Draft Regulations laid before Parliament under section 93(10) of the Environment Act 1995, for approval by a resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. [XXXX]

ENVIRONMENTAL PROTECTION

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

Made - - - - ***

Coming into force in accordance with regulation 1(b)

These Regulations are made by the Secretary of State as respects England, Scotland(**1**) and Wales(**2**) in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**3**) and sections 93 to 95 of the Environment Act 1995(**4**).

These Regulations implement Article 6(1) of Council Directive 94/62/EC on packaging and packaging waste(**5**) and section 93(3)(a) of the Environment Act 1995 applies.

The Secretary of State is a Minister designated(**6**) 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;

(**1**) 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.

(**2**) 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.

(**3**) 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).

(**4**) 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.

(**5**) 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).

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

(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.

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(**7**) 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(**8**); 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(**9**);";

(e) in the definition of "small producer"—

(**7**) S.I. 2007/871; relevant amending instruments are S.I. 2008/413 (revoked by regulation 23 below), 2008/1941, 2010/1159 and 2010/1820.
(**8**) 2006 c. 46.
(**9**) ISBN 978-0-230-21014-1.

(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(**10**)"; 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;".

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;

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

(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)"; and

(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)(**11**).";

(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

(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 reprocessors 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.

(**11**) Substituted by regulation 14 below.