

2015 No.

ENVIRONMENTAL PROTECTION

**The Producer Responsibility Obligations (Packaging Waste)
(Amendment) Regulations 2015**

Made

Laid before Parliament

Coming into force

1st October 2015

These Regulations implement Article 6(1) of Council Directive 94/62/EC on packaging and packaging waste(a).

The Secretary of State, having had regard to the matters specified in section 93(6) of the Environment Act 1995(b) (“the Act”) and after consultation in accordance with section 93(2) of the Act, makes these Regulations in exercise of the powers conferred by sections 93 and 94 of the Act.

Citation, commencement and interpretation

1.—(1) These Regulations—

- (a) may be cited as the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2015;
- (b) come into force on 1st October 2015.

(2) In these Regulations, “the 2007 Regulations” means the Producer Responsibility Obligations (Packaging Waste) Regulations 2007(c).

Amendment of the 2007 Regulations

- 2. The 2007 Regulations are amended in accordance with regulations 3 to 20.

Amendment of regulation 2 (interpretation and notices)

3. In regulation 2(2)—

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- (a) OJ No. L 365, 31.12.1994, p.10, as last amended by Commission Directive 2013/2/EU (OJ No. L 37, 8.2.2013, p.10).
 - (b) 1995 c.25. Under section 57 of the Scotland Act 1998 (c.46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under European Union law in respect of devolved matters, the Secretary of State’s function in relation to implementing those obligations continues to be exercisable as regards Scotland. Section 57 is amended by S.I. 2011/1043. Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c.32), despite the transfer of the relevant functions of the Secretary of State as far as they are exercisable in relation to Wales to the Welsh Ministers by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006, the Secretary of State’s function in relation to implementing obligations under European Union law continues to be exercisable as regards Wales. Paragraph 5 of Schedule 3 to the Government of Wales Act 2006 is amended by S.I. 2011/1043.
 - (c) S.I. 2007/871, amended by S.I. 2010/2849; there are other amending instruments but none is relevant.

- (a) in the definition of “appropriate Agency”—
 - (i) in sub-paragraph (d)(v)(aa) for “the Secretary of State”, substitute “that Agency”;
 - (ii) in sub-paragraph (d)(v)(bb) for “the Scottish Ministers”, substitute “that Agency”;
 - (iii) in sub-paragraph (d)(vi)(aa) for “the Secretary of State”, substitute “that Body”;
 - (iv) in sub-paragraph (d)(vi)(bb) for “the Scottish Ministers”, substitute “that Agency”;
 - (v) in sub-paragraph (d)(viii)(aa) for “the Scottish Ministers”, substitute “that Agency”;
 - (vi) for sub-paragraph (d)(viii)(bb), substitute—
 - “(bb) the Environment Agency, where the operator has elected to apply for approval from that Agency;
 - (cc) the Natural Resources Body for Wales, where the operator has elected to apply for approval from that Body;”;
- (b) in the definition of “appropriate authority”, omit sub-paragraphs (b) and (c);
- (c) at the appropriate place, insert—
 - ““delegate” means a person to whom the functions of an approved person are delegated in accordance with an approval granted under section 34A(2);”.

Amendment of regulation 7 (application for producer registration)

- 4. In regulation 7—
 - (a) in paragraph (4)—
 - (i) in sub-paragraph (d), for “;”, substitute “.”;
 - (ii) omit sub-paragraph (f);
 - (b) omit paragraph (10).

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

- 5. In regulation 8—
 - (a) in paragraph (d), after “;”, insert “and”;
 - (b) in paragraph (e), for “;”, substitute “.”;
 - (c) omit paragraphs (f) and (g).

Amendment of regulation 12 (schemes: general provisions)

- 6. In regulation 12(2), for sub-paragraphs (a) and (b), substitute—
 - “(a) he receives a notice of withdrawal of the scheme's approval under regulation 13B(3), together with a copy of the notice; or
 - (b) the scheme is approved under regulation 13(4).”.

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

- 7. In regulation 13—
 - (a) in paragraph (1), for “authority”, substitute “Agency”;
 - (b) in paragraph (2), for “unconditionally where the appropriate authority”, substitute “where the appropriate Agency”;
 - (c) in paragraph (3)—
 - (i) in sub-paragraph (c), for “authority”, substitute “Agency”;
 - (ii) in sub-paragraph (d), for “at paragraph (5) below”, substitute “in regulation 13A(2)”;
 - (d) in paragraph (4)—

- (i) for each occurrence of “authority”, substitute “Agency”;
- (ii) for “paragraph (5)”, substitute “regulation 13A(2)”;
- (e) omit paragraphs (5) to (10).

Insertion of regulations 13A and 13B

8. After regulation 13, insert—

“Conditions of approval of a scheme

13A.—(1) Approval of a scheme in accordance with regulation 13(2) shall be subject following conditions—

- (a) that the operator of the scheme will comply with the obligation set out in regulation 12(1);
- (b) that the operator of the scheme will, for the purposes of making possible the performance of that obligation, monitor the accuracy of information submitted under regulation 19(1), so that he may reasonably discover when a scheme member has not complied with regulation 19(2);
- (c) that the operator of the scheme will acquire PRNs or PERNs pursuant to regulation 12(3) in a manner which least hinders the ability of any other operator to purchase PRNs or PERNs pursuant to that regulation;
- (d) that the operator of the scheme will maintain sufficient financial resources to acquire PRNs or PERNS pursuant to regulation 12(3);
- (e) that the operator of the scheme will maintain access to, and sufficient financial resources to pay for, the expertise necessary for the purposes of calculating the recovery and recycling obligations referred to in regulation 12(1);
- (f) that the operator of the scheme will provide any information reasonably requested by the appropriate Agency pursuant to regulation 31(1)(b) or (c);
- (g) in relation to any year in which the scheme is registered under regulation 14—
 - (i) that the operator of the scheme will inform the appropriate Agency in writing of—
 - (aa) any change in the person who is the operator of the scheme and, in the case where the operator of the scheme is a partnership, or where there is more than one operator of a scheme, any change of partners or operators;
 - (bb) any material change in the information provided in accordance with regulation 14(3)(b);
 - (cc) any material change in the further information provided in accordance with regulation 14(3)(c); and
 - (dd) any change in the operator stated under regulation 14(3)(h), within 28 days of the occurrence of any such change; and
 - (ii) that the operator of the scheme will comply with the requirement set out in regulation 15; and
- (i) that the operator of the scheme will provide records and returns to the appropriate Agency as required by regulation 22.

(2) Approval of a scheme pursuant to regulation 13(4) shall be subject to the following additional conditions—

- (a) that the operator of the scheme shall comply with 50% of the total recovery and recycling obligations of the scheme before 30th June;
- (b) that the operator of the scheme shall comply with a further 50% of the remaining recovery and recycling obligations before 30th September;

- (c) that the operator of the scheme shall make returns to the appropriate Agency of information demonstrating compliance with the conditions set out at subparagraphs (a) and (b) above on or before 15th July and 15th October respectively;
- (d) in relation to any year in which the scheme is registered under regulation 14, that the operator pays the fee under regulation 16(3) to the appropriate Agency; and
- (e) that the operator of the scheme shall not accept any new members into the scheme.

(3) In the case of a scheme that has been granted approval pursuant to regulation 13(4), where the appropriate Agency is satisfied that the operator of the scheme met its recovery and recycling obligations in the preceding year, it shall serve a notice in writing on the operator of the scheme stating that the scheme has approval for the remainder of the year (and is no longer required to meet the additional conditions set out in paragraph (2) above).

(4) In the case of a scheme that has been granted approval pursuant to regulation 13(4), where the appropriate Agency is satisfied by 31st January in the year following the year for which a scheme is granted approval under regulation 13(4) (for the purposes of this paragraph, "the approval year") that the operator of the scheme met its recovery and recycling obligations and the additional conditions in paragraph (2) above in the approval year, it shall serve a notice in writing on the operator of the scheme stating that the scheme has approval for the year following the approval year (and is no longer required to meet the conditions set out in paragraph (2) above).

Withdrawal of approval of a scheme

13B.—(1) Subject to the right of appeal under Part VI of these Regulations, the appropriate Agency may withdraw approval of a scheme where it appears to the appropriate Agency that—

- (a) the operator of the scheme is in breach of any of the conditions referred to in regulation 13A(1) or (if applicable) (2); or
- (b) the operator knowingly or recklessly supplied false information in connection with the application for registration, or with compliance with the conditions referred to in regulation 13A(1) or (if applicable) (2).

(2) The appropriate Agency shall cancel the registration with it (if any) of a scheme if it withdraws approval of the scheme and such cancellation shall take effect on the date the withdrawal of approval takes effect.

(3) Before the withdrawal of approval the appropriate Agency shall serve on the operator of the scheme written notice of—

- (a) its decision under paragraph (1) to withdraw approval;
- (b) the reasons for the decision;
- (c) the right of appeal under Part VI of these Regulations; 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 2 of Schedule 6.

(4) Where an application which is required by regulation 13(3)(a) or (b) is not received by the due date, the appropriate Agency may decide to withdraw approval of the scheme and, if such a decision is taken, shall serve written notice on the operator of the scheme of—

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

(5) Where an application which is required by regulation 13(3)(c) or (d) is not received by the due date, the appropriate Agency shall serve written notice on the operator of the withdrawal of approval of the scheme, which shall take effect from the date of the notice.

(6) The appropriate Agency shall consider any representations made by the operator of a scheme before the notice under paragraph (4) takes effect, and may withdraw the notice under paragraph (4) at any time.

(7) An operator of a scheme in relation to which approval is withdrawn under this regulation must within 14 days of the withdrawal taking effect serve on each scheme member notice in accordance with paragraph (8).

(8) Notice must—

- (a) be in writing;
- (b) contain the following information—
 - (i) a statement that approval of the scheme has been withdrawn and the date when the withdrawal takes effect;
 - (ii) the reasons for the withdrawal; and
 - (iii) the obligation of a producer under regulation ***.”.

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

9. In regulation 14—

- (a) in paragraph (3)—
 - (i) in sub-paragraph (e), for “authority”, substitute “Agency”;
 - (ii) omit sub-paragraph (f);
- (b) in paragraph (4)—
 - (i) in sub-paragraph (a), omit “(f),”;
 - (ii) omit sub-paragraph (c);
 - (iii) in sub-paragraph (d), for “authority”, substitute “Agency”;
 - (iv) in sub-paragraph (e), for “authority”, substitute “Agency”;
- (c) in paragraph (5)(b), for “regulation 18”, substitute “regulation 13B(2)”.

Substitution of regulation 15 (conditions of registration of a scheme)

10. For regulation 15, substitute—

“Notification of change of membership

15. In relation to the year in which registration is granted, the operator of the scheme shall notify the appropriate Agency in writing at intervals as required by the appropriate Agency of any change in the membership of the scheme and any such notification shall be accompanied by the additional fee calculated as provided in regulation 16(6).”.

Amendment of regulation 16 (forms and fees for registration of a scheme)

11. In regulation 16—

- (a) in paragraph (3), for “conditional approval under”, substitute “approval pursuant to”;
- (b) in paragraph (6), for “condition referred to in paragraph (c)”, substitute “obligation set out”.

Amendment of regulation 17 (refusal to register a scheme)

12. In regulation 17—

- (a) in paragraph (a), after “;”, insert “and”;
- (b) omit paragraph (b).

Omission of regulation 18 (cancellation of registration of a scheme)

13. Omit regulation 18.

Amendment of regulation 22 (schemes—records and returns)

14. In regulation 22—

- (a) in paragraph (2)—
 - (i) in sub-paragraph (a), after “;”, insert “and”;
 - (ii) omit sub-paragraph (b);
- (b) in paragraph (4), for “authority”, substitute “Agency”.

Amendment of regulation 27 (right of appeal)

15. In regulation 27, for paragraph (2), substitute—

“(2) The operator of a scheme may appeal to the appropriate authority against a decision of the appropriate Agency—

- (a) to refuse to grant an application for approval under regulation 13(2);
- (b) to withdraw approval under regulation 13B(1) or (5);
- (c) after the notice referred to in paragraph 13B(4)(c) takes effect, to withdraw approval under regulation 13B(4); or
- (d) to refuse to grant an application for registration under regulation 14(4).”.

Amendment of regulation 30 (status pending appeal)

16. In regulation 30, for “regulation 11(1) or 18(1)”, substitute “regulation 11(1) or 13B(1), (4) or (5)”.

Amendment of regulation 31 (monitoring)

17. In regulation 31—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (c), for “regulation 13(4);”, substitute “regulation 13A(2); and”;
 - (ii) in sub-paragraph (d), for “; and”, substitute “.”;
 - (iii) omit sub-paragraph (e);
- (b) in paragraph (2)(f), for “regulations 13(5)(c) and 22”, substitute “regulations 13A(2)(c) and 22”.

Amendment of regulation 34

18. In regulation 34, after paragraph (3), insert—

“(4) Subject to regulation 34A, the appropriate Agency may approve the delegation by an approved person of his functions to any other person.

(5) For the purposes of these Regulations—

- (a) an act of a delegate performing the functions of an approved person on his behalf shall be treated as an act of the approved person;
- (b) an approved person may continue to perform his functions (notwithstanding that a delegate may also perform those functions on his behalf).

(6) In this regulation, and in regulation 34A, “functions” means the functions referred to in paragraph (1)(a) and (b).”.

Insertion of regulation 34A

19. After regulation 34, insert—

“Delegation of approved persons’ functions: procedure

34A.—(1) An approved person who proposes the delegation of his functions to another person under regulation 34(4) must apply for approval to the appropriate Agency in writing on a form supplied for that purpose by the appropriate Agency and signed by the approved person.

(2) An application for approval under paragraph (1) shall within 28 days of receipt of the application—

- (a) be granted where the appropriate Agency is satisfied that the proposed delegate will, taking into account the factors specified in paragraph (3), reasonably be capable of carrying out the functions of the approved person on his behalf; and
- (b) otherwise be refused.

(3) The factors mentioned in paragraph (2)(a) are—

- (a) if the proposed delegate is an employee of the producer or the operator of the scheme (as the case may be), the proposed delegate’s level of seniority;
- (b) if the proposed delegate is not an employee of the producer or the operator of the scheme (as the case may be), the nature of the proposed delegate’s relationship with the approved person;
- (c) the degree of the proposed delegate’s knowledge of, or access to, information necessary for the purposes of the carrying out the functions of the approved person on his behalf; and
- (d) any other factor which the appropriate Agency reasonably thinks relevant.

(4) An approval granted in accordance with paragraph (2)(a) may be for such period, or subject to such other conditions, as the appropriate Agency may specify.

(5) Where an application for approval is granted in accordance with paragraph (2)(a), the appropriate Agency shall, within 28 days of its decision, notify the approved person in writing of its decision and of any conditions it has imposed pursuant to paragraph (4).

(6) The appropriate Agency may decide to withdraw an approval granted under paragraph (2)(a) and, if such a decision is taken, shall serve written notice on the approved person of—

- (a) the decision to withdraw approval;
- (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.

(7) If an approved person proposes to revoke a delegation approved under paragraph (2)(a), he shall serve written notice on the appropriate Agency of—

- (a) his decision to revoke the delegation;
- (b) the date when the revocation will take effect, not being earlier than 28 days from the date of the notice.”.

Amendment of Schedule 3 (information)

20. Omit Schedule 3(12) and (13).

Transitional and saving provision

21.—(1) For the purposes of the 2007 Regulations—

- (a) an approval of a scheme under regulation 13(2) of those Regulations granted before 1st October 2015 shall be treated as if it were an approval of a scheme under that regulation granted after 1st October 2015;
- (b) in relation to the year of registration, a registration of a scheme under regulation 14(4) of those Regulations granted before 1st October 2015 shall be treated as if it were a registration under that regulation granted after 1st October 2015.
- (c) an appeal made, but not determined, before 1st October 2015 under regulation 27(2)(b) of those Regulations, shall be determined as if these Regulations had not come into force.

		<i>Name</i>
	Parliamentary Under Secretary of State	
Date		Department

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations amend the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (“the 2007 Regulations”). The 2007 Regulations impose on producers and schemes the obligation to recover and recycle packaging waste in order to attain the recovery and recycling targets set out in Article 6(1) of Council Directive 94/62/EC on packaging and packaging waste (OJ No. L 365, 31.12.1994, p.10, as last amended by Commission Directive 2013/2/EU (OJ No. L 37, 8.2.2013, p.10-12)).

Any reference in this note to an amendment or insertion is a reference to an amendment of, or insertion in, the 2007 Regulations.

Regulation 3 amends definitions.

Regulation 4(a)(ii) amends regulation 7 to remove the requirement that an operational plan accompany an application for producer registration under that regulation. Regulation 9(a)(ii) amends regulation 14 to remove the same requirement in relation to an application for registration of a scheme.

Regulation 7 amends regulation 13 such that the appropriate Agency replaces the appropriate authority as the body responsible for granting approval of schemes.

Regulation 8 inserts regulations 13A and 13B. Regulation 13A sets out conditions of approval of a scheme. Regulation 13B sets out the appropriate Agency’s power to withdraw approval of a scheme and provides that, where that power is exercised, registration of the scheme must be cancelled.

Regulation 10 amends regulation 15 to replace the conditions of registration of a scheme with an obligation for an operator of a scheme to notify the appropriate Agency of changes in membership of the scheme and pay a fee in respect of this.

Regulation 13 amends regulation 18 to remove the appropriate Agency’s power to cancel registration of a scheme.

Regulation 15 amends regulation 27(2) to insert new rights of appeal for an operator of a scheme in relation to a refusal to grant an application for approval and a withdrawal of approval.

Regulation 18 amends regulation 34. Regulation 19 inserts regulation 34A. These changes make possible the delegation by an approved person of his functions to another person.

Regulation 20 is a transitional and saving provision.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at www.gov.uk/defra and is annexed to the Explanatory Memorandum which is available alongside the instrument at www.legislation.gov.uk.

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