STATUTORY RULES OF NORTHERN IRELAND

2010 No. 396

ENVIRONMENTAL PROTECTION

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

Made - - - - 2nd December 2010

Coming into operation 1st January 2011

The Department of the Environment makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and Article 3(1) of the Producer Responsibility Obligations (Northern Ireland) Order 1998(**2**).

These Regulations are made for the implementation of Article 6(1) of Council Directive 94/62/EC on packaging and packaging waste(**3**).

The Department of the Environment was designated(**4**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the environment.

The Department makes the following Regulations—

(a) after consultation in accordance with Article 3(2) of the Producer Responsibility Obligations (Northern Ireland) Order 1998;

(b) having regard to the matters specified in Article 3(6) as required by Article 3(5) of that Order (subject to the modifications required through the exercise of the powers in Article 3(4); and

(c) in accordance with the duty in Article 3(7) of that Order.

Citation, commencement

1.—(1) These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations (Northern Ireland) 2010 and shall come into operation on 1st January 2011.

(2) The Interpretation Act (Northern Ireland) 1954(**5**) shall apply to these Regulations as it applies to an Act of the Assembly.

(**1**) 1972 c. 68
(**2**) S.I. 1998/1762 (N.I. 16)
(**3**) 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)
(**4**) The Department was designated under the European Communities (Designation) Order 1996 under Article 2 and the Schedule (S.I. 2008/301)
(**5**) 1954 c. 33 (N.I.)

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

2. The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 (**6**) are amended as follows.

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), 7(4)(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; 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;"

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

(i) omit "who satisfies the threshold tests in paragraph 3 of Schedule 1 but"; and

(ii) for "Article X of the Companies(NI) Order 1986", substitute "section 441 of the Companies Act 2006"; 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) In order to be a member of a registered scheme, a producer must—

(**6**) S.R. 2007/198 as amended by S.R. 2008/77 and S.R. 2008/373

(a) provide such information as the operator of the scheme requests for the purposes of meeting its producer responsibility obligations within a reasonable period of receiving such a request; and

(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 Department 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 Department 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; and

(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 as the Department reasonably requires in order to determine the application and as is specified on the form;";

(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) The applicable fee for producer registration referred to in regulation 9 must be received by the Department on or before the relevant date.".

Amendment of regulation 8 (conditions of registration of a producer)

6.—(1) In regulation 8(c)(iii), after "7(4)(c),", insert "7(4)(ca)".

(2) In regulation 8(g) for "1st January", substitute "31st January".

Amendment of regulation 9 (forms and fees for producer registration)

7. In regulation 9(1), after "7(4)(c)", insert "or 7(4)(ca)".

Amendment of regulation 12 (schemes: general provisions)

8. In regulation 12(4) for "PNR", substitute "PRN".

Amendment of regulation 13 (application for approval of a scheme)

9. In regulation 13—

(a) in paragraph (5)(c), omit ", together with copies of the PRNs or PERNs or both".

(b) in paragraph (6)(c), for "for", substitute "from".

Amendment of regulation 14 (application for registration of a scheme)

10. 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 Department", insert "and signed in accordance with the requirement in paragraph (3A)";

(iii) at the end of paragraph (i), insert "and each class of producer to which each producer belongs";

(iv) in paragraph (iv), for "paragraphs 4(c)(iv) and (v)", substitute "paragraphs (4)(ca) (i) and (ii)";

(c) in paragraph (3)(e), before "be accompanied", 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 III of Schedule 3; and

(ii) on any subsequent application, by a revised version of that plan unless it has already been provided pursuant to paragraph (g) in regulation 15;";

(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).";

(f) in paragraph (4), for sub-paragraphs (c) and (d), substitute—

"(c) the Department 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 Department; and

(e) the scheme was either registered in the previous year or the scheme was approved by the Department 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)

11. In regulation 22(4), after "statement", insert "signed by the approved person".

Insertion of regulation 22A (notification of insolvency)

12. After regulation 22, insert —

"**Notification of winding-up, receivership, administration, etc.**

22A.—(1) This regulation applies to any person who is—

(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 Department 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 Department as soon as is practicable upon becoming aware that any one or more of the relevant circumstances apply or are about to apply to the scheme it operates.

(4) For the purpose of this regulation the "relevant circumstances" are—

(a) a winding-up order has been made or a resolution for voluntary winding-up has been passed;

(b) a determination for a voluntary winding-up has been made;

(c) a receiver or a manager of its undertaking has been duly appointed;

(d) its undertaking has entered administration;

(e) a voluntary arrangement proposed for the purposes of Part II of the Insolvency (Northern Ireland) Order 1989 has been approved under that Part of the Order.".

Amendment of regulation 24 (application for accreditation)

13. In regulation 24—

(a) in paragraph (1)(a)(i), after "operations", insert "and";

(b) for paragraph (1)(c), substitute—