
STATUTORY RULES OF NORTHERN IRELAND

1999 No. 115

PUBLIC HEALTH

The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 1999

Made - - - - *12th March 1999*

Coming into operation *1st June 1999*

The Department of the Environment, in exercise of the powers conferred on it by Articles 2 to 5 and 7(2) of the Producer Responsibility Obligations (Northern Ireland) Order 1998(1), for the implementation of Article 6(1) of Directive 94/62/EC(2) and of every other power enabling it in that behalf, after consultation in accordance with Article 3(2) of that Order, and after having regard to the matters specified in Article 3(6) of that Order as required by Article 3(5) of that Order, hereby makes the following Regulations:

PART I
GENERAL

Citation and commencement

1. These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 1999 and shall come into operation on 1st June 1999.

Interpretation and notices

2.—(1) In these Regulations—

“the Department” means the Department of the Environment;

“the Director” means the Director General of Fair Trading;

“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;

“the Order” means the Producer Responsibility Obligations (Northern Ireland) Order 1998;

(1) S.I.1998/1762 (N.I. 16)

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

“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 stabilized 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; it 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 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 Directive [75/442/EEC](#)(3) (“the Waste Directive”) which, together with Annex 1 to that Directive, is reproduced in Part I of Schedule 3, other than production residues and, by virtue of Article 2(1)(b)(i) of the Waste Directive, radioactive waste;

“preceding year” has the meaning given in regulation 3;

“producer” has the meaning given in regulation 3 and the classes of producer are those set out in column 4 of the Table in Schedule 1;

“producer responsibility obligations” are the producer registration, recovery and recycling, and certifying obligations specified in regulation 3;

“recovery” means any of the applicable operations provided for in Annex IIB to the Waste Directive, reproduced in Part II of Schedule 3;

“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;

“relevant year” has the meaning given in regulation 3;

“reprocessor” means a person who, in the ordinary course of conduct of a trade, occupation or profession, carries out the activities of recovery or recycling;

“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; such reused packaging will become packaging waste when no longer subject to reuse;

“scheme” means a scheme which is (or, if it were to be registered in accordance with these regulations would be) a scheme whose members for the time being are, by virtue of these

(3) O.J. No. L194, 25.7.75, p. 39; Articles 1 to 12 and Annexes I and IIB were amended by Directive [91/156/EEC](#) O.J. No. L78, 26.3.91, p. 32

regulations and their membership of that scheme, exempt from the requirement to comply with their producer responsibility obligations and “registered scheme” means a scheme which is registered with the Department in accordance with these Regulations;

“special waste” means any waste covered by the definition of special waste in regulation 2 of the Special Waste Regulations (Northern Ireland) 1998(4);

“transit packaging” means—

- (a) grouped packaging or secondary packaging, as defined in paragraph (b) of the definition of packaging; or
- (b) transport packaging or tertiary packaging as defined in paragraph (c) of that definition of packaging; and

“year” means a calendar year.

(2) Where notices are to be served on a producer under regulations 6(6), 10 and 11(3), information is to be provided or returns furnished by a producer under regulations 7 and 8, fees are to be paid by a producer under regulations 6(4)(d) and 8(b), and records and returns are to be maintained and furnished by a producer under regulation 22, they shall be served on, provided, paid, or maintained and furnished, in the case of a partnership, by the partner notified under regulation 6(4)(e), or in accordance with the undertaking referred to in regulation 7(a)(ii) and references in these regulations to the producer shall be read accordingly.

(3) Where the operator of a scheme is a partnership, or where this is not the case but there is more than one operator of a scheme—

- (a) notices to be served on the operator of the scheme under regulations 12(6), 16, 17(3), 31(5) and (10), shall be served on the partner or operator, respectively, notified under regulation 12(3)(h), or in accordance with the condition referred to in regulation 13(d)(ii); and
- (b) where information is to be provided by the operator of the scheme under regulations 13 and 14, fees are to be paid by the operator of the scheme under regulation 15(3), records and returns are to be maintained and furnished by the operator of the scheme under regulation 24, and appeals may be made by the operator of the scheme under regulation 18, they shall be provided, paid, or maintained and furnished, and such appeals may only be made, by the partner or operator, respectively, notified under regulation 12(3)(h), or in accordance with the condition referred to in regulation 13(d)(ii),

and references in these regulations to the operator of the scheme shall be read accordingly.

PART II

PRODUCERS AND OBLIGATIONS

Producers and producer responsibility obligations

3.—(1) This regulation is subject to regulations 4, 29 and 30.

(2) In respect of a year a person is a producer of a class specified in an entry in Column 4 of the Table set out in Schedule 1 if—

- (a) in that year and the preceding year he performs the relevant functions of the class of producer specified in column 1 of that Table in relation to that entry;

- (b) in the preceding year he made supplies of the materials or products specified in Column 2 of that Table in relation to that entry of a class in Column 3 of that Table in relation to that entry; and
- (c) in relation to that year he satisfies the threshold tests as provided by paragraph 3 of that Schedule,

and the other provisions of that Schedule shall also have effect for the purposes of determining whether a person is a producer of any class.

(3) Where in respect of a year a person is a producer and satisfies the provisions of Columns 1 to 3 of the Table in Schedule 1 in relation to more than one class of producer specified in an entry in Column 4 of that Table, whether or not in relation to the same materials or products specified in Column 2 of that Table, or the same transaction or process, for that year that person belongs to each such class.

(4) For the purposes of these regulations—

- (a) “relevant year” is the year referred to in paragraph (2), that is to say a year in respect of which a person is a producer; and
- (b) “preceding year” is the year immediately preceding a relevant year.

(5) A person who is a producer in respect of a year has producer responsibility obligations in respect of that year, that is to say he shall—

- (a) be registered as provided in regulation 5 (in these regulations referred to as the “producer registration obligation”); and
- (b) for the year 2000 and subsequent years—
 - (i) take reasonable steps to recover and recycle packaging waste (in these regulations referred to as the “recovery and recycling obligations”) in relation to each of the classes of producer to which the producer belongs, calculated as provided in Schedule 2, and
 - (ii) furnish a certificate of compliance in respect of his recovery and recycling obligations in accordance with regulation 23 (in these regulations referred to as the “certifying obligation”).

(6) The recovery and recycling obligations of producers are to enable the United Kingdom to attain the recovery and recycling targets for Member States set out in Article 6(1) of Directive [94/62/EC](#) and those targets are set out in Schedule 11.

Exclusions and limitations

4.—(1) Where a producer is a member of a registered scheme throughout a relevant year—

- (a) the producer is exempt from complying with his producer responsibility obligations for the relevant year; and
- (b) the recovery and recycling obligations with which, but for his membership of the scheme, the producer would have had to comply in relation to the relevant year shall be performed through the scheme.

(2) These regulations do not apply to a charity within the meaning given in section 506 of the Income and Corporation Taxes Act 1988(5).

(3) The producer responsibility obligations of the producer class of wholesaler apply only in respect of the year 2000 and subsequent years.

(4) A special producer as defined in Part III of Schedule 3 shall have producer responsibility obligations as provided in Part IV of that Schedule and shall maintain records and furnish returns to the Department in accordance with Part V of that Schedule.

PART III REGISTRATION

Producer registration obligation

5. Subject to regulations 4(3) and (4), 29 and 30, a producer shall be registered with the Department in respect of a relevant year, or any part of that year, during which he is not a member of a registered scheme.

Application for producer registration

6.—(1) Subject to paragraph (3), a producer who is required by regulation 5 to be registered and who is not registered shall, on or before 1st April in a relevant year, make an application for producer registration to the Department.

(2) Where the producer is a partnership, the application shall be made by one partner acting on behalf of the partnership.

(3) Where—

- (a) the relevant year is the year 1999, the application for registration shall be made on or before 30th September 1999; or
- (b) any of the following occurs in a relevant year—
 - (i) the application for registration of a scheme of which the applicant was a member is refused,
 - (ii) the registration of a scheme of which the applicant was a member is cancelled,
 - (iii) the applicant's membership of a scheme is discontinued,
 - (iv) the applicant becomes a producer in respect of that year, or
 - (v) applications made in accordance with paragraph (1) or sub-paragraph (a) are refused,an application for registration shall be made within 28 days of the occurrence.

(4) An application for producer registration shall—

- (a) be made in writing;
- (b) contain the initial information set out in Part I of Schedule 4;
- (c) subject to paragraphs (7) and (8), be accompanied by the further information specified in, and provided on a form corresponding to, the form set out in Part II of Schedule 4;
- (d) be accompanied by the fee referred to in regulation 9; and
- (e) where the applicant is a partnership, be accompanied by a statement as to which partner is able to accept notices and act on behalf of the partnership as provided in regulation 2(2).

(5) An application for producer registration shall be granted where—

- (a) the producer has complied with paragraph (4)(a), (b), (d) and (e) and, where applicable, paragraph (8);
- (b) the Department is satisfied that the information provided in accordance with paragraph (4) (c), or (8), has been provided in accordance with paragraph (7); and

- (c) the producer has given the undertakings referred to in regulation 7, which have been required by the Department,
and shall otherwise be refused.
- (6) Where an application for producer registration is granted—
- (a) the Department shall, within 28 days of it being granted, serve notice on the producer in writing that he is registered with it; and
- (b) the producer shall be treated as having been registered from the beginning of the relevant year or, where the producer has applied to be registered for part of a year, from the date specified in the notice, until any cancellation of the producer's registration in accordance with regulation 11.
- (7) The further information shall—
- (a) where the application for registration, or compliance with regulation 8, is in respect of the year 1999, be provided using the producer's reasonable estimates of the information required; and
- (b) where the application for registration, or compliance with regulation 8, is in respect of the year 2000 or any subsequent year, the information provided shall be as accurate as reasonably possible.
- (8) Where the application to register is made in one of the circumstances set out in paragraph (3)(b), the further information referred to in paragraph (4)(c) need not accompany the application but shall be provided within 56 days of the application being made.

Requirements for producer registration

7. As requirements for producer registration the Department may require the applicant to undertake to—
- (a) inform the Department of—
- (i) any change in the circumstances of the producer which relate to the registration of the producer, and where the producer is a partnership, any change of partners,
- (ii) any change in the person who is the partner who is able to accept notices and act on behalf of the partnership as stated as required in regulation 6(4)(e),
- (iii) any material change in the initial information provided in accordance with regulation 6(4)(b), or
- (iv) any material change in the further information provided in accordance with regulation 6(4)(c), or (8), as the case may be, or regulation 8,
- within 28 days of the occurrence of any such change;
- (b) comply with the requirements of regulation 8;
- (c) maintain records and furnish returns to the Department as required by regulation 22; and
- (d) apply to the Department to cancel his registration where he has become a member of a registered scheme or has ceased to be a producer in respect of a year.

Continuation of producer registration

8. On or before 1st April in a relevant year a producer who is registered shall provide to the Department—
- (a) in accordance with regulations 6(7), the further information referred to in regulation 6(4)(c); and
- (b) the fee referred to in regulation 9.

Forms and fees for producer registration

9.—(1) The Department shall provide a copy of any form referred to in regulation 6 free of charge to any person requesting one.

(2) The fee which is to be charged by the Department on an application for producer registration or continuation of producer registration is £750.

Refusal to register producers

10. Notice of any decision of the Department under regulation 6(5) to refuse to register a producer shall be served within 28 days of the decision on the producer, in writing, together with the reasons for the decision and a statement as to the offence specified in regulation 34(1)(a).

Cancellation of registration of producers

11.—(1) The Department may cancel the registration with it of a producer where—

- (a) the information or the fee required by regulation 8 are not provided;
- (b) it appears to the Department that—
 - (i) the producer is in breach of any of the undertakings referred to in regulation 7 and given by him to the Department,
 - (ii) the producer knowingly supplied false information in connection with his application for registration, or with compliance with any undertaking referred to in regulation 7, or with regulation 8, or
 - (iii) information provided pursuant to regulation 8 was not provided in accordance with regulation 6(7).

(2) The Department shall cancel the registration with it of a producer where it is notified that the producer has become a member of a registered scheme or has otherwise ceased to be subject to the producer registration obligation in respect of a year.

(3) Before cancellation of a registration under paragraphs (1) or (2), the Department shall serve on the producer concerned written notice of—

- (a) its decision to cancel;
- (b) the reasons for the decision; and
- (c) the date when cancellation will take effect, not being earlier than—
 - (i) in the case of cancellation under paragraph (1), 28 days from the date of the notice; and
 - (ii) in the case of cancellation under paragraph (2), five days from the date of the notice.

Application for registration of a scheme

12.—(1) Subject to paragraph (8), an application for registration of a scheme in relation to a year shall be made by the operator of the scheme, on or before 1st April in the year, to the Department.

(2) Where the operator of the scheme is a partnership the application for registration shall be made by any one partner acting on behalf of the partnership.

(3) An application for registration of a scheme shall—

- (a) be made in writing;
- (b) contain the initial information set out in Part III of Schedule 4;
- (c) subject to paragraph (7), be accompanied by the further information specified in, and provided on a form corresponding to, the form set out in Part II of Schedule 4, for each class

of producer, and aggregating the information in relation to all of the scheme's members who belong to that class;

- (d) be accompanied by a published statement as provided in Part IV of Schedule 4;
- (e) be accompanied by an operational plan for the scheme as provided in Part IV of Schedule 4;
- (f) be accompanied by an undertaking by the operator of the scheme that the conditions referred to in regulation 13 will be complied with;
- (g) be accompanied by a fee calculated as provided in regulation 15; and
- (h) where the operator of the scheme is a partnership, or where there is more than one operator of the scheme, be accompanied by a statement as to which partner or operator, respectively, is able to accept notices or act on behalf of all the partners, or all the operators of the scheme, as the case may be, as provided in regulation 2(3).

(4) A scheme shall not be registered unless it has been notified under regulation 31(5) that it meets the requirements of competition scrutiny referred to in regulation 31, and the operator of the scheme shall supply evidence of that notification to the Department.

(5) An application for registration shall be granted where—

- (a) the operator has complied with paragraphs (3)(a), (b), (d), (f), (g) and (h) and (4);
- (b) the Department is satisfied that the information provided in accordance with paragraph (3) (c), has been provided in accordance with paragraph (7); and
- (c) the Department is satisfied as to the contents of the operational plan provided as required by paragraph (3),

and shall otherwise be refused.

(6) Where an application for registration of a scheme is granted—

- (a) the Department shall, within 28 days of it being granted serve notice on the operator of the scheme in writing that the scheme is registered with it; and
- (b) the scheme shall be treated as registered from the beginning of the year of application until any cancellation of the scheme's registration in accordance with regulation 17, except that for the purposes of regulations 32 and 33 the scheme shall be treated as registered from the date of notice until any such cancellation.

(7) The further information shall—

- (a) where the application for registration, or compliance with regulation 14, is in relation to the year 1999 be provided using the reasonable estimates of the operator of the scheme; and
- (b) where the application for registration, or compliance with regulation 14, is in relation to the year 2000 or any subsequent year, be as accurate as reasonably possible.

(8) Where an application for registration is made in the year 1999 the application shall be made on or before 30th September 1999.

Conditions of registration of a scheme

13. Registration of a scheme shall be subject to the following conditions—

- (a) that the recovery and recycling obligations of all of its members referred to in regulation 4(1)(b) shall be performed through the scheme;
- (b) that the operator of the scheme shall provide information at the request of the Department with regard to the obligations referred to in paragraph (a);
- (c) that the operator of the scheme shall notify the Department in writing at intervals as required by the Department of any change in the membership of the scheme and that any

such notification shall be accompanied by the additional fee calculated as provided in regulation 15(3);

- (d) that the operator of the scheme shall inform the Department in writing of—
- (i) any change in the person who is the operator of the scheme, and in the case where the operator of the scheme is a partnership, or where there is more than one operator of a scheme, any change of partners or operators,
 - (ii) any change in the person who is the partner or operator who is able to accept notices and act on behalf of the partners or operators as stated as provided in regulation 12(3)(h),
 - (iii) any material change in the initial information provided in accordance with regulation 12(3)(b), or
 - (iv) any material change in the further information provided in accordance with regulations 12(3)(c) or 14,
- within 28 days of the occurrence of any such change;
- (e) that the operator of the scheme shall comply with the requirements of regulation 14;
- (f) that the operator of the scheme shall maintain records and furnish returns to the Department as required by regulation 24; and
- (g) that the operator of the scheme shall inform the Department in writing if the Secretary of State notifies the operator under regulation 31(10) that he has ceased to be satisfied that the scheme meets the requirements of competition scrutiny.

Continuation of registration of a scheme

14. On or before 1st April in a relevant year and in respect of a scheme which is registered, the operator of the scheme shall provide to the Department—

- (a) in accordance with regulation 12(7), the further information referred to in regulation 12(3)(c); and
- (b) a fee calculated as provided in regulation 15.

Forms and fees for registration of a scheme

15.—(1) The Department shall provide a copy of any form referred to in regulation 12 free of charge to any person requesting one.

(2) The fee which is to be charged by the Department on an application for registration of a scheme and under regulation 14, is calculated as follows—

$$A \times B - F$$

where—

A is the number of members of the scheme at the date of the application, or the date of compliance with regulation 14, whichever is applicable,

B is an amount calculated by reference to the number of members of the scheme at that date as follows—

2 to 500 members £600

501 to 1500 members £450

1501 to 3000 members £300

over 3000 members £100, and

F is the fee.

(3) The fee which is to be paid by an operator of a scheme in compliance with the condition referred to in regulation 13(c) is calculated as follows—

$$A \times B - AF$$

where—

- A is the number of new members of the scheme which are the subject of the notification,
- B is the amount referred to in B in paragraph (2) except that it is calculated by reference to the number of members of the scheme at the date of notification to the Department, and
- AF is the fee.

Refusal to register a scheme

16. Notice of any decision of the Department under regulation 12(5) to refuse to register a scheme shall be served, within 28 days of the decision, on the operator of the scheme in writing together with—

- (a) the reasons for the decision;
- (b) a statement as to the right of appeal under Part IV; and
- (c) a statement as to the offence specified in regulation 34(1)(a).

Cancellation of registration of a scheme

17.—(1) Subject to the right of appeal under Part IV, the Department may cancel the registration with it of a scheme where—

- (a) the information or the fee required by regulation 14 are not provided; or
- (b) it appears to the Department that—
 - (i) any of the conditions referred to in regulation 13 has been broken,
 - (ii) the operator knowingly supplied false information in connection with the application for registration, or with compliance with the conditions referred to in regulation 13, or with regulation 14, or
 - (iii) information provided pursuant to regulation 14 was not provided in accordance with regulation 12(7).

(2) The Department shall cancel the registration with it of a scheme if the Secretary of State gives notice under regulation 31(10) that he has ceased to be satisfied that the scheme meets the requirements of competition scrutiny.

(3) Before the cancellation of a registration, the Department shall serve on the operator of the scheme written notice of—

- (a) its decision under paragraph (1) or (2) to cancel the registration;
- (b) the reasons for the decision;
- (c) where the decision is made under paragraph (1), the right of appeal under Part IV; and
- (d) the date when cancellation will take effect, not being earlier than—
 - (i) in the case of cancellation under paragraph (1), the expiration of the time limit for an appeal against the notice provided for in paragraph 2 of Schedule 5, or
 - (ii) in the case of cancellation under paragraph (2), five days from the date of the notice.

PART IV

REGISTRATION OF SCHEMES — APPEALS

Right of appeal

18. The operator of a scheme may appeal to the Planning Appeals Commission against a decision of the Department—

- (a) to refuse registration under regulation 12(5), except where the refusal arises from failure to comply with regulation 12(4); or
- (b) to cancel registration under regulation 17(1).

Procedure of appeals

19.—(1) Where an appeal is made to the Planning Appeals Commission, if the operator of the scheme so requests, or the Planning Appeals Commission so decides, the appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held or held to any extent in private).

- (2) Schedule 5 shall have effect with respect to the procedure on any such appeal.

Determination of appeals

20. Where, on such an appeal, the Planning Appeals Commission determines that the decision of the Department shall be altered it shall be the duty of the Department to give effect to the determination.

Status pending appeal

21. Where an appeal is pending in a case falling within regulation 17(1), the decision to cancel registration shall be ineffective until the appeal is disposed of; and if the appeal is dismissed or withdrawn the decision shall become effective from end of the day on which the appeal is dismissed or withdrawn.

PART V

RECORDS, RETURNS AND CERTIFICATE

Producers — records and returns

22.—(1) A producer who is subject to the certifying obligation shall maintain for at least four years after the record is made, records of the information referred to in paragraph (2) and shall, at the same time as he furnishes a certificate of compliance to the Department in accordance with regulation 23, furnish a return to the Department of that information.

- (2) The information is, in respect of the year 2000 and subsequent years—
 - (a) the amount in tonnes, to the nearest tonne, of packaging waste provided to a reprocessor by or on behalf of the producer;
 - (b) the amount in tonnes, to the nearest tonne, of each packaging material comprised in the packaging waste referred to in sub-paragraph (a), received by a reprocessor from the producer or a person acting on the producer's behalf; and

(c) the dates on which, and the name and address of the reprocessor to which, the packaging waste referred to in sub-paragraph (a), was so provided.

(3) For the purposes of paragraph (2), for the year 2000 and subsequent years, packaging materials means the materials mentioned in paragraph 6(1)(b) of Schedule 2.

Producers — certifying obligation

23.—(1) Subject to regulations 4 and 29, a producer shall furnish in accordance with this regulation a certificate of compliance to the Department.

(2) A certificate of compliance shall be furnished as evidence of whether or not the producer has complied with its recovery and recycling obligations for a relevant year and shall be furnished on or before 31st January in the year immediately following the relevant year.

(3) The provisions of Schedule 6 shall apply as regards the information to be contained in a certificate of compliance.

Schemes — records and returns

24.—(1) The operator of a scheme shall maintain for at least four years after they are made, records of the information referred to in paragraphs (2) and (3), and make returns of the information referred to in paragraph (3) to the Department upon request.

(2) In respect of the year 1999 the information is, for each producer which is a member of the scheme in that year, the information referred to in regulations 12(3)(c) and 14, together with any changes notified in accordance with the condition referred to in regulation 13(d)(iv).

(3) In respect of the year 2000 and subsequent years the information is, in addition to the information referred to in paragraph (2)—

- (a) the amount in tonnes, to the nearest tonne, of packaging waste provided to a reprocessor through the scheme;
- (b) the amount in tonnes, to the nearest tonne, of each packaging material comprised in the packaging waste referred to in sub-paragraph (a), provided to a reprocessor through the scheme; and
- (c) the dates on which, and the name and address of the reprocessor to which, the packaging waste referred to in sub-paragraph (a) was so provided.

(4) For the purposes of paragraph (3), for the year 2000 and subsequent years packing materials means the materials mentioned in paragraph 6(1)(b) of Schedule 2.

PART VI

POWERS AND DUTIES OF THE DEPARTMENT

Monitoring

25.—(1) The Department shall monitor in accordance with this regulation—

- (a) compliance with their producer responsibility obligations by persons who are producers; and
- (b) the discharge through schemes registered with it of the obligations of their members referred to in regulation 4(1)(b).

(2) The duty referred to in paragraph (1) includes a duty to monitor—

- (a) the registration of producers as required by regulation 5;

- (b) the accuracy of the initial information and the further information provided by producers and referred to in regulations 6 and 8, together with any changes notified in accordance with the undertakings referred to in regulation 7(a)(iii) and (iv);
- (c) the accuracy of the returns furnished to the Department by a producer under regulation 22 or Part V of Schedule 3;
- (d) the accuracy of the information contained in certificates of compliance furnished to the Department under regulation 23;
- (e) the accuracy of the initial information and the further information provided by an operator of a scheme and referred to in regulations 12 and 14, together with any changes notified in accordance with the conditions referred to in regulation 13(d)(iii) and (iv); and
- (f) the accuracy of the returns provided to the Department by an operator of a scheme under regulation 24.

Public register

26.—(1) The Department shall maintain and make available in accordance with this regulation a register relating to the producers and schemes registered with it in accordance with regulation 5 to 16 and containing—

- (a) the information relating to producer registration prescribed in paragraph 1 of Schedule 7; and
- (b) the information relating to registration of schemes prescribed in paragraph 2 of Schedule 7.

(2) The Department shall—

- (a) secure that the register is open for inspection by members of the public free of charge at all reasonable hours; and
- (b) permit members of the public to obtain copies of entries in the register on payment of reasonable charges.

(3) The register may be kept in any form but shall be indexed and arranged so that members of the public can readily trace information contained in it.

(4) The Department shall amend the relevant entry in the register to record any change to the information entered and shall note the date on which the amendment is made.

(5) Nothing in this regulation shall require a register maintained by the Department to contain information relating to, or to anything which is the subject-matter of, any criminal proceedings (including prospective proceedings) at any time before those proceedings are finally disposed of.

(6) Nothing in this regulation shall require a register maintained by the Department to contain any information which has been superseded by later information after four years have elapsed from that later information being entered in the register.

Approval of persons to issue certificates of compliance

27. For the purposes of issuing certificates of compliance the Department may approve—

- (a) where the producer is an individual, that individual;
- (b) where the producer is a partnership, a partner; or
- (c) where the producer is a company, a director of that company.

Entry and inspection

28.—(1) An officer of the Department who has been authorised in writing by the Department for the purpose of performing its function under these Regulations may exercise the powers of entry and inspection referred to in paragraph (2).

(2) The powers of entry and inspection are—

- (a) to enter at any reasonable time any premises which he has reason to believe it is necessary for him to enter;
- (b) to make such examination and investigation as may in any circumstances be necessary;
- (c) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (b);
- (d) to take such photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (b);
- (e) to take samples, or cause samples to be taken, of any records and packaging and packaging materials found in or on any premises which he has power to enter;
- (f) in the case of any such records and packaging and packaging materials as are mentioned in paragraph (e), to take possession of them and detain them for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine them, or cause them to be examined, and to do, or cause to be done, to them anything which he has power to do under that paragraph,
 - (ii) to ensure that they are not tampered with before examination of them is completed,
 - (iii) to ensure that they are available for use as evidence in any proceedings for an offence under regulation 34;
- (g) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (b) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
- (h) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any record and return—
 - (i) which are required to be kept and provided to the Department under regulations 22 and 24 and Part V of Schedule 3, or
 - (ii) which it is necessary for him to see for the purposes of an examination or investigation under paragraph (b), and to inspect and take copies of, or of any entry in, the records and returns; and
- (i) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this regulation.

(3) In any case where it is proposed to enter any premises used for residential purposes, any entry shall only be effected—

- (a) after the expiration of at least seven day's notice of the proposed entry given to a person who appears to the Department's servant or agent to be in occupation of the premises in question; and
- (b) either—

- (i) with the consent of a person who is in occupation of those premises, or
- (ii) when a justice of the peace by warrant under his hand authorises the authorised person to enter the premises in question.

(4) Where it is shown to the satisfaction of a justice of the peace on complaint on oath that an authorised person proposes to enter any premises and—

- (a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry; or
- (b) he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry;

an entry on to those premises shall only be effected under the authority of a warrant by virtue of Schedule 8.

(5) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(g) shall be admissible in evidence in Northern Ireland against that person in any proceedings.

(6) Nothing in this regulation shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

(7) In this regulation “warrant” means a warrant under the provisions set out in Schedule 8 as applied by paragraph (4).

PART VII

GROUPS OF COMPANIES AND MID-YEAR CHANGES

Groups of companies

29. The provisions of Schedule 9 shall apply with regard to groups of companies as defined in that Schedule.

Mid-year changes

30. The provisions of Schedule 10 shall apply with regard to changes in a year in respect of a person who is a producer in respect of that year and any change in membership of a group of companies or of a scheme by such a producer, or other event affecting a producer in the relevant year.

PART VIII

COMPETITION SCRUTINY

Competition scrutiny

31.—(1) For the purposes of this regulation, the requirements of competition scrutiny in relation to a scheme are that—

- (a) the scheme does not have, and is not likely to have, the effect of restricting, distorting or preventing competition or, where it appears to the Secretary of State that the scheme has or is likely to have any such effect, the effect is or is likely to be no greater than is necessary for achieving the environmental or economic benefits mentioned in Article 3(6) (b) of the Order; and

- (b) the scheme does not lead, and is not likely to lead, to an abuse of market power.
- (2) An operator who intends to apply for registration of a scheme under regulation 12 shall apply to the Director for the purpose of competition scrutiny, and shall submit with the application the information referred to in regulation 12(3)(h) and the information set out in Part III of Schedule 4.
- (3) The Director shall advise the Secretary of State whether, in the Director's opinion, the Secretary of State may be satisfied that the scheme meets the requirements of competition scrutiny.
- (4) For the purposes of the Director's advice under paragraph (3) or (8) as to whether, in his opinion, a scheme may meet or no longer meets the requirements of competition scrutiny, the words "where it appears to the Director" shall be substituted for the words "where it appears to the Secretary of State" in paragraph (1)(a).
- (5) If, after considering the advice of the Director, the Secretary of State decides that he is satisfied that the scheme meets the requirements of competition scrutiny, he shall serve notice in writing to the Department, and to the operator of the scheme to that effect.
- (6) The Secretary of State shall send a copy of any notice served under paragraph (5) to the Director.
- (7) The Director shall keep under review the operation of—
- (a) any registered scheme; and
 - (b) any scheme in respect of which an application for registration is pending and the Secretary of State has given notice under paragraph (5).
- (8) Subject to paragraph (9), if at any time the Director is of the opinion that any scheme whose operation he is keeping under review no longer meets the requirements of competition scrutiny, he shall advise the Secretary of State of his opinion and the reasons therefore.
- (9) Paragraph (8) shall not require the Director to repeat advice in respect of any scheme which he has previously given under paragraphs (3) or (8) in respect of that scheme unless there has been a material change of circumstances since the advice was given.
- (10) If at any time after serving a notice under paragraph (5) the Secretary of State decides, after considering any advice on the matter from the Director, that he has ceased to be satisfied that the scheme meets the requirements of competition scrutiny, he shall serve notice on the operator of the scheme to that effect.
- (11) The Secretary of State shall send a copy of any notice given under paragraph (10) to the Director.
- (12) For the purposes of, or otherwise in connection with, competition scrutiny, the Director may, by notice in writing, require any person to provide within a specified time such information as may be specified or described in the notice and which that person has, or which he may at any future time, acquire, relating to any scheme or to any acts or omissions of an operator of such a scheme or of any person dealing with such an operator.

PART IX

THE RESTRICTIVE TRADE PRACTICES ACT 1976

The 1976 Act

- 32.**—(1) In this Part "the 1976 Act" means the Restrictive Trade Practices Act 1976(6).

(2) The 1976 Act shall not apply to any agreement for the constitution of a body (whether corporate or unincorporated) which operates a registered scheme by reason of—

- (a) any term of the agreement; or
- (b) any implied term deemed to be contained in the agreement by virtue of section 8(2) or section 16(3) of the 1976 Act;

being in either case a term which is required or contemplated by that scheme.

(3) Where an agreement ceases by virtue of this regulation to be subject to registration under the 1976 Act—

- (a) the Director shall remove from the register maintained by him under the 1976 Act any particulars which are entered or filed in that register in respect of the agreement; and
- (b) any proceedings in respect of the agreement which are pending before the Restrictive Practices Court shall be discontinued.

(4) Where an agreement which has been exempt from registration under the 1976 Act by virtue of paragraph (2) ceases to be exempt in consequence of the cancellation of the registration of a scheme under regulation 17, the time within which particulars of the agreement are to be furnished in accordance with section 24 of and Schedule 2 to the 1976 Act shall be the period of one month beginning with the day on which the agreement ceased to be exempt from registration under the 1976 Act.

Agreement to which the 1976 Act applies

33.—(1) In this regulation, “the Court”, “information provision” and “restriction” have the same meanings as they have in the 1976 Act.

(2) This regulation applies to an agreement to which the 1976 Act applies—

- (a) at least one of the parties to which is an operator of a registered scheme; and
- (b) which is made for the purposes of that scheme.

(3) If it appears to the Secretary of State—

- (a) that the restrictions in an agreement to which this regulation applies do not have and are not intended or likely to have the effect of restricting, distorting or preventing competition; or
- (b) in a case where all or any of those restrictions have, or are intended or likely to have, that effect, that the effect is not greater than is necessary for achieving the environmental or economic benefits mentioned in Article 3(6) of the Order;

he may give a direction to the Director requiring him not to make an application to the Court under Part I of the 1976 Act in respect of the agreement.

(4) If it appears to the Secretary of State that one or more (but not all) of the restrictions in an agreement to which this regulation applies—

- (a) do not have, and are not intended or likely to have, the effect mentioned in paragraph (3); or
- (b) if they have, or are intended or likely to have, that effect, that the effect is not greater than is necessary for achieving the benefits mentioned in paragraph (3),

he may make a declaration to that effect and give notice of it to the Director and to the Court.

(5) The Court shall not in any proceedings begun by an application made after notice has been given to it of a declaration under this regulation make any finding or exercise any power under Part I of the 1976 Act in relation to a restriction in respect of which the declaration has effect.

(6) Before making an application to the Court under Part I of the 1976 Act in respect of an agreement to which this regulation applies, the Director shall—

- (a) notify the Secretary of State of his intention to do so and give him particulars of the agreement together with such other information as he considers will assist the Secretary of State in deciding whether to exercise his powers under this regulation, or as the Secretary of State may request; and
- (b) advise the Secretary of State as to his opinion—
 - (i) of the effects or likely effects on competition of the restrictions in the agreement, and
 - (ii) as to whether any such effects are necessary for achieving the benefits mentioned in paragraph (3).

(7) The Director shall not make an application to the Court under Part I of the 1976 Act in respect of an agreement to which this regulation applies unless the Secretary of State has either notified him that he does not intend to give a direction or make a declaration under this regulation or has given him notice of a declaration in respect of it.

(8) The Secretary of State may—

- (a) revoke a direction or declaration under this regulation;
- (b) vary any such declaration; or
- (c) give a direction or make a declaration notwithstanding a previous notification to the Director that he did not intend to give a direction or make a declaration,

if he is satisfied that there has been a material change of circumstances since the direction, declaration or notification was given.

(9) The Secretary of State shall give notice to the Director of the revocation of a direction and to the Director and the Court of the revocation or variation of a declaration; and no such variation shall have effect so as to restrict the powers of the Court in any proceedings begun by an application already made by the Director.

(10) A direction or declaration under this regulation shall cease to have effect if the agreement in question ceases to be an agreement to which this regulation applies.

(11) This regulation applies to information provisions as it applies to restrictions.

PART X

OFFENCES

Offences and penalties

34.—(1) Subject to paragraph 5 of Schedule 9, a producer who contravenes a requirement of—

- (a) subject to paragraph (2), regulation 3(5)(a);
- (b) regulation 3(5)(b)(i); or
- (c) regulation 3(5)(b)(ii),

is guilty of an offence.

(2) A producer is not guilty of an offence under paragraph (1)(a) in respect of any period during which, under regulation 6(6), he is treated as having been registered.

(3) A person who—

- (a) furnishes a certificate of compliance under regulation 23 and either—
 - (i) knows the information provided in or in connection with the certificate to be false or misleading in a material particular, or

- (ii) furnishes such information recklessly and it is false or misleading in a material particular;
- (b) fails without reasonable excuse to furnish any information required by the Director in accordance with regulation 31(12); or
- (c) furnishes any information to the Department in connection with its functions under these regulations, or to the Secretary of State or to the Director in connection with the functions of either of them under Part VIII, and either—
 - (i) knows the information to be false or misleading in a material particular, or
 - (ii) furnishes such information recklessly and it is false or misleading in a material particular,is guilty of an offence.
- (4) A person who intentionally delays or obstructs a person authorised by the Department in the exercise of powers referred to in regulation 28 is guilty of an offence.
- (5) A person guilty of an offence under any of paragraphs (1) to (4) shall be liable—
 - (a) on summary conviction to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.

Sealed with the Official Seal of the Department of the Environment on

L.S.

12th March 1999.

R. W. Rogers
Assistant Secretary

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SCHEDULE 1

Regulation 3(2) and (3)

Producers

Column 1 <i>Relevant function performed in Years 1 and 2</i>	Column 2 <i>Subject matter of supply in Year 1</i>	Column 3 <i>Class of supply in Year 1</i>	Column 4 <i>Class of producer in Year 2</i>
Manufacturer	Packaging materials	A B or C	Manufacturer
Convertor, subject to paragraph 1(2)	Packaging or packaging materials	A B or C	Convertor
Packer/filler	Packaging or packaging materials	A B or C	Packer/filler
Importer	Packaging or packaging materials	A B or C	Importer
Wholesaler	Packaging	D	Wholesaler
Seller	Packaging	E	Seller
Manufacturer, Convertor, Packer/filler, Wholesaler or Importer	Transit packaging	B or F	Secondary provider

1.—(1) For the purposes of Column 1 in the Table—

- (a) “relevant function” means the performance by a person of the functions of one of the following—
 - (i) manufacturer,
 - (ii) convertor,
 - (iii) packer/filler,
 - (iv) importer,
 - (v) wholesaler, or
 - (vi) seller,
 either himself or through an agent acting on his behalf, and in the course of business;
- (b) “convertor” means a person who uses or modifies packaging materials in the production or formation packaging;
- (c) “importer” means a person who imports packaging or packaging materials into the United Kingdom;
- (d) “manufacturer” means a person who manufactures raw materials for packaging;
- (e) “packer/filler” means a person who puts goods into packaging;
- (f) “seller” means any person who supplies packaging to a user or a consumer of that packaging, whether or not the filling has taken place at the time of the supply;
- (g) “wholesaler” means a person who supplies packaging to a seller but who does not carry out the functions of a packer/filler in relation to that packaging;
- (h) “Year 1” means the preceding year; and
- (i) “Year 2” means the relevant year.

(2) Where a person performs the functions of a convertor and a packer/filler at the same time, and as part of the same packing/filling process, and in relation to the same packaging, as regards supplies of packaging or packaging materials made to or by him in connection with those functions, or that process, he is treated for the purposes of these regulations as a producer of the class of packer/filler only.

(3) For the purposes of this Schedule a person acts “in the course of business” if he acts in the ordinary course of conduct of a trade, occupation or profession.

2. For the purposes of Column 3 of the Table, and Schedule 2—

- (a) “Class A supply” means a deemed supply;
- (b) “Class B supply” means a supply, other than solely for the purpose of transport, to a person who acts as a distributor, that is to say who, in relation to the packaging or packaging material supplied, neither performed the functions of one of the classes of producer, nor was the user or consumer;
- (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 other than that of an importer;
- (d) “Class D supply” means a supply to a seller who, at the time of supply, was not a producer;
- (e) “Class E supply” means a supply, other than a supply of transit packaging in respect of which a Class F supply has already been made, to a user or consumer other than a person who performed a relevant function;
- (f) “Class F supply” means a supply—
 - (i) to a person who performed a relevant function,
 - (ii) to a user or consumer, or
 - (iii) to a person who acts as a distributor,using the transit packaging supplied to perform the functions of a packer/filler and seller; and
- (g) “supply” means doing any of the following, either himself or through an agent acting on his behalf, in relation to packaging or packaging materials owned by the supplier—
 - (i) selling, hiring out or lending;
 - (ii) providing in exchange for any consideration (including trading stamps within the meaning of section 9 of the Trading Stamps Act (Northern Ireland) 1965(7) other than money,
 - (iii) providing in or in connection with the performance of any statutory function, or
 - (iv) giving as a prize or otherwise making a gift,and “deemed supply” means a supply which is deemed to occur when a person who has carried out a relevant function then performs another such function to the same packaging or packaging materials.

3. A person satisfies the threshold tests if—

- (a) his turnover—
 - (i) where the obligation year is 1999, in the last financial year in respect of which audited accounts are available before the relevant date, was more than £5,000,000, and
 - (ii) where the obligation year is the year 2000 or any subsequent year, in the last financial year in respect of which audited accounts are available before the relevant date, was more than £1,000,000; and

(7) 1965 c. 6 (N.I.)

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- (b) in the calculation year the person handled in aggregate more than 50 tonnes of packaging or packaging materials.

4.—(1) For the purposes of paragraph 3—

- (a) “financial year” in relation to a person—
 - (i) where the person is a company is determined as provided in Article 231(1) to (3) of the Companies (Northern Ireland) Order 1986⁽⁸⁾, and
 - (ii) in any other case has the meaning given in Article 231(4) of the Companies Order (Northern Ireland) 1986, but as if the reference there to an undertaking were a reference to that person;
- (b) “obligation year” means a year in respect of which it is being considered whether a person is a producer and “calculation year” means a year immediately before an obligation year;
- (c) “relevant date” means—
 - (i) subject to sub-paragraph (iii), where the obligation year is 1999, 30th September 1999,
 - (ii) subject to sub-paragraph (iii), where the obligation year is 2000 or any subsequent year, 1st April in the year, and
 - (iii) where an application for registration is made in a circumstance set out in regulation 6(3), or as required by paragraph 11 of Schedule 10, the date of the application;
- (d) a persons “turnover” means his turnover as defined in Article 270(1) of the Companies (Northern Ireland) Order 1986 but as if the references to a company were references to that person; and
- (e) the references to audited accounts being available are, where the person is a company, the annual accounts delivered to the registrar under Article 249 of the Companies (Northern Ireland) Order 1986.

(2) For the purposes of paragraph 3, and Schedule 2, the amount of packaging or packaging materials handled is the amount in respect of which the producer made a supply referred to in Column 3 of the Table, other than a Class A supply, calculated in tonnes to the nearest tonne by—

- (a) including packaging or packaging materials so supplied which were imported into the United Kingdom by the producer, either himself or through an agent acting on his behalf; and
- (b) excluding—
 - (i) any packaging or packaging materials so supplied which were exported from the United Kingdom by the producer, either himself or through an agent acting on his behalf, or which to the producer’s reasonable knowledge were otherwise exported from the United Kingdom,
 - (ii) production residues, and
 - (iii) reused packaging.

⁽⁸⁾ S.I. 1986/1032 (N.I. 6) as amended by S.I. 1990/593 (N.I. 5) Articles 5, 13 and 24

SCHEDULE 2

Regulation 3(5)(b)(i)

Recovery and Recycling Obligations

1. A producer's obligations to recover and recycle packaging waste in a relevant year are, in relation to each class of producer to which he belongs—

- (a) to recover an amount of packaging waste as provided in paragraph 2(1);
- (b) to recover by recycling a proportion of that packaging waste, as provided in paragraph 2(2); and
- (c) as part of the obligation to recover packaging waste as provided in sub-paragraph (a), to recover by recycling an amount of packaging materials which is packaging waste, as provided in paragraph 2(3),

and are calculated by aggregating his obligations in relation to each class of producer to which he belongs in respect of that year.

2.—(1) The amount of packaging waste to be recovered by a producer in relation to a class of producer to which he belongs is calculated as follows—

$$P \times C \times X = Z$$

where—

P is the amount in tonnes to the nearest tonne of packaging and packaging materials handled by the producer in the preceding year,

C is the percentage prescribed in paragraph 3 in relation to the class of producer,

X is the percentage prescribed in paragraph 4 as the recovery target for the relevant year, and

Z is the amount by tonnage of packaging waste which is to be recovered within the relevant year.

(2) The proportion of the packaging waste referred to in sub-paragraph (1) which is to be recovered by recycling is, for the year 2001 and subsequent years, in relation to a class of producer to which the producer belongs, not less than 50% of the amount by tonnage of packaging waste represented by "Z" in sub-paragraph (1).

(3) The obligations of a producer to recover by recycling an amount of packaging materials which is packaging waste in relation to a class of producer to which he belongs are calculated in relation to each packaging material which he handled in the preceding year, as follows—

$$M \times C \times Y = Q$$

where—

M is the amount in tonnes to the nearest tonne of the packaging material handled by the producer in the preceding year,

C is the percentage prescribed in paragraph 3 in relation to the class of producer,

Y is the percentage prescribed in paragraph 5 as the recycling target for the relevant year, and

Q is the amount by tonnage of packaging waste of that packaging material which is to be recycled in the relevant year.

3.—(1) The following percentages are prescribed as the percentages for the following classes of producer—

- (a) manufacturer 6%;
- (b) convertor 11%;
- (c) packer/filler 36%;

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- (d) seller or wholesaler 47%; and
 - (e) secondary provider 83%.
- (2) The following percentages are prescribed for the class of importer—
- (a) the manufacturer's percentage, that is 6%—
 - (i) on Class A supplies, where the importer also carries out the functions of a convertor,
 - (ii) on Class B supplies, where the relevant packaging or packaging materials are supplied, by the distributor who receives them, to a convertor, and
 - (iii) on Class C supplies to a convertor;
 - (b) the manufacturer's and the convertor's percentages aggregated, that is 6% & 11% & 17%—
 - (i) on Class A supplies, where the importer also carries out the functions of a packer/filler,
 - (ii) on Class B supplies, where the relevant packaging or packaging materials are supplied, by the distributor who receives them, to a packer/filler, and
 - (iii) on Class C supplies to a packer/filler;
 - (c) the manufacturer's, the convertor's and packer/filler's percentages aggregated, that is $6\% + 11\% + 36\% = 53\%$ —
 - (i) on Class A supplies, where the importer also carries out the functions of a seller,
 - (ii) on Class B supplies, where the relevant packaging or packaging materials are supplied, by the distributor who receives them, to a seller, and
 - (iii) on Class C supplies to a seller; and
 - (d) the manufacturer's, the convertor's, packer/filler's and the seller's percentages aggregated, that is $6\% + 11\% + 36\% + 47\% = 100\%$ —
 - (i) on Class F supplies,
 - (ii) on Class A supplies, where the importer is also the final user or consumer.
4. The following is prescribed as the recovery target "X"—
- (a) for the year 2000, 43%; and
 - (b) for any subsequent year, 52%.
5. The following is prescribed as the recycling target "Y"—
- (a) for the year 2000, 11%; and
 - (b) for any subsequent year, 16%.
- 6.—(1) In this Schedule—
- (a) for the purposes of paragraph 2(1) and for the year 1999 "packaging materials" means any of the following—
 - (i) glass,
 - (ii) aluminium,
 - (iii) steel,
 - (iv) paper/fibreboard, or
 - (v) plastic;
 - (b) for the purposes of paragraph 2(1), and for the year 2000 and subsequent years, "packaging materials" means any of the materials referred to in sub-paragraph (a) together with wood and other packaging materials; and

(c) for the purposes of paragraph 2(3) “packaging materials” means any of the materials referred to in sub-paragraph (a).

(2) For the purposes of sub-paragraph (1), packaging materials composed of a combination of the materials there referred to are to be treated as made of the material which is predominant by weight.

SCHEDULE 3

Regulation 2

PART I

DEFINITION OF WASTE — ARTICLE 1 OF AND ANNEX 1 TO THE WASTE DIRECTIVE

Article 1

1. “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.

Annex 1

CATEGORIES OF WASTE

- Q1. production or consumption residues not otherwise specified below;
- Q2. off-specification products;
- Q3. products whose date for appropriate use has expired;
- Q4. materials spilled, lost or having undergone other mishap, including any materials, equipment, etc. contaminated as a result of the mishap;
- Q5. materials contaminated or soiled as a result of planned actions (for example, residues from cleaning operations, packing materials, containers, etc.);
- Q6. unusable parts (for example, reject batteries, exhausted catalysts, etc.);
- Q7. substances which no longer perform satisfactorily (for example, contaminated acids, contaminated solvents, exhausted tempering salts, etc.);
- Q8. residues of industrial processes (for example, slags, still bottoms, etc.);
- Q9. residues from pollution abatement processes (for example, scrubber sludges, baghouse dusts, spent filters, etc.);
- Q10. machining/finishing residues (for example, lathe turnings, mill scales, etc.);
- Q11. residues from raw materials extraction and processing (for example, mining residues, oil filed slops, etc.);
- Q12. adulterated materials (for example, oils contaminated with polychlorinated biphenyls, etc.);
- Q13. any materials, substances or products whose use has been banned by law;
- Q14. products for which the holder has no further use (for example, agricultural, household, office, commercial and shop discards, etc.);

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Q15. contaminated materials, substances or products resulting from remedial action with respect to land; and

Q16. any materials, substances or products which are not contained in the above categories.
Regulation 2

PART II

DEFINITION OF RECOVERY — ANNEX IIB TO THE WASTE DIRECTORY

2. This Part is intended to list recovery operations as they are carried out in practice; in accordance with Article 4 of the Waste Directive, waste must be recovered without endangering human health and without the use of processes or methods likely to harm the environment—

R1. solvent reclamation/regeneration;

R2. recycling/reclamation of organic substances which are not used as solvents;

R3. recycling/reclamation of metals and metal compounds;

R4. recycling/reclamation of other inorganic materials;

R5. regeneration of acids or bases;

R6. recovery of components used for pollution abatements;

R7. recovery of components from catalysts;

R8. oil re-finishing or other re-uses of oil;

R9. use principally as a fuel or other means to generate energy;

R10. spreading on land resulting in benefit to agriculture or ecological improvement, including composting and other biological transformation processes, except in the case of waste excluded under Article 2(1)(b)(iii), of the Waste Directive;

R11. use of wastes obtained from any of the operations numbered R1-R10;

R12. exchange of wastes for submission of any of the operations numbered R1-R11; and

R13. storage of materials intended for submission to any operation in this Part, excluding temporary storage, pending collection, on the site where it is produced.
Regulation 4(4)

PART III

DEFINITION OF SPECIAL PRODUCERS

3. A special producer is a producer who in the preceding year handled—

(a) primary packaging, that is to say packaging within part (a) of the definition of packaging in regulation 2, any of which, in his reasonable opinion, when discarded was—

(i) likely to be special waste as defined in regulation 2 of the Special Waste Regulations (Northern Ireland) 1998(9); or

(ii) likely to have been used to contain or used in connection with the containment of such waste; or

(9) S.R. 1998 No. 289

- (b) packaging which is a package within the meaning given in regulation 2 of the Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations (Northern Ireland) 1997⁽¹⁰⁾ and which in his reasonable opinion was likely to be subject to the requirements of regulations 8 to 10 of those regulations (particulars to be shown on packages containing dangerous goods) other than any package referred to in regulation 8(5) of those Regulations.

Regulation 4(4)

PART IV

SPECIAL PRODUCERS — OBLIGATIONS

4. For the purposes of the provision of further information by a special producer under paragraphs (4) or (8) of regulation 6, if applicable, and 8, such information shall only be in respect of packaging or packaging materials other than packaging referred to in Part III.

5. For the purposes of the calculation of the recovery and recycling obligations of a special producer, Schedule 2 shall apply and item “P” in that Schedule shall be the amount by tonnage of packaging and packaging materials handled by the producer in the preceding year other than packaging referred to in Part III.

Regulation 4(4)

PART V

SPECIAL PRODUCERS — RECORDS AND RETURNS

- 6. A special producer shall, in relation to any relevant year—
 - (a) maintain records and furnish returns as required under regulation 22 in relation to the packaging and packaging materials referred to in paragraph 4, and in relation to such packaging and packaging materials when it becomes waste; and
 - (b) in addition to any records and returns he is required to make under regulation 22 maintain for at least four years after the record is made, records of the information referred to in paragraph 7 in respect of each relevant year, and shall make a return to the Department of that information on or before 31st January in the year immediately following the relevant year.
- 7. The information is—
 - (a) the amount in tonnes to the nearest tonne of packaging handled by the producer in the preceding year;
 - (b) the amount in tonnes to the nearest tonne of the packaging referred to in sub-paragraph (a) which was the packaging referred to in Part III; and
 - (c) any steps taken by the producer to promote or increase the recovery of the packaging referred to in sub-paragraph (b) when it becomes waste.

8. In relation to a special producer the reference in regulation 7(c) to regulation 22 shall be read as a reference to regulation 22 and this Part.

(10) S.R. 1997 No. 247

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SCHEDULE 4

Regulation 6(4)

Information

PART I

**INFORMATION TO BE CONTAINED IN
APPLICATION FOR PRODUCER REGISTRATION**

1. The address and telephone number of the registered office of the producer or, if not a company, the principal place of business of the producer.
 2. The business name of the producer if different from that referred to in paragraph 1.
 3. The address for service of notices on the producer if different from that referred to in paragraph 1.
- Regulations 6, 8, 12 and 14

PART II

PRODUCER AND SCHEME REGISTRATION

Further Information

FOR PROVISION OF FURTHER INFORMATION BY OBLIGATED PRODUCERS AND ON BEHALF OF SCHEMES AS REQUIRED UNDER REGULATIONS 6, 8, 12 AND 14 OF THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE) REGULATIONS (NORTHERN IRELAND) 1999.

Reference Number:

Please complete in black ink. 'Producers' are obligated businesses, that is companies, partnerships, sole traders etc.

As indicated below part of the form are optional but will assist in any future review of your sector's obligations.

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Please supply DATA IN METRIC TONNES and for PREVIOUS YEAR

SECTION 1

Name of Business: _____

Address of registered office or principal place of business: _____

Post Code: _____

Telephone number: _____

Fax number: _____

Name and position of Contact: _____

Where a group registration, name of group to which companies belong, if any: _____

Tick main activity performed with regard to packaging:

Manufacturing of packaging raw materials	
Conversion	
Packaging/filling	
Wholesaling*	
Selling	
Importing	

* Wholesalers who perform no other activity are obliged with effect from 1st January 2000 only.

SECTION 2

1. In accordance with regulations 6(7) and 12(7) you are required in 1999 to give reasonable estimates in tonnes per annum and in subsequent years to give information which is as accurate as reasonably possible in terms of the activities and materials set out in the following tables. You should attach a short description of how the data was obtained (Section 4). Tables 1-5 are (where applicable) required under regulations 6 and 12. Tables 6-8 are optional but will assist in any future review of your sector's obligations.

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2. Schedule 1 paragraph 2(f) and Schedule 2 paragraph 3(1)(e) apply on obligations of 83% to transit or “secondary provider” packaging. This is the sum of the packer/filler and seller obligations on the transit packaging you use to pack and sell goods to customers (36% + 47% = 83%). Transit packaging should therefore be included in Tables 1 and 2a according to the activities performed on it.

3. Imports carry a cumulative or “rolled up” obligation depending on the stage at which they are imported (see Schedules 1 and 2).

4. Composite packaging should be included according to the predominant material by total weight.

5. Where an entry amounts to less than 1 tonne, it does not need to be recorded separately but should be aggregated with the principal packaging material handled by the business.

6. In calculating tonnages of packaging handled you may use your information or any ready reckoner or guidance published by or in association with the Department.

Table 1: Packaging/Packaging Materials Supplied

	Paper	Glass	Metals		Plastic	Wood	Other
			A1	Steel			
Raw material manufacturing							
Conversion							
Pack/filling							
Selling							

Table 2(a): [Where applicable] Packaging/Packaging Materials exported by the Producer

	Paper	Glass	Metals		Plastic	Wood	Other
			A1	Steel			
Raw material manufacturing							
Conversion							
Pack/filling							
Selling							

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Table 2(b): [Where applicable and if known] Packaging/Packaging Materials exported by a Third Party

	Paper	Glass	Metals		Plastic	Wood	Other
			Al	Steel			
Raw material manufacturing							
Conversion							
Pack/filling							
Selling							

Table 3: [Where applicable] Tonnage of Packaging/Packaging Materials imported for the purpose of the named activity

	Paper	Glass	Metals		Plastic	Wood	Other
			Al	Steel			
Conversion							
Pack/filling							
Selling							
Transit Packaging round imports							

As of 1st January 2000 and in subsequent years (see below for 1999), you will be required to calculate and declare your obligation to recover and recycle, and fill in Table 4 below. IT SHOWS YOUR OBLIGATION. IT IS FOR THE CURRENT YEAR AND IS BASED ON DATA FROM THE PREVIOUS YEAR.

Summary Table 4: Statement of Obligations

Recovery Obligation			
Of which, Recycling Obligation for	Paper		
	Glass		
	Metals	Aluminium	
		Steel	
Plastic			

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SECTION 3

Table 5 Optional: Re-use

You do not have to answer this question, but if you can, please note below the tonnage of reused packaging excluded by material.

Paper		
Glass		
Metals	Aluminium	
	Steel	
Plastics		
Wood from 1.1.2000		
Other from 1.1.2000		

Table 6 Optional: Composites

You do not have to answer this question, but if you can, please note the tonnage of packaging included in your obligated tonnages that was composite packaging, for each material

Paper		
Glass		
Metals	Aluminium	
	Steel	
Plastics		
Wood from 1.1.2000		
Other from 1.1.2000		

Table 7 Optional IN 1999 ONLY: please provide an assessment of your levels of recovery and recycling (by material) of packaging waste in the year 1998:

Recovery			
Recycling	Paper		
	Glass		
	Metals	Aluminium	
		Steel	
	Plastic		

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SECTION 4

Basis of Assessment

How did you arrive at this assessment? Data from your own systems? Data from a Materials Organisation, from a Trade Association or Guidance from the Department of the Environment? Data from your suppliers? Other source?—please specify, using a separate sheet if necessary.

Please return completed form by [] 1999 to the Department.

Regulations 12(3)(b) and 31(2)

PART III

INFORMATION TO BE INCLUDED IN APPLICATION FOR REGISTRATION OF A SCHEME OR COMPETITION SCRUTINY

4. The name of the scheme.
 5. The name of the operator, and where the operator is a partnership, the names of all the partners.
 6. The address and telephone number of the registered office of the operator or, if not a company, the principal place of business of the operator, and, if more than one, all the operators.
 7. The address for service of notices if different from that referred to in paragraph 6.
 8. The names and addresses of the registered offices, or, if not companies, the principal places of business, of the schemes members.
 9. Full particulars of the agreement for the constitution of the scheme including any rules or regulations to be observed by its members.
- Regulations 12(3)(d) and (e)

PART IV

STATEMENT OF THE SCHEMES POLICIES AND SCHEMES OPERATIONAL PLAN

10. The matters to be contained in the statement with regard to the schemes policies referred to in regulation 12(3)(d) are—
 - (a) the steps intended to be taken through the scheme to increase the use of recycled packaging waste in the manufacture of packaging, packaging materials or other products or materials supplied by its members; and
 - (b) the principal methods by which packaging waste is to be recovered and recycled through the scheme, together with information about the steps the user or consumer may take to assist the scheme in applying these methods.

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11. The matters to be contained in the schemes operational plan referred to in regulation 12(3) (e) are matters which demonstrate—
- (a) that sufficient financial resources and technical expertise will be available to enable the recovery and recycling obligations of the schemes members referred to in regulation 4(1)(b) to be discharged through the scheme;
 - (b) that the arrangements for recovery and recycling through a scheme take account of any statement which, where the scheme is to be registered with the Department, contains the Department’s policies in relation to the recovery and disposal of waste in Northern Ireland, and which is made under Article 19 of the Waste and Contaminated Land (Northern Ireland) Order 1997(11);
 - (c) that there are arrangements in place to enable the operator to supply further information as required under regulation 14;
 - (d) how the recovery and recycling obligations of its members referred to in regulation 4(1)(b) will be performed as regards each of the packaging materials relevant to those obligations including—
 - (i) the names and addresses of the reprocessors it is intended to use,
 - (ii) the names of any district councils from whom packaging waste is intended to be obtained,
 - (iii) the proportions in which the packaging waste which is to be recovered and recycled is to be obtained from the waste of a producer who is a member of the scheme, other industrial or commercial waste, household waste or other waste,
 - (iv) the amounts to the nearest tonne of packaging waste it is proposed to recover in the three years immediately following registration, and
 - (v) the amounts to the nearest tonne of each such packaging material which it is proposed to recycle in the three years immediately following registration; and
 - (e) the steps it is proposed to take to recover and recycle any of the packaging materials relevant to the recovery and recycling obligations of the schemes members in order not to adversely affect the interests of any member of the scheme, or any other producer, whose recovery and recycling obligations are predominantly in relation to another such packaging material.
12. For the purposes of paragraph 11(d)(iii) “household waste”, “industrial waste” and “commercial waste” shall have the same meaning as in Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997.

SCHEDULE 5

Regulation 19

Procedure on Appeals

- 1.—(1) An operator of a scheme who wishes to appeal to the Planning Appeals Commission under regulation 18 shall do so by notice in writing given or sent to the Planning Appeals Commission.
- (2) The notice shall be accompanied by—
- (a) a statement of the grounds of appeal;
 - (b) where the appeal relates to refusal of registration under regulation 16, a copy of the appellant’s application and any supporting documents;

(11) S.I. 1997/2778 (N.I. 19)

- (c) where the appeal relates to cancellation of registration under regulation 17(1), a copy of the notification of the decision and any supporting documents;
 - (d) a copy of any correspondence relevant to the appeal;
 - (e) a copy of any other document relevant to the appeal; and
 - (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be determined on the basis of written representations.
- (3) The appellant shall serve a copy of his notice of appeal on the Department together with copies of the documents mentioned in sub-paragraph (2).
2. Notice of appeal shall be given before the expiry of the period of six months beginning with the date of the decision which is the subject of the appeal.
3. Where under regulation 19(1) the appeal is by way of a hearing, the person hearing the appeal shall make a written report to the Planning Appeals Commission which shall include his conclusions and recommendations or his reasons for not making any recommendations.
- 4.—(1) The Planning Appeals Commission upon determining an appeal shall notify the appellant in writing of its decisions and of its reasons.
- (2) If the Planning Appeals Commission determines an appeal after a hearing under regulation 19(1) it shall provide the appellant with a copy of any report made to it under paragraph 3.
- (3) The Planning Appeals Commission upon determining an appeal shall, at the same time as notifying the appellant of its decision, send the Department a copy of any document sent to the appellant.

SCHEDULE 6

Regulation 23

Information in Certificate of Compliance

The information to be contained in a certificate of compliance is as follows—

- (a) the name and address of the approved person who is issuing the certificate;
- (b) the date of the certificate;
- (c) the producer in respect of whom the approved person is issuing the certificate (“the relevant producer”);
- (d) the initial and further information provided by the relevant producer to the Department in accordance with regulations 6(4)(b), 6(4)(c) or (8), as the case may be, and regulation 8, together with any changes made to such information and provided to the Department in accordance with the undertakings referred to in regulations 7(a)(iii) and (iv);
- (e) a statement by the approved person that the certificate has been issued in accordance with any guidance issued by the Department under Article 4(3) of the Order; and
- (f) certification by the approved person as to whether the relevant producer has complied with his recovery and recycling obligations.

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SCHEDULE 7

Regulation 26

Public Register

Information regarding producer registration

1. The information to be contained in the register shall be—
 - (a) for the years 1999 and 2000, the name and address of the registered office or principal place of business of the producer registered; and
 - (b) for the year 2001 and subsequent years, the information referred to in sub-paragraph (a) together with a statement in relation to each producer registered and each relevant year as to whether a certificate of compliance has been furnished.

Information regarding scheme registration

2. The information to be contained in the register shall be—
 - (a) for the years 1999 and 2000—
 - (i) the name of the scheme,
 - (ii) the name and address of the registered office or principal place of business of each operator of the scheme, and
 - (iii) the name and address of the registered office or principal place of business of the members of the scheme;
 - (b) for the year 2001 and subsequent years, the information referred to in sub-paragraph (a) together with a statement in relation to each scheme member and each year as to whether the scheme has discharged the recovery and recycling obligations of its members referred to in regulation 4(1)(b).

SCHEDULE 8

Regulation 28

Supplemental Provisions with regard to powers of entry

Issue of warrants

- 1.—(1) If it is shown to the satisfaction of a justice of the peace on complaint on oath—
 - (a) that there are reasonable grounds for the exercise in relation to any premises of a relevant power conferred by regulation 28; and
 - (b) that one or more of the conditions specified in sub-paragraph (2) is fulfilled in relation to those premises,

the justice may by warrant authorise an authorised person to exercise the power in relation to those premises, in accordance with the warrant and, if need be, by force.

- (2) The conditions mentioned in sub-paragraph (1)(b) are—
 - (a) that the exercise of the power in relation to the premises has been refused;
 - (b) that such a refusal is reasonably apprehended;
 - (c) that the premises are unoccupied;
 - (d) that the occupier is temporarily absent from the premises and the case is one of urgency; or

(e) that an application for admission to the premises would defeat the object of the proposed entry.

(3) In a case where paragraph (3) of regulation 28, applies, a justice of the peace shall not issue a warrant under this Schedule by virtue only of being satisfied that the exercise of a power in relation to any premises has been refused, or that a refusal is reasonably apprehended; unless he is also satisfied that the notice required by that paragraph has been given and that the period of that notice has expired.

(4) Every warrant under this Schedule shall continue in force until the purposes for which the warrant was issued have been fulfilled.

Manner of exercise of powers

2. An authorised person shall produce evidence of his designation and other authority before he exercises the power.

Information obtained to be admissible in evidence

3.—(1) Subject to paragraph (5) of regulation 28, information obtained in consequence of the exercise of relevant power, with or without the consent of any person, shall be admissible in evidence against that or any other person.

(2) Without prejudice to the generality of sub-paragraph (1), information obtained by means of monitoring or other apparatus installed on any premises in the exercise of a relevant power, with or without the consent of any person in occupation of the premises, shall be admissible in evidence in any proceedings against that or any other person.

Duty to secure premises

4. A person who, in the exercise of a relevant power, enters on any premises which are unoccupied or whose occupier is temporarily absent shall leave the premises as effectually secured against trespassers as he found them.

Compensations

5.—(1) Where an authorised person exercises any power conferred by sub-paragraph 2(a) of regulation 28, it shall be the duty of the Department to make full compensation to any person who has sustained loss or damage by reason of—

- (a) the exercise by the authorised person of that power; or
- (b) the performance of, or failure of the authorised person to perform, the duty imposed by paragraph (4).

(2) Compensation shall not be payable by virtue of sub-paragraph (1) in respect of any loss or damage if the loss or damage—

- (a) is attributable to the default of the person who sustained it; or
- (b) is loss or damage in respect of which compensation is payable by virtue of any other provision of the Order.

(3) Any dispute as to a person's entitlement to compensation under this paragraph, or as to the amount of any such compensation, shall be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982(12) shall apply to any such determination.

(12) S.I. 1982/712 (N.I. 9)

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(4) An authorised person shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of any relevant power if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Relevant power

6. In this Schedule “relevant power” means a power conferred by regulation 28 including a power exercisable by virtue of a warrant under this Schedule.

SCHEDULE 9

Regulation 29

Groups of Companies

1. This Schedule applies in relation to a relevant year—
 - (a) where a holding company and one or more of its subsidiaries, or two or more subsidiary companies of the same holding company (in either case referred to in this Schedule and Schedule 10 as “a group of companies”) each satisfies the provisions of Columns 1 to 3 of that Table in Schedule 1 in relation to a class or classes of producer; and
 - (b) where the aggregate of the turnovers, and the aggregate of the amounts of packaging or packaging materials handled by each such company, are sufficient to satisfy the threshold tests as provided by paragraph 3 of Schedule 1.
2. Subject to regulation 4, in respect of a year each company referred to in paragraph 1 is a producer of a class specified in an entry in Column 4 of the Table set out in Schedule 1 if—
 - (a) in that year and the preceding year he performs the relevant functions specified in Column 1 of that Table in relation to that entry; and
 - (b) in the preceding year he made supplies of the materials or products specified in Column 2 of that Table in relation to that entry of a class specified in Column 3 of that Table in relation to that entry;

and the other provisions of that Schedule, other than paragraph 3, shall also have effect for the purposes of determining to which class of producer such a company belongs.
3. For the purpose of this Schedule and Schedule 10 “subsidiary” and “holding company” have the same meanings as they have in Article 4 of the Companies (Northern Ireland) Order 1986(13).
4. Subject to regulation 4, companies who are producers and are in a group of companies shall comply with their producer registration obligations for a relevant year by either—
 - (a) being registered for that year with the Department as required by regulation 5, in which case each company so registered has its own recovery, recycling and certifying obligations; or
 - (b) the holding company and one or more of the subsidiaries being registered together for that year with the Department, (in this Schedule and Schedule 10 referred to as a “group registration”) in which case paragraphs 5 and 6 shall apply.
5. Where there is a group registration—
 - (a) the subsidiary companies in the group registration are exempt from complying with their producer responsibility obligations for the relevant year;

(13) S.I. 1986/1032 (N.I. 6); Article 4 was substituted by Article 62 of S.I. 1990/1504 (N.I. 10)

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- (b) the holding company has a producer registration obligation for the relevant year which is an obligation to make the group registration and for this purpose regulations 5 to 11, and Parts I and II of Schedule 4, shall be read as if—
 - (i) references to the applicant or the producer were references to the holding company,
 - (ii) references to information to be provided regarding the producer were to information to be provided regarding each company in the group registration, and
 - (iii) the references in regulations 6(4)(d) and 9(2) to a fee for producer registration were read as references to a fee for a group registration;
 - (c) the holding company has recovery and recycling obligations for the relevant year which are the aggregate of its own obligations in respect of that year, if any, and the obligations which the subsidiary companies in the group registration would have had but for the group registration;
 - (d) the holding company shall furnish records and returns and provide a certificate of compliance, and references in regulations 23 and Schedule 6—
 - (i) to a producer shall be read as references to the holding company, and
 - (ii) to information shall be read as references to information regarding each company in the group registration; and
 - (e) regulation 34(1) (offences) shall not apply to the companies in the group and paragraphs 6 and 7 shall apply instead.
6. Where in accordance with this Schedule there is a group registration the holding company is guilty of an offence if—
- (a) it does not comply with its recovery and recycling obligations referred to in paragraph 5(c); or
 - (b) it does not furnish a certificate of compliance in accordance with paragraph 5(d).
7. A person guilty of an offence under paragraph 6 shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.
8. This Schedule is subject to the provisions of Schedule 10.

SCHEDULE 10

Regulation 30

Mid-year Changes

PART I

SCHEME MEMBERSHIP

1. Subject to paragraph 4, where a person who is a producer in respect of a year becomes a member of a registered scheme during that year, the recovery and recycling obligations of the producer for that year, referred to in regulation 4(1)(b), shall be performed through the scheme.
2. Subject to paragraph 3, where a person who is a producer in respect of a year ceases to be a member of a registered scheme during that year, he shall comply with his recovery and recycling obligations for that year, calculated as provided in regulation 3 and Schedule 2.

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3. Where a person who is a producer in respect of a year ceases to be a member of a registered scheme, because the registration of the scheme has been cancelled in accordance with regulation 17, during that year he shall comply with a proportion of his recovery and recycling obligations for the year, calculated as follows—

$$\frac{D}{E}$$

where

D is the number of days in the relevant year from the date when such membership ceased, and
E is the number of days in the relevant year.

4. Where a person who is a producer in respect of a year ceases to be a member of one registered scheme (“the first scheme”) and becomes a member of another registered scheme (“the second scheme”) during that year, the first scheme shall not be required to perform any of the producers recovery and recycling obligations, referred to in regulation 4(1)(b), and all such obligations shall be performed through the second scheme.

PART II

GROUP MEMBERSHIP

5. This Part applies where—

- (a) a company joins a group of companies and becomes a company to which paragraph 1 of Schedule 9 applies; or
- (b) a holding company or subsidiary company to which paragraph 1 of Schedule 9 applies ceases to belong to a group of companies.

6. Where paragraph 5(a) applies the company shall either—

- (a) be registered separately with the Department as required by regulation 5; or
- (b) be registered with the Department as part of a group registration under Schedule 9 and for the purposes of this paragraph—
 - (i) such registration is effected upon notice being given by the holding company to the Department of the change in the group registration, and
 - (ii) where prior to joining the group of companies the company was registered with the Department, the Department shall cancel the company’s registration on receipt of that notice and paragraphs (2) and (3) of regulation 11 shall apply to that cancellation.

7. Where—

- (a) paragraph 5(a) applies;
- (b) in relation to the obligation year the company itself satisfies the threshold tests; and
- (c) the company is registered as part of a group registration;

the holding company shall comply with the requirements of the company’s recovery and recycling obligations for the year in which it joins the group.

8. Where—

- (a) paragraph 5(a) applies;
- (b) in relation to the obligation year the company itself satisfies the threshold tests; and
- (c) the company is registered separately with the Department;

the company shall comply with the recovery and recycling obligations for the year in which it joins the group.

9. Where—

- (a) paragraph 5(a) applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and
- (c) the company is registered as part of a group registration;

the holding company shall comply with a proportion of the requirements of the company's recovery and recycling obligations for the year in which it joins the group, such proportion being calculated as provided in paragraph 17(1).

10. Where—

- (a) paragraph 5(a) applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and
- (c) the company is registered separately with the Department;

the company shall comply with a proportion of its recovery and recycling obligations for the year in which it joins the group, such proportion being calculated as provided in paragraph 17(1).

11. Where—

- (a) paragraph 5(b) applies; and
- (b) in relation to the obligation year the company itself satisfies the threshold tests;

it shall register with the Department as required by regulation 5 within 28 days of ceasing to be a member of the group and regulations 6 to 11 shall apply as if this were an occurrence specified in regulation 6(3).

12. Where—

- (a) paragraph 5(b) applies;
- (b) in relation to the obligation year the company itself satisfies the threshold tests; and
- (c) the company was registered as part of a group registration; the following shall apply—
 - (i) the holding company shall comply with a proportion, calculated as provided in paragraph 17(1), of the requirements of the company's recovery and recycling obligations for the year in which it ceases to be a member of the group, and
 - (ii) the company shall comply with the proportion of its recovery and recycling obligations for that year, such proportion being calculated as provided in paragraph 17(1), except that for this purpose G is the number of days in the relevant year during which the company was not a member of the group.

13. Where—

- (a) paragraph 5(b) applies;
- (b) in relation to the obligation year the company itself satisfies the threshold tests; and
- (c) the company is registered separately with the Department;

the company shall comply with the recovery and recycling obligations for the year which ceases to be a member of the group.

14. Where—

- (a) paragraph 5(b) applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and

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- (c) the company was registered as part of a group registration;

the holding company shall comply with a proportion of the requirements of the company's recovery and recycling obligations for the year in which it ceases to be a member of the group, such proportion being calculated as provided in paragraph 17(1).

15. Where—

- (a) paragraph 5(b) applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and
- (c) the company was registered separately with the Department;

the holding company shall comply with a proportion of the requirements of the company's recovery and recycling obligations for the year in which it ceases to be a member of the group, such proportion being calculated as provided in paragraph 17(1).

16. Where in a relevant year paragraph 5 above applies to a company as a result of that company ceasing to be a member of one group ("the first group") and becoming a member of another group ("the second group")—

- (a) where in relation to each group the company is registered as part of a group registration, each holding company shall comply with the requirements of a proportion of the company's recovery and recycling obligations, such proportion being calculated as provided in paragraph 17(2);
- (b) where in relation to each group the company is registered separately with the Department, the company shall comply with its recovery and recycling obligations for the year;
- (c) where in relation to the first group the company was registered as part of a group registration and in relation to the second group the company is registered separately with the Department, the holding company in relation to the first group, and the company, shall each comply with a proportion of the company's recovery and recycling obligations, such proportions being calculated as provided in paragraph 17(2); or
- (d) where in relation to the first group the company was registered separately with the Department and in relation to the second group the company is registered as part of a group registration, the company, and the holding company in relation to the second group, shall each comply with a proportion of the company's recovery and recycling obligations, such proportion being calculated as provided in paragraph 17(2).

17.—(1) The proportion referred to in paragraphs 9, 10, 12(c)(i) and (ii), 14 and 15 shall be calculated as follows—

G

H

where—

G is the number of days in the relevant year during which the company was a member of the group, and

H is the number of days in the relevant year.

(2) The proportion referred to in paragraph 16(a), (c) and (d) shall be calculated as provided in sub-paragraph (1) except that for this purpose G is the number of days in the relevant year during which the company was a member of the group in relation to which the calculation is being made.

18. For the purposes of this Part—

- (a) the "threshold tests" means the threshold tests provided in paragraph 3 of Schedule 1; and

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- (b) “obligation year” has the meaning given in that Schedule for the purposes of the definition of the threshold tests.

PART III

INCAPACITY

19. Where in a relevant year a producer dies or becomes bankrupt or incapacitated (“the first producer”) that person shall cease to have any producer responsibility obligations for that year and any person who carries on the activities of the first producer following that event shall be treated as a producer and shall have the producer responsibility obligations of the producer for that year.

20. Any person carrying on the activities of the first producer referred to in paragraph 19 shall within 28 days of commencing to do so—

- (a) inform the Department in writing of that fact and the date of the death, the date of bankruptcy or the nature of the incapacity and the date on which it began; and
- (b) apply to be registered as required by regulation 5 and for this purpose the requirement in regulation 6(4)(d) (payment of a fee) shall not apply.

21. In relation to a producer which is a company, the references to a person becoming bankrupt or incapacitated in paragraph 19 shall be construed as references to it going into liquidation or receivership or to an administration order being made in relation to it.

SCHEDULE 11

Regulation 3(6)

United Kingdom’s Recovery and Recycling Targets

The United Kingdom’s recovery and recycling targets are—

- (a) no later than the year 2001 between 50% as a minimum and 65% as a maximum by weight of the packaging waste is to be recovered; and
- (b) within this general target and with the same time limit between 25% as a minimum and 45% as a maximum by weight of the totality of packaging materials contained in packaging waste are to be recycled with a minimum of 15% by weight for each packaging material.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations impose on producers obligations to recover and recycle packaging waste, and related obligations, in order to attain the targets in Article 6(1) of Directive 94/62/EC.

A producer (defined in regulation 3) who in a year (“a relevant year”) has a specified level of turnover (set out in Schedule 1) and handles (as defined in Schedule 1) packaging or packaging materials (defined in regulation 2) weighing more than 50 tonnes has an obligation in the following year to recover and to recycle packaging waste, as set out in Schedule 2, (“the individual route”). These

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obligations will apply from the year 1999, except in relation to wholesalers to whom they will only apply from the year 2000.

Certain categories of producer are excluded by regulation 4. In particular, a producer who joins a scheme which undertakes to meet the recovery and recycling targets of all its members is not required to comply with its obligations. In such cases the obligations are performed through the scheme.

There are special provisions for groups of companies (regulation 29 and Schedule 9) and special producers (regulation 4 and Schedule 3 Parts III to V). “Packaging”, “packaging waste”, “recovery”, “recycling” and “reuse” are defined as in Directive 94/62/EC.

Under regulation 5 producers who are not members of registered schemes need to be registered with the Department. The producer applies in accordance with regulation 6 and must supply, in particular, the information set out in Parts I and II of Schedule 4. The Department will normally require the applicant to undertake to inform the Department of material changes and to give the other undertakings mentioned in regulation 7. An applicant who complies with the relevant requirements (regulation 6(5)) will be registered. Registration will continue unless and until cancelled, but is subject to an updating of information before 1st April each year (regulation 8). There is provision for cancellation of registration where, for example, a producer fails to provide information (regulation 11(1)) or joins a registered scheme (regulation 11(2)).

There are similar registration requirements for schemes in regulations 12 to 17. To be registered a scheme must satisfy the requirements of competition scrutiny in regulation 31 (regulation 12(4)).

Registered producers, and operators of schemes, are required to maintain records and furnish returns to the Department (regulations 22 and 24). Registered producers are also to provide certificates of compliance with their recovery and recycling obligations (regulation 23).

Regulations 25 and 26 set out the duties of the Department to monitor compliance and in relation to a public register. Regulations 27 and 28 and Schedule 8 concern the powers of the Department to approve persons to issue certificates of compliance and of entry and inspection. Regulations 32 and 33 exclude and modify the Restrictive Trade Practices Act 1976 respectively.

Under regulation 34 it is an offence to contravene the producer responsibility obligations to register, recover and recycle packaging waste, and furnish a certificate of compliance to the Department, or to provide false or misleading information, or to prevent the Department from exercising its powers of entry and inspection, or to fail to furnish information in connection with competition scrutiny.