STATUTORY INSTRUMENTS

2015 No. 1640

ENVIRONMENTAL PROTECTION

The Packaging (Essential Requirements) Regulations 2015

Made - - - -	*1st September 2015*
Laid before Parliament	*4th September 2015*
Coming into force - -	*1st October 2015*

The Secretary of State is a Minister designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the management of packaging and packaging waste.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Packaging (Essential Requirements) Regulations 2015 and come into force on 1st October 2015.

Interpretation

2.—(1) In these Regulations—

[[F1]"the Directive" means the European Parliament and Council Directive 94/62/EC on packaging and packaging waste(**3**)**[**[F2], as last amended by Council Directive (EU) 2018/852**];]**

"the 1987 Act" means the Consumer Protection Act 1987(**4**);

[[F1]"the Commission" means the Commission of the European Union;**]**

(**1**) S.I. 1996/266.
(**2**) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1), and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.
(**3**) OJ No L 365, 31.12.94, p10.
(**4**) 1987 c.43. Sections 31, 32 and 44 were amended by the Consumer Rights Act 2015 (c.15), section 77 and Schedule 6, paragraphs 37, 42, 43 and 46.

"energy recovery" means the use of combustible packaging waste as a means to generate energy through direct incineration with or without other waste but with recovery of the heat;

"enforcement authority" has the meaning set out in regulation 7;

"essential requirements" means the essential requirements **[**F3in Annex II of the Directive and which are**]** set out in Schedule 1;

"importer" means an importer of packaging which is packed or filled packaging into **[**F4Northern Ireland**]**;

"incidental presence" means the presence of a metal as an unintended ingredient of a packaging or packaging component;

"intentionally introduced" means the act of deliberately utilising a substance in the formulation of packaging or a packaging component where its continued presence is desired in the final packaging or packaging component to provide a specific characteristic, appearance or quality; but the use of recycled materials as a feedstock for the manufacture of new packaging materials where some portion of the recycled materials may contain amounts of regulated metals is not intentional introduction;

"organic recycling" means the aerobic (composting) or anaerobic (biomethanization) treatment, under controlled conditions and using micro-organisms, of the biodegradable parts of packaging waste, which produces stabilised organic residues or methane; but landfill is not be considered a form of organic recycling;

"packaging" has the meaning set out in regulation 3(2);

"packaging component" means any part of packaging that can be separated by hand or by using simple physical means;

"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" means any packaging or packaging material covered by the definition of waste in Article 3(1) of the Waste Directive **[**F5, as read with Articles 5 and 6 of that Directive,**]** but not including production residues;

"packaging waste management" means the management of waste as defined in Article 3(9) of the Waste Directive;

"plastic" means a polymer within the meaning of Article 3(5) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC(**5**), to which additives or other substances may have been added, and which is capable of functioning as a main structural component of carrier bags;

"plastic carrier bag" means a carrier bag with or without a handle, made of plastic, which is supplied to consumers at the point of sale of goods or products;

"ppm" means parts per million by weight;

"product loops which are in a closed and controlled chain" means product loops in which products circulate with a controlled reuse and distribution system and in which the recycled material originates only from these entities in the chain so that the introduction of external material is the minimum which is technically feasible and from which these entities may only be removed in a specially authorised procedure so that return rates are maximised;

(**5**) OJ No L 396, 30.12.2006, p1.

"recovery" has the meaning given by Article 3(15) of the Waste Directive;

"recycling" means the reprocessing in a production process of waste materials for the original purpose or for other purposes including organic recycling but excluding energy recovery;

"regulated metals" means lead, cadmium, mercury or hexavalent chromium or a combination of two or more of these metals, as the case may be;

"responsible person" means, in relation to packaging, the person who is—

(a) responsible for packing or filling products into packaging,

(b) any person presented as responsible by affixing to the packed or filled packaging that person's name, trade mark or other distinctive mark,

(c) the person who reconditions the packaging for reuse (except that reuse in itself shall not constitute reconditioning of the packaging),

(d) the importer; or

(e) for the purposes of regulation 6(2) only, the manufacturer or the manufacturer's authorised representative in **[**[F6]Northern Ireland or**]** the **[**[F7]United Kingdom**]**;

"reuse" means any operation by which packaging, which has been conceived and designed to accomplish within its life cycle a minimum number of trips or rotations, is refilled or used for the same purpose for which it was conceived, with or without the support of auxiliary products present on the market enabling the packaging to be refilled, and reused packaging shall be construed accordingly; such reused packaging will become packaging waste when no longer subject to reuse; and

"the Waste Directive" means Directive 2008/98/EC of the European Parliament and of the Council on waste (**6**)**[**[F8], as last amended by **[**[F9]Directive (EU) 2018/851**]][**[F10], and as read in accordance with regulation 2A**]**.

(2) **[**[F11]In these Regulations, except for the references to the European Union in the definition of "the Commission" and in relation to the Official Journal, a reference to the European Union ("EU") includes a reference to the EEA, and a reference to a member State includes a reference to an EEA State.**]**

F1 Words in reg. 2(1) omitted (E.W.S.) (31.12.2020) by virtue of The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188), regs. 1(2)(b), **20(2)(a)(i)** (as amended by S.I. 2020/1540, regs. 1(2), 11(2)); 2020 c. 1, Sch. 5 para. 1(1)

F2 Words in reg. 2(1) inserted (1.10.2020) by The Waste (Circular Economy) (Amendment) Regulations 2020 (S.I. 2020/904), regs. 1(1), **19(2)(a)**

F3 Words in reg. 2(1) omitted (E.W.S.) (31.12.2020) by virtue of The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188), regs. 1(2)(b), **20(2)(a)(ii)** (as amended by S.I. 2020/1540, regs. 1(2), 11(2)); 2020 c. 1, Sch. 5 para. 1(1)

F4 Words in reg. 2(1) substituted (N.I.) (31.12.2020) by The Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1647), regs. 1(3), **15(2)(a)**

F5 Words in reg. 2(1) inserted (E.W.S.) (31.12.2020) by The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188), regs. 1(2)(b), **20(2)(a)(iii)** (as amended by S.I. 2020/1540, regs. 1(2), 11(2)); 2020 c. 1, Sch. 5 para. 1(1)

F6 Words in reg. 2(1) inserted (N.I.) (31.12.2020) by The Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1647), regs. 1(3), **15(2)(b)**

(**6**) OJ No L 312, 22.11.2008, p 3.

F7 Words in reg. 2(1) substituted (E.W.S.) (31.12.2020) by The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188), regs. 1(2)(b), **20(2)(a)(iv)** (as amended by S.I. 2020/1540, regs. 1(2), 11(2)); 2020 c. 1, Sch. 5 para. 1(1)

F8 Words in reg. 2(1) substituted (17.9.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018 (S.I. 2018/942), regs. 1(2), **26**

F9 Words in reg. 2(1) substituted (1.10.2020) by The Waste (Circular Economy) (Amendment) Regulations 2020 (S.I. 2020/904), regs. 1(1), **19(2)(b)**

F10 Words in reg. 2(1) inserted (E.W.S.) (31.12.2020) by The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188), regs. 1(2)(b), **20(2)(a)(v)** (as amended by S.I. 2020/1540, regs. 1(2), 11(2)); 2020 c. 1, Sch. 5 para. 1(1)

F11 Reg. 2(2) omitted (E.W.S.) (31.12.2020) by virtue of The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188), regs. 1(2)(b), **20(2)(b)** (as amended by S.I. 2020/1540, regs. 1(2), 11(2)); 2020 c. 1, Sch. 5 para. 1(1)

[F12Modification of the Waste Directive

2A.—(1) For the purposes of these Regulations, the Waste Directive is to be read in accordance with this regulation.

(2) Article 5 is to be read as if—

(a) in paragraph 1, "Member States shall take appropriate measures to ensure that" were omitted;

(b) after paragraph 1 there were inserted—

"**1A.** Any decision as to whether a substance or object is a by-product must be made—

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.";

(c) paragraphs 2 and 3 were omitted.

(3) Article 6 is to be read as if—

(a) in paragraph 1, "Member States shall take appropriate measures to ensure that" were omitted;

(b) after paragraph 1 there were inserted—

"**1A.** Any decision as to whether a substance or object has ceased to be waste must be made—

(a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.";

(c) in paragraph 2—

(i) the first subparagraph were omitted;

(ii) in the second subparagraph, for "Those detailed criteria" there were substituted "Any detailed criteria set out in guidance as referred to in paragraph 1A";

(iii) the third and fourth subparagraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first subparagraph—

(aa) in the first sentence, for the words from the beginning to "Member State", there were substituted "Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency";

(bb) the second sentence were omitted;

(ii) in the second subparagraph—

(aa) for "Member States" there were substituted "The appropriate agency";

(bb) "by competent authorities" were omitted.

(4) In this regulation—

"appropriate agency" means—

(a) in relation to England, the Environment Agency;

(b) in relation to Wales, the Natural Resources Body for Wales;

(c) in relation to Scotland, the Scottish Environment Protection Agency;

"appropriate authority" means—

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the Welsh Ministers;

(c) in relation to Scotland, the Scottish Ministers.**]**

F12 Reg. 2A inserted (E.W.S.) (31.12.2020) by The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188), regs. 1(2)(b), **20(3)** (as amended by S.I. 2020/1540, regs. 1(2), **11(2)(13)(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**

PART 2

Application

Packaging

3.—(1) These Regulations apply to any packaging.

(2) In these Regulations "packaging" means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer, including non-returnable items used for the same purposes, but only where the products are—

(a) sales packaging or primary packaging, that is to say packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;

(b) grouped packaging or secondary packaging, that is to say packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale, and which can be removed from the product without affecting its characteristics; or

(c) transport packaging or tertiary packaging, that is to say packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packagings in order