

1999 No. 3447

ENVIRONMENTAL PROTECTION

**The Producer Responsibility Obligations (Packaging Waste)
(Amendment) (No. 2) Regulations 1999**

Made - - - 13th December 1999

*Coming into force except -
for regulation 3 14th December 1999*

Regulation 3 1st March 2000

The Secretary of State—

- (a) in exercise of his powers under sections 93, 94 and 95 of the Environment Act 1995(a), for the implementation of articles 6(1) and 13 of Directive 94/62/EC(b), after consultation in accordance with section 93(2) of that Act, and after having regard to the matters specified in section 93(6) as required by section 93(5) of that Act;
- (b) being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(c) in relation to the management of packaging and packaging waste(d), in exercise of his powers under section 2(2) of that Act(e), and
- (c) in exercise of all other powers enabling him in that behalf,

hereby makes the following Regulations, a draft of which has been laid before and approved by a resolution of each House of Parliament:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) (Amendment) (No. 2) Regulations 1999 and shall come into force, except for regulation 3, on the day after the day on which they are made.

(2) Regulation 3 shall come into force on 1st March 2000.

(3) These Regulations apply to England, Wales and Scotland.

Amendment of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997

2.—(1) The Producer Responsibility Obligations (Packaging Waste) Regulations 1997(f) (“the 1997 Regulations”) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) for the definition of “packaging waste” substitute—

““packaging waste” means waste from packaging or packaging materials which became waste in the United Kingdom;”;

(a) 1995 c. 25; see section 93(8) for the definitions of “prescribed” and “regulations”. See also the Government of Wales Act 1998 (c. 38), Schedule 3 paragraph 5, and the Scotland Act 1998 (c. 46), section 57(1), as respects the continued exercise of the Secretary of State’s functions for the purpose of implementing any Community obligation of the United Kingdom.

(b) O.J. No. L365, 31.12.94, p. 10.

(c) 1972 c. 68.

(d) S.I. 1996/266.

(e) Regulation 2(3) is made partly under this power.

(f) S.I. 1997/648, amended by S.I. 1999/1361.

- (b) in the definition of “producer responsibility obligations”, for the words “and certifying obligations” substitute “certifying and consumer information obligations”;
 - (c) after the definition of “recovery” insert–
 - “ “recyclable material” has the meaning given by paragraph 6(1) of Schedule 2;”;
 - (d) after the definition of “scheme” insert–
 - “ “SIC code” means a code included in “Indexes to the United Kingdom Standard Industrial Classification of Economic Activities 1992”, published by the Office for National Statistics in 1997(a);
 - “special producer” has the meaning given by regulation 4(4);”;
 - (e) after the definition of “transit packaging” insert–
 - “ “waste” has the same meaning as in Article 1(a) of the Waste Directive except that it does not include–
 - (a) production residues; or
 - (b) waste excluded from the scope of that Directive by Article 2, and Articles 1(a) and 2 of, and Annex I to, that Directive are reproduced in Part I of Schedule 3 to these Regulations;
 - “the Waste Directive” means Directive 75/442/EEC on waste, as amended by Directive 91/156/EEC(b);”.
- (3) In regulation 3 (producers and producer responsibility obligations)–
- (a) at the end of paragraph (5)(a), omit “and”; and
 - (b) after paragraph (5)(b), add–
 - “and–
 - (c) if his main activity is that of seller, provide the necessary information to consumers of the goods sold by him about–
 - (i) the return, collection and recovery systems available to them;
 - (ii) their role in contributing to reuse, recovery and recycling of packaging and packaging waste;
 - (iii) the meaning of markings on packaging existing on the market, and
 - (iv) the chapter dealing with the management of packaging and packaging waste in any strategy prepared under section 44A or 44B of the 1990 Act(c) (national waste strategy);
 - (in these Regulations referred to as the “consumer information obligations”).
- (5A) The Secretary of State shall take such steps as may be appropriate to ensure that users of packaging, including in particular consumers, obtain the necessary information about the matters referred to in paragraph (5)(c).”.
- (4) In regulation 4 (exclusions and limitations)–
- (a) in paragraph (1)(b), after “obligations” insert “and, where applicable, consumer information obligations”; and
 - (b) omit paragraph 4(3).
- (5) In regulation 6 (application for producer registration)–
- (a) in paragraph (1), for “1st April” substitute “7th April”;
 - (b) for paragraph (4)(c) substitute–
 - “(c) subject to paragraph (8) below, be accompanied by the following further information, on a form supplied for that purpose by the appropriate Agency, in relation to the relevant year–
 - (i) each class of producer to which the applicant belongs;
 - (ii) whether or not he is a special producer;
 - (iii) if he belongs to more than one class of producer, which of those classes constitutes his main activity as a producer;

(a) ISBN 0–11–620–923–2.

(b) O.J. No. L194, 25.7.75, p. 39; articles 1 to 12 and Annexes I and IB were amended by Directive 91/156/EEC (O.J. No. L78, 26.3.91, p. 32).

(c) 1990 c. 43; sections 44A and 44B were inserted by section 92 of the Environment Act 1995.

- (iv) the relevant SIC code for the class of producer to which the applicant belongs or, as the case may be, for the applicant’s main activity;
- (v) in relation to each such class of producer (excluding special producer)–
 - (a) the amount of packaging waste which he is required to recover by virtue of paragraph 2(1) of Schedule 2;
 - (b) the amount of packaging waste which he is required to recycle for each kind of recyclable material by virtue of paragraph 2(3) of Schedule 2;
- (vi) the basis on which the amounts referred to in paragraph (v) were calculated;”;
- (c) at the end of paragraph (4)(d) delete “and” and insert–
 - “(dd) where the applicant is a person whose turnover for the purposes of paragraph 3 of Schedule 1 was more than £5,000,000, be accompanied by a plan setting out the steps intended to be taken to comply with the producer’s recovery and recycling obligations; and”;
- (d) in paragraph (5)(a), after “(d)” insert “, (dd)”;
- (e) in paragraph (5)(b), for “the Agency” substitute “the appropriate Agency”;
- (f) in paragraph (6)(b), for the words “from the beginning” to the end of that paragraph substitute “–
 - (i) where the application was made within the time limit specified in regulation 6(1), from the beginning of the relevant year;
 - (ii) where the application was made within the time limit specified in regulation 6(3)(b), from the date of the relevant occurrence;
 - (iii) in any other case, from the date specified in the confirmation,
 until any cancellation of the producer’s registration in accordance with regulation 11.”; and
- (g) in paragraph (8), for “56 days” substitute “28 days”.
- (6) In regulation 8 (continuation of producer registration)–
 - (a) at the beginning insert “(1)”;
 - (b) for “1st April” substitute “7th April”; and
 - (c) at the end insert–
 - “(2) On or before 30th June in a relevant year, the producer shall provide to the appropriate Agency a revised version of the plan referred to in regulation 6(4)(dd).”.
- (7) In regulation 9 (forms and fees for producer registration)–
 - (a) in paragraph (1), for “a copy of any form” substitute “the form”; and
 - (b) in paragraph (2), for “£750” substitute “£950”.
- (8) In regulation 12 (application for registration of a scheme)–
 - (a) in paragraph (1), for “1st April” substitute “7th April”;
 - (b) for paragraph (3)(c) substitute–
 - “(c) subject to paragraph (7) below, be accompanied by the following further information, on a form supplied for that purpose by the appropriate Agency, in relation to the relevant year–
 - (i) each class of producer in the scheme;
 - (ii) whether any of the producers is a special producer, and if so how many;
 - (iii) if any producer belongs to more than one class of producer, which of those classes constitutes his main activity as a producer;
 - (iv) the relevant SIC code for the activity or, as the case may be, the main activity of each class of producer in the scheme;
 - (v) in relation to each such class of producer (excluding special producer)–
 - (a) the amount of packaging waste which is required to be recovered by virtue of paragraph 2(1) of Schedule 2; and

- (b) the amount of packaging waste which is required to be recycled for each kind of recyclable material by virtue of paragraph 2(3) of Schedule 2, aggregated in relation to all of the scheme's members who belong to that class;
 - (vi) the basis on which the amounts referred to in paragraph (v) were calculated;";
 - (c) in paragraph (6)(b), for "of application" substitute "in relation to which the application is made"; and
 - (d) in paragraph (7), after "shall" insert ", if it does not accompany the application, be provided not later than 15th April in the year of application, and shall".
- (9) In regulation 14 (continuation of registration of a scheme)—
- (a) at the beginning insert "(1)";
 - (b) for "1st April" substitute "7th April"; and
 - (c) at the end insert—
 - "(2) On or before 30th June in a relevant year and in respect of a scheme that is registered, the operator of the scheme shall provide to the appropriate Agency a revised version of the operational plan for the scheme."
- (10) In regulation 15 (forms and fees for registration of a scheme)—
- (a) in paragraph (1), for "a copy of any form" substitute "the form"; and
 - (b) in paragraph (2)—
 - (i) for "£600" substitute "£760";
 - (ii) for "£450" substitute "£570";
 - (iii) for "£300" substitute "£380"; and
 - (iv) for "£100" substitute "£126".
- (11) In regulation 22(2)(b) (producers—records and returns), for "packaging material" substitute "recyclable material".
- (12) In regulation 24 (schemes—records and returns)—
- (a) in paragraph (1), for "upon request" substitute "—
 - (a) where the information is in respect of 1998, upon request;
 - (b) where the information is in respect of any later year, on or before 31st January in the year immediately following that year."
 - (b) at the end of paragraph (3)(b), omit "and"; and
 - (c) after paragraph (3)(c), add "and
 - (d) for each member of the scheme who is a special producer, the information referred to in Part V of Schedule 3."
- (13) In regulation 25 (monitoring), after paragraph (2) insert—
- "(3) For the purposes of the discharge of its functions under these Regulations, an appropriate Agency may, by notice in writing served on—
 - (a) any person who has, or who the Agency has reason to believe has, producer responsibility obligations under regulation 3, or
 - (b) any person who is a member of a registered scheme,
 require him to maintain such records, and furnish such returns to the Agency, of such information specified in the notice as the 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 so specified."
- (14) After regulation 25 insert—

"Monitoring – publication

25A. The appropriate Agency shall take such steps as seem to it appropriate to publish, in relation to each year commencing with 2000, the following details of the monitoring carried out under regulation 25—

- (a) the Agency's policy in relation to monitoring and enforcement of producer responsibility obligations; and

- (b) an indication of the minimum number of persons which it proposes to monitor in the course of that year.”
- (15) In regulation 34 (offences and penalties), in paragraph (3) after sub-paragraph (a) insert—
- “(aa) fails without reasonable excuse to maintain any record or furnish any return required by an appropriate Agency in accordance with regulation 25(3);”.
- (16) In Schedule 1 (producers)—
- (a) In the Table, omit the entry “Wholesaler” in Column 1 and the entries relating to it in the other three Columns, and omit “Wholesaler” from the entry in Column 1 beginning “Manufacturer, Convertor”;
- (b) omit paragraphs 1(1)(a)(v), 1(1)(g) and 2(d);
- (c) in paragraph 1(1)(b), after “formation” insert “of”;
- (d) for paragraph 2(c) substitute—
- “(c) “Class C supply” means a supply (other than a Class F supply) to a person for the application by that person of a relevant function which—
- (i) is different from the function carried out by his immediate supplier, and
- (ii) is not that of an importer;”;
- (e) in paragraph 3(a)(ii) for “£1,000,000” substitute “£2,000,000”; and
- (f) in paragraph 4(2) omit “and Schedule 2,”.
- (17) In Schedule 2 (recovery and recycling obligations)—
- (a) for paragraph 2(3) substitute—
- “(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 by the producer in the preceding year.
- C is the percentage prescribed in paragraph 3 below in relation to the class of producer,
- Y is the percentage prescribed in paragraph 5 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.”.
- (b) in paragraph 3—
- (i) in sub-paragraph (1)(b), for “11%” substitute “9%”;
- (ii) in sub-paragraph (1)(c), for “36%” substitute “37%”;
- (iii) in sub-paragraph (1)(d), for “seller or wholesaler 47%” substitute—
- “seller 48%”;
- (iv) in sub-paragraph (1)(e), for “83%” substitute “85%”;
- (v) in sub-paragraph (2)(b), for “6% + 11% = 17%” substitute—
- “6% + 9% = 15%”;
- (vi) in sub-paragraph (2)(c), for “6% + 11% + 36% = 53%” substitute—
- “6% + 9% + 37% = 52%”;
- (vii) in sub-paragraph (2)(d), for “6% + 11% + 36% + 47% = 100%” substitute—
- “6% + 9% + 37% + 48% = 100%”;
- (c) for paragraph 6 substitute—
- “6.—(1) In this Schedule “recyclable material” means—

- (i) glass;
- (ii) aluminium;
- (iii) steel;
- (iv) paper/fibreboard; or
- (v) plastic;

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.

(2) Paragraph 4(2) of Schedule 1 applies for the purposes of this Schedule as it applies for the purposes of that Schedule, but as though the words “, other than a Class A supply” were omitted.

(3) For the year 1999 (but not for later years) paragraph 2(1) shall only apply to packaging and packaging materials which are recyclable materials.”; and

(d) at the end insert–

“7. Where the appropriate Agency is satisfied that the 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.”

(18) In Schedule 3 (special producers)–

(a) in Part I, for everything preceding the words “Categories of waste” substitute–

“DEFINITION OF WASTE—ARTICLES 1(a) AND 2 OF AND ANNEX I TO THE WASTE DIRECTIVE

Article 1

- (a) “Waste” shall mean any substance or object in the categories set out in Annex 1 which the holder discards or intends or is required to discard.

Article 2

1. The following shall be excluded from the scope of this Directive:

- (a) gaseous effluents emitted into the atmosphere;
- (b) where they are already covered by other legislation:–
 - (i) radioactive waste;
 - (ii) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries;
 - (iii) animal carcasses and the following agricultural waste: faecal matter and other natural, non-dangerous substances used in farming;
 - (iv) waste waters, with the exception of waste in liquid form;
 - (v) decommissioned explosives.

2. Specific rules for particular instances or supplementing those of this Directive on the management of particular categories of waste may be laid down by means of individual Directives.”

Annex I”;

(b) in Part III (definition of special producers)–

- (i) at the end of paragraph 3(a), omit “or”; and
- (ii) after paragraph 3(b) insert “or
 - (c) packaging used to contain, or used in connection with the containment of–
 - (i) an explosive within the meaning of the Explosives Act 1875(a); or
 - (ii) decommissioned explosives for the purposes of article 2 of the Waste Directive.

(a) 1875 c. 17.

(18) In Schedule 4 (information), omit Part II.

Competition scrutiny: revocations

3. The provisions of the 1997 Regulations referred to in column (1) of the Table below (which relate to competition scrutiny) are revoked to the extent specified in column (2) of that Table.

TABLE

<i>Provision</i>	<i>Extent of revocation</i>
Regulation 2 (interpretation and notices)	The definition of “the Director”.
Regulation 12 (application for registration of a scheme)	In paragraph (4)– (a) the words “and the operator” to “regulation 31” and the words “and notification”; and (b) in sub-paragraphs (a) and (b), the words “or notification”.
Regulation 13 (conditions of registration of a scheme)	In paragraph (g), the words “or notifies” to the end.
Regulation 17 (cancellation of registration of a scheme)	In paragraph (2), the words “or gives notice” to the end.
Regulation 31 (competition scrutiny)	The whole regulation.
Regulation 32 (the 1976 Act)	The whole regulation.
Regulation 33 (agreements to which the 1976 Act applies)	The whole regulation.
Regulation 34 (offences and penalties)	(a) paragraph (3)(b); (b) in paragraph (3)(c), the words “or to the Secretary of State” to “Part VIII of these Regulations.”.

Signed by authority of the Secretary of State

Chris Mullin
Minister of State,
Department of the Environment,
Transport and the Regions

13th December 1999

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 impose on producers obligations to recover and recycle packaging waste, and related obligations. They are made in implementation of Articles 6(1) and 13 of Directive 94/62/EC.

Regulation 2 makes a number of amendments to the 1997 Regulations, including in particular—

- (a) amending the definitions of “packaging waste” and “producer responsibility obligations”, and inserting definitions of “recyclable material”, “SIC code”, “special producer” and “waste”;
- (b) increasing the turnover threshold for 2000 and later years to £2,000,000;
- (c) removing the category of “wholesaler” from those on whom producer responsibility obligations are imposed;
- (d) requiring producers with over £5 million turn over and applying for individual registration with an Agency to include an operational plan showing the steps to be taken to comply with their obligations;
- (e) increasing the fees for registering producers and schemes by 27%;
- (f) imposing obligations on the Secretary of State and sellers to provide the necessary information to users of packaging about methods of reuse, recovery and recycling of packaging and packaging waste, in accordance with Article 13 of the Directive;
- (g) providing for data to be supplied on a form provided by the appropriate Agency;
- (h) permitting producers using reusable packaging to spread their obligations over four years;
- (i) requiring the appropriate Agency to publish details of its monitoring policy from 2000 onwards; and
- (j) changing the percentage activity obligations of convertors from 11% to 9%; of packers/ fillers from 36% to 37%; and of sellers from 47% to 48%.

Regulation 3 revokes certain provisions of the 1997 Regulations in consequence of the coming into force of the Competition Act 1998.

A Regulatory Impact Appraisal has been prepared in connection with these Regulations. It has been placed in the Library of each House of Parliament, and copies may be obtained from EB Division, Department of the Environment, Transport and the Regions, Ashdown House, 123 Victoria Street, London SW1E 6DE (telephone 0171–890–6567).

The volume entitled “Indexes to the United Kingdom Standard Industrial Classification of Economic Activities 1992”, referred to in the definition of “SIC code”, is available from the Stationery Office (telephone 0171–873–9090), price £22.50.

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