

2003 No. 1941

ENVIRONMENTAL PROTECTION

The Packaging (Essential Requirements) Regulations 2003

Made - - - - - 28th July 2003

Laid before Parliament 30th July 2003

Coming into force - - 25th August 2003

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) relating to the management of packaging and packaging waste, in exercise of the powers conferred on her by that section, hereby makes the following Regulations:

PART I

PRELIMINARY

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Packaging (Essential Requirements) Regulations 2003 and shall come into force on 25th August 2003.

(2) The Packaging (Essential Requirements) Regulations 1998(c) are hereby revoked.

Interpretation

2.—(1) In these Regulations—

- (a) “the Directive” means Directive 94/62/EC of the European Parliament and the Council on packaging and packaging waste(d);
- (b) “the 1987 Act” means the Consumer Protection Act 1987(e); and
- (c) except for the references to the European Communities in the definition of “the Commission” and in relation to the Official Journal, a reference to the Community includes a reference to the EEA, and a reference to a member State includes a reference to an EEA State: for this purpose—
 - (i) the “EEA” means the European Economic Area;
 - (ii) an “EEA State” means a State which is a Contracting Party to the EEA Agreement; and
 - (iii) the “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(f).

(a) S.I. 1996/266.

(b) 1972 c. 68.

(c) S.I. 1998/1165.

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

(e) 1987 c. 43.

(f) The application of the Directive was extended to the EEA from 1st December 1995 by virtue of Decision No. 67/95 of the EEA Joint Committee O.J. No. L8/38 which inserted a reference to that Directive after point 6 in Chapter XVII of Annex II to the EEA Agreement.

(2) In these Regulations—

“the Commission” means the Commission of the European Communities;

“energy recovery” means the use of combustible packaging waste as a means to generate energy through direct incineration with or without other waste but with recovery of the heat;

“enforcement authority” shall be construed in accordance with regulation 9 and Schedule IV;

“essential requirements” means the essential requirements in Annex II of the Directive and which are set out in Schedule I hereto;

“importer” means an importer of packaging which is packed or filled packaging into the United Kingdom;

“incidental presence” means the presence of a metal as an unintended ingredient of a packaging or packaging component;

“intentionally introduced” means the act of deliberately utilising a substance in the formulation of a packaging or a packaging component where its continued presence is desired in the final packaging or packaging component to provide a specific characteristic, appearance or quality; for the purpose of these Regulations, the use of recycled materials as a feedstock for the manufacture of new packaging materials where some portion of the recycled materials may contain amounts of regulated metals is not intentional introduction;

“organic recycling” means the aerobic (composting) or anaerobic (biomethanization) treatment, under controlled conditions and using micro-organisms, of the biodegradable parts of packaging waste, which produces stabilised organic residues or methane; for the purposes of these Regulations landfill shall not be considered a form of organic recycling;

“packaging” means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer, including non-returnable items used for the same purposes, but only where the products are—

- (a) sales packaging or primary packaging, that is to say packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;
- (b) grouped packaging or secondary packaging, that is to say packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale, and which can be removed from the product without affecting its characteristics; or
- (c) transport packaging or tertiary packaging, that is to say packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packagings in order to prevent physical handling and transport damage; for the purposes of these Regulations transport packaging does not include road, rail, ship and air containers;

“packaging component” means any part of packaging that can be separated by hand or by using simple physical means;

“packaging materials” means materials used in the manufacture of packaging and includes raw materials and processed materials prior to their conversion into packaging;

“packaging waste” means any packaging or packaging material covered by the definition of waste in Article 1 of the Waste Directive but not including production residues;

“packaging waste management” means the management of waste as defined in the Waste Directive;

“ppm” means parts per million by weight;

“product loops which are in a closed and controlled chain” means product loops in which products circulate with a controlled reuse and distribution system and in which the recycled material originates only from these entities in the chain so that the introduction of external material is the minimum which is technically feasible and from which these entities may only be removed in a specially authorised procedure so that return rates are maximised;

“recovery” means any of the applicable operations provided for in Annex II B of the Waste Directive;

“recycling” means the reprocessing in a production process of the waste materials for the original purpose or for other purposes including organic recycling but excluding energy recovery;

“regulated metals” means lead, cadmium, mercury or hexavalent chromium or a combination of two or more of the said metals, as the case may be;

“responsible person” means, in relation to packaging, the person who is—

- (a) responsible for packing or filling products into packaging, or
- (b) any person presenting himself as being so responsible by affixing to the packed or filled packaging his name, trade mark or other distinctive mark, or
- (c) the person who reconditions the packaging for reuse (except that reuse in itself shall not constitute reconditioning of the packaging), or
- (d) the importer; and
- (e) for the purposes of regulation 7(2) only includes the manufacturer or his authorised representative in the Community.

“reuse” means any operation by which packaging, which has been conceived and designed to accomplish within its life cycle a minimum number of trips or rotations, is refilled or used for the same purpose for which it was conceived, with or without the support of auxiliary products present on the market enabling the packaging to be refilled and reused packaging shall be construed accordingly; such reused packaging will become packaging waste when no longer subject to reuse; and

“Waste Directive” means Council Directive 75/442/EEC on waste(a).

PART II

APPLICATION

Packaging

3.—(1) Subject to regulation 4, these Regulations apply to any packaging.

(2) Nothing in these Regulations with regard to packaging shall affect the application of existing quality requirements for packaging, including those regarding safety, the protection of health and hygiene of the packed products, existing transport requirements or the provisions of Council Directive 91/689/EEC on hazardous waste(b).

Excluded packaging

4. These Regulations shall not apply to packaging which was—

(1) used for a given product prior to 31st December 1994; or

(2) manufactured on or before 31st December 1994, placed on the market in the Community on or before 31st December 1999 and which complies with any health and safety requirements or any other Act or enactment with which it would have been required to comply for it to be lawfully placed on the market in the United Kingdom on 31st December 1994.

PART III

GENERAL REQUIREMENTS

General duty relating to the placing on the market of packaging

5.—(1) Subject to regulation 6, on or after the coming into force of these Regulations, no person who is a responsible person shall place on the market any packaging unless the essential requirements have been complied with in relation to it provided always that placing on the market for the purposes of this regulation shall not occur in respect of reused packaging.

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

(b) O.J. No. L337, 31.12.91, p. 20.

- (2) Packaging shall be taken to satisfy the essential requirements—
- (a) if it satisfies national standards which implement the relevant harmonised standards; or
 - (b) where there are no relevant harmonised standards, if it satisfies national standards of which the texts are communicated to the Commission pursuant to Article 9(3) of the Directive and which, pursuant to that provision, are notified by the Commission to the member States as being deemed to comply with the essential requirements.

(3) In paragraph (2) above, “harmonised standards” shall mean the standards of which the reference number is published in the Official Journal of the European Communities in pursuance of Article 9(2)(a) of the Directive.

Concentration levels of regulated metals present in packaging

6.—(1) Subject to paragraphs (2) and (3) and regulation 7 below, no person who is a responsible person shall place on the market packaging if—

- (a) on or after 30th June 1998, the sum of the concentration levels of regulated metals either in the packaging or in any of its packaging components, exceeds 600 ppm;
- (b) on or after 30th June 1999, the sum of the concentration levels of regulated metals either in the packaging or in any of its packaging components, exceeds 250 ppm;
- (c) on or after 30th June 2001, the sum of the concentration levels of regulated metals either in the packaging or in any of its packaging components exceeds 100 ppm.

(2) Paragraph (1) above shall not apply to packaging which is made entirely of lead crystal glass as defined in Directive 69/493/EEC(a).

- (3) The concentration levels of regulated metals in paragraph (1) above shall not apply—
- (a) on or before 4th March 2009, to plastic crates or plastic pallets used in product loops which are in a closed and controlled chain provided the requirements set out in Schedule II to these Regulations are complied with in relation to that packaging;
 - (b) on or before 30th June 2006, to glass packaging provided the requirements set out in Schedule III to these Regulations are complied with in relation to that packaging.

Requirement for technical documentation

7.—(1) The responsible person shall—

- (a) at the request of the enforcement authority submit within twenty-eight days of the date of the request technical documentation or other information showing that the packaging complies with the essential requirements and the regulated metals concentration limits set out in regulation 6;
- (b) ensure that he retains the technical documentation or other information referred to in sub-paragraph (1) (a) above for a period of four years from the date that he places the packaging on the market.

(2) The responsible person shall—

- (a) submit a report as required under sub-paragraphs 2(a) and (b) of Schedule III to the enforcement authority;
- (b) at the request of the enforcement authority, submit within twenty-eight days of the date of the request the annual declaration of conformity and other information set out in sub-paragraphs 2 (a) and (b) of Schedule II and sub-paragraph 2 (c) of Schedule III.

PART IV

ENFORCEMENT

Enforcement Authority

8. Schedule IV shall have effect for the purposes of providing for the enforcement of these Regulations and for matters incidental thereto.

(a) O.J. No. L236, 29.12.69, p. 36; S.I. 1973/1952 implements Council Directive No. 69/493/EEC relating to crystal glass.

Offences

9. Any person who—
- (a) contravenes or fails to comply with regulation 5 or 6; or
 - (b) fails to supply or retain technical documentation or other information as required by regulations 7(1) and (2);

shall be guilty of an offence.

Penalties

- 10.—(1) A person guilty of an offence under regulation 9(a) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

(2) A person guilty of an offence under regulation 9(b) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

11.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 9, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against a person for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another; or
- (b) to reliance on information given by another;

the person shall not, without leave of the court, be entitled to rely on the defence unless, not later than 7 clear days before the hearing of the proceedings (or, in Scotland, the trial diet), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he took and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

Liability of persons other than the principal offender

12.—(1) Where the commission by any person of an offence under regulation 9 is due to an act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of any body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

28th July 2003

Stephen Timms,
Minister of State for Energy, E-Commerce and Postal Services,
Department of Trade and Industry

SCHEDULE I

Regulations 2(2), 5

(Annex II of the Directive)

ESSENTIAL REQUIREMENTS ON THE COMPOSITION AND THE REUSABLE AND RECOVERABLE, INCLUDING RECYCLABLE, NATURE OF PACKAGING

1. Requirements specific to the manufacturing and composition of packaging
 - Packaging shall be so manufactured that the packaging volume and weight be limited to the minimum adequate amount to maintain the necessary level of safety, hygiene and acceptance for the packed product and for the consumer;
 - Packaging shall be designed, produced and commercialised in such a way as to permit its reuse or recovery, including recycling, and to minimise its impact on the environment when packaging waste or residues from packaging waste management operations are disposed of; and
 - Packaging shall be so manufactured that the presence of noxious and other hazardous substances and materials as constituents of the packaging material or of any of the packaging components is minimised with regard to their presence in emissions, ash or leachate when packaging or residues from management operations or packaging waste are incinerated or landfilled.
2. Requirements specific to reusable packaging

The following requirements must be simultaneously satisfied:

 - the physical properties and characteristics of the packaging shall enable a number of trips or rotations in normally predictable conditions of use,
 - possibility of processing the used packaging in order to meet health and safety requirements for the workforce,
 - fulfil the requirements specific to recoverable packaging when the packaging is no longer reused and thus becomes waste.
3. Requirements specific to the recoverable nature of packaging
 - (a) Packaging recoverable in the form of material recycling:

Packaging must be manufactured in such a way as to enable the recycling of a certain percentage by weight of the materials used into the manufacture of marketable products, in compliance with current standards in the Community. The establishment of this percentage may vary, depending on the type of material of which the packaging is composed.
 - (b) Packaging recoverable in the form of energy recovery.

Packaging waste processed for the purpose of energy recovery shall have a minimum inferior calorific value to allow optimisation of energy recovery.
 - (c) Packaging recoverable in the form of composting.

Packaging waste processed for the purpose of composting shall be of such a biodegradable nature that it should not hinder the separate collection and the composting process or activity into which it is introduced.
 - (d) Biodegradable packaging.

Biodegradable packaging waste shall be of such a nature that it is capable of undergoing physical, chemical, thermal or biological decomposition such that most of the finished compost ultimately decomposes into carbon dioxide, biomass and water.

SCHEDULE II

Regulation 6(3)(a)

REQUIREMENTS FOR EXEMPTION FOR PLASTIC CRATES AND PALLETS FROM HEAVY METAL CONCENTRATION LEVELS SPECIFIED IN REGULATION 6(1)

1.
 - (a) The plastic crate or plastic pallet shall be, or shall have been, manufactured in a controlled recycling process, that is to say a process in which the recycled material originates only from other plastic crates or plastic pallets and in which the introduction of external materials is the minimum which is technically feasible but in any event does not exceed 20 per cent by weight;
 - (b) no regulated metal shall be intentionally introduced as an element during the manufacture or distribution of the plastic crate or plastic pallet provided always that the incidental presence of any of these elements shall be permitted; and
 - (c) the concentration levels of regulated metals in the plastic crate or plastic pallet may only exceed the levels referred to in regulation 7 as a result of the addition of recycled materials.
2.
 - (a) The plastic crate or plastic pallet shall be introduced in a controlled distribution and reuse system and the following requirements shall be complied with—
 - (i) the plastic crate or plastic pallet containing regulated metals shall be identified in a permanent and visible way;

- (ii) a system of inventory and record keeping shall be established, which shall include a method of regulatory and financial accountability, to document the compliance with the requirements set out in this Schedule including the return rates. The return rates are the percentage of returnable entities which are not discarded after use but are returned to the manufacturer of the packaging or the responsible person or an authorised representative established in the Community of the said manufacturer or the responsible person, as the case may be. The said return rates shall be as high as possible but in no case lower than 90 per cent over the lifetime of the said crate or pallet;
 - (iii) in addition the system shall account for all the reusable entities put into, and removed from, service; and
 - (iv) all returned plastic crates or plastic pallets that are no longer reusable shall be either disposed of by a procedure specifically authorised by the Environment Agency in England and Wales, the Environment and Heritage Service in Northern Ireland and the Scottish Environment and Protection Agency in Scotland or be recycled in a recycling process in which the recycled material is made up of plastic crates or plastic pallets in the circuit and the introduction of external material is the minimum which is technically feasible but in any event does not exceed 20 per cent by weight.
- (b) The manufacturer or his authorised representative established in the Community shall—
- (i) draw up on an annual basis a written declaration of conformity, including an annual report demonstrating how the conditions in this Schedule have been complied with; the declaration of conformity shall contain a list of any changes to the system and the manufacturer's authorised representatives; and
 - (ii) retain the documentation referred to in sub-paragraph (i) above at the disposal of the enforcement authority for inspection purposes for a period of four years from the date of its drawing up;
- provided always that where neither the manufacturer nor his authorised representative is established within the Community the said documentation shall be retained at the disposal of the enforcement authority by the responsible person who places the product on the market.

SCHEDULE III

Regulation 6(3)(b)

REQUIREMENTS FOR EXEMPTION FOR GLASS PACKAGING FROM HEAVY METAL CONCENTRATION LEVELS SPECIFIED IN REGULATION 6(1)

1. (a) No regulated metals shall be intentionally introduced during the manufacturing process of glass packaging.
- (b) The concentration levels of regulated metals in glass packaging may only exceed the level referred to in regulation 7 as a result of the addition of recycled materials.
2. (a) The manufacturer or his authorised representative, or, where neither the manufacturer nor his authorised representative is established within the Community, the responsible person who places the product on the market, shall submit a report in accordance with sub-paragraph (b) to the enforcement authority, where the average heavy metals concentration levels on any twelve consecutive monthly controls made from the production of each individual glass furnace, representative of normal and regular production activity, exceeds a concentration level of 200 ppm.
- (b) The report shall include as a minimum the following information—
 - measures values;
 - description of measurement methods employed;
 - suspected sources for the presence of heavy metals concentration levels; and
 - detailed description of the measures taken to reduce the heavy metals concentration levels.
- (c) Measurement results from production sites and measurement methods employed shall be made available at any time to the enforcement authority, if requested.

SCHEDULE IV

Regulation 8

ENFORCEMENT

1. It shall be the duty of the following authorities to enforce these Regulations within their area—
 - (a) in Great Britain, weights and measures authorities; and
 - (b) in Northern Ireland, the Department of Enterprise, Trade and Investment.
2. For the purposes of providing for the enforcement of these Regulations—
 - (a) sections 14, 15, 28 to 35, 37, 38, 44 and 47 of the 1987 Act shall apply and in respect of proceedings for contravention thereof as if—

- (i) references to safety provisions were references to these Regulations;
 - (ii) references to goods were references to packaging as the context may require;
 - (iii) in section 14, in sub-section (6), for “six months” there were substituted “three months”;
 - (iv) in sections 28, 29, 30, 33, 34 and 35, the words “or any provision made by or under Part III of this Act” on each occasion that they occur were omitted;
 - (v) in section 28, sub-sections (3), (4) and (5) were omitted;
 - (vi) in section 29, sub-section (4) was omitted;
 - (vii) in section 30, sub-sections (7) and (8) were omitted; and
 - (viii) in section 38(1), paragraphs (a) and (b) were omitted;
- (b) sections 39 and 40 of the 1987 Act shall apply to offences under section 32 of that Act as it is applied to these Regulations by sub-paragraph (a) above; and
- (c) in England and Wales, and Northern Ireland, a magistrates’ court may try an information in respect of an offence committed under these Regulations if the information is laid within twelve months from the time when the offence is committed, and in Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.
3. Nothing in this Schedule shall authorise any enforcement authority to bring proceedings in Scotland for an offence.
4. An enforcement authority shall, whenever the Secretary of State so directs, make a report to the Secretary of State on the exercise of the functions exercisable by that authority under these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace with amendments the Packaging (Essential Requirements) Regulations 1998 (“the 1998 Regulations”). The 1998 Regulations implemented Articles 9 and 11 of Directive 94/62/EC of the European Parliament and the Council on packaging and packaging waste (O.J. No. L365, 31.12.94, p. 10) which relate to the essential requirements to be satisfied by packaging. These Regulations implement in addition two Commission Decisions providing for derogations in respect of plastic crates and pallets and glass packaging. These are Commission Decision 1999/177/EC (O.J. L056, 04.03.98, p.47) and Commission Decision 2001/171/EC (O.J. L062, 02.03.01, p.20). References in the Regulations to the Community or a member State include respectively a reference to the EEA or an EEA State which are defined in regulation 2(1)(c).

Part II provides for the application of the Regulations. They apply to all packaging (as defined in regulation 2(2)) other than those excluded by regulation 4.

Part III sets out the general requirements of the Regulations. Regulation 5 imposes a duty on a responsible person (as defined in regulation 2(2)) who places packaging on the market to ensure that it satisfies the relevant essential requirements. The essential requirements (Annex II of Directive 94/62/EC) are set out in Schedule I. Regulation 6 imposes a duty on a responsible person who places the product on the market to ensure that the sum of the concentration levels of lead, cadmium, mercury and hexavalent chromium of packaging or of its packaging components, which is placed on the market on or after certain dates do not exceed certain limits on a sliding scale. Regulation 6 does not apply to packaging which is made entirely of lead crystal glass (regulation 6(2)). Regulation 6(3) introduces derogations from regulation 6(1) in respect of plastic crates and pallets and glass packaging providing respective conditions set out in Schedules II and III are met.

Regulation 7(1) provides for the responsible person to keep technical documentation on compliance with the essential requirements and the heavy metals concentration limits in respect of packaging and to make this available at the request of the enforcement authority for a period of four years from the date packaging is placed on the market.

Regulation 7(2) makes provision for the manufacturer or his authorised representative or if neither is established in the Community, the responsible person who places the product on the market to comply with the provisions relating to information set out in Schedules II and III to be submitted in certain circumstances and on request to the enforcement authorities.

Part IV relates to enforcement of the Regulations. The enforcement authorities are the weights and measures authorities in Great Britain and the Department of Enterprise, Trade and Investment in Northern Ireland (regulation 9 and Schedule IV). In Scotland, proceedings are brought by the Procurator-Fiscal or Lord Advocate. Regulation 9 provides for offences. Regulation 10 provides for penalties for breaches of the Regulations. There are also provisions relating to the defence of due diligence (regulation 11) as well as liability of persons other than the principal offender (regulation 12).

A Regulatory Impact Assessment (RIA) in respect of these Regulations is available and a copy may be obtained from the Department of Trade and Industry. As these Regulations maintain the implementation of Council Directive 94/62/EC on packaging and packaging waste together with two Decisions relating to derogations, a transposition note (TN) setting out how the Government will transpose into UK law the main elements of this Directive and the derogations has been prepared. Copies of the RIA and TN are available from SD3 Bay 425, the Department of Trade and Industry, 151 Buckingham Palace Road, London SW1W 9SS. Copies of these documents have been placed in the libraries of both Houses of Parliament.

2003 No. 1941

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£2.50

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E0274 8/2003 130274 19585

ISBN 0-11-047185-7



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