

SCHEDULE 1

Regulations 2(2), 4(2) and 4(3)

PRODUCERS

Table 1

<i>Relevant function performed in Years 1 and 2</i>	<i>Subject matter of supply in Year 1</i>	<i>Class of supply in Year 1</i>	<i>Class of producer in Year 2</i>
Manufacturer	Packaging materials	A B or C	Manufacturer
Convertor, subject to paragraph 1(2)	Packaging or packaging materials	A B or C	Convertor
Packer/filler	Packaging or packaging materials	A B or C	Packer/filler
Importer	Packaging or packaging materials	A B or C	Importer
Seller	Packaging	E	Seller
Manufacturer, Convertor, Packer/filler, or Importer	Transit packaging	B or F	Secondary provider
Service Provider	Packaging	G	Service Provider

1.—(1) For the purposes of Column 1 in the above Table—

- (a) “relevant function” means the performance by a person of the functions of one of the following—
 - (i) manufacturer;
 - (ii) convertor;
 - (iii) packer/filler;
 - (iv) importer;
 - (v) seller;
 - (vi) service provider,
 either himself or through an agent acting on his behalf, and in the course of business;
- (b) “convertor” means a person who uses or modifies packaging materials in the production or formation of packaging;
- (c) “importer” means a person who imports packaging or packaging materials into the United Kingdom;
- (d) “manufacturer” means a person who manufactures raw materials for packaging;
- (e) “packer/filler” means a person who puts goods into packaging;
- (f) “seller” means a person who supplies packaging to a user or a consumer of that packaging, whether or not the filling has taken place at the time of the supply;
- (g) “service provider” means a person who supplies reusable packaging to a user of that packaging where the supply is made by hiring out or lending the packaging;
- (h) “Year 1” means the preceding year; and
- (i) “Year 2” means the relevant year.

(2) Where a person performs the functions of a convertor and a packer/filler at the same time, and as part of the same packing/filling process, and in relation to the same packaging, as regards supplies of packaging or packaging materials made to or by him in connection with those functions, or that process, he is treated for the purposes of these Regulations as a producer of the class of packer/filler only.

(3) For the purposes of this Schedule a person acts “in the course of business” if he acts in the ordinary course of conduct of a trade, occupation or profession.

2. For the purposes of Column 3 of the above Table, and Schedule 2—

- (a) “Class A supply” means—
- (i) the final use or consumption by an importer of imported packaging or packaging materials; or
 - (ii) a deemed supply;
- (b) “Class B supply” means a supply, other than solely for the purpose of transport, to a person who acts as a distributor, that is to say who, in relation to the packaging or packaging materials supplied, neither performed the functions of one of the classes of producer, nor was the user or consumer;
- (c) “Class C supply” means a supply (other than a Class F supply) to a person for the performance by that person of a relevant function which—
- (i) is different from the function performed by his immediate supplier; and
 - (ii) is not that of an importer;
- (d) “Class E supply” means a supply, other than a supply of transit packaging in respect of which a Class F supply has already been made, to a user or consumer other than a person who performed a relevant function;
- (e) “Class F supply” means a supply—
- (i) to a person who performed a relevant function;
 - (ii) to a user or consumer; or
 - (iii) to a person who acts as a distributor,
- using the transit packaging supplied to perform the functions of a packer/filler and seller;
- (f) “Class G supply” means a supply —
- (i) to a person who performed a relevant function; or
 - (ii) to a person who acts as a distributor,
- where the supply is made by hiring out or lending the packaging;
- (g) “supply” means doing any of the following, either himself or through an agent acting on his behalf, in relation to packaging or packaging materials owned by the supplier—
- (i) selling, hiring out or lending;
 - (ii) providing in exchange for any consideration other than money;
 - (iii) providing in or in connection with the performance of any statutory function; or
 - (iv) giving as a prize or otherwise making a gift,

and, where the packaging or packaging materials are owned by a person who does not have a registered office or principal place of business in Great Britain, a supply shall take place when a person performs any of the functions in paragraphs (i) to (iv) above on behalf of the owner in relation to that packaging or packaging materials; and

- (h) “deemed supply” means a supply which is deemed to occur when a person who has carried out a relevant function then performs another such function in relation to the same packaging or packaging materials.

3. A person satisfies the threshold tests if—

- (a) his turnover in the last financial year—
 - (i) in respect of which audited accounts are available; or
 - (ii) where audited accounts are not required, in respect of which accounts are available, before the relevant date was more than £2,000,000; and
- (b) in the calculation year the person handled in aggregate more than 50 tonnes of packaging or packaging materials.

4.—(1) For the purposes of paragraph 3(a) above audited accounts shall be treated as being available, where the person is a company, where annual accounts have been delivered to the registrar under section 242 of the Companies Act 1985⁽¹⁾.

(2) For the purposes of paragraph 3(b) above, the amount of packaging or packaging materials handled is the amount handled in the United Kingdom in respect of which the producer made a supply referred to in Column 3 of Table 1, other than a deemed supply, calculated in tonnes to the nearest tonne by—

- (a) including packaging, including reused transit packaging, or packaging materials so supplied which were imported into the United Kingdom by the producer, either himself or through an agent acting on his behalf; and
- (b) excluding—
 - (i) reused sales packaging or primary packaging as defined in paragraph 1(a) of Article 3 of the Packaging Waste Directive;
 - (ii) production residues from the production of packaging or packaging materials or from any other production process occurring before, during or after the producer handled the packaging or packaging materials;
 - (iii) any packaging or packaging materials so supplied which were exported from the United Kingdom by the producer, either himself or through an agent acting on his behalf or which to the producer’s reasonable knowledge were otherwise exported from the United Kingdom; and
 - (iv) reused transit packaging (with the exception of reused transit packaging imported into the United Kingdom).

SCHEDULE 2

Regulation 4(4)

RECOVERY AND RECYCLING OBLIGATIONS

1.—(1) Except for a small producer who has elected to follow the allocation method, a producer’s obligations to recover and recycle packaging waste in a relevant year are, in relation to each class of producer to which he belongs—

- (a) to recover an amount of packaging waste as provided in paragraph 3(1) below;

(1) 1985 c. 6 as amended by the Companies Act 1989 (1989 c. 40), S.I. 2002/1986, S.I. 2005/1011, S. I. 1992/1083 and the Welsh Language Act 1993 (1993 c. 38).

- (b) to recover by recycling a proportion of that packaging waste, as provided in paragraph 3(2) below; and
- (c) as part of the obligation to recover packaging waste as provided in paragraph (a) above, to recover by recycling an amount of packaging materials which is packaging waste, as provided in paragraph 3(3) below,

and are calculated by aggregating his obligations in relation to each class of producer to which he belongs in respect of that year.

2. Where a small producer has elected to follow the allocation method, his obligations to recycle packaging waste in a relevant year are to recycle an amount of packaging waste as provided in paragraphs 7 and 8 below.

3.—(1) The amount of packaging waste to be recovered by a producer in relation to a class of producer to which he belongs is calculated as follows—

$$P \times C \times X = Z$$

where—

- “P” is the amount in tonnes to the nearest tonne of packaging and packaging materials handled in Great Britain by the producer in the preceding year;
- “C” is the percentage prescribed in paragraph 4 below in relation to the class of producer;
- “X” is the percentage prescribed in paragraph 5 below as the recovery target for the relevant year; and
- “Z” is the amount by tonnage of packaging waste which is to be recovered within the relevant year.

(2) The proportion of the packaging waste referred to in sub-paragraph (1) above which is to be recovered by recycling, in relation to a class of producer to which the producer belongs in the years 2006, 2007, 2008, 2009 and 2010 is not less than 92% of the amount by tonnage of packaging waste represented by “Z” in sub-paragraph (1) above.

(3) Where in the preceding year the producer has handled any recyclable material (whether in the form of packaging or packaging materials), the producer shall recover by recycling an amount of packaging waste consisting of that material calculated as follows—

$$M \times C \times Y = Q$$

where—

- “M” is the amount in tonnes to the nearest tonne of the recyclable material (whether in the form of packaging or packaging materials) handled in Great Britain by the producer in the preceding year;
- “C” is the percentage prescribed in paragraph 4 below in relation to the class of producer;
- “Y” is the percentage prescribed in paragraph 6 below as the recycling target for the relevant year; and
- “Q” is the amount by tonnage of packaging waste consisting of that material which is to be recycled in the relevant year.

4.—(1) The following percentages are prescribed as the percentages for the following classes of producer—

(a) manufacturer	6%;
(b) convertor	9%;

- (c) packer/filler 37%;
 - (d) seller 48%;
 - (e) secondary provider 85%; and
 - (f) service provider 85%.
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(2) The following percentages are prescribed for the class of importer—

- (a) the manufacturer’s percentage, that is 6%—
 - (i) on Class A supplies, where the importer also carries out the functions of a convertor;
 - (ii) on Class B supplies, where the relevant packaging or packaging materials are supplied, by the distributor who receives them, to a convertor; and
 - (iii) on Class C supplies to a convertor;
- (b) the manufacturer’s and the convertor’s percentages aggregated, that is $6\% + 9\% = 15\%$ —
 - (i) on Class A supplies, where the importer also carries out the functions of a packer/filler;
 - (ii) on Class B supplies, where the relevant packaging or packaging materials are supplied, by the distributor who receives them, to a packer/filler;
 - (iii) on Class C supplies to a packer/filler; and
 - (iv) on Class G supplies;
- (c) the manufacturer’s, the convertor’s and the packer/filler’s percentages aggregated, that is $6\% + 9\% + 37\% = 52\%$ —
 - (i) on Class A supplies where the importer also carries out the functions of a seller;
 - (ii) on Class B supplies where the relevant packaging or packaging materials are supplied, by the distributor who receives them, to a seller; and
 - (iii) on Class C supplies to a seller;
- (d) the manufacturer’s, the convertor’s, the packer/filler’s and the seller’s percentages aggregated, that is $6\% + 9\% + 37\% + 48\% = 100\%$ —
 - (i) on Class F supplies; and
 - (ii) on Class A supplies, where the importer is also the final user or consumer.

5. The following is prescribed as the recovery target “X”—

- (a) for the year 2006, 66%;
- (b) for the year 2007, 67%;
- (c) for the year 2008, 68%;
- (d) for the year 2009, 69%; and
- (e) for the year 2010, 70%.

6. 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—

Table 2: Recycling targets

Material	2006	2007	2008	2009	2010
Glass	65	69.5	73.5	74	74.5

<i>Material</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Aluminium	29	31	32.5	33	33.5
Steel	56	57.5	58.5	59	59.5
Paper/Board	66.5	67	67.5	68	68.5
Plastic	23	24	24.5	25	25.5
Wood	19.5	20	20.5	21	21.5

7.—(1) The amount of packaging waste to be recycled by a small producer who has elected to follow the allocation method is calculated as follows—

$$A \times B = Z_s$$

where—

“A” = a/1,000,000;

“a” is the annual turnover of the producer in the last financial year in respect of which audited accounts are available before the relevant date, rounded up to the nearest ten thousand pounds;

“B” is the recycling allocation for the relevant year prescribed in paragraph 8 below; and

“Z_s” is the amount of packaging waste (in tonnes) which is to be recycled in the relevant year.

(2) For the purposes of this paragraph, a small producer shall carry out his recycling obligations by recycling the recyclable material he handled which is predominant by weight.

8. Table 3 prescribes the recycling allocation “B” in relation to a relevant year—

Table 3: Recycling Allocations

<i>Relevant Year</i>	<i>Recycling Allocation</i>
2006	25
2007	26
2008	27
2009	28
2010	29

9. Paragraph 4(2) of Schedule 1 applies for the purposes of this Schedule, but as though the words “For the purposes of paragraph 3(b) above,” and the words “other than a Class A supply,” were omitted.

10. Where the appropriate Agency is satisfied that a producer has instituted a system of using reusable packaging which has a life of at least four years, the producer’s obligations under this Schedule in relation to that packaging may be discharged by equal instalments over four years commencing with the year in which that packaging is first used.

SCHEDULE 3

Regulations 7(4), 14(3) and 15(g)

INFORMATION

PART I

INFORMATION TO BE CONTAINED IN APPLICATION FOR PRODUCER REGISTRATION

1. The address and telephone number of the registered office of the producer or, if not a company, the principal place of business of the producer.
2. The business name of the producer if different from that referred to in paragraph 1 above.
3. The address for service of notices on the producer if different from that referred to in paragraph 1 above.
4. Where the producer is a partnership, the names of all the partners.

PART II

INFORMATION TO BE INCLUDED IN AN APPLICATION FOR REGISTRATION OF A SCHEME

5. The name of the scheme.
6. The name of the operator and, where the operator is a partnership, the names of all the partners.
7. The address and telephone number of the registered office of the operator or, if not a company, the principal place of business of the operator, and, if more than one, all the operators.
8. The address for service of notices if different from that referred to in paragraph 7 above.
9. The names and addresses of the registered offices, or, where the members of the scheme are not companies, the principal places of business, of the scheme's members.
10. Full particulars of the agreement for the constitution of the scheme including any rules or regulations to be observed by its members.

PART III

STATEMENT OF THE SCHEME'S POLICIES AND THE OPERATIONAL PLANS OF SCHEMES AND PRODUCERS

11. The matters to be contained in the statement to be provided pursuant to regulation 14(3)(d) are—
 - (a) the steps intended to be taken through the scheme to increase the use of recycled packaging waste in the manufacture of packaging, packaging materials or other products or materials supplied by its members; and
 - (b) the principal methods by which packaging waste is to be recovered through the scheme, and by which it is to be recycled through the scheme, together with information about the steps the user or consumer may take to assist the scheme in applying these methods.

- 12.** The matters to be contained in the operational plan referred to in regulations 7(4)(f), 8(g), 14(3)(f) and 15(g) are matters which demonstrate—
- (a) that sufficient financial resources and technical expertise will be available to enable the performance of the recovery and recycling obligations of the producer or the obligations of the operator of the scheme under regulation 12(1) (as the case may be);
 - (b) that the arrangements for recovery and recycling take account of any statement which contains the Secretary of State’s policies in relation to the recovery and disposal of waste in England and Wales and which is made under section 44A(2) of the 1990 Act and any statement which contains SEPA’s policies in relation to the recovery and disposal of waste in Scotland and which is made under section 44B(3) of the 1990 Act, in so far as they are relevant;
 - (c) how the recovery and recycling obligations or the obligation of the operator of the scheme under regulation 12(1) (as the case may be) will be performed as regards each of the packaging materials relevant to those obligations including—
 - (i) the names and addresses of the reprocessors or exporters or both it is intended to use;
 - (ii) the names of any waste collection or disposal authorities from whom packaging waste is intended to be obtained;
 - (iii) the proportions in which the packaging waste which is to be recovered and recycled is to be obtained from the waste of a producer, other industrial or commercial waste, household waste or other waste;
 - (iv) the amounts to the nearest tonne of packaging waste it is proposed to recover in the three years immediately following registration; and
 - (v) the amounts to the nearest tonne of each such packaging material which it is proposed to recycle in the three years immediately following registration;
 - (d) the steps it is proposed to take to recover and recycle any of the packaging materials relevant to the recovery and recycling obligations or the obligation of the operator of the scheme under regulation 12(1) (as the case may be) in order not to affect adversely the interests of any producer, whose recovery and recycling obligations are predominantly in relation to another such packaging material;
 - (e) in relation to PERNs and PRNs which are expected to be acquired in each quarter of the three years immediately following registration, the tonnage of packaging waste and the type of recyclable material to which they are expected to relate;
 - (f) a statement indicating the contracts anticipated to be made with reprocessors or exporters or both and packaging waste suppliers in the three years immediately following registration;
 - (g) a statement as to how the producer or operator of a scheme (as the case may be) is assisting reprocessors to direct resources at—
 - (i) increasing the capacity for the collection and reprocessing of packaging waste; and
 - (ii) encouraging the development of markets for materials or goods made from recycled packaging waste;
 - (h) how information to which regulation 19 applies is to be monitored under a monitoring plan so that the operator of the scheme can meet his obligations under regulation 15(f).

(2) Inserted by s92(1) of the 1995 Act.

(3) Inserted by s92(1) of the 1995 Act.

13.—(1) For the purposes of paragraph 12(c)(ii) above “waste collection authority” and “waste disposal authority” shall have the meanings given in section 30(4) of the 1990 Act.

(2) For the purposes of paragraph 12(c)(iii) above “household waste”, “industrial waste” and “commercial waste” shall have the same meanings as in section 75(5) of the 1990 Act.

SCHEDULE 4

Regulation 21

INFORMATION IN CERTIFICATE OF COMPLIANCE

The information to be contained in a certificate of compliance is—

1. The name and address of the approved person who is issuing the certificate.
2. The date of the certificate.
3. The producer in respect of whom the approved person is issuing the certificate (“the relevant producer”).
4. A statement by the approved person that the certificate has been issued in accordance with any guidance issued by the appropriate Agency under section 94(4) of the 1995 Act.
5. Certification by the approved person as to whether the relevant producer has complied with his recovery and recycling obligations.
6. Subject to paragraph 7 below, copies of all PRNs or PERNs acquired for the year to which the certificate relates.
7. A PRN or PERN which is issued in respect of packaging waste received by a reprocessor or exported in December of any year may be included in the certificate of compliance for either that year or the following year.

SCHEDULE 5

Regulation 25

CONDITIONS OF ACCREDITATION

1. The conditions referred to in regulation 25 are that—
 - (a) PRNs shall not be issued for more than the total amount of packaging waste which—
 - (i) is received for reprocessing on the reprocessing site of a reprocessor in the year or the part of the year for which he is accredited; and
 - (ii) will be capable of being reprocessed on the site for which he is accredited no later than the end of the following year;
 - (b) a reprocessor may only issue a PRN in respect of packaging waste once that packaging waste has been received for reprocessing on that reprocessing site;
 - (c) PRNs which relate to packaging waste received for reprocessing in December of a year shall specify that fact;
 - (d) PERNs shall not be issued for more than the total amount of packaging waste which an accredited exporter exports for reprocessing to the specified overseas reprocessing sites

(4) As amended by the 1995 Act, the Local Government (Wales) Act (1994 c. 19), the Local Government etc (Scotland) Act 1994 (1994 c. 39) and the Clean Neighbourhoods and Environment Act 2005 (2005 c. 16).

(5) As amended by S.I. 2005/894, the 1995 Act, S.I. 2005/1082, the Regulation of Care (Scotland) Act 2001 (2001 asp. 8), S.S.I. 2005/22 and S.I. 2005/1806.

- notified to and approved by the appropriate Agency in the year or part of the year for which he is accredited;
- (e) a PERN may only be issued once the packaging waste that it relates to has been exported for reprocessing to the specified overseas reprocessing sites notified to and approved by the appropriate Agency;
 - (f) PERNs which relate to packaging waste exported in December of a year shall specify that fact;
 - (g) where a PRN or PERN has not been issued by 31st January in any year in respect of an amount of packaging waste received for reprocessing or exporting in the previous year, a PRN or PERN for that amount shall not be issued to producers or operators of schemes, or to the representatives of producers or operators of schemes but shall be issued to the appropriate Agency on or before 15th February in that year;
 - (h) any blank PRN or PERN forms not issued and remaining blank in the book of PRNs or PERNs of a reprocessor or exporter are the property of the appropriate Agency and are to be returned to the appropriate Agency on demand;
 - (i) the weight of packaging waste recorded on a PRN or PERN shall be—
 - (i) rounded up to the nearest whole tonne where the part tonne is 0.5 or more;
 - (ii) rounded down to the nearest whole tonne where the part tonne is less than 0.5;
 - (j) duplicate copies of all PRNs and PERNs issued shall be retained and made available for inspection by the appropriate Agency at all reasonable times;
 - (k) subject to sub-paragraph (g) above, PRNs and PERNs may only be issued to producers or operators of schemes, or to the representatives of producers or operators of schemes;
 - (l) one or more substitute PRNs or PERNs shall be issued, on request, to the holder of an original PRN or PERN in exchange for the original, provided that—
 - (i) the aggregate tonnage of the substitute or substitutes so issued remains equal to that exchanged;
 - (ii) where the packaging waste was received or exported in December, the substitute shall also specify that fact;
 - (iii) the substitute PRNs or PERNs relate to the same year as the original; and
 - (iv) no substitutes which relate to packaging waste received for reprocessing in any given year may be issued after 31st January in the following year;
 - (m) records shall be maintained for each quarter year on a form made available for the purpose by the appropriate Agency, shall be retained for at least 4 years after the end of the year in which the record is made and shall be made available to the appropriate Agency on demand;
 - (n) reports shall be provided to the appropriate Agency before each of 21st April, 21st July, 21st October and 28th 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;
 - (iii) the number of PRNs or PERNs issued in that quarter; and
 - (iv) a list of all PRNs and PERNs issued,on a form provided by the appropriate Agency;
 - (o) 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; and
 - (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;
- (p) except in the case of a reprocessor or exporter who has made the undertaking specified in regulation 24(1)(d)(i) for the whole of the year in which he is accredited, a report shall be provided to the appropriate Agency in the format specified by the appropriate Agency which—
- (i) is from an independent auditor; and
 - (ii) confirms to the satisfaction of the appropriate Agency that the PRNs or PERNs issued by the reprocessor or exporter in relation to the previous year are consistent with the tonnage of packaging waste received or exported for reprocessing in relation to that year,
- before 28th February in the subsequent year;
- (q) a reprocessor or exporter must—
- (i) as far as possible implement the business plan referred to in regulation 24(1)(c);
 - (ii) undertake sampling and inspection of packaging waste received or exported for reprocessing, 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;
- (r) a PERN may only be issued in respect of packaging waste that is exported in accordance with [Council Regulation \(EEC\) No. 259/93](#) of 1st February 1993 on the supervision and control of shipments of waste within, into and out of the European Community⁽⁶⁾, as amended by [Commission Regulation \(EC\) No. 2557/2001](#)⁽⁷⁾.
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 scheme or operator of a scheme, 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—
 - (i) an auditor who would be eligible for appointment as company auditor of the reprocessor or exporter under Part II of the Companies Act 1989⁽⁸⁾; or
 - (ii) an environmental auditor who is—
 - (aa) registered with a supervisory body approved by the appropriate Agency; and
 - (bb) not ineligible for appointment as a company auditor of the reprocessor or exporter on the ground of lack of independence under section 27 of the Companies Act 1989.

⁽⁶⁾ OJNo. L30, 6.2.1993, p.1.

⁽⁷⁾ OJ No. L349, 31.12.2001, p.1.

⁽⁸⁾ [1989 c. 40](#), to which there are amendments not relevant to these Regulations.

SCHEDULE 6

Regulation 28(3)

PROCEDURE ON APPEALS

1.—(1) A person who wishes to appeal to the appropriate authority under regulation 27 shall do so by notice in writing given or sent to the appropriate authority.

(2) The notice shall be accompanied by—

- (a) a statement of the grounds of appeal;
- (b) a copy of any correspondence or document relevant to the appeal that could be required to be disclosed as part of standard disclosure under Part 31 of the Civil Procedure Rules 1998(9); and
- (c) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be determined on the basis of written representations.

(3) The appellant shall serve a copy of his notice of appeal on the appropriate Agency together with copies of the documents mentioned in sub-paragraph (2) above.

2.—(1) Subject to sub-paragraph (2) below, notice of appeal shall be given before the expiry of the period of 2 months beginning with the date of the decision which is the subject of the appeal.

(2) The appropriate authority may at any time allow notice of an appeal to be given after the expiry of the period mentioned in sub-paragraph (1) above.

3. Where under regulation 28(2) the appeal is by way of a hearing, the person hearing the appeal shall, unless he has been appointed to determine the appeal under regulation 28(1)(a), make a written report to the appropriate authority which shall include his conclusions and recommendations or his reasons for not making any recommendations.

4.—(1) The appropriate authority or other person determining an appeal shall notify the appellant in writing of its or his decision and the reasons for the decision.

(2) If the appropriate authority determines an appeal after a hearing under regulation 28(2), it shall provide the appellant with a copy of any report made to him under paragraph 3 above.

(3) The appropriate authority or other person determining an appeal shall, at the same time as notifying the appellant of his decision, send the appropriate Agency a copy of any document sent to the appellant under this paragraph.

SCHEDULE 7

Regulation 33

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 a scheme and each member of the scheme for which he is the operator; and
- (c) each accredited reprocessor and accredited exporter.

2. In relation to accredited reproducers and exporters—

- (a) each material type accepted;

(9) [S.I. 1998/3132 \(L. 17\)](#).

- (b) in relation to any recovery operation to be used, the appropriate classification of the applicable operation provided for in Annex IIB of the Waste Directive;
 - (c) in relation to the incineration at waste incineration plants with energy recovery, the appropriate classification of the applicable operation under Annex IIA or Annex IIB of the Waste Directive;
 - (d) whether the reprocessor or exporter is accredited to issue PRNs or PERNs for either 400 tonnes or less, or more than 400 tonnes of packaging waste;
 - (e) the trading name, address and telephone number of the reprocessor or exporter;
 - (f) the reprocessing site address for an accredited reprocessor;
 - (g) the reference number supplied by the appropriate Agency;
 - (h) whether or not quarterly returns and annual returns have been provided in accordance with the conditions set out in paragraphs 1(n), 1(o) and where required 1(p) of Schedule 5;
 - (i) whether the appropriate Agency has served a notice to suspend or cancel accreditation; and
 - (j) whether accreditation has been suspended or cancelled.
3. A statement in relation to each registered producer as to whether a satisfactory certificate of compliance has been furnished.
4. A statement in relation to each registered operator of a scheme as to whether he has complied with his obligations under regulation 12(1).

SCHEDULE 8

Regulation 37

GROUPS OF COMPANIES

1. This Schedule applies in relation to a relevant year—
- (a) where a holding company and one or more of its subsidiaries, or two or more subsidiary companies of the same holding company (in either case referred to in this Schedule and Schedule 10 as “a group of companies”) each satisfies the provisions of Columns 1 to 3 of Table 1 in Schedule 1 in relation to a class or classes of producer; and
 - (b) where the aggregate of the turnovers, and the aggregate of the amounts of packaging or packaging materials handled by each such company, are sufficient to satisfy the threshold tests as provided by paragraph 3 of Schedule 1.
2. Subject to regulation 5, in respect of a year each company referred to in paragraph 1 above 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 the company performs the relevant functions specified in Column 1 of that Table in relation to that entry; and
 - (b) in the preceding year the company made supplies of the materials or products specified in Column 2 of that Table in relation to that entry of a class specified in Column 3 of that Table in relation to that entry,
- and the other provisions of that Schedule, other than paragraph 3, shall also have effect for the purposes of determining to which class of producer such a company belongs.
3. For the purposes of this Schedule and Schedule 10 “subsidiary” and “holding company” have the same meanings as they have in section 736(1) of the Companies Act 1985.
4. Subject to regulation 5, companies who are producers and are in a group of companies shall comply with their producer registration obligations for a relevant year by—

- (a) being registered for that year with the appropriate Agency as required by regulation 6, in which case each company so registered has its own recovery and recycling obligations, certifying obligations, and, where applicable, consumer information obligations; or
 - (b) the holding company and one or more of the subsidiaries being registered together for that year with the appropriate Agency, (in this Schedule and Schedule 10 referred to as a “group registration”) in which case paragraphs 5 and 6 below shall apply.
5. Where there is a group registration—
- (a) the subsidiary companies in the group registration are exempt from complying with their producer responsibility obligations for the relevant year;
 - (b) the holding company has a producer registration obligation for the relevant year which is an obligation to make the group registration and for this purpose regulations 5 to 11, and Parts I and II of Schedule 3, shall be read as if—
 - (i) references to the applicant or the producer were references to the holding company;
 - (ii) references to information to be provided regarding the producer were to information to be provided regarding each company in the group registration; and
 - (iii) the references in regulations 7(4)(e) and 9(2) to a fee for producer registration were read as references to a fee for group registration;
 - (c) the holding company has recovery and recycling obligations and, where applicable, consumer information obligations for the relevant year which are the aggregate of its own obligations in respect of that year, if any, and the obligations which the subsidiary companies in the group registration would have had but for the group registration;
 - (d) the holding company shall furnish records and returns and provide a certificate of compliance, and references in regulation 21 and Schedule 4—
 - (i) to a producer shall be read as references to the holding company, and
 - (ii) to information shall be read as references to information regarding each company in the group registration.
6. Where—
- (a) there is a group registration;
 - (b) a subsidiary company in the group is a small producer which has elected in the group registration application to follow the allocation method; and
 - (c) the subsidiary company follows the allocation method during at least the year of registration and the following two years,

the obligations of the holding company for that subsidiary company shall be determined using the allocation method.

7. This Schedule is subject to the provisions of Schedule 10.

SCHEDULE 9

Regulation 38

LICENSORS AND PUB OPERATING BUSINESSES

1. A head organisation has producer responsibility obligations in the situations set out in paragraph 3(1) below where the conditions in paragraph 3(2) below are met and, where a head organisation has producer responsibility obligations, paragraphs 6 and 7 below apply to determine those obligations.

2. Paragraph 6 below applies to determine the producer responsibility obligations of a licensor and paragraph 7 below applies to determine the producer responsibility obligations of a pub operating business.

3.—(1) The situations referred to in paragraph 1 above are that—

- (a) the head organisation and one or more of his members would, but for a failure to satisfy one or both of the threshold tests in paragraph 3 of Schedule 1, each have producer responsibility obligations under these Regulations;
- (b) two or more members of the head organisation would, but for a failure to satisfy one or both of the threshold tests in paragraph 3 of Schedule 1, each have producer responsibility obligations under these Regulations; or
- (c) the head organisation has producer responsibility obligations under these Regulations and one or more of his members would, but for a failure to satisfy one or both of the threshold tests in paragraph 3 of Schedule 1, each have producer responsibility obligations under these Regulations.

(2) The conditions referred to in paragraph 1 above are that—

- (a) the head organisation satisfies the threshold test relating to turnover in paragraph 3(a) of Schedule 1; and
- (b) subject to paragraphs 4 and 5 below, the head organisation and one or more of his members, or his members alone, in one of the situations in paragraph 3(1)(a), (b) or (c) above, together satisfy the threshold test relating to packaging handled in paragraph 3(b) of Schedule 1.

4. Where the head organisation is a licensor, for the purposes of the threshold test in paragraph 3(b) of Schedule 1, packaging or packaging materials handled in one of the situations in paragraph 3(1)(a), (b) or (c) above shall only include—

- (a) packaging or packaging materials that bear a trade mark of the head organisation for which a licence to use such trade mark has been granted under the licence agreement;
- (b) packaging associated with goods that bear a trade mark of the head organisation for which a licence to use such trade mark has been granted under the licence agreement; and
- (c) where the member is obliged to—
 - (i) purchase goods in packaging;
 - (ii) purchase goods and associated packaging or packaging materials to be used to contain or protect such goods or to facilitate the handling of or for the presentation of such goods;
 - (iii) purchase packaging or packaging materials to be used to contain or protect such goods or to facilitate the handling of or for the presentation of such goods,

from the head organisation or, where the head organisation has negotiated some or all of the terms of the supply, a supplier nominated or authorised by the head organisation under the licence agreement, such packaging or packaging materials.

5. Where the head organisation is a pub operating business, for the purposes of the threshold test in paragraph 3(b) of Schedule 1, packaging or packaging materials handled in one of the situations in paragraph 3(1)(a), (b) or (c) above shall only include packaging or packaging materials that contain the goods that are the subject of the obligation to purchase from the head organisation or person nominated or authorised by that head organisation under the pub operating agreement, whether or not the goods have been packed or filled in the packaging or packaging materials when they are purchased by the member.

6. Where the head organisation is a licensor—

- (a) where there is a situation falling in paragraph 3(1)(a) or (b) above and the conditions in paragraph 3(2) above have been met, the head organisation is deemed to be a producer of a class or classes specified in an entry in Column 4 of Table 1 in Schedule 1 and has producer responsibility obligations in respect of his own activities, where applicable, and those of his members in respect of the packaging or packaging materials set out in paragraph 4; or
 - (b) where there is a situation falling in paragraph 3(1)(c) above and the conditions in paragraph 3(2) above have been met, the head organisation, in addition to having producer responsibility obligations as a producer in respect of his own activities, is deemed to be a producer of a class or classes specified in an entry in Column 4 of Table 1 in Schedule 1 and has producer responsibility obligations in respect of the activities of his members in respect of the packaging or packaging materials set out in paragraph 4.
7. Where the head organisation is a pub operating business—
- (a) where there is a situation falling in paragraph 3(1)(a) or (b) above and the conditions in paragraph 3(2) above have been met, the head organisation is deemed to be a producer of a class or classes specified in an entry in Column 4 of Table 1 in Schedule 1 and has producer responsibility obligations in respect of his own activities, where applicable, and those of his members in respect of the packaging or packaging materials set out in paragraph 5; or
 - (b) where there is a situation falling in paragraph 3(1)(c) above and the conditions in paragraph 3(2) above have been met, the head organisation, in addition to having producer responsibility obligations as a producer in respect of his own activities, is deemed to be a producer of a class or classes specified in an entry in Column 4 of Table 1 in Schedule 1 and has producer responsibility obligations in respect of the activities of its members in respect of the packaging or packaging materials set out in paragraph 5.
8. Where the head organisation does not have the information necessary for the purposes of paragraphs 4 to 7 above he shall use his best endeavours to obtain such information; and where despite having used his best endeavours he nevertheless does not have such information he shall produce his best estimate and that estimate shall be used for the purposes of paragraphs 4 to 7 above.
9. Where the head organisation is a licensor and does not have a registered office or principal place of business in Great Britain the obligations of the head organisation under this Schedule shall be performed by a person who carries out or manages the functions of the head organisation in Great Britain and has a registered office or principal place of business in Great Britain.
10. For the purposes of this Schedule—
- (a) “head organisation” means a licensor or pub operating business as defined in regulation 38; and
 - (b) “member” means:
 - (i) where the head organisation is a licensor, a licensee being the person granted a licence to use a trade mark by the licensor under a licence agreement as provided for in regulation 38; or
 - (ii) where the head organisation is a pub operating business, a tenant being the person granted a lease or tenancy by the pub operating business as provided for in regulation 38.

SCHEDULE 10

Regulation 39

MID-YEAR CHANGES

PART 1

SCHEME MEMBERSHIP

1. Subject to paragraphs 4 and 5 below, where a person who is a producer in respect of a year becomes a member of a registered scheme during that year, the recovery and recycling obligations of the producer for that year, referred to in regulation 12(1), shall be performed through the scheme.

2. Where a person who is a producer in respect of a year ceases to be a member of a registered scheme during that year, he shall comply with his recovery and recycling obligations for that year, calculated as provided in regulation 4 and Schedule 2.

3. Where a person who is a producer in respect of a year ceases to be a member of one registered scheme (“the first scheme”) and becomes a member of another registered scheme (“the second scheme”) during that year, the first scheme shall not be required to perform any of the producer’s recovery and recycling obligations, referred to in regulation 12(1), and all such obligations shall be performed through the second scheme.

PART II

GROUP MEMBERSHIP

4. This Part applies where—
- (a) a company joins a group of companies and becomes a company to which paragraph 1 of Schedule 8 applies; or
 - (b) a holding company or subsidiary company to which paragraph 1 of Schedule 8 applies ceases to belong to a group of companies.
5. Where paragraph 4(a) above applies the company shall either—
- (a) be registered separately with the appropriate Agency as required by regulation 6; or
 - (b) be registered with the appropriate Agency as part of a group registration under Schedule 8 and for the purposes of this paragraph—
 - (i) such registration is effected upon notice being given by the holding company to the appropriate Agency of the change in the group registration; and
 - (ii) where prior to joining the group of companies the company was registered with an appropriate Agency, the Agency shall cancel the company’s registration and regulation 11(3) shall apply to that cancellation as it applies to a cancellation under regulation 11(2).
6. Where—
- (a) paragraph 4(a) above applies;
 - (b) in relation to the obligation year the company itself satisfies the threshold tests; and
 - (c) the company is registered as part of a group registration,

the holding company shall comply with the requirements of the company’s recovery and recycling obligations for the year in which it joins the group.

7. Where—

- (a) paragraph 4(a) above applies;
- (b) in relation to the obligation year the company itself satisfies the threshold tests; and
- (c) the company is registered separately with the appropriate Agency,

the company shall comply with its recovery and recycling obligations for the year in which it joins the group.

8. Where—

- (a) paragraph 4(a) above applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and
- (c) the company is registered as part of a group registration,

the holding company shall comply with a proportion of the requirements of the company's recovery and recycling obligations for the year in which it joins the group, such proportion being calculated as provided in paragraph 16 below.

9. Where—

- (a) paragraph 4(a) above applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and
- (c) the company is registered separately with the appropriate Agency,

the company shall comply with a proportion of its recovery and recycling obligations for the year in which it joins the group, such proportion being calculated as provided in paragraph 16 below.

10. Where—

- (a) paragraph 4(b) above applies; and
- (b) in relation to the obligation year the company itself satisfies the threshold tests,

it shall register with the appropriate Agency as required by regulation 6 within 28 days of ceasing to be a member of a group and regulations 7 to 11 shall apply as if this were an occurrence specified in regulation 7(3)(d).

11. Where—

- (a) paragraph 4(b) above applies;
- (b) in relation to the obligation year the company itself satisfies the threshold tests; and
- (c) the company was registered as part of a group registration,

the holding company shall comply with the requirements of the company's recovery and recycling obligations for the year in which it ceases to be a member of the group.

12. Where—

- (a) paragraph 4(b) above applies;
- (b) in relation to the obligation year the company itself satisfies the threshold tests; and
- (c) the company is registered separately with the appropriate Agency,

the company shall comply with its recovery and recycling obligations for the year in which it ceases to be a member of the group.

13. Where—

- (a) paragraph 4(b) above applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and
- (c) the company was registered as part of a group registration,

the holding company shall comply with the requirements of the company's recovery and recycling obligations for the year in which it ceases to be a member of the group.

14. Where—

- (a) paragraph 4(b) above applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and
- (c) the company was registered separately with the appropriate Agency,

the holding company shall comply with the requirements of the company's recovery and recycling obligations for the year in which it ceases to be a member of the group.

15. Where in a relevant year paragraph 4 above applies to a company as a result of that company ceasing to be a member of one group ("the first group") and becoming a member of another group ("the second group")—

- (a) where in relation to each group the company is registered as part of a group registration, 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;
- (b) where in relation to each group the company is registered separately with the appropriate Agency, the company shall comply with its recovery and recycling obligations for the year;
- (c) where in relation to the first group the company was registered as part of a group registration and in relation to the second group the company is registered separately with the appropriate Agency, the holding company 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 company itself shall comply with its recovery and recycling obligations for any subsequent year; or
- (d) where in relation to the first group the company was registered separately with the appropriate Agency and in relation to the second group the company is registered as part of a group registration, the company itself shall comply with its recovery and recycling obligations for the year in which it joins the group and the holding company shall comply with the requirements of the company's recovery and recycling obligations for any subsequent year.

16. The proportion referred to in paragraphs 8 and 9 above shall be calculated as follows—

G / H

where—

- "G" is the number of days in the relevant year during which the company was a member of the group;
- "H" is the number of days in the relevant year; and
- "G / H" is the proportion.

17. For the purposes of this Part of this Schedule, the "threshold tests" means the threshold tests provided in paragraph 3 of Schedule 1.

PART III

INCAPACITY

18. Where in a relevant year a producer dies or becomes bankrupt or incapacitated ("the first producer") that person shall cease to have any producer responsibility obligations for that year and

any person who carries on the activities of the first producer following that event shall be treated as a producer and shall have the producer responsibility obligations of the producer for that year.

19. Any person carrying on the activities of the first producer referred to in paragraph 18 above shall within 28 days of commencing to do so—

- (a) inform the appropriate Agency in writing of that fact and the date of the death, the date of bankruptcy or the nature of the incapacity and the date on which it began; and
- (b) apply to be registered as required by regulation 6 and for this purpose the requirement in regulation 7(4)(e) shall not apply.

20. In relation to a producer which is a company, the references to a person becoming bankrupt or incapacitated in paragraph 18 above shall be construed as references to it going into liquidation or receivership or entering administration.