

2010 No. 396

ENVIRONMENTAL PROTECTION

**The Producer Responsibility Obligations (Packaging Waste)
(Amendment) Regulations (Northern Ireland) 2010**

Made - - - - - *2nd December 2010*

Coming into operation - - - - - *1st January 2011*

The Department of the Environment makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and Article 3(1) of the Producer Responsibility Obligations (Northern Ireland) Order 1998(b).

These Regulations are made for the implementation of Article 6(1) of Council Directive 94/62/EC on packaging and packaging waste(c).

The Department of the Environment was designated(d) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the environment.

The Department makes the following Regulations—

- (a) after consultation in accordance with Article 3(2) of the Producer Responsibility Obligations (Northern Ireland) Order 1998;
- (b) having regard to the matters specified in Article 3(6) as required by Article 3(5) of that Order (subject to the modifications required through the exercise of the powers in Article 3(4); and
- (c) in accordance with the duty in Article 3(7) of that Order.

Citation, commencement

1.—(1) These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations (Northern Ireland) 2010 and shall come into operation on 1st January 2011.

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

(a) 1972 c. 68
(b) S.I. 1998/1762 (N.I. 16)
(c) OJ No L 365, 31.12.1994, p 10, as amended by Directive 2004/12/EC of the European Parliament and of the Council (OJ No L 47, 18.2.2004, p 26)
(d) The Department was designated under the European Communities (Designation) Order 1996 under Article 2 and the Schedule (S.I. 2008/301)
(e) 1954 c. 33 (N.I.)

Amendment of the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007

2. The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 (a) are amended as follows.

Amendment of regulation 2 (interpretation and notices)

3. In regulation 2(2)—

- (a) for the definition of “approved person”, substitute—

““approved person” means the person for the time being approved under regulation 34 for the purpose of—

 - (a) issuing certificates of compliance under regulation 21 and signing the form referred to in regulation 7(4)(c), 7(4)(ca) or 19(2)(b) in relation to a particular producer; or
 - (b) signing the form referred to in regulation 14(3)(c) and the statement referred to in regulation 22(4) in relation to a particular operator of a scheme;”;
- (b) for the definition of “financial year”, substitute—

““financial year” in relation to a person—

 - (a) where the person is a company is determined as provided in section 390(1) to (3) of the Companies Act 2006; and
 - (b) in any other case has the meaning given in section 390(4) of the Companies Act 2006, but as if the reference there to an undertaking were a reference to that person;”;
- (c) after the definition of “financial year”, insert—

““marine installation” means any artificial island, installation or structure at sea, other than a vessel;”;
- (d) for the definition of “SIC code”, substitute—

““SIC code” means a code included in “Indexes to the UK Standard Industrial Classification of Economic Activities 2007” published by the Office for National Statistics in 2009;”
- (e) in the definition of “small producer”—
 - (i) omit “who satisfies the threshold tests in paragraph 3 of Schedule 1 but”; and
 - (ii) for “Article X of the Companies(NI) Order 1986”, substitute “section 441 of the Companies Act 2006”; and
- (f) for the definition of “turnover”, substitute—

““turnover” means, in relation to a person, their turnover as defined in section 539 of the Companies Act 2006 but as if the references to a company were references to that person;”.

Amendment of regulation 5 (producers and scheme membership)

4.—(1) Regulation 5 is renumbered as paragraph (1) of that regulation.

(2) After that paragraph, insert—

“(2) In order to be a member of a registered scheme, a producer must—

- (a) provide such information as the operator of the scheme requests for the purposes of meeting its producer responsibility obligations within a reasonable period of receiving such a request; and

(a) S.R. 2007/198 as amended by S.R. 2008/77 and S.R. 2008/373

- (b) pay any fee required for membership of the scheme.”.

Amendment of regulation 7 (application for producer registration)

5. In regulation 7—

(a) In paragraph (4)—

(i) for sub-paragraph (c), substitute—

“(c) 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 they belong to more than one class of producer, which of those classes constitutes their main activity as a producer; and
- (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;

(ca) other than in the case of a small producer who has elected to follow the allocation method under sub-paragraph (d) and, subject to paragraph (9), 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) in relation to each class of producer—

(aa) the amount of packaging waste which they are 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 they are required to recycle for each kind of recyclable material by virtue of paragraph 3(3) of Schedule 2;

(ii) the basis on which the amounts referred to in paragraph (i) were calculated; and

(iii) such other information as the Department reasonably requires in order to determine the application and as is specified on the form;”;

(ii) omit sub-paragraph (e);

(b) in paragraph 6—

(i) for sub-paragraph (a)(i), substitute—

“(i) paragraphs (4)(a) and (b) and (11);”;

(ii) in sub-paragraph (a)(ii), after “(4)(c),” insert “(ca),”;

(iii) in sub-paragraph (b), after “(4)(c),” insert “or (ca)”;

(c) in paragraph (9), after “(4)(c),” insert “or (ca)”;

(d) after paragraph (10), insert—

“(11) The applicable fee for producer registration referred to in regulation 9 must be received by the Department on or before the relevant date.”.

Amendment of regulation 8 (conditions of registration of a producer)

6.—(1) In regulation 8(c)(iii), after “7(4)(c),” insert “7(4)(ca)”.

(2) In regulation 8(g) for “1st January”, substitute “31st January”.

Amendment of regulation 9 (forms and fees for producer registration)

7. In regulation 9(1), after “7(4)(c),” insert “or 7(4)(ca)”.

Amendment of regulation 12 (schemes: general provisions)

8. In regulation 12(4) for “PNR”, substitute “PRN”.

Amendment of regulation 13 (application for approval of a scheme)

9. In regulation 13—

- (a) in paragraph (5)(c), omit “, together with copies of the PRNs or PERNs or both”.
- (b) in paragraph (6)(c), for “for”, substitute “from”.

Amendment of regulation 14 (application for registration of a scheme)

10. In regulation 14—

- (a) in paragraph (1), for “7th April”, substitute “15th April”;
- (b) in paragraph (3)(c)—
 - (i) omit “subject to paragraph (6) below,”;
 - (ii) after “by the Department”, insert “and signed in accordance with the requirement in paragraph (3A)”;
 - (iii) at the end of paragraph (i), insert “and each class of producer to which each producer belongs”;
 - (iv) in paragraph (iv), for “paragraphs 4(c)(iv) and (v)”, substitute “paragraphs (4)(ca)(i) and (ii)”;
- (c) in paragraph (3)(e), before “be accompanied”, insert “except where a scheme is registered in respect of the previous year,”;
- (d) for paragraph (3)(f), substitute—
 - “(f) be accompanied—
 - (i) on a first application for registration, by an operational plan for the scheme complying with Part III of Schedule 3; and
 - (ii) on any subsequent application, by a revised version of that plan unless it has already been provided pursuant to paragraph (g) in regulation 15;”;
- (e) after paragraph (3), insert—
 - “(3A) The requirement mentioned in paragraph (3)(c) is that the form be signed by—
 - (a) the approved person; or
 - (b) in the case of a scheme that has not already been registered, anyone who is eligible to be an approved person under regulation 34(2).”;
- (f) in paragraph (4), for sub-paragraphs (c) and (d), substitute—
 - “(c) the Department is satisfied as to the contents of the operational plan provided as required by paragraph (3)(f);
 - (d) the scheme has been approved by the Department; and
 - (e) the scheme was either registered in the previous year or the scheme was approved by the Department no earlier than in the year previous to that in which the application for registration is made,”;
- (g) omit paragraph (6); and
- (h) after paragraph (7), insert—
 - “(8) Where an application for registration is refused on the grounds of failure to meet the requirements of paragraph (4)(e), the operator must make a new application for approval of the scheme in accordance with regulation 13 before making an application for registration of the scheme under this regulation.”.

Amendment of regulation 22 (schemes— records and returns)

11. In regulation 22(4), after “statement”, insert “signed by the approved person”.

Insertion of regulation 22A (notification of insolvency)

12. After regulation 22, insert —

“Notification of winding-up, receivership, administration, etc.

22A.—(1) This regulation applies to any person who is—

- (a) the operator of a scheme;
- (b) a producer; or
- (c) a reprocessor or an exporter accredited in accordance with Part 5 (accreditation of reproducers and exporters).

(2) A company or limited liability partnership to which this regulation applies shall inform the Department as soon as is practicable upon becoming aware that one or more relevant circumstances apply or are about to apply to them.

(3) The operator of a scheme must inform the Department as soon as is practicable upon becoming aware that any one or more of the relevant circumstances apply or are about to apply to the scheme it operates.

(4) For the purpose of this regulation the “relevant circumstances” are—

- (a) a winding-up order has been made or a resolution for voluntary winding-up has been passed;
- (b) a determination for a voluntary winding-up has been made;
- (c) a receiver or a manager of its undertaking has been duly appointed;
- (d) its undertaking has entered administration;
- (e) a voluntary arrangement proposed for the purposes of Part II of the Insolvency (Northern Ireland) Order 1989 has been approved under that Part of the Order.”.

Amendment of regulation 24 (application for accreditation)

13. In regulation 24—

- (a) in paragraph (1)(a)(i), after “operations”, insert “and”;
- (b) for paragraph (1)(c), substitute—
 - “(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) investment in infrastructure and the development of capacity for the collection, sorting, treatment and reprocessing of packaging waste;
 - (ii) funding provided to other persons involved in the collection of packaging waste;
 - (iii) reductions in the prices of, and the development of new markets for, materials or goods made from recycled packaging waste;
 - (iv) the costs of complying with obligations in these Regulations;
 - (v) funds retained for future investment;
 - (vi) the development of a communications strategy for consumers of packaging made from recyclable materials; and”;
- (c) at the end of paragraph (6), insert “within 28 days of the breach”; and
- (d) for paragraph (7), substitute—

“(7) An application to extend the accreditation of an exporter to include a further reprocessing site or sites to which they want 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—

- (a) £85 for the first form submitted as part of the application; and
- (b) £35 for each additional form submitted as part of the application.”.

Amendment of regulation 33 (public register)

14. In regulation 33(4), omit “and shall note the date on which the amendment is made”.

Amendment of regulation 34 (approval of persons to issue certificates of compliance)

15. For regulation 34, substitute—

“Approved persons

34.—(1) The Department may approve a person listed in paragraph (2) for the purposes of—

- (a) in relation to a producer, issuing certificates of compliance and signing the form referred to in regulation 7(4)(c) or (ca) or 19(2) (as the case may be);
- (b) in relation to the operator of a scheme, signing the form referred to in regulation 14(3)(c) or the statement referred to in regulation 22(4).

(2) A person listed is where the relevant person—

- (a) is an individual, that individual;
- (b) is a partnership, a partner;
- (c) is a company registered in Northern Ireland, a director or company secretary of that company;
- (d) is an unincorporated body, an individual who has control or management of that body; or
- (e) does not have a registered office in Northern Ireland, an individual who has control or management of the relevant person.

(3) For the purposes of paragraph (2), the “relevant person” means a producer or the operator of a scheme (as the case may be).”.

Amendment of regulation 35 (entry and inspection)

16. In regulation 35—

- (a) in paragraph (2)(e), delete “delete”.
- (b) in paragraph (2)(f)(i), delete “delete”.

Amendment of regulation 38 (packaging handled by licensors and pub operating businesses)

17. In regulation 38(5)(iv), delete “has the same meaning as in no definition in Licensing (NI) Order for this”.

Amendment of Schedule 1 (producers)

18.—(1) Schedule 1 is amended as follows.

- (2) In paragraph 1(2) omit “at the same time, and”.
- (3) In paragraph 4—

- (a) at the end of sub-paragraph (1), for “Article 250 of the Companies (Northern Ireland) Order 1986”, substitute “section 441 of the Companies Act 2006”; and
- (b) at the end of sub-paragraph (2)(b)(iii), insert “(with the exception of any packaging or packaging materials exported from the United Kingdom to a marine installation)”.

Amendment of Schedule 2 (recovery and recycling obligations)

19.—(1) Schedule 2 is amended as follows.

(2) In paragraph 3(1), for the definition of “P”, substitute—

““P” is the amount of packaging and packaging materials handled in the United Kingdom by the producer in the preceding year, calculated in tonnes to the nearest tonne by—

- (a) taking into account packaging, including reused transit 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) reused sales packaging or primary packaging as defined in paragraph 1(a) of Article 3 of the Packaging Waste Directive;
 - (ii) production residues from the production of packaging or packaging materials or from any other production process occurring before, during or after the producer handled the packaging or packaging materials;
 - (iii) 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 (with the exception of any packaging or packaging materials exported from the United Kingdom to a marine installation); and
 - (iv) reused transit packaging (with the exception of reused transit packaging imported into the United Kingdom);”.

(3) For paragraph 3(2), substitute—

“(2) The proportion of the packaging waste referred to in sub-paragraph (1) which is to be recovered by recycling, in relation to a class of producer to which the producer belongs in the years 2010 to 2012 is not less than 92% of the amount by tonnage of packaging waste represented by “Z” in sub-paragraph (1).”.

(4) For paragraph 5, substitute—

“5. The recovery target “X” for the years 2010 to 2012 is 74%.”.

(5) For Table 2 in paragraph 6, substitute—

“Table 2: Recycling targets

<i>Material</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Glass	81	81	81
Aluminium	40	40	40
Steel	69	71	71
Paper/Board	69.5	69.5	69.5
Plastic	29	32	32
Wood	22	22	22”

(6) For paragraph 8, substitute—

“8. The recycling allocation “B” for the years 2010 to 2012 is 29.”.

Amendment of Schedule 3 (information)

20. In Schedule 3, paragraph 12(h), for “15(f)”, substitute “12(l)”.

Amendment of Schedule 5 (conditions of accreditation)

21.—(1) Schedule 5 is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (g), for “15th February”, substitute “28th February”;

(b) omit sub-paragraphs (h), (j) and (l);

(c) for sub-paragraph (o), substitute—

“(o) a report shall be provided to the Department before 28th February in each year which—

(i) sets out all the information provided in the quarterly reports which relate to the whole of the previous year;

(ii) sets out the amount of revenue received in the previous year from the sale of PRNs or PERNs;

(iii) sets out what that amount has been spent on, including information on the matters set out in paragraphs (i) to (vi) of regulation 24(1)(c);

(iv) accounts for the whole of the amount of revenue provided under paragraph (ii);

(v) sets out and explains any deviation during the previous year from the business plan referred to in regulation 24(1)(c); and

(vi) is, where required by the Department, in the form it may require;”;

(d) omit sub-paragraph (p);

(e) for sub-paragraph (r), substitute—

“(r) a PERN may only be issued in respect of packaging waste that is exported in accordance with—

(i) Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste; and

(ii) Commission Regulation (EC) No 1418/2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply;

(s) where applicable, a reprocessor or exporter must comply with regulation 24(6).”.

(3) In paragraph 2—

(a) after sub-paragraph (b), omit “; and”; and

(b) omit sub-paragraph (c).

Amendment of Schedule 7 (public register)

22. In Schedule 7, paragraph 2(h), for “paragraphs 1(n), 1(o) and where required 1(p)”, substitute “paragraphs 1(n) and 1(o)”.

Amendment of Schedule 9 (groups of companies)

23. In Schedule 9—

- (a) in paragraphs 1(a), 3 and 4(b), “for Schedule 10”, substitute “Schedule 11”;
- (b) in paragraph 3, for “Article 4 of the Companies (Northern Ireland) Order 1986”, substitute “section 1159 of the Companies Act 2006”; and
- (c) in paragraph 5(b)(iii), for “regulations 7(4)(e) and 9(2)”, substitute “regulation 9(2)”.

Amendment of Schedule 11 (mid-year changes)

24. In Schedule 11—

- (a) in Part 2, paragraphs 4(a) and 5(b), for “Schedule 8”, substitute “Schedule 9”;
- (b) in Part 3, in paragraph 19(b), omit “and for this purpose the requirement in regulation 7(4)(e) shall not apply”.

Sealed with the Official Seal of the Department of the Environment on 2nd December 2010.



Denis McMahon
A senior officer of the Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 (S.I. 2007/198) (the “2007 Regulations”), which implement Article 6 of Council Directive 94/62/EC on packaging and packaging waste (OJ No L 365, 31.12.1994, p 10) as amended by Directive 2004/12/EC of the European Parliament and of the Council (OJ No L 47, 18.2.2004, p 26).

Regulation 3 amends definitions in regulation 2(2) of the 2007 Regulations. Regulation 4 amends regulation 5 of the 2007 Regulations to impose direct requirements in relation to the payment of fees and provision of information on producers who become members of registered schemes.

Regulation 5 amends regulation 7(4)(c) of the 2007 Regulations to remove parts of the exemption for small producers in relation to the information that must be provided to the Department each year. This also inserts a new regulation 7(4)(ca) to preserve parts of this exemption for small producers.

Regulation 9 amends regulation 14 of the 2007 Regulations to change when application for scheme registrations must be made and what information must accompany these applications.

Regulation 12 inserts a new regulation 22A into the 2007 Regulations to create an obligation on operators of schemes, producers and accredited reprocessors and exporters to provide information to the Department about circumstances including winding-up orders, the appointment of a receiver and entering administration.

Regulation 13 amends regulation 24 of the 2007 Regulations to change what must be included in business plans submitted as part of an application for accreditation by a reprocessor or exporter.

Regulation 15 changes who may be specified as an approved person for the purpose of issuing certificates of compliance and signing the specified forms.

Regulation 18 amends Schedule 1 to the 2007 Regulations. The amendments include changes to paragraph 1(2) regarding the allocation of producer obligations for those carrying out packer/filler and convertor obligations and a change to paragraph 4(2)(b)(iii) to remove packaging or packaging materials exported from the United Kingdom to a marine installation from the exclusion from the calculation of a producer’s recovery and recycling obligations.

Regulation 19 amends Schedule 2 to the 2007 Regulations. Amendments include a replacement of the definition used to determine the amount of packaging and packaging materials handled by producers for the purpose of calculating their recovery targets; recovery, recycling and small producer recycling allocation targets for the years between 2010 and 2012 are provided in amendments to paragraphs 5,6 and 8;

Regulation 21 amends Schedule 5 to the 2007 Regulations, including changes to the annual reports provided to the Department by accredited reprocessors and exporters and removing the requirement to provide a report from an independent auditor.

An impact assessment which shows the anticipated cost of compliance to businesses and the environmental benefits in respect of these Regulations may be obtained from the Producer Responsibility Unit, Zone 6D, Ergon House, Horseferry Road, London SW1P 2AL.

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