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DRAFT STATUTORY INSTRUMENTS

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**2023 No.**

**The Packaging Waste (Data Reporting)  
(England) Regulations 2023**

**PART 4**

**Environment Agency's powers and duties**

**Publication of items recycled by relevant authorities**

- 22.** The Environment Agency must publish—
- (a) a list of the items which are collected for recycling from households by each relevant authority in England responsible for waste collection; and
  - (b) a list of those items which are collected for recycling from households by more than 75% of the relevant authorities in England responsible for waste collection.

**Monitoring**

- 23.**—(1) The Environment Agency must monitor in accordance with this regulation—
- (a) compliance with their data collection obligations and data reporting obligations by persons who are or may be producers; and
  - (b) compliance by operators of schemes with the obligations referred to in regulation 20(1) and (2).
- (2) The duty in paragraph (1) includes a duty to monitor the accuracy of—
- (a) the records kept by producers pursuant to regulation 16; and
  - (b) the information provided by producers in reports to the Environment Agency pursuant to regulation 17.
- (3) For the purposes of the discharge of its functions under these Regulations, the Environment Agency may, serve a notice in writing (“an information notice”) on—
- (a) any person who has, or who the Environment Agency has reason to believe has, data collection obligations or data reporting obligation;
  - (b) in relation to any person who is a member of a registered scheme, the operator of that scheme.
- (4) An information notice may require that person to maintain records, and supply to the Environment Agency any data specified in the notice which the Environment Agency reasonably considers it needs for those purposes, in such form and within such period following service of the notice, or at such time, as is specified in the notice.
- (5) Where the Environment Agency considers that any information supplied to it by any person further to a notice issued under paragraph (3), or otherwise under these Regulations, is inaccurate in any respect, the Environment Agency may require that person to supply corrected information.

### Approved persons

24.—(1) The Environment Agency may approve a person listed in paragraph (2) for the purposes of—

- (a) verifying information reported by a producer to the Environment Agency under regulation 17(4)(b); or
  - (b) verifying information provided by a producer to the operator of a scheme under regulation 19(2)(b)(ii).
- (2) The persons listed are, where the producer—
- (a) is an individual, that individual;
  - (b) is a partnership, a partner;
  - (c) is a company registered in the United Kingdom, a director or company secretary of that company;
  - (d) is an unincorporated body, an individual who has control or management of that body; or
  - (e) is a company which does not have a registered office in the United Kingdom, an individual who has control or management of the producer.

(3) Subject to regulation 25, the Environment Agency may approve the delegation by an approved person of the person's functions to any other person.

(4) An approved person who has delegated functions under paragraph (3) may continue to perform those functions.

(5) For the purposes of these Regulations, an act of a delegate performing the functions of an approved person on that person's behalf is to be treated as an act of the approved person.

(6) In this regulation, and in regulation 25, "functions" means the functions referred to in paragraph (1)(a) and (b).

### Delegation of approved persons' functions: procedure

25.—(1) An approved person who proposes the delegation of their functions to another person under regulation 24(3) must apply for approval to the Environment Agency on a form supplied for that purpose by that Agency, signed by the approved person.

(2) An application for approval under paragraph (1) must, within 28 days of receipt of the application—

- (a) be granted where the Environment Agency is satisfied that the proposed delegate, taking into account the factors specified in paragraph (3), is capable of carrying out the functions on behalf of the approved person; or
- (b) otherwise be refused.

(3) The factors mentioned in paragraph (2)(a) are—

- (a) if the proposed delegate is an employee of the producer or the operator of the scheme, the proposed delegate's level of seniority;
- (b) if the proposed delegate is not an employee of the producer or the operator of the scheme, the nature of the proposed delegate's relationship with the approved person;
- (c) the degree of the proposed delegate's knowledge of, or access to, information necessary for the purposes of carrying out the functions on behalf of the approved person; and
- (d) any other factor which the Environment Agency reasonably thinks is relevant.

(4) An approval granted in accordance with paragraph (2)(a) may be for such period, or subject to such other conditions, as the Environment Agency may specify.

(5) Where an application for approval is granted in accordance with paragraph (2)(a), the Environment Agency must notify the approved person in writing of this, and of any conditions it has imposed pursuant to paragraph (4), within 28 days of its decision.

(6) The Environment Agency may decide to withdraw approval granted under paragraph (2)(a) and, if such a decision is taken, must serve on the approved person written notice of—

- (a) the decision to withdraw approval;
- (b) the reasons for the decision;
- (c) the date on which the withdrawal takes effect, not being earlier than 28 days from the date of the notice.

(7) If an approved person proposes to revoke a delegation granted under paragraph (2)(a), the person must serve written notice on the Environment Agency of this and of the date when the revocation takes effect, not being earlier than 28 days from the date of the notice.

### **Entry and inspection**

**26.**—(1) A person who appears suitable to the Environment Agency may be authorised in writing by the Environment Agency for the purposes of its functions under these Regulations, or to assist another UK regulator which has equivalent functions, to exercise the powers of entry and inspection referred to in paragraph (2) in England.

(2) The powers of entry and inspection are those set out in section 108(4)(a) to (l) of the 1995 Act (powers of enforcing authorities and persons authorised by them) in relation to England.

(3) For this purpose, section 108(4) of the 1995 Act is to be read as if references to the authorised person were references to a person authorised under paragraph (1) of this regulation and as if—

- (a) the words “(or, in an emergency, at any time and, if need be, by force)” in section 108(4)(a) were omitted;
- (b) in section 108(4)(f), for the words “articles or substances” to the end, there were substituted “packaging and packaging materials found in or on any premises which that person has power to enter”;
- (c) section 108(4)(g) were omitted;
- (d) the references in section 108(4)(h) to any article or substance were to any sample which is or may be taken under section 108(4)(f), as modified by sub-paragraph (b), and as if the references to an offence in section 108(4)(h)(iii) were to an offence under regulation 28 of these Regulations;
- (e) the reference to records in section 108(4)(k)(i) were to the records and information required to be kept and provided to the Environment Agency under these Regulations;
- (f) the words “(other than an article or substance within paragraph (g))” in section 108(4)(ka)(ii) were omitted;
- (g) the reference in section 108(4)(1) to the power conferred by section 108 were to the power conferred by this regulation.

(4) The provisions of section 108(6) to (7F) and section 108A of the 1995 Act apply to the powers conferred by paragraphs (1) and (2) above as they apply to the powers conferred by section 108(4) of the 1995 Act respectively as it applies to relation to England, but as if any reference to an authorised person were to a person authorised under paragraph (1) of this regulation, and as if—

- (a) in section 108(6) and (7), the words “Except in an emergency” were omitted;
- (b) in section 108(6), the words “or to take heavy equipment on to any premises which are to be entered” were omitted;

(c) in section 108(7B)(a), the reference to pollution control enactments or flood risk activity enactments were a reference to these Regulations.

(5) The provisions of section 108(12), (12A) and (13) of the 1995 Act, as they apply in relation to England, apply to the powers conferred by paragraphs (1) and (2) above as they apply to the powers conferred by section 108(4) of the 1995 Act.

(6) The provisions of paragraphs 2 to 6 of Schedule 18 to the 1995 Act (supplemental provisions with respect to powers of entry), as they apply in relation to England, apply to the powers conferred by this regulation as they apply to the powers conferred by section 108 of the 1995 Act respectively, but as if reference—

(a) to a designated person were to a person authorised in writing by the Environment Agency to exercise on its behalf any power conferred by this regulation;

(b) to a relevant power were to a power conferred by this regulation, including a power exercisable by virtue of a warrant under the provisions of the Schedule as applied by this paragraph; and

(c) in paragraph 6(1) to section 108(4)(a) or (b) or (5) of the 1995 Act were to paragraph (1) of this regulation.

(7) In this regulation—

“the 1995 Act” means the Environment Act 1995;

“warrant” means a warrant under the provisions set out in Schedule 18 to the 1995 Act as applied by paragraph (6) above.

### **Information sharing**

**27.** The Environment Agency may share any information it receives under these Regulations with the following entities to enable them to carry out their functions—

(a) another UK regulator;

(b) the Department for Environment, Food and Rural Affairs; or

(c) any person or entity authorised by the Secretary of State to receive that information.