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

2003 No.

ENVIRONMENTAL PROTECTION, ENGLAND

The Producer Responsibility Obligations (Packaging Waste) (Amendment) (England) Regulations 2003

Made - - - -	*2003*
Coming into force - -	*1st January 2004*

Whereas the Secretary of State has consulted in accordance with section 93(2) of the Environment Act 1995(**1**) ("the Act") with such bodies and persons as appear to her to be representative of bodies or persons whose interests are, or are likely to be, substantially affected by these Regulations:

And whereas the Secretary of State—

(a) has had regard, in so far as these Regulations implement obligations(**2**) of the United Kingdom under the Community Treaties, to the matters specified in section 93(6) of the Act in accordance with section 93(5) of the Act;

(b) is satisfied, in so far as these Regulations make other provision, as to the matters specified in section 93(6) of the Act in accordance with section 93(3) of the Act:

And whereas the Secretary of State considers that making these Regulations exercises the power in sections 93, 94 and 95 of the Act in the manner required by section 93(6) of the Act:

And whereas the Secretary of State has, in making provision in relation to fees, had regard to the desirability of securing that the fees are sufficient for the purposes referred to in section 94(5) of the Act:

And whereas 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 Act:

Now, therefore, the Secretary of State, in exercise of the powers conferred on her by sections 93, 94 and 95 of the Act, hereby makes the following Regulations:

(**1**) 1995 c. 25; see the definitions of "prescribed" and "regulations" section 93(8). The functions of the Secretary of State under section 93 to 95, insofar as they relate to Scotland, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). In relation to Wales, those functions were transferred to the National Assembly for Wales (see article 2 of, and the entry relating to the Environment Act 1995 in Schedule 1, to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1996/672)).

(**2**) The relevant obligation is Article 6(1) of European Parliament and Council Directive 94/62/EC on packaging and packaging waste (OJ No L365, 31.12.94, p 10); the Directive was amended with effect from 20th November 2003 in Article 21 (Committee Procedure) by paragraph 53 of Annex III (Regulatory Procedure) to Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ No L284, 31.10.2003, p 1).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) (Amendment) (England) Regulations 2003 and shall come into force on 1st January 2004.

(2) These Regulations apply in relation to England only.

Interpretation

2. In these Regulations, "the 1997 Regulations" means the Producer Responsibility Obligations (Packaging Waste) Regulations 1997(**3**).

Amendment of the 1997 Regulations

3. The 1997 Regulations shall be amended in accordance with the following regulations.

Amendment of Part I (General)

4.—(1) In regulation 2(1)—

(a) insert at the appropriate alphabetical places—

""accredited exporter" means an exporter who is accredited by the appropriate Agency under regulation 21B;";

""accredited reprocessor" means a reprocessor who is accredited by the appropriate Agency under regulation 21B;";

""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, the Environment Agency;

(b) for the purposes of any provision of these Regulations relating to the obligations of any other person means—

(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; or

(iii) at the election of the person, either the 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 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;";

""approved person" means the person for the time being approved under regulation 27 for the purpose of issuing certificates of compliance under regulation 23 and signing the form referred to in regulation 6(4)(c) or 17A(2) in relation to a particular producer;";

(**3**) S.I. 1997/648. These Regulations have been amended in relation to Great Britain by S.I. 1999/1361 and 1999/3447, in relation to England and Wales by S.I. 2000/3375, and in relation to England by S.I. 2002/732. Those regulations have also been amended in relation to Scotland and Wales.

""exporter" means a person who, in the ordinary course of a trade, occupation or profession, owns and exports packaging waste for reprocessing outside the United Kingdom;";

""PERN" means a packaging waste export recovery note issued by an accredited exporter for the purposes of Part IVA of these Regulations, 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;"; and

""PRN" means a packaging waste recovery note issued by an accredited reprocessor for the purposes of Part IVA of these Regulations, 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;";

(b) for the definition of "recyclable material" substitute—

""recyclable material" means—

(a) glass;

(b) aluminium;

(c) steel;

(d) paper/fibreboard;

(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;";

(c) at the end of the definition of "reprocessor" insert "and "reprocessing" shall be construed accordingly";

(d) in the definition of "SIC Code" for the references to "1992" and "1997", in each case substitute "2003"; and

(e) omit the definition of "special producer".

(2) In regulation 2(2)(a) for "undertaking" substitute "condition".

(3) In regulation 2(3)(a) for "17(3), 31(5) and (10)" substitute "and 17(3)".

Amendment of Part II (Producers and Obligations)

5.—(1) In regulation 3—

(a) in paragraph (5)(b) for "for the year 1998 and subsequent years" substitute "for each year";

(b) after paragraph (5A) insert—

"(5B) The operator of the scheme shall take reasonable steps to carry out the recovery and recycling obligations that every producer who is a member of the scheme that he operates would have had, but for their membership of that scheme."; and

(c) omit paragraph (6).

(2) In regulation 4 omit paragraph (4).

Amendment of Part III (Registration)

6.—(1) In regulation 5 omit "4(3) and (4),".

(2) In regulation 6—

(a) in paragraph (1)-

(i) omit "and who is not registered";

(ii) for "Agency, being—" substitute "Agency."; and

(iii) omit sub-paragraphs (a), (b) and (c);

(b) omit paragraph (3)(a);

(c) in paragraph (4)(c) after "appropriate Agency" insert "and signed by the approved person";

(d) omit paragraph (4)(c)(ii);

(e) in paragraph (4)(c)(v) omit "(excluding special producer)";

(f) at the end of paragraph (4)(c)(vi) insert "and", and after paragraph (4)(c)(vi) insert—

"(vii) such other information as the appropriate Agency reasonably requires in order to determine the application and as is specified on the form.";

(g) in paragraph (4)(dd)—

(i) at the start of the sub-paragraph insert "on a first application for registration"; and

(ii) for "a plan setting out the steps intended to be taken to comply with the producer's recovery and recycling obligations" substitute "an operational plan complying with Part IV of Schedule 4";

(h) in paragraph (5)—

(i) at the end of sub-paragraph (a) insert "and";

(ii) at the end of sub-paragraph (b) omit "and"; and

(iii) omit sub-paragraph (c); and

(i) for paragraph (7) substitute—

"(7) The further information provided shall be as accurate as reasonably possible.".

(3) For regulation 7 substitute—

"**Conditions of registration of a producer**

7. Registration of a producer shall be subject to the conditions that the producer will—

(a) inform the appropriate Agency of—

(i) any change in the circumstances of the producer which relate to the registration of the producer, and where the producer is a partnership, any change of partners;

(ii) any change in the person who is the partner who is able to accept notices and act on behalf of the partnership as stated as required in regulation 6(4)(e);

(iii) any material change in the initial information provided in accordance with regulation 6(4)(b); or

(iv) any material change in the further information provided in accordance with regulation 6(4)(c), or (8), as the case may be,

within 28 days of the occurrence of any such change;

(b) provide records and returns to the appropriate Agency as required by regulation 22;

(c) apply to the appropriate Agency to cancel his registration where he has become a member of a registered scheme or has ceased to be a producer in respect of a year;

(d) comply with the operational plan submitted under regulation 6 or, if a revised plan has been submitted under paragraph (e), with the most recent version so submitted; and

(e) on or before 31st January in a relevant year, provide to the appropriate Agency a revised version of the operational plan.".

(4) Omit regulation 8.

(5) In regulation 9, for paragraph (2) substitute—

"(2) The fee which is to be charged by the appropriate Agency on an application for producer registration shall be £768 and in addition—

(a) in the case of an application where the fee is to be treated as a fee for group registration by virtue of paragraph 5(b)(iii) of Schedule 8, in respect of the subsidiaries included within that application, a fee of—

(i) £180 for each of the first 4 subsidiaries;

(ii) £90 for each of the 5th to the 20th subsidiaries inclusive; and

(iii) £45 for each of the 21st and subsequent subsidiaries; and

(b) on each resubmission of an application which is required by reason of its having failed to meet the requirements of regulation 6(4) or (7) on its previous submission, £220.".

(6) In regulation 11—

(a) omit paragraph (1)(a);

(b) in paragraph (1)(b)(i) for "undertakings referred to in regulation 7 and given to him by that Agency," substitute "conditions specified in regulation 7; or";

(c) in paragraph (1)(b)(ii) for "undertaking referred to in regulation 7, or with regulation 8" substitute "conditions specified in regulation 7";

(d) omit paragraph (1)(b)(iii); and

(e) in paragraph (3)—

(i) at the end of sub-paragraph (c), omit "and";

(ii) at the end of sub-paragraph (c), for the full stop substitute "; and" and

(iii) after sub paragraph (c), insert—

"(d) the right of appeal under Part IV of these Regulations.".

(7) In regulation 12—

(a) in paragraph (1)—

(i) omit "Subject to paragraph (8) below,";

(ii) for "Agency, being—" substitute "Agency."; and

(iii) omit sub-paragraphs (a), (b) and (c);

(b) in paragraph (3)(c)(i) omit "class of";

(c) omit paragraph (3)(c)(ii);

(d) in paragraph (3)(c)(v) omit "(excluding special producer)";

(e) after paragraph (3)(c)(vi) insert—

"(vii) such other information as the appropriate Agency reasonably requires in order to determine the application and as is specified on the form.";

(f) at the start of paragraph (3)(e) insert "on a first application for registration" and for "as provided in" substitute "complying with";