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STATUTORY INSTRUMENTS

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**2015 No. 1640**

**The Packaging (Essential Requirements) Regulations 2015**

**PART 1**

Preliminary

**Citation and commencement**

1. These Regulations may be cited as the Packaging (Essential Requirements) Regulations 2015 and come into force on 1st October 2015.

**Interpretation**

2.—(1) In these Regulations—

“the Directive” means the European Parliament and Council [Directive 94/62/EC](#) on packaging and packaging waste<sup>(1)</sup>;

“the 1987 Act” means the Consumer Protection Act 1987<sup>(2)</sup>;

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

“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” has the meaning set out in regulation 7;

“essential requirements” means the essential requirements in Annex II of the Directive and which are set out in Schedule 1;

“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 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; but 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; but landfill is not be considered a form of organic recycling;

“packaging” has the meaning set out in regulation 3(2);

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(1) OJ No L 365, 31.12.94, p10.

(2) 1987 c.43. Sections 31, 32 and 44 were amended by the Consumer Rights Act 2015 (c.15), section 77 and Schedule 6, paragraphs 37, 42, 43 and 46.

“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 3(1) of the Waste Directive but not including production residues;

“packaging waste management” means the management of waste as defined in Article 3(9) of the Waste Directive;

“plastic” means a polymer within the meaning of Article 3(5) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC<sup>(3)</sup>, to which additives or other substances may have been added, and which is capable of functioning as a main structural component of carrier bags;

“plastic carrier bag” means a carrier bag with or without a handle, made of plastic, which is supplied to consumers at the point of sale of goods or products;

“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” has the meaning given by Article 3(15) of the Waste Directive;

“recycling” means the reprocessing in a production process of 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 these 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,
- (b) any person presented as responsible by affixing to the packed or filled packaging that person’s name, trade mark or other distinctive mark,
- (c) the person who reconditions the packaging for reuse (except that reuse in itself shall not constitute reconditioning of the packaging),
- (d) the importer; or
- (e) for the purposes of regulation 6(2) only, the manufacturer or the manufacturer’s authorised representative in the European Union;

“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

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(3) OJ No L 396, 30.12.2006, p1.

“the Waste Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste and repealing certain Directives<sup>(4)</sup>.

(2) In these Regulations, except for the references to the European Union in the definition of “the Commission” and in relation to the Official Journal, a reference to the European Union (“EU”) includes a reference to the EEA, and a reference to a member State includes a reference to an EEA State.

## PART 2

### Application

#### Packaging

3.—(1) These Regulations apply to any packaging.

(2) In these Regulations “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.

(3) The following items must also be considered to be packaging on the basis of the criteria set out below—

- (a) items that fulfil the above definition without prejudice to other functions which the packaging might also perform, unless the item is an integral part of a product and it is necessary to contain, support or preserve that product throughout its lifetime and all elements are intended to be used, consumed or disposed of together.
- (b) items designed and intended to be filled at the point of sale and disposable items sold, filled or designed and intended to be filled at the point of sale provided they fulfil a packaging function.
- (c) packaging components and ancillary elements integrated into packaging, and ancillary elements hung directly on, or attached to, a product and which perform a packaging function, unless they are an integral part of that product and all elements are intended to be consumed or disposed of together.

(4) Schedule 5 to these Regulations lists the illustrative examples of packaging referred to in paragraph (3) and set out in Annex 1 of the Directive as amended by Commission Directive 2013/2/EU amending Annex I to [Directive 94/62/EC](#) of the European Parliament and of the Council on packaging and packaging waste<sup>(5)</sup>.

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(4) OJ No L 312, 22.11.2008, p 3.

(5) OJ No L 37, 8.2.2013, p10.

(5) Nothing in these Regulations with regard to packaging affects 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 the Hazardous Waste (England and Wales) Regulations 2005(6) in England and Wales, the Hazardous Waste Regulations (Northern Ireland) 2005(7) in Northern Ireland, the Hazardous Waste (Wales) Regulations 2005(8) in Wales, and the Special Waste Regulations 1996(9) in Scotland.

## PART 3

### General Requirements

#### General duty relating to the placing on the market of packaging

4.—(1) A responsible person must not place any packaging on the EU market unless it complies with the essential requirements.

(2) Reused packaging is not considered to be placed on the market for the purposes of this regulation.

(3) Packaging complies with 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 which have been communicated to the Commission pursuant to Article 9(3) of the Directive and which are notified by the Commission to the member States as being deemed to comply with the essential requirements.

(4) In paragraph (3), “harmonised standard” means the standard the reference number of which is published in the Official Journal of the European Union in accordance with Article 9(2)(a) of the Directive.

#### Concentration levels of regulated metals present in packaging

5.—(1) A responsible person must not place any packaging on the EU market if 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) does not apply to packaging which is made entirely of lead crystal glass as defined in Council [Directive 69/493/EEC](#) on the approximation of the laws of the Member States relating to crystal glass(10).

(3) The concentration levels of regulated metals in paragraph (1) do not apply—

- (a) 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 2 to these Regulations are complied with in relation to that packaging;
- (b) to glass packaging provided the requirements set out in Schedule 3 to these Regulations are complied with in relation to that packaging.

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(6) S.I. 2005/894, amended by S.I. 2006/937, 2007/3538, 2009/507, 2010/675, 2011/556, 2011/988, 2011/2043, 2013/755 (W. 90).

(7) S.R.(N.I.) 2005 No.300, amended by S.R. (N.I.) 2005/461, 2006/280, 2009/159, 2011/127 (W. 141), 2015/288.

(8) S.I. 2005/1806 (W. 138), amended by S.I. 2006/937, 2007/3538, 2009/2861 (W. 250), 2010/675, 2011/556, 2011/971 (W. 141), 2011/2043, 2013/755 (W. 90).

(9) S.I. 1996/972, amended by S.I. 1996/2019, S.S.I. 2004/112, 2000/323, 2011/226, 2012/360.

(10) OJ No L 326, 29.12.1969, p.36 (OJ/SE 1st series vol II p 599).

### **Requirement for technical documentation**

- 6.—(1) The responsible person must—
- (a) at the request of an enforcement authority submit, within twenty-eight days of the date of a request, the technical documentation or other information showing that the packaging complies with the essential requirements and the regulated metals concentration limits set out in regulation 5; and
  - (b) retain the technical documentation or other information referred to in paragraph (1)(a) for a period of four years from the date that the responsible person places the packaging on the market.
- (2) The responsible person must—
- (a) submit a report as required under paragraphs 2(1) and (2) of Schedule 3 to these Regulations to the enforcement authority; and
  - (b) at the request of an enforcement authority, submit within twenty-eight days of the date of the request, the annual declaration of conformity and other information set out in paragraphs 2(1) and (2) of Schedule 2 and paragraph 2(3) of Schedule 3 to these Regulations.

## **PART 4**

### **Enforcement**

#### **Enforcement authority**

- 7.—(1) The following authorities have a duty 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) Schedule 4 has effect for the purposes of providing for the enforcement of these Regulations<sup>(11)</sup>.

#### **Offences**

8. Any person who, without a defence under regulation 10—
- (a) contravenes or fails to comply with regulation 4 or 5; or
  - (b) fails to supply or retain technical documentation or other information as required by regulation 6(1) and (2);

is guilty of an offence.

#### **Penalties**

- 9.—(1) A person guilty of an offence under regulation 8(a) is liable—
- (a) on summary conviction—
    - (i) in England and Wales, to a fine;
    - (ii) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.

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<sup>(11)</sup> For the investigatory powers available to the enforcement authority for the purpose of the duty imposed by regulation 7(1), see Schedule 5 to the Consumer Rights Act 2015 (c.15).

- (b) on conviction on indictment in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (2) A person guilty of an offence under regulation 8(b) is liable on summary conviction—
  - (a) in England and Wales, to a fine;
  - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.

### **Defence of due diligence**

**10.**—(1) In proceedings for an offence under regulation 8, it is a defence for a person to show that that person took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) A person is not, without the leave of the court, entitled to rely on the defence if it 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;

unless, not later than seven clear days before the hearing of the proceedings (in England, Wales and Northern Ireland), or the trial diet (in Scotland), the person has served a notice on the person bringing the proceedings.

(3) The notice must give the information in the possession of the person (“A”) serving the notice which identifies or assists in identifying the person (“B”) who—

- (a) committed the act or default; or
- (b) supplied the information which was relied on.

(4) A may not rely on the defence by reason of reliance on information supplied by B, unless A shows that it was reasonable in all the circumstances to have relied on the information, having regard in particular—

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

### **Liability of persons other than the principal offender**

**11.**—(1) Where the commission by a person of an offence under regulation 8 is due to anything that another person did or failed to do in the course of a business, that other person is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person.

(2) Where a body corporate or a Scottish partnership commits an offence and it is proved that the offence was committed—

- (a) with the consent or connivance of a relevant person; or
- (b) as a result of the negligence of a relevant person,

that person, as well as the body corporate, is guilty of the offence.

(3) A “relevant person” means—

- (a) a director, manager, secretary or other similar officer of a body corporate;
- (b) in relation to a body corporate managed by its members, a member of that body performing managerial functions;
- (c) in relation to a Scottish partnership, a partner;
- (d) a person purporting to act as a person described in sub-paragraph (a), (b) or (c).

## PART 5

### Miscellaneous

#### Review

**12.**—(1) The Secretary of State must from time to time—

- (a) carry out a review of the effect of these Regulations,
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how articles 9 and 11 of the Directive (which is implemented by means of these Regulations) are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives to be achieved by the regulatory system established by these Regulations,
- (b) assess the extent to which those objectives have been achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

#### Consequential amendments

**13.**—(1) The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004(**12**) is amended as follows.

(2) In Schedule 1 for “The Packaging (Essential Requirements) Regulations 2003” substitute “The Packaging (Essential Requirements) Regulations 2015”.

**14.**—(1) The Legislative and Regulatory Reform (Regulatory Functions) Order 2007(**13**) is amended as follows.

(2) In Part 3 of the Schedule, under the heading “Environment”, omit the entry “The Packaging (Essential Requirements) Regulations 2003” and after the last entry insert “The Packaging (Essential Requirements) Regulations 2015”.

**15.**—(1) Paragraph 10 of Schedule 5 to the Consumer Rights Act 2015(**14**) is amended as follows.

(2) Omit “paragraph 1 of Schedule 4 to the Packaging (Essential Requirements) Regulations 2003 (S.I. 2003/1941);”.

(3) At the end, insert “regulation 7(1) of the Packaging (Essential Requirements) Regulations 2015”.

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(12) S.I. 2004/693, to which there are amendments not relevant to these Regulations.

(13) S.I. 2007/3544, to which there are amendments not relevant to these Regulations.

(14) 2015 c.15.

**Revocations**

16. Schedule 6 has effect.

1st September 2015

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