STATUTORY RULES OF NORTHERN IRELAND

2006 No. 356

PUBLIC HEALTH

The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2006

Made - - - -	*4th September 2006*
Coming into operation	*9th October 2006*

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 Articles 3-5 and 7(2) 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.

The Department of the Environment was designated(**3**) 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.

Accordingly, after consultation in accordance with Article 3(2) of the Producer Responsibility Obligations (Northern Ireland) Order 1998, and being satisfied as to the matters specified in Article 3(6) of that Order as required by Article 3(5) of that Order, the Department makes the following Regulations:

PART 1

GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2006 and shall come into operation on 9th October 2006.

(2) The Interpretation Act (NI) 1954(**4**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(**1**) 1972 c.68
(**2**) S.I. 1998/1762 (N.I. 16)
(**3**) The Department was designated under the European Communities (Designation) Order 1996 under Article 2 and the Schedule (S.I. 1996/266).
(**4**) 1954 c.33 (N.I.)

Interpretation and notices

2.—(1) In these Regulations—

"the Department" means the Department of the Environment;

"the Packaging Waste Directive" means Council Directive 94/62/EC(**5**) on packaging and packaging waste as amended by—

(a) Council Regulation (EC) No 1882/2003(**6**) 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(**7**) amending Directive 94/62/EC on packaging and packaging waste; and

(c) Council Directive 2005/20/EC(**8**) amending Directive 94/62/EC on packaging and packaging waste;

"the Waste Directive" means Council Directive 75/442/EEC(**9**) on waste as amended by—

(d) Council Directive 91/156/EEC(**10**) amending Directive 75/442/EEC on waste;

(e) Council Directive 91/692/EEC(**11**) standardizing and rationalizing reports on the implementation of certain Directives relating to the environment;

(f) Commission Decision 96/350/EEC(**12**) adapting Annexes IIA and IIB to Council Directive 75/442/EEC on waste; and

(g) 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 Order" means the Producer Responsibility Obligations (Northern Ireland) Order(**13**)

(2) In these Regulations—

"accredited exporter" means an operator who is accredited by the Department under regulation 24 ;

"accredited reprocessor" means a reprocessor who is accredited by the Department 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;

"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;

(**5**) OJNo. L 365, 31.12.1994, p. 10.
(**6**) OJ No. L 284, 31.10.2003, p. 1.
(**7**) OJ No. L 47, 18.2.2004, p. 26.
(**8**) OJ No. L 70, 16.3.2005, p. 17.
(**9**) OJ No. L 194, 25.7.1975, p. 39.
(**10**) OJ No. L 78, 26.3.1991, p. 32.
(**11**) OJ No. L 377, 31.12.1991, p. 48
(**12**) OJ No. L 135, 6.6.1996, p. 32.
(**13**) 1998 No. 1762 (N.I. 16).

"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 Article 231(1) to (3) of the Companies (Northern Ireland) Order 1986(**14**); and

(b) in any other case has the meaning given in Article 231(4) of the Companies (Northern Ireland) Order 1986, 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 11, 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(**15**);

"PERN" means a packaging waste export recovery note issued by an accredited exporter on a form supplied to him by the Department, as evidence of the export of the tonnage of packaging waste specified in the note for the reprocessing outside the United Kingdom;

"preceding year" means the year preceding a relevant year;

"PRN" means a packaging waste recovery note issued by an accredited reprocessor on a form supplied to him by the Department, 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,

(**14**) 1986 (N.I. 6) as amended by S.I. 1989 No. 2404.
(**15**) 1890 c. 39.

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 Regulations (Northern Ireland) 2003(**16**);

(b) an authorisation granted under Article 6 of the Industrial Pollution Control (Northern Ireland) Order 1997(**17**);

(c) a waste management licence granted under Article 6 of The Waste and contaminated Land (Northern Ireland) Order 1997;

(d) an exemption registered under regulation 17 of The Waste Management Licensing Regulations (Northern Ireland) 2003(**18**).

"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 11, 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;

"reprocessor" means a person who, in the ordinary course of conduct of a trade, occupation or profession, carries out one or more activities of recovery or recycling, and "reprocessing" shall be construed accordingly;

"reuse" has the meaning given to it in Article 3(5) of the Packaging Waste Directive;

"scheme" means a scheme which is (or, if it were to be registered in accordance with these Regulations would be) a scheme whose members for the time being are, by virtue of these Regulations and their membership of that scheme, exempt from the requirement to comply with their producer responsibility obligations and "registered scheme" means a scheme which is registered with the Department in accordance with these Regulations;

"SIC code" means a code included in "Indexes to the United Kingdom Standard Industrial Classification of Economic Activities 2003", published by the Office for National Statistics in 2003(**19**);

"small producer" means a producer whose turnover in the last financial year in respect of which audited accounts are available before the relevant date was £5,000,000 or less; and audited accounts shall be considered to be available when, where the person is a company, the annual accounts have been delivered to the registrar under Article 250 of the Companies (NI) Order 1986;

"transit packaging" means—

(a) grouped packaging or secondary packaging, as defined in paragraph (b) in Article 3(1) of the Packaging Waste Directive; or

(b) transport packaging or tertiary packaging as defined in paragraph (c) in Article 3(1) of the Packaging Waste Directive;

(**16**) S.R. 2003 No. 46.
(**17**) S.I. 1997/2777 (N.I.18)
(**18**) S.R. 2003 No. 493.
(**19**) ISBN 0 11 621641 7.

"turnover" means, in relation to a person, his turnover as defined in Article 270 of the Companies (NI) Order 1986 but as if the references to a company were references to that person; and

"year" means a calendar year beginning on 1st January.

(3) Where—

(a) notices are to be served on a producer under regulations 7(7)(a), 10 or 11(3);

(b) information is to be provided by a producer under regulations 7 or 8;

(c) fees are to be paid by a producer under regulation 9(2); or

(d) records and returns are to be maintained and furnished by a producer under regulation 20,

they shall be served on, provided paid, or maintained and furnished by, in the case of a partnership, a partner acting on behalf of the partnership, and references in these Regulations to the producer shall be read accordingly.

(4) Where there is more than one operator of a scheme—

(a) notices to be served on the operator of the scheme under regulations 14(5), 17, 18(3) or 36(2) shall be served on the operator stated under regulation 14(3)(h);

(b) where information is to be provided by the operator of the scheme under regulations 14 and 15, fees are to be paid by the operator of the scheme under regulation 16, records and returns are to be maintained and furnished by the operator of the scheme under regulation 22, and appeals may be made by the operator of the scheme under regulation 27, they shall be provided, paid, or maintained and furnished, and such appeals may only be made, by the operator stated under regulation 14(3)(h),

and references in these Regulations to the operator of the scheme shall be read accordingly.

Exclusion of charities from producer responsibility obligations

3. Parts II, III and IV of these Regulations do not apply to a charity within the meaning given in section 506 of the Income and Corporation Taxes Act 1988(**20**).

PART 2

PRODUCERS AND OBLIGATIONS

Producers and producer responsibility obligations

4.—(1) This regulation is subject to regulations 5, 37, 38 and 39 and Schedules 9, 10 and 11.

(2) In respect of a year a person is a producer of a class specified in an entry in column 4 of Table 1 in Schedule 1 if—

(a) in that year and the preceding year he performs the relevant functions of the class of producer specified in Column 1 of that Table in relation to that entry;

(b) in the preceding year he made supplies of the materials or products specified in Column 2 of that Table in relation to that entry of a class in Column 3 of that Table in relation to that entry; and

(c) in relation to that year he satisfies the threshold tests as provided by paragraph 3 of that Schedule,

(**20**) 1988 c. 1.