

**EXPLANATORY MEMORANDUM TO**  
**THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING**  
**WASTE)(AMENDMENT)(ENGLAND AND WALES) REGULATIONS 2005**

**2005 No. 717**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments

**2. Description**

- 2.1 These Regulations amend the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (SI No.648) to enable the Environment Agency to accredit reprocessors and exporters at any time throughout the year for the purposes of issuing packaging waste recovery notes (PRNs) and packaging waste export recovery notes (PERNs).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The amendment is being made to remove the requirement for reprocessors and exporters to have applied by 30th September to be accredited for the following year to issue PRNs and PERNs respectively.
- 3.2 This deadline could have meant that there would be insufficient accredited reprocessing capacity available to producers with producer responsibility obligations under the 1997 Regulations to meet their recovery and recycling obligations through the purchase of PRNs and PERNs. The principal Regulations impose producer responsibility obligations on producers to enable the United Kingdom to meet the recovery and recycling target obligations set out in EC Directive 94/62/EC on Packaging and Packaging Waste, as amended by Directive 2004/12/ EC (“the Packaging Waste Directive”).
- 3.3 This amendment is being made under the powers in section 2(2) of the European Communities Act 1972 (“the 1972 Act”) despite the fact that the principal regulations were made under sections 93-95 of the Environment Act 1995 (“the 1995 Act”). This is the second time that such powers have been used to amend the principal regulations, the previous occasion was in 1999 (see SI 1999/3447). Defra considers the matter to be urgent and, with the Easter Recess approaching and Parliamentary time short, that it should act as rapidly as possible to ensure that sufficient capacity

exists to meet producer demand in 2005 by allowing those not yet accredited for 2005 to be accredited for the second half of the year, and to prevent further loss of business amongst reprocessors and exporters.

3.4 Since the amendments made to the principal Regulations in 2003 (SIs 2003/3294 and 3238 (W318)) PRNs and PERNs provide the only route to demonstrating compliance with obligations and these documents may only be issued by accredited reprocessors and exporters. In January 2005, industry made known to Defra that the problem with accreditation, of which it was aware, needed to be resolved urgently for 2005. Defra considered various options for dealing with the issue and concluded that amending the Regulations would provide greatest certainty and clarity for producers, reprocessors and exporters. Defra decided that a short consultation exercise was necessary, despite the urgency, because there was an expectation that this would happen (given the powers used previously to make the principal regulations and amendments thereto). Consultation opened on 8 February and closed three weeks later on 28 February.

3.5 The amendment is uncontentious. It removes the bar on the Environment Agency granting accreditations to appropriate persons and is welcomed by virtually all stakeholders.

#### **4. Legislative Background**

4.1 The Producer Responsibility Obligations (Packaging Waste) Regulations 1997 implement, in particular, the recovery and recycling targets in the Packaging Waste Directive. The original Directive required target levels of recovery and recycling of packaging waste to be achieved by 2001 and the amendment to the Directive made in 2004 set further targets for 2008. The present amendment is being made to allow accreditation of reprocessors and exporters, who provide the evidence of compliance for businesses with producer responsibility obligations, to be granted at anytime during a year.

#### **5. Extent**

5.1 This instrument applies to England and Wales.

#### **6. European Convention on Human Rights**

6.1 Not applicable

#### **7. Policy background**

7.1 The 1997 Regulations require certain businesses who qualify as producers to carry out specified levels of packaging waste recovery and recycling each year. This allows the UK to demonstrate it has met the recovery and recycling targets set out in the Packaging Waste Directive. Producers can only demonstrate compliance with

their obligations by purchasing Packaging Waste Recovery Notes (PRNs) or Packaging Waste Export Recovery Notes (PERNs) from accredited reprocessors and exporters respectively. The PRN/PERN system was placed on a statutory footing by the amendments made to the principal regulations by the Producer Responsibility Obligations (Packaging Waste)(Amendment)(England) Regulations 2003 (SI 2003/3295) and the Producer Responsibility Obligations (Packaging Waste)(Amendment)(Wales) Regulations 2003 (SI 2003/3238 (W318)). Prior to those amendments being made, the system operated on a voluntary basis with the Environment Agency accrediting reprocessors and exporters so that they could issue PRNs and PERNs. The first year for which accreditation can be granted under the Regulations is 2005.

7.2 This issue was brought to the Government's attention by both Industry and the Environment Agency in September 2004 but it was only once discussions took place with industry that the extent of the problem was revealed. Initially Defra believed that there would be sufficient capacity accredited by 30 September to meet 2005 targets and that the complaint was more general in nature and not urgent. As such it could be dealt with during the consolidation exercise due to take place later in 2005 for accreditations in 2006. In January however, exporters and prospective exporters pointed out the current difficulties that they faced in terms of potentially lost contracts in 2005. At the same time Defra was concerned about the possibility of a currently accredited person closing down and the consequences for producers with obligations. Defra, in consultation with other Government Department and the Devolved Administrations, rapidly considered options for addressing the problem. The conclusion was that the only way to tackle the problem without creating further difficulties was to amend the Regulations. Other Government Departments and the Devolved Administrations supported this approach, Defra Ministers agreed to the proposed course of action and so Defra issued the Consultation.

7.3 Defra also considered the powers available to amend the Regulations which were originally made using the powers in sections 93-95 of the 1995 Act. Defra consider the amendment to be uncontentious. In reaching a decision as to which powers to rely on to make the amendment, Defra was influenced by the nature of the amendment, the impending Easter Recess, the heavy parliamentary agenda and the forthcoming likely announcement of an election and the 'purdah' period that would commence and the fact that stakeholders overwhelmingly welcomed the proposed change. Regulations made under section 93-95 of the 1995 Act follow the draft affirmative procedure which at the present time might take longer to arrange; most importantly, there was a high degree of risk that Defra might not succeed in getting both debates held before the announcement of the election and the purdah period. This would mean greater delay and a corresponding reduction in the accredited period available in 2005 for reprocessors and exporters. Defra is also aware that the overwhelming majority of stakeholders are in support of rapid change; this change is therefore politically very important. By relying on the powers in section 2(2) of the 1972 Act and following the negative procedure, the amendments would come into force in time for some businesses to be able to be accredited for a full half year in 2005. For

the individual new reprocessor or exporter, this would represent the removal of a barrier to competition and a potential loss of revenue. The policy intention is to amend the Regulations as quickly as possible so that as much accredited reprocessing capacity is available as is needed to meet producers' obligations.

7.4 A 3-week consultation exercise was carried out. 600 consultation documents were sent to:- reprocessors and exporters who had been accredited in the past two years under the voluntary scheme; compliance schemes (who discharge obligations on behalf of producers); and to the Advisory Committee members. It was also placed on the Defra website and was publicised in the specialist press. 54 replies were received and were overwhelmingly supportive. Responses came mainly from reprocessors and exporters, but were also received from 8 compliance schemes including Valpak (who between them represent the majority of obligated producers); and 5 trade bodies, including the CBI. There were only 4 negative responses to the questions from individual reprocessors who themselves had met the deadline and are accredited. They did not see why others should not have to do the same.

## **8. Impact**

8.1 No Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the costs of businesses, charities or voluntary bodies.

- the proposed changes are minor and are purely beneficial to those affected because they allow mid-year accreditations of reprocessors and exporters; and allow exporters to add further overseas reprocessors to their list mid-year.

8.2 There is no impact on the public sector.

## **9. Contact**

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