



# Environment Act 1995

## 1995 CHAPTER 25

### PART V

#### MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS

##### *Waste*

#### **94 Producer responsibility: supplementary provisions.**

- (1) Without prejudice to the generality of section 93 above, regulations may, in particular, make provision for or with respect to—
- (a) the classes or descriptions of person to whom the producer responsibility obligation imposed by the regulations applies;
  - (b) the classes or descriptions of products or materials in respect of which the obligation applies;
  - (c) the targets which are to be achieved with respect to the proportion (whether by weight, volume or otherwise) of the products or materials in question which are to be re-used, recovered or recycled, whether generally or in any prescribed way;
  - (d) particulars of the obligation imposed by the regulations;
  - (e) the registration of persons who are subject to a producer responsibility obligation and who are not members of registered exemption schemes, the imposition of requirements in connection with such registration, the variation of such requirements, the making of applications for such registration, the period for which any such registration is to remain in force and the cancellation of any such registration;
  - (f) the approval, or withdrawal of approval, of exemption schemes by the Secretary of State;
  - (g) the imposition of requirements on persons who are not members of registered exemption schemes to furnish certificates of compliance to the appropriate Agency;

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*Status: Point in time view as at 21/09/1995. This version of this provision has been superseded.*

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- (h) the approval of persons by the appropriate Agency for the purpose of issuing certificates of compliance;
- (j) the registration of exemption schemes, the imposition of conditions in connection with such registration, the variation of such conditions, the making of applications for such registration and the period for which any such registration is to remain in force;
- (k) the requirements which must be fulfilled, and the criteria which must be met, before an exemption scheme may be registered;
- (l) the powers of the appropriate Agency in relation to applications received by it for registration of exemption schemes;
- (m) the cancellation of the registration of an exemption scheme;
- (n) competition scrutiny of registered exemption schemes or of exemption schemes in whose case applications for registration have been received by the <sup>M1</sup>appropriate Agency;
- (o) the exclusion or modification of any provision of the <sup>M2</sup>Restrictive Trade Practices Acts 1976 and 1977 in relation to exemption schemes or in relation to agreements where at least one of the parties is an operator of an exemption scheme;
- (p) the fees, or the method of determining the fees, which are to be paid to the appropriate Agency—
  - (i) in respect of the approval of persons for the purpose of issuing certificates of compliance;
  - (ii) on the making of an application for registration of an exemption scheme;
  - (iii) in respect of the subsistence of the registration of that scheme;
  - (iv) on submission to the appropriate Agency of a certificate of compliance;
  - (v) on the making of an application for, or for the renewal of, registration of a person required to register under the regulations;
  - (vi) in respect of the renewal of the registration of that person;
- (q) appeals against the refusal of registration, the imposition of conditions in connection with registration, or the cancellation of the registration, of any exemption scheme;
- (r) the procedure on any such appeal;
- (s) cases, or classes of case,—
  - (i) in which an exemption scheme is, or is not, to be treated as registered, or
  - (ii) in which a person is, or is not, to be treated as a member of a registered exemption scheme,
 pending the determination or withdrawal of an appeal, and otherwise with respect to the position of persons and exemption schemes pending such determination or withdrawal;
- (t) the imposition on the appropriate Agency of a duty to monitor compliance with any of the obligations imposed by the regulations;
- (u) the imposition on prescribed persons of duties to maintain records, and furnish to the Secretary of State or to the appropriate Agency returns, in such form as may be prescribed of such information as may be prescribed for any purposes of, or for any purposes connected with, or related to, sections 93 to 95 of this Act or any regulations;

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- (w) the imposition on the appropriate Agency of a duty to maintain, and make available for inspection by the public, a register containing prescribed information relating to registered exemption schemes or persons required to register under the regulations;
  - (y) the powers of entry and inspection which are exercisable by a new Agency for the purposes of its functions under the regulations;
  - (ya) the conferring on prescribed persons of power to require, for the purposes of or otherwise in connection with competition scrutiny, the provision by any person of any information which he has, or which he may at any future time acquire, relating to any exemption scheme or to any acts or omissions of an operator of such a scheme or of any person dealing with such an operator.
- (2) If it appears to the Secretary of State—
- (a) that any action proposed to be taken by the operator of a registered exemption scheme would be incompatible with—
    - (i) any obligations of the United Kingdom under the Community Treaties, or
    - (ii) any international agreement to which the United Kingdom is for the time being a party, or
  - (b) that any action which the operator of such a scheme has power to take is required for the purpose of implementing any such obligations or agreement, he may direct that operator not to take or, as the case may be, to take the action in question.
- (3) Regulations may make provision as to which of the new Agencies is the appropriate Agency for the purposes of any function conferred or imposed by or under this section or section 93 above, or for the purposes of the exercise of that function in relation to the whole or a prescribed part of Great Britain, and may make provision for things done or omitted to be done by either new Agency in relation to any part of Great Britain to be treated for prescribed purposes as done or omitted to be done by the other of them in relation to some other part of Great Britain.
- (4) Persons issuing certificates of compliance shall act in accordance with guidance issued for the purpose by the appropriate Agency, which may include guidance as to matters which are, or are not, to be treated as evidence of compliance or as evidence of non-compliance.
- (5) In making any provision in relation to fees, regard shall be had to the desirability of securing that the fees received by each new Agency under the regulations are sufficient to meet the costs and expenses incurred by that Agency in the performance of its functions under the regulations.
- (6) In this section—
- “the appropriate Agency”, subject to regulations made by virtue of subsection (3) above, means—
    - (a) in relation to England and Wales, the Agency;
    - (b) in relation to Scotland, SEPA;
  - “certificate of compliance” means a certificate issued by a person approved for the purpose by the appropriate Agency to the effect that that person is satisfied that the person in respect of whom the certificate is issued is complying with any producer responsibility obligation to which he is subject;

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“competition scrutiny”, in the case of any scheme, means scrutiny of the scheme for the purpose of enabling the Secretary of State to satisfy himself—

- (i) whether or not the scheme has or is likely to have the effect of restricting, distorting or preventing competition or, if it appears to him that the scheme has or is likely to have any such effect, that the effect is or is likely to be no greater than is necessary for achieving the environmental or economic benefits mentioned in section 93(6) above; or
- (ii) whether or not the scheme leads or is likely to lead to an abuse of market power;

“exemption scheme” means a scheme which is (or, if it were to be registered in accordance with the regulations, would be) a scheme whose members for the time being are, by virtue of the regulations and their membership of that scheme, exempt from the requirement to comply with the producer responsibility obligation imposed by the regulations;

“new Agency” means the Agency or SEPA;

“operator”, in relation to an exemption scheme, includes any person responsible for establishing, maintaining or managing the scheme;

“registered exemption scheme” means an exemption scheme which is registered pursuant to regulations;

and expressions used in this section and in section 93 above have the same meaning in this section as they have in that section.

(7) Regulations—

- (a) may make different provision for different cases;
- (b) without prejudice to the generality of paragraph (a) above, may impose different producer responsibility obligations in respect of different classes or descriptions of products or materials and for different classes or descriptions of person or exemption scheme;
- (c) may include incidental, consequential, supplemental or transitional provision.

(8) Any direction under this section—

- (a) may include such incidental, consequential, supplemental or transitional provision as the Secretary of State considers necessary or expedient; and
- (b) shall, on the application of the Secretary of State, be enforceable by injunction or, in Scotland, by interdict or by an order for specific performance under section 45 of the <sup>M3</sup>Court of Session Act 1988.

**Marginal Citations**

- M1** 1976 c. 34 &
- M2** 1977 c. 19.
- M3** 1988 c. 36.

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