

2016 No.

ENVIRONMENTAL PROTECTION

The Packaging Waste Regulations (Northern Ireland) 2016

Made - - - -

Coming into operation -

The Department of Agriculture, Environment and Rural Affairs(a) has been designated(b) for the purposes of section 2(2) of the European Communities Act 1972(c) in respect of measures relating to the prevention, reduction and elimination of pollution caused by waste and in relation to the environment.

The Department of Agriculture, Environment and Rural Affairs in exercise of powers conferred on it by that section and by Articles 3, 4 and 5 of the Producer Responsibility Obligations (Northern Ireland) Order 1998(d) hereby makes the following Regulations.

In accordance with Article 3(2) of the Producer Responsibility Obligations (Northern Ireland) Order 1998, the Department has consulted with persons appearing to the Department to be representative of persons whose interests are, or likely are likely to be, substantially affected by the regulations.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Packaging Waste Regulations (Northern Ireland) 2016 and shall come into operation on xxx.

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

Interpretation

2. In these Regulations—

“the Department” means the Department of Agriculture, Environment and Rural Affairs(f);

(a) Formerly the Department of the Environment; see The Departments (Transfer of Functions) Order (Northern Ireland) 2016 S.I. 2016 No. 76
(b) S.I. 1992/2870 and S.I. 2008/301
(c) 1972 c.68
(d) S.I. 1998/1762 (N.I. 16) as relevantly amended by 2011 C.5(N.I.)
(e) 1954 c.33(NI)
(f) Formerly the Department of the Environment

“the Order” means the Producer Responsibility Obligations (Northern Ireland) Order 1998^(a).

“the Packaging Directive” means European Parliament and Council Directive 94/62/EC on Packaging and Packaging waste^(b);

“the Waste Directive” means Directive 2008/98/EC of the European Parliament and the Council on Waste^(c), as amended by Commission Directive (EU) 2015/1172^(d);

“amount” in relation to an amount in tonnes, other than in “rounded amount”, means a fraction or whole amount;

“approved person” means the person approved in accordance with regulation 37;

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

“holding company” has the meaning given in section 1159 of the Companies Act 2006^(e);

“obligation year” means—

- (a) in the case of schemes, a year in which the scheme is registered in accordance with regulation 19(1);
- (b) in the case of those with obligations in accordance with—
 - (i) Schedule 8 (Pub businesses with small tenant obligations), the year specified in paragraph 1(2)(a) of that Schedule;
 - (ii) Schedule 6 (Groups of companies), the year specified in paragraph 1(a) of that Schedule;
 - (iii) Schedule 7 (Franchisors with small franchisee obligations), the year specified in paragraph 1(2)(a) of that Schedule;
- (c) otherwise the year in which the person is a producer;

“packaging” has the meaning given to it in Article 3(1) of the Packaging 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 in Article 3(2) of the Packaging 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^(f);

“PERN” means a packaging export recovery note as described in regulation 26(3)(b);

“PRN” means a packaging recovery note as described in regulations 26(3)(a);

“producer” means a person falling within one of the classes of producer in accordance with paragraph 1 of Schedule 1 (Classes of producer);

“producer amount test” means the test in paragraph 2(1)(b) of Schedule 1;

“producer class” means a class of producer in paragraph 1(b) of Schedule 1;

“producer threshold test” means the test in paragraph 2 of Schedule 1;

“producer turnover test” means the test in paragraph 2(1)(a) of Schedule 1;

“producer obligations” means the obligations in regulations 3 to 7;

“producer using the allocation method” means a producer which has elected to use the calculation method in accordance with paragraph 12 of Schedule 3 (Amounts and processes);

“producer registration deadline” means the date specified in regulation 3(2);

“recovery” means any operation the principal result of which is the waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a

(a) 199 No. 1762 (N.I. 16)

(b) OJ No. L 365, 31.12.94, p.10, as last amended by Directive (EU) 2015/720 (OJ No. L 115, 6.5.2015. p.11)

(c) OJ No. L.312, 22.11.08, p.3

(d) OJ No. L.194/13, 11.7.2015

(e) 2006 c.46

(f) 1890 c.39. Section 1 was amended by the Statute Law (Repeals) Act 1998 (c.43) and by S.I. 2009/1941.

particular function, or waste being prepared for that function, in the plant or in the wider economy. Annex II to Directive 2008/98/EC of the European Parliament and the Council on waste, as amended by Commission Directive (EU) 2015/1127, sets out a non-exhaustive list of recovery operations;

“recovery and recycling obligations” means—

(a) in the case of operators of registered schemes, the obligation in regulation 14(a);

(b) otherwise the obligations in regulation 4;

“recyclable material” means glass, aluminium, steel, paper/board, plastic or 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 in Article 3(7) of the Packaging Directive;

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

“rounded” in relation to an amount in tonnes, means—

(a) rounded up to the nearest whole tonne where the part tonne is 0.5 or more; or

(b) rounded down to the nearest whole tonne where the part tonne is less than 0.5;

“scheme” means an arrangement for fulfilling obligations on behalf of producers in accordance with regulation 14;

“subsidiary” has the meaning given in section 1159 of the Companies Act 2006;

“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;

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

PART 2

Producers’ obligations

Obligation to be registered

3.—(1) A producer must register with the Department in the obligation year.

(2) An application for registration must be made—

(a) on or before the 7th of April of the obligation year; or

(b) where an event in paragraph (3) occurs on or after 12th March in the obligation year, within a period of 28 days beginning with the date on which the event occurs.

(3) The events are—

(a) the applicant becomes a producer in respect of the year;

(b) an application to register made before the 7th April in the year is refused;

(c) the application for registration of a scheme of which the applicant is a member is refused;

(d) the registration of a scheme of which the applicant is a member is cancelled; or

(e) the applicant’s membership of a scheme is discontinued.

(4) Schedule 2 (Producer registration applications) has effect.

Recovery and recycling obligations

4.—(1) A producer must in the obligation year secure the recovery and recycling of amounts of packaging waste in accordance with Schedule 3 (Amounts and processes).

(2) A producer may only demonstrate compliance with that obligation by acquiring evidence in accordance with regulation 26.

Obligation to certify

5.—(1) A producer must furnish a document to the Department certifying compliance with its recovery and recycling obligations in respect of the obligation year.

(2) The certificate must be furnished on or before 31st January in the year immediately following the obligation year.

(3) Schedule 4 (Information in certificate of compliance) has effect.

Obligation to keep records

6.—(1) A producer must keep a record of information in respect of the obligation year.

(2) The record must be furnished to the Department at the same time as the certificate referred to in regulation 5(2).

(3) The record must be kept for a period of four years beginning with the date it is made.

(4) A copy of the record must be made available to the Department on demand.

(5) Schedule 5 (Information in producer record) has effect.

Obligation to provide information to consumers

7. If a producer's main activity is that of a seller, it must provide information throughout the obligation year to consumers of the goods sold about—

- (a) the return, collection and recovery systems available to them;
- (b) its role in contributing to the reuse, recovery and recycling of packaging and packaging waste;
- (c) the meaning of related markings on packaging that is placed on the market which relates to the producer's recovery and recycling obligations; and
- (d) the chapter dealing with the management of packaging and packaging waste in any strategy prepared in accordance with Article 18 of the Waste and Contaminated Land (Northern Ireland) Order 1997(a).

Special cases

8. The following Schedules have effect—

- (a) Schedule 6 (Groups of companies);
- (b) Schedule 7 (Franchisors with small franchisee obligations); and
- (c) Schedule 8 (Pub businesses with small tenant obligations).

Exclusions

9.—(1) This part does not apply to the following in an obligation year—

- (a) a charity, within the meaning of paragraph 1 of Schedule 6 to the Finance Act 2010(b);
- (b) a producer which is a member throughout the year of a registered scheme; or
- (c) a producer which becomes a member of a registered scheme after 1st January of the year, save that such a producer must comply with the obligations in regulations 3, 6 and 7 for the period of the year during which the producer is not a member of the scheme.

(2) For the purposes of paragraph (1)(b) and (c), a member of a scheme is excluded only where any information requested by the scheme, for the purposes of meeting its obligations, is given by

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

(b) 2010 c.13 paragraph 1 was last amended by the Finance Act 2015 (c.32)

the member within a reasonable period of receiving such a request, and any fee for membership is paid.

PART 3

Producers' registration

Duty to grant registration

10.—(1) An application for registration as a producer must—

- (a) be granted where it has complied with the requirements of regulation 3 and Schedule 2 (Producer registration applications);
- (b) otherwise be refused.

(2) Any decision of the Department in accordance with paragraph 1(b) to refuse to register a producer must, within 28 days beginning with the date of the decision, be notified to the producer together with the reasons for the decision, a statement as to the right of appeal in accordance with regulation 39(1) and a statement as to the offence specified in regulation 38(1)(a).

Conditions

11. A registered producer must—

- (a) comply with producer obligations;
- (b) provide any information reasonably requested by the Department with regard to the obligations in paragraph (a);
- (c) inform the Department of the following events within 28 days beginning with the date on which the event occurs—
 - (i) any change in the circumstances which relate to its registration and, where it is a partnership, any change of partners;
 - (ii) any material change in the information provided in accordance with paragraph 1(b) of Schedule 2 (Producer registration applications); and
 - (iii) any material change in the further information provided in accordance with paragraph 1(c) or (d) or 7 of Schedule 2; and
- (d) notify the Department that it wishes to cancel its registration where it has become a member of a registered scheme or ceased to be a producer in respect of a year.

Power to cancel registration

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

- (a) is in breach of any of the conditions specified in regulation 11; or
- (b) knowingly or recklessly supplied false information in connection with its application for registration, or with compliance with any of the conditions specified in regulation 11.

(2) The Department must cancel the registration of a producer where—

- (a) it is notified that the producer has become a member of a registered scheme; or
- (b) has otherwise ceased to be subject to the obligation to be registered.

(3) Schedule 9 (Cancellation of producer registration) has effect.

PART 4

Schemes

Rights to apply

13. The operator of a scheme may apply to the Department for—

- (a) approval, to be determined in accordance with regulation 15; and
- (b) if so approved, registration, to be determined in accordance with regulation 19.

Operators' obligations

14. The operator of a registered scheme must, in respect of the obligation year, fulfil the following obligations that each producer which is a member on 31st December would have had, but for membership of the scheme—

- (a) recovery and recycling obligations in accordance with regulation 4; and
- (b) the obligation to provide information to consumers in accordance with regulation 7.

Duty to grant approval

15.—(1) An application for approval of a scheme must—

- (a) within a period of 28 days beginning with the date of receipt be granted where the Department is satisfied that—
 - (i) it is likely to subsist for a period of at least 5 years beginning with the date of the approval; and
 - (ii) the operator is likely to be able to meet its expected recovery and recycling obligations for that period; or
- (b) otherwise be refused.

(2) The Department may refuse to grant approval, notwithstanding that it is satisfied as to the matters in paragraph 1(a), if the operator has sent a statement in accordance with regulation 22 that the requirements of regulation 14 were not met.

(3) Schedule 10 (Approval applications) has effect.

Obligation to apply for further approval

16.—(1) A further application for approval in accordance with regulation 13(a) must be made in the event of—

- (a) a change in the person operating the scheme;
- (b) a conviction of the operator for an offence in accordance with these Regulations;
- (c) the operator sending a statement to the Department in accordance with regulation 22 that the requirements of regulation 14 were not met; or
- (d) a failure by the operator to comply with the condition in paragraph 1 of Schedule 11 (Conditions in exceptional circumstances).

(2) The further application must be made—

- (a) where an event mentioned in paragraph (1)(a), (b) or (d) occurs, within a period of 28 days beginning with the date on which the event occurs;
- (b) where an event mentioned in paragraph (1)(c) occurs, within a period of 14 days beginning with the date on which the event occurs.

Conditions

17.—(1) The operator of an approved scheme must—

- (a) notify producers which have expressed an interest in becoming members of the scheme immediately after the scheme is approved;
 - (b) monitor the accuracy of information to which regulation 24 applies, so that it may reasonably be discovered when a member has not complied with regulation 24(2)(c);
 - (c) not acquire PRNs or PERNs other than to secure the recovery and recycling of amounts of packaging waste, or reasonable estimates of those amounts, in accordance with regulation 14(a);
 - (d) maintain sufficient financial resources to pay for, the expertise necessary for the purposes of calculating the recovery and recycling obligations in accordance with regulation 14;
 - (e) maintain access to, and sufficient financial resources to pay for, the expertise necessary for the purposes of calculating the obligations in accordance with regulation 14;
 - (f) provide any information reasonably requested by the Department for the purposes of monitoring compliance in accordance with regulation 31(1)(b) or (c);
 - (g) in relation to each obligation year—
 - (i) within a period of 28 days of the occurrence of one of the following events, notify the Department of—
 - (aa) any change in the person operating the scheme, and in the case where the operator is a partnership, any change of partners; or
 - (bb) any material change in the information provided in accordance with paragraph 2(b) or (c) of Schedule 13 (Scheme registration applications);
 - (ii) notify any changes in membership in accordance with regulation 21;
 - (h) send a statement of compliance in accordance with regulation 22; and
 - (i) keep and provide records in accordance with regulation 23.
- (2) Schedule 11 (Conditions in exceptional circumstances) has effect.

Power to withdraw approval

- 18.**—(1) The Department may withdraw approval of a scheme where it appears that—
- (a) the operator is in breach of any of the conditions in accordance with regulation 14 or 17(1) or Schedule 11 (Conditions in exceptional circumstances); or
 - (b) the operator knowingly or recklessly supplies false information in connection with the application for registration, or in connection with compliance with the conditions in accordance with regulation 14 or 17(1) or Schedule 11.
- (2) Schedule 12 (Withdrawal of approval) has effect.

Duty to grant registration

- 19.**—(1) An application for registration of a scheme must—
- (a) be granted where—
 - (i) the operator has complied with the requirements of Schedule 13 (Scheme registration applications);
 - (ii) the Department is satisfied that the information provided in accordance with paragraph 2(c) of Schedule 13 has been provided in accordance with paragraph 5 of Schedule 13; and
 - (iii) the scheme is approved and the scheme was—
 - (aa) registered in the previous year; or
 - (bb) approved no earlier than in the year previous to that in which the application for registration is made;
 - (b) otherwise be refused.

- (2) Schedule 13(Scheme registration applications) has effect.
- (3) Schedule 14 (Scheme registration fees) has effect.

Requirement for new approval

20. Where an application for registration is refused on the grounds of failure to meet the requirements of regulation 19(1)(a)(iii), the operator must make a new application for approval of the scheme in accordance with regulation 15 before making a further application for registration of the scheme in accordance with regulation 19.

Obligation to notify change of membership

21.—(1) The operator of a registered scheme must notify the Department at intervals required by the Department of any change in membership in respect of the obligation year.

(2) Such notification must be accompanied by the additional fee in paragraph 6 of Schedule 14 (Scheme registration fees).

Obligation to send statement

22. An operator of a registered scheme must, by 31st January in the year immediately following the obligation year, send a statement signed by the approved person to the Department confirming whether or not the requirements of regulation 14 have been met.

Obligation to keep records

23.—(1) An operator of a registered scheme must, in respect of the obligation year—

- (a) keep a record of the information set out in paragraph (2); and
- (b) furnish a copy of the record to the Department on or before 31st January in the year immediately following the obligation year.

(2) The information is—

- (a) the rounded amount in tonnes of packaging waste received or exported for recovery and for recycling, as set out in the PRNs and PERNs acquired; and
- (b) the total rounded amount in tonnes of each material which the operator is required to recover and recycle in accordance with regulation 14(a).

(3) The record must be maintained for a period of four years beginning with the date on which it is made.

(4) A copy of the record must be made available to the Department on demand.

Members' information obligations

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

- (a) is provided to the operator of a scheme by a producer which is a member at the time the information is provided; and
- (b) the operator will need to rely on for the purposes of an application for registration in accordance with regulation 19.

(2) A producer which provides to the operator information to which this regulation applies must—

- (a) provide it 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.

Applications from Great Britain

25. Schedule 15 (Applications from Great Britain) has effect.

PART 5

Evidence and accreditation

Evidence of recovery and recycling

26.—(1) The evidence referred to in regulation 4(2) must, in relation to securing the recovery and recycling of each amount in accordance with regulation 4(1), refer to—

- (a) the amount of packaging waste which must be recovered or recycled;
- (b) the kind of packaging waste which must be recovered or recycled;
- (c) the kind of process by which the packaging waste must be recovered or recycled; and
- (d) packaging waste which was received or exported for recovery or recycling during the obligation year.

(2) Where evidence refers to packaging waste received in December of an obligation year, it may also be used to demonstrate compliance in relation to the year immediately following it.

(3) The evidence must be in the form of—

- (a) a PRN establishing that a whole number of tonnes of packaging waste specified in the PRN will be recovered within the United Kingdom;
- (b) a PERN establishing that a whole number of tonnes of packaging waste specified in the PERN will be recovered outside the United Kingdom; or
- (c) any combination of PRNs or PERNs or both taken together.

(4) PRNs or PERNs must be in any form specified by the Department.

Obligation to be accredited etc.

27.—(1) A person must not issue PRNs or PERNs unless accredited by the Department—

- (a) where the PRNs or PERNs are of the kind required in accordance with regulation 26(2), at the time the packaging waste referred to in the evidence is received;
- (b) otherwise at the time of issue.

(2) Schedule 16 (Accreditation applications) has effect.

Duty to grant accreditation

28.—(1) An application for accreditation to issue PRNs or PERNS must—

- (a) be granted where the Department is satisfied as to the matter in paragraph (3);
- (b) otherwise be refused.

(2) The Department may accredit a person to issue PRNs, PERNs or both.

(3) The matters are—

- (a) the contents of the business plan required in accordance with paragraph 1(c) of Schedule 16 (Accreditation applications);
- (b) that the application has been made in accordance with Schedule 16;
- (c) that the person will comply with the conditions in, or any conditions imposed in accordance with Schedule 17 (Conditions of accreditation); and
- (d) that the requirements of Article 6(2) of the Packaging Directive will be met in relation to any waste to be exported for recovery.

Conditions of accreditation

29. A person accredited to issue PRNs or PERNS must comply with the conditions in Schedule 17 (Conditions of accreditation).

Power to suspend and cancel accreditation

30.—(1) The Department may suspend or cancel accreditation where it appears to it that the person accredited—

- (a) has failed to comply with any of the conditions required in accordance with Schedule 17 (Conditions of accreditation); or
- (b) has knowingly or recklessly supplied false information in the application for accreditation made in accordance with Schedule 16 (Accreditation applications) or in connection with compliance with any of the conditions required in accordance with Schedule 17.

(2) In the case of a person accredited to issue PERNs, the Department must cancel the accreditation to the extent that it relates to the event in paragraph (3).

(3) The event is that the Department is no longer satisfied that the requirements of Article 6(2) of the Packaging Directive are met in relation of one or more specified recyclable materials for recovery or recycling at one or more sites outside the European Union.

(4) Schedule 18 (Suspension etc. of accreditation) has effect.

PART 6

Monitoring, enforcement etc.

Duty to monitor

31.—(1) The Department must monitor compliance with—

- (a) producer obligations in Part 2 by persons who are or may be producers;
- (b) the obligations in accordance with regulation 14 by operators of registered schemes;
- (c) the conditions in regulation 17(1) or Schedule 11 (Conditions in exceptional circumstances) by such operators; and
- (d) the conditions in Schedule 17 by persons accredited to issue PRNs or PERNs.

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

- (a) in the case of producers—
 - (i) registration, as required by regulation 3(1);
 - (ii) the accuracy of information provided in pursuance of regulation 3, regulation 11 and Schedule 2 (Producer registration applications); and
 - (iii) the accuracy of the information in certificates furnished in accordance with regulation 5; and
- (b) in the case of schemes, the accuracy of—
 - (i) information in records, provided in accordance with regulation 6;
 - (ii) information provided in accordance with regulation 23;
 - (iii) records provided in accordance with Schedule 10 (Approval applications); and
 - (iv) information provided in accordance with regulation 21 and Schedule 13 (Scheme registration applications).

(3) The Department may by notice require a person listed in paragraph (5) to keep records for the purpose in accordance with regulation 31(1) and 31(2) and furnish these to the Department.

(4) The records must—

- (a) contain such information as the Department reasonably considers it needs for the purposes indicated;
 - (b) be in any form specified in the notice; and
 - (c) be submitted within any period specified in the notice.
- (5) The persons are—
- (a) any person who has, or who the Department has reason to believe has, producer obligations;
 - (b) in relation to any producer which is a member of a registered scheme, the operator of the scheme;
 - (c) any person who is, or who the Department has reason to believe is, issuing PRNs or PERNs;
 - (d) any person who is engaged in trading in, or brokerage in relation to, PRNs or PERNs; or
 - (e) any person accredited to issue PRNs or PERNs.

Duty to publish report

32.—(1) The Department must compile a report setting out its plans to carry out monitoring in accordance with regulation 31 which shall include—

- (a) how the Department will carry out monitoring in accordance with regulation 31; and
- (b) an indication of the minimum number of persons which it proposes to monitor in the course of that year.

(2) The report shall be provided by 1st December, and published by 31st December, in the year immediately preceding the year to which it relates.

Duty to maintain public register

33.—(1) The Department must maintain and make available a public register relating to—

- (a) the producers and registered schemes; and
- (b) the persons accredited by it to issue PRNs or PERNs.

(2) Schedule 19 (Information in the public register) has effect.

Powers of entry and inspection

34.—(1) A person who appears suitable to the Department may be authorised in writing by the Department for the purposes of its functions in accordance with these Regulations to exercise the powers of entry and inspection in paragraph (2).

(2) The powers of entry and inspection are—

- (a) to enter at any reasonable time any premises which the authorised person has reason to believe it is necessary to enter;
- (b) to make such examination and investigation as may in any circumstance be necessary;
- (c) as regards any premises which the authorised person 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 in accordance with paragraph (b);
- (d) to take such photographs and make such recordings as the authorised person considers necessary for the purpose of any examination or investigation in accordance with paragraph (b);
- (e) to take samples, or cause samples to be taken, of any records and packaging and packaging material found in or on any premises which the authorised person has power to enter;

- (f) in the case of any such records and packaging and packaging materials as are mentioned in paragraph (e), to take possession of them and detain them for so long as is necessary for all or any of the following purposes—
 - (i) to examine them, or cause them to be examined, and to do, or cause to be done, to them anything that an authorised person has power to in accordance with that paragraph;
 - (ii) to ensure that they are not tampered with before examination of them is completed; and
 - (iii) to ensure that they are available for use as evidence in any proceedings for an offence in accordance with regulation 38.
 - (g) to require any person whom the authorised person has reasonable cause to believe to be able to give any information relevant to any examination or investigation in accordance with 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 in accordance with regulations 5, 6 and Schedule 17 (Conditions of accreditation).
 - (ii) which it is necessary for the authorised person to see for the purposes of an examination or investigation in accordance with 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 the authorised person 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 them 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 days 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) where a lay magistrate 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 lay magistrate on complaint on oath that an authorised person proposes to enter any premises and—
- (a) entry has been refused and the authorised person apprehends on reasonable grounds that the use of force may be necessary to effect entry; or
 - (b) the authorised person 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 onto those premises shall only be effected under the authority of a warrant by virtue of Schedule 20.
- (5) No answer given by a person in accordance with a requirement imposed in accordance with 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 they would on grounds of legal profession privilege be entitled to withhold production on an order for discovery in an action in the High Court.

(7) In this paragraph “warrant” means a warrant in accordance with the provisions set out in Schedule 20 (Supplemental provision with regard to the power of entry) as applied by paragraph (4).

Provision of information to the Department

35. Where in respect of an obligation year the total figure provided to the Department by the operator of a scheme in accordance with regulation 23(2)(a) is less than the total figure in accordance with regulation 23(2)(c) the Department shall notify the operator of a scheme that they have not met their recovery and recycling obligations for that year.

Duty to issue guidance

36. The Department must issue guidance for the purpose of ensuring that consumers obtain appropriate information from producers about matters in accordance with regulation 7.

Power to approve persons

- 37.—(1) The Department may approve a person listed in paragraph (2) for the purposes of—
- (a) in the case of a producer, issuing certificates of compliance and signing the form referred to in regulation 24(2)(b) or paragraph 1 (c) or (d) of Schedule 2 (Producer registration applications);
 - (b) in the case of an operator of a registered scheme, signing the form referred to in paragraph 2(c) of Schedule 13 (Scheme registration applications) or the statement referred to in regulation 22.
- (2) A person listed is, where the producer or operator—
- (a) is a company registered in Northern Ireland, a director or company secretary of that company;
 - (b) is a partnership, a partner;
 - (c) is an individual, the individual;
 - (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 producer or operator.
- (3) Schedule 21 (Delegation of functions) has effect.

PART 7

Offences, penalties and appeals

Offences and penalties

- 38.—(1) A producer which fails to comply with the following is guilty of an offence—
- (a) regulation 3, other than in the case of a holding company which is a producer by virtue of paragraph 4 of Schedule 6 (Groups of companies);
 - (b) regulation 4; or
 - (c) regulation 5.
- (2) A producer is not guilty of an offence in accordance with paragraph (1) in respect of any period during which, in accordance with paragraph 6(b) of Schedule 2 (Producer registration applications), it is treated as having been registered.
- (3) An operator of a registered scheme which fails to comply in accordance with regulation 14(a) is guilty of an offence.

(4) A person who contravenes a requirement of regulation 27 or who is in breach of either of the conditions in paragraph 1(k) or (n) of Schedule 17 (Conditions of accreditation) is guilty of an offence.

(5) A person who furnishes any information to the Department in connection with its functions in accordance with these Regulations or furnishes information in accordance with regulation 24 applies to an operator of a scheme is guilty of an offence if the person—

- (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 in accordance with regulation 31(3) is guilty of an offence.

(7) A person who intentionally delays or obstructs a person authorised by the Department in the exercise of powers in regulation 34 is guilty of an offence.

(8) A person guilty of an offence in accordance with this regulation is liable—

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

Right of appeal

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

- (a) to refuse to grant an application for its registration in accordance with regulation 10(1)(b); or
- (b) to cancel its registration in accordance with regulation 12(1).

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

- (a) to refuse to grant its application for approval in accordance with regulation 15(1)(b);
- (b) to withdraw its approval in accordance with regulation 18(1) or paragraph 3 of Schedule 12 (Withdrawal of approval);
- (c) after notice in accordance with paragraph 2 of Schedule 12 is served, to withdraw its approval under that paragraph; or
- (d) to refuse to grant its application for registration in accordance with regulation 19(1)(b).

(3) A person may appeal to the Planning Appeals Commission against a decision of the Department—

- (a) to refuse the person's application for accreditation to issue PRNs or PERNs in accordance with regulation 28(1)(b);
- (b) to specify a condition in relation to such accreditation in accordance with paragraph 1(r) of Schedule 17 (Conditions of accreditation); or
- (c) to suspend or cancel such accreditation in accordance with regulation 30.

(4) Schedule 22 (Appeals) has effect.

PART 8

General

Transfer of obligations on receivership

40.—(1) A producer ceases to have producer obligations for the obligation year on going into receivership.

- (2) The person who carries on the activities of the producer must—
- (a) within a period of 28 days beginning with the day after the date of going into receivership, notify the Department of the fact that the producer went into receivership and the date of this;
 - (b) apply to be registered in accordance with regulation 3; and
 - (c) comply with any of the obligations in accordance with regulations 4 to 7 that the producer would have had, but for going into receivership.
- (3) In this regulation, “receivership” includes—
- (a) in the case of a company, liquidation or administration; or
 - (b) in the case of an individual, bankruptcy or incapacity.

Notification of winding-up

41.—(1) A producer, operator of an approved scheme or person accredited to issue PRNs or PERNs must notify the Department as soon as is practicable on becoming aware that an event specified in paragraph (2) applies or is about to apply to it.

- (2) The events 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 the company or limited liability partnership’s undertaking has been duly appointed;
 - (d) its undertaking has entered administration; or
 - (e) a voluntary arrangement proposed for the purposes of Part II of the Insolvency (Northern Ireland) Order 1989(a) has been approved in accordance with that Part of that Order.

(3) For the purposes of paragraph (1), the circumstances in which an operator of a scheme must notify the Department include where the event applies or is about to apply to the scheme but not the operator.

Service of notice

42.—(1) Notice in accordance with the Regulations must be in writing.

(2) Notice may be served on or given to a person by—

- (a) personal delivery;
- (b) leaving it at the person’s proper address; or
- (c) sending it by post or electronic means to the person’s proper address.

(3) In the case of a body corporate, notice may be served on or given to a director of that body or the secretary or clerk.

(4) In the case of a partnership, notice may be served on or given to a partner or a person having control or management of the partnership business.

(5) In paragraph (2), “proper address” means—

- (a) in the case of a body corporate, a director of the body or the secretary or clerk—
 - (i) the registered or principal office of that body; or
 - (ii) the email address of the director, secretary or clerk;
- (b) in the case of a partnership or a partner or person having control or management of the partnership business—

(a) 1989 No.2405 (N.I. 19)

- (i) the principal office of the partnership; or
- (ii) the email address of a partner or a person having that control or management; or
- (c) in any other case, a person’s last known address, which includes an email address.

(6) For the purposes of paragraph (5), the principal office of a company registered outside the United Kingdom or of a partnership established outside the United Kingdom is their principal office in the United Kingdom.

(7) In this regulation “notice” includes notification or confirmation.

Electronic data

43. In accordance with these Regulations—

- (a) any document which is to be given to any person may be given by electronic means if the document is capable of being reproduced by that person in legible form;
- (b) any requirement to make, keep or retain a record or to maintain a register may be satisfied by a record or register in electronic form if the text is capable of being produced by the person subject to the requirement in a legible documentary form;
- (c) any requirement for a signature may be satisfied by an electronic signature with the meaning of regulation 3(10) of Regulation (EU) 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market^(a).

PART 9

Transition etc.

44. Schedule 23 (Amendments, revocations and transition) has effect.

Sealed with the Official Seal of the *** on ***

Address	<i>Name</i>
Date	A senior officer of the Department

SCHEDULE 1

Regulation 2

Classes of producer

Classes

1. A person falls within one of the following classes of producer if—

- (a) in a year (“year 2”) the threshold test is satisfied; and
- (b) in the years indicated in the following table the person —
 - (i) performs the activity corresponding to the class of producer; and
 - (ii) supplies an item indicated where the supply falls within one of the corresponding classes of supply.

(a) OJ No L 257, 28.8.14, p. 73.

<i>Class of producer</i>	<i>Activity in year 2 and year preceding that ("year 1")</i>	<i>Items and classes of supply in year 1</i>
Manufacturer	Manufactures raw materials for packaging	Packaging materials; Class A, B or C supply
Convertor	Uses or modifies packaging materials in the production of formation of packaging	Packaging or packaging materials; Class A, B or C supply
Packer/filler	Puts goods into packaging	Packaging or packaging materials; Class A, B or C supply
Importer	Imports packaging or packaging material into the United Kingdom	Packaging or packaging materials; Class A, B or C supply
Seller	Supplies packaging to a user or a consumer of that packaging, whether or not the filling has taken place at the time of the supply	Packaging; Class E supply
Secondary provider	The activity for manufacturer, convertor, packer/filler or importer	Transit packaging; Class B or F supply
Service provider	Supplies reusable packaging to a user of that packaging where the supply is made by hiring out or lending the packaging	Packaging; Class G supply

Threshold test

2.—(1) The threshold test is satisfied if—

- (a) the person's turnover was more than £2,000,000 in the financial year immediately preceding—
 - (i) where the person performs in year 2 any of the activities corresponding to the producer classes on or before 7th April of year 2;
 - (ii) otherwise the date in year 2 on which that person first performs that activity; and
- (b) in the calculation year the person handled in aggregate more than 50 tonnes of packaging or packaging materials.

(2) For the purposes of sub-paragraph (1)(a)—

- (a) The person's turnover is determined by reference to—
 - (i) where the person is a company and annual accounts have been delivered to the registrar in accordance with section 441 of the Companies Act 2006(a), those accounts; or
 - (ii) otherwise other audited or final accounts; and
- (b) "financial year"—
 - (i) where the person is a company, is determined as provided in section 390(1) to (3) of the Companies Act 2006; or

(a) 2006 c.26

- (ii) otherwise 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.

(3) For the purposes of sub-paragraph (1)(b), the amount of packaging or packaging materials handled is the rounded amount in tonnes handled in the United Kingdom in respect of which the producer made a supply referred to in Column 3 of the above Table, other than a deemed supply by—

- (a) including—
 - (i) packaging, including reused transit packaging, or packaging materials which were imported into the United Kingdom by the producer; and
 - (ii) packaging or packaging materials exported from the United Kingdom to any artificial island, installation or structure at sea, other than a vessel; and
- (b) excluding—
 - (i) reused sales packaging or primary packaging as defined in paragraph 1(a) of Article 3 of the Packaging 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 which were exported from the United Kingdom by the producer or which to the producer's reasonable knowledge were otherwise exported from the United Kingdom other than the packaging and packaging materials in paragraph (a)(ii); and
 - (iv) reused transit packaging (with the exception of reused transit packaging imported into the United Kingdom).

Packer/filler class: special provision

3. Where a person performs the activity of a convertor and a packer/filler as part of a continuous packing/filling process, and in relation to the same packaging, as regards supplies of packaging or packaging materials made to or by the person in connection with the activity or process, the person is treated for the purposes of these Regulations as a producer of the class of packer/filler only.

Interpretation

4. In this Schedule—

“Class A supply” means—

- (a) the final use or consumption by an importer of imported packaging or packaging materials; or
- (b) a deemed supply;

“Class B supply” means a supply, other than solely for the purpose of transport, to a distributor which in relation to the packaging or packaging materials supplied did not perform the activity of one of the classes of producer;

“Class C supply” means a supply (other than Class F supply) to a person for the performance by them of the activity of one of the classes of producer which—

- (a) is different from the activity performed by the person's immediate supplier; and
- (b) is not the activity of an importer;

“Class E supply” means a supply, other than a supply of transit packaging in respect of which a Class F supply has already been made, to a user or consumer who did not perform the activity of one of the classes of producer;

“Class F supply” means a supply using the transit packaging supplied to perform the activities of a packer/filler and seller to—

- (a) a person who performed the activity of one of the classes of producer;

(b) a user or consumer; or

(c) a distributor;

“Class G supply” means a supply made by hiring out or lending the packaging to—

(a) a person who performed the activity of one of the classes of producer; or

(b) a distributor;

“deemed supply” means a supply which is deemed to occur when a person who has performed the activity of one of the classes of producer then performs another such activity in relation to the same packaging or packaging materials;

“supply” means doing the following in relation to packaging or packaging materials owned by the supplier—

(a) selling, hiring out or lending;

(b) providing in exchange for any consideration other than money;

(c) providing in or in connection with the performance of any statutory function; or

(d) giving as a prize or otherwise making a gift;

“transit packaging” means—

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

(b) transport packaging or tertiary packaging as defined in paragraph (c) in Article 3(1) of the Packaging Directive.

SCHEDULE 2

Regulation 3(4)

Producer registration applications

1. An application for producer registration must—

(a) be made in writing;

(b) contain the information set out in paragraph 2;

(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 obligation year—

(i) each producer class to which the applicant belongs;

(ii) if the applicant belongs to more than one producer class, which of the classes constitutes its main activity as a producer; and

(iii) the relevant code in “Indexes to the UK Standard Classification of Economic Activities 2007” published by the Office for National Statistics in 2009^(a) for the class of producer to which the applicant belongs or for the applicant’s main activity;

(d) other than in the case of a producer using the allocation method, 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 obligation year—

(i) for each producer class, the amounts of packaging waste which are required to be recovered in accordance with its recovery and recycling obligations;

(ii) the basis on which those amounts were calculated; and

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

(e) in the case of a producer using the allocation method, be accompanied by—

(a) ISBN 978-0-230-21014-1.

- (i) where the producer is required to deliver accounts to the registrar in accordance with section 441 of the Companies Act 2006, those accounts; or
- (ii) where those accounts are not available, other written evidence of turnover.

2. The information is—

- (a) the business name of the producer;
- (b) the address and telephone number of the registered office of the producer or, if not a company, the principal place of business of the producer;
- (c) the address for service of notices on the producer if different to that given in accordance with sub-paragraph (b); and
- (d) where the producer is a partnership, the names of all the partners.

3. A producer making an application for registration must pay the fee in accordance with paragraph 8 to the Department on or before the date the application must be made on, or before the producer registration deadline.

4. Any information provided must be as accurate as reasonably possible.

5. Where the producer is a partnership, the application must be made by any partner acting on behalf of the partnership.

6. Where an application for producer registration is granted—

- (a) the Department must within a period of 28 days beginning with the date of the decision confirm to the producer its registration with the Department; and
- (b) the producer is treated as registered from the beginning of the year save that—
 - (i) where the application is made following an event in regulation 3(3), it is treated as registered from the date on which the event occurs; or
 - (ii) where the confirmation specifies the date from which it is treated as being registered, it is treated as registered from that date.

7. Where the application for registration is made in the circumstances in paragraph 1(a), (b), (d) or (e), the further information referred to in paragraph 2(c) or (d) need not accompany the application, but must be provided within a period of 28 days beginning with the date on which the application is made.

8.—(1) The fee for registration is—

- (a) in the case of a producer using the allocation method, £564;
- (b) in all other cases, £950.

(2) A holding company which is a producer in accordance with paragraph 4 of Schedule 6 must pay an additional fee for each subsidiary for which recovery and recycling obligations are not calculated in accordance with the allocation method in paragraph 12 of Schedule 3—

- (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.

(3) On each resubmission of an application which is required by reason of the producer having failed to meet the requirements of paragraph 1 or 7 on the producer's previous submission, the Department must charge an additional fee of £220.

(4) The Department must provide the form referred to in paragraph 1(c) or (d) free of charge to any person requesting one.

SCHEDULE 3

Regulation 4

Amounts and processes

PART 1

Amounts

1. The amounts are calculated as follows.

2.—(1) Calculate an amount in tonnes of glass packaging waste (“G”) which must be recycled by re-melt as follows—

$$\frac{67(LxCxY)}{100} = G$$

(2) In sub-paragraph (1), “re-melt” means a method that melts the glass before it is reformed into a product.

3.—(1) For each M, calculate an amount in tonnes of packaging materials which is packaging waste (“Q”) which may be recycled by any means as follows—

$$MxCxY = Q$$

(2) For the purposes of the remaining calculations, aggregate each Q to get a total amount in tonnes of packaging materials which is packaging waste (“T”).

4.—(1) Calculate an amount in tonnes of packaging waste (“B”) which may be recycled by any means as follows—

$$\frac{92Z}{100} - T = B$$

(2) Where the person is a producer using the allocation method, Part 3 applies.

5. Calculate an amount of packaging waste (“A”) which may be recovered by any means as follows—

$$\frac{8Z}{100} = A$$

6. A, B, G and each Q must be calculated in relation to each producer class to which the producer belongs.

7. An amount not less than A, B, G and each Q must be recovered or recycled for each class by the process indicated in paragraphs 2 to 5.

8. In this Part—

“C” is the percentage in paragraph 9 for the producer class;

“L” is the rounded amount in tonnes of the glass (whether in the form of packaging or packaging materials) handled in the United Kingdom by the producer in the calculation year;

“M” is the rounded amount in tonnes of recyclable material (whether in the form of packaging or packaging materials) handled in the United Kingdom by the producer in the calculation year;

“P” is the rounded amount in tonnes of packaging and packaging materials handled in the United Kingdom by the producer in the calculation year, calculated by—

- (a) taking into account packaging, including reused transit packaging as defined in paragraph 4 of Schedule 1, or packaging materials, which were imported into the United Kingdom by the producer; and
- (b) excluding—
 - (i) reused sales packaging or primary packaging as defined in paragraph 1(a) of Article 3 of the Packaging 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 or which to the producer’s reasonable knowledge were otherwise exported from the United Kingdom (except to an artificial island, installation or structure at sea other than a vessel); and
 - (iv) reused transit packaging(except reused transit packaging imported into the United Kingdom);

“X” is the percentage in paragraph 10;

“Y” is the percentage in paragraph 11; and

“Z” is the result of the following calculation—

$$PxCxX = Z$$

PART 2

Prescribed percentages

9.—(1) The percentage is, for the following classes of producer—

<i>Class</i>	<i>Percentage</i>
(a) manufacturer	6%
(b) convertor	9%
(c) packer/filler	37%
(d) seller	48%
(e)secondary provider	85%
(f) service provider	85%

(2) The percentage is, for the following classes of producer—

- (a) 6%—
 - (i) for Class A supplies, where the importer also carries out the functions of a convertor;
 - (ii) for Class B supplies, where the relevant packaging or packaging materials are supplied, by the distributor which receives them, to a packer/filler; and
 - (iii) for Class C supplies to a convertor;
- (b) 15%—
 - (i) for Class A supplies, where the importer also carries out the functions of a packer/filler;
 - (ii) for Class B supplies, where the relevant packaging or packaging materials are supplied, by the distributor which receives them, to a packer/filler;
 - (iii) for Class C supplies to a packer/filler; and
 - (iv) for Class G supplies;

- (c) 52%—
 - (i) for Class A supplies where the importer also carries out the functions of a seller;
 - (ii) for Class B supplies where the relevant packaging or packaging materials are supplied, by the distributor which receives them, to a seller; and
 - (iii) for Class C supplies to a seller;
- (d) 100%—
 - (i) for Class A supplies, where the importer is also the final user or consumer; and
 - (ii) for Class F supplies.

10. The percentage is, for the following years—

<i>Recovery target</i>	<i>Year</i>
78%	2016
79%	2017

11. The percentage is, for the following years—

<i>Material</i>	<i>2016</i>	<i>2017</i>
Glass	77%	77%
Aluminium	52%	55%
Steel	75%	76%
Paper/Board	69.5%	69.5%
Plastic	52%	57%
Wood	22%	22%

PART 3

Producers using the allocation method

12. A producer with an annual turnover in the financial year preceding the producer registration deadline of £5,000,000 or less may elect to calculate B for the purposes of paragraph 4 as follows—

$$\frac{30a}{1,000,000} = B$$

where “a” is the turnover rounded up to the nearest ten thousand pounds.

13. Where a producer so elects—

- (a) Q and G are taken to be zero for the purposes of paragraphs 2 and 3; and
- (b) the recycling amount must be so calculated for a period of three years beginning with the year in which the election is made in accordance with paragraph 12.

14. For the purposes of paragraph 12, the producer’s annual turnover is determined by reference to—

- (a) where the producer is a company and annual accounts have been delivered to the registrar in accordance with section 441 of the companies Act 2006(a), audited accounts;
- (b) otherwise other accounts.

(a) 2006 c.46

15. For the purposes of paragraph 12, the obligation is carried out by recycling the recyclable material which is predominant by weight.

16. In this Part, “financial year” has the meaning given in paragraph 2(2)(b) of Schedule 1.

PART 4

Handling packaging etc.

17. Where the handling of packaging or packaging materials is referred to in this Schedule, paragraph 2(3) of Schedule 1 applies, but as though the words “For the purposes of sub-paragraph (1)(b),” and the words “other than deemed supply,” were omitted.

18. Where the Department is satisfied that a producer has instituted a system of using reusable packaging which has a life of at least four years, the producers obligations in accordance with this Schedule in relation to that packaging may be discharged by equal instalments over a period of four years beginning with the year in which the packaging is first used.

SCHEDULE 4

Regulation 5(4)

Information in certificate of compliance

- 1.** The certificate of compliance must contain the following information—
 - (a) the name and address of the approved person who is issuing the certificate;
 - (b) the date of the certificate and the obligation year to which it relates;
 - (c) the producer in respect of which the approved person is issuing the certificate;
 - (d) a statement by the approved person that the certificate has been issued in accordance with any guidance issued by the Department in accordance with Article 4(3) of the Order;
 - (e) certification by the approved person as to whether the producer has complied with its recovery and recycling obligations; and
 - (f) copies of all PRNs and PERNs for the obligation year.

SCHEDULE 5

Regulation 6(5)

Information in producer record

- 1.** The information in the case of a producer using the allocation method is—
 - (a) the producer’s turnover;
 - (b) the amount in tonnes of packaging waste which is to be recycled; and
 - (c) the aggregate tonnage of packaging materials referred to in the PRNs or PERNs acquired.
- 2.** In any other case the information is—
 - (a) the rounded amount in tonnes, of packaging waste delivered respectively for recovery and for recycling to a person accredited to issue PRNs or PERNs, 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 the producer is required to recover and recycle in accordance with Schedule 3.

SCHEDULE 6

Regulation 8(a)

Groups of companies

Application

1. This Schedule applies to two or more companies (a “group of companies”) where—
 - (a) in a year each company in the group—
 - (i) falls within a producer class; and
 - (ii) is either a subsidiary of the same holding company or the holding company itself; and
 - (b) the aggregate amount of the turnovers of, and amounts of packaging or packaging materials handled by, the companies in the group satisfies the producer threshold test.

Small Companies

2.—(1) A small company in a group of companies is taken to satisfy the producer threshold test for the obligation year.

(2) Such a company’s recovery and recycling obligations for the year are a proportion of that calculated in accordance with Schedule 3.

- (3) The proportion is—

$$G / H$$

where—

“G” is the number of days in the year during which the company was in the group of companies; and

“H” is the number of days in the year.

(4) In this paragraph, “small company” means a company which does not satisfy the producer threshold test in the obligation year.

Group registration

3. The holding company for a group of companies may fulfil the obligation of each company in the group to be registered in the obligation year in accordance with regulation 6.

Obligations

4. Where a holding company registers a group of companies—
 - (a) the holding company is a producer in the obligation year for the purposes of these Regulations in relation to the producer obligations each company in the group would have had but for the holding company’s registration; and
 - (b) Part 2 does not apply to each subsidiary in the group for the year.

Companies joining in year

5. Where a company joins after 1st January in the obligation year a group of companies registered in accordance with paragraph 3—

- (a) the company must, if it is a producer in accordance with these Regulations in the period beginning with 1st January and ending with the date on which it joins the group, comply with the obligations in regulations 3, 6 and 7 for that period; and
- (b) otherwise Part 2 does not apply to the company.

Companies leaving in year

6. Where a company ceases to be in a group of companies after registration in accordance with paragraph 3 but before 31st December in the obligation year—

- (a) the holding company of the group is the producer in relation to the company's producer obligations for the year; and
- (b) Part 2 of the Regulations does not apply to the company.

Companies joining second group in year

7. Where a company ceases to be in a group after registration in accordance with paragraph 3 but before 31st December, and the company joins another group before 31st December—

- (a) the holding company in respect of the first group is the producer in relation to the company's producer obligations; and
- (b) Part 2 does not apply to the company or other holding company.

SCHEDULE 7

Regulation 8(b)

Franchisors with small franchisee obligations

Application

1.—(1) This Schedule applies to a franchisor where it has obligations relating to small franchisees.

(2) A franchisor has those obligations where—

- (a) in a year—
 - (i) it has an agreement with one or more small franchisees relating to the same trademark; and
 - (ii) any two or more of the franchisor and those small franchisees each fall within a producer class;
- (b) the franchisor satisfies the producer turnover test; and
- (c) the aggregate amount of the small franchise-related packaging or packaging materials handled by the franchisor and the small franchisees satisfies the producer amount test.

Obligations

2.—(1) A franchisor is a producer for the purposes of these Regulations for the obligation year in relation to—

- (a) the franchise-related packaging or packaging materials handled by the group; and
- (b) where the franchisor falls within a producer class and satisfies the producer amount test, any other packaging or packaging materials it handled.

(2) In sub-paragraph (1)(a), “the group” means each of the small franchises identified in paragraph 1(2)(a) falling within a producer class and, where the franchisor itself falls within a producer class, the franchisor.

Franchisors based abroad

3. Where the franchisor with small franchisee obligations does not have a registered office or principal place of business in Northern Ireland, its obligations must be performed by a person who carries out or manages its functions in Northern Ireland and has a registered office or principal place of business there.

Information

4.—(1) A franchisor with small-franchisee obligations which does not have the information necessary to meet its obligations in accordance with this Schedule must use its best endeavours to obtain such information.

(2) Where, despite having used its best endeavours, the franchisor does not have such information it must produce a best estimate.

Interpretation

5. In this Schedule—

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

“franchise-related packaging or packaging materials” means—

- (a) packaging or packaging materials that bear a trade mark owned by it for which a licence to use such trade mark has been granted in accordance with the agreement;
- (b) packaging associated with goods that bear a trade mark owned by it for which a licence to use such trade mark has been granted in accordance with the agreement; and
- (c) packaging or packaging materials which the franchisee is obliged to purchase from the franchisor or, where it has negotiated some or all of the terms of the supply, a supplier nominated or authorised by the franchisor in accordance with the agreement—
 - (i) goods in packaging;
 - (ii) goods and associated packaging or packaging materials to be used to contain or protect such goods or to facilitate the handling of or for the presentation of such goods; or
 - (iii) packaging or packaging materials to be used to contain or protect such goods or to facilitate the handling of or for the presentation of such goods;

“small franchisee” means a franchisee which does not satisfy the producer threshold test;

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

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

SCHEDULE 8

Regulation 8(c)

Pub businesses with small tenant obligations

Application

1.—(1) This Schedule applies to a pub business where it has obligations relating to small tenants.

(2) A pub business has those obligations where—

- (a) in a year—
 - (i) it has an agreement with one or more small tenants; and
 - (ii) any two or more of the pub business and those small tenants each fall within a producer class;
- (b) the pub business satisfies the producer turnover test; and

(a) 1994 c.26

- (c) the aggregate amount of the business-related packaging or packaging materials handled by the pub business and its small tenants satisfies the producer amount test.

Obligations

2.—(1) A pub business is a producer for the purposes of these Regulations for the obligation year in relation to—

- (a) the pub business-related packaging or packaging materials handled by the group; and
- (b) where the pub business falls within a producer class and satisfies the producer threshold test, any other packaging or packaging materials it handled.

(2) In sub-paragraph (1)(a), “the group” means each of the small tenants identified in paragraph 1(2)(a) falling within a producer class and, where the pub business itself falls within a producer class, the pub business.

Operations from abroad

3. Where the pub business does not have a registered office or principal place of business in the Northern Ireland, its obligations must be performed by a person who carries out or manages its functions in the Northern Ireland and has a registered office or principal place of business there.

Information

4.—(1) A pub business which does not have the information necessary to meet its obligations in accordance with this Schedule must use its best endeavours to obtain such information.

(2) Where despite having used its best endeavours the pub business does not have such information it must produce a best estimate.

Interpretation

5.—(1) In this Schedule

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

“pub business-related packaging or packaging materials” means packaging or packaging materials that contain the goods that are the subject of the obligation to purchase from the pub business or person nominated or authorised by that pub business in accordance with the agreement, whether or not the goods have been packed or filled in the packaging or packaging materials when they are purchased by the tenant;

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

“pub business” means a person who is party to an agreement by which a person grants a lease or tenancy of premises to another in respect of which a premises licence is in force and those premises are —

- (a) used by the tenant 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.

(2) In the definition of pub business in sub-paragraph (1)—

“intoxicating liquor” has the same meaning as in Article 2(2) of the Licensing (Northern Ireland) Order 1996(a);

“licence” has the same meaning as in Article 2(2) of the Licensing (Northern Ireland) Order 1996 and licensed activity shall be construed accordingly;

“supply of intoxicating liquor” shall be construed with in accordance with Registration of Clubs (Northern Ireland) Order 1996(b);

“selling by retail” in relation to any intoxicating liquor shall be construed in accordance with the Licensing (Northern Ireland) Order 1996.

SCHEDULE 9

Regulation 12(3)

Cancellation of producer registration

1. Before cancellation of a registration in accordance with regulation 12, the Department must 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 in accordance with 12(1), the expiration of the time limit for an appeal against the notice provided for in paragraph 6 of Schedule 21;
 - (ii) in the case of cancellation in accordance with regulation 12(2), five days from the date of the notice;
- (d) the right of appeal in accordance with regulation 39(1)(b); and
- (e) where cancellation is in accordance with paragraph 12(1), a statement as to the offence in accordance with regulation 38(1)(a).

SCHEDULE 10

Regulation 15(3)

Approval applications

1. An application for approval of a scheme by the Department must be made in writing by the operator and must—

- (a) contain the following information—
 - (i) the name and address of the operator; and
 - (ii) which demonstrates that—
 - (aa) the scheme is likely to subsist for a period of at least 5 years beginning with the date on which the approval would be granted; and
 - (bb) the operator 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.

(a) S.I. 1996/3158 (N.I. 22)

(b) S.I. 1996/3159 (N.I.23)

2. Where an application for approval is granted, the Department must within a period of 28 days beginning with the date of its decision notify the operator of that decision.

3. Any decision of the Department in accordance with regulation 15(1)(b) to refuse to grant approval of a scheme must within 28 days beginning with the date of the decision be notified to the operator together with—

- (a) the reason for the decision; and
- (b) a statement as to the right of appeal in accordance with regulation 39(2)(a).

SCHEDULE 11

Regulation 17(2)

Conditions in exceptional circumstances

1. The operator of a scheme approved in the circumstances in regulation 15(2) must in addition—

- (a) comply with 50% of the total recovery and recycling obligations of the scheme before 30th June of the obligation year;
- (b) comply with a further 50% of the remaining recovery and recycling obligations before 30th September of that obligation year;
- (c) make returns to the Department of information demonstrating compliance with the conditions in sub-paragraphs (a) and (b) on or before 15th July and 15th October of the obligation year;
- (d) pay the fee in accordance with paragraph 2 of Schedule 14; and
- (e) not accept any new members into the scheme.

2. The conditions in paragraph 1 cease to apply beginning with the year following the year for which approval was granted in accordance with regulation 16(1) if the Department is satisfied that in the approval year the operator complied with—

- (a) those conditions; and
- (b) the obligation in accordance with regulation 14.

3. If the conditions in paragraph 1 cease to apply by virtue of paragraph 2, the Department must within a period of 28 days beginning with the date on which the Department is satisfied in accordance with paragraph 2 serve written notice of the cessation.

4. In this Schedule, “approval year” means the year for which approval was granted in accordance with regulation 15.

SCHEDULE 12

Regulation 18(2)

Withdrawal of approval

1. The Department must, before withdrawing approval of a scheme in accordance with regulation 18, serve on the operator of the scheme written notice of—

- (a) its decision to withdraw approval;
- (b) the reasons for the decision;
- (c) the right of appeal in accordance with regulation 41(2)(b) and (c); and
- (d) the date when the withdrawal will take effect, not being earlier than the expiration of the time limit for an appeal against the notice provided for in paragraph 3 of Schedule 10.

2. Where an application which is required by regulation 16(1)(a) or (b) is not received in accordance with regulation 16(2), the Department may decide to withdraw approval of the scheme and, if such a decision is taken, must 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 from the date of the notice.

3. Where an application which is required by regulation 16(1)(a) or (d) is not received in accordance with regulation 16(2), the Department must serve written notice on the operator of the withdrawal of approval of the scheme, which takes effect from the date of the notice.

4. The Department must consider any representations made by the operator of a scheme before the notice given in paragraph 2 takes effect, and may withdraw the notice served in accordance with paragraph 2 at any time.

5. Where a scheme's approval is withdrawn in accordance with regulation 18 or this Schedule, the operator of the scheme must within a period of 14 days beginning with the date on which the withdrawal takes effect serve on each scheme member written notice containing the following information—

- (a) a statement that approval of the scheme has been withdrawn and the date when the withdrawal takes effect;
- (b) a copy of the notice of withdrawal;
- (c) the reasons for the withdrawal; and
- (d) the obligation of a producer in accordance with regulation 3.

6. Where a scheme's approval is withdrawn in accordance with regulation 18 or this Schedule, the Department must cancel any registration of the scheme in accordance with regulation 19 and such cancellation takes effect on the date the withdrawal of approval takes effect.

SCHEDULE 13

Regulation 19(2)

Scheme registration applications

1. An application for registration of a scheme in relation to a year must be made by the operator of the scheme, on or before 15th April in that year to the Department.

2. An application for registration of a scheme must—

- (a) be made in writing;
- (b) contain the information set out in paragraph 3;
- (c) be accompanied by the following further information, on a form supplied for that purpose by the Department and signed in accordance with the requirement in paragraph 8, in relation to the obligation year—
 - (i) each producer which is a member of the scheme and each producer class to which each producer belongs;
 - (ii) if any producer belongs to more than one producer class, which of those classes constitutes the producer's main activity as a producer;
 - (iii) the relevant code in "Indexes to the UK Standard Industrial Classification of Economic Activities 2007" published by the Office for National Statistics in 2009^(a) for the activity or the main activity of each producer class in the scheme;
 - (iv) in relation to each producer the information referred to in paragraph 1(d) of Schedule 2;

(a) <http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/guide-method/classifications/current-standard-classifications/standard-industrial-classification/index.html> A copy may be obtained in writing to the Office for National Statistics, Classifications and Harmonisation Unit, Government Buildings, Cardiff Road, Newport, South Wales, NP108XG

- (v) in relation to members which are producers using the allocation method, the aggregate amount of packaging waste which is required to be recycled by virtue of Part 3 of Schedule 3 by those members;
- (vi) a statement of the turnover of each producer using the allocation method which is a member of a 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 of the scheme's policies to be provided in accordance with paragraph 4;
- (e) except where a scheme is registered in respect of the previous year, be accompanied by—
 - (i) evidence that the scheme has been approved by the Department; or
 - (ii) a statement that such approval is pending; and
- (f) be accompanied by a fee set out in Schedule 14 (Scheme registration fees).

3. The information is—

- (a) the name of the scheme;
- (b) the name of the operator and, where the operator is a partnership, the names of all the partners;
- (c) the address and telephone number of the registered office of the operator or, if not a company, the principal place of business of the operator;
- (d) the address for service of notices if different from that given in accordance with subparagraph (c);
- (e) the names and addresses of the registered offices, or, where the members of the scheme are not companies, the principal place of business, of the scheme's members; and
- (f) full particulars of the agreement for the constitution of the scheme including any rules or regulations to be observed by its members.

4. The matters to be contained in the statement of the schemes policies are—

- (a) the steps intended to be taken through the scheme to increase the use of recycled packaging waste in the manufacture of packaging, packaging materials or other products or materials supplied by its members; and
- (b) the principal methods by which packaging waste is to be recovered through the scheme, and by which it is to be recycled through the scheme, together with information about the steps the user or consumer may take to assist the scheme in applying the methods.

5. Any information provided must be as accurate as reasonably possible.

6. Where the operator of the scheme is a partnership, the application for registration must be made by any partner acting on behalf of the partnership.

7. Where an operator relies on paragraph 2(e)(ii), the operator must supply evidence of approval to the Department as soon as possible after receipt.

8. The requirement referred to in paragraph 2(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 in accordance with regulation 37(2).

9. Where an application for registration of a scheme is granted—

- (a) the Department must within a period of 28 days beginning with the date of the decision notify the operator of the scheme of that decision; and

- (b) the scheme is to 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 paragraph 6 of Schedule 12.

10. The Department must provide the form referred to in paragraph 2(c) free of charge to any person requesting one.

11. Any decision of the Department in accordance with regulation 19(1)(b) to refuse to register a scheme must within a period of 28 days beginning with the date of the decision be notified to the operator of the scheme together with—

- (a) the reasons for the decision;
- (b) a statement as to the right of appeal in accordance with regulation 39(2)(d); and
- (c) a statement as to the offence in accordance with regulation 38(1)(a).

SCHEDULE 14

Regulation 19(3)

Scheme registration fees

1. The fee which is to be charged by the Department on an application for registration of a scheme is—

- (a) £776 for each producer using the allocation method who had a turnover of more than £5,000,000 in the previous year and which is on the date of the application a member of the scheme;
- (b) £776 for each producer not using the allocation method who had a turnover of £5,000,000 or less in the previous year and which is on the date of the application a member of the scheme; and
- (c) £564 for each producer using the allocation method who had a turnover between £5,000,000 or less in the previous year and which is on the date of the application a member of the scheme.

2. In the case of a scheme that has been granted conditional approval in accordance with 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.

3. 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 for that member is—

- (a) £564 where the holding company is not a small producer who has elected to follow the allocation method and the group of companies had an aggregate turnover of £5,000,000 or less in the previous year; or
- (b) where—
 - (i) the holding company is not a producer using the allocation method;
 - (ii) the holding company is a producer using the allocation method and the group of companies had an aggregate turnover of more than £5,000,000 in the previous year.

4. In addition to the fee payable in accordance with paragraph 3(a) or (b), in respect of each subsidiary included within that application which is not a producer using the allocation method, the Department must charge a fee of—

- (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 in accordance with paragraph 2(c) of Schedule 13, the fee to be charged by the Department in addition to any fee payable in accordance with this Schedule is £220 for each member of that scheme in respect of which 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 accordance with the obligation in regulation 21 is £110 for each member who is submitting data late.

SCHEDULE 15

Regulation 25

Applications from Great Britain

1. An operator may elect to make an application for approval by the GB Agency in accordance with regulation 15(1) where—

- (a) the operator’s registered office or principal place of business is in Great Britain; and
- (b) the operator proposes to apply to the GB Agency for registration in accordance with regulation 15(1) of the GB Regulations.

2. An operator may elect to make an application to the GB Agency for registration in accordance with regulation 19(1) where—

- (a) the operators registered office or principal place of business is in great Britain; and
- (b) the operator proposes to apply to the GB Agency in relation to the same year for registration of the scheme in accordance with regulation 19(1) of the GB Regulations.

3. Where an operator makes an election in accordance with paragraph 1—

- (a) functions of the Department in relation to the application in accordance with regulation 15 and Schedule 10 must be carried out by the GB Agency on behalf of the Department; and
- (b) until the application has been determined, the operator may not make an application to the Department in accordance with regulation 15(1) in relation to the same or substantially the same scheme.

4. Where an operator makes an election in accordance with paragraph 2—

- (a) functions of the Department in relation to the application in accordance with regulation 19 and Schedules 11 and 12 must be carried out by the GB Agency acting on behalf of the Department; and
- (b) until such time as the application has been determined, the operator may not make an application to the Department in accordance with regulation 19(1) in relation to the same or substantially the same scheme.

5. For the purposes of these Regulations, an act of the GB Agency performing the functions of the Department in accordance with this Schedule is treated as an act of the Department.

6. In the Schedule—

“the GB Agency” means—

- (i) in the case of an application for approval in accordance with paragraph (1) the body to which that application would be made in accordance with regulation 15(1) of the GB regulations; and

- (ii) in the case of an application for approval in accordance with paragraph (2) the body to which that application would be made in accordance with regulation 19(1) of the GB Regulations; and

“the GB Regulations” means the Packaging Waste Regulations 2016(a)

SCHEDULE 16

Regulation 27(2)

Accreditation applications

1. An application for accreditation must be made to the Department—
 - (a) in the case of a person wishing to be accredited—
 - (i) to issue PRNs, in respect of each site for which the person wishes to be accredited and stating which of the applicable recovery operators and which recyclable materials the person wishes that accreditation to cover; and
 - (ii) to issue PERNs, in respect of the export of one or more recyclable materials for recovery or recycling 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 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 recovery of recycling of packaging waste;
 - (ii) funding provided to other persons involved in the collection of packaging waste;
 - (iii) reductions in the process 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; and
 - (vi) the development of a communications strategy for consumers of packaging made from recyclable materials; 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; and
 - (ii) otherwise £2616.
2. Where accreditation is granted in accordance with regulation 28(1)(a), it takes 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;
 - (ii) in all cases, from the date of the decision.
3. Accreditation which takes effect in accordance with paragraph 2(a) remains in force until 31st December in the year for which the person has applied to be accredited.
4. The Department must notify the applicant of its decision in accordance with regulation 28 no later than 12 weeks after the application was made and, if the decision is to refuse accreditation,

(a) **XXXXX**

such notification must include reasons for the decision and a statement of the right of appeal in accordance with regulation 39(3)(a).

5. Where a person who has given the undertaking and paid the fee specified in paragraph 1(d)(i) subsequently breaches that undertaking, they are from the date of that breach liable to pay to the Department the sum of £2111 (being the balance of the fees which would have been payable in accordance with paragraph 1(d)(ii) had the undertaking not been given) within a period of 28 days beginning with the date of the breach.

6. An application to extend the accreditation of a person accredited to issue PERNs to include further sites to which they want to export packaging waste for recovery and recycling must be made to the Department on the form specified in paragraph 1(b) 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.

7. An application to extend the accreditation of a person accredited to issue PERNs to include further sites located within the European Union must be granted by the Department where it is satisfied that the application has been made in accordance with paragraph 6, or otherwise be refused.

8. An application to extend the accreditation of a person accredited to issue PERNs to include further sites located outside the European Union must be granted by the Department where it is satisfied that each of those sites meets the requirements of Article 6(2) of the Packaging Directive, and that the application was made in accordance with paragraph 6, or otherwise be refused.

SCHEDULE 17

Regulation 29

Conditions of accreditation

- 1.** A person accredited to issue PRNs or PERNs must—
- (a) where an amount of packaging waste received for recovery or recycling or exporting has been received in a year but a PRN or PERN has not been issued in relation to that amount by 31st January of the following year (“year 2”)—
 - (i) issue to the Department a PRN or PERN for that amount by 28th February in year 2; and
 - (ii) not issue a PRN or PERN for that amount to producers or operators of schemes;
 - (b) other than in the circumstances in sub-paragraph (a), only issue a PRN or PERN to a producer or operator of a scheme;
 - (c) record the rounded amount in tonnes of packaging waste in a PRN or PERN;
 - (d) maintain for each quarter year records on a form made available for the purpose by the Department, retain these for at least four years after the end of the year in which the record is made and make these available to the Department on demand.
 - (e) provide a report to the Department, on a form provided by the Department, before each of 21st April, 21st July, 21st October and 28th February in respect of the previous quarter year which sets out—
 - (i) the tonnage of the packaging received or exported for recovery or recycling in the quarter;
 - (ii) the tonnage of packaging waste recovered and recycled in the quarter;
 - (iii) the number of PRNs or PERNs issued in the quarter; and
 - (iv) a list of all PRNs and PERNs issued.
 - (f) provide a report to the Department before 28th February in each year, on a form provided by the Department, which sets out—

- (i) all the information provided in the quarterly reports which relate to the whole of the previous year;
 - (ii) the amount of revenue received in the previous year from the sale of PRNs or PERNs;
 - (iii) how the whole of that amount has been used, including information on the matters in paragraph 1(c) of Schedule 16 (Accreditation applications); and
 - (iv) an explanation to any deviation during the previous year from the business plan referred to in paragraph 1(c) of Schedule 16.
- (g) implement as far as possible the business plan referred to in 1(c) of Schedule 16;
 - (h) carry out sampling and inspection of packaging waste received or exported for recovery or recycling in accordance with a plan approved by the Department;
 - (i) where applicable, comply with paragraph 5 of Schedule 16;
 - (j) not issue PRNs or PERNs in respect of waste received during a period of suspension of accreditation in accordance with regulation 30 after the period of suspension has ended;
 - (k) not issue PRNs for more than the total of packaging waste which—
 - (i) is received at the site at which recovery or recycling takes place in the year or the part of the year for which the person is accredited; and
 - (ii) will be capable of being recovered or recycled on the site no later than 31st December of the following year;
 - (l) issue a PRN only in respect of packaging waste once that waste has been received for recovery or recycling on the site at which recovery or recycling takes place;
 - (m) specify in a PRN which refers to packaging waste received on the site at which recovery or recycling takes place in December of a year for recovery or recycling the fact that the waste was received in December of the year;
 - (n) not issue PERNs for more than the total amount of packaging waste which the person exports for recovery or recycling in the year or part of the year for which the person is accredited;
 - (o) issue a PERN only once the packaging waste that it refers to has been exported for recovery or recycling;
 - (p) specify in a PERN which refers to packaging waste exported in December of a year the fact that it was exported in December of the year;
 - (q) issue a PERN in respect of packaging waste that is exported only in accordance with—
 - (i) Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste^(a); and
 - (ii) Commission Regulation (EC) No 1418/2007 concerning the export for recovery of certain waste^(b); and
 - (r) comply with such other conditions as the Department may specify in the notification of a grant of accreditation.

General

2.—(1) for the purposes of this Schedule, persons accredited to issue PRNs or PERNs may issue them to themselves.

(2) In this Schedule, “quarter year” means the period of—

- (a) January, February and March;
- (b) April, May and June;

(a) OJ L 190, 12.7.06, p.1, as last amended by Commission Regulation (EU) 2015/02 (OJ L 294, 11.11.15, p.1)

(b) OJ L 316, 4.12.07, p.6, as last amended by Commission Regulation (EU) No 733/2014 (OJ L 197, 4.7.14, p.10)

- (c) July, August and September; or
- (d) October, November and December.

SCHEDULE 18

Regulation 30(4)

Suspension etc. of accreditation

1. Where the Department suspends or cancels the accreditation of a person in accordance with regulation 30, it must serve on the person concerned written notice of—

- (a) its decision to suspend or cancel the accreditation;
- (b) the reasons for the decision;
- (c) the right of appeal in accordance with regulation 39(3)(c);
- (d) the date when the suspension or cancellation will take effect, not being earlier than the date of receipt of the notice; and
- (e) in the case of a suspension—
 - (i) the period of the suspension or any steps which are required to be taken in order to bring the suspension to an end; and
 - (ii) the fact that the person may not, after the period of suspension has ended, issue PRNs or PERNs which refer to waste received during the period of suspension.

2. The accreditation of a person to issue PRNs or PERNs is deemed to be cancelled—

- (a) on the date on which either of the following occurs—
 - (i) the person who is accredited ceases to be a person who—
 - (aa) holds a permit in accordance with regulation 9 of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(a);
 - (bb) holds a waste management licence granted in accordance article 6(1) of the Waste and Contaminated Land Order 1997(b); or
 - (cc) is exempt from the requirements of Article 4(1)(a) and (b) of the Waste and Contaminated Land Order 1997 in accordance with regulation 17 of the Waste Management Licensing Regulations (Northern Ireland) Order 2003(c); or
 - (ii) the person who is accredited ceases to carry out the activity of recovery or recycling or of exporting waste from recovery or recycling; or
- (b) in a case where the person who is accredited requests that the person's accreditation should be cancelled, with effect from the date for cancellation specified by the person.

SCHEDULE 19

Regulation 33(2)

Information in the public register

1. The register must contain the following information—

- (a) The name and address of the registered office or principal place of business of —
 - (i) each registered producer;
 - (ii) each registered operator of a scheme and each member of the scheme; and
 - (iii) each person accredited to issue PRNs or PERNs;
- (b) in relation to a person accredited to issue PRNs or PERNs—

(a) S.R. 2013 No. 160
(b) 1997 No. 2778 (N.I. 19)
(c) S.R. 2003 No. 493

- (i) each material type accepted;
 - (ii) in relation to any recovery operation to be used, the appropriate classification of the applicable operation provided for in Annex II of Waste Directive;
 - (iii) in relation to the incineration at waste incineration plants with energy recovery within the meaning of Article 3(8) of the Packaging Directive, the appropriate classification of the applicable operation in accordance with Annex I or II of the Waste Directive;
 - (iv) whether the person is accredited to issue PRNs or PERNs for either 400 tonnes or less, or more than 400 tonnes of packaging waste;
 - (v) the trading name, address and telephone number of the person;
 - (vi) the sites of recovery or recycling for a person accredited to issue PRNs;
 - (vii) the reference number supplied by the Department;
 - (viii) whether or not quarterly returns and annual returns have been provided in accordance with the conditions in paragraph 1(e) and (f) of Schedule 17;
 - (ix) whether the Department has served a notice to suspend or cancel accreditation; and
 - (x) whether accreditation has been suspended or cancelled;
- (c) a statement in relation to each registered producer as to whether a satisfactory certificate of compliance has been furnished; and
- (d) a statement in relation to each registered operator of a scheme as to whether each has complied with its obligations in accordance with regulation 14.

2. The Department must—

- (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 must be kept in any form but must be indexed and arranged so that members of the public can readily trace information contained in it.

4. The Department must within a period of seven days beginning with the date of receipt of any information amend the relevant entry in the register.

5. Nothing in these Regulations requires a register maintained by the Department to contain information—

- (a) relating to, or to anything which is the subject matter of, any criminal proceedings (including prospective proceedings) at any time before those proceedings are disposed of; or
- (b) which has been superseded by later information after four years have elapsed from that later information being entered in the register.

SCHEDULE 20

Regulation 34

Supplemental provisions with regard to the power of entry

1.—(1) If it shown to the satisfaction of a lay magistrate on complaint of oath—

- (a) that there are reasonable grounds for the exercise in relation to any premises of a relevant power conferred by regulation 34; and
- (b) that one or more of the conditions specified in sub-paragraph (2) is fulfilled in relation to those premises,

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

(2) The conditions mentioned in sub-paragraph (1)(b) are—

- (a) that the exercise of the power in relation to the premises has been refused;
- (b) that such a refusal is reasonable apprehended;
- (c) that the premises are unoccupied;
- (d) that the occupier is temporarily absent from the premises and the case is one of urgency;
or
- (e) that an application for admission to the premises would defeat the object of the proposed entry.

(3) In a case where paragraph (3) of regulation 34, applies, a lay magistrate shall not issue a warrant in accordance with this Schedule by virtue only of being satisfied that the exercise of a power in relation to any premises has been refused, or that refusal is reasonably apprehended but must also be satisfied that the notice required by that paragraph has been given and that the period of that notice has expired.

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

Manner of exercise of power

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

Information obtained to be admissible in evidence

3.—(1) In accordance with paragraph (5) of regulation 34, information obtained in consequence of the exercise of relevant power, with or without the consent of any person, shall be admissible in evidence against that or any other person.

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

Duty to secure premises

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

Compensations

5.—(1) Where an authorised person exercises any power in accordance with sub-paragraph 2(a) of regulation 34, it shall be the duty of the Department to make full compensation to any person who has sustained loss or damage by reason of—

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

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

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

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

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

Relevant power

6. In this Schedule "relevant power" means a power in accordance with regulation 34 including a power exercisable by virtue of a warrant in accordance with this Schedule.

SCHEDULE 21

Regulation 37(3)

Delegation of functions

1. The Department may approve the delegation by an approved person of the functions in regulation 37(1)(a) and (b) to any other person.

2. An approved person who proposes to delegate those functions must apply for approval to the Department on a form supplied for that purpose by the Department and signed by the approved person.

3. An application for approval in accordance with paragraph 2 must within a period of 28 days beginning with the date of receipt—

- (a) be granted where the Department is satisfied that the proposed delegate, taking into account the factors in paragraph 4, is capable of carrying out the functions on behalf of the approved person; or
- (b) otherwise be refused.

4. The factors are—

- (a) if the proposed delegate is an employee of the producer or the operator of the scheme, the nature of the proposed delegate's relationship with the approved person;
- (b) if the proposed delegate is not an employee of the producer or the operator of the scheme, the nature of the proposed delegates relationship with the approved person;
- (c) the degree of the proposed delegate's knowledge of, or access to, information necessary for the purposes of carrying out the functions on behalf of the approved person; and
- (d) any other factor which the Department reasonably thinks relevant.

5. An approval granted in accordance with paragraph 3(a) may be for such a period, or subject to such other conditions, as the Department may specify.

6. Where an application for approval is granted in accordance with paragraph 3(a), the Department must within a period of 28 days beginning with the date of the decision notify the approved person of it and of any conditions it has imposed in accordance with paragraph 5.

7. The Department may decide to withdraw an approval granted in accordance with paragraph 3(a) and, if such a decision is taken, must notify the approved person of this and of—

- (a) the reasons for the decision; and
- (b) the date when the withdrawal takes effect, not being earlier than 28 days for the date of the notice.

(a) S.I. 1982/712

8. If an approved person proposes to revoke a delegation granted in accordance with paragraph 3(a), the person must serve written notice of this on the Department and of the date when the revocation takes effect, not being earlier than 28 days for the date of the notice.

9. For the purposes of these Regulations—

- (a) an approved person who has delegated functions may continue to perform the functions; and
- (b) an act of a delegate performing the functions of an approved person on that person's behalf is treated as an act of the approved person.

SCHEDULE 22

Regulation 39

Appeals

1. Where an appeal is made to the Planning Appeals Commission it may—

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

2. If the appellant so requests, or the Planning Appeals Commission so decides, the appeal must be or continue in the form of a hearing.

3. A person who wishes to appeal to the Planning Appeals Commission in accordance with regulation 39 must do so by notice given in writing or sent to the Planning Appeals Commission.

4. The notice must be accompanied by—

- (a) a statement of the grounds of appeal;
- (b) a copy of any correspondence or document relevant to the appeal that could be required to be disclosed as part of standard disclosure in accordance with Order 24 of the Rules of the Supreme Court (Northern Ireland) 1984(a); and
- (c) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be determined on the basis of written representations.

5. The appellant must serve a copy of the notice of appeal on the Department together with a copy of each of the documents mentioned in paragraph 4.

6. The notice of appeal must be given before the expiry of the period of two months beginning with the date of the decision which is the subject of the appeal.

7. The Planning Appeals Commission may at any time allow notice of an appeal to be given after the expiry of the period mentioned in paragraph 4.

8. Where in accordance with paragraph 2 the appeal is by way of a hearing, the person hearing the appeal must, unless the person has been appointed to determine the appeal in accordance with paragraph 1(a), make a written report to the Planning Appeals Commission including the person's conclusions and recommendations or the reasons for not making recommendations.

9. The Planning Appeals Commission or other person determining an appeal must notify the appellant of the decision and the reason for the decision.

10. If the Planning Appeals Commission determines an appeal after hearing in accordance with paragraph 2, it must provide the appellant with a copy of any report made in accordance with paragraph 8.

(a) S.R. 1980 No. 346

11. The Planning Appeals Commission or other person determining an appeal must, at the same time as notifying the appellant of the decision, send the Department a copy of any document sent to the appellant in accordance with paragraphs 9 and 10.

12. Where the Planning Appeals Commission determines that the decision of the Department is to be altered, the Department must give effect to the determination.

13. In a case falling within regulations 12(1) or 18(1), or paragraphs 2 or 3 of Schedule 12, the decision appealed against is ineffective until the appeal is disposed of; and if the appeal is dismissed or withdrawn the decision becomes effective from the end of the day on which the appeal is dismissed or withdrawn.

SCHEDULE 23

Regulation 43

Amendments, revocations and transition

PART 1

Amendments

The Waste Management Licensing Regulations (Northern Ireland) 2003

1. For line 15 of Table 1 in paragraph (1) of Schedule 6 (Prescribed offences) of the Waste Management Licensing Regulations (Northern Ireland) 2003(a) substitute—

“Regulation 38 of the Packaging Waste Regulations (Northern Ireland) 2016 (S.R. 2016 No. Xx)”.

The Waste Batteries and Accumulators Regulations 2009

2. In regulation 52(2)(e)(iii)(cc) of, and paragraph 7(1)(c) of Schedule 3 (approval of approved schemes) to, the Waste batteries and Accumulators Regulations 2009(b), for each “the Producer Responsibility Obligations (Packaging Waste) Regulations 2007” substitute “the Packaging Waste Regulations (Northern Ireland) 2016”.

PART 2

Revocations

The Waste Regulations (Northern Ireland) 2011

3. Regulation 67 of the Waste Regulations (Northern Ireland) 2011(c) is revoked.

The Waste (Amendment) Regulations (Northern Ireland) 2016

4. Regulation 5 of the Waste (Amendment) Regulations (Northern Ireland) 2016(d) is revoked.

(a) S.R. 2003 No. 493 as relevantly amended by S.R. 2015 No. 386
(b) S.I. 2009/890, to which there are amendments not relevant to these Regulations
(c) S.R. 2011 No. 127
(d) S.R. 2016 No. 95

Producer Responsibility packaging Waste Regulations

5. The following regulations are revoked—
- (a) The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007**(a)**;
 - (b) The Producer Responsibility Obligations (Packaging Waste)(Amendment) Regulations (Northern Ireland) 2008**(b)**;
 - (c) The Producer Responsibility Obligations (Packaging Waste)(Amendment No. 2) Regulations (Northern Ireland) 2008**(c)**;
 - (d) The Producer Responsibility Obligations (Packaging Waste)(Amendment) Regulations (Northern Ireland) 2010**(d)**;
 - (e) The Producer Responsibility Obligations (Packaging Waste)(Amendment) Regulations (Northern Ireland) 2012**(e)**;
 - (f) The Producer Responsibility Obligations (Packaging Waste)(Amendment) Regulations (Northern Ireland) 2013**(f)**;
 - (g) The Producer Responsibility Obligations (Packaging Waste)(Amendment) Regulations (Northern Ireland) 2014**(g)**; and
 - (h) The Producer Responsibility Obligations (Packaging Waste)(Amendment) Regulations (Northern Ireland) 2016**(h)**.

PART 3

Transition

6. Any step taken before commencement of these Regulations which has effect in accordance with any provision of the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 is treated on or after xxxx 2016 as having effect in accordance with the equivalent provision of these Regulations.

7. Where the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 specified a time period and part of that period had elapsed before xxx 2016, that part of the period is treated on xxx 2016 as having elapsed in accordance with the equivalent provision of these Regulations.

-
- (a)** S.R. 2007 No. 198
 - (b)** S.R. 2008 No. 77
 - (c)** S.R. 2008 No. 373
 - (d)** S.R. 2010 No. 396
 - (e)** S.R. 2012 No. 437
 - (f)** S.R. 2013 No. 262
 - (g)** S.R. 2014 No. 276
 - (h)** S.R. 2016 No. 79