other than in the case of a small producer who has elected to follow the allocation method under sub-paragraph (d) below and subject to paragraph (9) below, be accompanied by the following further information, on a form supplied for that purpose by the appropriate Agency and signed by the approved person, in relation to the relevant year—
  - (i) each class of producer to which the applicant belongs;
  - (ii) if he belongs to more than one class of producer, which of those classes constitutes his main activity as a producer;
  - (iii) the relevant SIC code for the class of producer to which the applicant belongs or, as the case may be, for the applicant's main activity;
  - (iv) in relation to each such class of producer—
    - (aa) the amount of packaging waste which he is required to recover by virtue of paragraph 3(1) of Schedule 2 and of this the proportion which is to be recovered by recycling by virtue of paragraph 3(2) of Schedule 2; and
    - (bb) the amount of packaging waste which he is required to recycle for each kind of recyclable material by virtue of paragraph 3(3) of Schedule 2;
  - (v) the basis on which the amounts referred to in paragraph (iv) were calculated; and

- (vi) such other information as the appropriate Agency reasonably requires in order to determine the application and as is specified on the form;
- (d) in the case of a small producer state whether he elects to follow the allocation method, and, if he does, be accompanied by evidence as to his turnover;
- (e) be accompanied by the relevant fee for producer registration referred to in regulation 9; and
- (f) be accompanied—
  - (i) on a first application for registration, by an operational plan complying with Part III of Schedule 3; and
  - (ii) on any subsequent application, by a revised version of that plan unless it has already been provided pursuant to paragraph (g) in regulation 8,
 where the producer, other than a small producer who has elected to follow the allocation method, had a recovery and recycling obligation of more than 500 tonnes of packaging waste in the preceding year.

(5) A small producer who has elected under paragraph (4)(d) above to follow the allocation method shall follow this method for a minimum of the year of registration and the following two years.

(6) An application for producer registration shall be granted where—

- (a) the producer has complied with—
  - (i) paragraph (4)(a), (b) and (e) above; and
  - (ii) where applicable, paragraphs (4)(c), (d), (f) and (5) above; and
- (b) the appropriate Agency is satisfied that the further information provided in accordance with paragraph (4)(c) above, or (9) below, has been provided in accordance with paragraph (8) below,

and shall otherwise be refused.

(7) Where an application for producer registration is granted—

- (a) the appropriate Agency shall, within 28 days of it being granted confirm to the producer in writing that he is registered with it; and
- (b) the producer shall be treated as having been registered—
  - (i) where the application was made within the time limit specified in paragraph (1), from the beginning of the relevant year;
  - (ii) where the application was made within the time limit specified in paragraph (3), from the date of the relevant occurrence;
  - (iii) in any other case, from the date specified in the confirmation,
 until any cancellation of the producer's registration in accordance with regulation 11.

(8) Any information provided shall be as accurate as reasonably possible.

(9) Where the application to register is made in one of the circumstances set out in sub-paragraph (a), (b), (d) or (e) of paragraph (3) above, the further information referred to in paragraph (4)(c) above need not accompany the application but shall be provided within 28 days of the application being made.

(10) A producer who is required to submit an operational plan or revised operational plan in connection with his application for registration shall at the same time send a copy of it to the appropriate authority.

### **Conditions of registration of a producer**

8. Registration of a producer shall be subject to the conditions that the producer will—

- (a) comply with his obligations set out in regulation 4(4);

- (b) provide any information reasonably requested by the appropriate Agency with regard to the obligations referred to in paragraph (a) above;
- (c) inform the appropriate Agency of—
  - (i) any change in the circumstances of the producer which relate to the registration of the producer and, where the producer is a partnership, any change of partners;
  - (ii) any material change in the information provided in accordance with regulation 7(4)(b); and
  - (iii) any material change in the further information provided in accordance with regulation 7(4)(c), or 7(9), as the case may be, within 28 days of the occurrence of any such change;
- (d) provide records and returns to the appropriate Agency as required by regulation 20;
- (e) notify the appropriate Agency that he wishes to cancel his registration where he has become a member of a registered scheme or has ceased to be a producer in respect of a year;
- (f) comply with the operational plan submitted under regulation 7(4)(f) or, if a revised plan has been submitted under paragraph (g) below, with the most recent version so submitted; and
- (g) on or before 31st January in a relevant year, provide to the appropriate Agency a revised version of the operational plan.

#### **Forms and fees for producer registration**

9.—(1) The appropriate Agency shall provide the form referred to in regulation 7(4)(c) free of charge to any person requesting one.

(2) Subject to paragraphs (3) and (4) below, the fee which is to be charged by the appropriate Agency on an application for producer registration shall be—

- (a) where the producer is a small producer who has elected to follow the allocation method, £562; or
- (b) in all other cases, £776.

(3) In the case of an application where the fee in paragraph (2) above is to be treated as a fee for group registration by virtue of paragraph 5(b)(iii) of Schedule 8, in respect of each subsidiary included within that application that is not a small producer who has elected to follow the allocation method, the appropriate Agency shall charge an additional fee of—

- (a) £180 for each of the first 4 subsidiaries;
- (b) £90 for each of the 5th to the 20th subsidiaries inclusive; and
- (c) £45 for each of the 21st and subsequent subsidiaries.

(4) On each resubmission of an application which is required by reason of the producer having failed to meet the requirements of regulation 7(4) or (9) on his previous submission, the appropriate Agency shall charge an additional fee of £220.

#### **Refusal to register producers**

10. Any decision of the appropriate Agency under regulation 7(6) to refuse to register a producer shall be notified within 28 days of the decision to the producer in writing together with the reasons for the decision, a statement as to the right of appeal under Part VI of these Regulations and a statement as to the offence specified in regulation 40(1)(a).

#### **Cancellation of registration of producers**

11.—(1) The appropriate Agency may cancel the registration with it of a producer where it appears to the appropriate Agency that—

- (a) the producer is in breach of any of the conditions specified in regulation 8; or
- (b) the producer knowingly or recklessly supplied false information in connection with his application for registration, or with compliance with any of the conditions specified in regulation 8.

(2) The appropriate Agency shall cancel the registration with it of a producer where it is notified that the producer has become a member of a registered scheme or has otherwise ceased to be subject to the producer registration obligation in respect of a year.

(3) Before cancellation of a registration under paragraphs (1) or (2) above, the appropriate Agency shall serve on the producer concerned written notice of—

- (a) its decision to cancel;
- (b) the reasons for the decision;
- (c) the date when cancellation will take effect, not being earlier than—
  - (i) in the case of cancellation under paragraph (1) above, the expiration of the time limit for an appeal against the notice provided for in paragraph 2 of Schedule 6;
  - (ii) in the case of cancellation under paragraph (2) above, 5 days from the date of the notice;
- (d) the right of appeal under Part VI of these Regulations; and
- (e) where cancellation is under paragraph (1), a statement as to the offence specified in regulation 40(1)(a).

### **Schemes: general provisions**

**12.**—(1) The operator of a scheme shall carry out the recovery and recycling obligations and where applicable, consumer information obligations, that every producer who is a member of the scheme that he operates would have had, but for their membership of that scheme.

(2) The operator of a scheme shall inform the members in writing immediately if—

- (a) he receives a notice of cancellation of the scheme's registration under regulation 18(3), together with a copy of the notice; or
- (b) the scheme is granted conditional approval under regulation 13(4).

(3) The operator of a scheme may only demonstrate compliance with his recovery and recycling obligations through the acquisition of PRNs or PERNs or both.

(4) A PRN or PERN that relates to packaging waste delivered or exported for reprocessing in December in a year may be relied on by the operator of a scheme to demonstrate compliance with his recovery and recycling obligations either in that year or the following year.

### **Application for approval of a scheme**

**13.**—(1) An application for approval of a scheme by the appropriate authority shall be made in writing by the operator of the scheme and shall—

- (a) contain the following information—
  - (i) the name and address of the person who proposes to operate the scheme; and
  - (ii) information which demonstrates that—
    - (aa) the scheme is likely to subsist for a period of at least 5 years; and
    - (bb) the operator of the scheme is likely to be able to meet its expected recovery and recycling obligations for that period; and
- (b) be accompanied by the following documentation—
  - (i) a copy of the constitution of the scheme;
  - (ii) a copy of the rules with which a member of the scheme is obliged to comply; and



- (iii) a copy of the procedures under which the operator of the scheme would enforce the rules against a member of the scheme.

(2) Subject to paragraphs (3) and (4), an application for approval of a scheme shall within 28 days of receipt of the application be granted unconditionally where the appropriate authority is satisfied that—

- (a) the scheme is likely to subsist for a period of at least 5 years;
- (b) the operator of the scheme is likely to be able to meet its expected recovery and recycling obligations for that period,

and otherwise be refused.

(3) A further application for approval in accordance with paragraph (1) shall be made on the occurrence of—

- (a) a change in the person who is the operator of the scheme;
- (b) a conviction of the operator of the scheme for an offence under these Regulations;
- (c) the operator of the scheme notifying the appropriate authority under regulation 22(4) that he did not comply with the requirements of regulation 12(1) for the previous year of registration; or
- (d) a failure by the operator of the scheme to comply, where applicable, with the additional conditions set out at paragraph (5) below,

within 28 days of the occurrence of an event mentioned in sub-paragraph (a), (b) or (d) above or within 14 days of the occurrence of the event mentioned in sub-paragraph (c) above.

(4) Where the operator of the scheme has notified the appropriate authority under regulation 22(4) that he did not comply with the requirements of regulation 12(1) the appropriate authority may, whether or not it is not satisfied as to the matters set out in paragraph (2) above, grant approval subject to the additional conditions set out in paragraph (5).

(5) The conditions are that—

- (a) the operator of the scheme shall comply with 50% of the total recovery and recycling obligations of the scheme before 30th June;
- (b) the operator of the scheme shall comply with a further 50% of the remaining recovery and recycling obligations before 30th September;
- (c) the operator of the scheme shall make returns to the appropriate Agency of information demonstrating compliance with the conditions set out at sub-paragraphs (a) and (b) above on or before 15th July and 15th October respectively, together with copies of the PRNs or PERNS or both;
- (d) the operator pays the fee under regulation 16(3) to the appropriate Agency; and
- (e) the operator of the scheme shall not accept any new members into the scheme.

(6) Where an application which is required by paragraph (3)(a) or (3)(b) is not received by the due date, the appropriate authority may decide to withdraw approval of the scheme and, if such a decision is taken, shall serve written notice on the operator of the scheme of—

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

(7) Where an application which is required by paragraph (3)(c) or (3)(d) above is not received by the due date, the appropriate authority 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.

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

(9) In the case of a scheme that has been granted conditional approval pursuant to paragraph (4) above, where the appropriate authority is satisfied that the operator of the scheme met its recovery and recycling obligations in the preceding year, it shall serve a notice in writing on the operator of the scheme stating that the scheme has unconditional approval for the remainder of the year (and is no longer required to meet the additional conditions set out in paragraph (5) above) and send a copy of the notice to the appropriate Agency.

(10) In the case of a scheme that has been granted conditional approval pursuant to paragraph (4) above, where the appropriate authority is satisfied by 31st January in the year following the year for which a scheme is granted conditional approval under paragraph (4) above (for the purposes of this paragraph, “the conditional approval year”) that the operator of the scheme met its recovery and recycling obligations and the conditions in paragraph (5) above in the conditional approval year, it shall serve a notice in writing on the operator of the scheme stating that the scheme has unconditional approval for the year following the conditional approval year (and is no longer required to meet the conditions set out in paragraph (5) above).

### **Application for registration of a scheme**

**14.—**(1) An application for registration of a scheme in relation to a year shall be made by the operator of the scheme, on or before 7th April in that year, to the appropriate Agency.

(2) Where the operator of the scheme is a partnership the application for registration shall be made by any partner acting on behalf of the partnership.

(3) An application for registration of a scheme shall—

- (a) be made in writing;
- (b) contain the information set out in Part II of Schedule 3;
- (c) subject to paragraph (6) below, be accompanied by the following further information, on a form supplied for that purpose by the appropriate Agency, in relation to the relevant year—
  - (i) each producer who is a member of the scheme;
  - (ii) if any producer belongs to more than one class of producer, which of those classes constitutes his main activity as a producer;
  - (iii) the relevant SIC code for the activity or, as the case may be, the main activity of each class of producer in the scheme;
  - (iv) in relation to each producer the information referred to in paragraphs (4)(c)(iv) and (v) of regulation 7;
  - (v) in relation to members who are small producers who have elected to follow the allocation method, the aggregate amount of packaging waste which is required to be recycled by virtue of paragraphs 2, 7 and 8 of Schedule 2 by those members;
  - (vi) a statement of the turnover of each small producer who is a member of the scheme; and
  - (vii) such other information as the appropriate Agency reasonably requires in order to determine the application and as is specified on the form;
- (d) be accompanied by a statement as provided in Part III of Schedule 3;
- (e) be accompanied by evidence that the scheme has been approved by the appropriate authority; but, subject to paragraph (4)(d) below, where the scheme has yet to be approved, such evidence shall be supplied to the appropriate Agency as soon as possible after receipt;
- (f) on a first application for registration be accompanied by an operational plan for the scheme that complies with Part III of Schedule 3;
- (g) be accompanied by a fee calculated under regulation 16; and



- (h) where there is more than one operator of the scheme, be accompanied by a statement signed by all of the operators of the scheme as to which operator is able to accept notices and act on behalf of all the operators of the scheme.
- (4) An application for registration shall be granted where—
- (a) the operator has complied with paragraphs (3)(a), (b), (d), (f), (g) and (h) above;
  - (b) the appropriate Agency is satisfied that the information provided in accordance with paragraph (3)(c) above has been provided in accordance with paragraph (7) below;
  - (c) the appropriate Agency is satisfied as to the contents of the operational plan provided as required by paragraph (3)(f) above; and
  - (d) the scheme has been approved by the appropriate authority,
- and shall otherwise be refused.
- (5) Where an application for registration of a scheme is granted—
- (a) the appropriate Agency shall, within 28 days of its decision, notify the operator of the scheme in writing of its decision; and
  - (b) the scheme shall be treated as registered from the beginning of the year in relation to which the application is made until any cancellation of the scheme's registration in accordance with regulation 18.
- (6) The further information shall, if it does not accompany the application, be provided not later than 15th April in the year of application.
- (7) Any information provided shall be as accurate as reasonably possible.

#### **Conditions of registration of a scheme**

**15.** Registration of a scheme shall be subject to the following conditions—

- (a) that the operator of the scheme will comply with the obligation set out in regulation 12(1);
- (b) that the operator of the scheme will provide any information reasonably requested by the appropriate Agency with regard to the obligation referred to in paragraph (a) above;
- (c) that the operator of the scheme will notify the appropriate Agency in writing at intervals as required by the appropriate Agency of any change in the membership of the scheme and that any such notification will be accompanied by the additional fee calculated as provided in regulation 16(6);
- (d) that the operator of the scheme will inform the appropriate Agency in writing of—
  - (i) 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;
  - (ii) any material change in the information provided in accordance with regulation 14(3)(b);
  - (iii) any material change in the further information provided in accordance with regulation 14(3)(c);
  - (iv) any change in the operator stated under regulation 14(3)(h), within 28 days of the occurrence of any such change;
- (e) that the operator of the scheme will provide records and returns to the appropriate Agency as required by regulation 22;
- (f) that the operator of the scheme will comply with the operational plan submitted under regulation 14(3)(f) or, if a revised plan has been submitted under paragraph (g) below, with the most recent version so submitted; and
- (g) that the operator of the scheme will, on or before 31st January in a relevant year, provide to the appropriate Agency and the appropriate authority a revised version of the operational plan for the scheme that complies with Part III of Schedule 3.

## Forms and fees for registration of a scheme

16.—(1) The appropriate Agency shall provide the form referred to in regulation 14(3)(c) free of charge to any person requesting one.

(2) Subject to paragraphs (3), (4), (5) and (6) below, the fee which is to be charged by the appropriate Agency on an application for registration of a scheme shall be—

- (a) £345 for each small producer who has elected to follow the allocation method and who is on the date of the application a member of the scheme; and
- (b) £564 for each producer who is not a small producer who has elected to follow the allocation method and is on the date of the application a member of the scheme.

(3) In the case of a scheme that has been granted conditional approval under regulation 13(4) the fee to be charged by the appropriate Agency in addition to the fee in paragraph (2) above is—

- (a) £1,540 where the operator of the scheme has an obligation to recover up to and including 24,999 tonnes of packaging waste;
- (b) £2,310 where the operator of the scheme has an obligation to recover between 25,000 and 249,999 tonnes of packaging waste; or
- (c) £3,080 where the operator of the scheme has an obligation to recover over 250,000 tonnes of packaging waste.

(4) In the case of a group of companies that is on the date of the application a member of a scheme the fee to be charged by the appropriate Agency for that member is—

- (a) £345 where the holding company is a small producer who has elected to follow the allocation method and the group of companies had an aggregate turnover of £5,000,000 or less in the previous year; or
- (b) £564 where—
  - (i) the holding company is not a small producer who has elected to follow the allocation method; or
  - (ii) the holding company is a small producer who has elected to follow the allocation method and the group of companies had an aggregate turnover of more than £5,000,000 in the previous year;

and, in addition to the fee payable under sub-paragraph (a) or (b), in respect of each subsidiary included within that application who is not a small producer who has elected to follow the allocation method, the appropriate Agency shall charge a fee of—

- (i) £180 for each of the first 4 subsidiaries;
- (ii) £90 for each of the 5th to 20th subsidiaries inclusive; and
- (iii) £45 for each of the 21st and subsequent subsidiaries.

(5) In the case where an application is required to be resubmitted as a result of a failure to meet the requirements of regulation 14(3)(c) or 14(6), the fee to be charged by the appropriate Agency in addition to any fee payable under this regulation is £220 for each member of that scheme in respect of whom the information resubmitted was different from that contained in the original application.

(6) The additional fee which is to be paid by an operator of a scheme in compliance with the condition referred to in paragraph (c) in regulation 15 is calculated as follows—

$$(A \times B) + (C \times D) = AF$$

where—

“A” is the number of new members of the scheme which are the subject of the notification who are not small producers who have elected to follow the allocation method;

“B” is the fee set out at sub-paragraph (2)(b) above plus the sum of £110;

“C” is the number of new members of the scheme which are the subject of the notification who are small producers who have elected to follow the allocation method ;

“D” is the fee set out at sub-paragraph (2)(a) above plus the sum of £110; and

“AF” is the additional fee.

### **Refusal to register a scheme**

17. Any decision of the appropriate Agency under regulation 14 to refuse to register a scheme shall be notified, within 28 days of the decision, to the operator of the scheme in writing together with—

- (a) the reasons for the decision;
- (b) a statement as to the right of appeal under Part VI of these Regulations; and
- (c) a statement as to the offence specified in regulation 40(1)(a).

### **Cancellation of registration of a scheme**

18.—(1) Subject to the right of appeal under Part VI of these Regulations, the appropriate Agency may cancel the registration with it of a scheme where it appears to the appropriate Agency that—

- (a) the operator of the scheme is in breach of any of the conditions referred to in regulation 15; or
- (b) the operator knowingly or recklessly supplied false information in connection with the application for registration, or with compliance with the conditions referred to in regulation 15.

(2) The appropriate Agency shall cancel the registration with it of a scheme if the appropriate authority withdraws approval of the scheme.

(3) Before the cancellation of a registration the appropriate Agency shall serve on the operator of the scheme written notice of—

- (a) its decision under paragraph (1) or (2) above to cancel the registration;
- (b) the reasons for the decision;
- (c) where the decision is made under paragraph (1) above, the right of appeal under Part VI of these Regulations; and
- (d) the date when cancellation will take effect, not being earlier than—
  - (i) in the case of cancellation under paragraph (1) above, the expiration of the time limit for an appeal against the notice provided for in paragraph 2 of Schedule 6; or
  - (ii) in the case of cancellation under paragraph (2) above, 5 days from the date of the notice.

### **Information provided to scheme operators**

19.—(1) This regulation applies to information which—

- (a) is provided to the operator of a scheme by a producer who is a member of that scheme at the time the information is provided; and
- (b) is information which the operator of the scheme will need to rely upon for the purposes of his application for registration of a scheme under regulation 14.

(2) A producer who provides to the operator of the scheme information to which this regulation applies shall—

- (a) provide that information on a form supplied for the purpose by the appropriate Agency;
- (b) ensure that the form is signed by the approved person; and
- (c) ensure that the information is as accurate as reasonably possible.

## PART IV

### RECORDS, RETURNS AND CERTIFICATE

#### **Producers—records and returns**

- 20.**—(1) A producer who is subject to the certifying obligation shall—
- (a) maintain, and retain for at least 4 years after the record is made, records of the information referred to in paragraph (2) below for a small producer who has elected to follow the allocation method or paragraph (3) for any other producer; and
  - (b) at the same time as he furnishes a certificate of compliance to the appropriate Agency in accordance with regulation 21, make a return to the appropriate Agency of that information.
- (2) The information to be recorded by a small producer who has elected to follow the allocation method is—
- (a) his turnover;
  - (b) the recycling allocation for the relevant year as provided in paragraph 8 of Schedule 2;
  - (c) the amount, in tonnes, of packaging waste which is to be recycled under the allocation method set out in paragraph 7 of Schedule 2; and
  - (d) the aggregate tonnage of packaging materials that have been received by an accredited reprocessor for recycling and that have been exported by an accredited exporter for recycling as set out in the PRNs or PERNs acquired.
- (3) The information to be recorded by any other producer is—
- (a) the amount in tonnes, to the nearest tonne, of packaging waste delivered respectively for recovery and for recycling to a reprocessor or exporter, by or on behalf of the producer as set out in the PRNs or PERNs acquired; and
  - (b) the total number of tonnes of each material which is the subject of the producer's recovery and recycling obligations.
- (4) The records maintained under paragraph (1)(a) above by a producer shall be made available, on demand, to the appropriate Agency.

#### **Producers—certifying obligation**

- 21.**—(1) Subject to regulations 5, 37 and 39 and Schedules 8 and 10, a producer shall furnish in accordance with this regulation a certificate of compliance to the appropriate Agency.
- (2) A certificate of compliance shall be furnished as evidence of whether or not the producer has complied with his recovery and recycling obligations for a relevant year and shall be furnished on or before 31st January in the year immediately following the relevant year.
- (3) The provisions of Schedule 4 shall apply as regards the information to be contained in a certificate of compliance.

#### **Schemes—records and returns**

- 22.**—(1) The operator of a scheme shall maintain, and retain for at least 4 years after they are made, records of the information referred to in paragraph (2) below, and make returns of that information to the appropriate Agency on or before 31st January in the year following the year to which the information relates.
- (2) For each year the information is—
- (a) the amount in tonnes, to the nearest tonne, of packaging waste delivered respectively for recovery and for recycling, to a reprocessor or exporter through the scheme as set out in the PRNs or PERNs acquired;

- (b) the information specified in regulation 14(3)(c) and the revised operational plan referred to in paragraph (g) of regulation 15, together with any changes notified in accordance with the condition specified in regulation 15(d)(iii); and
- (c) the total number of tonnes of each material which is the subject of an obligation to recover and recycle for which the operator of the scheme is responsible under regulation 12(1).

(3) The records maintained under paragraph (1) above shall be made available, on demand, to the appropriate Agency.

(4) The operator of a scheme shall, by 31st January in 2008 and thereafter by 31st January in each year following the year to which the information relates, send a statement to the appropriate authority confirming whether or not the operator has complied with the requirements of regulation 12(1) for the previous year of registration.

## PART V

### ACCREDITATION OF REPROCESSORS AND EXPORTERS

#### **Requirement for accreditation**

**23.—**(1) A person shall not issue a PRN unless he is at the time of the issue an accredited reprocessor or, where the PRN is of the type referred to in paragraph (6) of regulation 4 or paragraph (4) of regulation 12 was accredited at the time the material was received, and the PRN relates to packaging waste received by him for reprocessing on the reprocessing site for which he is accredited.

(2) A person shall not issue a PERN unless he is at the time of the issue an accredited exporter or, where the PERN is of the type referred to in paragraph (6) of regulation 4 or paragraph (4) of regulation 12 was accredited at the time the material was received, and the PERN relates to packaging waste exported by him for reprocessing to a specified reprocessing site or sites for which he is accredited under regulation 24.

#### **Application for accreditation**

**24.—**(1) An application for accreditation shall be made to the appropriate Agency—

- (a) in the case of a person wishing to be accredited—
  - (i) as a reprocessor in respect of each reprocessing site for which he wishes to be accredited and stating which of the applicable recovery operations and which recyclable materials he wishes that accreditation to cover; or
  - (ii) as an exporter, in respect of the export of one or more recyclable materials for reprocessing at one or more specified reprocessing sites outside the United Kingdom;
- (b) on a form made available by the appropriate Agency and including all the information specified on that form, being information which the appropriate Agency reasonably requires in order to determine the application;
- (c) accompanied by a business plan containing information on how the funds acquired from the issue of PRNs or PERNs are to be applied including information in respect of the following matters—
  - (i) the development of capacity for the collection and reprocessing of packaging waste and the development of new markets for materials or goods which have been made from recycled packaging waste;
  - (ii) arrangements for the collection and sorting of packaging waste; and
  - (iii) the strategy, including communications, to be adopted in order to achieve the matters described in paragraphs (i) and (ii) above; and
- (d) accompanied by a fee of—

- (i) in the case of an applicant who undertakes to issue PRNs or PERNs for not more than 400 tonnes of packaging waste in the year to which the application relates, £505; or
- (ii) in any other case, £2616.

(2) An application for accreditation as—

- (a) a reprocessor to issue PRNs for the receipt of one or more specified recyclable materials at a specified reprocessing site and for reprocessing in one or more specified recovery operations or a combination of such operations; or
- (b) an exporter, to issue PERNs for the export of one or more specified recyclable materials for reprocessing in one or more recovery operations at a specified reprocessing site or sites outside the United Kingdom, or a combination of such operations,

shall be granted where the appropriate Agency is satisfied as to the matters set out in paragraph (3) below or, in any other case, shall be refused.

(3) The matters referred to in paragraph (2) are—

- (a) the contents of the business plan referred to in paragraph (1)(c) above;
- (b) where the application is made for accreditation as an exporter and relates to one or more reprocessing sites outside the European Community, that the requirements of Article 6(2) of the Packaging Waste Directive have been met in respect of each such site;
- (c) that the application has been duly made in accordance with paragraph (1) above; and
- (d) the reprocessor or exporter will comply with the conditions specified in or under Schedule 5.

(4) The appropriate Agency shall notify the applicant in writing of its decision under paragraph (2) no later than 12 weeks after the application was made and, if the decision is a decision to refuse accreditation, such notification shall include reasons for the decision and a statement of the right of appeal under regulation 27(3)(a).

(5) Subject to regulation 26, where accreditation is granted under paragraph (2), it shall take effect—

- (a) where the application is made in the preceding year to that in which the person wishes to be accredited—
  - (i) from 1st January where the decision to accredit was made before that date; and
  - (ii) in all other cases, from the date of the decision,and shall remain in force until 31st December in the year for which the person has applied to be accredited;
- (b) where the application is made during the year in which the person wishes to be accredited, from the date of the decision, and shall remain in force until 31st December in that year.

(6) Where a reprocessor or exporter who has given the undertaking and paid the fee specified in paragraph (1)(d)(i) subsequently breaches that undertaking, he shall from the date of that breach be liable to pay to the appropriate Agency the sum of £2111 (being the balance of the fee which would have been payable under paragraph (1)(d)(ii) had the undertaking not been given).

(7) An application to extend the accreditation of an exporter to include a further reprocessing site or sites to which he wants to export packaging waste for reprocessing shall be made to the appropriate Agency on the form specified in paragraph (1) and be accompanied by a fee of £110.

(8) An application to extend an exporter's accreditation to include a further reprocessing site or sites located within the European Community shall be granted by the appropriate Agency where it is satisfied that the application has been made in accordance with paragraph (7) above, and in any other case be refused.

(9) An application to extend an exporter's accreditation to include a further reprocessing site or sites located outside the European Community shall be granted by the appropriate Agency where it is satisfied that each of those sites meets the requirements of Article 6(2) of the Packaging



Waste Directive and is satisfied that the application was made in accordance with paragraph (7) above, and in any other case be refused.

### **Conditions of accreditation**

25. An accredited reprocessor or exporter shall comply with the conditions specified in and under Schedule 5.

### **Suspension and cancellation of accreditation**

26.—(1) The appropriate Agency may suspend or cancel the accreditation of a reprocessor or exporter where it appears to it that—

- (a) the person who is accredited has failed to comply with any of the conditions specified in or under Schedule 5; or
- (b) the person who is accredited has knowingly or recklessly supplied false information in his application for accreditation made under regulation 24 or in connection with compliance with any of the conditions specified in or under Schedule 5.

(2) Where the appropriate Agency is no longer satisfied that the requirements of Article 6(2) of the Packaging Waste Directive are met in relation to one or more reprocessing sites located outside the European Community, the appropriate Agency shall cancel the accreditation of an exporter to the extent that it relates to that site or those sites.

(3) Where the appropriate Agency suspends or cancels an accreditation under paragraph (1) or cancels the accreditation of an exporter to the extent that it relates to a site or sites under paragraph (2), it shall serve on the reprocessor or exporter concerned written notice of—

- (a) its decision to cancel or suspend (as the case may be) the accreditation;
- (b) the reasons for the decision;
- (c) the right of appeal under Part VI;
- (d) the date when the cancellation or suspension will take effect, not being earlier than the date of receipt of the notice; and
- (e) in the case of a suspension, the period of the suspension or any steps which are required to be taken in order to bring the suspension to an end.

(4) The accreditation of a reprocessor or exporter shall be deemed to be cancelled—

- (a) on the date on which either of the following occurs—
  - (i) the person who is accredited ceases to be the holder of a relevant authorisation; or
  - (ii) the person who is accredited ceases to be a reprocessor or exporter; or
- (b) in a case where the person who is accredited requests that his accreditation should be cancelled, with effect from the date for cancellation specified by that person.

## **PART VI**

### **APPEALS**

#### **Right of appeal**

27.—(1) A producer may appeal to the appropriate authority against a decision of the appropriate Agency—

- (a) to refuse to grant an application for registration under regulation 7(6); or
- (b) to cancel registration under regulation 11(1).

(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 registration under regulation 14(4); or
  - (b) to cancel registration under regulation 18(1).
- (3) A reprocessor or exporter may appeal to the appropriate authority against a decision of the appropriate Agency—
- (a) to refuse accreditation under regulation 24;
  - (b) to specify a condition pursuant to paragraph 1(q)(iii) of Schedule 5; or
  - (c) to cancel or suspend accreditation under regulation 26.

### **Procedure on appeals**

- 28.**—(1) Where an appeal is made to the appropriate authority it may—
- (a) appoint any person to exercise on its behalf, with or without payment, the function of determining the appeal; or
  - (b) refer any matter involved in the appeal to such person as the appropriate authority may appoint for the purpose, with or without payment.
- (2) If the appellant so requests, or the appropriate authority so decides, the appeal shall be or continue in the form of a hearing.
- (3) Schedule 6 shall have effect with respect to the procedure on any such appeal.

### **Determination of appeals**

**29.** Where, on such an appeal, the appropriate authority determines that the decision of the appropriate Agency shall be altered it shall be the duty of the appropriate Agency to give effect to the determination.

### **Status pending appeal**

**30.** In a case falling within regulation 11(1) or 18(1), the decision appealed against shall be ineffective until the appeal is disposed of; and if the appeal is dismissed or withdrawn the decision shall become effective from the end of the day on which the appeal is dismissed or withdrawn.

## **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 provide to the appropriate authority by 1st December, and publish by 31st December, in each year in respect of the following calendar year a report setting out its proposed monitoring plan including the following details of the monitoring to be 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 reproducers 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 within 7 days of receipt of the information 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;
- (c) where the producer is a company registered in Great Britain, a director or company secretary of that company;
- (d) where the producer is an unincorporated body, an individual who has control or management of that body; or
- (e) where the producer does not have a registered office in Great Britain, an individual who has control or management of the producer.

### **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.

### **Collation and provision of information**

**36.**—(1) The appropriate Agency shall collate and place in the common database every report provided to it under paragraph 1(n) of Schedule 5 no later than 21 days after receipt.

(2) The appropriate Agency shall, by the same dates as it places the reports under paragraph (1), place in the common database the information in its possession required under regulations 7(4)(c) and 14(3)(c).

(3) The Environment Agency shall, by 31st March in the year following the year in which the reports are due to be provided under paragraph 1(n) of Schedule 5, provide the Secretary of State with a copy of every report collated under paragraph (1) above.

(4) The Environment Agency shall provide the Secretary of State with any information placed under paragraph (2) above by 30th June in the year in which it has been provided to the appropriate Agency or, where the information is provided after this date, by 31st January in the following year.

## **PART VIII**

### **GROUPS OF COMPANIES, PUB OPERATING BUSINESSES AND LICENSORS AND MID-YEAR CHANGES**

#### **Packaging handled by groups of companies**

**37.** The provisions of Schedule 8 shall apply with regard to groups of companies as defined in that Schedule.

#### **Packaging handled by licensors and pub operating businesses**

**38.**—(1) Where in the relevant year and in the preceding year a person is a licensor, the provisions of Schedule 9 shall apply to determine whether that person has producer responsibility obligations in that capacity.

(2) Where in the relevant year and in the preceding year a person is a pub operating business, the provisions of Schedule 9 shall apply to determine whether that person has producer responsibility obligations in that capacity.

(3) For the purposes of this regulation and Schedule 9 a person is a licensor where he is a party to a licence agreement in or under which he grants a licence to use a trade mark to another.

(4) For the purposes of this regulation and Schedule 9 a person is a pub operating business where—

- (a) he is a party to a pub operating agreement in or under which he grants a lease or tenancy of premises to another; and
  - (b) the premises to which the pub operating agreement relates—
    - (i) in England or Wales, are used by the tenant in order to carry on the licensable activity of—
      - (aa) the sale by retail of alcohol for consumption on the premises or both on and off the premises; or
      - (bb) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club or both, for consumption on the premises or both on and off the premises,
 and in respect of which a premises licence is in force; or
    - (ii) in Scotland, are used by the tenant for the sale by retail or supply of alcoholic liquor for consumption on the premises or both on and off the premises, and in respect of which a relevant licence is in force, or such premises are occupied by a registered club.
- (5) In England and Wales, in the definition of pub operating business—
- (i) “alcohol” has the same meaning as in section 191 of the Licensing Act 2003<sup>(a)</sup> and ‘alcoholic’ shall be construed accordingly;
  - (ii) “premises licence” has the same meaning as in section 11 of the Licensing Act 2003;
  - (iii) “supply of alcohol” has the same meaning as in section 14 of the Licensing Act 2003; and
  - (iv) “sale by retail” in relation to any alcohol has the same meaning as in section 192 of the Licensing Act 2003.
- (6) In Scotland, in the definition of pub operating business—
- (i) “alcoholic liquor” has the same meaning as in section 139 of the Licensing (Scotland) Act 1976<sup>(b)</sup>;
  - (ii) “registered club” has the same meaning as in section 139 of the Licensing (Scotland) Act 1976; and
  - (iii) “relevant licence” means a public house licence, an hotel licence (including a restricted hotel licence), a restaurant licence, a refreshment licence or an entertainment licence all as defined in Schedule 1 of the Licensing (Scotland) Act 1976.
- (7) For the purposes of this regulation and Schedule 9—
- “licence agreement” means an agreement or number of related agreements in or under which the licensor grants the licensee a licence that allows the licensee to use a trade mark as the name under which the licensee sells from premises goods that are associated with that trade mark, and includes an obligation (whether expressed as a positive or as a negative obligation) on the licensee that relates to the presentation of those premises;
- “licensee” means the party to a licence agreement to whom a licence to use a trade mark is granted;
- “premises” means any sales outlet on which packaging is handled and includes any land, vehicle, vessel, mobile plant and stall;
- “pub operating agreement” means an agreement or number of related agreements in or under which one person (the pub operating business) grants a tenancy or lease of premises to another person (the tenant) that includes an obligation (whether expressed as a positive or as a negative obligation) on the tenant to purchase some or all of the alcohol or alcoholic liquor (as

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(a) 2003 c. 17.  
 (b) 1976 c. 66.

the case may be), to be sold or supplied on or from the premises, from the pub operating business or from a person or persons nominated or authorised by or on behalf of that business; “tenant” means the party to a pub operating agreement to whom the lease or tenancy of premises is granted; and “trade mark” has the same meaning as in section 1 of the Trade Marks Act 1994<sup>(a)</sup>.

### Mid-year changes

39. The provisions of Schedule 10 shall apply with regard to changes in a year in respect of a person who is a producer in respect of that year and any changes in membership of a scheme or group of companies, or other event affecting a producer in the relevant year.

## PART IX OFFENCES

### Offences and penalties

40.—(1) A producer who contravenes a requirement of—

- (a) subject to paragraph (2) below, regulation 4(4)(a);
- (b) regulation 4(4)(b); or
- (c) regulation 4(4)(c),

is guilty of an offence.

(2) A producer is not guilty of an offence under paragraph (1)(a) above in respect of any period during which, under regulation 7(7), he is treated as having been registered.

(3) An operator of a scheme who fails to comply with his recovery and recycling obligations in contravention of regulation 12(1) is guilty of an offence.

(4) A person who contravenes a requirement of regulation 23 or who is in breach of either of the conditions specified in paragraph 1(a) or 1(d) of Schedule 5 is guilty of an offence.

(5) A person who furnishes any information to the appropriate Agency in connection with its functions under these Regulations or furnishes information to which regulation 19 applies to an operator of a scheme shall be guilty of an offence if, in furnishing the information, he—

- (a) knows the information to be false or misleading in a material particular; or
- (b) furnishes such information recklessly and it is false or misleading in a material particular.

(6) A person who fails without reasonable excuse to comply with any requirement imposed in a notice under regulation 31(3) shall be guilty of an offence.

(7) A person who intentionally delays or obstructs a person authorised by the appropriate Agency in the exercise of powers referred to in regulation 35 is guilty of an offence.

(8) Where in accordance with Schedule 8 there is a group registration the holding company is guilty of an offence if—

- (a) it does not comply with its recovery and recycling obligations referred to in paragraph 5(c) of Schedule 8; or
- (b) it does not furnish a certificate of compliance in accordance with paragraph 5(d) of Schedule 8.

(9) A person guilty of an offence under any of paragraphs (1) to (8) above shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

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(a) 1994 c. 26.

(10) Where an offence under these Regulations is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of, or have been attributable to neglect on the part of, any partner or a person who was purporting to act as such, that person as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## PART X

### REVOCATION AND TRANSITIONAL PROVISION

#### Revocation and transitional provision

**41.**—(1) The Producer Responsibility Obligations (Packaging Waste) Regulations 2005<sup>(a)</sup> are revoked.

(2) Any step taken before commencement of these Regulations which has effect under any provision of the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 shall be treated on or after commencement as having effect under any equivalent provision of these Regulations.

(3) Where the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 specified a time period and part of that period had elapsed under those Regulations before revocation of those Regulations, that part of the period shall be treated on commencement of these Regulations as having elapsed under the equivalent provision of these Regulations.

*Ben Bradshaw*

Minister of State

15th March 2007

Department for Environment, Food, and Rural Affairs

### SCHEDULE 1 Regulations 2(2), 4(2) and 4(3)

#### PRODUCERS

**Table 1**

<i>Relevant function performed in Years 1 and 2</i>	<i>Subject matter of supply in Year 1</i>	<i>Class of supply in Year 1</i>	<i>Class of producer in Year 2</i>
Manufacturer	Packaging materials	A B or C	Manufacturer
Convertor, subject to paragraph 1(2)	Packaging or packaging materials	A B or C	Convertor
Packer/filler	Packaging or packaging materials	A B or C	Packer/filler
Importer	Packaging or packaging materials	A B or C	Importer
Seller	Packaging	E	Seller
Manufacturer, Convertor, Packer/filler, or Importer	Transit packaging	B or F	Secondary provider
Service Provider	Packaging	G	Service Provider

1.—(1) For the purposes of Column 1 in the above Table—

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(a) S.I. 2005/3468.

- (a) “relevant function” means the performance by a person of the functions of one of the following—
  - (i) manufacturer;
  - (ii) convertor;
  - (iii) packer/filler;
  - (iv) importer;
  - (v) seller;
  - (vi) service provider,
 either himself or through an agent acting on his behalf, and in the course of business;
- (b) “convertor” means a person who uses or modifies packaging materials in the production or formation of packaging;
- (c) “importer” means a person who imports packaging or packaging materials into the United Kingdom;
- (d) “manufacturer” means a person who manufactures raw materials for packaging;
- (e) “packer/filler” means a person who puts goods into packaging;
- (f) “seller” means a person who supplies packaging to a user or a consumer of that packaging, whether or not the filling has taken place at the time of the supply;
- (g) “service provider” means a person who supplies reusable packaging to a user of that packaging where the supply is made by hiring out or lending the packaging;
- (h) “Year 1” means the preceding year; and
- (i) “Year 2” means the relevant year.

(2) Where a person performs the functions of a convertor and a packer/filler at the same time, and as part of the same packing/filling process, and in relation to the same packaging, as regards supplies of packaging or packaging materials made to or by him in connection with those functions, or that process, he is treated for the purposes of these Regulations as a producer of the class of packer/filler only.

(3) For the purposes of this Schedule a person acts “in the course of business” if he acts in the ordinary course of conduct of a trade, occupation or profession.

**2.** For the purposes of Column 3 of the above Table, and Schedule 2—

- (a) “Class A supply” means—
  - (i) the final use or consumption by an importer of imported packaging or packaging materials; or
  - (ii) a deemed supply;
- (b) “Class B supply” means a supply, other than solely for the purpose of transport, to a person who acts as a distributor, that is to say who, in relation to the packaging or packaging materials supplied, neither performed the functions of one of the classes of producer, nor was the user or consumer;
- (c) “Class C supply” means a supply (other than a Class F supply) to a person for the performance by that person of a relevant function which—
  - (i) is different from the function performed by his immediate supplier; and
  - (ii) is not that of an importer;
- (d) “Class E supply” means a supply, other than a supply of transit packaging in respect of which a Class F supply has already been made, to a user or consumer other than a person who performed a relevant function;
- (e) “Class F supply” means a supply—
  - (i) to a person who performed a relevant function;
  - (ii) to a user or consumer; or



- (iii) to a person who acts as a distributor, using the transit packaging supplied to perform the functions of a packer/filler and seller;
- (f) “Class G supply” means a supply —
  - (i) to a person who performed a relevant function; or
  - (ii) to a person who acts as a distributor, where the supply is made by hiring out or lending the packaging;
- (g) “supply” means doing any of the following, either himself or through an agent acting on his behalf, in relation to packaging or packaging materials owned by the supplier—
  - (i) selling, hiring out or lending;
  - (ii) providing in exchange for any consideration other than money;
  - (iii) providing in or in connection with the performance of any statutory function; or
  - (iv) giving as a prize or otherwise making a gift,
 and, where the packaging or packaging materials are owned by a person who does not have a registered office or principal place of business in Great Britain, a supply shall take place when a person performs any of the functions in paragraphs (i) to (iv) above on behalf of the owner in relation to that packaging or packaging materials; and
- (h) “deemed supply” means a supply which is deemed to occur when a person who has carried out a relevant function then performs another such function in relation to the same packaging or packaging materials.

**3.** A person satisfies the threshold tests if—

- (a) his turnover in the last financial year—
  - (i) in respect of which audited accounts are available; or
  - (ii) where audited accounts are not required, in respect of which accounts are available, before the relevant date was more than £2,000,000; and
- (b) in the calculation year the person handled in aggregate more than 50 tonnes of packaging or packaging materials.

**4.—(1)** For the purposes of paragraph 3(a) above audited accounts shall be treated as being available, where the person is a company, where annual accounts have been delivered to the registrar under section 242 of the Companies Act 1985(a).

(2) For the purposes of paragraph 3(b) above, the amount of packaging or packaging materials handled is the amount handled in the United Kingdom in respect of which the producer made a supply referred to in Column 3 of Table 1, other than a deemed supply, calculated in tonnes to the nearest tonne by—

- (a) including packaging, including reused transit packaging, or packaging materials so supplied which were imported into the United Kingdom by the producer, either himself or through an agent acting on his behalf; and
- (b) excluding—
  - (i) reused sales packaging or primary packaging as defined in paragraph 1(a) of Article 3 of the Packaging Waste Directive;
  - (ii) production residues from the production of packaging or packaging materials or from any other production process occurring before, during or after the producer handled the packaging or packaging materials;
  - (iii) any packaging or packaging materials so supplied which were exported from the United Kingdom by the producer, either himself or through an agent acting on his

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(a) 1985 c. 6 as amended by the Companies Act 1989 (1989 c. 40), S.I. 2002/1986, S.I. 2005/1011, S. I. 1992/1083 and the Welsh Language Act 1993 (1993 c. 38).



- behalf or which to the producer's reasonable knowledge were otherwise exported from the United Kingdom; and
- (iv) reused transit packaging (with the exception of reused transit packaging imported into the United Kingdom).

## SCHEDULE 2

Regulation 4(4)

### RECOVERY AND RECYCLING OBLIGATIONS

1.—(1) Except for a small producer who has elected to follow the allocation method, a producer's obligations to recover and recycle packaging waste in a relevant year are, in relation to each class of producer to which he belongs—

- (a) to recover an amount of packaging waste as provided in paragraph 3(1) below;
- (b) to recover by recycling a proportion of that packaging waste, as provided in paragraph 3(2) below; and
- (c) as part of the obligation to recover packaging waste as provided in paragraph (a) above, to recover by recycling an amount of packaging materials which is packaging waste, as provided in paragraph 3(3) below,

and are calculated by aggregating his obligations in relation to each class of producer to which he belongs in respect of that year.

2. Where a small producer has elected to follow the allocation method, his obligations to recycle packaging waste in a relevant year are to recycle an amount of packaging waste as provided in paragraphs 7 and 8 below.

3.—(1) The amount of packaging waste to be recovered by a producer in relation to a class of producer to which he belongs is calculated as follows—

$$P \times C \times X = Z$$

where—

- “P” is the amount in tonnes to the nearest tonne of packaging and packaging materials handled in Great Britain by the producer in the preceding year;
- “C” is the percentage prescribed in paragraph 4 below in relation to the class of producer;
- “X” is the percentage prescribed in paragraph 5 below as the recovery target for the relevant year; and
- “Z” is the amount by tonnage of packaging waste which is to be recovered within the relevant year.

(2) The proportion of the packaging waste referred to in sub-paragraph (1) above which is to be recovered by recycling, in relation to a class of producer to which the producer belongs in the years 2006, 2007, 2008, 2009 and 2010 is not less than 92% of the amount by tonnage of packaging waste represented by “Z” in sub-paragraph (1) above.

(3) Where in the preceding year the producer has handled any recyclable material (whether in the form of packaging or packaging materials), the producer shall recover by recycling an amount of packaging waste consisting of that material calculated as follows—

$$M \times C \times Y = Q$$

where—

- “M” is the amount in tonnes to the nearest tonne of the recyclable material (whether in the form of packaging or packaging materials) handled in Great Britain by the producer in the preceding year;

“C” is the percentage prescribed in paragraph 4 below in relation to the class of producer;  
 “Y” is the percentage prescribed in paragraph 6 below as the recycling target for the relevant year; and  
 “Q” is the amount by tonnage of packaging waste consisting of that material which is to be recycled in the relevant year.

4.—(1) The following percentages are prescribed as the percentages for the following classes of producer—

- |                        |          |
|------------------------|----------|
| (a) manufacturer       | 6%;      |
| (b) convertor          | 9%;      |
| (c) packer/filler      | 37%;     |
| (d) seller             | 48%;     |
| (e) secondary provider | 85%; and |
| (f) service provider   | 85%.     |

(2) The following percentages are prescribed for the class of importer—

- (a) the manufacturer’s percentage, that is 6%—
- (i) on Class A supplies, where the importer also carries out the functions of a convertor;
  - (ii) on Class B supplies, where the relevant packaging or packaging materials are supplied, by the distributor who receives them, to a convertor; and
  - (iii) on Class C supplies to a convertor;
- (b) the manufacturer’s and the convertor’s percentages aggregated, that is  $6\% + 9\% = 15\%$ —
- (i) on Class A supplies, where the importer also carries out the functions of a packer/filler;
  - (ii) on Class B supplies, where the relevant packaging or packaging materials are supplied, by the distributor who receives them, to a packer/filler;
  - (iii) on Class C supplies to a packer/filler; and
  - (iv) on Class G supplies;
- (c) the manufacturer’s, the convertor’s and the packer/filler’s percentages aggregated, that is  $6\% + 9\% + 37\% = 52\%$ —
- (i) on Class A supplies where the importer also carries out the functions of a seller;
  - (ii) on Class B supplies where the relevant packaging or packaging materials are supplied, by the distributor who receives them, to a seller; and
  - (iii) on Class C supplies to a seller;
- (d) the manufacturer’s, the convertor’s, the packer/filler’s and the seller’s percentages aggregated, that is  $6\% + 9\% + 37\% + 48\% = 100\%$ —
- (i) on Class F supplies; and
  - (ii) on Class A supplies, where the importer is also the final user or consumer.

5. The following is prescribed as the recovery target “X”—

- (a) for the year 2006, 66%;
- (b) for the year 2007, 67%;
- (c) for the year 2008, 68%;
- (d) for the year 2009, 69%; and
- (e) for the year 2010, 70%.

6. The following percentages are prescribed as the recycling target “Y” in respect of the recyclable material specified in the first column in relation to the years indicated at the head of the subsequent columns—

**Table 2: Recycling targets**

<i>Material</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Glass	65	69.5	73.5	74	74.5
Aluminium	29	31	32.5	33	33.5
Steel	56	57.5	58.5	59	59.5
Paper/Board	66.5	67	67.5	68	68.5
Plastic	23	24	24.5	25	25.5
Wood	19.5	20	20.5	21	21.5

7.—(1) The amount of packaging waste to be recycled by a small producer who has elected to follow the allocation method is calculated as follows—

$$A \times B = Z_s$$

where—

“A” = a/1,000,000;

“a” is the annual turnover of the producer in the last financial year in respect of which audited accounts are available before the relevant date, rounded up to the nearest ten thousand pounds;

“B” is the recycling allocation for the relevant year prescribed in paragraph 8 below; and

“Z<sub>s</sub>” is the amount of packaging waste (in tonnes) which is to be recycled in the relevant year.

(2) For the purposes of this paragraph, a small producer shall carry out his recycling obligations by recycling the recyclable material he handled which is predominant by weight.

8. Table 3 prescribes the recycling allocation “B” in relation to a relevant year—

**Table 3: Recycling Allocations**

<i>Relevant Year</i>	<i>Recycling Allocation</i>
2006	25
2007	26
2008	27
2009	28
2010	29

9. Paragraph 4(2) of Schedule 1 applies for the purposes of this Schedule, but as though the words “For the purposes of paragraph 3(b) above,” and the words “other than a Class A supply,” were omitted.

10. Where the appropriate Agency is satisfied that a producer has instituted a system of using reusable packaging which has a life of at least four years, the producer’s obligations under this Schedule in relation to that packaging may be discharged by equal instalments over four years commencing with the year in which that packaging is first used.

SCHEDULE 3      Regulations 7(4), 14(3) and 15(g)

INFORMATION

PART I

INFORMATION TO BE CONTAINED IN APPLICATION FOR PRODUCER  
REGISTRATION

1. The address and telephone number of the registered office of the producer or, if not a company, the principal place of business of the producer.
2. The business name of the producer if different from that referred to in paragraph 1 above.
3. The address for service of notices on the producer if different from that referred to in paragraph 1 above.
4. Where the producer is a partnership, the names of all the partners.

PART II

INFORMATION TO BE INCLUDED IN AN APPLICATION FOR  
REGISTRATION OF A SCHEME

5. The name of the scheme.
6. The name of the operator and, where the operator is a partnership, the names of all the partners.
7. The address and telephone number of the registered office of the operator or, if not a company, the principal place of business of the operator, and, if more than one, all the operators.
8. The address for service of notices if different from that referred to in paragraph 7 above.
9. The names and addresses of the registered offices, or, where the members of the scheme are not companies, the principal places of business, of the scheme's members.
10. Full particulars of the agreement for the constitution of the scheme including any rules or regulations to be observed by its members.

PART III

STATEMENT OF THE SCHEME'S POLICIES AND THE OPERATIONAL  
PLANS OF SCHEMES AND PRODUCERS

11. The matters to be contained in the statement to be provided pursuant to regulation 14(3)(d) are—
  - (a) the steps intended to be taken through the scheme to increase the use of recycled packaging waste in the manufacture of packaging, packaging materials or other products or materials supplied by its members; and
  - (b) the principal methods by which packaging waste is to be recovered through the scheme, and by which it is to be recycled through the scheme, together with information about the steps the user or consumer may take to assist the scheme in applying these methods.
12. The matters to be contained in the operational plan referred to in regulations 7(4)(f), 8(g), 14(3)(f) and 15(g) are matters which demonstrate—

- (a) that sufficient financial resources and technical expertise will be available to enable the performance of the recovery and recycling obligations of the producer or the obligations of the operator of the scheme under regulation 12(1) (as the case may be);
- (b) that the arrangements for recovery and recycling take account of any statement which contains the Secretary of State's policies in relation to the recovery and disposal of waste in England and Wales and which is made under section 44A(a) of the 1990 Act and any statement which contains SEPA's policies in relation to the recovery and disposal of waste in Scotland and which is made under section 44B(b) of the 1990 Act, in so far as they are relevant;
- (c) how the recovery and recycling obligations or the obligation of the operator of the scheme under regulation 12(1) (as the case may be) will be performed as regards each of the packaging materials relevant to those obligations including—
  - (i) the names and addresses of the reprocessors or exporters or both it is intended to use;
  - (ii) the names of any waste collection or disposal authorities from whom packaging waste is intended to be obtained;
  - (iii) the proportions in which the packaging waste which is to be recovered and recycled is to be obtained from the waste of a producer, other industrial or commercial waste, household waste or other waste;
  - (iv) the amounts to the nearest tonne of packaging waste it is proposed to recover in the three years immediately following registration; and
  - (v) the amounts to the nearest tonne of each such packaging material which it is proposed to recycle in the three years immediately following registration;
- (d) the steps it is proposed to take to recover and recycle any of the packaging materials relevant to the recovery and recycling obligations or the obligation of the operator of the scheme under regulation 12(1) (as the case may be) in order not to affect adversely the interests of any producer, whose recovery and recycling obligations are predominantly in relation to another such packaging material;
- (e) in relation to PERNs and PRNs which are expected to be acquired in each quarter of the three years immediately following registration, the tonnage of packaging waste and the type of recyclable material to which they are expected to relate;
- (f) a statement indicating the contracts anticipated to be made with reprocessors or exporters or both and packaging waste suppliers in the three years immediately following registration;
- (g) a statement as to how the producer or operator of a scheme (as the case may be) is assisting reprocessors to direct resources at—
  - (i) increasing the capacity for the collection and reprocessing of packaging waste; and
  - (ii) encouraging the development of markets for materials or goods made from recycled packaging waste;
- (h) how information to which regulation 19 applies is to be monitored under a monitoring plan so that the operator of the scheme can meet his obligations under regulation 15(f)).

**13.—**(1) For the purposes of paragraph 12(c)(ii) above “waste collection authority” and “waste disposal authority” shall have the meanings given in section 30(c) of the 1990 Act.

(2) For the purposes of paragraph 12(c)(iii) above “household waste”, “industrial waste” and “commercial waste” shall have the same meanings as in section 75(d) of the 1990 Act.

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(a) Inserted by s92(1) of the 1995 Act.

(b) Inserted by s92(1) of the 1995 Act.

(c) As amended by the 1995 Act, the Local Government (Wales) Act (1994 c. 19), the Local Government etc (Scotland) Act 1994 (1994 c. 39) and the Clean Neighbourhoods and Environment Act 2005 (2005 c. 16).

(d) As amended by S.I. 2005/894, the 1995 Act, S.I. 2005/1082, the Regulation of Care (Scotland) Act 2001 (2001 asp. 8), S.S.I. 2005/22 and S.I. 2005/1806.

## INFORMATION IN CERTIFICATE OF COMPLIANCE

The information to be contained in a certificate of compliance is—

1. The name and address of the approved person who is issuing the certificate.
2. The date of the certificate.
3. The producer in respect of whom the approved person is issuing the certificate (“the relevant producer”).
4. A statement by the approved person that the certificate has been issued in accordance with any guidance issued by the appropriate Agency under section 94(4) of the 1995 Act.
5. Certification by the approved person as to whether the relevant producer has complied with his recovery and recycling obligations.
6. Subject to paragraph 7 below, copies of all PRNs or PERNs acquired for the year to which the certificate relates.
7. A PRN or PERN which is issued in respect of packaging waste received by a reprocessor or exported in December of any year may be included in the certificate of compliance for either that year or the following year.

## CONDITIONS OF ACCREDITATION

1. The conditions referred to in regulation 25 are that—
  - (a) PRNs shall not be issued for more than the total amount of packaging waste which—
    - (i) is received for reprocessing on the reprocessing site of a reprocessor in the year or the part of the year for which he is accredited; and
    - (ii) will be capable of being reprocessed on the site for which he is accredited no later than the end of the following year;
  - (b) a reprocessor may only issue a PRN in respect of packaging waste once that packaging waste has been received for reprocessing on that reprocessing site;
  - (c) PRNs which relate to packaging waste received for reprocessing in December of a year shall specify that fact;
  - (d) PERNs shall not be issued for more than the total amount of packaging waste which an accredited exporter exports for reprocessing to the specified overseas reprocessing sites notified to and approved by the appropriate Agency in the year or part of the year for which he is accredited;
  - (e) a PERN may only be issued once the packaging waste that it relates to has been exported for reprocessing to the specified overseas reprocessing sites notified to and approved by the appropriate Agency;
  - (f) PERNs which relate to packaging waste exported in December of a year shall specify that fact;
  - (g) where a PRN or PERN has not been issued by 31st January in any year in respect of an amount of packaging waste received for reprocessing or exporting in the previous year, a PRN or PERN for that amount shall not be issued to producers or operators of schemes, or to the representatives of producers or operators of schemes but shall be issued to the appropriate Agency on or before 15th February in that year;

- (h) any blank PRN or PERN forms not issued and remaining blank in the book of PRNs or PERNs of a reprocessor or exporter are the property of the appropriate Agency and are to be returned to the appropriate Agency on demand;
- (i) the weight of packaging waste recorded on a PRN or PERN shall be—
  - (i) rounded up to the nearest whole tonne where the part tonne is 0.5 or more;
  - (ii) rounded down to the nearest whole tonne where the part tonne is less than 0.5;
- (j) duplicate copies of all PRNs and PERNs issued shall be retained and made available for inspection by the appropriate Agency at all reasonable times;
- (k) subject to sub-paragraph (g) above, PRNs and PERNs may only be issued to producers or operators of schemes, or to the representatives of producers or operators of schemes;
- (l) one or more substitute PRNs or PERNs shall be issued, on request, to the holder of an original PRN or PERN in exchange for the original, provided that—
  - (i) the aggregate tonnage of the substitute or substitutes so issued remains equal to that exchanged;
  - (ii) where the packaging waste was received or exported in December, the substitute shall also specify that fact;
  - (iii) the substitute PRNs or PERNs relate to the same year as the original; and
  - (iv) no substitutes which relate to packaging waste received for reprocessing in any given year may be issued after 31st January in the following year;
- (m) records shall be maintained for each quarter year on a form made available for the purpose by the appropriate Agency, shall be retained for at least 4 years after the end of the year in which the record is made and shall be made available to the appropriate Agency on demand;
- (n) reports shall be provided to the appropriate Agency before each of 21st April, 21st July, 21st October and 28th February in respect of the previous quarter year on—
  - (i) the tonnage of packaging waste received or exported for reprocessing in that quarter;
  - (ii) the tonnage of packaging waste reprocessed in that quarter;
  - (iii) the number of PRNs or PERNs issued in that quarter; and
  - (iv) a list of all PRNs and PERNs issued,  
on a form provided by the appropriate Agency;
- (o) a report shall be provided to the appropriate Agency before 28th February in each year which sets out—
  - (i) all the information provided in the quarterly reports which relate to the whole of the previous year; and
  - (ii) the amount of revenue received in the previous year from the sale of PRNs or PERNs and a statement of what it has been spent on;
- (p) except in the case of a reprocessor or exporter who has made the undertaking specified in regulation 24(1)(d)(i) for the whole of the year in which he is accredited, a report shall be provided to the appropriate Agency in the format specified by the appropriate Agency which—
  - (i) is from an independent auditor; and
  - (ii) confirms to the satisfaction of the appropriate Agency that the PRNs or PERNs issued by the reprocessor or exporter in relation to the previous year are consistent with the tonnage of packaging waste received or exported for reprocessing in relation to that year,  
before 28th February in the subsequent year;
- (q) a reprocessor or exporter must—
  - (i) as far as possible implement the business plan referred to in regulation 24(1)(c);



- (ii) undertake sampling and inspection of packaging waste received or exported for reprocessing, in accordance with a plan approved by the appropriate Agency; and
- (iii) comply with such other conditions as the appropriate Agency may specify in the notification of a grant of accreditation;
- (r) a PERN may only be issued in respect of packaging waste that is exported in accordance with Council Regulation (EEC) No. 259/93 of 1st February 1993 on the supervision and control of shipments of waste within, into and out of the European Community<sup>(a)</sup>, as amended by Commission Regulation (EC) No. 2557/2001<sup>(b)</sup>.

**2. For the purposes of this Schedule—**

- (a) “issue” in relation to a PRN or PERN means to sell or otherwise supply to a producer or operator of a scheme or to the representative of a scheme or operator of a scheme, and a reprocessor or exporter may issue a PRN or PERN to himself;
- (b) “quarter year” means the first, second, third and fourth three months of the year; and
- (c) “independent auditor” means—
  - (i) an auditor who would be eligible for appointment as company auditor of the reprocessor or exporter under Part II of the Companies Act 1989<sup>(c)</sup>; or
  - (ii) an environmental auditor who is—
    - (aa) registered with a supervisory body approved by the appropriate Agency; and
    - (bb) not ineligible for appointment as a company auditor of the reprocessor or exporter on the ground of lack of independence under section 27 of the Companies Act 1989.

## SCHEDULE 6

Regulation 28(3)

### PROCEDURE ON APPEALS

**1.—(1)** A person who wishes to appeal to the appropriate authority under regulation 27 shall do so by notice in writing given or sent to the appropriate authority.

**(2)** The notice shall be accompanied by—

- (a) a statement of the grounds of appeal;
- (b) a copy of any correspondence or document relevant to the appeal that could be required to be disclosed as part of standard disclosure under Part 31 of the Civil Procedure Rules 1998<sup>(d)</sup>; and
- (c) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be determined on the basis of written representations.

**(3)** The appellant shall serve a copy of his notice of appeal on the appropriate Agency together with copies of the documents mentioned in sub-paragraph (2) above.

**2.—(1)** Subject to sub-paragraph (2) below, notice of appeal shall be given before the expiry of the period of 2 months beginning with the date of the decision which is the subject of the appeal.

**(2)** The appropriate authority may at any time allow notice of an appeal to be given after the expiry of the period mentioned in sub-paragraph (1) above.

**3.** Where under regulation 28(2) the appeal is by way of a hearing, the person hearing the appeal shall, unless he has been appointed to determine the appeal under regulation 28(1)(a), make a

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<sup>(a)</sup> OJ No. L30, 6.2.1993, p.1.

<sup>(b)</sup> OJ No. L349, 31.12.2001, p.1.

<sup>(c)</sup> 1989 c. 40, to which there are amendments not relevant to these Regulations.

<sup>(d)</sup> S.I. 1998/3132 (L. 17).



written report to the appropriate authority which shall include his conclusions and recommendations or his reasons for not making any recommendations.

4.—(1) The appropriate authority or other person determining an appeal shall notify the appellant in writing of its or his decision and the reasons for the decision.

(2) If the appropriate authority determines an appeal after a hearing under regulation 28(2), it shall provide the appellant with a copy of any report made to him under paragraph 3 above.

(3) The appropriate authority or other person determining an appeal shall, at the same time as notifying the appellant of his decision, send the appropriate Agency a copy of any document sent to the appellant under this paragraph.

## SCHEDULE 7

Regulation 33

### PUBLIC REGISTER

1. The name and address of the registered office or principal place of business of—
  - (a) each registered producer;
  - (b) each registered operator of a scheme and each member of the scheme for which he is the operator; and
  - (c) each accredited reprocessor and accredited exporter.
2. In relation to accredited reproducers and exporters—
  - (a) each material type accepted;
  - (b) in relation to any recovery operation to be used, the appropriate classification of the applicable operation provided for in Annex IIB of the Waste Directive;
  - (c) in relation to the incineration at waste incineration plants with energy recovery, the appropriate classification of the applicable operation under Annex IIA or Annex IIB of the Waste Directive;
  - (d) whether the reprocessor or exporter is accredited to issue PRNs or PERNs for either 400 tonnes or less, or more than 400 tonnes of packaging waste;
  - (e) the trading name, address and telephone number of the reprocessor or exporter;
  - (f) the reprocessing site address for an accredited reprocessor;
  - (g) the reference number supplied by the appropriate Agency;
  - (h) whether or not quarterly returns and annual returns have been provided in accordance with the conditions set out in paragraphs 1(n), 1(o) and where required 1(p) of Schedule 5;
  - (i) whether the appropriate Agency has served a notice to suspend or cancel accreditation; and
  - (j) whether accreditation has been suspended or cancelled.
3. A statement in relation to each registered producer as to whether a satisfactory certificate of compliance has been furnished.
4. A statement in relation to each registered operator of a scheme as to whether he has complied with his obligations under regulation 12(1).

## GROUPS OF COMPANIES

1. This Schedule applies in relation to a relevant year—

- (a) where a holding company and one or more of its subsidiaries, or two or more subsidiary companies of the same holding company (in either case referred to in this Schedule and Schedule 10 as “a group of companies”) each satisfies the provisions of Columns 1 to 3 of Table 1 in Schedule 1 in relation to a class or classes of producer; and
- (b) where the aggregate of the turnovers, and the aggregate of the amounts of packaging or packaging materials handled by each such company, are sufficient to satisfy the threshold tests as provided by paragraph 3 of Schedule 1.

2. Subject to regulation 5, in respect of a year each company referred to in paragraph 1 above is a producer of a class specified in an entry in Column 4 of Table 1 in Schedule 1 if—

- (a) in that year and the preceding year the company performs the relevant functions specified in Column 1 of that Table in relation to that entry; and
- (b) in the preceding year the company made supplies of the materials or products specified in Column 2 of that Table in relation to that entry of a class specified in Column 3 of that Table in relation to that entry,

and the other provisions of that Schedule, other than paragraph 3, shall also have effect for the purposes of determining to which class of producer such a company belongs.

3. For the purposes of this Schedule and Schedule 10 “subsidiary” and “holding company” have the same meanings as they have in section 736(1) of the Companies Act 1985.

4. Subject to regulation 5, companies who are producers and are in a group of companies shall comply with their producer registration obligations for a relevant year by—

- (a) being registered for that year with the appropriate Agency as required by regulation 6, in which case each company so registered has its own recovery and recycling obligations, certifying obligations, and, where applicable, consumer information obligations; or
- (b) the holding company and one or more of the subsidiaries being registered together for that year with the appropriate Agency, (in this Schedule and Schedule 10 referred to as a “group registration”) in which case paragraphs 5 and 6 below shall apply.

5. Where there is a group registration—

- (a) the subsidiary companies in the group registration are exempt from complying with their producer responsibility obligations for the relevant year;
- (b) the holding company has a producer registration obligation for the relevant year which is an obligation to make the group registration and for this purpose regulations 5 to 11, and Parts I and II of Schedule 3, shall be read as if—
  - (i) references to the applicant or the producer were references to the holding company;
  - (ii) references to information to be provided regarding the producer were to information to be provided regarding each company in the group registration; and
  - (iii) the references in regulations 7(4)(e) and 9(2) to a fee for producer registration were read as references to a fee for group registration;
- (c) the holding company has recovery and recycling obligations and, where applicable, consumer information obligations for the relevant year which are the aggregate of its own obligations in respect of that year, if any, and the obligations which the subsidiary companies in the group registration would have had but for the group registration;
- (d) the holding company shall furnish records and returns and provide a certificate of compliance, and references in regulation 21 and Schedule 4—
  - (i) to a producer shall be read as references to the holding company, and

- (ii) to information shall be read as references to information regarding each company in the group registration.

**6. Where—**

- (a) there is a group registration;
- (b) a subsidiary company in the group is a small producer which has elected in the group registration application to follow the allocation method; and
- (c) the subsidiary company follows the allocation method during at least the year of registration and the following two years,

the obligations of the holding company for that subsidiary company shall be determined using the allocation method.

**7. This Schedule is subject to the provisions of Schedule 10.**

## 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.

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.

## SCHEDULE 10

Regulation 39

### MID-YEAR CHANGES

#### PART 1

##### SCHEME MEMBERSHIP

**1.** Subject to paragraphs 4 and 5 below, where a person who is a producer in respect of a year becomes a member of a registered scheme during that year, the recovery and recycling obligations of the producer for that year, referred to in regulation 12(1), shall be performed through the scheme.

**2.** Where a person who is a producer in respect of a year ceases to be a member of a registered scheme during that year, he shall comply with his recovery and recycling obligations for that year, calculated as provided in regulation 4 and Schedule 2.

**3.** Where a person who is a producer in respect of a year ceases to be a member of one registered scheme (“the first scheme”) and becomes a member of another registered scheme (“the second scheme”) during that year, the first scheme shall not be required to perform any of the producer’s recovery and recycling obligations, referred to in regulation 12(1), and all such obligations shall be performed through the second scheme.

#### PART II

##### GROUP MEMBERSHIP

**4.** This Part applies where—

- (a) a company joins a group of companies and becomes a company to which paragraph 1 of Schedule 8 applies; or
- (b) a holding company or subsidiary company to which paragraph 1 of Schedule 8 applies ceases to belong to a group of companies.

**5.** Where paragraph 4(a) above applies the company shall either—

- (a) be registered separately with the appropriate Agency as required by regulation 6; or
- (b) be registered with the appropriate Agency as part of a group registration under Schedule 8 and for the purposes of this paragraph—

- (i) such registration is effected upon notice being given by the holding company to the appropriate Agency of the change in the group registration; and
- (ii) where prior to joining the group of companies the company was registered with an appropriate Agency, the Agency shall cancel the company's registration and regulation 11(3) shall apply to that cancellation as it applies to a cancellation under regulation 11(2).

**6. Where—**

- (a) paragraph 4(a) above applies;
- (b) in relation to the obligation year the company itself satisfies the threshold tests; and
- (c) the company is registered as part of a group registration,

the holding company shall comply with the requirements of the company's recovery and recycling obligations for the year in which it joins the group.

**7. Where—**

- (a) paragraph 4(a) above applies;
- (b) in relation to the obligation year the company itself satisfies the threshold tests; and
- (c) the company is registered separately with the appropriate Agency,

the company shall comply with its recovery and recycling obligations for the year in which it joins the group.

**8. Where—**

- (a) paragraph 4(a) above applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and
- (c) the company is registered as part of a group registration,

the holding company shall comply with a proportion of the requirements of the company's recovery and recycling obligations for the year in which it joins the group, such proportion being calculated as provided in paragraph 16 below.

**9. Where—**

- (a) paragraph 4(a) above applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and
- (c) the company is registered separately with the appropriate Agency,

the company shall comply with a proportion of its recovery and recycling obligations for the year in which it joins the group, such proportion being calculated as provided in paragraph 16 below.

**10. Where—**

- (a) paragraph 4(b) above applies; and
- (b) in relation to the obligation year the company itself satisfies the threshold tests,

it shall register with the appropriate Agency as required by regulation 6 within 28 days of ceasing to be a member of a group and regulations 7 to 11 shall apply as if this were an occurrence specified in regulation 7(3)(d).

**11. Where—**

- (a) paragraph 4(b) above applies;
- (b) in relation to the obligation year the company itself satisfies the threshold tests; and
- (c) the company was registered as part of a group registration,

the holding company shall comply with the requirements of the company's recovery and recycling obligations for the year in which it ceases to be a member of the group.

**12. Where—**

- (a) paragraph 4(b) above applies;
- (b) in relation to the obligation year the company itself satisfies the threshold tests; and
- (c) the company is registered separately with the appropriate Agency,

the company shall comply with its recovery and recycling obligations for the year in which it ceases to be a member of the group.

**13. Where—**

- (a) paragraph 4(b) above applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and
- (c) the company was registered as part of a group registration,

the holding company shall comply with the requirements of the company's recovery and recycling obligations for the year in which it ceases to be a member of the group.

**14. Where—**

- (a) paragraph 4(b) above applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and
- (c) the company was registered separately with the appropriate Agency,

the holding company shall comply with the requirements of the company's recovery and recycling obligations for the year in which it ceases to be a member of the group.

**15. Where in a relevant year paragraph 4 above applies to a company as a result of that company ceasing to be a member of one group ("the first group") and becoming a member of another group ("the second group")—**

- (a) where in relation to each group the company is registered as part of a group registration, the first group shall comply with the requirements of the company's recovery and recycling obligations for the year in which the company ceases to be a member of that group and the second group shall comply with those requirements in the following and any subsequent year in which the company is a member of the second group;
- (b) where in relation to each group the company is registered separately with the appropriate Agency, the company shall comply with its recovery and recycling obligations for the year;
- (c) where in relation to the first group the company was registered as part of a group registration and in relation to the second group the company is registered separately with the appropriate Agency, the holding company shall comply with the requirements of the company's recovery and recycling obligations for the year in which the company ceases to be a member of that group and the company itself shall comply with its recovery and recycling obligations for any subsequent year; or
- (d) where in relation to the first group the company was registered separately with the appropriate Agency and in relation to the second group the company is registered as part of a group registration, the company itself shall comply with its recovery and recycling obligations for the year in which it joins the group and the holding company shall comply with the requirements of the company's recovery and recycling obligations for any subsequent year.

**16. The proportion referred to in paragraphs 8 and 9 above shall be calculated as follows—**

$$G / H$$

where—



“G” is the number of days in the relevant year during which the company was a member of the group;

“H” is the number of days in the relevant year; and

“G / H” is the proportion.

**17.** For the purposes of this Part of this Schedule, the “threshold tests” means the threshold tests provided in paragraph 3 of Schedule 1.

### PART III INCAPACITY

**18.** Where in a relevant year a producer dies or becomes bankrupt or incapacitated (“the first producer”) that person shall cease to have any producer responsibility obligations for that year and any person who carries on the activities of the first producer following that event shall be treated as a producer and shall have the producer responsibility obligations of the producer for that year.

**19.** Any person carrying on the activities of the first producer referred to in paragraph 18 above shall within 28 days of commencing to do so—

- (a) inform the appropriate Agency in writing of that fact and the date of the death, the date of bankruptcy or the nature of the incapacity and the date on which it began; and
- (b) apply to be registered as required by regulation 6 and for this purpose the requirement in regulation 7(4)(e) shall not apply.

**20.** In relation to a producer which is a company, the references to a person becoming bankrupt or incapacitated in paragraph 18 above shall be construed as references to it going into liquidation or receivership or entering administration.

## EXPLANATORY NOTE

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

These Regulations (which apply to Great Britain) impose on producers the obligation to recover and recycle packaging waste, and related obligations, in order for the United Kingdom to attain the recovery and recycling targets set out in Article 6(1) of Council Directive 94/62/EC on packaging and packaging waste as amended by Council Regulation (EC) No 1882/2003, Council Directive 2004/12/EC and Council Directive 2005/20/EC (“the Packaging Waste Directive”).

Part I of these Regulations (“General”) sets out various definitions used in these Regulations (regulation 2: interpretation and notices). In particular, certain terms used in these Regulations have the same meaning as in the Packaging Waste Directive. This includes the following terms—“packaging”, “packaging waste”, “recovery”, “recycling” and “reuse”. Part I also excludes charities from having producer responsibility obligations (regulation 3).

Part II of these Regulations (“Producers and Obligations”) provides that where a producer (defined in regulation 4) satisfies the two threshold tests (set out in Schedule 1, paragraph 3), he will have producer responsibility obligations for that year. The criteria are to have a turnover of more than £2M (in the last financial year in respect of which audited accounts are available) and to have handled (as defined in Schedule 1) packaging or packaging materials (defined in regulation 2) weighing more than 50 tonnes in the previous year. Schedule 1 sets out the detailed basis upon which a person qualifies as a producer with producer responsibility obligations under these Regulations. Schedule 2 sets out the rules for working out the level of a producer’s recovery and recycling obligations.

A producer can purchase packaging waste recovery notes (“PRNs”) or packaging waste export recovery notes (“PERNs”) or both to satisfy his obligations himself (regulation 4(5)), or may join a compliance scheme. Where he joins a scheme that is registered with an appropriate Agency he is exempt from complying with his producer responsibility obligations (regulation 5) for that year. The scheme must meet the recovery and recycling obligations and, where appropriate, the consumer information obligations, that its members would have had, but for their membership of the scheme.

Part III of these Regulations (“Registration: Producers and Schemes”) sets out the requirements for registration of a producer or a scheme, the conditions that apply and why (and how) that registration may be cancelled. Under regulation 6 producers who are not members of registered schemes need to be registered, in England or Wales with the Environment Agency or, in Scotland with the Scottish Environment Protection Agency. Regulation 7 (Application for producer registration) sets out the information needed from the producer when he applies. In particular, he must supply the information set out in Part I of Schedule 3. Regulation 8 sets out the conditions of registration of a producer. Where the appropriate Agency is satisfied that an application has been properly made (including payment of the relevant fee) it shall be registered with the appropriate Agency for the year. There is provision for cancellation of registration in regulation 11 where a producer fails to meet the conditions specified in regulation 8 or is subsequently found to have given false information on his application or where he joins a registered compliance scheme.

There are similar registration requirements for schemes in regulations 14 to 18. Before a compliance scheme can be registered, it must have approval from the appropriate authority (regulation 13).

Part IV of these Regulations (“Records, Returns and Certificate”) sets out the requirements on producers and operators of schemes to keep records and furnish returns to the appropriate Agency (regulations 20 and 22) and on producers to provide certificates demonstrating compliance with their recovery and recycling obligations (regulation 21 and Schedule 4).

Part V of these Regulations (“Accreditation of Reprocessors and Exporters”) sets out the procedure for applying for accreditation as a reprocessor to issue PRNs or as an exporter to issue PERNs. Regulation 24 sets out the procedure for applying, regulation 25 and Schedule 5 set out

the conditions that apply to such accreditation and regulation 26 the basis upon which such accreditation may be suspended or cancelled.

Part VI of these Regulations (“Appeals”) sets out the right of appeal against certain decisions of the appropriate Agency (regulation 27). The procedure to be followed is set out in regulation 28 and Schedule 6. This Part also sets out the status of the producer or scheme pending the resolution of the appeal (regulation 30).

Part VII of these Regulations (“Agencies’ Powers and Duties”) sets out the duties of the appropriate Agencies to monitor compliance (regulation 31) and their duties in relation to keeping a public register (regulation 33 and Schedule 7). Regulations 34 and 35 concern the powers of the appropriate Agencies to approve persons to issue certificates of compliance and of entry and inspection. Regulation 36 requires the Environment Agency and SEPA to collate information on the common database and for the Environment Agency to pass this data to the Secretary of State.

Part VIII of these Regulations (“Groups of Companies, Licensors and Pub Operating Businesses and Mid-Year Changes”) sets out how to apply these Regulations to groups of companies (regulation 37 and Schedule 8) and to situations where two or more businesses are in relationships involving licenses of trade marks or pub operating agreements (regulation 38 and Schedule 9) and how to apportion the recovery and recycling obligations and other obligations where mid-year changes occur (regulation 39 and Schedule 10).

Part IX of these Regulations sets out various offences. Under regulation 40 it is an offence to contravene the producer responsibility obligations to register, recover and recycle packaging waste, and furnish a certificate of compliance to the appropriate Agency, or to provide false or misleading information, or to prevent the appropriate Agencies from exercising their powers of entry and inspection.

Part X of these Regulations revokes the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 (S.I. 2005/3468) and includes a transitional provision to account for actions taken or time periods commenced under the Producer Responsibility Obligations (Packaging Waste) Regulations 2005.

The transposition note relating to these Regulations and a Regulatory Impact Assessment which shows the anticipated cost of compliance to businesses and the environmental benefits in respect of these Regulations may be obtained from the Producer Responsibility Unit, Department for Environment, Food and Rural Affairs, Room 6/F5, Ashdown House, 123 Victoria Street, London SW1E 6DE. A copy of the transposition note and Regulatory Impact Assessment have been placed in the library of each of the Houses of Parliament.

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E0476 3/2007 170476T 19585

