
STATUTORY RULES OF NORTHERN IRELAND

2007 No. 198

The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007

PART 1

GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 and shall come into operation on 5th April 2007.

(2) The Interpretation Act (NI) 1954(1) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Interpretation and notices

2.—(1) In these Regulations—

“the Department” means the Department of the Environment;

“the Packaging Waste Directive” means Council Directive 94/62/EC(2) on packaging and packaging waste as amended by—

(a) Council Regulation (EC) No 1882/2003(3) adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty;

(b) Council Directive 2004/12/EC(4) amending Directive 94/62/EC on packaging and packaging waste; and

(c) Council Directive 2005/20/EC(5) amending Directive 94/62/EC on packaging and packaging waste;

“the Waste Directive” means Council Directive 75/442/EEC(6) on waste as amended by—

(d) Council Directive 91/156/EEC(7) amending Directive 75/442/EEC on waste;

(e) Council Directive 91/692/EEC(8) standardizing and rationalizing reports on the implementation of certain Directives relating to the environment;

(1) 1954 c.33 (N.I.)

(2) OJNo. L 365, 31.12.1994, p. 10.

(3) OJ No. L 284, 31.10.2003, p. 1.

(4) OJ No. L 47, 18.2.2004, p. 26.

(5) OJ No. L 70, 16.3.2005, p. 17.

(6) OJ No. L 194, 25.7.1975, p. 39.

(7) OJ No. L 78, 26.3.1991, p. 32.

(8) OJ No. L 377, 31.12.1991, p. 48

- (f) Commission Decision [96/350/EEC](#)(**9**) adapting Annexes IIA and IIB to Council Directive [75/442/EEC](#) on waste; and
- (g) Council Regulation (EC) No [1882/2003](#) adapting to Council Decision [1999/468/EC](#) the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty;

“the Order” means the Producer Responsibility Obligations (Northern Ireland) Order(**10**)

(2) In these Regulations—

“accredited exporter” means an operator who is accredited by the Department under regulation 24 ;

“accredited reprocessor” means a reprocessor who is accredited by the Department under regulation 24;

“allocation method” means the method set out in paragraph 7 of Schedule 2 for calculating the recycling obligations of a small producer who has elected under regulation 7 to follow this method;

“approved person” means the person for the time being approved under regulation 34 for the purpose of issuing certificates of compliance under regulation 21 and signing the form referred to in regulation 7(4)(c) or 19(2)(b) in relation to a particular producer;

“calculation year” means the year preceding an obligation year;

“consumer information obligations” has the meaning given to it in regulation 4(4)(d);

“disposal” has the meaning given to it in Article 3 (10) of the Packaging Waste Directive;

“energy recovery” has the meaning given to it in Article 3(8) of the Packaging Waste Directive;

“exporter” means a person who, in the ordinary course of conduct of a trade, occupation or profession, owns and exports packaging waste for reprocessing outside the United Kingdom;

“financial year” in relation to a person—

(a) where the person is a company is determined as provided in Article 231(1) to (3) of the Companies Order 1986(**11**); and

(b) in any other case has the meaning given in Article 231(4) of the Companies Order 1986, but as if the reference there to an undertaking were a reference to that person;

“obligation year” means, for the purposes of this regulation and Schedule 11, a year in respect of which it is being considered whether a person is a producer;

“organic recycling” has the meaning given to it in Article 3(9) of the Packaging Waste Directive;

“packaging” has the meaning given to it in Article 3(1) of the Packaging Waste Directive;

“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” has the meaning given to it in Article 3(2) of the Packaging Waste Directive; but does not include packaging that became waste outside the United Kingdom;

“partnership” has the meaning given in section 1 of the Partnership Act 1890(**12**);

(9) OJ No. L 135, 6.6.1996, p. 32.

(10) [1998 No. 1762 \(N.I. 16\)](#).

(11) [1986 \(N.I. 6\)](#) as amended by [S.I. 1989 No. 2404](#). [CHECK]

(12) [1890 c. 39](#).

“PERN” means a packaging waste export recovery note issued by an accredited exporter on a form supplied to him by the Department, as evidence of the export of the tonnage of packaging waste specified in the note for the reprocessing outside the United Kingdom;

“preceding year” means the year preceding a relevant year;

“PRN” means a packaging waste recovery note issued by an accredited reprocessor on a form supplied to him by the Department, as evidence of the receipt of the tonnage of packaging waste specified in the note for reprocessing within the United Kingdom;

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

“producer responsibility obligations” are the producer registration, recovery and recycling, certifying and consumer information obligations specified in regulation 4;

“recovery” means any of the applicable operations provided for in Annex IIB to the Waste Directive and for the purposes of these Regulations incineration at waste incineration plants with energy recovery shall be treated as if it is recovery; and “recover” and “recovery operation” shall be construed accordingly;

“recovery and recycling obligations” has the meaning given in regulation 4(4)(b);

“recyclable material” means—

- (a) glass;
- (b) aluminium;
- (c) steel;
- (d) paper/board;
- (e) plastic; or
- (f) wood,

and packaging materials composed of a combination of any of those materials are to be treated as made of the material which is predominant by weight;

“recycling” has the meaning given to it in Article 3(7) of the Packaging Waste Directive; and “recycle” shall be construed accordingly;

“recycling obligations” means the obligation to recycle set out in regulation 4(4)(b)(ii);

“relevant authorisation” means—

- (a) a permit granted under regulation 10 of The Pollution Prevention and Control Regulations (Northern Ireland) 2003(**13**);
- (b) an authorisation granted under Article 6 of the Industrial Pollution Control (Northern Ireland) Order 1997(**14**) (repealed by the Environment (Northern Ireland) Order 2002(**15**));
- (c) a waste management licence granted under Article 6 of The Waste and contaminated Land (Northern Ireland) Order 1997;
- (d) an exemption registered under regulation 17 of The Waste Management Licensing Regulations (Northern Ireland) 2003(**16**).

“relevant date” means—

- (a) 7th April in the obligation year; or

(13) S.R. 2003 No. 46.

(14) S.I. 1997/2777 (N.I.18)

(15) S.I. 2002/3153 (N.I.7)

(16) S.R. 2003 No. 493.

- (b) where an application for registration is made in a circumstance set out in regulation 7(3), or as required by paragraph 10 of Schedule 11, the date of the application;

“relevant year” means the year referred to in regulation 4(2), that is to say a year in respect of which a person is a producer;

“reprocessor” means a person who, in the ordinary course of conduct of a trade, occupation or profession, carries out one or more activities of recovery or recycling, and “reprocessing” shall be construed accordingly;

“reuse” has the meaning given to it in Article 3(5) of the Packaging Waste Directive;

“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 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;

“SIC code” means a code included in “Indexes to the United Kingdom Standard Industrial Classification of Economic Activities 2003”, published by the Office for National Statistics in 2003⁽¹⁷⁾;

“small producer” means a producer who satisfies the threshold tests in paragraph 3 of Schedule 1 but whose turnover in the last financial year in respect of which audited accounts are available (or where audited accounts are not required, the most recently available accounts of the producer) before the relevant date was £5,000,000 or less; and audited accounts shall be considered to be available when, where the person is a company, the annual accounts have been delivered to the registrar under [Article X of the Companies (NI) Order 1986];

“transit packaging” means—

- (a) grouped packaging or secondary packaging, as defined in paragraph (b) in Article 3(1) of the Packaging Waste Directive; or
- (b) transport packaging or tertiary packaging as defined in paragraph (c) in Article 3(1) of the Packaging Waste Directive;

“turnover” means, in relation to a person, his turnover as defined in [Article X of the Companies (NI) Order 1986] but as if the references to a company were references to that person; and

“year” means a calendar year beginning on 1st January.

(3) Where—

- (a) notices are to be served on a producer under regulations 7(7)(a), 10 or 11(3);
- (b) information is to be provided by a producer under regulations 7 or 8;
- (c) fees are to be paid by a producer under regulation 9(2); or
- (d) records and returns are to be maintained and furnished by a producer under regulation 20,

they shall be served on, provided paid, or maintained and furnished by, in the case of a partnership, a partner acting on behalf of the partnership, and references in these Regulations to the producer shall be read accordingly.

(4) Where there is more than one operator of a scheme—

- (a) notices to be served on the operator of the scheme under regulations 14(5), 17, 18(3) or 36(3) shall be served on the operator stated under regulation 14(3)(h);
- (b) where information is to be provided by the operator of the scheme under regulations 14 and 15, fees are to be paid by the operator of the scheme under regulation 16, records

and returns are to be maintained and furnished by the operator of the scheme under regulation 22, and appeals may be made by the operator of the scheme under regulation 27, they shall be provided, paid, or maintained and furnished, and such appeals may only be made, by the operator stated under regulation 14(3)(h),

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

(5) In these Regulations—

- (a) any document which is to be provided or given to any person may be provided or given to that person in electronic form if the text is capable of being produced by that person in a visible and legible documentary form;
- (b) any requirement to make, keep or retain a record or to maintain a register may be satisfied in electronic form if the text is capable of being produced by that person in a visible and legible documentary form;
- (c) any requirement for a signature may be satisfied by an electronic signature incorporated into the document; and
- (d) “electronic signature” means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.

Exclusion of charities from producer responsibility obligations

3. Parts II, III and IV of these Regulations do not apply to a charity within the meaning given in section 506 of the Income and Corporation Taxes Act 1988(18).

PART 2

PRODUCERS AND OBLIGATIONS

Producers and producer responsibility obligations

4.—(1) This regulation is subject to regulations 5, 37, 38 and 39 and Schedules 9, 10 and 11.

(2) In respect of a year a person is a producer of a class specified in an entry in column 4 of Table 1 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 Table 1 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.

(18) 1988 c. 1.

(4) 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 must—

- (a) be registered as provided in regulation 6 (in these Regulations referred to as the “producer registration obligation”);
- (b) where he is—
 - (i) a producer, other than a small producer who has elected to follow the allocation method, recover and recycle packaging waste in relation to each of the classes of producer to which the producer belongs, as calculated under Schedule 2; or
 - (ii) a small producer who has elected to follow the allocation method, recycle packaging waste as calculated under paragraphs 2, 7 and 8 of Schedule 2,

(in these Regulations referred to as the “recovery and recycling obligations”);

- (c) furnish a certificate of compliance in respect of his recovery and recycling obligations in accordance with regulation 21 (in these Regulations referred to as the “certifying obligation”); and
- (d) if his main activity is that of seller, provide information to consumers of the goods sold by him about—
 - (i) the return, collection and recovery systems available to them;
 - (ii) their role in contributing to the reuse, recovery and recycling of packaging and packaging waste;
 - (iii) the meaning of related markings on packaging that he places on the market and that relates to his recovery and recycling obligations; and
 - (iv) the chapter dealing with the management of packaging and packaging waste in any strategy prepared under Article 18 of The Waste and Contaminated Land (Northern Ireland) Order 1997 (national waste strategy),

(in these Regulations referred to as the “consumer information obligations”).

(5) A producer may only demonstrate compliance with his recovery and recycling obligations through the acquisition of PRNs or PERNs or both.

(6) A PRN or PERN that relates to packaging waste delivered or exported for reprocessing in December in a year may be relied on by a producer to demonstrate compliance with his recovery and recycling obligations either in that year or the following year.

(7) The Department shall issue guidance as to the provision of information under paragraph (4)(d) above and shall take such steps as may be appropriate to ensure that users of packaging, including in particular consumers, obtain the necessary information about the matters referred to in paragraph (4) (d).

Producers and Scheme membership

5. Where a producer is a member of a registered scheme throughout a relevant year he is exempt from complying with his producer responsibility obligations for the relevant year.

PART 3

REGISTRATION: PRODUCERS AND SCHEMES

Producer registration obligation

6. Subject to regulations 37 and 39 and Schedules 9 and 11, 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

7.—(1) Subject to paragraph (3) below, a producer who is required by regulation 6 to be registered shall, on or before 7th 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 any partner acting on behalf of the partnership.

(3) Where any of the following occurs in a relevant year—

- (a) the application for registration of a scheme of which the applicant was a member is refused;
- (b) the registration of a scheme of which the applicant was a member is cancelled;
- (c) the applicant's membership of a scheme is discontinued;
- (d) the applicant becomes a producer in respect of that year; or
- (e) an application to register made within the time limit in paragraph (1) above is 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 information set out in Part I of Schedule 3;
- (c) other than in the case of a small producer who has elected to follow the allocation method under sub-paragraph (d) below and subject to paragraph (9) below, be accompanied by the following further information, on a form supplied for that purpose by the Department and signed by the approved person, in relation to the relevant year—
 - (i) each class of producer to which the applicant belongs;
 - (ii) if he belongs to more than one class of producer, which of those classes constitutes his main activity as a producer;
 - (iii) the relevant SIC code for the class of producer to which the applicant belongs or, as the case may be, for the applicant's main activity;
 - (iv) in relation to each such class of producer—
 - (aa) the amount of packaging waste which he is required to recover by virtue of paragraph 3(1) of Schedule 2 and of this the proportion which is to be recovered by recycling by virtue of paragraph 3(2) of Schedule 2; and
 - (bb) the amount of packaging waste which he is required to recycle for each kind of recyclable material by virtue of paragraph 3(3) of Schedule 2;
 - (v) the basis on which the amounts referred to in paragraph (iv) were calculated; and
 - (vi) such other information as the Department reasonably requires in order to determine the application and as is specified on the form;

- (d) in the case of a small producer state whether he elects to follow the allocation method, and, if he does, be accompanied by evidence as to his turnover;
 - (e) be accompanied by the relevant fee for producer registration referred to in regulation 9; and
 - (f) where the producer has a recovery and recycling obligation in respect of more than 500 tonnes of packaging waste
 - (i) on a first application for registration be accompanied by an operational plan complying with Part III of Schedule 3; and
 - (ii) on any subsequent application, be accompanied by a revised version of that plan unless it has already been provided pursuant to paragraph (g) in regulation 8.
- (5) A small producer who has elected under paragraph (4)(d) above to follow the allocation method shall follow this method for a minimum of the year of registration and the following two years.

- (6) An application for producer registration shall be granted where—
- (a) the producer has complied with—
 - (i) paragraph (4)(a), (b) and (e) above; and
 - (ii) where applicable, paragraphs (4)(c), (d), (f) and (5) above; and
 - (b) the Department is satisfied that the further information provided in accordance with paragraph (4)(c) above, or (9) below, has been provided in accordance with paragraph (8) below,

and shall otherwise be refused.

- (7) Where an application for producer registration is granted—
- (a) the Department shall, within 28 days of it being granted confirm to the producer in writing that he is registered with it; and
 - (b) the producer shall be treated as having been registered—
 - (i) where the application was made within the time limit specified in paragraph (1), from the beginning of the relevant year;
 - (ii) where the application was made within the time limit specified in paragraph (3), from the date of the relevant occurrence;
 - (iii) in any other case, from the date specified in the confirmation,

until any cancellation of the producer's registration in accordance with regulation 11.

- (8) Any information provided shall be as accurate as reasonably possible.

(9) Where the application to register is made in one of the circumstances set out in sub-paragraph (a), (b), (d) or (e) of paragraph (3) above, the further information referred to in paragraph (4)(c) above need not accompany the application but shall be provided within 28 days of the application being made.

(10) A producer who is required to submit an operational plan or revised operational plan in connection with his application for registration shall at the same time send a copy of it to the Department.

Conditions of registration of a producer

- 8.** Registration of a producer shall be subject to the conditions that the producer will—
- (a) comply with his obligations set out in regulation 4(4);
 - (b) provide any information reasonably requested by the Department with regard to the obligations referred to in paragraph (a) above;

- (c) 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 material change in the information provided in accordance with regulation 7(4)(b); and
 - (iii) any material change in the further information provided in accordance with regulation 7(4)(c), or 7(9), as the case may be,within 28 days of the occurrence of any such change;
- (d) provide records and returns to the Department as required by regulation 20;
- (e) notify the Department that he wishes 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;
- (f) comply with the operational plan submitted under regulation 7(4)(f) or, if a revised plan has been submitted under paragraph (g) below, with the most recent version so submitted; and
- (g) on or before 1st January in a relevant year, provide to the Department a revised version of the operational plan.

Forms and fees for producer registration

9.—(1) The Department shall provide the form referred to in regulation 7(4)(c) free of charge to any person requesting one.

(2) Subject to paragraphs (3) and (4) below, the fee which is to be charged by the Department on an application for producer registration shall be—

- (a) where the producer is a small producer who has elected to follow the allocation method, £564; or
- (b) in all other cases, £950.

(3) In the case of an application where the fee in paragraph (2) above is to be treated as a fee for group registration by virtue of paragraph 5(b)(iii) of Schedule 9, in respect of each subsidiary included within that application that is not a small producer who has elected to follow the allocation method, the Department shall charge an additional fee of—

- (a) £180 for each of the first 4 subsidiaries
- (b) £90 for each of the 5th to the 20th subsidiaries inclusive; and
- (c) £45 for each of the 21st and subsequent subsidiaries.

(4) On each resubmission of an application which is required by reason of the producer having failed to meet the requirements of regulation 7(4) or (9) on his previous submission, the Department shall charge an additional fee of £220.

Refusal to register producers

10. Any decision of the Department under regulation 7(6) to refuse to register a producer shall be notified within 28 days of the decision to the producer in writing together with the reasons for the decision, a statement as to the right of appeal under Part 6 of these Regulations and a statement as to the offence specified in regulation 40(1)(a).

Cancellation of registration of producers

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

- (a) the producer is in breach of any of the conditions specified in regulation 8; or
- (b) the producer knowingly or recklessly supplied false information in connection with his application for registration, or with compliance with any of the conditions specified in regulation 8.

(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) and (2) above, the Department shall serve on the producer concerned written notice of—

- (a) its decision to cancel;
- (b) the reasons for the decision;
- (c) the date when cancellation will take effect, not being earlier than—
 - (i) in the case of cancellation under paragraph (1) above, the expiration of the time limit for an appeal against the notice provided for in paragraph 2 of Schedule 6;
 - (ii) in the case of cancellation under paragraph (2) above, 5 days from the date of the notice;
- (d) the right of appeal under Part 6 of these Regulations; and
- (e) where cancellation is under paragraph (1), a statement as to the offence specified in regulation 40(1)(a).

Schemes: general provisions

12.—(1) The, operator of a scheme shall carry out the recovery and recycling obligations and where applicable, consumer information obligations, that every producer who is a member of the scheme that he operates would have had, but for their membership of that scheme.

- (2) The operator of a scheme shall inform the members in writing immediately if—
 - (a) he receives a notice of cancellation of the scheme’s registration under regulation 18(3), together with a copy of the notice; or
 - (b) the scheme is granted conditional approval under regulation 13(4).

(3) The operator of a scheme may only demonstrate compliance with his recovery and recycling obligations through the acquisition of PRNs or PERNs or both.

(4) A PNR or PERN that relates to packaging waste delivered or exported for reprocessing in December in a year may be relied on by the operator of a scheme to demonstrate compliance with his recovery and recycling obligations either in that year or the following year.

Application for approval of a scheme

13.—(1) An application for approval of a scheme by the Department shall be made in writing by the operator of the scheme and shall—

- (a) contain the following information—
 - (i) the name and address of the person who proposes to operate the scheme; and
 - (ii) information which demonstrates that—
 - (aa) the scheme is likely to subsist for a period of at least 5 years; and
 - (bb) the operator of the scheme is likely to be able to meet its expected recovery and recycling obligations for that period; and
- (b) be accompanied by the following documentation—

- (i) a copy of the constitution of the scheme;
- (ii) a copy of the rules with which a member of the scheme is obliged to comply; and
- (iii) a copy of the procedures under which the operator of the scheme would enforce the rules against a member of the scheme.

(2) Subject to paragraphs (3) and (4), an application for approval of a scheme shall within 28 days of receipt of the application be granted unconditionally where the Department is satisfied that—

- (a) the scheme is likely to subsist for a period of at least 5 years;
- (b) the operator of the scheme is likely to be able to meet its expected recovery and recycling obligations for that period,

and otherwise be refused.

(3) A further application for approval in accordance with paragraph (1) shall be made on the occurrence of—

- (a) a change in the person who is the operator of the scheme;
- (b) a conviction of the operator of the scheme for an offence under these Regulations;
- (c) the receipt by the operator of the scheme of a notification under regulation 36(2); or
- (d) a failure by the operator of the scheme to comply, where applicable, with the additional conditions set out at paragraph (5) below,

within 28 days of the occurrence of an event mentioned in sub-paragraph (a), (b) or (d) above or within 14 days of the occurrence of the event mentioned in sub-paragraph (c) above.

(4) Where the Department has been provided with information pursuant to regulation 36 it may, whether or not it is satisfied as to the matters set out in paragraph (2) above, grant approval subject to the additional conditions set out in paragraph (5).

(5) The conditions are that—

- (a) the operator of the scheme shall comply with 50% of the total recovery and recycling obligations of the scheme before 30th June;
- (b) the operator of the scheme shall comply with a further 50% of the remaining recovery and recycling obligations before 30th September;
- (c) the operator of the scheme shall make returns to the Department of information demonstrating compliance with the conditions set out at sub-paragraphs (a) and (b) above on or before 15th July and 15th October respectively, together with copies of the PRNs or PERNs or both;
- (d) the operator pays the fee under regulation 16(3) to the Department; and
- (e) the operator of the scheme shall not accept any new members into the scheme.

(6) Where an application which is required by paragraph (3)(a) or (3)(b) is not received by the due date, the Department may decide to withdraw approval of the scheme and, if such a decision is taken, shall serve written notice on the operator of the scheme of—

- (a) the decision to withdraw approval of the scheme;
- (b) the reasons for the decision; and
- (c) the date when the withdrawal will take effect, not being earlier than 28 days for the date of the notice.

(7) Where an application which is required by paragraph (3)(c) or (3)(d) above is not received by the due date, the Department shall serve written notice on the operator of the withdrawal of approval of the scheme, which shall take effect from the date of the notice.

(8) The Department shall consider any representations made by the operator of a scheme before the notice under paragraph (6) takes effect, and may withdraw the notice under paragraph (6) at any time.

(9) In the case of a scheme that has been granted conditional approval pursuant to paragraph (4) above, where the Department is satisfied that the operator of the scheme met its recovery and recycling obligations in the preceding year, it shall serve a notice in writing on the operator of the scheme stating that the scheme has unconditional approval for the remainder of the year (and is no longer required to meet the additional conditions set out in paragraph (5) above and send a copy of the notice to the Department.

(10) In the case of a scheme that has been granted conditional approval pursuant to paragraph (4) above, where the Department is satisfied by 31st January in the year following the year for which a scheme is granted conditional approval under paragraph (4) above (for the purposes of this paragraph, “the conditional approval year”) that the operator of the scheme met its recovery and recycling obligations and the conditions in paragraph (5) above in the conditional approval year, it shall serve a notice in writing on the operator of the scheme stating that the scheme has unconditional approval for the year following the conditional approval year (and is no longer required to meet the conditions set out in paragraph (5) above).

Application for registration of a scheme

14.—(1) An application for registration of a scheme in relation to a year shall be made by the operator of the scheme, on or before 7th April in that year, to the Department.

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

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

- (a) be made in writing;
- (b) contain the information set out in Part II of Schedule 3;
- (c) subject to paragraph (6) below, be accompanied by the following further information, on a form supplied for that purpose by the Department, in relation to the relevant year—
 - (i) each producer who is a member of the scheme;
 - (ii) if any producer belongs to more than one class of producer, which of those classes constitutes his main activity as a producer;
 - (iii) the relevant SIC code for the activity or, as the case may be, the main activity of each class of producer in the scheme;
 - (iv) in relation to each producer the information referred to in paragraphs (4)(c)(iv) and (v) of regulation 7;
 - (v) in relation to members who are small producers who have elected to follow the allocation method, the aggregate amount of packaging waste which is required to be recycled by virtue of paragraphs 2, 7 and 8 of Schedule 2 by those members;
 - (vi) a statement of the turnover of each small producer who is a member of the scheme; and
 - (vii) such other information as the Department reasonably requires in order to determine the application and as is specified on the form;
- (d) be accompanied by a statement as provided in Part III of Schedule 3;
- (e) be accompanied by evidence that the scheme has been approved by the Department; but subject to paragraph (4)(d) below, where the scheme has yet to be approved, such evidence shall be supplied to the Department as soon as possible after receipt;

- (f) on a first application for registration be accompanied by an operational plan for the scheme that complies with Part III of Schedule 3;
 - (g) be accompanied by a fee calculated under regulation 16; and
 - (h) where there is more than one operator of the scheme, be accompanied by a statement signed by all of the operators of the scheme as to which operator is able to accept notices and act on behalf of all the operators of the scheme.
- (4) An application for registration shall be granted where—
- (a) the operator has complied with paragraphs (3)(a), (b), (d), (f), (g) and (h) above;
 - (b) the Department is satisfied that the information provided in accordance with paragraph (3)(c) above has been provided in accordance with paragraph (7) below;
 - (c) the Department is satisfied as to the contents of the operational plan provided as required by paragraph (3)(f) above; and
 - (d) the scheme has been approved by the Department,
- and shall otherwise be refused.
- (5) Where an application for registration of a scheme is granted—
- (a) the Department shall, within 28 days of its decision, notify the operator of the scheme in writing of its decision; and
 - (b) the scheme shall be treated as registered from the beginning of the year in relation to which the application is made until any cancellation of the scheme's registration in accordance with regulation 18.
- (6) The further information shall, if it does not accompany the application, be provided not later than 15th April in the year of application.
- (7) Any information provided shall be as accurate as reasonably possible.

Conditions of registration of a scheme

- 15.** Registration of a scheme shall be subject to the following conditions—
- (a) that the operator of the scheme will comply with the obligation set out in regulation 12(1);
 - (b) that the operator of the scheme will provide any information reasonably requested by the Department with regard to the obligation referred to in paragraph (a) above;
 - (c) that the operator of the scheme will 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 will be accompanied by the additional fee calculated as provided in regulation 16(6);
 - (d) that the operator of the scheme will 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 material change in the information provided in accordance with regulation 14(3)(b);
 - (iii) any material change in the further information provided in accordance with regulation 14(3)(c);
 - (iv) any change in the operator stated under regulation 14(3)(h),within 28 days of the occurrence of any such change;

- (e) that the operator of the scheme will provide records and returns to the Department as required by regulation 22;
- (f) that the operator of the scheme will comply with the operational plan submitted under regulation 14(3)(f) or, if a revised plan has been submitted under paragraph (g) below, with the most recent version so submitted; and
- (g) that the operator of the scheme will, on or before 31st January in a relevant year, provide to the Department a revised version of the operational plan for the scheme that complies with Part III of Schedule 3.

Forms and fees for registration of a scheme

16.—(1) The Department shall provide the form referred to in regulation 14(3)(c) free of charge to any person requesting one.

(2) Subject to paragraphs (3), (4), (5) and (6) below, the fee which is to be charged by the Department on an application for registration of a scheme shall be—

- (a) £776 for a scheme member who had a turnover of more than £5,000,000 in the previous year;
- (b) £776 for a scheme member who had a turnover of between £2,000,000 and £5,000,000 in the previous year and has chosen not to follow the allocation method;
- (c) £564 for a scheme member who had a turnover of between £2,000,000 and £5,000,000 in the previous year and has elected to follow the allocation method.

(3) In the case of a scheme that has been granted conditional approval under regulation 13(4) the fee to be charged by the Department in addition to the fee in paragraph (2) above is—

- (a) £1,540 where the operator of the scheme has an obligation to recover up to and including 24,999 tonnes of packaging waste;
- (b) £2,310 where the operator of the scheme has an obligation to recover between 25,000 and 249,999 tonnes of packaging waste; or
- (c) £3,080 where the operator of the scheme has an obligation to recover over 250,000 tonnes of packaging waste.

(4) In the case of a group of companies that is on the date of the application a member of a scheme the fee to be charged by the Department is—

- (a) £564 where the holding company is a small producer who has elected to follow the allocation method and the group of companies had a turnover of £5,000,000 or less in the previous year; and
 - (i) £180 for each of the first 4 subsidiaries;
 - (ii) £90 for each of the 5th to 20th subsidiaries inclusive; and
 - (iii) £45 for each of the 21st and subsequent subsidiaries.

(5) In the case where an application is required to be resubmitted as a result of a failure to meet the requirements of regulation 14(3)(c) or 14(6), the fee to be charged by the Department in addition to any fee payable under this regulation is £220 for each member of that scheme in respect of whom the information resubmitted was different from that contained in the original application.

(6) The additional fee which is to be paid by an operator of a scheme in compliance with the condition referred to in paragraph (c) in regulation 15 is £110 for each member who is submitting data late.

Refusal to register a scheme

17. Any decision the Department under regulation 14 to refuse to register a scheme shall be notified, within 28 days of the decision, to 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 6 of these Regulations; and
- (c) a statement as to the offence specified in regulation 40(1)(a).

Cancellation of registration of a scheme

18.—(1) Subject to the right of appeal under Part 6 of these Regulations, the Department may cancel the registration with it of a scheme where it appears that—

- (a) the operator of the scheme is in breach of any of the conditions referred to in regulation 15; or
- (b) the operator knowingly or recklessly supplied false information in connection with the application for registration, or with compliance with the conditions referred to in regulation 15.

(2) The Department shall cancel the registration with it of a scheme if the Secretary of State withdraws approval of the scheme.

(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) above to cancel the registration;
- (b) the reasons for the decision;
- (c) where the decision is made under paragraph (1) above, the right of appeal under Part VI of these Regulations; and
- (d) the date when cancellation will take effect, not being earlier than—
 - (i) in the case of cancellation under paragraph (1) above, the expiration of the time limit for an appeal against the notice provided for in paragraph 2 of Schedule 6; or
 - (ii) in the case of cancellation under paragraph (2) above, 5 days from the date of the notice.

Information provided to scheme operators

19.—(1) This regulation applies to information which—

- (a) is provided to the operator of a scheme by a producer who is a member of that scheme at the time the information is provided; and
- (b) is information which the operator of the scheme will need to rely upon for the purposes of his application for registration of a scheme under regulation 14.

(2) A producer who provides to the operator of the scheme information to which this regulation applies shall—

- (a) provide that information on a form supplied for the purpose by the Department;
- (b) ensure that the form is signed by the approved person; and
- (c) ensure that the information is as accurate as reasonably possible.

PART 4

RECORDS, RETURNS AND CERTIFICATE

Producers – records and returns

- 20.**—(1) A producer who is subject to the certifying obligation shall—
- (a) maintain, and retain for at least 4 years after the record is made, records of the information referred to in paragraph (2) below for a small producer who has elected to follow the allocation method or paragraph (3) for any other producer; and
 - (b) at the same time as he furnishes a certificate of compliance to the Department in accordance with regulation 21, make a return to the Department of that information.
- (2) The information to be recorded by a small producer who has elected to follow the allocation method is—
- (a) his turnover;
 - (b) the recycling allocation for the relevant year as provided in paragraph 8 of Schedule 2;
 - (c) the amount, in tonnes, of packaging waste which is to be recycled under the allocation method set out in paragraph 7 of Schedule 2; and
 - (d) the aggregate tonnage of packaging materials that have been received by an accredited reprocessor for recycling and that have been exported by an accredited exporter for recycling as set out in the PRNs or PERNs acquired.
- (3) The information to be recorded by any other producer is—
- (a) the amount in tonnes, to the nearest tonne, of packaging waste delivered respectively for recovery and for recycling to a reprocessor or exporter, by or on behalf of the producer as set out in the PRNs or PERNs acquired; and
 - (b) the total number of tonnes of each material which is the subject of the producer's recovery and recycling obligations.
- (4) The records maintained under paragraph (1)(a) above by a producer shall be made available, on demand, to the Department.

Producers – certifying obligation

- 21.**—(1) Subject to regulations 5, 37 and 39 and Schedules 9 and 11, 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 his 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 4 shall apply as regards the information to be contained in a certificate of compliance.

Schemes – records and returns

- 22.**—(1) The operator of a scheme shall maintain, and retain for at least 4 years after they are made, records of the information referred to in paragraph (2) below, and make returns of that information to the Department on or before 31st January in the year following the year to which the information relates.
- (2) For each year the information is—

- (a) the amount in tonnes, to the nearest tonne, of packaging waste delivered respectively for recovery and for recycling, to a reprocessor or exporter through the scheme as set out in the PRNs or PERNs acquired;
 - (b) the information specified in regulation 14(3)(c) and the revised operational plan referred to in paragraph (g) of regulation 15, together with any changes notified in accordance with the condition specified in regulation 15(d)(iii); and
 - (c) the total number of tonnes of each material which is the subject of an obligation to recover and recycle for which the operator of the scheme is responsible under regulation 12(1).
- (3) The records maintained under paragraph (1) above shall be made available, on demand, to the Department.
- (4) The operator of a scheme shall, by 31st January in the year following the year to which the information relates, send a statement to the Department confirming whether the operator has complied with the requirements of regulation 12(1) for the year of registration.

PART 5

ACCREDITATION OF REPROCESSORS AND EXPORTERS

Requirement for accreditation

23.—(1) A person shall not issue a PRN unless he is at the time of the issue an accredited reprocessor or, where the PRN is of the type referred to in paragraph (6) of regulation 4 or paragraph (4) of regulation 12 was accredited at the time the material was received, and the PRN relates to packaging waste received by him for reprocessing on the site for which he is accredited.

(2) A person shall not issue a PERN unless he is at the time of the issue an accredited exporter or, where the PERN is of the type referred to in paragraph (6) of regulation 4 or paragraph (4) of regulation 12 was accredited at the time the material was received, and the PERN relates to packaging waste exported by him for reprocessing to a specified reprocessing site or sites for which he is accredited under regulation 24.

Application for accreditation

24.—(1) An application for accreditation shall be made to the Department—

- (a) in the case of a person wishing to be accredited—
 - (i) as a reprocessor in respect of each site for which he wishes to be accredited and stating which of the applicable recovery operations which recyclable materials he wishes that accreditation to cover; or
 - (ii) as an exporter, in respect of the export of one or more recyclable materials for reprocessing at one or more specified reprocessing sites outside the United Kingdom;
- (b) on a form made available by the Department and including all the information specified on that form, being information which the Department reasonably requires in order to determine the application;
- (c) accompanied by a business plan containing information on how the funds acquired from the issue of PRNs or PERNs are to be applied including information in respect of the following matters—
 - (i) the development of capacity for the collection and reprocessing of packaging waste and the development of new markets for materials or goods which have been made from recycled packaging waste; and

- (ii) arrangements for the collection and sorting of packaging waste; and
- (iii) the strategy, including communications, to be adopted in order to achieve the matters described in paragraphs (i) and (ii) above; and
- (d) accompanied by a fee of—
 - (i) in the case of an applicant who undertakes to issue PRNs or PERNs for not more than 400 tonnes of packaging waste in the year to which the application relates, £505; or
 - (ii) in any other case, £2616.
- (2) An application for accreditation as—
 - (a) A reprocessor to issue PRNs for the receipt of one or more specified recyclable materials at a specified site and for reprocessing in one or more specified recovery operations or a combination of such operations; or
 - (b) An exporter, to issue PERNs for the export of one or more specified recyclable materials for reprocessing in one or more recovery operations at a specified reprocessing site or sites outside the United Kingdom, or a combination of such operations,

shall be granted where the Department is satisfied as to the matters set out in paragraph (3) below or, in any other case, shall be refused.

- (3) The matters referred to in paragraph (2) are—
 - (a) the contents of the business plan referred to in paragraph (1)(c) above;
 - (b) where the application is made for accreditation as an exporter and relates to one or more reprocessing sites outside the European Community, that the requirements of Article 6(2) of the Packaging Waste Directive have been met in respect of each site;
 - (c) that the application has been duly made in accordance with paragraph (1) above; and
 - (d) the reprocessor or exporter will comply with the conditions specified in and under Schedule 5.

(4) The Department shall notify the applicant in writing of its decision under paragraph (2) no later than 12 weeks after the application was made and, if the decision is a decision to refuse accreditation, such notification shall include reasons for the decision and a statement of the right of appeal under regulation 27(3)(a).

(5) Subject to regulation 26, where accreditation is granted under paragraph (2), it shall take effect—

- (a) where the application is made in the preceding year to that in which the person wishes to be accredited—
 - (i) from 1st January where the decision to accredit was made before that date; and
 - (ii) in all other cases, from the date of the decision,

and shall remain in force until 31st December in the year for which the person has applied to be accredited;

- (b) where the application is made during the year in which the person wishes to be accredited, from the date of the decision, and shall remain in force until 31st December in that year.

(6) Where a reprocessor or exporter who has given the undertaking and paid the fee specified in paragraph (1)(d)(i) subsequently breaches that undertaking, he shall from the date of that breach be liable to pay to the Department the sum of £2,111 (being the balance of the fee which would have been payable under paragraph (1)(d)(ii) had the undertaking not been given).

(7) An application to extend the accreditation of an exporter to include a further reprocessing site or sites to which he wants to export packaging waste for reprocessing shall be made to the Department on the form specified in paragraph (1) and be accompanied by a fee of £110.

(8) An application to extend an exporters accreditation to include a further reprocessing site or sites located within the European Community shall be granted by the Department where it is satisfied that the application has been made in accordance with paragraph (7) above, and in any other case be refused.

(9) An application to extend an exporter's accreditation to include a further reprocessing site or sites located outside the European Community shall be granted by the Department where it is satisfied that each of those sites meets the requirements of Article 6(2) of the Packaging Waste Directive and is satisfied that the application was made in accordance with paragraph (7) above, and in any other case be refused.

Conditions of accreditation

25. An accredited reprocessor or exporter shall comply with the conditions specified in and under Schedule 5.

Suspension and cancellation of accreditation

26.—(1) The Department may suspend or cancel the accreditation of a reprocessor or exporter where it appears to it that—

- (a) the person who is accredited has failed to comply with any of the conditions specified in or under Schedule 5; or
- (b) the person who is accredited has knowingly or recklessly supplied false information in his application for accreditation made under regulation 24 or in connection with compliance with any of the conditions specified in or under Schedule 5.

(2) Where the Department is no longer satisfied that the requirements of Article 6(2) of the Packaging Waste Directive are met in relation to one or more reprocessing sites located outside the European Community, the Department shall cancel the accreditation of an exporter to the extent that it relates to that site or those sites.

(3) Where the Department suspends or cancels an accreditation under paragraph (1) or cancels the accreditation of an exporter to the extent that it relates to a site or sites under paragraph (2), it shall serve on the reprocessor or exporter concerned written notice of—

- (a) its decision to cancel or suspend (as the case may be) the accreditation;
- (b) the reasons for the decision
- (c) the right of appeal under Part 6;
- (d) the date when the cancellation or suspension will take effect, not being earlier than the date of receipt of the notice; and
- (e) in the case of a suspension, the period of the suspension or any steps which are required to be taken in order to bring the suspension to an end.

(4) The accreditation of a reprocessor or exporter shall be deemed to be cancelled—

- (a) On the date on which either of the following occurs—
 - (i) the person who is accredited ceases to be the holder of a relevant authorisation; or
 - (ii) the person who is accredited ceases to be a reprocessor or exporter; or
- (b) in a case where the person who is accredited requests that his accreditation should be cancelled, with effect from the date for cancellation specified by that person.

PART 6

APPEALS

Right of appeal

27.—(1) A producer may appeal to the Planning Appeals Commission against a decision of the Department—

- (a) to refuse to grant an application for registration under regulation 7(6); or
- (b) to cancel registration under regulation 11(1).

(2) The operator of a scheme may appeal to the Planning Appeals Commission against a decision of the Department—

- (a) to refuse to grant an application for registration under regulation 14(4); or
- (b) to cancel registration under regulation 18(1).

(3) A reprocessor or exporter may appeal to the Planning Appeals Committee against a decision of the Department—

- (a) to refuse accreditation under regulation 24;
- (b) to specify a condition pursuant to paragraph 1(q)(iii) of Schedule 5; or
- (c) to cancel or suspend accreditation under regulation 26.

Procedure on appeals

28.—(1) Where an appeal is made to the Planning Appeals Committee it may—

- (a) appoint any person to exercise on its behalf, with or without payment, the function of determining the appeal; or
- (b) refer any matter involved in the appeal to such person as the Department may appoint for the purpose, with or without payment.

(2) If the appellant so requests, or the Department so decides, the appeal shall be or continue in the form of a hearing.

(3) Schedule 6 shall have effect with respect to the procedures on any such appeal.

Determination of appeals

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

Status pending appeal

30. In a case falling within regulation 11(1) or 18(1), the decision appealed against shall not take effect until the appeal is disposed of; and if the appeal is dismissed or withdrawn the decision shall take effect from the end of the day on which the appeal is dismissed or withdrawn.

PART 7

POWERS AND DUTIES OF THE DEPARTMENT

Monitoring

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

- (a) compliance with their producer responsibility obligations by persons who are or may be producers;
- (b) compliance by operators of schemes with the obligations referred to in regulation 12(1);
- (c) compliance by operators of schemes with the conditions referred to in regulation 13(4);
- (d) compliance by persons who are accredited reprocessors or exporters with the conditions specified in or under Schedule 5; and
- (e) compliance by producers and operators of schemes with operational plans submitted under these Regulations.

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

- (a) the registration of producers as required by regulation 6;
- (b) the accuracy of the information provided by producers pursuant to regulations 7 and 8;
- (c) the accuracy of the returns furnished to the Department by a producer under regulation 20;
- (d) the accuracy of the information contained in the certificates of compliance furnished to the Department under regulation 21;
- (e) the accuracy of the information provided by an operator of a scheme pursuant to regulations 14 and 15; and
- (f) the accuracy of the returns provided to the Department by an operator of a scheme under regulations 13(5)(c) and 22.

(3) For the purposes of the discharge of its functions under these Regulations, the Department may, by notice in writing served on—

- (a) any person who has, or who the Department has reason to believe has, producer responsibility obligations under regulation 4;
- (b) in relation to any person who is a member of a registered scheme, the operator of that scheme;
- (c) any person who is, or who the Department has reason to believe is, issuing PERNs or PRNs;
- (d) any person who is engaged in trading in, or brokerage in relation to, PERNs or PRNs; or
- (e) any accredited reprocessor or exporter,

require him to maintain such records, and furnish such returns to the Department, of such information specified in the notice as the Department reasonably considers it needs for those purposes, in such form and within such period following service of the notice, or at such time, as is so specified.

Monitoring – publication

32. The Department shall provide in relation to each year, by 1st December in the preceding year, a report setting out its proposed monitoring plan including the following details of the monitoring to be carried out under regulation 31—

- (a) the Department's policy in relation to the monitoring it is required to carry out under regulation 31; and
- (b) an indication of the minimum numbers of persons which it proposes to monitor in the course of that year.

Public register

33.—(1) The Department shall maintain and make available in accordance with this regulation a register relating to—

- (a) the producers and schemes registered with it in accordance with Part 3; and
- (b) the reprocessors and exporters accredited by it in accordance with Part 5,

and containing the relevant information prescribed in Schedule 7.

(2) The Department shall—

- (a) secure that the register is open for inspection at its principal office by members of the public free of charge at all reasonable working 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 within 5 days of receipt of the information 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 4 years have elapsed from that later information being entered in the register.

Approval of persons to issue certificates of compliance

34. For the purposes of issuing certificates of compliance and signing the form referred to in regulation 7(4)(c) or 19(2) (as the case may be) 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 registered in Northern Ireland, a director or company secretary of that company; or
- (d) where the producer is an unincorporated body or does not have a registered office in Northern Ireland, an individual who has control or management of the body.

Entry and inspection

35.—(1) An authorised person may exercise the powers referred to in paragraph (2) below.

(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; delete
 - (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 delete 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 40;
 - (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 20, 22 and 25, 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 authorised person 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 “authorised person” means a person who is authorised in writing by the Department for the purposes of its functions under these Regulations and “warrant” means a warrant under the provisions set out in Schedule 8 as applied by paragraph (4).

Provision of information to the Department

36.—(1) If in respect in the relevant year the total figure provided to the Department by the operator of the scheme under regulation 22(2)(a) is less than the total figure under regulation 22(2)(c) then it shall appear to the Department that the operator of a scheme has not met his recovery and recycling obligations and paragraph (2) shall apply.

(2) Where, in accordance with paragraph (1) above, it appears to the Department that the operator of a scheme has not met his recovery or recycling obligations in relation to the scheme in a relevant year the Department shall notify the operator of that fact.

PART 8

GROUPS OF COMPANIES, PUB OPERATING BUSINESSES AND LICENSORS AND MID-YEAR CHANGES

Packaging handled by groups of companies

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

Packaging handled by licensors and pub operating businesses

38.—(1) Where in the relevant year and in the preceding year a person is a licensor, the provisions of Schedule 10 shall apply to determine whether that person has producer responsibility obligations in that capacity.

(2) Where in the relevant year and in the preceding year a person is a pub operating business, the provisions of Schedule 10 shall apply to determine whether that person has producer responsibility obligations in that capacity.

(3) For the purposes of this regulation and Schedule 10 a person is a licensor where he is a party to a licence agreement in or under which he grants a licence to use a trade mark to another.

(4) For the purposes of this regulation and Schedule 10 a person is a pub operating business where—

- (a) he is a party to a pub operating agreement in or under which he grants a lease or tenancy of premises to another; and
- (b) the premises to which the pub operating agreement relates are used by the tenant in order to carry on the licensable activity of—
 - (i) selling intoxicating liquor by retail for consumption in, or both in or off the premises;

or

(ii) the supply of intoxicating liquor by or on behalf of a club, or to the order of, a member of the club or both, for consumption on the premises or both on and off the premises, and the tenant holds a licence in respect of those premises.

(5) In the definition of pub operating business—

- (i) “intoxicating liquor” has the same meaning as in Article 2(2) of the Licensing (Northern Ireland) Order 1996⁽¹⁹⁾;
- (ii) “licence” has the same meaning as in Article 2(2) of the Licensing (Northern Ireland) Order 1996 and licensed activity shall be construed accordingly;
- (iii) “supply of intoxicating liquor” shall be construed in accordance with Registration of Clubs (Northern Ireland) Order 1996⁽²⁰⁾;
- (iv) “selling by retail” in relation to any intoxicating liquor shall be construed in accordance with the Licensing (Northern Ireland) Order 1996 has the same meaning as in no definition in Licensing (NI) Order for this.

(6) For the purposes of this regulation and Schedule 9—

“licence agreement” means an agreement or number of related agreements in or under which the licensor grants the licensee a licence that allows the licensee to use a trade mark as the name under which the licensee sells from premises goods that are associated with that trade mark, and includes an obligation (whether expressed as a positive or negative obligation) on the licensee that relates to the presentation of those premises;

“licensee” means the party to a licence agreement to whom a licence to use a trade mark is granted;

“premises” means any sales outlet on which packaging is handled and includes any land, vehicle, vessel, mobile plant and stall;

“pub operating agreement” means an agreement or number of related agreements in or under which one person (the pub operating business) grants a tenancy or lease of premises to another person (the tenant) that includes an obligation (whether expressed as a positive or as a negative obligation) on the tenant to purchase some or all of the alcohol or alcoholic liquor (as the case may be), to be sold or supplied on or from the premises, from the pub operating business or from a person or persons nominated or authorised by or on behalf of that business;

“tenant” means the party to a pub operating agreement to whom the lease or tenancy of premises is granted; and

“trade mark” has the same meaning as in section 1 of the Trade Marks Act 1994⁽²¹⁾.

Mid-year changes

39. The provisions of Schedule 11 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 changes in membership of a scheme or group of companies, or other event affecting a producer in the relevant year.

⁽¹⁹⁾ S.I. 1996/3158 (N.I.22)

⁽²⁰⁾ S.I. 1996/3159 (N.I.23)

⁽²¹⁾ 1994 c. 26

PART 9 OFFENCES

Offences and penalties

40.—(1) A producer who contravenes a requirement of—

- (a) subject to paragraph (2) below, regulation 4(4)(a);
- (b) regulation 4(4)(b); or
- (c) regulation 4(4)(c),

is guilty of an offence.

(2) A producer is not guilty of an offence under paragraph (1)(a) above in respect of any period during which, under regulation 7(7), he is treated as having been registered.

(3) An operator of a scheme who fails to comply with his recovery and recycling obligations in contravention of regulation 12(1) is guilty of an offence.

(4) A person who contravenes a requirement of regulation 23 or who is in breach of either of the conditions specified in paragraph 1(a) or 1(d) of Schedule 5 is guilty of an offence.

(5) A person who furnishes any information to the Department in connection with its functions under these Regulations or furnishes information to which regulation 19 applies to an operator of a scheme shall be guilty of an offence if, in furnishing the information, he—

- (a) knows the information to be false or misleading in a material particular; or
- (b) furnishes such information recklessly and it is false or misleading in a material particular.

(6) A person who fails without reasonable excuse to comply with any requirement imposed in a notice under regulation 31(3) shall be guilty of an offence.

(7) A person who intentionally delays or obstructs a person authorised by the Department in the exercise of powers referred to in regulation 35 is guilty of an offence.

(8) Where in accordance with Schedule 9 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) of Schedule 9; or
- (b) it does not furnish a certificate of compliance in accordance with paragraph 5(d) of Schedule 9.

(9) A person guilty of an offence under any of paragraphs (1) to (8) above shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

PART 10 REVOCATION AND TRANSITIONAL PROVISION

Revocation and transitional provision

41.—(1) The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2006 (a) are revoked.

(2) Any step taken before commencement of these Regulations which has effect under any provision of the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2006 shall be treated on or after commencement as having effect under any equivalent provision of these Regulations.

(3) Where the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2006 specified a time period and part of that period had elapsed under those Regulations before revocation of those Regulations, that part of the period shall be treated on commencement as having elapsed under the equivalent provision of these Regulations.

Sealed with the Official Seal of the Department of the Environment on 23rd March 2007

L.S.

Wesley Shannon
A senior officer of the Department of the
Environment