
STATUTORY INSTRUMENTS

2016 No. 241

The Producer Responsibility Obligations (Packaging Waste) (Miscellaneous Amendments) Regulations 2016

PART 2

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

New regulations 13A, 13B and 13C

8. After regulation 13, insert—

“Conditions of approval of a scheme

13A.—(1) Approval of a scheme under regulation 13 is subject to the following conditions—

- (a) the operator of the scheme complies with the obligations set out in regulation 12(1);
- (b) the operator of the scheme monitors the accuracy of information to which regulation 19 applies, so that the operator may reasonably discover when a scheme member has not complied with regulation 19(2)(c);
- (c) the operator of the scheme acquires PRNs or PERNs in a manner which least hinders the ability of any other operator to acquire PRNs or PERNs pursuant to regulation 12(3);
- (d) the operator of the scheme maintains sufficient financial resources to acquire PRNs or PERNS pursuant to regulation 12(3);
- (e) the operator of the scheme maintains access to, and sufficient financial resources to pay for, the expertise necessary for the purposes of calculating the recovery and recycling obligations referred to in regulation 12(1);
- (f) the operator of the scheme provides any information reasonably requested by the appropriate Agency for the purposes of monitoring compliance pursuant to regulation 31(1)(b) or (c);
- (g) in relation to any year in which the scheme is registered under regulation 14—
 - (i) the operator of the scheme informs the appropriate Agency in writing of—
 - (aa) any change in the person who is the operator of the scheme and, in the case where the operator of the scheme is a partnership, or where there is more than one operator of a scheme, any change of partners or operators;
 - (bb) any material change in the information provided in accordance with regulation 14(3)(b);

- (cc) any material change in the further information provided in accordance with regulation 14(3)(c); and
 - (dd) any change in the operator stated under regulation 14(3)(h), within 28 days of the occurrence of any such change; and
 - (ii) the operator of the scheme complies with the requirement set out in regulation 15A; and
 - (h) the operator of the scheme provides records and returns to the appropriate Agency as required by regulation 22.
- (2) Approval of a scheme pursuant to regulation 13(4) is subject to the following additional conditions in relation to any year in which the scheme is registered under regulation 14—
- (a) the operator of the scheme complies with 50% of the total recovery and recycling obligations of the scheme before 30th June;
 - (b) the operator of the scheme complies with a further 50% of the remaining recovery and recycling obligations before 30th September;
 - (c) the operator of the scheme makes returns to the appropriate Agency of information demonstrating compliance with the conditions set out at subparagraphs (a) and (b) on or before 15th July and 15th October respectively;
 - (d) the operator pays the fee under regulation 16(3) to the appropriate Agency; and
 - (e) the operator of the scheme does not accept any new members into the scheme.
- (3) The additional conditions set out in paragraph (2) cease to apply at the beginning of the year following the approval year if the appropriate Agency is satisfied that in the approval year the operator complied with—
- (a) the obligations under regulation 12(1); and
 - (b) the additional conditions set out in paragraph (2).
- (4) If the additional conditions set out in paragraph (2) cease to apply by virtue of paragraph (3), the appropriate Agency shall serve written notice of the cessation within 28 days of the date on which the appropriate Agency is satisfied in accordance with paragraph (3).
- (5) In paragraph (3), “approval year” means the year for which approval was granted pursuant to regulation 13(4).

Refusal to grant approval of a scheme

13B. Where the appropriate Agency decides under regulation 13 to refuse to grant approval of a scheme, it shall serve on the operator of the scheme, within 28 days of making the decision, written notice of—

- (a) the decision under regulation 13;
- (b) the reasons for the decision; and
- (c) the right of appeal under regulation 27(2)(a).

Withdrawal of approval of a scheme

13C.—(1) The appropriate Agency may withdraw approval of a scheme where it appears to it that—

- (a) the operator of the scheme is in breach of any of the conditions referred to in regulation 13A(1) or (2); or
 - (b) the operator knowingly or recklessly supplied false information in connection with the application for registration, or in connection with compliance with the conditions referred to in regulation 13A(1) or (2).
- (2) The appropriate Agency shall cancel any registration of a scheme under regulation 14 if it withdraws approval of the scheme and such cancellation shall take effect on the date on which the withdrawal of approval takes effect.
- (3) Before the withdrawal of approval, the appropriate Agency shall serve on the operator of the scheme written notice of—
- (a) its decision under paragraph (1) to withdraw approval;
 - (b) the reasons for the decision;
 - (c) the right of appeal under regulation 27(2)(b) and (c); and
 - (d) the date on which the withdrawal takes effect, not being earlier than the expiration of the time-limit for an appeal against the notice provided for in paragraph 2 of Schedule 6.
- (4) Where an application under regulation 13(3)(a) or (b) is not received by the due date, the appropriate Agency may decide to withdraw approval of the scheme and, if such a decision is taken, shall serve on the operator of the scheme written notice of—
- (a) the decision to withdraw approval of the scheme;
 - (b) the reasons for the decision; and
 - (c) the date on which the withdrawal takes effect, not being earlier than 28 days from the date of the notice.
- (5) Where an application under regulation 13(3)(c) or (d) is not received by the due date, the appropriate Agency shall serve written notice on the operator of the withdrawal of approval of the scheme, which shall take effect from the date of the notice.
- (6) The appropriate Agency shall consider any representations made by the operator of a scheme before the notice under paragraph (4) takes effect, and may withdraw the notice under paragraph (4) at any time.
- (7) An operator of a scheme in relation to which approval is withdrawn under this regulation shall, within 14 days of the withdrawal taking effect, serve on each scheme member written notice containing the following information—
- (a) a statement that approval of the scheme has been withdrawn and the date when the withdrawal takes effect;
 - (b) the reasons for the withdrawal; and
 - (c) the obligation of a producer under regulation 6.”.