

2003 No. 613

ENVIRONMENTAL PROTECTION

**The Producer Responsibility Obligations (Packaging Waste)
Amendment (Scotland) Regulations 2003**

Made - - - - - *19th December 2003*

Coming into force *1st January 2004*

The Scottish Ministers, in exercise of the powers conferred by sections 93, 94, and 95 of the Environment Act 1995(a), and of all other powers enabling them in that behalf, after consultation with representatives of bodies or persons whose interests are, or are likely to be, substantially affected by the following Regulations, in accordance with section 93(2) of that Act, and after having regard to the matters specified in section 93(6) of that Act as required by section 93(5) of that Act, hereby make the following Regulations, a draft of which has been laid before and approved by a resolution of the Scottish Parliament:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2003 and shall come into force on 1st January 2004.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

“the 1997 Regulations” means the Producer Responsibility Obligations (Packaging Waste) Regulations 1997(b).

Amendment of the 1997 Regulations

3. The 1997 Regulations shall be amended in accordance with the following regulations.

Amendment of Part I (General)

4.—(1) In regulation 2(1) (interpretation and notices)—

(a) insert at the appropriate places—

““accredited exporter” means an exporter who is accredited by the appropriate Agency under regulation 21B;”;

““accredited reprocessor” means a reprocessor who is accredited by the appropriate Agency under regulation 21B;”;

(a) 1995 c.25. The functions of the Secretary of State, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.I. 1997/648, amended by S.I. 1999/1361 and 3447; S.S.I. 2000/451 and 2002/147.

““appropriate Agency” means–

- (a) for the purposes of any provision of these Regulations relating to the exercise of the functions of the appropriate Agency in Scotland, SEPA;
- (b) for the purposes of any provision of these Regulations relating to the obligations of any other person–
 - (i) the Environment Agency, where at the beginning of the relevant year the person’s registered office or principal place of business is in England or Wales;
 - (ii) SEPA, where at the beginning of the relevant year the person’s registered office or principal place of business is in Scotland; or
 - (iii) at the election of the person, either the Agency or SEPA, where at the beginning of the relevant year the person does not have a registered office or principal place of business in Great Britain, or there is more than one operator of the scheme and such operators have registered offices or principal places of business in England or Wales and in Scotland;” ;

““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 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 that person by the appropriate Agency, as evidence of the export of the tonnage of packaging waste specified in the note for reprocessing outside the United Kingdom;”;

““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 that person by the appropriate Agency, as evidence of the receipt of the tonnage of packaging waste specified in the note for reprocessing within the United Kingdom;”;

- (b) for the definition of “recyclable material” substitute–

““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) at the end of the definition of “reprocessor” insert “and “reprocessing” shall be construed accordingly”;
- (d) in the definition of “SIC Code” for the references to “1992” and “1997”, in each case substitute “2003”; and
- (e) omit the definition of “special producer”.

(2) In regulation 2(2)(a) (notices) for “undertaking” substitute “condition”.

(3) In regulation 2(3)(a) for “17(3), 31(5) and (10)” substitute “and 17(3)”.

Amendment of Part II (Producers and Obligations)

- 5.**—(1) In regulation 3 (producers and producers responsibility obligations)—
- (a) in paragraph (5)(b) for “for the year 1998 and subsequent years” substitute “for each year”;
 - (b) after paragraph (5A) insert—
 - “(5B) The operator of the scheme shall take reasonable steps to carry out the recovery and recycling obligations which every producer who is a member of that scheme would have had, but for their membership of the scheme.”; and
 - (c) in paragraph (6) omit “and those targets are set out in Schedule 10”.
- (2) In regulation 4 (exclusions and limitations) omit paragraph (4).

Amendment of Part III (Registration)

- 6.**—(1) In regulation 5 (producer registration obligation) omit “4(3) and (4),”.
- (2) In regulation 6 (application for producer registration)—
- (a) in paragraph (1)—
 - (i) omit “and who is not registered”;
 - (ii) for “Agency, being-” substitute “Agency.”; and
 - (iii) omit sub-paragraphs (a), (b) and (c);
 - (b) omit paragraph (3)(a);
 - (c) in paragraph (4)(c) after “appropriate Agency” insert “and signed by the approved person”;
 - (d) omit paragraph (4)(c)(ii);
 - (e) in paragraph (4)(c)(v) omit “(excluding special producer)”;
 - (f) after paragraph (4)(c)(vi) insert—
 - “and
 - (vii) such other information as the appropriate Agency reasonably requires in order to determine the application and which is specified on the form.”;
 - (g) in paragraph (4)(dd)—
 - (i) at the start of the paragraph insert “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” substitute “an operational plan complying with Part IV of Schedule 4”;
 - (h) in paragraph (5)—
 - (i) at the end of sub-paragraph (a) insert “and”;
 - (ii) at the end of sub-paragraph (b) omit “and”; and
 - (iii) omit sub-paragraph (c); and
 - (i) for paragraph (7) substitute—
 - “(7) The further information provided shall be as accurate as reasonably possible.”.

(3) For the cross heading preceding it, and for regulation 7 (requirements for producer registration) substitute–

“Conditions of registration of a producer

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

- (a) inform the appropriate Agency 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 appropriate Agency as required by regulation 22;
- (c) apply to the appropriate Agency to cancel the registration where the producer has become a member of a registered scheme or has ceased to be a producer in respect of a relevant 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 appropriate Agency a revised version of the operational plan.”.

(4) Omit regulation 8 (continuation of producer registration).

(5) In regulation 9 (forms and fees for producer registrations), for paragraph (2) substitute–

“(2) The fee which is to be charged by the appropriate Agency on an application for producer registration shall be £768 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 8, in respect of the subsidiaries included within that application, a fee of–
 - (i) £180 for each of the first 4 subsidiaries;
 - (ii) £90 for each of the 5th to the 20th subsidiaries inclusive; or
 - (iii) £45 for each of the 21st and subsequent subsidiaries; and
- (b) on each resubmission of an application which is required because it failed to meet the requirements of regulation 6(4) or (7) on its previous submission, £220.”.

(6) In regulation 11 (cancellations of registration of producers)–

- (a) omit paragraph (1)(a);
- (b) in paragraph (1)(b)(i) for “undertakings referred to in regulation 7 and given by him to that Agency,” substitute “conditions specified in regulation 7; or”;
- (c) in paragraph (1)(b)(ii)–
 - (i) for “undertaking referred to in regulation 7,” substitute “condition specified in regulation 7.” and
 - (ii) omit “, or with regulation 8;”;
- (d) omit paragraph (1)(b)(iii); and

- (e) at the end of paragraph (3)(c) delete the full stop and insert after that paragraph–
 - “; and
 - (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)–
 - (i) omit “Subject to paragraph (8) below,”;
 - (ii) for “Agency, being-” substitute “Agency.”; and
 - (iii) omit sub-paragraphs (a), (b) and (c);
 - (b) in paragraph 3(c)(i) omit “class of”;
 - (c) omit paragraph (3)(c)(ii);
 - (d) in paragraph (3)(c)(v) omit “(excluding special producer)”;
 - (e) after paragraph (3)(c)(vi) insert–
 - “(vii) such other information as the appropriate Agency reasonably requires in order to determine the application and as is specified on the form;”;
 - (f) at the start of paragraph (3)(e) insert “on a first application for registration” and for “as provided in” substitute “complying with”;
 - (g) omit paragraph (3)(f);
 - (h) in paragraph (g) omit “and”, and at the end of paragraph (h) insert “and”;
 - (i) after paragraph (3)(h) insert–
 - “(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 the obligation under paragraph (7).”;
 - (j) after paragraph (4) insert–
 - “(4A) An application for approval of a scheme by the Scottish Ministers shall be made in writing by the operator of the scheme and shall contain–
 - (a) 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 attainment by the United Kingdom of the objectives referred to in regulation 3(6); 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 Scottish Ministers shall be granted where the Scottish Ministers are satisfied that the scheme is likely to subsist for a period of at least 5 years and will assist the attainment by the United Kingdom of the objectives referred to in regulation 3(6), 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) there is a change in the person who is the operator of the scheme;
 - (b) the operator of the scheme being convicted of an offence under these Regulations; or
 - (c) the operator of the scheme failing 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 Scottish Ministers may decide to withdraw approval of the scheme, and if they so decide shall serve a written notice on the operator of the scheme of–

- (a) their decision to withdraw approval of the scheme;
- (b) the reasons for the decision; and
- (c) the date when the withdrawal will take effect, not being earlier than 28 days from the date of the notice.

(4E) The Scottish Ministers shall consider any representations made by the operator of the scheme before the notice takes effect, and may withdraw the notice under paragraph (4D) at any time.”;

- (k) in paragraph (5)(a) for “and (h),” substitute “(h) and (i),”;
 - (l) in paragraph (6)(b) omit “, except that for the purposes of regulations 32 and 33 the scheme shall be treated as registered from the date of confirmation until any such cancellation”;
 - (m) in paragraph (7), for sub-paragraphs (a) and (b) substitute “be as accurate as reasonably possible”; and
 - (n) omit paragraph (8).
- (8) In regulation 13 (conditions of registration of a scheme)–
- (a) for paragraph (a) substitute–
“(a) that the obligation in regulation 3(5B) is complied with;”;
 - (b) in paragraph (d)(iv) for “regulations 12(3)(c) or 14” substitute “regulation 12(3)(c)”;
 - (c) omit paragraphs (e) and (g);
 - (d) in paragraph (f) omit “and” where it appears for the second time, and insert after that paragraph–
“(g) that the operator of the scheme will comply with the operational plan submitted under regulation 12(3)(e) or, if a revised plan has been submitted under paragraph (h), with the most recent version so submitted; and
(h) that the operator of the scheme will on or before 31st January in a relevant year provide to the appropriate Agency a revised version of the operational plan for the scheme.”.
- (9) Omit regulation 14 (continuation of registration of a scheme).
- (10) For regulation 15(2) (forms and fees for registration of a scheme) substitute–
- “(2) The fee which is to be charged by the appropriate Agency on an application for registration of a scheme shall be £558 for each producer (or group of producers where the group is a group of companies within the meaning of Schedule 8) who is on the date of the application a member of the scheme and in addition–
- (a) in a case where part of the fee is calculated on the basis of a group of companies, a fee of the following amount for each subsidiary within that group apart from the holding company–
 - (i) £180 for each of the first 4 subsidiaries;
 - (ii) £90 for each of the 5th to 20th subsidiaries inclusive; or
 - (iii) £45 for each of the 21st and subsequent subsidiaries.
 - (b) in the case of an application which is received after 7th April in any year, £110; and
 - (c) on each resubmission of an application which is required because it failed to meet the requirements of regulation 12(3) and (7), on its previous submission, £220.”.
- (11) In regulation 17(1) (cancellation of registration of a scheme)–
- (a) omit sub-paragraph (a);

- (b) at the end of sub-paragraph (b)(i) insert “or”;
- (c) in sub-paragraph (b)(ii) omit “, or with regulation 14, or”; and
- (d) omit sub-paragraph (b)(iii).

(12) Insert after regulation 17–

“Information provided to scheme operators

17A.—(1) This regulation applies to information which–

- (a) is provided to the operator of the scheme by a producer who is a member of that scheme at the time the information is provided; and
- (b) is information which the operator of the scheme will need to rely upon for the purposes of the application for registration of a scheme under regulation 12.

(2) A producer who provides to the operator of the scheme, information to which this regulation applies shall–

- (a) provide that information on a form supplied for the purpose by the appropriate Agency;
- (b) ensure that the form is signed by the approved person; and
- (c) ensure that the information is as accurate as reasonably possible.”.

Amendment of Part IV (Registration of Schemes – Appeals)

7.—(1) For regulation 18 (right of appeal) substitute–

“18.—(1) A producer may appeal to the Scottish Ministers against a decision of the appropriate Agency–

- (a) to refuse to grant an application for registration under regulation 6(5); or
- (b) to cancel registration under regulation 11(1).

(2) The operator of a scheme may appeal to the Scottish Ministers against a decision of the appropriate Agency–

- (a) to refuse to grant an application for registration under regulation 12(5); or
- (b) to cancel registration under regulation 17(1).

(3) A reprocessor or exporter may appeal to the Scottish Ministers against a decision of the appropriate Agency–

- (a) to refuse accreditation under regulation 21B(2); or
- (b) to specify a condition pursuant to paragraph 1(n)(iii) of Schedule 2A; or
- (c) to cancel accreditation under regulation 21D.”.

(2) In regulation 19(2)–

- (a) for “operator of the scheme” substitute “appellant”; and
- (b) omit from “form of a hearing” to the end.

(3) In regulation 21 (status pending appeal) for “regulation 17(1), the decision to cancel registration” substitute “regulations 11(1), 17(1) or 21D, the decision appealed against”.

Insertion of new Part IVA (Accreditation of reprocessors and exporters)

8. After regulation 21 insert—

“PART IVA

ACCREDITATION OF REPROCESSORS AND EXPORTERS

Requirement for accreditation

21A.—(1) A person shall not at any time after 31st December 2004 issue a PRN unless that person is at the time of the issue an accredited reprocessor and the PRN relates to packaging waste received by that person for reprocessing on the site for which that person is accredited.

(2) A person shall not at any time after 31st December 2004 issue a PERN unless that person is at the time of the issue an accredited exporter and the PERN relates to packaging waste exported by that person for reprocessing outside the United Kingdom.

Application for accreditation

21B.—(1) An application for accreditation shall be made to the appropriate Agency—

- (a) in the case of a person wishing to be accredited—
 - (i) as a reprocessor, in respect of each site for which that person wishes to be accredited and stating which of the applicable recovery operations specified in Part II of Schedule 3 and which recyclable materials that person wishes to be covered by the accreditation;
 - (ii) as an exporter, in respect of the export of one or more recyclable materials for reprocessing in one or more applicable recovery operations outside the United Kingdom;
- (b) before 30th September in the year immediately prior to that for which the reprocessor or exporter wishes to be accredited, the latter being a year not earlier than the year 2005;
- (c) on a form made available by the appropriate Agency and including all the information specified on that form, being information which the Agency reasonably requires in order to determine the application;
- (d) accompanied by a business plan containing information on how the funds acquired from the issue of PRNs or PERNs are to be applied including in respect of the following matters—
 - (i) the development of capacity for the collection and reprocessing of packaging waste and the development of new markets for materials or goods which have been made from recycled packaging waste;
 - (ii) arrangements for the collection and sorting of packaging waste; and
 - (iii) the strategy, including communications, to be adopted in order to achieve the matters described in (i) and (ii) above; and
- (e) accompanied by a fee of—
 - (i) in the case of an applicant who undertakes to issue PRNs or PERNs for 400 tonnes or less of packaging waste in the year to which the application relates, £500; or
 - (ii) in any other case, £2590.

(2) The appropriate Agency shall—

- (a) where it is satisfied as to the content of the business plan referred to in paragraph (1)(d), and where it is otherwise satisfied that the application has been duly made in accordance with paragraph (1), grant accreditation to—
 - (i) a reprocessor, to issue PRNs for the receipt of one or more specified recyclable materials at a specified site and for reprocessing in one or more specified applicable recovery operations; or
 - (ii) an exporter, to issue PERNs for the export of one or more specified recyclable materials for reprocessing in one or more applicable recovery operations outside the United Kingdom,and in each case subject to the conditions imposed by or under regulation 21C; or
- (b) in any other case, refuse the application.

(3) The appropriate Agency shall, unless otherwise agreed with the applicant, notify the applicant in writing of its decision under paragraph (2) before 30th November in the year in which the application is made.

(4) Where the decision notified under paragraph (3) is a decision to refuse accreditation, the notification shall include reasons for that decision.

(5) Subject to regulation 21D, where accreditation is granted under paragraph (2), it shall take effect at the beginning of the year following that in which the application is made and shall remain in force for the duration of one year.

(6) Where a reprocessor or exporter who has given the undertaking and paid the fee specified in paragraph (1)(e)(i), subsequently breaches that undertaking, that reprocessor or (as the case may be) exporter shall from the date of the breach be liable to pay to the Agency the sum of £2090.

Conditions of accreditation

21C. An accredited reprocessor or exporter shall comply with the conditions specified in and under Schedule 2A.

Suspension and cancellation of accreditation

21D.—(1) The appropriate Agency may suspend or cancel the accreditation of a reprocessor or exporter where it appears to it that—

- (a) the person who is accredited has failed to comply with any of the conditions specified in or under Schedule 2A; or
- (b) the person who is accredited has knowingly supplied false information in the application for accreditation made under regulation 21B or in connection with compliance with any of the conditions specified in or under Schedule 2A.

(2) Before suspension or cancellation of an accreditation under paragraph (1), the appropriate Agency shall serve on the reprocessor or exporter concerned written notice of—

- (a) its decision to cancel or suspend (as the case may be) the accreditation;
- (b) the reasons for the decision;
- (c) the right of appeal under Part IV of these Regulations;
- (d) the date when the cancellation or suspension will take effect, not being earlier than 28 days from the date of the notice; and
- (e) in the case of a notification of suspension, the period of the suspension or any steps which are required to be taken in order to bring the suspension to an end.

- (3) The accreditation of a reprocessor or exporter shall be deemed to be cancelled—
- (a) on the date on which either of the following occurs—
 - (i) the person who is accredited ceases to be the holder of a relevant authorisation;
 - (ii) the person who is accredited ceases to be a reprocessor or exporter; or
 - (b) in a case where the person who is accredited requests that the accreditation should be cancelled, on the date specified as the date of cancellation in that request.
- (4) For the purposes of paragraph (3) “relevant authorisation” means—
- (a) a permit granted under regulation 7 of the Pollution Prevention and Control (Scotland) Regulations 2000^(a);
 - (b) a waste management licence granted under section 36 of the 1990 Act; or
 - (c) an authorisation in respect of an activity which is—
 - (i) registered under regulation 18 of the Waste Management Licensing Regulations 1994^(b) as exempt from the requirement to have a waste management licence; and
 - (ii) carried out so as to comply with all the conditions detailed in those Regulations appropriate for that exemption.”.

Amendment of Part V (Records, Returns and Certificate)

- 9.—**(1) In regulation 22 (producers- records and returns)—
- (a) in paragraph (2)—
 - (i) omit “,in respect of the year 1998 and subsequent years”;
 - (ii) in sub-paragraph (a)—
 - (aa) for “provided to a reprocessor” substitute “delivered respectively for recycling and for recovery”;
 - (bb) in sub-paragraph (b) omit “and”; and
 - (cc) at the end of sub-paragraph (c) insert “and”; and
 - (iii) after sub-paragraph (c) insert—
 - “(d) the total number of tonnes of each material which is the subject of both the producer’s recovery and recycling obligations;
 - (e) the number of PRNs or PERNs acquired; and
 - (f) a statement which demonstrates how the producer has complied with the operational plan (where that producer requires to have one), for the period in question.”;
 - (b) in paragraph (3) omit “for the year 1998 and subsequent years.”.
- (2) In regulation 24 (schemes-records and returns)—
- (a) in paragraph (1)—
 - (i) for “paragraphs (2) and” substitute “paragraph”; and
 - (ii) for sub-paragraphs (a) and (b) substitute “on or before 31st January in the year immediately following the year to which the information relates”;
 - (b) omit paragraph (2);
 - (c) in paragraph (3)—
 - (i) for the headpiece substitute “For each year the information is—”;

^(a) S.S.I. 2000/323 to which there are amendments not relevant to these Regulations.

^(b) S.I. 1994/1056, amended by S.I. 1994/1137, 1995/288, 1950, 1996/593, 1998/606, S.S.I. 2000/323 and S.S.I. 2003/171; there are other amending instruments but none is relevant to these Regulations.

- (ii) in sub-paragraph (a) after “provided” insert “respectively for recycling and for recovery”;
- (iii) at the end of sub-paragraph (c) omit “and”;
- (iv) omit sub-paragraph (d); and
- (v) after sub-paragraph (c) insert–
 - “(d) for each producer who is a member of the scheme in that year, the information specified in regulation 12(3)(c) and the revised operational plan referred to in regulation 13(h), together with any changes notified in accordance with the condition specified in regulation 13(d)(iv);
 - (e) the total number of tonnes of each material which is the subject of both the recovery and recycling obligations for which the operator of the scheme is responsible under regulation 3(5B);
 - (f) the number of PRNs or PERNs acquired by the operator of the scheme; and
 - (g) a statement which demonstrates how the scheme has complied with its operational plan for the period in question.”;
- (d) in paragraph (4) for the words “for the year 1998 and subsequent years packaging materials” substitute “packaging material”.

Amendment of Part VI (Agencies’ Powers and Duties)

10.—(1) In regulation 25 (monitoring)–

- (a) in paragraph (1) for sub-paragraph (b) substitute–
 - “(b) compliance by operators of schemes with the obligation referred to in regulation 3(5B); and
 - (c) compliance by persons who are accredited reprocessors or exporters with the conditions specified in or under Schedule 2A.”;
- (b) in paragraph (2)–
 - (i) in sub-paragraph (b) for “regulations 6 and 8” substitute “regulation 6” and for “undertakings” substitute “conditions”;
 - (ii) in sub-paragraph (c) omit “or Part V of Schedule 3”;
 - (iii) in sub paragraph (e) for “regulations 12 and 14” substitute “regulation 12” and omit “and” where it appears at the end of that sub-paragraph; and
 - (iv) after sub-paragraph (f) insert–
 - “; and
 - (g) the compliance by accredited reprocessors and exporters with the conditions specified in or under Schedule 2A.”;
- (c) in paragraph (3)–
 - (i) at the end of sub-paragraph (a), omit “or”;
 - (ii) at the end of sub-paragraph (b), insert “or”; and
 - (iii) after sub-paragraph (b) insert–
 - “(c) any person who is engaged in trading in or brokerage in relation to, PERNs or PERNs.”.

(2) In regulation 25A (monitoring-publication)(a)–

- (a) omit the words “commencing with 2000”; and
- (b) for paragraph (a) substitute–
 - “(a) the Agency’s policy in relation to the monitoring it is required to carry out under regulation 25; and”.

(a) Regulation 25A was inserted by S.I. 1999/3447, regulation 2(4).

- (3) For paragraph (1) of regulation 26 substitute–
- “(1) The appropriate Agency shall maintain and make available in accordance with this regulation a register relating to–
- (a) the producers and schemes registered with it in accordance with regulations 5 to 16; and
 - (b) the reprocessors and exporters accredited by it in accordance with Part IVA, and containing the relevant information prescribed in Schedule 7.”.

(4) In regulation 27 (approval of persons to issue certificates of compliance) after “compliance” insert “and signing the form referred to in regulation 6(4)(c) or 17A(2) (as the case may be)”.

(5) In regulation 28 (entry and inspection)–

 - (a) in paragraph (2)–
 - (i) for “the appropriate Agency’s servant or agent” substitute “a person authorised under paragraph (1) of this regulation”;
 - (ii) omit sub-paragraphs (b) and (c); and
 - (iii) in sub-paragraph (g) for “regulations 22 and 24 and Part V of Schedule 3” substitute “regulations 21C, 22 and 24”; and
 - (b) in paragraph (3) for “the appropriate Agency’s servant or agent” substitute “a person authorised under paragraph (1) of this regulation”.

Amendment of Part X (Offences)

- 11.** In regulation 34(offences and penalties)–
- (a) insert after paragraph 2–
 - “(2A) An operator of a scheme who contravenes a requirement of regulation 3(5B) is guilty of an offence;
 - “(2B) A person who contravenes a requirement of regulation 21A or who is in breach of either of the conditions specified in paragraph (1)(a) or (b) of Schedule 2A is guilty of an offence;”;
 - (b) for paragraph (3) substitute–
 - “(3) A person who furnishes any information to the appropriate Agency in connection with its functions under these Regulations or furnishes information to which regulation 17A applies to an operator of scheme, shall be guilty of an offence if, in furnishing the information that person–
 - (a) knows the information to be false or misleading in a material particular; or
 - (b) furnishes such information recklessly and it is false or misleading in a material particular.
 - “(3A) A person who fails without reasonable excuse to comply with any requirement imposed by a notice under regulation 25(3) shall be guilty of an offence;”.

Amendment of Schedule 1 (Producers)

- 12.**—(1) In Schedule 1–
- (a) for paragraph 3(a) substitute–
 - “(a) that person’s turnover in the last financial year in respect of which audited accounts are available before the relevant date was more than £2,000,000; and”;
 - and
 - (b) for paragraph 4(1)(c) substitute–
 - “(c) “relevant date” means–
 - (i) 7th April in the obligation year; or

- (ii) where an application for registration is made in a circumstance set out in regulation 6(3), or as required by paragraph 11 of Schedule 9, the date of the application.”.

Amendment of Schedule 2 (Recovery and Recycling Obligations)

13.—(1) In Schedule 2—

(a) for paragraph 2(2) substitute—

“(2) The proportion of the packaging waste referred to in sub-paragraph (1) which is to be recovered by recycling is, in relation to a class of producer to which the producer belongs—

- (a) in the years 2004, 2005 and 2006, not less than 94%; and
- (b) in the years 2007 and 2008, not less than 95%,

of the amount by tonnage of packaging waste represented by “Z” in sub-paragraph (1) above;”.

(b) for paragraph 4 substitute—

“(4) The following is prescribed as the recovery target “X”—

- (a) for the year 2004, 63%;
- (b) for the year 2005, 65%;
- (c) for the year 2006, 67%;
- (d) for the year 2007, 69%; and
- (e) for the year 2008, 70%”;

(c) for paragraph 5 substitute—

“5. The following percentages are prescribed as the recycling target “Y” in respect of the recyclable material specified in the first column in relation to the years indicated at the head of the subsequent columns—

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|------------------|-------------|-------------|-------------|-------------|-------------|
| Glass | 49.0 | 55 | 61.0 | 66.0 | 71.0 |
| Aluminium | 26.0 | 28 | 30.5 | 33.0 | 35.5 |
| Steel | 52.5 | 55 | 58.0 | 60.0 | 61.5 |
| Paper/fibreboard | 65.0 | 66 | 68.0 | 69.0 | 70.0 |
| Plastic | 21.5 | 22 | 22.5 | 23.0 | 23.5 |
| Wood | 18.0 | 19 | 20.0 | 20.5 | 21.0 |

”; and

(d) in paragraph 6 omit sub-paragraphs (1) and (3).

Insertion of new Schedule 2A (Conditions of accreditation)

14. After Schedule 2 insert–

“SCHEDULE 2A

Regulations 21C, 25(1)(c),
25(2)(g) and 34(2B)

Conditions of Accreditation

1. The conditions referred to in regulation 21C are the following–
 - (a) PRNs and PERNs shall relate to packaging waste received or exported, as the case may be, in a specified year and shall not be issued after 31st January in any year in respect of packaging waste received or exported in the previous year;
 - (b) all PRNs and PERNs which have not been issued before 1st February of the year following that in which the packaging waste to which they relate was received, shall be returned to the appropriate Agency before 15th February of that year;
 - (c) PRNs shall be issued for no more than the total amount of packaging waste which–
 - (i) is received for reprocessing on the site of an accredited reprocessor for the year for which that reprocessor is accredited; and
 - (ii) will be capable of being reprocessed on the site for which the reprocessor is accredited by not later than the end of the year following that for which that reprocessor is accredited;
 - (d) PERNs shall be issued for no more than the total amount of packaging waste which an accredited exporter exports for reprocessing in the year for which that exporter is accredited;
 - (e) PRNs and PERNs which have not been issued and which have expired shall remain the property of the appropriate Agency at all times and shall be returned to the Agency on demand;
 - (f) the weight of packaging waste recorded on a PRN or PERN shall be rounded up to the nearest tonne;
 - (g) duplicate copies of all PRNs and PERNs issued shall be retained and made available for inspection by the appropriate Agency at all reasonable times;
 - (h) PRNs and PERNs shall only be issued to producers or operators of schemes, or to the representatives of producers or such operators;
 - (i) substitute PRNs or PERNs shall be issued on request to the holder of the original PRNs or PERNs in exchange for those originals, provided that the value of the substitute PRNs or PERNs so issued remains equal to those exchanged and that no substitutes which relate to packaging waste received for reprocessing in any given year are issued after 31st January in the following year;
 - (j) records shall be maintained for each quarter year on a form made available for the purpose by the appropriate Agency and shall be retained for at least 4 years after the end of the year in which the record is made;
 - (k) reports shall be provided to the appropriate Agency before each of the 21st days of April, July, October and February in respect of the previous quarter year on–
 - (i) the tonnage of packaging waste received or exported for reprocessing in that quarter;
 - (ii) the tonnage of packaging waste reprocessed in that quarter; and
 - (iii) the number of PRNs or PERNs issued in that quarter together with copies of those documents;

- (l) a report shall be provided to the appropriate Agency before 28th February in each year which sets out–
 - (i) all the information provided in the quarterly reports which relate to the whole of the previous year;
 - (ii) the amount of revenue received in the previous year from the sale of PRNs or PERNs and a statement of what it has been spent on;
- (m) except in the case of a reprocessor or exporter who has made the undertaking specified in regulation 21B(1)(e)(i), a report shall be provided to the appropriate Agency before 28th February in any year which–
 - (i) is from an independent auditor;
 - (ii) demonstrates that the PRNs or PERNs issued by the reprocessor or exporter in the previous year are consistent with the tonnage of packaging waste received or exported for that year;
- (n) a reprocessor or exporter must–
 - (i) take reasonable steps to implement the business plan referred to in regulation 21B(1)(d);
 - (ii) undertake sampling and inspection of packaging waste received or exported, in accordance with a plan approved by the appropriate Agency; and
 - (iii) comply with such other conditions as the appropriate Agency may specify in the notification of a grant of accreditation.

2. For the purposes of this Schedule–

- (a) “issue” in relation to a PRN or PERN means to sell or otherwise supply to a producer or operator of a scheme or to the representative of a producer or such operator, and a reprocessor or exporter may issue a PRN or PERN to himself;
- (b) “quarter year” means the first, second, third and fourth three months of the year; and
- (c) “independent auditor” means an auditor who would be eligible for appointment as company auditor of the reprocessor or auditor under the Companies Act 1989(a).”.

Amendment of Schedule 3 (Definition of waste, Recovery and Special Producers)

15.—(1) In the shoulder note to Schedule 3 for “Regulations 2, 4(4)” substitute “Regulation 2(1)”.

(2) For the list R1 to R13 in paragraph 2 of Part II substitute–

- “R1 Use of waste principally as a fuel or for other means of generating energy;
- R2 Reclamation or regeneration of solvents;
- R3 Recycling or reclamation of organic substances which are not used as solvents, including composting and other biological transformation processes;
- R4 Recycling or reclamation of metals and metal compounds;
- R5 Recycling or reclamation of other inorganic materials;
- R6 Regeneration of acids or bases;

(a) 1989 c.40; see Part II.

- R7 Recovery of components used for pollution abatement;
- R8 Recovery of components from catalysts;
- R9 Re-refining, or other reuses, of oil which is waste;
- R10 Land treatment resulting in benefit to agriculture or ecological improvement;
- R11 Use of wastes obtained from any of the operations listed as R1 to R10 in this paragraph;
- R12 Exchange of wastes for submission to any of the operations listed as R1 to 11 in this paragraph;
- R13 Storage of waste pending any of the operations listed in this paragraph, but excluding temporary storage, pending collection, on the site where it is produced.”

(3) Omit Parts III, IV and V of Schedule 3.

Amendment of Schedule 4 (Information)

16. In Part IV of Schedule 4–

- (a) in the headnote, for “Scheme’s Operational Plan” substitute “the Operational Plans of Schemes and Producers” and
- (b) in the shoulder note, for the reference to “Regulation 12(3)(d) and (e)” substitute “Regulations 6(4)(dd) and 12(3)(d) and (e)”;
- (c) in paragraph 11–
 - (i) omit “scheme’s” and for “regulation 12(3)(e) substitute “regulations 6(4)(dd) and 12(3)(e)”;
 - (ii) in sub-paragraph (a) for “scheme’s members referred to in regulation 4(1)(b) to be discharged through the scheme” substitute “producer or the obligation of the scheme operator under regulation 3(5B) (as the case may be) to be discharged”;
 - (iii) for sub-paragraph (b) substitute–
 - “(b) that the arrangements for recovery and recycling take account of any statement which contains the Scottish Ministers’ policies in relation to the recovery and disposal of waste in Scotland and which is made under section 44B of the 1990 Act”(a);
 - (iv) omit sub-paragraph (c);
 - (v) in sub-paragraph (d) for “of its members referred to in regulation 4(1)(b)” substitute “or the obligation of the operator of the scheme under regulation 3(5B) (as the case may be)”;
 - (vi) in sub-paragraph (d)(iii) omit “who is a member of the scheme”;
 - (vii) at the end of sub-paragraph (d)(v) omit “and”;
 - (viii) in sub-paragraph (e) for “of the scheme’s members” substitute “or the obligation of the operator of the scheme under regulation 3(5B) (as the case may be)” and for “any “member of the scheme, or any other producer” substitute “any producer”; and
 - (ix) after sub-paragraph (e) insert–

(a) Section 44B was inserted by section 92 of the Environment Act 1995 (c.25).

- “(f) the number of PRNs or PERNs which are expected to be acquired in each quarter of the three years immediately following registration, and the type of recyclable material to which they are expected to relate;
- (g) the quantity of packaging waste which it is expected to be acquired during the three years immediately following registration;
- (h) the amounts to the nearest tonne of the recovery and recycling obligations in respect of each recyclable material that are expected to have to be discharged in each of the three years immediately following registration;
- (i) a statement indicating the contracts anticipated to be made with reprocessors and packaging waste suppliers in the three years immediately following registration;
- (j) a statement as to the purposes for which it is intended to apply funds supplied to reprocessors for the acquisition of PRNs or PERNs in the three years immediately following registration, including the amounts to be applied to the following matters–
 - (i) increasing the capacity for the collection and reprocessing of packaging waste;
 - (ii) encouraging the development of markets for materials or goods made from recycled packaging waste;
 - (iii) the strategy, including communications, to be adopted in order to achieve the matters described in sub-paragraphs (i) and (ii) above.”.

Amendment of Schedule 5 (Procedure on appeals)

17.—(1) Schedule 5 is amended as follows.

(2) In paragraph 1–

- (a) in sub-paragraph (1), for “operator of a scheme” substitute “person”;
- (b) in sub-paragraph (2)(b), for “regulation 16” substitute “regulation 6(5) or 16”; and
- (c) in sub-paragraph (2)(c), for “regulation 17(1)” substitute “regulation 11 or 17”.

(3) In paragraph 2(1) for “6 months” substitute “2 months”.

Amendment of Schedule 6 (Information in certificate of compliance)

18.—(1) In paragraph (d) of Schedule 6 omit “, and regulation 8” and for “undertakings” substitute “conditions”.

(2) Insert after paragraph (f)–

- “(g) copies of all PRNs or PERNs acquired in the year to which the certificate relates, except that a PRN or PERN which is acquired in December of any year may be included in the certificate of compliance for either that year or the following year.”.

Amendment of Schedule 7 (Public Register)

19. For Schedule 7 substitute—

“SCHEDULE 7

Regulation 26

Public Register

1. The name and address of the registered office or principal place of business of—
 - (a) each registered producer;
 - (b) each registered operator of the scheme and each member of the scheme for which that operator is responsible under the scheme; and
 - (c) each accredited reprocessor and accredited exporter.
2. A statement in relation to each registered producer and each relevant year as to whether a certificate of compliance has been furnished.
3. A statement in relation to each registered operator of a scheme as to whether that operator has complied with the obligation under regulation 3(5B).”.

Amendment of Schedule 9 (Mid-year Changes)

20. In paragraph 16(a) of Schedule 9 for “each holding company shall comply with the requirements of a proportion of the company’s recovery and recycling obligations, such proportion being calculated as provided in paragraph 17(2) below” substitute “the first group shall comply with the requirements of the company’s recovery and recycling obligations for the year in which the company ceases to be a member of that group and the second group shall comply with those requirements in the following and any subsequent year in which the company is a member of the second group”.

Amendment of Schedule 10 (United Kingdom’s recovery and recycling targets)

21. Omit Schedule 10.

St Andrew’s House,
Edinburgh
19th December 2003

ALLAN WILSON
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (the “1997 Regulations”), which imposed on producers, and, on their behalf, scheme operators, obligations to recover and recycle specified tonnages of packaging waste, and related obligations, in order to attain the targets in Article 6(1) of Directive 94/62/EC (the “Directive”) (O.J. No. L 365, 31.12.94, p.10). A revision of the Directive which will set new targets to be met in 2008 is presently being negotiated and is expected to be agreed soon (see Com (2001) 729 final). In order to ensure that the absence of targets higher than those presently in the 1997 Regulations does not prejudice the United Kingdom’s ability to increase its rates of recovery and recycling sufficiently to meet the new Directive targets in 2008, these Regulations set interim domestic targets and recovery and recycling obligations which take account of the probable new targets which the United Kingdom is likely to have to meet in 2008.

Regulation 4 makes amendments to regulation 2 of the 1997 Regulations by way of inserting a number of new definitions and amending others.

Regulation 5 introduces a new obligation on scheme operators to take reasonable steps to discharge the recovery and recycling obligations which the members of the schemes would have had but for their membership of the schemes.

Regulation 6 makes a number of amendments to Part III of the 1997 Regulations concerning registration, including in particular–

- (a) a requirement for forms of application for registration to be signed by an approved person;
- (b) provision for the appropriate Agency to include additional information requirements within the application form;
- (c) requirements for producers above certain turnover and tonnage thresholds and for scheme operators to comply with the operational plans they are required to have submitted;
- (d) alignment of the conditions of registration applying to producers and scheme operators;
- (e) a change in the date by which revised operational plans are to be submitted to 31st January in each year;
- (f) the introduction of new charges for applications which are submitted late, and for those which require to be corrected or resubmitted and for applications which relate to subsidiaries within groups;
- (g) a requirement on scheme operators to submit monitoring plans relating to the steps they propose to take to ensure the accuracy of the information they receive from scheme members;
- (h) new procedural requirements for obtaining the approval of the Scottish Ministers to a scheme;
- (i) requirements for annual applications for registration to be made in place of annual renewals of registration; and
- (j) requirements relating to the submission of information by scheme members to scheme operators.

Regulation 7 introduces rights of appeal for producers and for reprocessors and exporters.

Regulation 8 inserts a new Part IVA into the 1997 Regulations in order to require the accreditation of reprocessors and exporters to issue packaging waste recovery notes and packaging waste export recovery notes.

Regulation 9 amends Part V of the 1997 Regulations in order to require additional records and returns to be submitted to the appropriate Agency by producers and scheme operators.

Regulation 10 amends Part VI of the 1997 Regulations in order to ensure that the monitoring obligations which apply to the appropriate Agency include monitoring the new obligations placed on scheme operators, and accredited reprocessors and exporters; and to increase the scope of the Agency's power to serve notices on persons requiring the submission of information to the Agency.

Regulation 11 amends Part X of the 1997 Regulations in order to introduce new offences for which scheme operators, scheme members, reprocessors and exporters may be liable.

Regulation 12 makes minor consequential amendments to Schedule 1 of the 1997 Regulations.

Regulation 13 amends Schedule 2 of the 1997 Regulations in order to apply new recovery and recycling targets reflecting the anticipated revisions to the Directive targets.

Regulation 14 inserts a new Schedule 2A into the 1997 Regulations setting out the conditions of accreditation referred to in the new regulation 21C inserted by regulation 8 of these Regulations.

Regulation 15 amends the list of recovery operations set out in Schedule 3 of the 1997 Regulations in order to reflect amendments made by Commission Decision 96/350/EEC.

Regulation 16 amends Schedule 4 of the 1997 Regulations in order to amplify the information required to be contained in the operational plans which producers and scheme operators are required to submit to the appropriate Agency.

Regulation 17 amends Schedule 5 of the 1997 Regulations in order to make provision for producer, reprocessor and exporter appeals and exporter appeals and reduce the period in which appeals may be made from 6 months to 2 months.

Regulation 18 amends Schedule 6 of the 1997 Regulations in order to amplify the information which must be contained in the certificate of compliance required by regulation 23 of the 1997 Regulations.

Regulation 19 amends Schedule 7 of the 1997 Regulations in order to require information in relation to accredited reprocessors and exporters to be placed on the public register.

Regulation 20 amends Schedule 8 of the 1997 Regulations in order to simplify the arrangements for mid-year changes affecting groups of companies who have obligations under the Regulations.

Regulation 21 removes Schedule 10 which set out the recovery and recycling obligations of the United Kingdom under the Directive.

These Regulations were notified in draft to the European Commission in accordance with Article 8 of the European Parliament and Council Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services (O.J. No. L 204, 21.7.1998, p.37), as amended by the European Parliament and Council Directive 98/48/EC (O.J. No. L 217, 5.8.1998, p.18).

A Regulatory Impact Assessment in relation to these Regulations has been placed in the library of the Scottish Parliament and copies can be obtained from the SEPA Sponsorship and Waste Unit, Scottish Executive Environment and Rural Affairs Department (SEERAD), Victoria Quay, Leith, EH6 6QQ.

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