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

DRAFT STATUTORY INSTRUMENTS

2005 No. [ ]

ENVIRONMENTAL PROTECTION

The Producer Responsibility Obligations (Packaging Waste) Regulations 2005

Made - - - - 2005

Coming into force in accordance with regulation 1(1)

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

These Regulations are made for the implementation of Article 6(1) of Council Directive 94/62/EC on packaging and packaging waste.

The Secretary of State for Environment, Food and Rural Affairs was designated(**5**) 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.

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:

(**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 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 her as regards Scotland.

(**2**) Under paragraph 5 of Schedule 3 of the Government of Wales Act (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 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 her as regards Wales.

(**3**) 1972 c. 68

(**4**) 1995 c. 25

(**5**) The Secretary of State was designated under the European Communities (Designation) Order 1996 under Article 2 and the Schedule (S.I. 1996/266).

PART I

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 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(**6**) on packaging and packaging waste as amended by—

(a) Council Regulation (EC) No 1882/2003(**7**) adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty;

(b) Council Directive 2004/12/EC(**8**) amending Directive 94/62/EC on packaging and packaging waste; and

(c) Council Directive 2005/20/EC(**9**) amending Directive 94/62/EC on packaging and packaging waste;

"the Waste Directive" means Council Directive 75/442/EEC(**10**) on waste as amended by—

(a) Council Directive 91/156/EEC(**11**) amending Directive 75/442/EEC on waste;

(b) Council Directive 91/692/EEC(**12**) standardizing and rationalizing reports on the implementation of certain Directives relating to the environment;

(c) Commission Decision 96/350/EEC(**13**) adapting Annexes IIA and IIB to Council Directive 75/442/EEC on waste; and

(d) Council Regulation (EC) No 1882/2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty;

"the 1995 Act" means the Environment Act 1995(**14**); and

"the 1990 Act" means the Environmental Protection Act 1990(**15**).

(2) In these Regulations—

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

(**6**) OJNo. L 365, 31.12.1994, p. 10.
(**7**) OJ No. L 284, 31.10.2003, p. 1.
(**8**) OJ No. L 47, 18.2.2004, p. 26.
(**9**) OJ No. L 70, 16.3.2005, p.17.
(**10**) OJ No. L 194, 25.7.1975, p. 39.
(**11**) OJ No. L 78, 26.3.1991, p. 32.
(**12**) OJ No. L 377, 31.12.1991, p. 48.
(**13**) OJ No. L 135, 6.6.1996, p. 32.
(**14**) 1995 c. 25
(**15**) 1990 c. 43

"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;

(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;

"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(**16**); 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(**17**);

"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;

(**16**) 1985 c. 6 as amended by the Companies Act 1989 (1989 c. 40).
(**17**) 1890 c.39

"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 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,

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(**18**) or regulation 7 of the Pollution Prevention and Control (Scotland) Regulations 2000(**19**);

(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(**20**).

"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;

(**18**) S.I. 2000/1973 as amended by the Solvent Emissions (England and Wales) Regulations 2004 (S.I. 2004/107). There are other amendments not relevant to these Regulations.

(**19**) S.S.I. 2000/323 as amended by the Solvent Emissions (Scotland) Regulations 2004 (S.S.I. 2004/26). There are other amendments not relevant to these Regulations.

(**20**) S.I. 1994/1056 as amended by the Waste Management Licensing (Amendment) Regulation 1998 (S.I. 1998/606) and the Waste Management Licensing (England and Wales) (Amendment and Related Provisions) (No. 3) Regulations 2005 (S.I. 2005/1728). There are other amendments but none are relevant to these Regulations.