STATUTORY RULES OF NORTHERN IRELAND

1999 No. 115

PUBLIC HEALTH

The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 1999

Made - - - -	*12th March 1999*
Coming into operation	*1st June 1999*

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**) 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) of that Order as required by Article 3(5) of that Order, hereby makes the following Regulations:

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 1999 and shall come into operation on 1st June 1999.

Interpretation and notices

2.—(1) In these Regulations—

"the Department" means the Department of the Environment;

"the Director" means the Director General of Fair Trading;

"energy recovery" means the use of combustible packaging waste as a means to generate energy through direct incineration with or without other waste but with recovery of the heat;

"the Order" means the Producer Responsibility Obligations (Northern Ireland) Order 1998;

(**1**) S.I.1998/1762 (N.I. 16)
(**2**) O.J. No. L365, 31.12.94, p. 10

"organic recycling" means the aerobic (composting) or anaerobic (biomethanization) treatment, under controlled conditions and using micro-organisms, of the biodegradable parts of packaging waste, which produces stabilized organic residues or methane; for the purposes of these regulations landfill shall not be considered a form of organic recycling;

"packaging" means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer, including non-returnable items used for the same purposes but only where the products are—

(a) sales packaging or primary packaging, that is to say packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;

(b) grouped packaging or secondary packaging, that is to say packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale; it can be removed from the product without affecting its characteristics; or

(c) transport packaging or tertiary packaging, that is to say packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packagings in order to prevent physical handling and transport damage; for the purposes of these regulations transport packaging does not include road, rail, ship and air containers;

"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" means any packaging or packaging material covered by the definition of waste in Article 1 of Directive 75/442/EEC(**3**) ("the Waste Directive") which, together with Annex 1 to that Directive, is reproduced in Part I of Schedule 3, other than production residues and, by virtue of Article 2(1)(b)(i) of the Waste Directive, radioactive waste;

"preceding year" has the meaning given in regulation 3;

"producer" has the meaning given in regulation 3 and the classes of producer are those set out in column 4 of the Table in Schedule 1;

"producer responsibility obligations" are the producer registration, recovery and recycling, and certifying obligations specified in regulation 3;

"recovery" means any of the applicable operations provided for in Annex IIB to the Waste Directive, reproduced in Part II of Schedule 3;

"recycling" means the reprocessing in a production process of the waste materials for the original purpose or for other purposes including organic recycling but excluding energy recovery;

"relevant year" has the meaning given in regulation 3;

"reprocessor" means a person who, in the ordinary course of conduct of a trade, occupation or profession, carries out the activities of recovery or recycling;

"reuse" means any operation by which packaging, which has been conceived and designed to accomplish within its life cycle a minimum number of trips or rotations, is refilled or used for the same purpose for which it was conceived, with or without the support of auxiliary products present on the market enabling the packaging to be refilled; such reused packaging will become packaging waste when no longer subject to reuse;

"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

(**3**) O.J. No. L194, 25.7.75, p. 39; Articles 1 to 12 and Annexes I and IIB were amended by Directive 91/156/EEC O.J. No. L78, 26.3.91, p. 32

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;

"special waste" means any waste covered by the definition of special waste in regulation 2 of the Special Waste Regulations (Northern Ireland) 1998(**4**);

"transit packaging" means—

(a) grouped packaging or secondary packaging, as defined in paragraph (b) of the definition of packaging; or

(b) transport packaging or tertiary packaging as defined in paragraph (c) of that definition of packaging; and

"year" means a calender year.

(2) Where notices are to be served on a producer under regulations 6(6), 10 and 11(3), information is to be provided or returns furnished by a producer under regulations 7 and 8, fees are to be paid by a producer under regulations 6(4)(d) and 8(b), and records and returns are to be maintained and furnished by a producer under regulation 22, they shall be served on, provided, paid, or maintained and furnished, in the case of a partnership, by the partner notified under regulation 6(4)(e), or in accordance with the undertaking referred to in regulation 7(a)(ii) and references in these regulations to the producer shall be read accordingly.

(3) Where the operator of a scheme is a partnership, or where this is not the case but there is more than one operator of a scheme—

(a) notices to be served on the operator of the scheme under regulations 12(6), 16, 17(3), 31(5) and (10), shall be served on the partner or operator, respectively, notified under regulation 12(3)(h), or in accordance with the condition referred to in regulation 13(d)(ii); and

(b) where information is to be provided by the operator of the scheme under regulations 13 and 14, fees are to be paid by the operator of the scheme under regulation 15(3), records and returns are to be maintained and furnished by the operator of the scheme under regulation 24, and appeals may be made by the operator of the scheme under regulation 18, they shall be provided, paid, or maintained and furnished, and such appeals may only be made, by the partner or operator, respectively, notified under regulation 12(3)(h), or in accordance with the condition referred to in regulation 13(d)(ii),

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

PART II

PRODUCERS AND OBLIGATIONS

Producers and producer responsibility obligations

3.—(1) This regulation is subject to regulations 4, 29 and 30.

(2) In respect of a year a person is a producer of a class specified in an entry in Column 4 of the Table set out 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;

(**4**) S.R. 1998 No. 289

(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,

and the other provisions of that Schedule shall also have effect for the purposes of determining whether a person is a producer of any class.

(3) Where in respect of a year a person is a producer and satisfies the provisions of Columns 1 to 3 of the Table in Schedule 1 in relation to more than one class of producer specified in an entry in Column 4 of that Table, whether or not in relation to the same materials or products specified in Column 2 of that Table, or the same transaction or process, for that year that person belongs to each such class.

(4) For the purposes of these regulations—

(a) "relevant year" is the year referred to in paragraph (2), that is to say a year in respect of which a person is a producer; and

(b) "preceding year" is the year immediately preceding a relevant year.

(5) A person who is a producer in respect of a year has producer responsibility obligations in respect of that year, that is to say he shall—

(a) be registered as provided in regulation 5 (in these regulations referred to as the "producer registration obligation"); and

(b) for the year 2000 and subsequent years—

(i) take reasonable steps to recover and recycle packaging waste (in these regulations referred to as the "recovery and recycling obligations") in relation to each of the classes of producer to which the producer belongs, calculated as provided in Schedule 2, and

(ii) furnish a certificate of compliance in respect of his recovery and recycling obligations in accordance with regulation 23 (in these regulations referred to as the "certifying obligation").

(6) The recovery and recycling obligations of producers are to enable the United Kingdom to attain the recovery and recycling targets for Member States set out in Article 6(1) of Directive 94/62/EC and those targets are set out in Schedule 11.

Exclusions and limitations

4.—(1) Where a producer is a member of a registered scheme throughout a relevant year—

(a) the producer is exempt from complying with his producer responsibility obligations for the relevant year; and

(b) the recovery and recycling obligations with which, but for his membership of the scheme, the producer would have had to comply in relation to the relevant year shall be performed through the scheme.

(2) These regulations do not apply to a charity within the meaning given in section 506 of the Income and Corporation Taxes Act 1988(**5**).

(3) The producer responsibility obligations of the producer class of wholesaler apply only in respect of the year 2000 and subsequent years.

(**5**) 1988 c. 1

(4) A special producer as defined in Part III of Schedule 3 shall have producer responsibility obligations as provided in Part IV of that Schedule and shall maintain records and furnish returns to the Department in accordance with Part V of that Schedule.

PART III

REGISTRATION

Producer registration obligation

5. Subject to regulations 4(3) and (4), 29 and 30, a producer shall be registered with the Department in respect of a relevant year, or any part of that year, during which he is not a member of a registered scheme.

Application for producer registration

6.—(1) Subject to paragraph (3), a producer who is required by regulation 5 to be registered and who is not registered shall, on or before 1st April in a relevant year, make an application for producer registration to the Department.

(2) Where the producer is a partnership, the application shall be made by one partner acting on behalf of the partnership.

(3) Where—

(a) the relevant year is the year 1999, the application for registration shall be made on or before 30th September 1999; or

(b) any of the following occurs in a relevant year—

(i) the application for registration of a scheme of which the applicant was a member is refused,

(ii) the registration of a scheme of which the applicant was a member is cancelled,

(iii) the applicant's membership of a scheme is discontinued,

(iv) the applicant becomes a producer in respect of that year, or

(v) applications made in accordance with paragraph (1) or sub-paragraph (a) are refused,

an application for registration shall be made within 28 days of the occurrence.

(4) An application for producer registration shall—

(a) be made in writing;

(b) contain the initial information set out in Part I of Schedule 4;

(c) subject to paragraphs (7) and (8), be accompanied by the further information specified in, and provided on a form corresponding to, the form set out in Part II of Schedule 4;

(d) be accompanied by the fee referred to in regulation 9; and

(e) where the applicant is a partnership, be accompanied by a statement as to which partner is able to accept notices and act on behalf of the partnership as provided in regulation 2(2).

(5) An application for producer registration shall be granted where—

(a) the producer has complied with paragraph (4)(a), (b), (d) and (e) and, where applicable, paragraph (8);

(b) the Department is satisfied that the information provided in accordance with paragraph (4)(c), or (8), has been provided in accordance with paragraph (7); and