STATUTORY INSTRUMENTS

2016 No. 241

ENVIRONMENTAL PROTECTION
ENVIRONMENTAL PROTECTION, NORTHERN IRELAND

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

Made - - - - 23rd February 2016

Coming into force in accordance with regulation 1(b)

The Secretary of State makes these Regulations in exercise of the powers conferred by—

(a) section 2(2) of the European Communities Act 1972(**1**) ("the ECA 1972");

(b) sections 93 and 94 of the Environment Act 1995(**2**) ("the EA 1995").

The Secretary of State is designated(**3**) for the purposes of the ECA 1972 in relation to the environment.

The Secretary of State has consulted in accordance with section 93(2) of the EA 1995, and has had regard to the matters specified in section 93(6) of the EA 1995 as required by section 93(5) of that Act.

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 EA 1995 and paragraph 2(2) of Schedule 2 to the ECA 1972.

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

(**2**) 1995 c.25; section 93 was amended by S.I. 2011/1043. Section 94 was amended by S.I. 2000/311, 2004/1261, 2011/1043 and 2013/755. Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c.32), despite the transfer to the Welsh Ministers of functions in relation to implementing obligations under European Union law in relation to devolved matters, the Secretary of State's function in relation to implementing those obligations continues to be exercisable as regards Wales. Under section 57 of the Scotland Act 1998 (c.46), despite the transfer to the 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.

(**3**) S.I. 2008/301.

PART 1

Introduction

Citation and commencement

1. These Regulations—

(a) may be cited as the Producer Responsibility Obligations (Packaging Waste) (Miscellaneous Amendments) Regulations 2016;

(b) come into force on the day after the day on which they are made.

Amendment of subordinate legislation

2.—(1) The Producer Responsibility Obligations (Packaging Waste) Regulations 2007(**4**) are amended in accordance with Part 2.

(2) The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007(**5**) are amended in accordance with Part 3.

PART 2

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

Regulation 2

3. In regulation 2 (interpretation and notices)(**6**)—

(a) in paragraph (1), at the appropriate place, insert—

> ""PRONIR" means the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007;";

(b) in paragraph (2)—

(i) in the definition of "appropriate agency"—

(aa) for each "agency", substitute "Agency";

(bb) in paragraph (d)—

(i) in sub-paragraph (v)(aa), for "the Secretary of State", substitute "that Agency";

(ii) in sub-paragraph (v)(bb), for "the Scottish Ministers", substitute "that Agency";

(iii) in sub-paragraph (vi)(aa), for "the Secretary of State", substitute "that Body";

(iv) in sub-paragraph (vi)(bb), for "the Scottish Ministers" substitute "that Agency";

(v) for sub-paragraphs (vii) and (viii), substitute—

(**4**) S.I. 2007/871, amended by S.I. 2010/2849, 2013/755 and 1821; there are other amending instruments but none is relevant.
(**5**) S.R. (N.I.) 2007/198, amended by S.R. (N.I.) 2010/396; there are other amending instruments but none is relevant.
(**6**) In regulation 2, the definition of "appropriate Agency" was amended by S.I. 2013/755 and the definition of "appropriate authority" was amended by S.I. 2013/755 and 1821.

"(vii) in relation to schemes, where there is more than one operator of a scheme and such operators have registered offices or principal places of business in England and in Wales (but not in Scotland)—

(aa) the Environment Agency, where the operators have elected to apply for approval of the scheme from that Agency; or

(bb) the Natural Resources Body for Wales, where the operators have elected to apply for approval of the scheme from that Body;

(viii) in relation to schemes, where there is more than one operator of a scheme and such operators have registered offices or principal places of business in England, in Scotland and in Wales—

(aa) the Environment Agency, where the operator has elected to apply for approval of the scheme from that Agency;

(bb) SEPA, where the operator has elected to apply for approval from that Agency; or

(cc) the Natural Resources Body for Wales, where the operator has elected to apply for approval from that Body;";

(ii) in the definition of "appropriate authority", omit paragraphs (b) and (c);

(iii) at the appropriate place, insert—

""DOENI" means the Department of the Environment in Northern Ireland;";

(c) in paragraph (4)(a), for "regulations 14(5), 17 or 18(3)", substitute "regulation 13, 13A, 13B, 13C, 14 or 17".

Regulation 7

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

Regulation 8

5. In regulation 8 (conditions of registration of a producer)(**8**)—

(a) after paragraph (d), insert "and";

(b) omit paragraphs (f) and (g).

Regulation 12

6. In regulation 12 (schemes: general provisions), for paragraph (2), substitute—

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

(a) the operator receives a notice of withdrawal of the scheme's approval under regulation 13C(3); or

(b) the scheme is approved pursuant to regulation 13(4).

(2A) The operator shall provide a copy of the notice of withdrawal of the scheme's approval with the written notice provided pursuant to paragraph (2).".

(**7**) Regulation 7 was amended by S.I. 2010/2849.
(**8**) Regulation 8 was amended by S.I. 2010/2849.

Regulation 13

7. In regulation 13 (application for approval of a scheme)(**9**)—

(a) in paragraph (1), for "authority", substitute "Agency";

(b) in paragraph (2), for "unconditionally where the appropriate authority", substitute "where the appropriate Agency";

(c) after paragraph (2), insert—

"(2A) Where an application for approval is granted, the appropriate Agency shall notify the operator of the scheme in writing of its decision within 28 days of making that decision.";

(d) in paragraph (3)—

(i) in sub-paragraph (c), for "authority", substitute "Agency";

(ii) in sub-paragraph (d), for "at paragraph (5) below", substitute "in regulation 13A(2)";

(e) in paragraph (4)—

(i) for each "authority", substitute "Agency";

(ii) for "paragraph (5)", substitute "regulation 13A(2)";

(f) for paragraphs (5) to (10), substitute—

"(5) Where the conditions in paragraph (7) are met, an operator may elect to make an application for approval by DOENI under paragraph (1).

(6) Where an operator so elects—

(a) functions of the appropriate Agency in relation to the application under this regulation shall be carried out by DOENI on behalf of the appropriate Agency; and

(b) until the application has been determined, the operator may not make an application to the appropriate Agency under paragraph (1) in relation to the same or substantially the same scheme.

(7) The conditions are—

(a) the operator's registered office or principal place of business is in Northern Ireland; and

(b) the operator proposes to apply to DOENI in relation to the same year for approval of the scheme under regulation 13(1) of PRONIR.

(8) For the purposes of these Regulations, an act of DOENI performing the functions of the appropriate Agency pursuant to paragraph (6)(a) is to be treated as an act of the appropriate Agency.".

New regulations 13A, 13B and 13C

8. After regulation 13, insert—

"**Conditions of approval of a scheme**

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

(a) the operator of the scheme complies with the obligations set out in regulation 12(1);

(**9**) Regulation 13 was amended by S.I. 2010/2849.

(b) the operator of the scheme monitors the accuracy of information to which regulation 19 applies, so that the operator may reasonably discover when a scheme member has not complied with regulation 19(2)(c);

(c) the operator of the scheme acquires PRNs or PERNs in a manner which least hinders the ability of any other operator to acquire PRNs or PERNs pursuant to regulation 12(3);

(d) the operator of the scheme maintains sufficient financial resources to acquire PRNs or PERNS pursuant to regulation 12(3);

(e) the operator of the scheme maintains access to, and sufficient financial resources to pay for, the expertise necessary for the purposes of calculating the recovery and recycling obligations referred to in regulation 12(1);

(f) the operator of the scheme provides any information reasonably requested by the appropriate Agency for the purposes of monitoring compliance pursuant to regulation 31(1)(b) or (c);

(g) in relation to any year in which the scheme is registered under regulation 14—

(i) the operator of the scheme informs the appropriate Agency in writing of—

(aa) any change in the person who is the operator of the scheme and, in the case where the operator of the scheme is a partnership, or where there is more than one operator of a scheme, any change of partners or operators;

(bb) any material change in the information provided in accordance with regulation 14(3)(b);

(cc) any material change in the further information provided in accordance with regulation 14(3)(c); and

(dd) any change in the operator stated under regulation 14(3)(h),

within 28 days of the occurrence of any such change; and

(ii) the operator of the scheme complies with the requirement set out in regulation 15A; and

(h) the operator of the scheme provides records and returns to the appropriate Agency as required by regulation 22.

(2) Approval of a scheme pursuant to regulation 13(4) is subject to the following additional conditions in relation to any year in which the scheme is registered under regulation 14—

(a) the operator of the scheme complies with 50% of the total recovery and recycling obligations of the scheme before 30th June;

(b) the operator of the scheme complies with a further 50% of the remaining recovery and recycling obligations before 30th September;

(c) the operator of the scheme makes returns to the appropriate Agency of information demonstrating compliance with the conditions set out at sub-paragraphs (a) and (b) on or before 15th July and 15th October respectively;

(d) the operator pays the fee under regulation 16(3) to the appropriate Agency; and

(e) the operator of the scheme does not accept any new members into the scheme.

(3) The additional conditions set out in paragraph (2) cease to apply at the beginning of the year following the approval year if the appropriate Agency is satisfied that in the approval year the operator complied with—

(a) the obligations under regulation 12(1); and