

Department for Environment, Food  
and Rural Affairs  
The Scottish Executive  
The National Assembly for Wales

The Producer Responsibility  
Obligations (Packaging Waste)  
Regulations 1997 (as amended)

# **THE USER'S GUIDE**

2<sup>ND</sup> EDITION 2003

**NOTE TO READERS !**

**THE USER'S GUIDE IS BEING PUBLISHED ON THE DEFRA WEBSITE ONLY AT THIS STAGE.**

**FOLLOWING THE CONSULTATION ON CHANGES TO THE PACKAGING REGULATIONS WHICH WILL CONCLUDE TOWARDS THE END OF 2003, THE USER'S GUIDE WILL BE AMENDED TO TAKE ACCOUNT OF CHANGES EMERGING FROM THE CONSULTATION AND WILL BE PUBLISHED IN BOTH HARD COPY AND ON THE DEFRA WEBSITE IN JANUARY 2004**

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## INTRODUCTION TO THE SECOND EDITION OF THE *USER'S GUIDE*

- i. This Guidance Note fulfils the requirement on Government to provide guidance on the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (as amended). This *User's Guide* is therefore intended to ensure that there is detailed guidance in place on all aspects of the Regulation.
- ii. The *User's Guide* is therefore in two parts: Part One sets down a summary of the requirements in the Regulations for those that want a succinct overview; Part Two sets down more detailed guidance.
- iii. This is the second edition of the *User's Guide*. It is issued jointly by the Department for Environment, Food and Rural Affairs, the Scottish Executive and the National Assembly for Wales. The Northern Ireland Administration will be issuing its own version of the Guide. The Producer Responsibility Obligations (Packaging Waste) Regulations 1997 ("the Regulations") were made under sections 93-95 of the Environment Act 1995 ("the Act") which, at that time, gave the Secretary of State powers to make producer responsibility regulations in relation to Scotland, England and Wales. These powers, and responsibility for environmental matters, have now been devolved in Wales and Scotland as well as Northern Ireland. This means that decisions affecting the Scottish and Welsh environments, including the implementation of the environmental protection elements of the Packaging Directive, are now taken locally. However, the packaging recovery scheme was conceived as a GB-wide scheme, with a parallel regime in Northern Ireland, and packaging users should not therefore experience any difference to the way in which it operates.
- iv. The Regulations discussed in this Guide apply in England, Wales and Scotland. Separate, parallel, Regulations have been made for **Northern Ireland**. Businesses with subsidiaries in Northern Ireland, or who trade with businesses in Northern Ireland, should ensure that they have read, and if necessary, complied with the Northern Ireland Regulations and related guidance <sup>1</sup>.
- v. The *User's Guide* provides guidance on the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 SI No. 648 as amended by -
- the Producer Responsibility Obligations (Packaging Waste)(Amendment) Regulations SI 1999 No. 1361
  - the Producer Responsibility Obligations (Packaging Waste)(Amendment)(No.2) Regulations SI 1999 No. 3447

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<sup>1</sup> SR 1999 No. 115 The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland)1999 SR 1999 No. 496 The Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations (Northern Ireland)1999 and SR 2002 239 The Producer Responsibility Obligations(Packaging Waste) (Amendment) Regulations (Northern Ireland) 2002

- the Producer Responsibility Obligations (Packaging Waste)(Amendment)(England and Wales) Regulations SI 2000 No.3375.
- the Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2000 (SSI 2000 No. 451)
- the Producer Responsibility Obligations (Packaging Waste)(Amendment)(England) Regulations SI 2002 No. 732
- the Producer Responsibility Obligations (Packaging Waste)(Amendment)(Scotland) Regulations 2002 SI 2002 No. 147
- The Producer Responsibility Obligations (Packaging Waste)(Amendment)(Wales) Regulations 2002 SI 813 (W.93)

vi. Throughout the *User's Guide*, 'the Regulations' means the 1997 Regulations as amended by the Statutory Instruments listed above. The *User's Guide* gives the Department's and devolved administrations' interpretation of the Regulations and explains the obligations placed on producers.

vii. The Guide also provides information on the Agencies' statutory guidance throughout the document. The main guidance on what is and is not considered to be 'packaging' is provided in the 'Blue Book' issued by the Agencies, entitled '*The Agencies' Interpretation of Packaging 2<sup>nd</sup> Edition*'.

**It should be noted that any non-statutory guidance, including the *User's Guide*, cannot provide a definitive interpretation of the Regulations but merely an interpretation. Definitive interpretation of regulations is a matter for the courts.**

viii. The Single Market provisions of the EC Directive on Packaging and Packaging Waste 94/62/EC are implemented through the Packaging (Essential Requirement) Regulations 1998<sup>2</sup>. In brief, the Essential Requirements Regulations require that -

- packaging must be the minimum subject to safety, hygiene and acceptance for the packed product and for the consumer;
- noxious or hazardous substances in packaging must be minimised in emissions, ash or leachate from incineration or landfill;
- packaging must be recoverable through at least one of: material recycling, incineration with energy recovery, composting or it must be biodegradable

ix. The Essential Requirements Regulations also relate to product design and standards. This is a matter reserved to the UK Government and the devolved administrations do not therefore have a function. These Regulations are applied by local authorities through their Trading Standards Officers. The Essential

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<sup>2</sup> 1998 SI No.1165. Government Guidance Notes on the Packaging (Essential Requirements) Regulations 1998 can be obtained through the DTI Publications Orderline (0870 1502 500) quoting URN 99/904, or through the DTI website at <http://www.dti.gov.uk/access/guidehh.htm>

Requirements Regulations also set heavy metals limits. Aggregate heavy metal limits apply to cadmium, mercury, lead and hexavalent chromium.

x. Other provisions of the Directive, in particular the recovery and recycling targets, which were to be achieved by 30 June 2001, are implemented through the producer responsibility Regulations dealt with in this *User's Guide*.

## UK objectives

xi. The Regulations give substance to 'Producer Responsibility' which is an extension of the polluter pays principle, and is aimed at ensuring that businesses take responsibility for the products they have placed on the market once those products have reached the end of their life. Thus, through the Regulations, the aim is to -

- achieve a more **sustainable approach** to dealing with packaging and packaging waste as part of the Government's Waste Strategies<sup>3</sup>.
- **reduce** the amount of packaging waste, and particularly the amount going to landfill;
- increase **reuse** of packaging where possible, increase the **recovery and recycling** of packaging waste in the UK and implement the recovery and recycling targets in the EC Directive on Packaging and Packaging Waste 94/62/EC (henceforth 'the Directive') and any subsequent packaging Directives.

xii. The UK's policies and approach to broader waste management issues are explained in greater detail in the Government's Waste Strategies.

xiii. These Regulations apply to businesses, that is **companies, partnerships or sole traders, which in Great Britain carry out certain activities, or functions, in relation to packaging**, from the manufacture of packaging raw materials to the selling of packaging to the final user (see below). Such businesses, if obligated, will be "producers". To carry out their obligations they may either register individually with an Agency and take the necessary steps themselves; or they may join a registered compliance scheme which will carry out their obligations for them. The Regulations also apply to **compliance scheme operators** who should also, in particular, see Appendix III to Part Two of the User's Guide.

xiv. Any business with a turnover of more than £2,000,000 and handling more than 50 tonnes of packaging (see definition of "packaging handled" in paragraph 8 of Part One and paragraph 4(2) of Schedule 1 to the Regulations) in a year (see paragraph 3 in Schedule 1 to the Regulations) is likely to be affected by the Regulations and **should read these guidance notes**

## THE PACKAGING CHAIN

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<sup>3</sup> Waste Strategy 2000 (England); National Waste Strategy Scotland; Wise About Waste: The National Waste Strategy for Wales, June 2002

xv. Throughout the *User's Guide* there will be reference to the "packaging chain" since it is those businesses involved at one or more stages of the chain who are likely to be obligated under the Regulations. The "packaging chain" is generally considered to consist broadly of four main stages: those who

- (i) manufacture raw materials for packaging;
- (ii) convert raw materials into packaging;
- (iii) pack and fill packaging, or use packaging to wrap goods;
- (iv) sell packaging to the final user.

In addition, businesses at any stage in the packaging chain can import packaging or packaging materials and those who do are included in the packaging chain, fall within the scope of the Regulations and may have obligations.

xvi. The worked examples in the Guide refer to an individual business complying on its own. Guidance on completing the data form is provided in Appendix 1.

xvii. Packaging is defined in the Regulations as follows-

““packaging” means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer.....”.

In addition, packaging consists only of -

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

# PART ONE

## SUMMARY OF THE REGULATIONS

### **DIRECTIVE 94/62/EC ON PACKAGING AND PACKAGING WASTE**

1. It is estimated that over 58 million tonnes of packaging waste is currently produced annually in the European Community (EC). Of this, in 2002 some 9.9 million tonnes of packaging waste is expected to arise in the UK. The disposal of large quantities of waste poses a number of environmental problems, for example loss of amenity as a result of the siting of waste disposal facilities and the potential emissions from such facilities. In addition, however, disposing of waste to landfill is to squander resources since, in most cases, the discarded materials are capable of recovery or recycling into new products. This in turn helps to conserve virgin resources.

2. EC Directive 94/62/EC on Packaging and Packaging Waste (the "Directive") is one of a number of product-specific waste Directives that emerged from the EU's Fifth Environmental Action Programme where certain waste streams were designated 'priority waste streams' and became the subject of specific action. In this context, end of life vehicles and waste electronics have followed packaging. The packaging Directive aims to introduce harmonised measures for Member States to reduce the environmental impacts of packaging and packaging waste.

3. The primary objective of the Directive is to reduce the overall quantity of packaging waste that is subject to final disposal, and priority is therefore given to prevention of packaging waste and to reuse of packaging where possible (articles 4,5). In addition, Articles 9 and 11 provide that packaging must comply with certain 'essential requirements' if it is to be put on the market. Packaging must be minimised at source and certain hazardous substances are to be reduced. The focal point of the Directive, however, is Article 6 which sets mandatory recovery and recycling targets which Member States were bound to achieve by June 2001. These targets were:

- Between 50% - 65% (by weight) overall recovery of packaging waste;
- Of that, between 25% - 45% (by weight) recycling of packaging waste; and
- 15% minimum recycling level (by weight) for each packaging material e.g. plastic, glass, paper etc.

4. These targets are currently the subject of review and a new Directive is likely to be agreed by the end of 2003.

## UK implementation of the Directive

5. The Directive came into force in 1994 and was transposed into UK law in 1997 through the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (the “Regulations”). In essence, in order to allow the UK to meet its Directive targets, the Regulations impose specific recovery and recycling obligations on all UK businesses (companies, partnerships, sole traders) who have a turnover exceeding £2 million and who ‘handle’ more than 50 tonnes of packaging waste per annum and are ‘**producers**’ as defined in the Regulations.

6. Packaging waste recovery in the UK stood at some 30% in 1997, of which 27% was estimated to be recycling. As a result, it was considered appropriate to set interim business recovery and recycling targets in the Regulations as a way of facilitating the transition from existing levels of activity to the much higher levels required to meet the recovery and recycling targets in the Directive in 2001. Targets 1998-2001 and the UK achievement in 2001 are shown in Table 1 below.

	Business recovery target %	Directive minimum recovery target %	Business recycling target per material %	Directive minimum recycling target per material %	Business overall recycling target	Directive minimum recycling target %
1998	38		7			
1999	43		10			
2000	45		11			
2001	56	50	18	15	25	25
<b>UK achieved in 2001</b>		<b>48</b>		<b>Paper 53, glass 33, alu 24, steel 37, wood 57, plastic 16</b>		<b>42</b>

### The main obligations in the Regulations – the “producer responsibility obligations”

7. In summary, the Regulations impose three main obligations on all producers and a further obligation on producers whose main activity is selling. These obligations are:

- i. **the registration obligation.** Producers must register with an Agency by 7 April each year, pay a fee, and provide data on the amount of packaging handled by the producer in the previous year. Producers with turnover in excess of £5 million must also provide a compliance plan outlining the steps they intend to take to meet their recovery and recycling obligations.
- ii. **the recovery and recycling obligations.** Take reasonable steps to carry out specified tonnages of recovery and recycling of packaging waste;

- iii. **the certifying obligation.** At the end of the year in question, provide the Agency with a certificate of compliance stating whether those recovery and recycling obligations have been met;
- iv. **the consumer information obligations.** Businesses whose main activity is “selling” must also carry out consumer information obligations.

## **Packaging handled**

8. The definition of ‘packaging handled’ can be summarised as **packaging** or **packaging materials** that are **owned** by the producer and on which a **relevant function or activity** is performed prior to **supply** onto the next stage in the packaging chain or to the final user. These terms are described in further detail below.

### Definition of packaging

9. The **definition of packaging** is given in regulation 2(1) and is the same as that given in the Directive. Packaging means -

*“all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods from the producer to the user or the consumer...”*

Packaging includes primary, secondary and tertiary packaging.

10. The main packaging materials are –

paper	plastic	aluminium
glass	steel	wood

and ‘other packaging materials’ such as jute, hessian, ceramics, cork etc.

Recovery and recycling targets applied to the main packaging materials as of 1998, but specific recovery obligations on wood and ‘other’ packaging materials did not come into force until 2000. Further guidance on the interpretation of “packaging” is available from the Agencies ‘guide to interpretation of packaging’. Businesses might handle pulp for making paper (raw material manufacturing); timber for making pallets (converting); cans for food and drink (pack/filling); packaged goods for sale to consumers (selling). They might also import, for example, paper for conversion into cartons, or packaged goods for sale to consumers.

### Ownership

11. **Ownership** of packaging is not defined in the regulations but is taken to have its ordinary everyday meaning i.e. that the property belongs to the person who has the exclusive right to use, possess or dispose of it, or direct its use, possession or disposal.

#### Relevant functions or activities

12. The 'packaging chain' is considered to consist of the four main stages – raw material manufacturing, converting, pack/filling and selling, together with importing. The Regulations set down in Schedule 1(1)(a) what the 'relevant functions' or 'activities' are, namely -

*“the performance by a person of the functions of one of the following-*

*(i) manufacturer*

*(ii) convertor*

*(iii) packer/filler*

*(iv) importer, or*

*(v) seller*

*either himself or through an agent acting on his behalf, and **in the course of business.**”*

13. Thus, bodies which are not businesses will not be obligated under the Regulations. For example, an organisation which is a charity within the meaning given in section 506 of the Income and Corporation Taxes Act 1988 will not be obligated, although a branch of a charity which is a business may well have obligations if it satisfies both threshold tests.

#### Supply

14. The final step in the assessment of 'packaging handled' is the consideration of whether packaging owned by the producer and on which a relevant function, or activity, is performed is subsequently **supplied** on to another stage in the packaging chain or to the final user. "Supply" is defined in the Regulations in paragraph 2(g) of Schedule 1 as follows -

*“Supply” means doing any of the following, either himself or through an agent acting on his behalf in relation to packaging or packaging materials owned by the supplier:*

*(i) selling, hiring out or lending,*

*(ii) providing in exchange for any consideration...other than money,*

*(iii) providing in or in connection with the performance of any statutory function,*

*(iv) giving as a prize or other wise making a gift.”*

15. A definition is also provided of a type of supply called "deemed supply". This is -

*“a supply which is deemed to occur when a person who has carried out a relevant function then performs another such function in relation to the same packaging or packaging materials.”*

16. This kind of supply might occur where, for example, a producer manufactures plastic pellets before converting them into bottles, in which case he is both the raw material manufacturer and the convertor. A ‘deemed supply’ has taken place from the first to the second activity.

17. The kinds of supply that are classed as ‘supply’ with respect to these Regulations are outlined in Regulation 3(2)(b) with further reference to the Table and paragraph 2 of Schedule 1 to the Regulations. Briefly, a producer can only make a ‘supply’ to:

- another person who performs a relevant function different to that performed by the producer (e.g. a pack/filler to a seller);
- a final user or consumer (e.g. the person who will discard the packaging);
- a distributor who does not perform a relevant function (e.g. from a convertor, through a distributor and thereafter on to a pack/filler);
- himself (i.e. a deemed supply)

18. The definition of ‘packaging handled’ **excludes** -

packaging and packaging materials that are exported from the UK; packaging that is being reused; and  
production residues that arise during packaging manufacture and conversion.

**Businesses coming new to the Regulations should ask themselves the following questions –**

- **Is my turnover more than £2 million ?**
- **Do I handle packaging ?**
- **How much – is it more than 50 tonnes a year ?**

**If the answer to these questions is ‘yes’, you should go onto the next questions -**

- **What activities do I carry out on the packaging or packaging materials ?**
- **Do I own the packaging or packaging materials ?**
- **Do I supply it to another stage in the chain, or the final user of the packaging ?**

**The answers to these questions will help determine whether you are a producer for the purposes of the Regulations**

**It should be noted that the calculation of the recovery and recycling obligations is based on packaging handled by the business and not packaging waste produced by the business.**

### Producer Responsibility Obligations

19. If a business's assessment of its 'packaging handled' concludes that more than 50 tonnes of packaging is handled then, subject to the turnover threshold also being exceeded (more than £2 million turnover), the business must comply with the following **producer responsibility obligations**.

- i. **the registration obligation.** Producers must register with an Agency (Environment Agency or SEPA in Scotland) by the deadline of 7 April each year, pay a fee, and provide the required data on the amount of packaging handled by the producer in the previous year, together with a statement of the recovery and recycling obligations to be carried out, calculated on the basis of three factors, namely –
  - a. the tonnage of packaging handled by the business in the previous year;
  - b. the business recovery and recycling targets in force in that year;
  - c. the percentage 'activity obligation' associated with the activity that the business carries out on packaging;

Producers with turnover in excess of £5 million must also provide a compliance plan outlining the steps they intend to take to meet their recovery and recycling obligations.

- ii. **the recovery and recycling obligations.** Throughout the year, take reasonable steps to carry out the specified tonnages of recovery and recycling of packaging waste as shown in the statement of recovery and recycling obligations; this will be calculated on the basis of the packaging handled in the previous year (see paragraph 21 below).
- iii. **the certifying obligation.** At the end of the year in question, provide the Agency with a certificate of compliance stating whether those recovery and recycling obligations have been met;
- iv. **the consumer information obligations.** Businesses whose main activity is "selling" must also carry out consumer information obligations.

20. Producers may choose to discharge these obligations individually, that is take all the steps necessary to ensure that the specified tonnages of packaging waste are recovered or recycled; or they may join an Agency-registered compliance scheme that will meet obligations on their behalf. This is discussed further in paragraph 37 below.

## Calculating recovery and recycling obligations

21. The recovery and recycling obligations are calculated using three factors –
- i. the tonnage of ‘packaging handled’ by the business (see paragraph 8 in previous section);
  - ii. the percentage activity obligation that is applied to the relevant activity performed by the producer on packaging (see below);
  - iii. the business recovery or recycling target for the UK that year (see below).
22. For example, a business that is a packer/filler in 2003, handling 500 tonnes of packaging would have a recovery obligation as follows –

$$[500 \text{ t}] \times [37\%] \times [59\%] = 109 \text{ tonnes recovery obligation}$$

A 37% activity obligation is applied to packer/fillers (see Table 2 below); and 59% is the business recovery target in 2003 (Table 3 below).

The business would also have a minimum recycling obligation on each material. If the 500t handled by the packer/filler in the example was 300 tonnes of plastic and 200 tonnes of paper, the recycling obligations would be as follows –

$$[300 \text{ t}] \times [37\%] \times [19\%] = 21 \text{ tonnes plastic recycling obligation}$$
$$[200 \text{ t}] \times [37\%] \times [19\%] = 14 \text{ tonnes paper recycling obligation}$$

Again, a 37% activity obligation is applied to packer/fillers and 19% is the material-specific minimum recycling target for 2003.

Overall, therefore, the packer/filler in these examples would have a recovery obligation of 109 tonnes, **of which** 21 tonnes of plastic and 14 tonnes of paper must be recycled. The recycling tonnages are part of the overall recovery obligation, they are not additional to it. Having recycled the 35 tonnes required in plastic and paper, the producer can carry out the remaining 74 tonnes recovery (109t – 21 – 14 = 74t) by recycling any material (including composting) or by carrying out some incineration with energy recovery (EfW), e.g. 50 tonnes of paper recycling plus 12 tonnes of wood recycling plus 12 tonnes of EfW.

23. Because the Regulations intend that each item of packaging placed on the market should wherever possible carry a 100% obligation, shared between the four main stages in the packaging chain, a specific percentage obligation is applied to each of the relevant activities. These “activity obligations” are shown in Table 2.

**Table 2: Percentage Obligations applied to the relevant activities**

<b>Relevant activity</b>	<b>Percentage obligation</b>
Manufacturing	6%
Converting	9%
Packing/filling	37%
Selling	48%

<b>Total</b>	<b>100%</b>
Importing	up to 100%

24. Importers carry the obligations for the activities on packaging they import that were carried out before the packaging or packaging materials entered the UK. E.g. a pack/filler imports 100 tonnes of flat cartons which it will fill. As an importer, the pack/filler has the raw material manufacturing and converting activity obligations (6% + 9%), and these are referred to as the “rolled up” obligations.

25. The business recovery and recycling targets for 1998 to 2003 are shown in Table 3. It will be seen from these targets that, for the UK to meet the Directive’s minimum 50% recovery target in 2001, the business target placed on obligated businesses was higher. This is because we have to take account of the fact that smaller businesses (those with turnover of £2m or less, and handling packaging of 50 tonnes or less) are exempt from the Regulations. The higher targets on producers therefore compensate for the fact that the packaging that is handled by these smaller businesses is not obligated but the Directive targets apply to the totality of packaging arising in the UK waste stream.

**Table 3: Business Recovery and Recycling Targets for 1998 - 2003**

Year	Business Recovery Target	Minimum business recycling target per material	Overall Directive minimum recovery target	Minimum Directive recycling target per material	Overall Directive minimum recycling target
1997	-	-	-	-	-
1998	38%	7%	-	-	-
1999	43% <sup>4</sup>	10%	-	-	-
2000	45% <sup>5</sup>	11%	-	-	-
2001	56% <sup>6</sup>	18%	50%	15%	25%
2002	59%	19%	50%	15%	25%
2003	59%	19%	50%	15%	25%

Taking “reasonable steps” to meet recovery and recycling obligations

26. Regulation 3(5)(a) requires producers to **take reasonable steps** to meet their recovery and recycling obligations. This means that producers must take all the steps necessary to ensure that they can meet the obligation to recover and recycle specified amounts of packaging waste.

27. ‘Recovery’ and ‘recycling’ are defined in the Regulations.

*“**Recovery**” means any of the ‘applicable operations’ provided for in Annex IIB to the Waste Directive”.*

4 Original target was 38%

5 Original target was 43%

6 Original target was 52% for 2001 onwards.

The 'applicable operations' from Annex IIB are –

- recycling
- and composting (a form of recycling)
- incineration with energy recovery;

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

Recycling includes putting steel scrap into a steel works to produce new steel products or melting waste glass into new glass containers.

### Demonstrating compliance with the recovery and recycling obligations

#### *The PRN System*

28. Because the Regulations place certain obligations on producers, they also place a duty on the Environment Agency and SEPA in Scotland to monitor compliance with these obligations and take enforcement action if necessary. Regulation 34 sets out a number of offences and the penalties that might apply. This is a criminal offences regime (see paragraph 7.01 in Part Two of this *User's Guide*). To enable producers to demonstrate compliance with their obligations an instrument was developed called a **Packaging Waste Recovery Note (PRN)**, which enables producers (or compliance schemes) to procure the necessary documentary evidence to show that they have had the specified tonnages of packaging waste recovered or recycled according to their particular obligation.

29. At the same time, a **voluntary accreditation scheme** for reprocessors was created, with a view to giving obligated businesses confidence that, when claiming a certain level of recycling, the recycling had actually occurred. Reprocessors applying for accreditation are scrutinised by the relevant Agency. Accreditation is available to any site that meets the basic criteria. These are -

- that the site is carrying out a valid recovery activity on packaging waste; and
- that an adequate documentation system is in place to record activities satisfactorily.

30. Only reprocessors who have been accredited can issue PRNs for tonnages of packaging waste delivered for reprocessing, provided it is waste that arose in the UK waste stream. Reprocessors are required only to issue PRNs to obligated businesses or to their representatives, but the PRN is a tradable note and can also be purchased, for example, on a trading floor.

31. A similar scheme is in place for accreditation of exporters who ship packaging waste for reprocessing overseas. Only exporters who have been accredited can issue **Packaging Waste Export Recovery Notes (PERNs)**.

32. PRNs are issued by the reprocessor who carries out the final recovery activity. For example, a business who chips wood packaging waste cannot generate PRNs for chips that he supplies to a chipboard manufacturer since it is the chipboard manufacturer that is considered to be the final reprocessor. However, if the wood chipper sells the chips as animal bedding, then he may issue PRNs for that material since he is classed as the final reprocessor.

33. Under this system, therefore, producers can meet their recovery and recycling obligations by buying or obtaining PRNs or PERNs which provide documentary evidence that the correct quantity and material of packaging waste has been recovered, consistent with the business's declared obligation.

34. The compliance market operates on a single year basis. Producers have obligations in a certain year and must purchase PRNs that relate to tonnages received for recovery/recycling in that same year. An exception to this rule is that PRNs relating to tonnages of packaging waste received for recovery in December of each year may be purchased to meet recovery obligations for either that year or the following year.

35. Reprocessors issuing PRNs receive a revenue stream associated with this activity. One condition of accreditation is that reprocessors are intended to use this revenue to fund the recovery infrastructure; it is not intended for use as additional profit to reprocessors. Reprocessors are expected to direct resources at the development of the collection, reprocessing or end-use market infrastructure.

36. Table 4 illustrates the number of reprocessors and exporters that have been accredited by SEPA, the Environment Agency (and the Northern Ireland Environment and Heritage Service) to issue PRNs/PERNs within each material category between 1999 and 2001. A list of reprocessors/ exporters is available from each Agency.

**Table 4 – Accredited Reprocessors and Exporters in UK 1998 - 2001**

<b>Reprocessors</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
Aluminium	12	12	11	10
Glass	18	18	23	36
Paper	45	41	46	45
Composting	0	2	3	3
Plastic	71	66	83	92
Steel	13	13	13	12
Wood	-	-	22	31
Energy from Waste	31	31	36	37
<b>Total Reprocessors</b>	<b>190</b>	<b>183</b>	<b>237</b>	<b>266</b>

<b>Exporters</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
Aluminium	-	-	2	6
Glass	1	1	3	2

Paper	-	1	3	13
Plastic	1	12	12	30
Steel	2	8	12	13
Total Exporters	4	22	32	64
<b>TOTAL ACCRED. COMPANIES</b>	<b>194</b>	<b>205</b>	<b>269</b>	<b>330</b>

## Compliance Schemes

37. The Regulations provide that producers may meet their obligations individually by following the steps described in the box below. Alternatively, they may choose to join a compliance scheme that will meet the producer responsibility obligations on the producer's behalf. However, producers who choose to join a compliance scheme must still, themselves, submit data on packaging handled to their compliance scheme, and these data must be as accurate as reasonably possible. There are currently 21 Agency registered compliance schemes in the UK which operate in a competitive market and which, between them, have attracted 85% of producers (see discussion of compliance schemes, and list of registered schemes, in Appendix III to Part Two of this *User's Guide*).

## **The Packaging (Essential Requirements) Regulations 1998 (The '1998 Regulations')**

38. Separate provisions have also been put in place relating to the minimisation of packaging use and other 'essential requirements' which are to be met by all packaging that is to be placed on the market. The Packaging (Essential Requirements) Regulations 1998 implement Articles 9 and 11 of the Directive and apply to all manufacturers, importers and brand owners of packaging (there are no threshold tests). The 1998 Regulations require that all packaging placed on the market must comply with specific 'essential requirements' including that -

*“Packaging shall be so manufactured that the packaging volume and weight be limited to the minimum adequate to maintain the necessary level of safety, hygiene and acceptance for packed product and for the consumer”.*

39. The Essential Requirements Regulations relate to product design and standards which is a matter reserved to the UK Government and the devolved administrations do not therefore have a function. The Essential Requirements Regulations also set heavy metals limits. Aggregate heavy metal limits apply to cadmium, mercury, lead and hexavalent chromium. The Packaging (Essential Requirements) Regulations 1998 are a separate set of requirements which are enforced by Local Authority Trading Standards/Consumer Protection Departments.

**A producer pursuing the individual route must –**

- Register with the relevant Agency by 7 April and pay a fee (currently £950);
- Provide packaging data that is as accurate as reasonably possible (also by 7 April);
- On registration, provide a compliance plan to the relevant Agency (if turnover is above £5 m);
- Discharge the necessary recovery and recycling throughout the year and obtain evidence of compliance;
- Provide a certificate of compliance (by 31 January in the following year) confirming whether this has been done; provide supporting evidence (e.g. copies of PRNs);
- Discharge the consumer information obligations (if main activity is selling)

**A producer pursuing the option to join a registered compliance scheme must -**

- Join the scheme in good time to allow the scheme to register by 7 April;
- Provide packaging data that is as accurate as reasonably possible to the scheme as soon as possible, but at least in time to allow the scheme to provide aggregated data by the required date (15 April for scheme data);
- Ensure that the consumer information obligations are met either through the scheme (if the main activity of the producer is selling) or through own activity.

# PART TWO

## CHAPTER ONE

### DIRECTIVE TARGETS AND 'BUSINESS' TARGETS; WHO IS OBLIGATED; THE MAIN OBLIGATIONS IN THE REGULATIONS

**Summary:** this chapter discusses-

- the Directive targets and targets for producers in the UK;
- the main obligations placed on producers, including the 'consumer information obligation' on sellers;
- who is exempt ?
- 'packaging handled'
- the targets

#### IMPLEMENTING THE EC DIRECTIVE ON PACKAGING AND PACKAGING WASTE

##### The Directive Targets

1.01 The Regulations have been made to implement parts of the *EC Directive on Packaging and Packaging Waste 94/62/EC*, in particular Article 6(1). This Article set EU Member States specific **targets** for recovery and recycling to be reached by 30 June 2001. The Directive targets are -

- that between **50%** minimum and 65% maximum by weight of packaging waste will be recovered;
- within this general target, between **25%** minimum and 45% maximum will be recycled, with a minimum of **15%** by weight of each packaging material.

1.02 These are the targets that the UK had to meet in 2001. The targets to be met over the next 5-year period will increase following the review of the Directive which is being carried out at the time of the publication of this User's Guide. New targets are expected to be agreed in late 2003.

##### Targets for Producers

1.03 In order to enable the UK to achieve the Directive targets, Regulations have been made in Great Britain and Northern Ireland. Regulation 3 places specific obligations on certain producers to recover and recycle specified tonnages of packaging waste which are calculated by using three factors (discussed further in Chapter Four), one of which is the **business recovery and recycling targets** in the Regulations.

1.04 “Business targets” in the Regulations are different from the Directive targets that the UK has to meet because it applies only to the packaging handled by producers. Not all businesses are producers, and account has to be taken of the fact that the packaging handled by those businesses who fall below the two threshold tests (see below) is not obligated, but the targets apply to all packaging waste in the UK waste stream. Thus in 2001, for example, a 56% business recovery target was set in order to achieve the 50% recovery rate required in the Directive.

### **Who is Obligated ?**

1.05 In order for the UK to meet its Directive targets, the Regulations place certain obligations on businesses in Great Britain. Businesses who will be obligated will exceed two threshold tests and will carry out certain activities on packaging. Both threshold tests must be satisfied if a business is to be obligated. Businesses that satisfy the thresholds and are obligated are known as "producers".

### **The two threshold tests**

1.06 Businesses will be obligated if they satisfy the two threshold tests referred to below. The turnover threshold also applies to businesses that are not required to have audited accounts, e.g. partnerships and sole traders. Any assessment of turnover should be consistent with the definition of 'turnover' in the Companies Act (see below). Where audited accounts are not required, the most recent accounts of the business should be referred to.

#### The turnover threshold

1.07 Businesses should look at the turnover figure for the last financial year for which audited accounts are available before the “relevant date”. “Relevant date” means the date by which obligated producers must be registered, or continue their registration, i.e. 7 April. Turnover as defined in the Companies Act 1985, S. 262 (1) “in relation to a company, means the amounts derived from the provision of goods and services falling within the company’s ordinary activities, after deduction of -

- i. trade discounts;
- ii. value added tax; and
- iii. any other taxes based on the amounts so derived”

1.08 For groups of companies, the relevant turnover is the aggregate turnover of all the companies in the group (holding company and subsidiaries) which supply

packaging. For the purposes of the Regulations, the definition of turnover applies also to legal persons who are not companies.

### Turnover and Overseas Activity

1.09 It is the total turnover of the registered business as reported in its audited accounts that should be being considered, whether or not this turnover figure incorporates overseas or Northern Ireland activity. Businesses who are not required to provide audited accounts, such as sole traders and partnerships, should also look at the turnover relating to the business entity as a whole.

### The tonnage threshold

1.10 Where in one year a producer is considering whether it is obligated, the tonnage threshold test requires that the producer handled more than 50 tonnes of packaging or packaging materials in the previous calendar year. Businesses will need to be clear about the meaning of 'packaging handled' as this is what they will want to look at first to see whether they satisfy the tonnage threshold test. They will also need to consider their packaging handled to establish the tonnage of packaging on which they will have recovery and recycling obligations (see below).

**Note: this is not about the packaging waste produced but about the packaging that goes through your business.**

## **PACKAGING HANDLED**

1.11 Any business that is a producer will have obligations to recover and recycle packaging waste each year which are calculated on the basis of the **packaging handled** by the business in the previous year. "Packaging handled" is defined in the Regulations (paragraph 4(2) of Schedule 1) and can be summarised as **packaging** or **packaging materials** that are **owned** by the producer and on which a **relevant activity** is performed prior to **supply** onto the next stage in the packaging chain or to the final user. These terms are described in further detail below.

### Definition of packaging

1.12 The **definition of packaging** is given in regulation 2(1) and is the same as that given in the Directive. Packaging means -

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

(a) *sales or primary packaging, that is to say packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;*

(b) *grouped packaging or secondary packaging, that is to say packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale; it can be removed from the product without affecting its characteristics; or*

(c) *transport packaging or tertiary packaging, that is to say packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packagings in order to prevent physical handling and transport damage; for the purposes of the Regulations transport packaging does not include road, rail ship and air containers.”*

1.13 The main packaging materials are –

paper	plastic	aluminium
glass	steel	wood

and ‘other packaging materials’ such as jute, hessian, ceramics, cork etc.

1.14 Recovery and recycling targets applied to the main packaging materials from 1998, but specific recovery obligations on wood and ‘other’ packaging materials did not come into force until 2000. Further guidance on the interpretation of “packaging” is available from the Agencies ‘guide to interpretation of packaging’.

### Ownership

1.15 **Ownership** of packaging is not defined in the regulations but is taken to have its ordinary everyday meaning; i.e. that the property belongs to the person who has the exclusive right to use, possess or dispose of it, or direct its use, possession or disposal.

### Activities carried out on packaging

1.16 The ‘packaging chain’ is considered to consist of the four main stages through which packaging materials and packaging might be expected to flow, i.e. *manufacturing* of raw materials for packaging, *converting* materials into packaging; *filling* packaging or using packaging to wrap goods; and *selling* packaging to the final user (i.e. the person who will discard the packaging); together with importing packaging or packaging materials. At each stage, an activity or function is carried out on packaging. The Regulations use the word ‘function, and they set down what these functions or activities are, namely -

*“the performance by a person of the functions of one of the following-*

- (i) manufacturer
- (ii) convertor
- (iii) packer/filler
- (iv) importer, or
- (v) seller

*either himself or through an agent acting on his behalf, and **in the course of business.***”

1.17 It should be noted that, to be obligated under the Regulations, a person or organisation must be a business. The Regulations say that a person acts in the course of business if he “acts in the normal course of conduct of a trade, occupation or profession”. Thus, bodies which are not businesses will not be obligated under the Regulations. For example, an organisation which is a charity within the meaning given in section 506 of the Income and Corporation Taxes Act 1988 will not be obligated, although a branch of a charity which is a business may well have obligations if it satisfies both threshold tests.

### Supply

1.18 Finally, in assessing ‘packaging handled’ a business will consider whether the packaging owned by the producer, and on which a relevant activity is performed is subsequently **supplied** on to another stage in the packaging chain or to the final user. “Supply” is defined in the Regulations as follows -

*“Supply” means doing any of the following, either himself or through an agent acting on his behalf in relation to packaging or packaging materials owned by the supplier:*

- (i) *selling, hiring out or lending;*
- (ii) *providing in exchange for any consideration .....other than money;*
- (iii) *providing in or in connection with the performance of any statutory function,*
- (iv) *giving as a prize or other wise making a gift.”*

1.19 There is a type of supply called “deemed supply” which is also defined. “Deemed supply” means -

*“a supply which is deemed to occur when a person who has carried out a relevant function then performs another such function in relation to the same packaging or packaging materials.”*

1.20 This kind of supply occurs where a producer carries out one activity on packaging and then carries out another activity on the same packaging. For

example, where a producer manufactures molten glass (raw material manufacturing activity) before converting this (converting activity) into bottles, the producer is both the raw material manufacturer and the convertor. A 'deemed supply' has taken place from the first to the second activity.

1.21 There is a range of different types of 'supply' set down in the Regulations (set out in Schedule 1 in the Table and paragraph 2) but briefly, a producer can only make a 'supply' to:

- another person who performs a relevant function different to that performed by the producer (e.g. a pack/filler to a seller or a convertor to a pack/filler);
- a final user or consumer (e.g. a seller supplying packaged goods to the person who will discard the packaging);
- a distributor who does not perform a relevant function (e.g. from a convertor, to a distributor and thereafter on to a pack/filler);
- himself (i.e. a 'deemed supply' as defined above).

1.22 **Excluded** from 'packaging handled' are -

- packaging and packaging materials that are exported from the UK;
- packaging that is being reused; and
- production residues that arise during packaging manufacture and conversion.

### Percentage activity obligations

1.23 In order to calculate the recovery and recycling obligations, three factors are used, including the percentage activity obligations that are applied to the different activities carried out on packaging. Because the obligation to recover and recycle packaging waste under the Packaging Regulations is shared between the four main activity stages of the packaging chain, the activity obligations are as follows -

<u>Activity</u>	<u>Activity obligation</u>
Manufacturing raw materials for packaging	6%
Converting	9%
Pack/filling	37%
Selling	48%

1.24 Importers may also pick up obligations, up to 100%, for activities carried out on packaging before it is imported into the UK.

### Using the targets to calculate obligations

1.25 Also used to calculate a producer's tonnage recovery and recycling obligations are the recovery and recycling targets. The obligation of an individual business will be as follows =

### Recovery target

*[Tonnage of packaging handled] x [percentage activity obligation] x [UK recovery target] = the recovery obligation*

### Material Specific Recycling target

*[tonnage of packaging handled by material] x [percentage activity obligation] x [UK recycling target] = the recycling obligation in this specific material*

**Table 3 (repeated): Business Recovery and Recycling Targets for 1998 - 2003**

Year	Business Recovery Target	Minimum business recycling target per material	Overall Directive minimum recovery target	Minimum Directive recycling target per material	Overall Directive minimum recycling target
1997	-	-	-	-	-
1998	38%	7%	-	-	-
1999	43% <sup>7</sup>	10%	-	-	-
2000	45% <sup>8</sup>	11%	-	-	-
2001	56% <sup>9</sup>	18%	50%	15%	25%
2002	59%	19%	50%	15%	25%
2003	59%	19%	50%	15%	25%

**The Regulations require that, with effect from 2001, producers must discharge at least 50% of their recovery obligation through recycling (see Chapter 4).**

1.26 A large number of businesses will carry out more than one activity and will handle more than one material - which is relevant when it comes to calculating the recovery and recycling obligations in particular. It should be noted that a producer will be obligated, and have a calculation, for each activity they perform, on each material. The calculation of the obligation is discussed in Chapter Four.

### **Some examples -**

*(Unless otherwise stated, these and all following examples relate to individually registered businesses signing up directly with an Agency rather than joining a compliance scheme)*

*The following businesses are considering whether they need to register -*

<sup>7</sup> Original target was 38%

<sup>8</sup> Original target was 43%

<sup>9</sup> Original target was 52% for 2001 onwards.

*\* Business A is considering registering with the relevant Agency in 2004, and believe that their turnover is likely to be £2 million or less for their accounting year 2003-04 but they do not yet have the audited figures. They therefore look at the most recently available audited accounts, which are those for accounting year 2002-03. If these figures show a turnover of £2 million or less, defined in para. 1.07 above, A is excluded from the Regulations. They will need to monitor the future growth of the business to check that it continues to comply with the Regulations.*

*\* Business B was considering registration in 2003. It established that it had a turnover of £7 million in its most recently available audited accounts, but that in 2002 it only handled 35 tonnes of packaging/packaging materials. B did not satisfy both threshold tests and so is excluded from the Regulations.*

*\* In 2003 Business C is considering registration. Their most recently available accounts show a turnover of £6 million, and in 2002 it handled 30 tonnes of paper/fibreboard and 35 tonnes of wood and ceramics packaging materials, that is a total of 65 tonnes of packaging. It was therefore an obligated producer and had to discharge the producer responsibility obligations.*

*\* In 2003, Business D, a partnership, is considering registration. Most recent accounts show a turnover of £6 million and in 2002 they handled 60 tonnes of packaging, of which 15 tonnes were exported. Only 45 tonnes were supplied on and so, for the purposes of the Regulations, Business D was not obligated.*

*\* In 2003, Business E was considering registration. The business imports paper for supply on to convertors in the UK and elsewhere. In 2002 it imported 998 tonnes of which 500 tonnes were exported. Under the Regulations, E supplied on 498 tonnes to UK convertors. E has evidence to show that, further down the chain, 300 tonnes was subsequently exported by UK convertors and so the packaging handled for the purposes of the Regulations was 198 tonnes. Business E's turnover exceeded £2m and the business is therefore obligated.*

## **Data Accuracy**

How accurate must the data be?

1.27 In the years 1997 to 1999, it was sufficient to make a reasonable estimate as to the packaging data handled by a producer. However, since 2000, the data to be provided has been required to be **“as accurate as reasonably possible”** (Regulation 6(7)). Provision of data is part of the registration obligation (regulation 3(5)(a)) and this means that producers must provide the relevant Agencies with data that are the best that can reasonably be obtained. It will be for the relevant Agency to determine whether the data provided meet the requirement. Producers may wish to discuss this with the relevant Agency. The same applies to compliance schemes, who take on the producer responsibility obligations that their members would have had but for their membership of the scheme (regulation 4(1)(a)).

1.28 Producers, whether individually registered or members of schemes, will be aware that they have been expected to provide increasingly accurate data from 1997 on. Those who began developing data gathering systems from 1997 will find the data provision requirement less challenging as a result.

### **An example**

*In 1997, it was acceptable to make a rough estimate of packaging handled by estimating, say, the weight of yoghurt pots by assessing the weight of the whole pot ( as body and lid, plastic and metal) and multiplying by the average number handled in a month, multiplied by 12. Now, however, producers are expected to have a system that takes account of plastic and metal separately, and counts tonnages on the basis of, for example, invoices, or inward supplies of plastic and metal, inventory lists etc.*

*Remember - a yoghurt pot and lid is not composite packaging - that would be packaging that cannot be separated by hand.*

*The lid and the pot must both be counted separately - unless they are both of the same material (e.g. plastic pot and lid). Schemes are expected to ensure that their members also take steps to provide robust data.*

## **THE MAIN OBLIGATIONS ON PRODUCERS**

1.29 Regulation 3 places three **main obligations** on all producers while a fourth obligation is placed on producers whose main activity is selling. Registration and data provision takes place by 7 April each year. Producers have until 31 January the following year to meet their recovery and recycling obligations and submit a Certificate of Compliance (see below). These obligations are:

### **i. The 'registration obligation' (see Chapter Two)**

Producers may register with the relevant Agency or join a registered compliance scheme. Producers who have chosen not to join a registered compliance scheme must register with the Environment Agency or the Scottish Environment Protection Agency (SEPA) depending on where their registered office or principal place of business is located. They must register by submitting an application form to the relevant Agency together with the appropriate fee, and the required packaging data relating to the previous calendar year. It is a requirement for those producers registering individually with an Agency (i.e. who are not a member of a compliance scheme) who have financial turnover in excess of £5 million to also provide the relevant Agency with a compliance plan each year (see Chapter Two). **Failure to register on time is a criminal offence and may result in legal proceedings being taken against the company.**

### **ii. The 'recovery and recycling obligations' (see Chapter Three)**

Producers must take reasonable steps to recover and recycle specified tonnages of packaging waste, i.e. through the acquisition of evidence that the required tonnages of packaging waste have been delivered to reprocessors for recycling or recovery. The tonnages to be recovered and recycled are calculated on the basis of -

- the packaging handled by the producer in the previous year (Regulation 3 and Schedule 2)
- national recovery and recycling targets (paras. 4(c) and 5(c) of Schedule 2); and
- specified percentage activity obligations (para. 3 (1) of Schedule 2).

### **iii. The 'certifying obligation' (see Chapter Five)**

Producers must certify annually to the relevant Agency at the end of the year whether the recovery and recycling obligations have been complied with (see regulation 23). They have until 31 January of the following year to submit this certificate of compliance<sup>10</sup>. The evidence of recovery and recycling will normally be in the form of PRNs and/or PERNs (see paragraph below).

### **iv. the 'consumer information obligations' (see Chapter Six)**

Those producers who are “sellers”, i.e. as defined in the Regulations (and the definition refers to “selling” meaning supplying packaging filled or unfilled) must provide to the consumers to whom they sell, whether they are householders or other businesses, information on a range of recycling issues (see para. 3.63 below).

1.30 The Regulations are directed specifically at businesses who put packaging or packaging materials on the market, whether through domestic production or import from outside the United Kingdom of Great Britain and Northern Ireland (see definition of ‘importer’ in Chapter 3; and whose packaging goes into the UK’s household, commercial or industrial waste stream (and agricultural waste stream when it is packaging waste, e.g. from fertiliser bags, pesticide bottles and drums etc.).

### **Producers who are members of a compliance scheme**

1.31 Under Regulation 4, producers will be exempt from their producer responsibility obligations where they have joined a registered compliance scheme. The scheme will take on the obligations that the producers would have had but for their membership of the scheme.

1.32 Schemes must therefore: register with the relevant Agency by the statutory deadline and, as part of the registration obligation, provide packaging data which is as accurate as reasonably possible on the packaging handled by all their members in the previous year; pay the relevant fee (currently £460) per member to the relevant Agency; discharge the recovery and recycling obligations that their members would have had but for their membership of the scheme; and certify at the

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<sup>10</sup> schemes also have a certifying obligation. See Appendix III

end of the relevant year whether the recovery and recycling and consumer information obligations have been complied with. See Appendix III for more information relating to schemes.

## WHO IS EXEMPT ?

1.33 These Regulations are based on the principle of producer responsibility. Consequently, if you are not a producer, you are not affected by the Regulations. In addition, by virtue of regulation 4(2), these Regulations do not apply to charities as defined in section 506 of the Income and Corporation Taxes Act 1988. Where a charity has a trading arm, which is a business, that business is potentially a producer with producer responsibility obligations.

1.34 This User's Guide will discuss the Regulations in relation to obligations placed on an individually registered producer, i.e. a business which is free-standing and is not a member of a group of companies and has not joined a compliance scheme. Unless otherwise indicated, worked examples also relate to such individual businesses.

'Producers' can be companies, partnerships or sole traders - acting in the course of business and in the UK. This includes groups or single companies. "In the course of business" means acting in the ordinary course of conduct of a trade, occupation or profession. The business entity has the obligations so it is irrelevant how many sites a business may have. Registration options for groups of companies are discussed in Chapter Two.

## 'SPECIAL PRODUCERS'

1.35 The Regulations make specific provisions for those producers who are 'special producers' as defined in Schedule 3 Part III. Special producers handle **primary packaging** which, when discarded, is likely to be special waste or have contained, and thus be contaminated by, special waste as defined in regulation 2 of the Special Waste Regulations 1996<sup>11</sup>; or they handle some dangerous goods packaging within the meaning of the *Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations 1996* or have handled explosives packaging. Special producers should note that the terminology "special waste" is likely to change in the course of 2003 and a review is being carried out following the changes to the European Hazardous Waste List and changes can be expected. Account will be taken of this in any future changes to the Regulations.

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<sup>11</sup> the term "special waste" is going to disappear with the changes to the legislation in the UK implementing the Hazardous Waste Directive, and the revised Hazardous Waste List. This term is likely to disappear in the course of 2003/04

1.36 Special producers will have the producer responsibility obligations (i.e. 'registration', 'recovery and recycling', 'certifying' and, if relevant, 'consumer information' obligations) on packaging that they handle that does not fall within the definition of special producer in Part III of Schedule 3; and will have to provide data and returns and keep records on all their packaging, including their special producer packaging, as set out in Part V of Schedule 3. **Special producers should note in particular that, when calculating whether they satisfy the threshold tests, they must include all packaging handled whether 'special' packaging or not.**

**An example -**

*\* Business A was considering registration in 2003. Their most recently available audited accounts showed turnover of £6.5 million and in 2001 they handled 20 tonnes of packaging together with a further 35 tonnes of packaging which would be treated as special waste when discarded. Business A handled a total of 55 tonnes of packaging and also satisfied the turnover test and was an obligated business. It had to report data on all packaging handled, but had recovery and recycling obligations only on the 20 t that is not expected to become special waste. On the 35 tonnes which does become special waste, A has a reporting requirement - see para. 1.28 above and also paragraph 6 of Schedule 3.*

*\* Business B is a convertor that manufactures flat cartons. They are considering registration in 2004. They expect their accounts to show a turnover of £10 million and in 2003 they know they will handle 120 tonnes of paper. They will therefore be obligated. Because 100 tonnes of this becomes 'special waste', B will be a special producer (regulation 4 and Schedule 3) in relation to the 100 tonnes and they will not have recovery and recycling obligations on that tonnage. They will, however, have the reporting obligations as a special producer (Schedule 4 Parts IV and V). Business B will have the usual producer responsibility obligations - including recovery and recycling - on the 20 tonnes of their packaging handled that does not become 'special producer waste'.*

**As for all producers, with effect from 2001, at least half of Businesses A's recovery obligations must be discharged through recycling.**

## **TWO ROUTES TO COMPLYING WITH THE REGULATIONS**

1.37 Producers have a choice of complying with their obligations in one of two ways -

- i. they can register individually with the relevant Agency and make their own arrangements to comply with their legal obligations ('the individual route'); or
- ii. they can join a registered compliance scheme which will discharge the obligations which they would have had but for their membership of the scheme. 'Exemption' schemes as they are described in the Environment Act 1995 are more commonly termed 'compliance' schemes as they have been

set up to ensure that their members comply with their obligations under the Regulations and are described as such in this User's Guide.

1.38 The remaining chapters of this Guide discuss the provisions of the Regulations from the perspective of a producer pursuing the individual route. See Appendix III for information about compliance schemes. **Producers should note that whether they pursue the individual route or if they join a scheme, they will themselves have to put together the requisite data relating to the packaging handled by their business and they will have to ensure that this is as accurate as reasonably possible.**

# CHAPTER TWO

## REGISTRATION AND DATA PROVISION

Summary: this chapter discusses -

- the deadline for registration;
- producers' registration obligation and the related data provision requirement;
- registration obligation for Groups of companies;
- fees for Groups of companies;
- submission of packaging data
  - what is packaging
  - all packaging materials covered
  - cellulose included with paper
  - composites
  - filling in the data form
  - accuracy of the data

### DEADLINE FOR REGISTRATION

2.01 The deadline for registration is **7 April**. This means that businesses and compliance schemes must have applied for registration and provided the completed data form, the relevant registration fee and, in the case of individually registering businesses with turnover over £5 million, the required compliance plan, by that date at the latest. **Late registrations are not accepted and the producer may face criminal proceedings.** Compliance schemes have until 15 April to provide aggregated data on behalf of all their members. Clearly, therefore, if the data requirement is going to be adequately complied with, businesses should start as soon as possible in a new calendar year, or beforehand, to think about the packaging data they are to provide under the Regulations. It should be noted that provision of data that is as accurate as reasonably possible is a requirement regardless of whether the producer chooses to comply itself or through a compliance scheme.

2.02 The provision of data, in full and on time, is particularly important. The aggregate data from all individual companies and scheme members gives the total UK obligation. The data also enables the Agency to carry out its monitoring duties, and the Government to carry out any analysis of data that is necessary, for example, to assess whether the UK is on course to meet targets, to develop new targets, and to provide information back to industry on the amount of packaging arising in the

waste stream, and thus the tonnage to which the recovery and recycling targets apply.

## **REGISTRATION OF PRODUCERS**

2.03 The requirements on registration are as follows (regulation 6(1)(a) to (c)) -

- (a) if a producer's registered office or principal place of business is in Scotland they must apply for registration to the Scottish Environment Protection Agency (SEPA).
- (b) if a producer's registered office or principal place of businesses is in England or Wales, they must apply to the Environment Agency.

2.04 When they apply to register, or to renew their registration, a producer must provide the Agency with –

- i. a fee of £950 if registering itself with an Agency (regulation 9). See paragraph 2.08 for the rules applying to groups of companies;
- ii. general information about the producer - (i) address and telephone number of the producer's registered or principal office; (ii) the business name of the producer if different from (i); (iii) the address for service of notices if different from (i) (Regulation 6, Schedule 4; (iv) the business's SIC Code <sup>12</sup>
- iii. packaging data relating to the previous calendar year (Regulation 6) and that is as accurate as reasonably possible, on a form to be provided by the appropriate Agency;
- iv. in order to remain registered and have their registration continued, an undertaking that the producer will, in subsequent years, provide the relevant Agency with the appropriate fee and the required packaging data by 7 April at the latest (Regulation 8), and inform the relevant Agency of any changes to the information in (ii) above (Regulation 7).
- v. where the producer is planning to comply itself and is therefore registering individually with the relevant Agency, and their turnover is more than £5million, a compliance plan showing how the recovery and recycling obligations are to be complied with throughout the year.

### **Compliance plans from individually registered businesses**

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<sup>12</sup> A Standard Industrial Classification (SIC) is used to classify business establishments and other statistical units by the type of economic activity in which they are engaged. Business establishments receive their classification either based on information they provide as part of a PAYE application, or from information supplied to Customs & Excise for importers.

2.05 Businesses failing to provide an adequate plan may find their application for registration with the Agency being rejected. It is therefore important that this requirement should be discharged as fully as possible. Businesses who are required to supply the Agency with a compliance plan should look at Appendix III of this guide which discusses compliance schemes' operational plans and sets out some considerations which are also relevant to the compliance plans required of these individually registering businesses.

2.06 Producers who are required to supply a compliance plan<sup>13</sup> i.e. individually registering businesses with turnover over £5 million should be guided by schedule 4 to the Regulations and demonstrate to the Agency -

- the type of evidence the producer will obtain to meet the obligations e.g. Packaging Waste Recovery Notes (PRNs) or Packaging Waste Export Recovery Notes (PERNs);
- confirmation of any arrangements with named reprocessors/exporters including any contract(s);
- the frequency according to which the producer proposes to obtain this evidence e.g. monthly, quarterly;
- whether the producer intends to use non-Agency accredited reprocessors/exporters and if so, identify the reprocessor/exporter and provide full details of these non-accredited reprocessors/exporters, and estimates of tonnages to be provided
- if it is intended to meet the obligation (or at least part of it) using own backdoor packaging waste, details of tonnages and materials and name and address details of reprocessors/exporters it is intended to use. Producers taking this approach will still need PRNs or PERNs or alternative evidence even when own backdoor waste is used as this documentation provides evidence of tonnages delivered for reprocessing.

2.07 The Agencies will check these points against the compliance plan provided when a Certificate of Compliance is submitted.

**SEE CHAPTER FOUR FOR HOW TO CALCULATE PACKAGING HANDLED**

## **REGISTRATION OF GROUPS OF COMPANIES**

### **Groups of Companies and the threshold tests**

2.08 Regulation 29 and Schedule 8 relate to groups of companies, defined in this instance as a holding company and one or more of its subsidiaries, or two or more subsidiaries of the same holding company that make a supply of packaging. For the purposes of the Regulations, therefore, a “group of companies” has a specific meaning and is different to that more generally applied in company law.

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<sup>13</sup> Compliance schemes are required to provide an operational plan in order to be registered. See Appendix III

2.09 Whether a group of companies in this sense has producer responsibility obligations under the Regulations depends on -

- a) whether the aggregate of the annual turnovers of the producers in the group (i.e. the holding company and the subsidiary businesses in the group of companies that are producers) satisfies the financial turnover threshold test ('over £2million') and
- b) whether the aggregate of the amounts of packaging or packaging materials handled by the producers in the group satisfies the tonnage threshold test (see para. 3 of Schedule 1 to the Regulations and paragraph 1 of Schedule 8).

2.10 Thus, a group of companies as defined by the Companies Act can assess whether the holding company and any subsidiaries are to be registered as a “group of companies” as defined for the purposes of the Regulations. They may do so by reference to the holding company and one or more subsidiaries. The consequence is that the holding company, even if it is not a producer itself, may register on behalf of all those subsidiaries in the group that are producers if the option of “group registration” is followed. This is the only departure from the general rule that holding company and subsidiaries must each be a producer if they are to be obligated as a group of companies. The application of the Regulations also means that a subsidiary which is a producer, but which would alone not satisfy the threshold tests will be required to be registered, either separately or as part of a group registration (assuming that, together with other members of the group, they satisfy the threshold tests).

2.11 Where a business is a member or subsidiary of a group of companies, it should contact the holding or parent company to establish the approach to registration that the group as a whole proposes to take.

2.12 The examples below illustrate the position for groups of companies.

**Three examples:**

*The first Group consists of a holding company and three subsidiary businesses handling 2 tonnes, 3 tonnes, 8 tonnes and 36 tonnes respectively. The Group as a whole has financial turnover of £26.5 million. Even though the holding company and subsidiaries are all producers and the Group as a whole satisfies the turnover threshold test in aggregate, it only handled 49 tonnes of packaging, so it is not obligated.*

*The second Group consists of a holding company and twelve subsidiaries. Three subsidiaries are not producers (i.e. they do not carry out activities on packaging which they own and which they supply to another stage in the chain or to the final user). In this case, the holding company and the 9 subsidiaries, who are all producers, are the 10 businesses that must aggregate their turnover and their packaging handled.*

*The third Group consists of a holding company and four subsidiaries. Their aggregate financial turnover exceeds £2 million and they handle more than 50 tonnes of packaging between them. Although the holding company is not a producer but the subsidiaries are, nevertheless the holding company can register on behalf of all.*

2.13 Obligated groups of companies have four registration options -

- i. where the holding company and all the subsidiaries are producers, they can all register together;
- ii. where each subsidiary and the holding company is a producer, each can register individually;
- iii. where the holding company is a producer, it can register in respect of one or more of the subsidiary companies that are producers, while all remaining subsidiary businesses that are producers must register individually - they may not join together in one registration without the holding company.
- iv. where the holding company is not a producer but its subsidiaries are, the holding company can still register on behalf of all.

2.14 For example, if a Group consists of 1 holding company and 11 subsidiary companies that are producers and, as a Group, it satisfies both the threshold tests -

- (a) there can be one registration consisting of 12 producers (the holding company and the 11 subsidiaries, all of which are producers), which reports on the packaging handled by all 12 (as in (i) above); or
- (b) there can be 12 individual registrations, where the holding company and each subsidiary business are all producers, and each will report on its packaging handled regardless of whether individually the businesses would satisfy the threshold tests (as in (ii) above); or
- (c) there can be a registration of the holding company and, say, 7 subsidiary businesses where all are producers (one registration on behalf of the 8 companies and reporting on the packaging handled by all 8 companies) and 4 individual registrations with each reporting on its own packaging handled (as in (iii) above).

## **Group fees**

2.15 Where there is a group registration as in (i) above, there will be one fee payable to the appropriate Agency and data will be provided on the holding company and those subsidiary businesses in the group registration, whether or not they individually satisfy the threshold tests. If the Group is a member of a compliance scheme, the same arrangement applies.

2.16 If all subsidiary businesses each register individually as in (ii) above, each will pay a fee and provide data on its own activities. Equally, if each subsidiary business decides to join a scheme, it will have to pay a fee to the scheme on its own behalf.

2.17 Where the holding company registers in respect of itself and some of its subsidiary businesses as in (iii) above, it will pay one fee and provide data in respect of itself and all those subsidiary businesses on whose behalf it is registering; if it registers with a scheme, the same fee arrangements will apply. The remaining subsidiaries will register individually, whether or not they satisfy the threshold tests individually, and each will pay a fee (see Schedule 8 para 4); if the subsidiaries join a compliance scheme individually, they will pay an individual fee to the scheme.

## SUBMISSION OF PACKAGING DATA

### What is Packaging ?

2.18 Regulation 2(1) sets down the definition of packaging. This is the same one provided in the Directive. In particular, **packaging** means “*all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods...*” The full definition of packaging (see para. xvii in the Introduction to this *User’s Guide*) also explains the difference between sales or primary packaging, grouped or secondary packaging and transport or tertiary packaging (see also *The Agencies’ Interpretation of Packaging*<sup>14</sup>).

2.19 Where a producer is unsure whether an item that they handle is packaging or not, **their first recourse should be to the definition of packaging in the Regulations**. This will help in most cases, but where there continues to be a difficulty, it will be up to the producer to reach their own view taking account of the guidance issued by the Environment Agency and SEPA in the second edition of their ‘Blue Book’ or guidance on what is and is not packaging. The Agencies also issue Explanatory Notes, which are developed by the Agencies to aid interpretation. The Agencies’ guidance takes account of discussions that the UK has held with other Member States and the European Commission as to what is and what is not packaging.

### All packaging materials included

2.20 The producer responsibility obligations in the Regulations apply to all packaging materials, that is paper/fibreboard (including paper, light carton, corrugated boxes, etc.), plastic, glass, steel, aluminium, wood and other packaging materials such as ceramics, jute, hessian etc.(see regulation 2(1)). In relation to the recovery and recycling obligations, wood and other packaging materials are subject only to a recovery obligation and do not have the material-specific recycling obligation (Schedule 2, para 6) although it should be noted that at least 50% of the recovery obligation (which will include wood and other) must be carried out through

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<sup>14</sup> The Agencies Interpretation of Packaging, 2<sup>nd</sup> Edition, [1999]

recycling. 'Recovery' can be discharged by means of recycling, including composting or incineration with energy recovery.

2.21 The Regulations refer to “materials ...to be used for ...the containment, protection, ...” etc. This means that businesses must take account of materials that they handle that will be used to make packaging, including, for example, rolls of paper, sheets of steel or aluminium, timber to be used for making pallets or crates, plastic granules to be made into, for example, plastic shrink wrap, as well as imports of these into the UK. In addition, they must take account of packaging such as paper cartons, boxes, bags and sacks; aluminium cans, aerosols and pet food containers; steel cans, drums and strapping; glass jars and bottles; plastic food containers, bottles and small and large drums; and wooden crates, boxes and pallets.

### Cellulose

2.22 The Government has agreed, following discussions with those involved in the cellulose, plastics and paper material sectors, and taking account of the wood pulp base of the material, that the category 'paper/fibreboard' also covers all packaging derived from cellulose including regenerated cellulose and cellulose acetate films. It should also be noted that cork is not classed as wood but is part of “other packaging materials”.

### **Composite Packaging**

2.23 For the purposes of the Regulations, composite packaging is packaging made from two or more materials that are not separable by hand - e.g. plastic potato crisp bag with an aluminium interior coating. When producers are assessing the weight of composite packaging for the purposes of the Regulations, they should allocate the whole weight of the packaging item to the predominant packaging material by weight. See paragraph 6(1) of Schedule 2 to the Regulations.

Composite packaging – the whole weight of composite packaging is to be allocated to the predominant material by weight.
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2.24 It should be noted that components (e.g. the caps to a bottle) are not the same thing as composites. The latter can generally not be separated by hand. Components can be separated by hand. Thus, for example bottle caps which can easily be separated from the bottle are components and should be reported separately on the data form.

### **Filling in the data form**

2.25 All producers who register with the Agencies (including through Schemes – see Appendix III) will be required to provide the relevant Agency with packaging data (regulations 6 and 12). The relevant Agency will provide the producer with a data form, and this form must be completed and returned to the Agency by 7 April. Compliance schemes have until 15 April to provide the data. **Members of compliance schemes will have to fill in the data form and return this to their**

**compliance scheme - and they are likely to have to do so to an earlier deadline so that the scheme may provide the aggregated data to the relevant Agency on time.** This self-assessment by producers is subject to audit by the relevant Agency and the producer may be required to re-submit data in the event the self-assessment is held by the Agency to be invalid. Producers who submit data they know to be inaccurate are liable to enforcement action including the possibility of prosecution.

2.26 The data form for completion and guidance notes are available from the relevant Agencies. The guidance notes must be read carefully before the data form is completed. Those companies who are members of schemes may also receive specific guidance directly from their scheme.

2.27 Producers switching to reuse systems instead of using one-trip transit packaging may spread their first-time round obligation across four years provided that the packaging in question has a life of at least four years (Schedule 2 para.7). Where a producer chooses to do this, the recovery and recycling obligations can be spread equally over four years. Producers wishing to take advantage of the provision to spread the cost of the first-time round obligation on packaging that is going to be reused should get in touch with the Environment Agency or SEPA.

2.28 The reason for this provision is that the Government considers that the waste minimisation objectives of the Directive might be better achieved if producers switched where possible to reusable, closed loop packaging rather than single use packaging. The Government also understands that there may be significant 'one off' costs associated with picking up obligations for a new closed loop packaging system.

**NB The Ready Reckoner issued by the Department in 1998 is no longer valid and should not be used !**

## CHAPTER THREE

# THE RECOVERY AND RECYCLING OBLIGATIONS AND ASSESSING THE PACKAGING YOU HANDLE; OBLIGATED BUSINESSES INCLUDING IMPORTERS; AND THE ACTIVITY OBLIGATIONS

**Summary: this chapter discusses-**

- the recovery and recycling obligations;
- assessment of *packaging* handled, recovery of *packaging waste*;
- obligated businesses;
- ownership;
- the activities in the packaging chain;
- secondary provider
- the activity obligations;
- supply;
- the provisions with regard to agents, franchisees/franchisors
- imports and exports;
- transit packaging;
- wholesalers
- the consumer information obligations

### RECOVERY AND RECYCLING OBLIGATIONS

3.01 Regulation 3(6) makes clear that the recovery and recycling obligations of producers are to enable the UK to attain the recovery and recycling targets for Member States set out in article 6(1) of the EC Directive on Packaging and Packaging Waste 94/62/EC. Thus, the system set down in the Regulations is designed to have sufficient recovery and recycling of UK packaging waste carried out to meet the Directive targets<sup>15</sup>.

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<sup>15</sup> In 2001, against the first Directive target, the UK achieved the overall recycling and the material-specific recycling targets but fell short of the 50% recovery target – achieved 48%

3.02 In planning for the UK's achievement of the Directive targets, it is assumed that all obligated businesses will carry out their legal obligations and that the great majority of their packaging handled will be 100% obligated. This means that the obligation at each stage of the packaging chain - 6% at raw material manufacturing stage, 9% at converting stage, 37% at pack/filling stage and 48% at selling stage, and including any importers' obligations - must be discharged.

## **ASSESSMENT OF PACKAGING HANDLED AND RECOVERY OF EQUIVALENT TONNAGE OF PACKAGING WASTE**

### **Obligation in one year based on activity in the previous calendar year**

3.03 Obligated producers that carried out one or more of the activities in one year will **in the following year** have the producer responsibility obligations. Thus, a producer registering in April 2004 will provide data relating to its activities in 2003; thus the obligation to recover and recycle in 2004 will be calculated from the packaging handled in 2003.

3.04 Under the Regulations, producers are required first to assess, as accurately as reasonably possible, the tonnage of **packaging** that they handled in the previous year, and then to calculate their recovery and recycling obligations and arrange for the recovery and recycling of the necessary tonnage of UK-sourced **packaging waste**. The Regulations do not require producers to track and retrieve the actual packaging that goes through their hands - it can be any equivalent tonnage of packaging waste provided that the minimum amount of recycling of each material is carried out. See also **Chapter Five**.

## **OBLIGATED BUSINESSES**

3.05 The Regulations obligate businesses who are producers and who themselves, or through persons acting on their behalf -

- i. perform certain *activities* in the packaging chain; and
- ii. *supply* packaging or packaging materials, which they *own* to another stage in the packaging chain or to the final user.

3.06 **These three factors** - performing an activity, owning the packaging and supplying on to another stage in the chain or to the final user - **will all apply if a company is to be obligated**.

### **In the Course of Business**

3.07 Paragraph 1(1)(a) of Schedule 1 makes clear that the activities (or functions) are performed by a producer either themselves or through an agent or person acting on their behalf, and '*in the course of business*'. '*In the course of business*' is defined in paragraph 1(3) of Schedule 1 as meaning "in the ordinary course of conduct of a trade, occupation or profession". This means business as carried out in the usually understood, day to day way. In addition, when considering whether a person is a

business or not, other aspects of the Regulations will be helpful. Generally, if the person is a company, it will be registered as a company with Companies House (cf. regulation 6(1)(a),(b) and (c), regulation 6(4)(e)); and generally a company will have audited accounts (cf. 3(2)(c) and paragraph 3(a) of Schedule 1 to the Regulations). The application of the Regulations in respect of agents and franchisors/franchisees is discussed below. Also, if they satisfy the threshold tests, it will be possible for some public bodies to be obligated - for example, a shop attached to the House of Commons or a business attached to a Local Authority. This is similar to the position in relation to charities (regulation 4(2)) where the business arm of a charity will be obligated (assuming it satisfies the threshold tests and is a producer) but the charity itself will not. Those with queries should address themselves to the relevant Agency.

3.08 Where the obligated business is an importer (see paragraph 3.39 below), it should be noted that -

- the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (as amended) apply in Great Britain and there are parallel Northern Ireland Regulations. Movement of packaging between GB and Northern Ireland is therefore not import or export; movement of packaging into or out of the United Kingdom is. For these purposes, the Isle of Man and the Channel Islands are not considered to be part of the UK.
- the producer has to be carrying out one or more of the activities, including importing, in the course of business;
- under these Regulations, producers who are importers will be bringing packaging or packaging materials, or causing them to be brought, into the UK; a company outside the UK sending, or exporting, packaging or packaging materials to the UK, is generally not the importer. The importer for the purposes of the Regulations is the first person in the UK who takes ownership of the packaging or packaging materials. If the overseas exporting company has a business presence in the UK he can, through that presence, be the importer - and it will be that UK business presence that will be obligated under the Regulations. If the overseas exporting company does not have a presence in the UK but arranges for final transport to the premises of a UK company it is the UK company that is regarded as taking first ownership in the UK.

## **OWNERSHIP**

3.09 Ownership is not defined within the Regulations but it bears its ordinary legal meaning. It is normally taken to mean that property belongs to a person who has the exclusive right to use, possess or dispose of it, or direct its use, possession or disposal.

## **THE ACTIVITIES IN THE PACKAGING CHAIN AND THE 'ACTIVITY OBLIGATIONS'**

## The activities

3.10 The relevant activities, which are performed at each stage in the packaging chain, are those set out in Schedule 1 and explained below. **To be obligated, a producer will, in the course of business, either themselves or through a person acting on their behalf, carry out one or more of these activities on packaging which they own and they will supply that packaging either to another stage in the chain, or to the final user of the packaging. All these points are set out in Schedule 1 and discussed in the paragraphs below.**

The activities are -

- i. manufacturing raw materials for packaging (Schedule 1, 1(1)(d));  
*(e.g. the manufacture of plastic granules through a melt process; the manufacture of aluminium or steel coils; or sheets of paper; or molten glass).*
- ii. converting, that is using or modifying packaging materials in the production or formation of packaging (Schedule 1, 1(1)(b));  
*(e.g. converting plastic granules into food trays; turning coils of aluminium or steel into drink cans or strapping; converting sheets of board into cartons, or molten glass into bottles, or wood into crates).*
- iii. packing/filling, that is putting goods into packaging (Schedule 1, 1(1)(e));  
*(e.g. putting pesticides into bottles, milk into cartons, cat food into a can, wrapping bubble wrap round china figurines, putting a washing machine into a box, loading cartons onto wooden pallets, packing hops into hessian sacks, wrapping plastic shrink wrap and steel strapping around a pallet load of goods).*
- iv. selling, that is supplying packaging to the final user of that packaging (Schedule 1, 1(1)(f)).  
*(e.g. selling packaged cereals or drums of motor oils or boxes of spare parts or cases of bottles of wine or wooden boxes of tea or ceramic pots of jam, or pallet loads of goods - to the final user of the packaging)*

There are also the following activities -

- v. importing, that is importing packaging or packaging materials into the UK. (Schedule 1, 1(1)(c)).  
*(e.g. importing flat cartons which will be filled, or rolls of paper and sheets of steel for conversion; importing cans of pineapple on pallets and wrapped in transit shrink-wrap or importing jute sacks filled with coffee beans, etc).*
- vi. secondary providing, that is both pack/filling and selling **transit** packaging to the final user of that packaging (i.e. the one who is likely to discard it).  
*(e.g. where a producer fills cans of beans and then supplies on the cans to their customer in cardboard boxes and on pallets wrapped in shrink wrap; or*

*puts small boxes of spare parts into a large plastic bag for supply to their customer ).*

## Distributors

3.12 Sometimes, a producer who is a packer/filler will supply their product on transit packaging to a seller through a 'conduit' such as a distributor. **A businesses which, in the commercial world, is described as a distributor may not be a distributor as defined in the Regulations.** In the Regulations, "distributor" is not included in the definitions in regulation 2(1), but the meaning of "distributor" is clearly set down in paragraph 2(b) of Schedule 1 which says -

" "Class B supply" means a supply, other than solely for the purpose of transport, **to a person who acts as a distributor, that is to say who, in relation to the packaging or packaging materials supplied, neither performed the functions of one of the classes of producer nor was the user or consumer"**.

3.13 In cases of Class B supply (i.e. supply through a distributor), the persons who perform the activities can generally be identified on either side of the distributor. E.g.

packer/filler.....>distributor.....>seller

3.14 A distributor will therefore not qualify as any of the classes of producer -i.e. will not manufacture raw materials for packaging nor convert materials into packaging; will not fill packaging nor supply packaging to the final user or consumer. It should also be noted that a business that acts as a distributor of primary packaging may not be a distributor in relation to the transit packaging - it may carry out an activity on the transit packaging. Care therefore needs to be taken to consider all activities carried out. See the examples below.

3.15 For example, where a packer/filler supplies their primary filled packaging wrapped in transit packaging on to the next stage in the chain through a person who does not qualify as one of the classes of producer, then that latter person is a distributor. Where packer/fillers supply on in this way, and where the person to whom the distributor supplies the packaging is the final user of the transit packaging, the packer/filler is clearly the secondary provider of that transit packaging, where the distributor does not own the packaging.

3.16 There are a number of ways in which producers might supply transit packaging through distributors. The following example illustrates this.

## **THE ACTIVITY OBLIGATIONS**

3.17 At each stage in the chain, therefore, certain activities are performed. **Each activity has a percentage activity obligation associated with it, which will be used in calculating the tonnage obligation to recover and recycle packaging waste.** The percentage activity obligations are set out in Schedule 2 to the Regulations and in the box below.

<u>Activity</u>	<u>Obligation</u>
raw material manufacturing	6%
converting	9%
packing/filling	37%
selling	48%
pack/filling and selling transit packaging (secondary provider)	85% (ie.37% + 48% )
importing transit packaging for own use or if selling to end user	100%

**3.18 The acquisition by producers of percentage activity obligations corresponding to each activity performed on packaging is the central tenet underlying this producer responsibility system and the shared approach. Producers at any stage in the chain may perform more than one activity. Producers need to be very clear about what the activities are, which of them they perform, and what each percentage activity obligation associated with each activity is.**

3.19 The intention is that each item of packaging that enters the UK waste stream should have 100% of the obligations performed on it as it moves through the different stages in the chain, i.e. all the producer responsibility activity obligations:  $6\% + 9\% + 37\% + 48\% = 100\%$ . It is very unlikely that packaging will be either produced in, or imported into, the UK and placed on the market and not carry at least some obligation unless it is handled at every stage, from raw material manufacturer through to seller, by businesses who are not obligated under the Regulations.

3.20 Each producer that performs any of the activities described below will therefore pick up the corresponding percentage activity obligation in relation to the packaging on which the activities are performed. **Many producers will find that they perform more than one activity; where this is so, each activity performed on a tonnage of packaging will attract the appropriate activity obligation.**

**Remember-** a producer will have an activity obligation if they perform an *activity* and *supply* packaging which they *own* to another stage in the chain or to a final user!

## **Percentage Activity Obligations**

3.21 Some businesses may find that they do not satisfy the thresholds in a certain year. Because their circumstances can change (as may the Regulations) they should keep an eye on their turnover and tonnage handled to ensure that they are always compliant.

## **SUPPLY**

3.22 Schedule 1 provides that, to be obligated, a producer would have *owned* the packaging that they *supplied*, and would have carried out the activity either *themselves or through a person acting on their behalf*, and they would have carried out this activity *in the course of business*. In the Regulations:

"relevant function" means the performance by a person of the functions (or activities) of one of the following.....either themselves or through an agent acting on their behalf, *and in the course of business;*"

"*supply* means doing any of the following either *themselves or through a person acting on their behalf*, in relation to packaging *owned* by the supplier-

- selling hiring out or lending
- providing in exchange for any consideration.....other than money
- providing in or in connection with the performance of any statutory function or
- giving as a prize or otherwise making a gift."

3.23 Regulation 3 and paragraphs 1-3 of Schedule 1, taken together with the table in Schedule 1, set out who, and in what circumstances, is classed as a particular type of producer and therefore has the relevant activity obligation. Businesses may carry out more than one type of activity and may be classed as more than one class of producer.

3.24 Paragraph 2 of Schedule 1 provides for five different 'classes of supply'. When the Regulations first came into force there was also a Class D supply which was carried out specifically by those who were defined as "wholesalers" but the "wholesaler obligation" and Class D supply have been removed from the Regulations. There is therefore no longer a Class D supply but it should be noted that many wholesaler businesses will have obligations because they will be, for example, packer/fillers and/or sellers.

## **Class A Supply or 'Deemed Supply'**

3.25 Supply from one stage in the chain to another, different, stage is relatively simple to determine when the business carrying out one activity is different from the business carrying out the second activity. 'Deemed supply' however, occurs where one business **performed one activity** (e.g. converting) **and then performed another activity** (e.g. pack/filling) on the same packaging. When this occurs, the

business is deemed to have supplied on to another stage in the chain – e.g. from converting stage to pack/filling stage. For example, one business both pack/fills cartons with tea and then also sells the packaged tea to the consumer. It should be noted that persons can be deemed to supply to themselves where they are the final user of, for example, packaging that has been imported for own use (paragraph 3(2)(d)(ii) of Schedule 2). Where there is a deemed supply, the producer picks up both the activity obligations.

**An Example:**

☞ *Producer Z is a packer/filler who manufactures tissues. They import cartons from overseas and fill these. They supply 60% of the filled cartons to sellers in the UK, but they also sell 40% of their output direct to a major hotel for their own use. On 40% of their output, therefore, Z both pack/fills and sells the cartons; they carry out the pack/filling activity, and make a deemed supply to themselves (as a seller) and then carry out the selling activity on this proportion of their output. They have both pack/filling and selling obligations*

*Producer D is a glass bottle manufacturer. They carry out the raw material manufacturing activity and then carry out the converting activity. As a raw material manufacturer, they are deemed to supply to themselves in their capacity as a convertor.*

**'Supply' can include 'deemed supply'. This is where a producer performs one activity on an item of packaging and then performs another activity on the same packaging. A producer can, for example, be both the packaging raw material manufacturer and also the convertor of a certain tonnage of packaging material.**

**A number of producers at one stage in the chain**

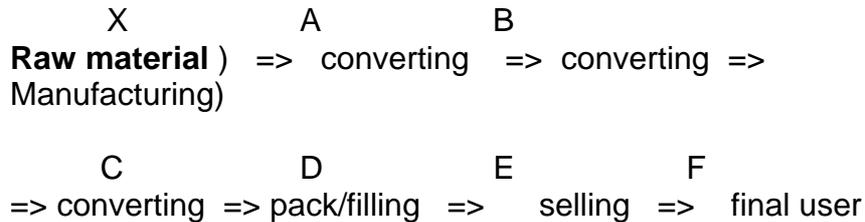
3.26 An item of packaging will move from one stage in the chain to another stage as it moves from the raw material manufacturing stage through to the final stage at which it is an item of packaging surrounding, for example, a product for sale to a consumer. Thus, producers will supply packaging to another stage in the chain, or to the final user.

*Raw material => converting => pack/filling => selling  
 Manufacturing stage stage stage stage  
 stage*

More than one convertor

3.27 However, at some stages of the chain there may be more than one phase of activity so not all producers will supply packaging or packaging materials to another stage in the chain - they may supply on to another business at the same stage. For example, at the converting stage, an item of packaging may go through two or three convertors. Where this happens, **it is the last convertor, that is the convertor**

that supplies on to the next stage in the chain, (i.e. normally to the pack/filler) that has the converting activity obligation.



**An example:**

*Convertor A, who has financial turnover of £8.4 million, converted 1,000 tonnes of plastic packaging which they supplied to convertor B who performed a further converting activity and supplied on to a packer/filler. A has no obligation on the 1,000 t that they supplied to another convertor. B, however, has the converting obligation on that tonnage which he supplies on to the packer/filler. Convertor A also handled 52 tonnes of plastic shrink wrap as a 'secondary provider' (i.e. they have the pack/filling and selling obligations on this transit packaging which they are using to supply to B). When considering whether they satisfy the threshold tests, convertor A will consider what activities they perform and what packaging they supplied on to another stage in the chain. They do **not** supply on the 1,000 tonnes plastic packaging to **another stage** in the chain or to the final user. They do supply on the 52 tonnes of transit packaging to the final user of that packaging. The packaging on which convertor A performed an activity, and which they owned and supplied on is therefore 52 tonnes. Convertor A satisfies both threshold tests (>50 t and >£2m) and is therefore obligated on the 52 tonnes.*

★ **Businesses are also considered to supply packaging to another stage in the chain where they do so through a distributor (a Class B supply) who performs no activity on that packaging (NB supplying packaging to the final user is an activity - it is "selling").**

**Converting as part of a packing/filling process**

3.28 There may be processes where a convertor passes packaging onto a packer/filler who, as part of a packing/filling process performs a further converting activity. This is not to be confused with deemed supply (which is where a producer performs one activity and then performs another on the same packaging). Where a convertor has supplied packaging on to a packer/filler, and a further element of conversion is performed by the packer/filler at the same time and as part of the same pack/filling process i.e. the final element of conversion takes place as the crisp

packets are being filled on the filling machine, the packer/filler is considered to be performing the packing/filling activity only, and not the last converting phase (paragraph 1(2) of Schedule 1 to the Regulations) while the convertor who supplies to the packer/filler in these instances is considered to be the last convertor and to carry the convertor activity obligation.

**Example:**

*One convertor (Producer A) has produced rolls of plastic film from plastic granules, and passes the film onto a second convertor (Producer B) who laminates the film and passes it to a packer/filler (Producer C). Packer/filler C feeds the roll of film into a production process, which converts the film into bags as part of the same process that fills the bags with potato crisps. In such circumstances, Producer B is the last convertor and has the converting activity obligation, while Producer C, the packer/filler, performs the packing/filling activity only and has that activity obligation.*

## **AGENTS**

3.29 Where a producer has an activity carried out for them by an agent, that is, another person carrying out the activity on their behalf, but the producer continues to own the packaging used, the producer, not the agent, carries the activity obligation for the packaging which is supplied on to the next stage. **Ownership of the packaging is the key to determining who has the obligation.**

**An example:**

*A manufacturer of bath oil contracts a packer/filler to fill bottles with bath oil for them. The manufacturer owns both the bath oil and the bottles. Thus the manufacturer uses the packer/filler as an agent acting on their behalf to pack goods in packaging which they, the manufacturer, will then supply on to a retailer. Responsibility for taking the pack/filling obligation lies with the manufacturer of bath oil as the owner of the packaging. If the agent were to own the packaging, pack/fill the bottles and supply these to the next stage in the chain, the agent would have the pack/filling obligation. The selling obligation remains with the seller to whom the filled bottles are supplied for sale and who will sell them to the final user.*

## **FRANCHISORS AND FRANCHISEES**

3.30 When considering whether a franchisor or franchisee is the obligated producer the determining factor is, again, ownership. Where there is a franchise arrangement, that is where a person has entered into a franchise agreement or master franchise agreement within the meaning of these terms given in European Commission regulation number 4087/88 of 30.11.88, it is the party that owns the packaging that has the obligation. Thus, a franchisor that retains ownership of the packaging used by one of their franchisees to pack/fill a product will be obligated

under the Regulations. However, if the franchisee only has a franchise on the other company's name, and the franchisee owns any packaging supplied, the franchisee will have the pack/filling obligation.

## IMPORTS AND EXPORTS

### Imports

3.31 Imported packaging - i.e. packaging brought into the UK - goes into the UK waste stream and **must be obligated in the same way as domestically produced packaging** (Schedule 1, para. 4(2)). This is important as the Directive targets apply to the UK waste stream as a whole and must therefore include imported packaging which ends up in the UK waste stream. The Regulations provide that imported and domestically produced packaging and packaging materials are treated equitably. Importers of packaging or packaging materials can, therefore, also be obligated under the Regulations.

3.32 The packaging Regulations apply in the UK and not in other Member States, who have their own domestic regulations implementing the packaging Directive. Thus, 'importer' is defined in the Regulations as "a person who imports packaging or packaging materials into the UK" ("person" here means a legal person or entity, e.g. a business, company or partnership). For the purposes of the packaging Regulations, this means a business bringing, or causing to be brought, packaging or packaging materials into the UK and not the business sending the packaging or packaging materials out of a foreign country. Thus, the importer will be a UK-based business that first takes ownership of packaging or packaging materials when they have been brought into the UK.

3.33 There has been some discussion about the meaning of "importer" for the purposes of these Regulations. **However it remains the case that, in the opinion of the Department and devolved administrations, a producer who satisfies the threshold tests will come into the category of importer under the Regulations if they -**

- **carry out an activity, (which includes importing) as defined in the Regulations, in the UK and in the course of business**
- **import into the UK (either themselves or through an agent) packaging or packaging materials which they own, (i.e. of which they are the first in the UK to take ownership) and**
- **supply it (either themselves or through another person) on to another stage in the packaging chain or to the final user (including 'deemed' supply, i.e. for own use).**

Where the producer is an importer, particular attention should be paid to the points in paragraph 3.08 above.

3.34 Importers may be importing agents pure and simple, or they may be producers, themselves importing materials in order to carry out an activity, e.g. a

packer/filler may import the cans they intend to fill or a seller may import the packaged goods they propose to sell. If, in addition to importing, an importer also carries out one of the other activities (e.g. pack/filling, selling), and is therefore also a producer of that class, they will also have that activity obligation.

3.35 Questions have been asked as to whether the foreign company sending packaging or packaging materials, for example, to the UK is not the first person to take ownership in the UK and is therefore the person with the importer obligations. Generally an overseas company will be the **exporter** from the country in which they are located, not the importer. However, as noted above, if the foreign company also has a business presence in the UK and, through it, is the first to take ownership of packaging or packaging materials brought into the UK, then that UK business presence is likely to be the obligated business (provided it satisfies the other requirements, e.g. the threshold tests). As noted in paragraph 3.06 above, the persons that are obligated will generally perform an activity, own the packaging and supply it to another stage in the chain or to the final user.

3.36 A foreign company would therefore only be obligated under the UK Regulations if it also had operations in the UK, e.g. a UK-based branch or office. That branch or office would be the obligated party (there are different considerations, which apply to holding companies of groups of companies; see paragraph 2.08 above). If a foreign company sends packaging to the UK but does not have a UK branch or office, then the obligated party will be the first party in the UK to take ownership of the packaging/packaging materials.

### **Including imports in the assessment of the tonnage threshold test**

3.37 The first point at which imports and exports are relevant is where a producer is looking to see whether they satisfy the threshold tests. The tonnage test is 'more than 50 tonnes of packaging handled'.

#### Packaging handled

3.38 'Packaging handled' is defined in paragraph 4(2)(a) and (b) of Schedule 1 as "the amount in respect of which a producer made a supply referred to in Column 3 of the Table (in Schedule 1), other than a Class A supply within the United Kingdom, calculated in tonnes to the nearest tonne by

- including packaging or packaging materials so supplied which were imported into the UK by the producer, either himself or through an agent acting on his behalf; and
- excluding:
  - packaging/packaging materials exported from the UK
  - production residues
  - reused packaging "

**3.39 This means that a business must look at what they supplied on to another stage in the chain or to the final user (including deemed supply) within**

**the UK and take account of that.** Production residues are not considered to be packaging waste. Reused packaging is excluded to avoid double counting (because it is obligated on its first trip) and this means any reused packaging, including imported reused packaging.

### **Three examples:**

☞ *Company A is assessing whether they satisfy the threshold tests. They are a packer filler and their business is involved in both import and export. They sourced 50 tonnes of material (plastic trays) from a UK supplier. They also import into the UK 50 tonnes of plastic trays, which they will then fill. In addition, A imports 30 tonnes of trays, which they store in their warehouse before exporting them (the same trays) to a firm in France.*

*Thus, Company A sees that -*

- *They sourced 50 t of material from the UK;*
- *They imported 50 t from overseas into the UK;*
- *They imported 30 t of plastic trays into the UK and then exported the same 30 t of trays from the UK.*

*A's packaging handled is therefore 100 tonnes [50 t + 50 t + 30t - 30t = 100 tonnes] so A is obligated.*

☞ *Company B imports 100 tonnes of paper into the UK. They carry out first a converting activity on the paper and then they carry out another activity, the pack/filling activity, on the same packaging. They have made a deemed supply from themselves as a convertor to themselves as a packer/filler because they carried out one activity and then they carried out another on the same packaging. They have the converting 9% obligation and they have the 37% pack/filling obligation.*

*However, remember, the materials of which Producer B made a deemed supply do not have to be counted twice when the business is assessing whether they satisfy the threshold tests - they converted and then filled the same 100 tonnes and so they handled that 100 tonnes (not 200 tonnes).*

*Company B would also have the 'rolled up' raw material manufacturing 6% obligation on the imported 100 tonnes of paper – see paragraph. 3.40 below.*

### 'Rolled up' obligations

3.40 Importers have the activity obligations for the activities carried out on the packaging before it came into the UK. These are called the 'rolled up' obligations. This provision has been included so that all packaging flowing into the UK waste stream is equitably obligated and so that the purchaser of the packaging has a choice between imported packaging and domestically produced packaging where both will have been fully obligated.

## Importers' obligations

3.41 Importers' 'rolled up' obligations are set out in Schedule 2, paragraph 3(2). They will carry the obligations for any activities that were carried out on the packaging or packaging materials before they entered the UK.

### **Examples:**

*(i) A producer imports packaging for the purpose of filling it, fills it themselves, and supplies on to a seller. They pick up -*

*a) - as an importer - the 'rolled up' raw material manufacturing 6% and the converting 9% obligations*

*b) - as a packer/filler - the packing/filling 37% obligation.*

*The business to which the producer supplies the filled packaging supplies it to the final user of the packaging and picks up the selling obligation.*

*(ii) A producer imports 500 tonnes of aluminium coils which they propose to convert into cans and supply on to a packer/filler. They are an importer and a convertor. As a convertor they will have a 9% converting obligation. As the importer of this packaging material they also have the 'rolled up' raw material manufacturing obligation (6%) as this activity was carried out before the aluminium entered the UK.*

*(iii) Where a producer imports chemicals in a drum and proposes to use the chemicals themselves in their factory, the producer, as an importer, will carry all the 'rolled up' obligations on the drum because all the activities are deemed to have been carried out overseas. Where the drum is being reused - for example if they are importing the chemicals in a re-conditioned drum - the producer will not be required to include the tonnage of the drum in their calculation of their obligation (but they must do so where the drum is new and is making its first trip). The producer would, however, have to provide relevant documentation as evidence that the drum was being reused.*

*(iv) An importing agent imports 350 tonnes of empty cartons for the purpose of filling. They do not take ownership themselves and are not a packer/filler so they have no obligation. Their customer, B, is a packer/filler and takes ownership of the empty cartons and fills them. B is an importer in that they were the first company to take ownership of the cartons in the UK. As such they have 'rolled up' raw material manufacturing (6%) and converting (9%) obligation. B is also a packer/filler and as such, B also has the pack/filling activity obligation (37%) on the 350 tonnes of cartons that they fill.*

*(v) An importing agent imports 1,000 tonnes of paper for the purposes of pack/filling, and this is wrapped in 20 tonnes of paper transit packaging. They*

*take ownership of the imported materials and supply them on to their customer, D, who is a packer/filler.*

*The importing agent is an importer who has imported 1,000 tonnes of paper for the purposes of pack/filling. They have the rolled up raw material manufacturing (6%) and converting (9%) activity obligations on this tonnage.*

*They have imported 20 tonnes of transit packaging and have a 100% obligation on that tonnage (Class F supply see paragraph 3(2)(d)(I) of Schedule 1).*

*Their customer, D, is the packer/filler and carries the pack/filling 37% activity obligation on the 1,000 tonnes that they fill.*

*(vi) A producer, X, imports 250 tonnes of plastic trays from Y overseas into the UK for the purpose of pack/filling. X is a packer/filler and will have the pack/filling 37% on the 250t of plastic. The overseas firm, Y, from whom X imports the plastic trays, has a UK-based office and X and Y have included in their contract that Y will carry out the rolled up raw material and converting obligations that X would otherwise have had and the relevant Agency is informed accordingly. However, because the legal obligation remains with X, it is for X to satisfy themselves at the end of the year that Y has indeed carried out the relevant obligations and that evidence is available for X to show to the relevant Agency.*

*(vii) P is an overseas company that sells sheets of paper to K, a UK packer/filler. K has the pack/filling obligation on any paper packaging they use to wrap around their goods. Because K is the first owner in the UK of the paper imported from overseas, they would also have the rolled up raw material manufacturing and converting obligations on the imported packaging. P has therefore set up a registered office in the UK so that their company is the first to take title in the UK to the paper that P sells to K. Thus K only has the pack/filling obligation while P, in the person of its registered UK office, as the importer and first owner of the paper in the UK, has the rolled up raw material manufacturing and converting obligations on the imported packaging.*

3.42 It should be noted that, in order to be as certain as possible that all imported tonnages of packaging and packaging materials are being declared and obligated as required, and taking account of experience in previous years, the Agencies will normally assume that importing agents are likely to be the first owners of imported materials and are obligated on the imported tonnages unless they can show that another person, e.g. the customer, to whom they supplied the materials, has taken on the obligation. See also below.

### **Importing Agents**

3.43 Importing agents may be obligated under the Regulations. The importer may be an importing agent. Where importers are agents and can demonstrate that they do not take ownership of the packaging being brought into the UK, they do not have

an obligation; it will be the company to whom they send the packaging as this is the company that first takes ownership of the imported packaging in the UK. Where an agent does take ownership and sells on to a producer, the agent will have an obligation. For example, an agent imports flat cartons for filling. If they own these and supply them onto another business for filling, they will have the rolled up converting and raw material manufacturing obligations. If they do not own them, but have imported them on behalf of the filler, who will be the first person in the UK to take ownership of them, the filler will have the filling, converting and raw material manufacturing obligations.

3.44 If the agent wishes to take on part or all of this obligation for their client, that is a matter for commercial decision between them and their customer (see examples (vi) and (vii) above). Legally, the obligation will remain with the person classed as an importer under the Regulations and this person will have to register with the relevant Agency, but it is perfectly possible for administrative arrangements to be made whereby the 'importer' company's obligation is discharged by the agent. It is suggested that companies wishing to take this approach should check with the relevant Agency that any arrangements they propose are acceptable to the Agency. If a company wishing to take this approach is a member of a compliance scheme, the compliance scheme will need to be informed of the arrangement and all those involved will need to discuss the modalities of discharging the obligations. **It should also be noted that, because the legal obligation remains with the person classed as the importer under the terms of the Regulations, it is for that importer to satisfy themselves at the end of the year that the agent has indeed carried out the relevant obligations and that evidence is available for the importer to show to the relevant Agency.**

## Exports

3.45 Packaging or packaging materials that are exported from the UK do not go into the UK waste stream and they are therefore excluded from the calculation of a producer's obligation (Schedule 1, para. 4(2)). Some packaging supplied on by a producer will be exported further down the chain and the producer may exclude this, too, provided that he has reasonable evidence to demonstrate that fact to the relevant Agency. Further information can be obtained from the relevant Agency.

3.46 Packaging which is imported and subsequently exported, with or without an activity being carried out on it does not need to be taken into account. This is because it does not become waste in the UK. This only applies, however, where it is the same packaging that is imported and then exported. This does not apply if there is merely a similar tonnage of imports and exports but different items/materials. Within the Agencies' data form there is provision to identify packaging that falls into this category.

3.47 Producers may know that some of the packaging that passes through their hands is exported at a later stage, but may not have satisfactory data. If a producer does have significant third-party exports they may therefore consider it worthwhile to develop, perhaps with their trade association and relevant Agency, a 'protocol' which

sets down, for example, the usual percentage of packaging exported at a later stage for a given volume of packaging supplied on to that stage. They might wish to discuss this sort of protocol with the relevant Agency with a view to having its provisions accepted as a reasonable source of data for third party exports.

## TRANSIT PACKAGING

### Imported transit packaging

3.48 Where imported packaged goods or packaging materials are wrapped in transit packaging, the same principle of 'rolled up' obligations applies. The result is that the importer has a 100% obligation on the transit packaging of which they are the end user because they have the 'rolled up' obligations for all the activities performed outside the UK (cf. paragraph 3(2)(d)(i) and (ii) of Schedule 2 to the Regulations) and are deemed to sell to themselves (i.e. deemed supply to an end user).

#### **An example:**



*An industrialist imports chemicals for own use in drums on wooden pallets and wrapped in shrink-wrap. If the drums are being reused (e.g. they have been reconditioned), even if the first use took place outside the UK, the industrialist has no obligation on them (see paragraphs 3.47 and 3.48 on reuse) - but they will have to provide evidence that they are being reused.*

*If the drums, which are primary packaging, are making their first trip (i.e. are new) they must be included in the calculation of the obligation (see paragraph 4.08); the obligation on the drums will be 100% because the industrialist has the 'rolled up' raw material manufacturing (6%)%, converting (9%), packing/filling (37%) and selling (48%), obligations. In the case of the selling obligation, the importer is deemed to sell to themselves as the final user of the packaging (the two activities are 'importing' and 'selling'). When the industrialist discards the drums, these will either go for further reconditioning, or, if at the end of their useful life, will be considered part of their back door waste.*

*The wooden pallets and the shrink-wrap are transit packaging and the industrialist has a 100% obligation on that because they take on all the obligations for the activities performed outside the UK. The transit packaging will be discarded as the industrialist's back door waste.*

3.49 On registration, producers are legally required to declare all the packaging they handle including imported packaging and packaging material and imported transit packaging and enter this in the data form. Failure to declare correct data may result in prosecution.

### Receipt of domestically-supplied transit packaging

3.50 Where a producer receives packaged goods from a supplier in the UK they will generally remove that packaging and discard it. They are the final users of the packaging and have no obligation on such packaging since, by the time it reaches them, it should have had the full 100% obligation carried out on it. They may put it out into their own back door waste, segregate it and send for recycling to an accredited reprocessor. Or they may use it again for the same purpose, to supply goods of their own, and there will be no further obligations on it (reused packaging).

### **Use of Transit Packaging - secondary provider**

3.51 Producers are required to declare all the packaging they handle, including transit packaging. Where a producer uses packaging to pack/fill and sell packaged goods for transfer to their customers they are using transit packaging and placing this on the UK market. Where they fill and sell the transit packaging, in the Regulations they are described as a 'secondary provider'. This means that the producer must take the obligations for activities on the transit packaging, i.e. the pack/filling 37% and the selling 48%.

### **WHOLESALEERS**

**3.52 In these Regulations there is no longer a specific 'wholesaler obligation' that would have applied only to commercial wholesaling businesses that met the Regulations' definition of 'wholesaler'. However, it remains the case that a wholesaling business that is considering what its obligations might be under the Regulations will look at all the activities that it performs in the same way as any other producer. In particular, it might perform the pack/filling and selling activities.**

# CHAPTER FOUR

## CALCULATION OF THE OBLIGATION TO RECOVER AND RECYCLE

**Summary: this chapter discusses-**

- **the calculation of the recovery and recycling obligations;**
- **worked examples;**
- **reasonable steps**

### THREE FACTORS TO CALCULATE THE OBLIGATION

4.01 Once a business has established that they are obligated in a given year and have producer responsibility obligations; and once they have clarified which activities they performed in the previous year, and on which packaging - they will need to calculate the recovery and recycling obligations which they must carry out during the year.

4.02 A producer will need three factors to calculate the tonnages of packaging waste that they must recover and recycle -

- the tonnage of packaging handled by the business in the previous year, by activity and by material;
- the recovery and recycling targets for the year (e.g. 59% recovery and 19% material specific recycling in 2003); and
- The activity obligation(s) associated with the activity(s) performed (e.g. 37% for pack/filling - see paragraph 4.16 below).

4.03 The calculations which have to be done are set out in paragraphs 1 and 3 of Schedule 2 and are, briefly, as follows -

i. recovery target:

*[Tonnage of packaging handled] x [percentage activity obligation] x [UK recovery target] = the recovery obligation*

- ii. material-specific recycling target

*[tonnage of packaging handled by material] x [percentage activity obligation] x [UK recycling target] = the recycling obligation in this specific material*

It should be noted that the material-specific recycling obligations form part of the recovery obligation and **are not additional to it**.

### Rounding

4.04 The calculation of recovery and recycling obligations should be undertaken to two places of decimals (e.g. 5.68 tonnes). The amounts derived should be rounded to the nearest whole tonne only for the final calculation of recovery and recycling obligations. Rounding should be to the nearest whole tonne e.g.-

61.52 = 62 tonnes  
3.21 = 3 tonnes

where the figure is, e.g., 50.5, the figure should be rounded up to the nearest whole tonne when doing the final calculation and not at each material and activity calculation.

4.05 It should be noted that producers will calculate a recovery obligation and material-specific recycling obligations. Where the material handled is wood or 'any other' packaging materials such as jute, hessian, textiles, ceramics etc. there is no material-specific recycling obligation but only a recovery obligation (although it should be noted that there may be a wood recycling obligation in future).

4.06 'Recovery' means recycling, including composting, or energy recovery, all of which are defined in regulation 2(1) in the Regulations. **It should be noted that, with effect from 2001, at least half of a producer's recovery obligation must be carried out through recycling.**

4.07 The following paragraphs discuss the three factors below -

- i. the amount of packaging handled, by activity and by material;
- ii. the percentage activity obligations;
- iii. the UK national targets for producers.

### **Packaging handled**

4.08 In order to assess the amount of packaging handled (see paragraph 4(2) of Schedule 1) the producer must calculate the amount of packaging they used to perform each activity in the previous calendar year and which he supplied on to another stage in the packaging chain, or to the final user (see Schedule 2 paragraph 2). The producer will include in their tonnage of packaging handled any *imports* into the UK and will exclude *exports* from the UK (NB - *the UK* and not GB).

**It should be noted that United Kingdom means England, Scotland, Wales and Northern Ireland and "United Kingdom" excludes for these purposes the Isle of Man and the Channel Islands.** If producers have evidence for them which, in the view of the relevant Agency is reasonable, they may exclude tonnages for exports at a later stage ('third-party exports'). Further guidance on this point may be obtained from the relevant Agency.

**NB Your recovery and recycling obligations for one year (e.g. 2003) will be based on data from, and activities performed in, the previous year (e.g. 2002)!**

4.09 Some producers may have difficulty in assessing the packaging they handled in the previous year, and therefore in assessing whether they satisfy the tonnage threshold test. There are a number of commercial undertakings involved in providing assistance to businesses in assessing their packaging handled. Members of compliance schemes are likely to be provided with assistance by their Scheme. Some categories of smaller businesses with turnover between £2 million and £5 million may take advantage of "off-the-shelf" data sets. See Appendix IV.

#### Third party exports

4.10 If producers wish to deduct third party exports, they must be able to demonstrate to the Environment Agency or SEPA if requested, that they have a good reason for deducting third party exports. For example, they might provide correspondence showing that a certain proportion of the items supplied to a customer were exported, or other evidence to show that third party exports of the producer's material did occur.

#### Process waste

4.11 **A producer may not include *process waste or production losses* in this calculation, nor may they use the recovery or recycling of these materials to discharge their obligation. These terms are self-explanatory but if there are special circumstances in which producers have received guidance on an ad hoc basis they should speak to the relevant agency.**

4.12 The tonnage of any item of packaging that is making its first trip, i.e. is being used for the first time, must be included in the tonnage of packaging handled. However, **when a producer is re-using packaging for the same purpose, they do not have to include that tonnage in the calculation of their obligation.**

#### **REMEMBER !**

**From 2001 onwards, at least half of the recovery obligation has had to be Carried out through recycling**

### **An example**

*Producer A buys in 200 tonnes of empty steel drums which they will use in transporting chemicals. If all these drums are new and are making their first trip, the tonnage must be included in the calculation of Producer A's obligation. If, however, Producer A is using re-conditioned drums they are re-using drums which have been used before and they do not need to include this tonnage in the calculation of their obligation. If 100 t of drums are new and 100 t are reconditioned, only the 100t of new drums need be included in the calculation.*

*In making the calculation of the obligation, therefore, the producer, who is a packer/filler, fills 100 tonnes of steel drums and supplies these on to a manufacturer of pesticides. The producer both fills and sells the drums and has both the 37% and the 48% obligations (85%). Their obligations in 2002 would be -*

$$100t \times 85\% \times 59\% = 50.15 \text{ tonnes recovery (50 t)}$$

$$100t \times 85\% \times 19\% = 16.15 \text{ tonnes recycling (steel) (16 t)}$$

*The recycling requirement for 16t steel is part of the overall 50t recovery obligation. Producers must discharge at least half of their recovery obligation through recycling, to Producer A must ensure that at least 25 tonnes are recycled. If, for example, the producer carried out -*

*16 tonnes of steel recycling (the required steel minimum)*

*9 tonnes of aluminium recycling (to bring recycling up to the minimum – i.e. half the recovery total)*

*25 tonnes of recovery would remain to be carried out. Producer A might carry out a further 20 tonnes of steel recycling and discharge the remaining 5 tonnes of recovery through paper recycling. In this way, the full recovery obligation of 50 tonnes would have been discharged, and (within that) the minimum steel recycling obligation would have been discharged as would the requirement to carry out at least half of the recovery obligation through recycling.*

4.13 In considering their packaging handled and activities performed, a producer will need to be sure that they know the tonnage on which each activity was performed and what the different materials are. Otherwise it will be difficult to calculate the material-specific recycling target.

**The recycling obligation is part of the recovery obligation, not additional to it !**

### **An example:**

☞ In calculating its obligation for 2003, Producer B sees that, in 2001 they handled -

- 172 t plastic, 334 t paper/fibreboard as a packer/filler,
- 400 t paper/fibreboard as a secondary provider.

They will do a calculation for each activity performed:

as packer/filler:  $506$  (i.e.  $172+334$ )  $\times 37\% \times 59\% = 110.45$  t recovery  
37% because they are a packer/filler  
59% because this is the recovery target in 2002  
 $172 \times 37\% \times 19\% = 12.09$  t recycling (plastic)  
 $334 \times 37\% \times 19\% = 23.48$  t recycling of paper/fibreboard  
37% again because they are a packer/filler  
19% because this is the material-specific recycling target for 2002

as secondary provider  $400 \times 85\% \times 59\% = 200.60$  t recovery  
 $400 \times 85\% \times 19\% = 64.60$  t recycling (paper/fibreboard)

Thus, the producer's overall recovery obligation is :  $(110.45 + 200.60) = 311.05$  tonnes. Of this, at least half, i.e. 155.52 tonnes must be recycled. The material specific recycling obligations are -

12.09 plastic and 88.08 t ( $23.48 + 64.60$ ) paper/fibreboard.

Once the total of material-specific recycling has been carried out ( 101 t) a further 55t of recycling must be carried out to meet the recycling requirement. This might be achieved by, for example, a further 55 tonnes of paper recycling. The remaining recovery tonnage (156t) can be carried out through recycling, including composting, or through incineration with energy recovery.

## Wood and any other materials

4.14 At present, there is no material specific recycling target on wood or on 'any other packaging materials' although the position on wood is currently being reconsidered (i.e. jute, hessian, cork, ceramics etc.) but there is a recovery obligation.

### An example,

In calculating the recovery and recycling obligations for 2003, Company P, which has a turnover of more than £2 million according to its most recently available audited accounts, looks at its packaging handled in 2002. It handled 49 tonnes of paper/fibreboard, 14 tonnes of plastic and 23 tonnes of one-trip wooden pallets. Producer P exported 10 tonnes of paper/fibreboard and 7 tonnes of plastic and therefore had an obligated tonnage of 69 tonnes [49 +

*14 + 23 - 10 - 7 = 69]. The Company will fill in the data form as usual including data on wood and other. There is a recovery obligation on wood and any other materials but no material-specific recycling obligation, so Company P must include wood and any other materials in the calculation of the recovery obligation in 2001. Company P has material-specific recycling obligations on paper/fibreboard and plastic.*

4.15 Those businesses handling wood should note that the industry has reached agreement with the Agencies to apply a uniform density of wood of 507 kilogrammes per cubic metre throughout the packaging chain, regardless of the actual weight. This is because newer wood is likely to weigh significantly more than older, dryer wood and a uniform weight has been agreed so that all sectors in the chain can use the same tonnage.

### Percentage Activity Obligations

4.16 The activities and the percentage obligation attached to each activity (Schedule 2) were discussed in Chapter One (paragraph 1.05). **It will be recalled that the activity obligations are:**

<b>raw material manufacturing</b>	<b>6%</b>
<b>converting</b>	<b>9%</b>
<b>packing/filling</b>	<b>37%</b>
<b>selling</b>	<b>48%</b>

**Producers who import packaging/packaging materials may also pick up obligations for the activities that were carried out on packaging before it is imported into the UK.**

4.17 It will be recalled that the targets in the Regulations are designed to achieve the EC Directive targets for recovery and recycling of packaging waste which in 2001 were recovery: between 50% and 65% of packaging waste, by weight; recycling between 25% and 45% and recycling per material 15%. It should be noted that the EC Directive is itself under review and further Directive targets for the next 5-year period will be established during the course of 2003-4.

4.18 In 2001 and thereafter, in order to ensure that the 25% recycling target in the Directive is achieved, a producer must discharge at least half of their recovery obligation through recycling. **This proportion may increase as targets rise.**

### THE CALCULATION

4.19 In summary, therefore, as we saw in paragraph 4.02 above, three factors are brought together to carry out the calculation of the obligation and this is set out again below. **A calculation must be carried out for each activity performed.**

[tonnage of packaging handled] x [percentage activity obligation] x [UK recovery target] = the recovery obligation

[tonnage of packaging handled by material] x [percentage activity obligation] x [UK recycling target] = the material-specific recycling obligation in this particular material

## Two Examples of the Calculation

4.20 Two simple examples of the calculation are set out below. Further worked examples are set out in Appendix II.

### **Example (i)**

*Greengrow plc fills cartons with herbs and sells these in corrugated transport boxes to retailers who sell the herbs to their customers. Greengrow is a packer/filler and in 2001 handled 120 tonnes of paper/fibreboard of which 45 tonnes was transit packaging (on which they were a secondary provider) which the retailer discarded.*

*As a packer/filler Greengrow's obligation in 2002 is:*

$$\begin{aligned} 75 \text{ (i.e. } 120 - 45 \text{) tonnes} \times 37\% \times 59\% &= 16.37 \text{ t recovery} \\ 75 \text{ tonnes} \times 37\% \times 19\% &= 5.27 \text{ t recycling (paper)} \end{aligned}$$

*As a secondary provider Greengrow's 2002 obligation was :*

$$\begin{aligned} 45 \text{ tonnes} \times 85\% \times 59\% &= 22.56 \text{ t recovery} \\ 45 \text{ tonnes} \times 85\% \times 19\% &= 7.26 \text{ t recycling (paper)} \end{aligned}$$

*Greengrow's total recovery obligation is therefore  $16.37 + 22.56 = 38.93\text{t}$  of **which** its total recycling obligation in paper is  $5.27 + 7.26 = 12.53$  tonnes. Rounding the figures, this amounts to:*

*A total recovery obligation of 39 tonnes - of this, at least half (19.5t, i.e. 20 rounded) must be carried out through recycling. Of the total recovery obligation at least 13 tonnes of paper must be recycled. To meet the overall recycling requirement (of 20t) after carrying out the paper recycling, a further 7t must be recycled. The remaining half of the recovery obligation (19 tonnes) can be recycled in any material or combination of materials (e.g. glass, aluminium recycling, paper, wood composting etc.) or recovered through incineration with energy recovery.*

### **Example (ii)**

*☞ Cartonware plc makes flat carton, which are supplied to packer/fillers. Cartonware imports the paper for the cartons from overseas. It is 2002 and Cartonware is considering what its recycling/recovery obligations are.*

In 2001 Cartonware imported 550 tonnes of paper which was delivered on 50 tonnes of wood transit pallets (one trip) and 4 tonnes of steel strapping. Because it loses some 8% in production losses when manufacturing the cartons, it only supplies on 506 tonnes. It supplies its product to packer/fillers on 12t wooden pallets, 80% of which are being reused, wrapped in 8 tonnes of plastic shrink-wrap.

In 2001, therefore, as an **importer**, Cartonware has the following 'rolled up' obligations:

$$506 \times 6\% \times 59\% = 17.91t \text{ recovery}$$
$$506 \times 6\% \times 19\% = 5.76 t \text{ recycling (paper)}$$

$$54t \times 100\% \times 59\% = 31.86 \text{ recovery}$$
$$4 \times 100\% \times 19\% = 0.76 t \text{ recycling (steel)}$$

As a **converter**, Cartonware has the following obligations:

$$506 t \times 9\% \times 59\% = 26.86 t \text{ recovery}$$
$$468 t \times 9\% \times 19\% = 8.00 t \text{ recycling (paper)}$$

As a **secondary provider** Cartonware has the following obligations:

$$10t \text{ (first trip wood and plastic shrink wrap)} \times 85\% \times 59\% = 5.01t \text{ recovery}$$
$$8t \times 85\% \times 19\% = 1.29 t \text{ recycling plastic}$$

(NB 80% of the wooden pallets are being reused, so do not have to be included)

This gives Cartonware a **total recovery** obligation of)  
 $17.91+31.86+26.86+5.01 = 81.64 = \mathbf{82 \text{ tonnes}}$  of which:  
 $5.76+8.00= 13.76t = 14 \text{ tonnes paper/fibreboard}$   
 $1.29t = 1 \text{ tonne of plastic}$   
 $0.76t = 0.76 t \text{ steel must be recycled}$

The recycling obligation for steel, at 0.76 tonnes, is below 1 tonne so this amount can be added to the tonnage for the main material handled, i.e. paper. Thus, the paper entry would be  $13.76 t + 0.76 = 14.52 = 15 \text{ tonnes of paper}$ .

After recycling the required tonnages of paper and plastics and ensuring that at least half of the recovery obligation is carried out through recycling, Cartonware can make up the remaining recovery tonnage by recycling any material or combination of materials, or through incineration with energy recovery.

## REASONABLE STEPS

4.21. Producers' recovery and recycling obligations are set down in regulation 3(5)(b)(i). Specifically, they must -

“... take reasonable steps to recover and recycle packaging waste (in these Regulations referred to as “the recovery and recycling obligations”) in relation to each of the classes of producer to which the producer belongs, calculated as provided in Schedule 2).

Schedule 2 to the Regulations sets out the formula according to which the recovery and recycling obligations are calculated. The definitions of "recovery" and "recycling" are those in the Directive and can be found in regulation 2(1) and Schedule 3, Part II. 'Recovery' for the purposes of the packaging Regulations is-

- recycling
- composting
- incineration with energy recovery

4.22 Advice can also be found in the Agencies' guidance on evidence of compliance. Generally speaking, taking “reasonable steps” to recover and recycle certain tonnages of packaging waste will mean taking action to ensure that you will be able to obtain sufficient evidence of compliance in the form of Packaging Waste Recovery Notes (PRNs) and/or Packaging Waste Export Recovery Notes (PERNs) to demonstrate compliance with the tonnage obligations. This may mean that you need to think about whether there is sufficient collection of the waste packaging in question to enable PRNs to be issued by the reprocessors with which you are dealing. See paragraph 5.05 for PERNs and PRNs.

4.23 Producers may arrange to have the necessary recovery and recycling carried out in the UK or they may use overseas reprocessors (subject to existing rules and regulations on the shipment of waste and subject to the guidance provided by the Agencies on how to seek accreditation to issue PERNs).

4.24 By requiring producers to take “reasonable” steps to recover and recycle specified tonnages of packaging waste each year, the Regulations recognise that there may be situations where, despite taking all appropriate action, it is not possible for a producer to achieve their recovery and recycling targets. However, it should be kept in mind that the Regulations also require compliance schemes to provide forward operational plans over three years (regulation 12(3)(d) and (e)) and they require producers who are individually registered with an Agency and whose turnover is more than £5million, to provide to that Agency each year "a plan showing the steps intended to be taken to comply with the producer's recovery and recycling obligations" (regulation 6(4)(dd)). In these plans, schemes and producers should be thinking ahead about the ability to discharge their coming obligations.

4.25 The Regulations therefore provide both an obligation to recover and recycle based on taking "reasonable steps" and a framework within which producers and schemes are both expected to demonstrate that they have a plan each year for complying with their obligations. Thus, in the Department's view, if a producer took the view that there was insufficient reprocessing capacity available to them, before they could claim that they had taken "reasonable steps", they would be likely to

have to show that they had adhered to their compliance plan and had taken into account that both domestic and overseas reprocessing capacity is available to them.

4.26 Equally, it has been well known for some time that the collection infrastructure, for some materials in particular, is where expansion of capacity is needed. A producer should, therefore, be looking to ensure that action is being taken in good time, either through a compliance scheme, or themselves with their chosen reprocessor(s) or with local authorities or other collectors, to ensure that sufficient packaging waste is collected to allow for the discharge of their obligation.

4.27 Enforcement of the Regulations is for the relevant Agency and it will be for the Agencies to determine whether reasonable steps have or have not been taken. In doing so, the Agencies are likely to take account of all the relevant requirements in the Regulations and not just those in regulation 3 relating to “reasonable steps to recover and recycle packaging waste”. Producers and schemes should therefore note in particular -

- that regulation 3(b) makes clear that the recovery and recycling of producers in the packaging Regulations are to enable the UK to meet Directive targets, in the first instance in 2001;
- that under regulation 6(4)(dd) producers registering individually with an Agency, and who have turnover of more than £5 million, must provide a compliance plan (or an updated plan) showing the steps they propose to take to comply with their recovery and recycling obligations in that year;
- under regulation 12(3)(e) schemes must provide an operational plan (or an updated plan) showing, amongst other things, how the recovery and recycling obligations of its members will be performed (paragraph 11(d) of Schedule 4 to the Regulations); and the plan covers three years;
- that the Agencies' guidance on evidence of compliance sets down a procedure for exporting packaging waste for recovery/recycling overseas, and for the issue of PERNs to demonstrate this.

4.28 In addition, when the Regulations came into force in 1997 they set in place a framework within which producers have obligations under the Regulations which are to enable the UK to meet the Directive targets in 2001, but they also give producers the freedom to decide how best to discharge these obligations, individually or as a member of a compliance scheme. In addition, the system in place for demonstrating compliance (see the Agencies' guidance on evidence of compliance<sup>16</sup>) is characterised by the Packaging Waste Recovery Note (PRN) which, in addition to being the mechanism for demonstrating compliance and deterring fraud, is also, and most importantly in this context, a mechanism for directing resources at the infrastructure necessary to deliver the recovery and recycling targets. It is therefore

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<sup>16</sup> *Guidance on Evidence of Compliance and Voluntary Accreditation of Reprocessors and Exporters*, 2<sup>nd</sup> edition, [publication pending]

assumed that producers have been and are considering what infrastructure is needed to meet the next targets.

4.29 If a producer will not be able to adhere to their operational plan, **they should discuss a new plan with the relevant Agency as soon as possible**. An approach to compliance which relies on an approach to a reprocessor or an exchange at the last minute is unlikely to be considered to be reasonable, in light of the above. The Department and devolved administrations assume that the relevant Agency will wish to be satisfied that the producer acted in good time – i.e. took action sufficiently early to ensure that their obligations can be met and that any difficulties they are facing or anticipate do not result from delay on their part.

# CHAPTER FIVE

## THE CERTIFYING OBLIGATION

**Summary:** this chapter discusses

- certifying compliance with the obligations;
- statutory guidance for approved persons who issue certificates of compliance;
- records and returns
- reprocessors
  - recycling, composting and energy from waste
  - Accreditation of Reprocessors

### CERTIFYING COMPLIANCE WITH THE OBLIGATIONS

#### Certificate of Compliance

5.01 The third of the three main obligations placed on producers is the certifying obligation (regulation 23 and regulation 24 for compliance schemes). At the end of each calendar year, those producers that are pursuing the individual route will be required to certify to the appropriate Agency whether or not the recovery and recycling obligations for the previous year have been complied with. Producers will have until 31 January of the year following the obligation year, (i.e. the year in which the recovery and recycling had to occur), to submit their certificate of compliance.

5.02 The Agencies have powers in regulation 27 to approve persons for the issue of certificates of compliance. Persons (i.e. legal persons) who will be approved will be of Director level in a company or a Partner in a Partnership or sole traders themselves, as the case may be. Provided that the requirements of regulation 23 and Schedule 6 are complied with, the certificate can take any form, including, for example, a letter from the approved person to the relevant Agency. Further guidance may be obtained from the Agencies.

5.03 **Schedule 6 sets out the information that must be contained in the certificate of compliance.** The certificate must contain -

- name and address of the approved person;
- the general information about the producer that was given to the Agency on registration (or in order to continue registration) including the producer in respect of which the certificate is being issued;
- date of the certificate;

- a statement that the producer has issued the certificate in compliance with any guidance that the relevant Agency might have issued (on, for example, evidence of compliance, under section 94(4) of the Act);
- the packaging data that was provided to the Agency earlier in the year (for example, a photocopy of the data form) stating what the producer's recovery and recycling obligations were for that year;
- certification as to whether the recovery and recycling obligations have been complied with.

The Agencies can supply producers with a template to use if they wish.

Compliance Schemes must also certify that their obligations have been met. Both producers and Schemes must provide copies of evidence of compliance to support their Certificate.

## STATUTORY GUIDANCE

5.04 Under sections 93-95 of the Environment Act 1995, the Agencies have been given the power to publish guidance as to what is regarded as suitable evidence of compliance. The Environment Agency and SEPA have therefore issued **statutory guidance** indicating what is and is not considered to be evidence of compliance. This can be found in the Agencies' guidance on evidence of compliance

### Acceptable Evidence of Compliance

5.05 The principal forms of evidence of compliance are:

- Packaging Waste Recovery Notes (PRNs) from accredited reprocessors
- Packaging Waste Export Recovery Notes (PERNs) from accredited exporters

5.06 A voluntary scheme has been set up whereby companies who carry out reprocessing (i.e. recovery and recycling) of packaging waste can apply for accreditation. The Agencies are responsible for the accreditation of both reprocessors and exporters of packaging waste for reprocessing overseas. The main criteria for obtaining accreditation are that **UK packaging waste** (as defined in the Regulations and Agency guidance) is being **reprocessed, i.e. recovered and recycled** (as defined in the Regulations and guidance) and that an **adequate documentation system** is in place. In addition to the accreditation inspection, routine inspection may also be carried out to ensure that the established conditions of accreditation are being adhered to. One condition of accreditation is that the accredited reprocessors must issue PRNs or, if exporting, PERNs, as the only means of demonstrating compliance. It is therefore only the accredited reprocessors and exporters who generate Packaging Waste Recovery Notes (PRNs) and Packaging Waste Export Recovery Notes (PERNs) respectively for each tonne of packaging waste that is reprocessed. Obligated businesses and compliance schemes can meet their recovery and recycling obligations by obtaining the correct amount and material of PRNs/PERNs to meet their obligations. A system for the

submission of evidence obtained from non-accredited reprocessors is also in place but is very rarely used.

5.07 The main objectives and benefits of having a system of agency accredited reprocessors and exporters are as follows -

- To enable a producer or compliance scheme to have greater confidence that the evidence of compliance they hold relates accurately to packaging waste from the UK waste stream, which has actually been reprocessed (recovered or recycled). Thus accreditation is also intended to deter fraud in the reprocessing sector or fraudulent claims by producers or schemes;
- To provide a means of establishing consistency on matters such as the provision of documentary evidence of recovery and recycling; and to ensure that the amount of reprocessing demonstrated by the documentary evidence is no more than the available capacity of the reprocessors;
- To provide a system whereby revenue is invested in the reprocessing, collection and end-use market infrastructure through the sale of PRNs/ PERNs;
- To provide a consistent means of gathering data on recovery and recycling of UK-sourced packaging waste that has taken place in the UK and overseas.

5.08 Further information about evidence of compliance including lists of accredited reprocessors and exporters from whom PRNs/PERNs can be obtained is available from the Agencies.

## **RECORDS AND RETURNS**

### PRNs and PERNs

5.09 Regulations 22 and 24 provide that records shall be kept and retained for 4 years. In practice, the requirements on records to be kept and the returns to be made can be discharged through acquisition and retention of PRNs and PERNs.

5.10 Producers must supply copies of their evidence with their certificate of compliance. This means that copies of PRNs and PERNs must be supplied. They must also be kept for four years and supplied to the Agency on demand.

## **REPROCESSORS**

5.11 Regulation 2(1) provides a definition of reprocessor. This is a business that “in the ordinary course of conduct of a trade, occupation or profession, carries out the activities of recovery or recycling”. ‘Recovery’ and ‘recycling’ are also defined in Regulation 2(1) and are those in the Directive. Recycling, for the purposes of the packaging Regulations, was further explained in the first edition of the User's Guide. This was incorporated by the Agency into their "Guidance on evidence of compliance and voluntary accreditation of reprocessors". Guidance has been provided by the Agencies as to what is considered to be recycling for the purposes of the packaging

Regulations. The guidance notes the businesses that are the recyclers for the various materials used for packaging, as follows -

for **glass**, the reprocessor will be the glass container manufacturer, that is the producer of molten glass or, where not used for glass container manufacture, the business processing cullet for beneficial end-use;

for **metals** (aluminium and steel), the reprocessor will be the business producing the ingots, sheets or coils of aluminium or steel from packaging waste; this can include the de-tinner for tin-plated waste packaging products;

for **plastics**, the reprocessor will normally be the business melt processing the waste plastic packaging to produce new products or materials - but not the business which just carries out size reduction or washing where the material goes through a subsequent melt process;

for **paper/fibreboard**, the reprocessor will be the mill manufacturing paper, or other business utilising packaging waste to make products such as loft insulation, animal bedding etc. Waste Paper merchants are not reprocessors.

For **wood**, the reprocessor will be the business manufacturing goods (e.g. chipboard) out of chipped wood packaging waste.

5.12 There are also some additional examples of what is considered to be recycling, e.g. glass being used as roadstone, fibre and shot blasting. As the Agencies' guidance notes, there are also reprocessors undertaking **organic recycling** through aerobic (composting) or anaerobic (biomethanisation) treatment of biodegradable packaging waste.

### **Wood recycling**

5.13 Although there are currently only recovery targets for wood packaging waste and any other materials and no material-specific recycling target (although this is being mooted in the review of the Packaging Directive) nevertheless, much of the recovery of wood packaging waste in the UK will be carried out through recycling. In addition, the recycling of wood (and any other materials) contributes to the overall recycling target in the Directive and it is important that all actual recycling should be counted as such. The business carrying out the recycling of waste wood packaging will be the business using chipped waste wood packaging to manufacture e.g. chipboard or items of furniture etc. The wood chipper is not the recycler unless the wood chips are used directly for a beneficial end-use such as animal bedding, pathways, etc.

5.14 A number of issues connected with the definition of recycling were the subject of the Mayer Parry II legal proceedings. A judgment was recently given by the European Court of Justice in June 2003 which seems likely to endorse the approach taken above and pending further guidance on this judgment the present approach set out in the Agencies' guidance continues to apply.

# CHAPTER SIX

## THE CONSUMER INFORMATION OBLIGATIONS

### The Consumer Information Obligations

6.01 The 'consumer information obligations' came into force on 1.1.2000 and are designed to encourage greater consumer involvement in collection and recycling of packaging waste, or in reusing packaging. Consumer involvement is essential in order to increase both waste collection and markets for recycled products.

Regulation 3(5)(c) provides that producers **whose main activity is selling** shall have the consumer information obligations. The intention is that the consumer information obligations should help to increase the amount of information that is provided to consumers of packaging. The wording of the relevant regulation also says that the information concerned should be provided **to consumers of goods sold by the seller**. All businesses whose main activity is 'selling' will therefore have the consumer information obligations. A seller can be, for example, a seller of goods to consumers, such as food retailers, or can be a business selling components to another business; thus selling can be business to business or it can be business to consumer. In both cases the seller will have the consumer information obligations.

6.02 The **consumer information obligations** require businesses whose main activity is 'selling' to provide specific information to consumers; this information, (which is set out in Article 13 of the EC Directive on Packaging and Packaging Waste 94/62/EC), is:

- the return, collection and recovery systems available to consumers;
- their (the consumers') role in contributing to reuse, recovery and recycling of packaging and packaging waste
- the meaning of markings on packaging on the market
- the chapter dealing with the management of packaging and packaging waste that appears in the Waste Strategy 2000 for England and the *National Waste Strategy: Scotland* and *Wise About Waste: The National Waste Strategy for Wales*, June 2002.

6.03 In terms of deciding who has the consumer information obligations, businesses have, since 1997, been required to indicate on the Data Form what their main activity is in relation to packaging. In the vast majority of cases it will be clear to the producer concerned, or to the compliance scheme of which the producer is a member (given that they will have had to provide this information in previous years), whether the producer is principally a seller, i.e. involved mainly in selling packaging to the final user of that packaging, whether business to business or business to consumer; or whether it is principally involved in another activity - pack/filling,

converting, importing etc. If it is the former, the producer will have consumer information obligations.

6.04 Compliance schemes already have responsibilities with regard to consumers. Schedule 4, Part IV, paragraph 10(b) requires a scheme to have a policy on how it is going to recover and recycle packaging waste and provide information for consumers about how they (the consumers) can assist the scheme in achieving the necessary recovery and recycling. Schemes should, therefore, already have given thought to ways of providing information to consumers. Under regulation 4(1)(a), where a producer is a member of a registered compliance scheme, the producer does not have to carry out its producer responsibility obligations itself - because they have passed these to their compliance scheme to discharge for them. This applies to the consumer information obligations in regulation 3(5)(c) as much as it does to the other producer responsibility obligations set out in regulation 3(5)(a) and (b). Clearly, where a compliance scheme is taking on the consumer information obligations of a member, this will be in addition to any consumer information activity it is already carrying out.

6.05 The action that a compliance scheme is already taking to inform consumers could be combined with action to discharge the consumer information obligations of seller scheme members. This might result in the scheme's action being stepped up (e.g. through contributions from the seller members of the scheme) so as to discharge both the scheme's own obligations under Schedule 4 and the seller members' obligations under regulation 3(5)(c). It is also possible for a producer that is a seller, and has consumer information obligations to join in the efforts of a compliance scheme even though the producer is not a member of that scheme (i.e. is individually registered).

6.06 It is expected that sellers who are members of a scheme will carry out their consumer information obligations through the scheme, but if, for example, a seller can show that it is already involved in an ongoing project which would enable it to comply with the obligations; or can show that it can do something similar to the scheme's proposed activity but more cost-effectively, then that seller may discharge the consumer information obligations on its own rather than through its scheme. However, it will be important for any sellers who take this route to agree the procedure with the scheme in writing so that a copy of that letter can be forwarded by the scheme to the relevant Agency at the end of the year when it is reporting on the discharge of the consumer information obligations of its seller members to the Agency. It is producers who have obligations; where a producer joins a compliance scheme, the scheme takes on the obligations that he would have had but for his membership of the scheme. If a producer wants to discharge the consumer information obligations itself, it is for the producer to say so to the scheme of which it is a member and justify that course of action.

6.07 As to what action should or might be taken to discharge the consumer information obligations, compliance schemes will themselves have experience of informing consumers and seller scheme members will, if necessary, be able to get

some assistance from their scheme operator. The following might also be considered to be methods of discharging the consumer information obligations -

- the seller could take action itself with its customers, or fund others to do so – e.g. provide leaflets about recycling which cover the benefits of recycling, indicate the nearest locations of recycling operations, local operators, and encourage early separation of packaging waste.
- The seller could contribute to action being undertaken by others. Bodies such as the National Waste Awareness Initiative, Waste Watch, Encams, Keep Scotland Beautiful, run a number of suitable environmental awareness programmes. Contributions could be made to the cost of an event.
- Sellers could also contribute to action being taken by local authorities – e.g. providing maps to show collection and/or recycling locations or contribute to work done by local or community action groups, e.g. the Community Recycling Network, schools, clubs and so on.

6.08 In addition to the above steps (which would contribute to meeting regulation 3(5)(c)(i) and (ii)), steps will have to be taken to comply with regulation 3(5)(c)(iii) and (iv). To comply with (iv) it will be enough to make a reference to the fact that there are national waste strategies which deal, amongst other things, with packaging, and that the main objectives are to **reduce** the amount of packaging and packaging waste, to **reuse** packaging where possible and to **recover and in particular recycle increasing amounts** of the packaging waste that flows into the waste stream.

6.09 As to (iii), it would be useful for consumers generally to have the meaning of the various symbols to be found on packaging more widely disseminated. The Industry Council on Packaging and the Environment (INCPEN) produce a small, pocket-size leaflet, which explains these symbols. This information is available from INCPEN (address in Appendix V).

# CHAPTER SEVEN

## MONITORING COMPLIANCE, OFFENCES and PENALTIES

**Summary:** this chapter discusses

- offences and penalties and de-registration of schemes
- the cancellation of a scheme's registration
- monitoring and enforcement by the Agencies
- the public register
- publication of annual monitoring strategy

### OFFENCES AND PENALTIES - A CRIMINAL REGIME

#### Offences

7.01 There are nine offences under the Regulations and these are set out in regulation 34. They are-

**a) Obligated producer offences**

1. 34(1)(a) – failure to register
2. 34(1)(b) – failure to take reasonable steps to recover/recycle
3. 34(1)(c) – failure to furnish Certificate of Compliance.

**b) Information offences**

4. 34(3)(a)(i) – producer knows false information is in Certificate of Compliance
5. 34(3)(a)(ii) –producer recklessly providing false information in Certificate of Compliance
6. 34(3)(c)(i) – knows he has provided false information
7. 34(3)(c)(ii) – has provided reckless false information.

**c) Obstruction**

8. 34(4) – producer is obstructing Agency in execution of its duty (as in regulation 28).

**d) Notices**

9. 34(3)(aa) – failure to maintain record or furnish return.

Compliance schemes must carry out the obligations that their members would have had but for their membership of the scheme.

## **Penalties**

7.02 The Regulations provide for criminal offences with specific penalties for producers, and do not provide for appeals except for compliance schemes, for example, where registration has been refused or cancelled. This is because the appeals mechanism is for use in circumstances where what is at issue is a question of administrative judgement and not where there is provision for court proceedings, as is the case for producers.

7.03 Penalties for producers range from a fine not exceeding the statutory maximum (£5,000) for each offence heard in a Magistrates or Sheriff Court to an unlimited fine for a case heard in the Crown Court or High Court.

7.04 Enforcement action under the Regulations is focused on the offences listed in the Regulations and is taken in accordance with the relevant Agency's enforcement policy, a copy of which is available from each Agency.

## **The De-registration of compliance Schemes**

7.05 At present, where a scheme fails to carry out the legal obligations that its members would have had but for their membership of the scheme, the scheme is liable to de-registration. This would mean that the scheme's registration could, subject to any appeal, be cancelled and in those circumstances, the scheme could no longer operate. Its members would, from that point on, have to find alternative ways of achieving compliance with their legal obligations.

## **ROLE OF THE AGENCIES IN MONITORING COMPLIANCE**

7.06 The Regulations are enforced by the Environment Agency (EA) in England and Wales and the Scottish Environment Protection Agency (SEPA) in Scotland. In Northern Ireland, the Environment and Heritage Service (EHS) enforces the NI Regulations. The Agencies work closely with each other to ensure that, as far as possible, a consistent approach is taken to interpretation, policy and guidance, monitoring and enforcement. The main roles and responsibilities are shown below.

### **Registration of 'individual' companies and compliance schemes**

7.07 The Agencies are responsible for handling the registration of those companies who wish to comply individually and of compliance schemes. This involves checking that -

- registrations are received no later than 7 April each year, application forms are accurate and appropriate payment has been received;

- data on packaging handled has been submitted on time and that the correct recovery and recycling obligations have been calculated, based on the data supplied;
- a compliance plan has been submitted by those companies with a turnover exceeding £5 million, and by compliance schemes.

### **Submission of Certificates of Compliance**

7.08 All individually registered companies must submit an annual Certificate of Compliance by 31 January each year, as must all compliance schemes. This states whether the company/scheme has met its recovery and recycling obligations for the previous registration year and provided the relevant evidence. The Agencies monitor these certificates to check that they have been submitted on time, that they contain the correct information and that there is appropriate evidence of compliance to support the certificate.

### **Maintenance of the public register**

7.09 The Agencies are responsible for compiling and maintaining the public register which lists those companies that have registered with an Agency and those who have joined a compliance scheme. Copies of the public register are available from the Agencies.

### **Compliance monitoring of producers and scheme members**

7.10 Routine compliance monitoring is carried out on both agency registered companies and compliance scheme members. The Agencies are also responsible for the identification and monitoring of those companies who may be obligated under the Regulations but have not registered. The audits of registered businesses and schemes are carried out with a view to checking that -

- the data submitted is correct.
- all parts of the company are accounted for.
- interpretation of the Regulations corresponds with agency guidance.
- 'consumer information obligations' have been met where appropriate.

7.11 The Agencies are responsible for the collection of data on packaging handled by individually registered businesses and by compliance scheme members, and on packaging waste recovered and recycled by accredited reprocessors and exporters. This data is then submitted to DEFRA.

7.12 The method of choosing which companies to monitor is a mixture of risk based selection and selection based on the following factors -

- whether or not they are first time registrants.
- their previous compliance history.

- whether they belong to particular industry sectors or they perform particular activities that are being targeted for investigation at that time.
- whether their data has changed significantly from one year to the next.
- whether or not they have large recovery and recycling obligations.
- whether or not they are declaring relatively large amounts of exports, third party exports, special packaging and use of reused packaging.
- whether or not they are part of a large company group.

7.13 The Agencies also check the quarterly returns that the accredited reprocessors and exporters are required to provide. These returns detail the reprocessing that has been carried out and the PRNs/PERNs that have been issued. In addition, the Agencies monitor the annual revenue return that the accredited reprocessors are required, as a condition of accreditation, to make to the relevant Agency. This return discloses the revenue obtained through the sale of PRNs and PERNs and the uses to which the revenue has been put.

### **Publication of Annual Monitoring Strategy**

7.14 Regulation 25 of the packaging Regulations places a duty on the Agencies to monitor compliance with the producer responsibility obligations in the Regulations. A monitoring policy and strategy is required each year in line with regulation 25A of the amended Regulations as follows -

“The appropriate Agency shall take such steps as seem to it appropriate to publish, in relation to each year commencing with 2000, the following details of the monitoring carried out under Regulation 25 -

- (a) the Agency’s policy in relation to monitoring and enforcement of producer responsibility obligations; and
- (b) an indication of the minimum number of persons which it proposes to monitor in the course of that year”

7.15 A copy of the relevant monitoring strategy is available from each Agency.

## APPENDIX I

### NOTES ON FILLING IN THE DATA FORM

#### Introduction

1. These Notes are provided to set down the method of calculating the obligations and to help producers who choose to register directly fill in the data form which must be returned to the relevant Agency by 7 April each year. This is the latest date for registration. These notes will also assist those who choose to register with a scheme, as registration forms for most schemes mirror that used by the Agencies. This section also sets down the procedure used for calculating table 4.

Please note the data form is no longer shown in the Regulations, although Regulations 6(4)(c) and 12(3)(c) provide legally for the information that is to be provided by producers. As before, a number of tables are to be completed, which are designed to establish the packaging handled by obligated businesses and their overall obligation each year. The data provided is also to enable the UK to comply with its data provision requirements under the EC Directive on Packaging and Packaging Waste and the associated Commission Decision on Formats for Databases.

**2. Please read these Notes carefully. They include instructions on how to calculate your legal obligation to recover and recycle packaging waste.**

**3. Schemes should provide the relevant Agency with one form for each class of producer, aggregating the data for each of their members that belongs to that class - e.g. one form aggregating the data for all producers who are converters, one form for all producers who are packer/fillers and so on.** Some producers will carry out more than one activity and will therefore belong to more than one class of producer, but they are likely to consider one activity to be their main one, and to see themselves as being predominantly a producer belonging to one particular class. They are asked in section 1 of the data form to indicate what the main activity is that they perform with regard to packaging. **It is very important to know which is a producer's main activity. Without this information the UK obligation cannot be correctly aggregated.**

**Please supply data :**

- in WHOLE METRIC TONNES**
- and for the PREVIOUS YEAR**

**PRODUCERS SHOULD ENSURE THAT THEY ALSO READ THE AGENCIES'  
GUIDANCE NOTES**

**NOTES ON THE TABLES IN THE DATA FORM**

4. **Table 1a packaging/packaging materials supplied:** you should calculate the tonnage of packaging or packaging materials on which you performed one or more of the activities and which you supplied on, including any imports. (cf. Schedule 1). Please note that this amount should **at this stage include packaging/packaging materials, which you or others later on will export.** A later table will ask you to record exports separately. However, the amount in table 1 should **exclude** production residues and packaging that you have re-used.

5. **Table 2a packaging/packaging materials exported by the producer:** you should fill in here the tonnage of packaging or packaging materials exported by you after production, conversion, filling, selling, etc. For example, if you export 200 t of coffee jars after filling them, then the 200t goes in the glass-pack/filling box in table 2a. If you make (convert) 100 t of empty glass bottles and then export them, the 100t goes into the conversion-glass box. You should also fill in tonnages exported by you through an agent acting on your behalf since, where you own the packaging being exported, this is your export.

6. **Table 2b packaging/packaging materials exported by a third party:** if you have an activity obligation on products or materials which you know are later exported and you have a reasonable figure and evidence for these exports, you may fill in the exported tonnage here. **This should be in the box where YOU had the activity obligation.** E.g. if you are a paper raw material manufacturer and you know that 100 t will be exported as cartons at the converting stage, 100 t is put in the raw material/paper box because that was the activity that you performed on the paper. You are not obliged to fill in this box, but if you do, you must use figures which you can justify to the appropriate Agency if necessary.

7. **Table 3a tonnage of packaging/packaging materials imported for the purpose of the named activity:** Fill in here the tonnage of products or materials that you imported for the purpose of one or more of the activities. E.g. if you import 4,000 tonnes of tinplate for the purpose of conversion, you put 4,000 t in the conversion/steel box. **You do this if this is the next activity that will be performed on this tonnage, even if you yourself are not the producer that performs the activity.** You should also include here tonnages of packaging you import for own use (i.e. which you are deemed to sell to yourself as end user).

Please note that at this stage you do not have to record your 'rolled up' obligations on imported packaging and packaging materials.

8. **Table 3b transit packaging around imports into the UK:** you should fill in here any tonnages of transit packaging you imported into the UK and which you will dispose of.

9. **Table 3c imported packaging which is subsequently exported:** you should fill in here any tonnages of packaging that you import and then export; this must be the same packaging and not an equivalent amount of any other packaging. In some cases, you may perform an activity on the packaging after import and before export.

10. **Summary Table 4 Statement of Obligations:** Summary table 4 will show you what your tonnage recovery obligation is and what your tonnage recycling obligation on each material is. NB with effect from 2001, at least half of your recovery obligation must be discharged through recycling. See below for instructions on how to fill in table 4.

### **How to calculate your obligation**

11. In order to fill in Table 4 the steps set out below must be followed.

### **NB WHAT FOLLOWS ARE EXAMPLES ONLY! FIGURES MAY CHANGE !**

12. **Step one,** you will need to remind yourself of the percentage activity obligations, and the UK national recovery and recycling targets -

<b>Activity Obligations</b>	<b>National Recovery &amp; Recycling Targets</b>		
Manufacture of raw material For packaging           6% Converting pack/filling            37% selling                 48%	2003	Recovery* 59%	recycling by material 19%
importing transit packaging around packaging/package goods                    100%	* As of 2001, at least half of the recovery obligation must be recovered through recycling		

13. **Step two,** you need to calculate the obligations on UK sourced packaging handled. As a later step you will calculate the 'rolled up' obligations on imports. Each step is illustrated by an extract from the data form. These illustrations use 2002 targets - 59% recovery and 19% material-specific recycling. First, obligations on UK sourced packaging handled:

Illustrative table 1

	Paper	Glass	Alu	Steel	<b>Plastic</b>	Wood	Other
Manufacturing							
<b>Conversion</b>					<b>150</b>		
Packing/filling							
Selling							

- a. start with any one of the boxes in table 1 (e.g. conversion/plastic)
- b. subtract the figure in the corresponding box in table 2a

Illustrative table 2a

	Paper	Glass	Alu	Steel	<b>Plastic</b>	Wood	Other
Manufacturing							
<b>Conversion</b>					<b>70</b>		
Packing/filling							
Selling							

So, 150 t (from table 1) minus 70t (from table 2a) = 80t

- c. subtract the figure in the corresponding box in table 2b

Illustrative table 2b

	Paper	Glass	Alu	Steel	<b>Plastic</b>	Wood	Other
Manufacturing							
<b>Conversion</b>					<b>0</b>		
Packing/filling							
Selling							

So, 80t (the answer above) minus 0 (from table 2b) = 80t

- d. multiply the answer by the percentage activity obligation for that activity (in this example, converting 9%) so,

$$80\text{t plastic} \times 9\% = 7.20\text{t}$$

- e multiply the answer at (d) by the recovery target to calculate the recovery obligation on UK sourced packaging handled -

$$7.2\text{t} \times 59\% = 4.24\text{t recovery}$$

- f. multiply the answer at (d) by the recycling target to calculate the recycling obligation on UK sourced packaging handled

$$7.2\text{t} \times 19\% = 1.36\text{t plastic recycling}$$

- g. **repeat this for all boxes in table 1.**
- h. Add together all recovery obligations;
- i. add together all recycling obligations, by material.

**Step three**, you need to calculate the 'rolled up' obligations on imports. To do this you will look at the figures in table 3a only.

Illustrative table 3a

	Paper	Glass	Alu	Steel	Plastic	Wood	Other
Conversion	55				72		
Pack/filling	27						
Selling					30		

- a. packaging or packaging materials imported for the purpose of conversion (whether by you or another producer) picks up the 'rolled up' raw material manufacturing obligation (6%), so
- b. take each figure in the conversion row and multiply it by 6% -
- thus 55 t paper x 6% = 3.30t and 72t plastic x 6% = 4.32t
- c. multiply the answers at (b) by the recovery target to calculate the 'rolled up' recovery obligation: thus 3.3t x 59% = 1.94t and 4.3t x 59% = 2.53t
- d. multiply the answers at (b) by the recycling target to calculate the 'rolled up' recycling obligations by material, thus:

$$3.3\text{t} \times 19\% = 0.62\text{t paper} \text{ and } 4.3 \times 19\% = 0.81\text{t plastic}$$

e. In the same way, packaging/packaging materials imported for the purpose of packing/filling pick up the raw material manufacturing 6% and the converting 9% activity obligations.

f. Therefore, take each figure in the packing/filling row and multiply it by 15% (i.e. 6% + 9%). So, looking at illustrative table 3a we have -

$$\underline{27t \text{ paper} \times 15\% = 4.10t}$$

g. multiply the answer at (f) by the recovery target to calculate the recovery obligation, so

$$\underline{4.1t \times 59\% = 2.41t \text{ recovery}}$$

h. Multiply the answer at (f) by the recycling target to calculate the recycling obligations-

$$\underline{4.1t \times 19\% = 0.77t \text{ paper recycling}}$$

i. In the same way, packaging and packaging materials imported for the purpose of selling pick up the raw material manufacturing 6%, converting 9% and pack/filling 37% rolled up obligations (i.e. 52%);

j. take each figure in the selling row and multiply it by 52%. Thus looking at illustrative table 3a we have -

$$\underline{30t \text{ plastic} \times 52\% = 15.60t}$$

k. multiply the answer at (j) by the recovery target to get the recovery obligations,

$$\underline{15.6 \times 59\% = 9.20t \text{ recovery}}$$

l. multiply the answer at (j) by the recycling target to get the recycling obligations,

$$\underline{15.6t \times 19\% = 2.96t \text{ plastic recycling}}$$

m. where you are the end user of transit packaging around imports or import it and then sell it, you pick up a 100% obligation (6% + 9% + 37% +48%)

Illustrative table 3b

	Paper	Glass	Alu	Steel	Plastic	Wood	Other
packaging around imports which you dispose of	10						

- n. take each figure in the row and multiply it by 100%. Thus from illustrative table 3b we have -

$$\underline{10\text{t paper} \times 100\% = 10.00\text{t}}$$

- o. Multiply the answer at (n) by the recovery target to get the recovery obligation on imported transit packaging

$$\underline{10 \times 59\% = 5.90\text{t recovery}}$$

- p. Multiply the answer at (n) by the recycling target to get the recycling obligation on imported transit packaging

$$\underline{10 \times 19\% = 1.90 \text{ paper recycling}}$$

- q. add together all recovery obligations;  
r. add together all recycling obligations, by material.

The results of your calculations should be entered in Table 4 which sets out your recovery and material-specific recycling obligations.

Table 3c - You do not need to use this table in the calculation of your obligation.

14. **Table 5 - Amount of packaging that was being re-used** is optional. You are not required to answer this question, but if you can, you are asked to note the tonnage of re-used packaging that you have excluded from the previous tables (and the calculation of your obligation) according to material. This information helps the UK to comply with its data provision requirement under the Directive.

15. **Table 6 - Amount of composite packaging handled** is also optional but if you can answer this question, you are asked to note in the table the tonnage of packaging included in the calculation of your obligated tonnage that was composite packaging. For example: You handled 240 tonnes of packaging made from 75% paper and 25% aluminium. In accordance with the guidance, you attributed the whole weight of the packaging to paper and filled in the relevant tables (1-3) accordingly. You can also fill in 240t in table 6 opposite paper.

## APPENDIX II

### CALCULATION OF THE RECOVERY AND RECYCLING OBLIGATIONS - WORKED EXAMPLES

#### Example 1: Producer A - manufacturer of plastic bottles

It is 2003. Producer A makes plastic bottles and supplies them to a company which uses them to bottle soft drinks. Producer A is therefore a convertor. Producer A's most recently available audited accounts show a turnover of £15 million and they handled more than 50 tonnes of packaging in 2001.

When producer A supplied their bottles to the drinks company, they did so on 10 tonnes of wood transit pallets (half new, half being reused) and used 1 tonnes of plastic shrink-wrap.

To manufacture the bottles, Producer A imported 100 tonnes of plastic flakes from a business in France and these flakes were delivered in 10 tonnes of plastic packaging. A is therefore also an importer. Producer A also bought 100 tonnes of plastic flakes from a business in the UK and these, too, were delivered in 10 tonnes of plastic packaging. In the process of manufacturing the bottles, 10 tonnes of plastic were lost as process waste. Half of the 10 tonnes of process losses is being deducted from the imported 100 tonnes, the other half from the UK sourced 100 tonnes.

Producer A imported 100 tonnes of plastic for the purposes of conversion. As an importer, A has the 'rolled up' raw material manufacturing obligation on this tonnage (6%).

$$97.5\text{t} \times 6\% \times 59\% = 3.36 \text{ t recovery}$$
$$97.5\text{t} \times 6\% \times 19\% = 1.08 \text{ t recycling (plastic)}$$

Producer A also imported 10 tonnes of plastic packaging around the plastic flakes. This is the only packaging around the flakes and is therefore not transit packaging but is primary packaging. Producer A imported the plastic flakes for own use and will discard the packaging. Therefore A has all the 'rolled up' obligations (100%) on this tonnage:

$$10\text{t} \times 100\% \times 59\% = 5.90 \text{ recovery}$$
$$10\text{t} \times 100\% \times 19\% = 1.90\text{t recycling (plastic)}$$

In all, Producer A has converted and supplied 190 tonnes of plastic (taking account of 10 t of process losses). As a convertor they have the following obligations:

$$190\text{t} \times 9\% \times 59\% = 10.08 \text{ tonnes recovery}$$
$$190\text{t} \times 9\% \times 19\% = 3.25\text{t recycling (plastic)}$$

Producer A has no obligation on the packaging in which the UK sourced flakes were delivered, as they are the final users of that packaging.

Producer A used 10 tonnes of wood and 1 t of plastic to pack/fill and sell the bottles to the drinks company. Half of the wood is being reused so it does not have to be included in the calculation. The other half, i.e. 5 tonnes, is being used for the first time and must be obligated (NB no material-specific recycling obligation on wood). As a secondary provider, A has the following obligations:

9t (i.e. 5t wood + 1t plastic) x 85% x 59% = 3.01 t recovery  
1t x 85% x 19% = 0.11 t recycling (plastic)

A's overall recovery obligation is therefore:

$3.36 + 5.90 + 10.08 + 3.01 = 23.07$  5t = **23 tonnes recovery (of which at least half (12tonnes) must be achieved through recycling)**

A's overall plastic recycling obligation is therefore:

$1.08t + 1.90t + 3.25 t + 0.11 t = 6.34 t$  **6 tonnes of plastic (plus another 6 tonnes of recycling in any material to achieve the 50% recycling target)**

### **Example 2: Producer B - a food manufacturer**

It is 2003. Producer B makes tinned food which they supply to several retailers in 200 tonnes of steel cans. Half of their output goes to retail outlets in the Republic of Ireland (not Northern Ireland), and half goes to retailers in Great Britain. Producer B is a packer/filler. B does not include in their calculation the tonnage they supply to the Republic of Ireland as this is exported from the UK and does not arise in the UK waste stream (this would be different if the supply was to a business in Northern Ireland, part of the UK).

In 2002, Producer B bought 100 tonnes of steel cans from the Netherlands, and 100 tonnes of cans from a company in Northern Ireland. Each of the deliveries arrived on plastic one-trip pallets, which weighed 8 tonnes, covered in shrink-wrap, which weighed 2 tonnes. Producer B, who is the final user of it, discards this transit packaging. Packaging from NI is not considered an import because NI is within the UK.

When supplying the cans to the retailers Producer B used 10 tonnes of transit packaging. This consisted of 8t wood which is on its first trip, 1 t plastic shrink-wrap and 1 t plastic strapping. NB There is a recovery obligation but no *recycling* obligation on wood. It should be remembered that half of Producer B's output is being exported to the Republic of Ireland. They are therefore only obligated on the 5 tonnes of transit packaging which is supplied on and becomes waste in the UK.

As the **importer** of the 100t of cans from the Netherlands, for the purposes of filling, Producer B has the rolled up raw material manufacturing and converting obligations (6%+9%= 15%):

$$\begin{aligned} 100\text{t} \times 15\% \times 59\% &= 8.85 \text{ t recovery} \\ 100\text{t} \times 15\% \times 19\% &= 2.85 \text{ t recycling (steel)} \end{aligned}$$

As the **importer of** the 5 t of plastic transit packaging around the cans Producer B has all the rolled up obligations (100%):

$$\begin{aligned} 5 \text{ t} \times 100\% \times 59\% &= 2.95 \text{ t recovery} \\ 5 \text{ t} \times 100\% \times 19\% &= 0.95 \text{ t recycling (plastic)} \end{aligned}$$

Producer B has no obligation on the 5 tonnes of transit packaging around the cans he sourced from within the UK as he is the final user of that transit packaging.

Producer B has pack/filled 200t of cans but they export 100 t of these. As a **packer/filler** they therefore have -

$$\begin{aligned} 100\text{t} \times 37\% \times 59\% &= 21.83 \text{ t recovery} \\ 100\text{t} \times 37\% \times 19\% &= 7.03 \text{ t recycling (steel)} \end{aligned}$$

Producer B used 10 tonnes (including 2 tonnes of plastic) of transit packaging to supply their cans to their customers. Half of this is being exported, so as a secondary provider they acquire a **packing/filling** and a **selling** obligation on 5 t of transit packaging (37%+48%):

$$\begin{aligned} 5 \text{ t} \times 85\% \times 59\% &= 2.51 \text{ t recovery (includes wood and any other materials)} \\ 1 \text{ t} \times 85\% \times 19\% &= 0.16 \text{ t recycling (plastic)} \end{aligned}$$

B's overall recovery obligation is therefore:

$$8.85 + 5.90 + 21.83 + 2.51 = 38.64 = 39 \text{ tonnes recovery}$$

B's overall recycling obligations are therefore:

$$\begin{aligned} 2.85 + 7.03 &= 9.88\text{t} = 10 \text{ tonnes recycling (steel)} \\ 0.95 + 0.16 &= 2.06 = 2 \text{ tonnes recycling (plastic)} \end{aligned}$$

### **Example 3: Producer C - a retailer of electrical goods**

It is 2003. Producer C is a retailer of a range of electrical goods, from electrical toothbrushes to fridge-freezers. In their most recently available audited accounts they have a turnover of £60 million. They sell products in 200 tonnes of cardboard boxes and 40 tonnes of expanded polystyrene and bubble wrap (around and inside the goods, inside the box). They did not pack/fill the products into the boxes.

In 2002, they imported a quarter of the goods and packaging from Italy (300 tonnes cardboard and 10 tonnes of expanded polystyrene and bubble wrap) which came

into the UK on 20 tonnes of wooden pallets, 2 tonnes steel strapping, 3 tonnes of card and 2 tonnes of shrink-wrap. Of the 20t of wooden pallets, three quarters (15t) are being reused while the remainder (5t) are on their first trip. Therefore, they pick up an obligation on imported transit packaging of only 5 t of wood and so only 5t need be included in the calculation of the obligation.

As an **importer**, Producer C has the rolled-up raw material manufacturing, converting and packing/filling obligations (=52%) on the 300 tonnes of primary packaging imported from Italy. They have material-specific recycling obligations on each material.

$$\begin{aligned} 310 \text{ t} \times 52\% \times 59\% &= 95.11 \text{ t recovery} \\ 300 \text{ t} \times 52\% \times 19\% &= 29.64 \text{ t recycling (paper)} \\ 10\text{t} \times 52\% \times 19\% &= 0.98 \text{ t recycling (plastic)} \end{aligned}$$

As an **importer**, Producer C also has all the rolled up obligations (100%) on 12 tonnes of transit packaging that was around the packaged Italian goods: (NB excluding the 15t of wood being reused)

$$\begin{aligned} 12\text{t} \times 100\% \times 59\% &= 7.08 \text{ t recovery} \\ 2\text{t} \times 100\% \times 19\% &= 0.38 \text{ t recycling (steel)} \\ 3\text{t} \times 100\% \times 19\% &= 0.57 \text{ t recycling (paper)} \\ 2\text{t} \times 100\% \times 19\% &= 0.38 \text{ t recycling (plastic)} \end{aligned}$$

Producer C sells 240 tonnes of packaging to customers (who are final users). As a **seller**, C has:

$$\begin{aligned} 1240 \text{ t} \times 48\% \times 59\% &= 351.17 \text{ t recovery} \\ 1200 \text{ t} \times 48\% \times 19\% &= 109.44 \text{ t recycling (paper)} \\ 40 \times 48\% \times 19\% &= 3.64 \text{ t recycling (plastic)} \end{aligned}$$

C's overall recovery obligation is therefore:

$$95.11 \text{ t} + 7.08\text{t} + 351.17 \text{ t} = 453.36 = \mathbf{453 \text{ tonnes recovery}}$$

of which, C's recycling obligations are

$$\begin{aligned} 0.98\text{t} + 0.38\text{t} + 3.64\text{t} &= \mathbf{5 \text{ tonnes recycling (plastic)}} \\ 4.94\text{t} + 0.57\text{t} + 109.44 \text{ t} &= 114.95 = \mathbf{115 \text{ tonnes recycling (paper)}} \\ &\quad \mathbf{0.38\text{t recycling (steel)}} \end{aligned}$$

However, C's steel recycling obligation is below 1 tonne, so it may be ascribed to C's predominant material, which for recycling is paper. Adding 0.38 to 114.95 t gives 115.33 t which, rounded, gives a paper recycling obligation of 115 tonnes.

#### **Example 4: Producer D - A manufacturer of coils of aluminium for packaging**

It is 2003. Producer D makes aluminium coils which they supply to a number of aerosol can producers. The turnover in their most recently available audited

accounts is £10 million. In 2002 they manufactured 1,100 tonnes of aluminium coils , and exported 1,052 tonnes to Germany.

D supplied 48 tonnes of aluminium coils to UK customers, on a 10 ton paper/fibreboard core and on 12t of wooden pallets which they are re-using and 2 tonnes of steel strapping.

They do not need to count any packaging or packaging materials which are exported (1,052), nor the packaging that is being re-used (12 t wood). Their obligated packaging handled is therefore 60 tonnes.

Producer D has manufactured the 48 tonnes of aluminium coils he sends to UK producers. As a **raw material manufacturer** they have :

$$48t \times 6\% \times 59\% = 1.69 \text{ t recovery}$$
$$48t \times 6\% \times 19\% = 0.54 \text{ t recycling (aluminium)}$$

Producer D has used 2 tonnes of steel strapping and 10t of paper/fibreboard cores to **pack/fill** and **sell** aluminium sheets to their UK business customers. (37% +48). They therefore have:

$$12t \times 85\% \times 59\% = 6.01 \text{ t recovery}$$
$$2t \times 85\% \times 19\% = 0.32 \text{ t recycling (steel)}$$
$$10t \times 85\% \times 19\% = 1.61 \text{ t recycling (paper)}$$

If the wooden pallets were on their first trip, they would have to be counted. In that case, Producer D would be a 'secondary provider' in relation to that wood transit packaging. However, in this case, the wood is being reused and attracts no obligation.

D's overall recovery obligation is therefore:

$$1.69t + 6.01t = 7.70 \text{ t or } \mathbf{8 \text{ tonnes recovery}}$$

D's overall recycling obligations are:

**0.54tonnes aluminium**  
**0.32 tonnes steel**  
**1.61 tonnes paper**

However, D's aluminium and steel recycling obligations are below 1 tonne so D may ascribe them to their predominant material, which is paper. **This would give D a paper recycling obligation of 2 tonnes** (1.61 + 0.54 + 0.32 = 2.47 = 2 t).

If the aerosol manufacturers can provide evidence of aluminium process losses in the aerosol manufacturing process, this amount could be deducted from the obligated aluminium tonnage supplied (48t).

#### **Example 5: Producer E - A wine producer**

It is 2003. Producer E makes wine, which they bottle. Their turnover in their most recently available audited accounts is £8 million.

In 2002 E supplied 550 tonnes of filled glass bottles to UK based retailers, and sells 20 tonnes of filled glass bottles direct to end users. They use 4 tonnes of cork: there is a recovery, but no recycling, obligation on cork, which is classified with “other” packaging materials.

When E supplied their customers they used 60 tonnes of one-trip wooden pallets and 25t of paper corrugated boxes and dividers.

E used 574 tonnes of glass and cork to bottle their wine. As a **packer/filler** E has:

$$\begin{aligned} 574\text{t} \times 37\% \times 59\% &= 125.30 \text{ t recovery} \\ 570\text{t} \times 37\% \times 19\% &= 40.07 \text{ t recycling (glass)} \end{aligned}$$

E also sold 20 tonnes of glass to end users. The amount of cork is negligible (circa 7 kilograms) and is not counted here. As a **seller**, E has:

$$\begin{aligned} 20\text{t} \times 48\% \times 59\% &= 5.66 \text{ t recovery} \\ 20\text{t} \times 48\% \times 19\% &= 1.82 \text{ t recycling (glass)} \end{aligned}$$

E used 60 tonnes of wooden one trip pallets and 25t of corrugated boxes and dividers to pack/fill and sell their wine (37%+48%). As a **secondary provider** of this transit packaging, E has:

$$\begin{aligned} 85\text{t} \times 85\% \times 59\% &= 42.62 \text{ t recovery} \\ 25\text{t} \times 85\% \times 19\% &= 4.03 \text{ t recycling (paper)} \end{aligned}$$

E's overall recovery obligation is therefore:

$$125.30\text{t} + 5.66\text{t} + 42.62 = 173.58 = \mathbf{174 \text{ tonnes recovery}}$$

E's overall recycling obligations are therefore:

$$\begin{aligned} 40.07\text{t} + 1.82\text{t} &= 41.89\text{t} = \mathbf{42 \text{ tonnes recycling (glass)}} \\ \mathbf{4.03\text{t}} &= \mathbf{4 \text{ tonnes recycling (paper)}} \end{aligned}$$

## APPENDIX III

### INFORMATION ABOUT COMPLIANCE SCHEMES

#### REGISTRATION OF COMPLIANCE SCHEMES

1. The compliance schemes operating under the Regulations have been established by industry, and a scheme's operator determines the terms and arrangements for producers to join them. Under regulation 4, where a producer joins a compliance scheme, the scheme takes on the producer responsibility obligations that the producer would have had but for their membership of the scheme and they are exempt from their legal obligations. In most cases, this will include the consumer information obligations where the scheme member is a 'seller' (but see also paragraph 6.04 in Chapter Six above). A compliance scheme has responsibility for ensuring that the aggregated data they provide to the relevant Agency is as accurate as reasonably possible, but the producer must provide accurate data on its own packaging handled to the scheme of which it is a member.

2. Regulation 12 provides that a compliance scheme must apply, in writing, for registration to the appropriate Agency depending on the location of its principal place of business or registered office (as for producers, see Chapter Two). Provisions relating to an operator of a scheme which is a partnership, or where there is more than one operator of a scheme, are set down in regulation 2(3) and regulation 12(2) and 12(3)(h).

3. A scheme will not be registered until it has obtained the approval of the relevant Minister in England, Wales or Scotland.

4. An application for registration of a scheme must be made by the operator of the scheme to the Environment Agency or SEPA. **There is no longer any requirement to obtain competition clearance from the Department of Trade and Industry**, but, following the entry into force on 1 March 2000 of the Competition Act 1998, operators of schemes and prospective schemes must satisfy themselves that their scheme does not or will not distort, restrict or prevent competition under the terms of the Competition Act 1998 and this may mean taking their own legal advice on these points. Agreements to establish schemes, which may have an effect on interstate trade, may need to be notified to the European Commission by those concerned. The relevant Minister will not give approval to a scheme which may affect trade between Member States of the Community, without taking into account the application of European Community law.

5. If an operator (or operators) of a registered scheme wish to apply for registration, the application must be received by the relevant Agency **at the very latest** by 7 April (regulation 12(1)). Given the requirement to provide data to the Agency, and the need to check and aggregate all members' data, it is important that

schemes note that **7 April is the last date for application for registration.** Schemes have until 15 April to provide data on packaging handled.

6. An application for registration must be accompanied by the following:
- a) general data relating to members of the scheme - (i) name/address of registered office, telephone and fax numbers; (ii) business name if different from (i); (iii) name for service of notices if different from (i) (regulation 12 (3)(b)).
  - b) packaging data relating to all the scheme's members, on forms provided by the Agency, **with one form aggregating the data for each class or type of producer (i.e. one form for all convertors, one form for all packer/fillers etc.** (regulation 12(3)(c));
  - c) a statement of the scheme's policies on certain issues (regulation 12 (3)(d));
  - d) an operational plan (regulation 12 (3)(e)) or an updated plan;
  - e) in order to remain registered (regulation 14), give certain undertakings including an undertaking that the scheme will, in subsequent years, provide the appropriate fee and the required packaging data on behalf of all its members, by the relevant deadline, and will provide an updated operational plan each year to the relevant Agency.
  - f) a fee (regulation 15)

7. Schemes will also, under Regulation 13, have to notify the relevant Agency about new members of the scheme that join after scheme registration and pay the necessary additional fee, at intervals required by the relevant Agency. Joining a scheme after the statutory deadline of 7 April should only occur in exceptional circumstances, and is provided for to take account, for example, of a situation in which the business has only just become obligated, or a scheme of which it was a member has been de-registered or ceased to operate etc. **Producers who register late with a scheme are committing an offence and are liable to enforcement action by the relevant Agency.** The Agencies cannot accept late registrations.

8. The current registration fee payable to the relevant Agency by a compliance scheme (of whatever size) is £460 for each member.

#### **APPROVAL OF SCHEMES BY THE SECRETARY OF STATE OR SCOTTISH ENVIRONMENT MINISTER**

9. In order to be registered by the relevant Agency, a scheme must have obtained the approval of the Secretary of State for Environment, Food and Rural Affairs or the Welsh Assembly Environment Minister if registering with the Environment Agency, and the Scottish Environment Minister if the scheme is

registering with SEPA in Scotland. As a basis for the scrutiny of their application for approval, scheme operators are asked to provide to the Department or Scottish Executive -

- i. a list of the likely members of the scheme;
- ii. a copy of the scheme's constitution and any associated rules and regulations, particulars of which schemes will have already provided to the Environment Agency in accordance with paragraph 9 of Part III of Schedule 4 of the Regulations.

10. In considering whether to give a scheme approval, the Secretary of State for Environment, Food and Rural Affairs or the Scottish Environment Minister is principally interested in satisfying him or herself that the scheme is likely to be able to continue to subsist and contribute to the achievement of the objectives in the Directive and the Regulations, thus enabling the UK to deliver Directive targets. The Secretary of State or Scottish Environment Minister will consider the scheme against the background of the following -

- i. whether there is any reason to suppose that the scheme will not subsist and continue to assist the UK in achieving the objectives set down in article 1(1) and (2), and the recovery and recycling targets set down in article 6(1) of the EC Directive on Packaging and Packaging Waste and in the Regulations;

In order to determine whether the scheme is likely to subsist the Department or Executive will want to be satisfied that a number of probable members have been identified, that there are measures which take account, as need be, of the sometimes differing interests of the different sectors in the packaging chain; and whether the scheme's objectives are clearly set down, and the costs and obligations of Members clearly stated in the rules and regulations.

- ii. the scheme's rules and regulations, in particular whether procedures are available to the scheme's operator(s) to enforce the performance of members' obligations under the scheme and its rules and regulations.

In considering the rules and regulations the Department or Executive will also want to ensure that the continued registration of a scheme cannot be jeopardised by the recalcitrance of one member. The Department or Executive will therefore look to see that the scheme operator has procedures available to enforce members' obligations under the scheme and its rules and regulations, and to expel forthwith recalcitrant members.

11. Before a scheme is given approval, the Department or Executive will want to satisfy itself that the relevant Agency is, or is likely shortly to be, satisfied with the operational plan of the scheme. It is otherwise unlikely that the scheme could be said to be likely to subsist. Once the scheme has obtained the approval of the Secretary of State or Scottish Environment Minister, and when the Agency is fully

satisfied that the scheme has satisfied all conditions of registration, registration will be granted. The two conditions of registration are -

- that the relevant Agency should be satisfied that the scheme has the **policies** required by Regulation 12 and Schedule 4, Part IV; and
- that the scheme's **operational plan** demonstrates the points set out in Schedule 4, Part IV paragraph 11, to the relevant Agency's satisfaction.

## THE POLICIES OF A COMPLIANCE SCHEME

12. A compliance scheme is required (regulation 12(3)(d) and paragraph 10 of Schedule 4) to provide to the relevant Agency a statement showing its policies on the following -

- i. the steps that the scheme intends to take to increase the amount of recyclate used in the packaging and packaging materials, and other products, supplied by its member businesses;
- ii. the main methods which the scheme proposes to use to recover and recycle packaging waste and an indication of the role that the consumer can play in helping the scheme use these methods.

## Use of Recyclate

13. Greater use of recyclate is important to the successful implementation of the Regulations, since the provision of markets for recyclate helps to close the loop. The development of new markets, and expansion of existing markets will be essential if the recovery of packaging waste is to be achieved in the most cost-effective manner. It is for this reason that one of the intended uses of the PRN and PERN money paid by schemes on behalf of their members is to develop markets for recycled materials. Producers themselves can encourage greater use of recycled packaging waste by using increasing amounts of recyclate in the manufacture of their products and in specifying recycled material for any packaging they use around their products. Encouraging this sort of change amongst its members is one of the roles that compliance schemes can play.

## Information for consumers

14. The Government and devolved administrations also consider that the consumer should be provided with information about the steps that he or she can take in increasing the amounts of packaging waste that are recovered and recycled, and other recycling matters. They already support or promote such programmes as *Going for Green*, *Waste Watch*, *People and Places* and *Just Bin It*. The Department's "*Are You Doing Your Bit?*" campaign also provided information on recovery and recycling. As recovery and recycling targets rise, obligated producers and compliance schemes will increasingly need to have access to greater amounts of packaging waste from the household waste stream, and so consumers need to

know what sort of developments in waste collection and sorting are likely to occur, together with indications of what they can do to help.

15. In practice, it is expected that the consumer is likely to be asked increasingly to use kerbside collection systems where possible and take greater advantage of the facilities for bringing their packaging waste to specific collection points, for example, the bottle banks, plastic and cardboard bins that already exist in a number of Local Authority civic amenity sites and on retail car parks. In this way, packaging waste can be collected and sorted at an early stage and this will allow both a greater volumes of packaging waste to be collected, and the costs of collection and sorting to be reduced. Because the Government and devolved administrations consider that compliance schemes can play a useful role in informing consumers and encouraging the greater use of recyclate, schemes are required to show that they have policies on these two issues.

16. Businesses whose main activity is selling will also have the "consumer information obligations". These are discussed in Chapter Six.

## **THE OPERATIONAL PLAN OF A COMPLIANCE SCHEME**

17. Any compliance scheme that proposes to register and take on the producer responsibility obligations that its members would have had but for their membership of the scheme must have an operational plan, and, under Regulation 12 and Schedule 4 part IV, this plan must demonstrate to the relevant Agency's satisfaction -

- i. that it has sufficient financial resources and the technical expertise to discharge the recovery and recycling obligations of all its members;
- ii. that the scheme's proposals for discharging the recovery and recycling obligations of its members take account of all the current Waste Strategies for the constituent parts of the UK, commit themselves to following the Government's and devolved administrations' policies on recovery, recycling and re-use and to be sufficiently flexible to accommodate changes which may be introduced as and when the Strategies are reviewed;
- iii. that appropriate arrangements exist for the scheme to supply to the relevant Agency the required data, using the data form to be provided by the relevant Agency;
- iv. how the recovery and recycling obligations of the scheme's members will be performed, particularly in relation to each packaging material, including details of -
  - the reprocessors that will be used (names and addresses);
  - the waste disposal authorities to be used (names);
  - how much packaging waste is to be obtained from, respectively, member businesses' own wastes, the commercial/industrial waste stream and the household waste stream;

- the amount of packaging waste that the scheme proposes to recover in the three years following registration;
  - within that, the amounts of each material to be recycled.
- v. the steps that the scheme proposes to take to minimise, as far as possible, the scope for material cross-subsidy.

18. Compliance schemes are required to update these plans annually.

## **FORWARD PLANNING IN SCHEMES' OPERATIONAL PLANS**

19. Schemes are more likely to be able to take reasonable steps to ensure the recovery and recycling of UK packaging waste sufficient to meet their members' obligations if they plan ahead to discharge the recovery and recycling obligations. Therefore, they are asked to show forward plans for the three years following registration and to update these plans each year. For example, it would seem sensible to consider not only whether a certain number of Packaging Waste Recovery Notes (PRNs) can be contracted for, but also to consider whether the requisite systems are in place to deliver the necessary collection of the relevant UK packaging waste.

## **SCHEME FEES**

20. Following consultation in 2000, the mechanism for determining the fee payable by registered compliance scheme in respect of each member was changed. As a result, the registration fee payable by a scheme for each producer registered with it is £460 p.a. until further notice.

## **A SCHEME'S RIGHT OF APPEAL**

21. Regulations 18-21 set out the provisions on appeals. A scheme has a right of appeal against a decision of the relevant Agency to refuse registration or to cancel registration. However, there is no right of appeal where such a decision arises from a scheme's failure to obtain Ministerial approval. The procedure on appeals is set out in Schedule 5 to the Regulations.

## **RECORDS AND RETURNS TO BE MADE BY COMPLIANCE SCHEMES**

22. Under Regulation 24 a compliance scheme must maintain certain records and keep these for at least 4 years, and must return certain information to the relevant Agency by 31 January in the year following the obligation year (i.e. returns for 2002 must reach the relevant Agency by 31 January 2003). In practice, schemes can meet these requirements by retaining their PRNs and PERNs for four years and providing the Agencies with copies with their certificates of compliance.

23. At the time of publication there were 19 compliance schemes registered with the Environment Agency, SEPA or the EHS. A list of names and addresses is at the bottom of this section.

## DE-REGISTRATION OF COMPLIANCE SCHEMES

24. Compliance Schemes are currently not subject to offences and penalties. Regulation 18 provides that a scheme has the right of appeal against a decision of the relevant Agency to refuse or to cancel registration. However, a compliance scheme that fails to carry out the producer responsibility obligations that its members would have had but for their membership of the scheme, is liable to be de-registered (see regulations 13 and 17). The de-registration of a scheme would leave its members to comply with their obligations themselves or join another scheme.

25. It is possible that the continued registration of a scheme can be jeopardised by the failure of one or a small number of members to comply with the scheme's rules and regulations. Thus, in order to ensure that de-registration can be avoided, schemes must, in order to obtain the approval of the relevant UK or devolved administration Secretary of State or Minister, have to include provisions in their constitutions, or membership rules and regulations, to permit the immediate expulsion of a member or members who have failed to adhere to the rules and regulations of the Scheme (e.g. have provided inaccurate or insufficient data).

## CANCELLATION OF A SCHEME'S REGISTRATION

26. If a scheme fails to carry out the total of the legal obligations (the registration, recovery and recycling and certifying and where relevant consumer information obligations) that its members would have had but for their membership of the scheme, it will be liable to have its registration cancelled by the relevant Agency (see regulations 13 and 17). In this case, members would then have a proportion of their individual obligations to carry out themselves. The apportionment of the recovery and recycling obligations can be found in Schedule 9 paragraph 3.

### **Current compliance schemes in operation at April 2003**

Mr Clive Hoyland <b>BETAPACK</b> 103 Tenter Lane Warmsworth DONCASTER South Yorkshire DN4 7JE Tel: 01302 857 448 Fax: 01302 857 448	Ms Helen Burfield <b>BIFFPACK</b> Biffa Waste Services Limited Coronation Road Cressex HIGH WYCOMBE Bucks, HP12 3TZ Tel: 01494 556 565 Fax: 01494 484 836
<b>CLEANAPACK</b> c/o Cleanaway Ltd Station Road Ecclesfield SHEFFIELD S35 9YR	Mr Andrew Francis <b>COMPLYPAK</b> 63 Elphinstone Road Hastings EAST SUSSEX TN34 2EG Tel: 01424 432 320

<p>Tel: 0114 246 6813 S35 9YR 246 6657</p> <p>Fax: 0114</p>	<p>202 983</p> <p>Fax: 01424</p>
<p>Ms Kamila Horak <b>DIFPAK</b> Pishiobury House Pishiobury Drive Sawbridgeworth HERTFORDSHIRE CM21 0AF Tel: 01279 721 921 Fax: 01279 600 561</p>	<p>Mr Scott Brady <b>ECOPAK</b> 9 East Haddon Road DUNDEE DD4 7LD Tel: 01382 401 007 Fax: 01382 461 029</p>
<p>Ms Helen Burfield <b>IMPACT</b> Biffa Waste Services Limited Coronation Road Cressex HIGH WYCOMBE Bucks, HP12 3TZ Tel: 01494 427 271 Fax: 01494 484 836</p>	<p>Sian Bunn <b>INTEGRA</b> PO Box 17 DARLINGTON DL1 2WX Tel: 0790 554 0538</p>
<p>Mr Andy Fay, <b>KES</b> Kite Environmental Solutions Ltd., Unit H2, Grovelands Industrial Estate, Exhall, Coventry, WARicks, CV7 9ND Tel: 01476 514812 Fax: 01476 573 678</p>	<p>Mr David Pryke <b>PAPER COLLECT</b> Hamilton House Gogmore Lane CHERTSEY Surrey, KT16 9AP Tel: 01932 569 797 Fax: 01932 569 749</p>
<p>Mr Geoff Butterworth <b>PAPERPAK LIMITED</b> Boston House Grove Technology Park WANTAGE OX12 9FF Tel: 01235 760 011 Fax: 01235 770 200</p>	<p>Mr Graham Wiles <b>PENNINE-PACK LTD</b> Green Business Network 5 Town Hall Street SOWERBY BRIDGE HX6 2QD Tel: 01422 316 661 Fax: 01422 316 662</p>

<p>Mr Martin Bonser  <b>ONYXPAK</b>  Thameside Drive  Castle Bromwich  BIRMINGHAM  B35 7AG  Tel: 0121 749 6583  Fax: 0121 749 5324</p>	<p>Mr David Duggan  <b>RECYCLE-PAK LTD</b>  Unit 12 Clydesdale Place  Moss Side Employment Area  LEYLAND  PR26 7QS  Tel: 01772 331 100  Fax: 01772 452 777</p>
<p>Miss Vikki Law  <b>S.W.S. LIMITED</b>  Thomlinson Road  Longhill Industrial Estate  HARTLEPOOL  TS25 1NS  Tel: 01429 276 961  Fax: 01429 864 320</p>	<p>Mr Mark Saunders  <b>TaG PACK</b>  Trees are Green Limited  15 Dormer Place  Leamington Spa  WARWICK  CV32 5AA  Tel: 01926 452 040  Fax: 01926 452 440</p>
<p>Mr Richard Todd  <b>TODDPAK</b>  F D Todd &amp; Sons Limited  Excelsior Mill  THIRSK  North Yorkshire,  YO7 1QF  Tel: 01845 523 131  Fax: 01845 523 997</p>	<p>Mr Philip Gale  <b>VALPAK LIMITED</b>  Stratford Business Park  Banbury Road  Stratford-upon-Avon  CV37 7GW  Tel: 084506 825 725  Fax: 084506 825 329</p>
<p>Ms Kamila Horak  <b>WASTEPAK</b>  Pishiobury House  Pishiobury Drive  Sawbridgeworth  HERTFORDSHIRE  CM21 0AF  Tel: 01279 721 721  Fax: 01279 600 561</p>	<p>Mr James Donaldson  <b>WESPAK</b>  Waste Exchange Services Limited  59 Boathouse Lane  Stockton-on-Tees  CLEVELAND  TS18 3AW  Tel: 01642 606 055  Fax: 01642 868 115</p>

## APPENDIX IV

### OFF-THE-SHELF DATA SETS FOR SMALLER PRODUCERS

1. The Department of Environment, Food and Rural Affairs commissioned the development of off-the-shelf data sets to help smaller businesses (with turnover between £2-5m) and develop some data sets, which certain businesses could opt to use instead of undertaking the collection of data themselves.

2. There is now available a number of data sets and a *Guide to the Methodology* for use by Trade Associations who may wish to develop similar data sets for their members; and a *Guide for Small Businesses* for use by sectors using these data sets. The data sets already developed are for specific sectors of the retail business -

- Confectionery, Tobacco and Newspaper retailers (CTNs) without off-licence
- CTNs with off-licence
- Shoe shops
- Electrical/electronic retailers of (a) white goods (b) brown goods (c) small appliances

3. Data sets were developed to show probable tonnage of packaging handled per £1 million of turnover (Table 1). Businesses are to derive their packaging handled by multiplying the tonnage for £1 million by their turnover. The completed data sets show probable tonnage of packaging handled per £1 million of turnover for these businesses (see Table). E.g. a business with turnover of £2.54 m, and selling shoes, is likely to handle 17.8 t of packaging.

**Table 1**

1	2 Packaging Handled t/£1m	3	4 Est. packaging handled by business with £2m turnover	5 Turnover at which a business is likely to become obligated
CTN - no off licence	16	=>	32t	<b>£3.1m</b>
CTN with off licence	19	=>	38t	<b>£2.6m</b>
Shoe shops	7	=>	14t	£7.1m
Elec/retailers of				
White goods	12	=>	24t	<b>£4.2m</b>
Brown goods	8	=>	16t	£6.3m
Small appl'ces	12	=>	24t	£4.2m

4. Column 4 of table 1 shows the tonnage that a business in the relevant sector would handle with a £2 million turnover; column 5 shows the turnover level at which the business is likely also to satisfy the tonnage threshold test. Thus, CTNs with or

without off-licence, retailers of white goods and of small appliances could be obligated once they have the turnover shown in column 5 of the table. However, small shoe shops and retailers of brown goods in the £2-5 million turnover category are unlikely to be obligated. If they had turnover of more than £5 million, they would be obligated anyway - **remember, the off-the-shelf data sets are only for use by businesses with turnover in the £2m-£5m range who were obligated for the first time on 1.1.2000.**

### Using the Off-the-Shelf data sets

5. The intention is that off-the-shelf data sets should be developed for groups of relatively homogenous businesses by the relevant trade body. For example, if businesses in the two CTN categories wish to use the off-the-shelf data sets that the Department had developed, they should inform the Agency of this through the National Federation of Retail Newsagents, who worked with the consultants to develop the data sets. Other business sectors wishing to develop similar forms should notify the Agency who can provide both a *Guide to the Methodology*, which is to be used in developing such forms; and a *Guide to Using the Forms*, which can be issued to the businesses concerned once forms have been developed.

6. **Trade Associations developing data sets for their business members must use the methodology set out in the *Guide to the Methodology*. If they are using consultants, they must also require the consultants to use this methodology** because the Agency needs to know the basis upon which the data is derived. This approach has been tested and judged likely to produce the required results.

7. It should be noted that if businesses using the off-the-shelf data sets also import packaging or packaged goods directly into the UK, **they must add data about the imported tonnages themselves as these data sets do not include imports**. It was not possible to develop import tonnages that could be considered to be handled by most of the businesses concerned. The Environment Agency and the relevant trade associations will be able to offer advice and guidance on this matter. Businesses who do import directly are likely to import transit packaging around the goods and the transit packaging must also be declared in the relevant table of the data form. The off-the-shelf data sets do not include information on imported transit packaging.

8. Further information about the off-the-shelf data forms can be obtained from the Environment Agency.

## APPENDIX V

### USEFUL ADDRESSES -

**Producer Responsibility Unit  
Defra**

Zone 7/F8  
Ashdown House,  
123 Victoria Street.  
London SW1E 6DE

Tel 020 7944 6567  
fax 020 7944 6409

email: [andrew.bryson@defra.gsi.gov.uk](mailto:andrew.bryson@defra.gsi.gov.uk)

**Environment Agency,**

Waste Registration Unit- Producer Responsibility  
10 Albert Embankment,  
London SE1 7TJ

tel. 020 8305 4036

fax 020 8305 4027

email: [hazel.mallett@environment-agency.gov.uk](mailto:hazel.mallett@environment-agency.gov.uk)

**Scottish Environment Protection Agency**

The Producer Responsibility Unit  
SEPA Corporate Office,  
Erskine Court,  
The Castle Business Park  
Stirling FK9 4TR

Tel: 01786 457 700 Fax: 01786 446 885

**Environment & Heritage Service**

Commonwealth House,  
35 Castle Street,  
Belfast BT1 1GU  
Northern Ireland

Tel. 02890 254 818 Fax 02890 254 60

email: [pamela.patterson@doeni.gov.uk](mailto:pamela.patterson@doeni.gov.uk)

### MATERIALS ORGANISATIONS

**Peter Davis,**

Chief Executive, British Plastics Federation  
6 Bath Place, Rivington Street  
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tel: 020 7457 5042

Fax: 0171 457 5018

email: [pdavis@bpf.co.uk](mailto:pdavis@bpf.co.uk)

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**John May**[John.May@corusgroup.com](mailto:John.May@corusgroup.com)

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**Graham Barnard**[Gbarnard@paper.org.uk](mailto:Gbarnard@paper.org.uk)

Director of Public Affairs  
Confederation of Paper Industries (PIMO)  
3<sup>rd</sup> Floor 45 Mortimer Street London W1N 7TP  
Tel: 01793 889 600 Fax: 01793 886 182

**John M B Mead & Partner, Timber Packaging & Pallet Confederation**

Bridgemead, High Street, Avebury, Wiltshire, SN8 1QX Tel: 01672 539304. E-mail:  
[meadpartners@compuserve.com](mailto:meadpartners@compuserve.com)

**Other Organisations**

Waste & Resources Action Programme (WRAP) Tel. 01295 819 900  
[www.wrap.org.uk](http://www.wrap.org.uk) [helpline@wrap.org.uk](mailto:helpline@wrap.org.uk)

INCPEN (Industry Council for Packaging and the Environment)  
Suite 108, Sussex House,  
6 The Forbury,  
Reading, Berks  
RG1 3EJ tel. 01189 253 466 [www.incpen.co.uk](http://www.incpen.co.uk)

**DEFRA has also produced the following documents which may be of interest -**

- A Forward Look for Planning Purposes (1999) [code 99EP 0290]
- Report of the Task Force of the ACP, 2001 [code PB 6282]
- Waste Strategy 2000

These can be obtained from - DEFRA Publications  
Admail 6000  
London SW1A 2XX

All DEFRA documents, including the Regulations, are available on the DEFRA website – [www.defra.gov.uk](http://www.defra.gov.uk)

## APPENDIX VI

# Frequently Asked Questions

**Q: Where can I get a registration form from to register directly with the Environment Agency?**

A : National Waste Registration Unit tel. : 020 8305 4036

**Q: How am I expected to get packaging back from customers?**

A: You are not. You are required to obtain evidence that an equivalent amount of packaging waste has been recovered/recycled.

**Q What evidence of recovery/recycling am I required to obtain ?**

A: Normally the evidence obtained will be in the form of Packaging Waste Recovery Notes (PRNs) or Packaging Waste Export Recovery Notes (PERNs).

**Q. What obligation do I have if I reuse my packaging several times ?**

A. Packaging only attracts an obligation on its first trip. Any subsequent reuse of the packaging will not attract an obligation.

**Q: Are Duty of Care Waste Transfer Notes acceptable as evidence of recovery/recycling?**

A. No

**Q. I use packaging made from recycled materials, do I have an obligation ?**

A. Yes, the obligation is based on the packaging you handle and not whether its made from recycled material

**Q: Do I have to collect data on packaging I receive as an end user or consumer of that packaging ?**

A. No (unless you are the importer of the packaging), the obligation is based on the packaging you handle and supply, not on your backdoor waste.

**Q: If I join a scheme do I still have to pay a fee to the Agency?**

A: .No. Schemes will charge you a membership fee, a proportion of which will be passed onto the Agency.

**Q: A holding company has a number of subsidiaries who all handle packaging. Each of them is below the 50 tonne & £2million turnover threshold limits but aggregated together, they exceed 50 tonnes & £2million turnover; are all the companies obligated?**

A: Yes. All must be registered - either collectively as a group registration or individually

Q: What are the Consumer Information Obligations (CIO), who has to comply with them ?

Only producers whose principal activity is selling have to comply with the CIO obligations. Information has to be provided in relation to collection & recovery systems, their role in contributing to recovery, meaning of any markings and the UK waste strategy.

Q: Do I include second-hand pallets on the data form and calculation?

A. No. Only include new pallets.