

---

STATUTORY INSTRUMENTS

---

**2003 No. 1941**

**The Packaging (Essential Requirements) Regulations 2003**

**PART I**

**PRELIMINARY**

**Citation, commencement and revocation**

1.—(1) These Regulations may be cited as the Packaging (Essential Requirements) Regulations 2003 and shall come into force on 25th August 2003.

(2) The Packaging (Essential Requirements) Regulations 1998(1) are hereby revoked.

**Interpretation**

2.—(1) In these Regulations—

- (a) “the Directive” means Directive 94/62/EC of the European Parliament and the Council on packaging and packaging waste(2);
- (b) “the 1987 Act” means the Consumer Protection Act 1987(3); and
- (c) except for the references to the European Communities in the definition of “the Commission” and in relation to the Official Journal, a reference to the Community includes a reference to the EEA, and a reference to a member State includes a reference to an EEA State: for this purpose—
  - (i) the “EEA” means the European Economic Area;
  - (ii) an “EEA State” means a State which is a Contracting Party to the EEA Agreement; and
  - (iii) the “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(4).

(2) In these Regulations—

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

“energy recovery” means the use of combustible packaging waste as a means to generate energy through direct incineration with or without other waste but with recovery of the heat;

“enforcement authority” shall be construed in accordance with regulation 9 and Schedule IV;

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

---

(1) S.I. 1998/1165.

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

(3) 1987 c. 43.

(4) The application of the Directive was extended to the EEA from 1st December 1995 by virtue of Decision No. 67/95 of the EEA Joint Committee O.J. No. L8/38 which inserted a reference to that Directive after point 6 in Chapter XVII of Annex II to the EEA Agreement.

“importer” means an importer of packaging which is packed or filled packaging into the United Kingdom;

“incidental presence” means the presence of a metal as an unintended ingredient of a packaging or packaging component;

“intentionally introduced” means the act of deliberately utilising a substance in the formulation of a packaging or a packaging component where its continued presence is desired in the final packaging or packaging component to provide a specific characteristic, appearance or quality; for the purpose of these Regulations, the use of recycled materials as a feedstock for the manufacture of new packaging materials where some portion of the recycled materials may contain amounts of regulated metals is not intentional introduction;

“organic recycling” means the aerobic (composting) or anaerobic (biomethanization) treatment, under controlled conditions and using micro-organisms, of the biodegradable parts of packaging waste, which produces stabilised organic residues or methane; for the purposes of these Regulations landfill shall not be considered a form of organic recycling;

“packaging” means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer, including non-returnable items used for the same purposes, but only where the products are—

- (a) sales packaging or primary packaging, that is to say packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;
- (b) grouped packaging or secondary packaging, that is to say packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale, and which can be removed from the product without affecting its characteristics; or
- (c) transport packaging or tertiary packaging, that is to say packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packagings in order to prevent physical handling and transport damage; for the purposes of these Regulations transport packaging does not include road, rail, ship and air containers;

“packaging component” means any part of packaging that can be separated by hand or by using simple physical means;

“packaging materials” means materials used in the manufacture of packaging and includes raw materials and processed materials prior to their conversion into packaging;

“packaging waste” means any packaging or packaging material covered by the definition of waste in Article 1 of the Waste Directive but not including production residues;

“packaging waste management” means the management of waste as defined in the Waste Directive;

“ppm” means parts per million by weight;

“product loops which are in a closed and controlled chain” means product loops in which products circulate with a controlled reuse and distribution system and in which the recycled material originates only from these entities in the chain so that the introduction of external material is the minimum which is technically feasible and from which these entities may only be removed in a specially authorised procedure so that return rates are maximised;

“recovery” means any of the applicable operations provided for in Annex II B of the Waste Directive;

“recycling” means the reprocessing in a production process of the waste materials for the original purpose or for other purposes including organic recycling but excluding energy recovery;

“regulated metals” means lead, cadmium, mercury or hexavalent chromium or a combination of two or more of the said metals, as the case may be;

“responsible person” means, in relation to packaging, the person who is—

- (a) responsible for packing or filling products into packaging, or
- (b) any person presenting himself as being so responsible by affixing to the packed or filled packaging his name, trade mark or other distinctive mark, or
- (c) the person who reconditions the packaging for reuse (except that reuse in itself shall not constitute reconditioning of the packaging), or
- (d) the importer; and
- (e) for the purposes of regulation 7(2) only includes the manufacturer or his authorised representative in the Community.

“reuse” means any operation by which packaging, which has been conceived and designed to accomplish within its life cycle a minimum number of trips or rotations, is refilled or used for the same purpose for which it was conceived, with or without the support of auxiliary products present on the market enabling the packaging to be refilled and reused packaging shall be construed accordingly; such reused packaging will become packaging waste when no longer subject to reuse; and

“Waste Directive” means Council Directive [75/442/EEC](#) on waste<sup>(5)</sup>.

## PART II

### APPLICATION

#### **Packaging**

3.—(1) Subject to regulation 4, these Regulations apply to any packaging.

(2) Nothing in these Regulations with regard to packaging shall affect the application of existing quality requirements for packaging, including those regarding safety, the protection of health and hygiene of the packed products, existing transport requirements or the provisions of Council Directive [91/689/EEC](#) on hazardous waste<sup>(6)</sup>.

#### **Excluded packaging**

4. These Regulations shall not apply to packaging which was—

(1) used for a given product prior to 31st December 1994; or

(2) manufactured on or before 31st December 1994, placed on the market in the Community on or before 31st December 1999 and which complies with any health and safety requirements or any other Act or enactment with which it would have been required to comply for it to be lawfully placed on the market in the United Kingdom on 31st December 1994.

---

<sup>(5)</sup> O.J. No. L194, 25.7.75, p. 39; Articles 1 to 12 and Annexes I and II B were amended by Directive [91/156/EEC](#), O.J. No. L78, 26.3.91, p. 32.

<sup>(6)</sup> O.J. No. L337, 31.12.91, p. 20.

## PART III

### GENERAL REQUIREMENTS

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

5.—(1) Subject to regulation 6, on or after the coming into force of these Regulations, no person who is a responsible person shall place on the market any packaging unless the essential requirements have been complied with in relation to it provided always that placing on the market for the purposes of this regulation shall not occur in respect of reused packaging.

(2) Packaging shall be taken to satisfy the essential requirements—

- (a) if it satisfies national standards which implement the relevant harmonised standards; or
- (b) where there are no relevant harmonised standards, if it satisfies national standards of which the texts are communicated to the Commission pursuant to Article 9(3) of the Directive and which, pursuant to that provision, are notified by the Commission to the member States as being deemed to comply with the essential requirements.

(3) In paragraph (2) above, “harmonised standards” shall mean the standards of which the reference number is published in the Official Journal of the European Communities in pursuance of Article 9(2)(a) of the Directive.

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

6.—(1) Subject to paragraphs (2) and (3) and regulation 7 below, no person who is a responsible person shall place on the market packaging if—

- (a) on or after 30th June 1998, the sum of the concentration levels of regulated metals either in the packaging or in any of its packaging components, exceeds 600 ppm;
- (b) on or after 30th June 1999, the sum of the concentration levels of regulated metals either in the packaging or in any of its packaging components, exceeds 250 ppm;
- (c) on or after 30th June 2001, the sum of the concentration levels of regulated metals either in the packaging or in any of its packaging components exceeds 100 ppm.

(2) Paragraph (1) above shall not apply to packaging which is made entirely of lead crystal glass as defined in Directive [69/493/EEC](#)(7).

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

- (a) on or before 4th March 2009, to plastic crates or plastic pallets used in product loops which are in a closed and controlled chain provided the requirements set out in Schedule II to these Regulations are complied with in relation to that packaging;
- (b) on or before 30th June 2006, to glass packaging provided the requirements set out in Schedule III to these Regulations are complied with in relation to that packaging.

#### **Requirement for technical documentation**

7.—(1) The responsible person shall—

- (a) at the request of the enforcement authority submit within twenty-eight days of the date of the request technical documentation or other information showing that the packaging complies with the essential requirements and the regulated metals concentration limits set out in regulation 6;

---

(7) O.J. No. L236, 29.12.69, p. 36; [S.I. 1973/1952](#) implements Council Directive No. [69/493/EEC](#) relating to crystal glass.

- (b) ensure that he retains the technical documentation or other information referred to in sub-paragraph (1) (a) above for a period of four years from the date that he places the packaging on the market.
- (2) The responsible person shall—
  - (a) submit a report as required under sub-paragraphs 2(a) and (b) of Schedule III to the enforcement authority;
  - (b) at the request of the enforcement authority, submit within twenty-eight days of the date of the request the annual declaration of conformity and other information set out in sub-paragraphs 2 (a) and (b) of Schedule II and sub-paragraph 2 (c) of Schedule III.

## PART IV ENFORCEMENT

### **Enforcement Authority**

8. Schedule IV shall have effect for the purposes of providing for the enforcement of these Regulations and for matters incidental thereto.

### **Offences**

9. Any person who—
- (a) contravenes or fails to comply with regulation 5 or 6; or
  - (b) fails to supply or retain technical documentation or other information as required by regulations 7(1) and (2);

shall be guilty of an offence.

### **Penalties**

- 10.—(1) A person guilty of an offence under regulation 9(a) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (2) A person guilty of an offence under regulation 9(b) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Defence of due diligence**

11.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 9, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against a person for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another; or
- (b) to reliance on information given by another;

the person shall not, without leave of the court, be entitled to rely on the defence unless, not later than 7 clear days before the hearing of the proceedings (or, in Scotland, the trial diet), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

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

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

**12.**—(1) Where the commission by any person of an offence under regulation 9 is due to an act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of any body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

*Stephen Timms,*  
Minister of State for Energy, E-Commerce and  
Postal Services,  
Department of Trade and Industry

28th July 2003