

2010 No. 2849

ENVIRONMENTAL PROTECTION

**The Producer Responsibility Obligations (Packaging Waste)
(Amendment) Regulations 2010**

Made - - - - *25th November 2010*

Coming into force in accordance with regulation 1(b)

These Regulations are made by the Secretary of State as respects England, Scotland^(a) and Wales^(b) in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(c) and sections 93 to 95 of the Environment Act 1995^(d).

These Regulations implement Article 6(1) of Council Directive 94/62/EC on packaging and packaging waste^(e) and section 93(3)(a) of the Environment Act 1995 applies.

The Secretary of State is a Minister designated^(f) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the environment.

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

The Secretary of State makes the following Regulations—

- (a) after consultation in accordance with section 93(2) of the Environment Act 1995;
- (b) having regard to the matters specified in section 93(6), as required by section 93(5) of that Act (subject to the modifications required through the exercise of the powers in section 93(4)); and
- (c) in accordance with the duty in section 93(7) of that Act.

(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 European Union law in respect of devolved matters, the Secretary of State's function in relation to implementing those obligations continues to be exercisable as regards Scotland.

(b) Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer of the relevant functions of the Secretary of State so far as they are exercisable in relation to Wales to the Welsh Ministers by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006, the Secretary of State's function in relation to implementing obligations under European Union law continues to be exercisable as regards Wales.

(c) 1972 c. 68. Section 2(2) is amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(d) 1995 c. 25. Section 94 is amended by section 3(1)(b) of, and paragraph 6 of Schedule 2 to, the Competition Act 1998 (c. 41) and by S.I. 2000/311 and S.I. 2004/1261.

(e) OJ No L 365, 31.12.1994, p 10, as amended by Directive 2004/12/EC of the European Parliament and of the Council (OJ No L 47, 18.2.2004, p 26).

(f) S.I. 2008/301.

Citation and commencement

1. These Regulations—
 - (a) may be cited as the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2010; and
 - (b) come into force on the day after the day on which they are made.

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

2. The Producer Responsibility Obligations (Packaging Waste) Regulations 2007(a) are amended in accordance with regulations 3 to 22.

Amendment of regulation 2 (interpretation and notices)

3. In regulation 2(2)—
 - (a) for the definition of “approved person”, substitute—

““approved person” means the person for the time being approved under regulation 34 for the purpose of—

 - (a) issuing certificates of compliance under regulation 21 and signing the form referred to in regulation 7(4)(c) or (ca) or 19(2)(b) in relation to a particular producer; or
 - (b) signing the form referred to in regulation 14(3)(c) and the statement referred to in regulation 22(4) in relation to a particular operator of a scheme;”;
 - (b) for the definition of “financial year”, substitute—

““financial year” in relation to a person—

 - (a) where the person is a company is determined as provided in section 390(1) to (3) of the Companies Act 2006(b); and
 - (b) in any other case has the meaning given in section 390(4) of the Companies Act 2006, but as if the reference there to an undertaking were a reference to that person;”;
 - (c) after the definition of “financial year”, insert—

““marine installation” means any artificial island, installation or structure at sea, other than a vessel;”;
 - (d) for the definition of “SIC code”, substitute—

““SIC code” means a code included in “Indexes to the UK Standard Industrial Classification of Economic Activities 2007” published by the Office for National Statistics in 2009(c);”;
 - (e) in the definition of “small producer”—
 - (i) omit “who satisfies the threshold tests in paragraph 3 of Schedule 1 but”; and
 - (ii) for “section 242 of the Companies Act 1985”, substitute “section 441 of the Companies Act 2006(d)”; and
 - (f) for the definition of “turnover”, substitute—

““turnover” means, in relation to a person, their turnover as defined in section 539 of the Companies Act 2006 but as if the references to a company were references to that person;”.

(a) S.I. 2007/871; relevant amending instruments are S.I. 2008/413 (revoked by regulation 23 below), 2008/1941, 2010/1159 and 2010/1820.

(b) 2006 c. 46.

(c) ISBN 978-0-230-21014-1.

(d) Section 441 was amended by S.I. 2008/393.

Amendment of regulation 5 (producers and scheme membership)

4.—(1) Regulation 5 is renumbered as paragraph (1) of that regulation.

(2) After that paragraph, insert—

“(2) A producer shall not be a member of a registered scheme for the purposes of these Regulations if they fail to—

- (a) provide any information the scheme requests for the purposes of meeting its producer responsibility obligations within a reasonable period of receiving such a request; or
- (b) pay any fee required for membership of the scheme.”.

Amendment of regulation 7 (application for producer registration)

5. In regulation 7—

(a) in paragraph (4)—

(i) for sub-paragraph (c), substitute—

“(c) 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 they belong to more than one class of producer, which of those classes constitutes their main activity as a producer; and
- (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;

(ca) other than in the case of a small producer who has elected to follow the allocation method under sub-paragraph (d) and, subject to paragraph (9), 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) in relation to each class of producer—

- (aa) the amount of packaging waste which they are 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;
- (bb) the amount of packaging waste which they are required to recycle for each kind of recyclable material by virtue of paragraph 3(3) of Schedule 2;

(ii) the basis on which the amounts referred to in paragraph (i) were calculated; and

(iii) such other information, which is specified on the form, as the appropriate Agency reasonably requires in order to determine the application;”;

(ii) omit sub-paragraph (e);

(b) in paragraph (6)—

(i) for sub-paragraph (a)(i), substitute—

“(i) paragraphs (4)(a) and (b) and (11);”;

(ii) in sub-paragraph (a)(ii), after “(4)(c),” insert “(ca),”;

(iii) in sub-paragraph (b), after “(4)(c),” insert “or (ca)”;

(c) in paragraph (9), after “(4)(c),” insert “ or (ca)”;

(d) after paragraph (10), insert—

“(11) A producer making an application for registration shall pay the fee required in regulation 9 to the appropriate Agency on or before the relevant date.”.

Amendment of regulation 8 (conditions of registration of a producer)

6. In regulation 8(c)(iii), after “7(4)(c),” insert “or (ca),”.

Amendment of regulation 9 (forms and fees for producer registration)

7. In regulation 9(1), after “7(4)(c),” insert “or (ca)”.

Amendment of regulation 13 (application for approval of a scheme)

8. In regulation 13(5)(c), omit “, together with copies of the PRNs or PERNs or both”.

Amendment of regulation 14 (application for registration of a scheme)

9. In regulation 14—

- (a) in paragraph (1), for “7th April”, substitute “15th April”;
- (b) in paragraph (3)(c)—
 - (i) omit “subject to paragraph (6) below,”;
 - (ii) after “by the appropriate Agency”, insert “and signed in accordance with the requirement in paragraph (3A)”;
 - (iii) at the end of paragraph (i), add “and each class of producer to which each producer belongs”;
 - (iv) in paragraph (iv), for “paragraphs (4)(c)(iv) and (v)”, substitute “paragraph (4)(ca)(i) and (ii)”;
- (c) in paragraph (3)(e), at the beginning, insert “except where a scheme is registered in respect of the previous year,”;
- (d) for paragraph (3)(f), substitute—
 - “(f) be accompanied—
 - (i) on a first application for registration, by an operational plan for the scheme complying with Part 3 of Schedule 3; and
 - (ii) on any subsequent application, by a revised version of that plan unless it has already been provided pursuant to regulation 15(g);”;
- (e) after paragraph (3), insert—
 - “(3A) The requirement mentioned in paragraph (3)(c) is that the form be signed by—
 - (a) the approved person; or
 - (b) in the case of a scheme that has not already been registered, anyone who is eligible to be an approved person under regulation 34(2)(a).”;
- (f) in paragraph (4), for sub-paragraphs (c) and (d), substitute—
 - “(c) the appropriate Agency is satisfied as to the contents of the operational plan provided as required by paragraph (3)(f);
 - (d) the scheme has been approved by the appropriate authority; and
 - (e) the scheme was either registered in the previous year or the scheme was approved by the appropriate authority no earlier than in the year previous to that in which the application for registration is made,”;
- (g) omit paragraph (6); and

(a) Substituted by regulation 14 below.

(h) after paragraph (7), insert—

“(8) Where an application for registration is refused on the grounds of failure to meet the requirements of paragraph (4)(e), the operator must make a new application for approval of the scheme in accordance with regulation 13 before making an application for registration of the scheme under this regulation.”.

Amendment of regulation 22 (schemes— records and returns)

10. In regulation 22(4), after “statement”, insert “signed by the approved person”.

Insertion of regulation 22A

11. After regulation 22, insert—

“Notification of winding-up, receivership, administration, etc.

22A.—(1) This regulation applies to—

- (a) the operator of a scheme;
- (b) a producer; or
- (c) a reprocessor or an exporter accredited in accordance with Part 5 (accreditation of reproducers and exporters).

(2) A company or limited liability partnership to which this regulation applies shall inform the appropriate Agency as soon as is practicable upon becoming aware that one or more relevant circumstances apply or are about to apply to them.

(3) The operator of a scheme must inform the appropriate Agency as soon as is practicable upon becoming aware that one or more relevant circumstances apply or are about to apply to the scheme it operates.

(4) For the purposes of this regulation “relevant circumstances” are—

- (a) a winding-up order has been made or a resolution for voluntary winding-up has been passed;
- (b) a determination for a voluntary winding-up has been made;
- (c) a receiver or a manager of the company or limited liability partnership’s undertaking has been duly appointed;
- (d) its undertaking has entered administration;
- (e) a voluntary arrangement proposed for the purposes of Part 1 of the Insolvency Act 1986(a) has been approved under that Part of the Act.”.

Amendment of regulation 24 (application for accreditation)

12. In regulation 24—

(a) for paragraph (1)(c), substitute—

“(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) investment in infrastructure and the development of capacity for the collection, sorting, treatment and reprocessing of packaging waste;
- (ii) funding provided to other persons involved in the collection of packaging waste;

(a) 1986 c. 45. Part 1 was amended by the Insolvency Act 2000 (c. 39), the Enterprise Act 2002 (c. 40) and by S.I. 2005/879 and S.I. 2009/1941. There are other amendments but none is relevant to these Regulations.

- (iii) reductions in the prices of, and the development of new markets for, materials or goods made from recycled packaging waste;
 - (iv) the costs of complying with obligations in these Regulations;
 - (v) funds retained for future investment;
 - (vi) the development of a communications strategy for consumers of packaging made from recyclable materials; and”;
- (b) at the end of paragraph (6), add “within 28 days of the breach”; and
- (c) for paragraph (7), substitute—
- “(7) An application to extend the accreditation of an exporter to include a further reprocessing site or sites to which they want 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—
- (a) £85 for the first form submitted as part of the application; and
 - (b) £35 for each additional form submitted as part of the application.”.

Amendment of regulation 33 (public register)

13. In regulation 33(4), omit “and shall note the date on which the amendment is made”.

Amendment of regulation 34 (approval of persons to issue certificates of compliance)

14. For regulation 34, substitute—

“Approved persons

34.—(1) The appropriate Agency may approve a person listed in paragraph (2) for the purposes of—

- (a) in relation to a producer, issuing certificates of compliance and signing the form referred to in regulation 7(4)(c) or (ca) or 19(2) (as the case may be);
- (b) in relation to the operator of a scheme, signing the form referred to in regulation 14(3)(c) or the statement referred to in regulation 22(4).

(2) A person listed is, where the relevant person—

- (a) is an individual, that individual;
- (b) is a partnership, a partner;
- (c) is a company registered in Great Britain, a director or company secretary of that company;
- (d) is an unincorporated body, an individual who has control or management of that body; or
- (e) does not have a registered office in Great Britain, an individual who has control or management of the relevant person.

(3) For the purposes of paragraph (2), the “relevant person” means a producer or the operator of a scheme (as the case may be).”.

Amendment of regulation 36 (collation and provision of information)

15. In regulation 36—

- (a) in paragraph (2), after “7(4)(c)”, insert “and (ca)”; and
- (b) in paragraph (4), for “31st January”, substitute “28th February”.

Amendment of Schedule 1 (producers)

- 16.—(1) Schedule 1 is amended as follows.
- (2) In paragraph 1(2), omit “at the same time, and”.
- (3) In paragraph 4—
- (a) in sub-paragraph (1), for “section 242 of the Companies Act 1985”, substitute “section 441 of the Companies Act 2006(a)”; and
- (b) at the end of sub-paragraph (2)(b)(iii), add “(with the exception of any packaging or packaging materials exported from the United Kingdom to a marine installation)”.

Amendment of Schedule 2 (recovery and recycling obligations)

- 17.—(1) Schedule 2 is amended as follows.
- (2) In paragraph 3(1), for the definition of “P”, substitute—
- ““P” is the amount of packaging and packaging materials handled in Great Britain by the producer in the preceding year, calculated to the nearest tonne by—
- (a) taking into account packaging, including reused transit packaging, or packaging materials, which were imported into the United Kingdom by the producer; 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 or which to the producer’s reasonable knowledge were otherwise exported from the United Kingdom (except to a marine installation); and
- (iv) reused transit packaging (except reused transit packaging imported into the United Kingdom);”.
- (3) For paragraph 3(2), substitute—
- “(2) The proportion of the packaging waste referred to in sub-paragraph (1) which is to be recovered by recycling, in relation to a class of producer to which the producer belongs in the years 2010 to 2012 is not less than 92% of the amount by tonnage of packaging waste represented by “Z” in sub-paragraph (1).”.
- (4) For paragraph 5, substitute—
- “5. The recovery target “X” for the years 2010 to 2012 is 74%.”.
- (5) For Table 2 in paragraph 6, substitute—

“Table 2: Recycling targets

<i>Material</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Glass	81	81	81
Aluminium	40	40	40
Steel	69	71	71
Paper/Board	69.5	69.5	69.5
Plastic	29	32	32
Wood	22	22	22”

- (6) For paragraph 8, substitute—

(a) Section 441 was amended by S.I. 2008/393.

“8. The recycling allocation “B” for the years 2010 to 2012 is 29.”.

Amendment of Schedule 3 (information)

18. In Schedule 3, paragraph 12(h), for “15(f)”, substitute “12(1)”.

Amendment of Schedule 5 (conditions of accreditation)

19.—(1) Schedule 5 is amended as follows.

(2) In paragraph 1—

- (a) in sub-paragraph (g), for “15th February”, substitute “28th February”;
- (b) omit sub-paragraphs (h), (j) and (l);
- (c) for sub-paragraph (o), substitute—
 - “(o) a report shall be provided to the appropriate Agency before 28th February in each year which—
 - (i) sets out all the information provided in the quarterly reports which relate to the whole of the previous year;
 - (ii) sets out the amount of revenue received in the previous year from the sale of PRNs and PERNs;
 - (iii) sets out what that amount has been spent on, including information on the matters set out in paragraphs (i) to (vi)(a) of regulation 24(1)(c);
 - (iv) accounts for the whole of that amount;
 - (v) sets out and explains any deviation during the previous year from the business plan referred to in regulation 24(1)(c);
 - (vi) is in the form prescribed by the appropriate Agency for this purpose;”;
- (d) omit sub-paragraph (p);
- (e) for sub-paragraph (r), substitute—
 - “(r) a PERN may only be issued in respect of packaging waste that is exported in accordance with—
 - (i) Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste(b); and
 - (ii) Commission Regulation (EC) No 1418/2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply(c);
 - (s) where applicable, a reprocessor or exporter must comply with regulation 24(6)”.

(3) In paragraph 2—

- (a) after sub-paragraph (b), omit “; and”; and
- (b) omit sub-paragraph (c).

Amendment of Schedule 7 (public register)

20. In Schedule 7, paragraph 2(h), for “paragraphs 1(n), 1(o) and where required 1(p)”, substitute “paragraph 1(n) and (o)”.

(a) Substituted by regulation 12(a) above.

(b) OJ No L 190, 12.7.2006, p1, as last amended by Commission Regulation (EU) No 413/2010 (OJ No L 119, 13.5.2010, p1).

(c) OJ No L 316, 4.12.2007, p6, as last amended by Commission Regulation (EC) No 967/2009 (OJ No L 271, 16.10.2009, p12).

Amendment of Schedule 8 (groups of companies)

21. In Schedule 8—

- (a) in paragraph 3, for “section 736(1) of the Companies Act 1985”, substitute “section 1159 of the Companies Act 2006”; and
- (b) in paragraph 5(b)(iii), for “regulations 7(4)(e) and 9(2)”, substitute “regulation 9(2)”.

Amendment of Schedule 10 (mid-year changes)

22. In Schedule 10, paragraph 19(b), omit “and for this purpose the requirement in regulation 7(4)(e) shall not apply”.

Revocation

23. The Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2008(a) are revoked.

25th November 2010

Henley
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

(a) S.I. 2008/413.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871) (the “2007 Regulations”), which implement Article 6(1) of Council Directive 94/62/EC on packaging and packaging waste (OJ No L 365, 31.12.1994, p 10) as amended by Directive 2004/12/EC of the European Parliament and of the Council (OJ No L 47, 18.2.2004, p 26).

These Regulations were notified in draft to the European Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ No L 24, 21.7.1998, p 37), as last amended by Council Directive 2006/96/EC (OJ No L 363, 20.12.2006, p 81).

Regulation 3 amends definitions in the 2007 Regulations. Regulation 4 amends regulation 5 of the 2007 Regulations to impose direct requirements in relation to the payment of fees and provision of information on producers who become members of registered schemes.

Regulation 5 amends regulation 7(4)(c) of the 2007 Regulations to remove parts of the exemption for small producers in relation to the information that must be provided to the appropriate Agency each year. This also inserts a new regulation 7(4)(ca) to preserve parts of this exemption for small producers.

Regulation 9 amends regulation 14 of the 2007 Regulations to change when applications for scheme registrations must be made and what information must accompany these applications. Regulation 11 inserts a new regulation 22A into the 2007 Regulations to create an obligation on operators of schemes, producers and accredited reprocessors and exporters to provide information to the appropriate Agency about circumstances including winding-up orders, the appointment of a receiver and entering administration.

Regulation 12 amends regulation 24 of the 2007 Regulations to change what must be included in business plans submitted as part of an application for accreditation by a reprocessor or exporter. Regulation 14 changes who may be specified as an approved person for the purpose of issuing certificates of compliance and signing the specified forms.

Other amendments include:

(a) changes to paragraph 1(2) of Schedule 1 regarding the allocation of producer obligations for those carrying out packer/filler and convertor obligations and a change to paragraph 4(2)(b)(iii) to remove packaging or packaging materials exported from the United Kingdom to a marine installation from the exclusion from the calculation of a producer’s recovery and recycling obligations (regulation 16);

(b) replacement of the definition used to determine the amount of packaging and packaging materials handled by producers for the purpose of calculating their recovery targets; recovery, recycling and small producer recycling allocation targets for the years between 2010 and 2012 are provided in amendments to paragraphs 5, 6 and 8 of Schedule 2 (regulation 17);

(c) changes to the annual reports provided to the appropriate Agency by accredited reprocessors and exporters and removing the requirement to provide a report from an independent auditor (regulation 19).

An impact assessment which shows the anticipated cost of compliance to businesses and the public sector and the environmental benefits in respect of these Regulations may be obtained from the Producer Responsibility Unit, Zone 6D, Ergon House, Horseferry Road, London SW1P 2AL and is available alongside the Explanatory Memorandum and the instrument on the OPSI website.

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STATUTORY INSTRUMENTS

2010 No. 2849

ENVIRONMENTAL PROTECTION

The Producer Responsibility Obligations (Packaging Waste)
(Amendment) Regulations 2010

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