STATUTORY RULES OF NORTHERN IRELAND

2004 No. 106

PUBLIC HEALTH

The Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations (Northern Ireland) 2004

Made - - - -	*11th March 2004*
Coming into operation	*5th April 2004*

The Department of the Environment, in exercise of the powers conferred on it by Articles 2 to 5 and 7(2) of the Producer Responsibility Obligations (Northern Ireland) Order 1998(**1**), for the implementation of Article 6(1) of Directive 94/62/EC(**2**) on packaging and packaging waste and of every other power enabling it in that behalf, after consultation in accordance with Article 3(2) of that Order, and after having regard to the matters specified in Article 3(6) as required by Article 3(5) of that Order, and after having regard to the matters specified in Article 4(4) of that Order, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations (Northern Ireland) 2004 and shall come into operation on 5th April 2004.

(2) In these Regulations, "the principal Regulations" means the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 1999(**3**).

Amendment of the principal Regulations

2. The principal Regulations shall be amended in accordance with the following regulations.

Amendment of Part I (General)

3.—(1) In regulation 2(1) (interpretation and notices) –

(a) there shall be inserted at the appropriate places in alphabetical order –

(**1**) S.I.1998/1762 (N.I. 16)

(**2**) O.J. 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 (O.J. No. L284, 31.10.2003, p. 1)

(**3**) S.R. 1999 No. 115; as amended by S.R. 1999 No. 496 and S.R. 2002 No. 239

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

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

""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;";

""exporter" means a person who, in the ordinary course of a trade, occupation or profession, owns and exports UK 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 Department, as evidence of the export of the tonnage of UK 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 Department, as evidence of the receipt of the tonnage of UK packaging waste specified in the note for reprocessing within the United Kingdom;";

(b) for the definition of "recyclable material" there shall be substituted –

""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) in the definition of "SIC Code" for the references to "1992" and "1997", in each case there shall be substituted "2003"; and

(d) the definition of "special producer" shall be omitted.

(2) In regulation 2(2) for "undertaking" there shall be substituted "condition".

(3) In regulation 2(3)(a) for "17(3), 31(5) and (10)" there shall be substituted "and 17(3)".

Amendment of Part II (Producers and Obligations)

4.—(1) In regulation 3 (producers and producer responsibility obligations) –

(a) in paragraph (5)(b) for "for the year 2000 and subsequent years" there shall be substituted "for each year for which he has producer responsibility obligations";

(b) after paragraph (5A) there shall be inserted –

"(5B) The operator of a 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) paragraph 6 shall be omitted.

(2) In regulation 4 (exclusions and limitations), paragraph (4) shall be omitted.

Amendment of Part III (Registration)

5.—(1) In regulation 5 (producer registration obligation), "4(3) and (4)," shall be omitted.

(2) In regulation 6 (application for producer registration) –

(a) in paragraph (1) "and who is not registered" shall be omitted;

(b) paragraph (3)(a) shall be omitted;

(c) in paragraph (3)(b)(v) "or sub-paragraph (a)" shall be omitted;

(d) in paragraph (4)(c) after "by the Department" there shall be inserted "and signed by the approved person";

(e) paragraph (4)(c)(ii) shall be omitted;

(f) in paragraph (4)(c)(v) "(excluding special producer)" shall be omitted;

(g) at the end of paragraph (4)(c)(vi) there shall be inserted "and"; and

(h) after paragraph (4)(c)(vi) there shall be inserted –

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

(i) in paragraph (4)(dd) –

(i) at the beginning of the sub-paragraph there shall be inserted "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" there shall be substituted "an operational plan complying with Part IV of Schedule 4";

(j) at the end of paragraph (5)(a) "and" shall be inserted;

(k) at the end of paragraph (5)(b) "and" shall be omitted;

(l) paragraph (5)(c) shall be omitted; and

(m) for paragraph (7) there shall be substituted –

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

(3) For regulation 7 (Requirements for producer registration) there shall be substituted –

"**Conditions of registration of a producer**

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

(a) inform the Department 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 Department as required by regulation 22;

(c) apply to the Department 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 Department a revised version of the operational plan.".

(4) Regulation 8 (continuation of producer registration) shall be omitted.

(5) In regulation 9 (forms and fees for producer registration), for paragraph (2) there shall be substituted –

"(2) The fee which is to be charged by the Department on an application for producer registration shall be £950 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 9, in respect of the subsidiaries included within that application, a fee of –

(i) £100 for each of the first 4 subsidiaries; or

(ii) £50 for each of the 5th 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 (cancellation of registration of producers) –

(a) paragraph (1)(a) shall be omitted;

(b) in paragraph (1)(b)(i) for "undertakings referred to in regulation 7 and given to him by the Department," there shall be substituted "conditions specified in regulation 7; or";

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

(d) paragraph (1)(b)(iii) shall be omitted; and

(e) in paragraph (3) –

(i) at the end of sub-paragraph (3)(b), "and" shall be omitted;

(ii) at the end of sub-paragraph (3)(c), for "." there shall be substituted "; and"; and

(iii) after sub-paragraph (3)(c) there shall be inserted –

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

(7) In regulation 12 (application for registration of a scheme) –

(a) in paragraph (1) "Subject to paragraph (8)," shall be omitted;

(b) in paragraph (3)(c)(i) "class of" shall be omitted;

(c) paragraph (3)(c)(ii) shall be omitted;

(d) in paragraph (3)(c)(v) "(excluding special producer)" shall be omitted;

(e) after paragraph (3)(c)(vi) there shall be inserted – "and

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

(f) at the beginning of paragraph (3)(e) there shall be inserted "on a first application for registration" and for "as provided in" there shall be substituted "complying with";

(g) paragraph (3)(f) shall be omitted;

(h) at the end of paragraph (3)(g) "and" shall be omitted;

(i) at the end of paragraph (3)(h) "and" shall be inserted;

(j) after paragraph (3)(h) there shall be inserted –

"(i) be accompanied by a monitoring plan which demonstrates how information to which regulation 17A applies is to be monitored so that the operator of the scheme can meet his obligation under paragraph (7).";

(k) after paragraph (4) there shall be inserted –

"(4A) An application for approval of a scheme by the Department shall be made in writing by the operator of the scheme and shall –

(a) contain the following information –

(i) the name and address of the person who proposes to operate the scheme; and

(ii) any other information which demonstrates that the scheme is likely to subsist for a period of at least 5 years and will assist the objectives of the United Kingdom in relation to the recovery and recycling of packaging waste; and

(b) be accompanied by the following documentation –

(i) a copy of the constitution of the scheme;

(ii) a copy of the rules with which a member of the scheme is obliged to comply; and

(iii) a copy of the procedures under which the operator of the scheme would enforce the rules against a member of the scheme.

(4B) An application for approval of a scheme by the Department shall be granted where the Department is satisfied that the scheme is likely to subsist for a period of at least 5 years and will assist the objectives of the United Kingdom in relation to the recovery and recycling of packaging waste, and shall otherwise be refused.

(4C) A further application for approval in accordance with paragraph (4A) shall be made within 28 days of the occurrence of any of the following –

(a) a change in the person who is the operator of the scheme;

(b) a conviction of the operator of the scheme for an offence under these Regulations; or

(c) a failure by the operator of the scheme to comply with the obligation referred to in regulation 3(5B).

(4D) Where an application which is required by paragraph (4C) is not received by the due date, the Department may decide to withdraw approval of the scheme, and if it so decides shall serve written notice on the operator of the scheme of –

(a) its decision to withdraw approval of the scheme;

(b) the reasons for the decision;

(c) the date when the withdrawal will take effect, not being earlier than 28 days from the date of the notice.