

Fact sheet - packaging amendment regulations 2010

Issued 20 December 2010

1.0 Introduction

The Packaging Regulations have been amended and came into force on the 26 November 2010. The amendments are the conclusion to the governments consultation earlier in the year.

This fact sheet summarises the main changes brought in by the amending regulations for 2011 and what they mean for you if you are a producer compliance scheme, a producer or an accredited reprocessor or exporter. You must however refer to the legislation for the full legal text and you should not rely solely on this fact sheet. A copy of the amending regulations can be found at: <http://www.legislation.gov.uk/uksi/2010/2849/made>

2.0 Target Changes

The amending regulations have set out the recovery and recycling targets up to 2012. The National Packaging Waste Database (NPWD) has been updated with the new targets. Producers who register with us directly via NPWD are provided with their statement of obligations i.e. the recovery and recycling obligations they have for the compliance year based on their packaging handled data. The statement of obligations provided when registering in 2011 will be based on the revised targets.

The small producer allocation has not changed.

3.0 Revised position on conversion and pack/fill at the same time

The amendments have removed the restriction of 'at the same time' for situations where a conversion and pack fill activity is occurring as part of the same process. Thus where a conversion and pack/filling activity is taking place on the same packaging as part of the same process, the conversion obligation will pass back to the person who has 'part converted' the packaging material.

As an example plastic bottles are frequently provided to bottling plants as a preform i.e. not the fully blown bottle. The bottling plants then blow the preform to the final shape and pass it on, in the same process, for filling. In such cases the bottling plant will only attract the pack/filling obligation. The conversion obligation will fall to the preform manufacturer.

4.0 Allocation method for small subsidiary companies

Businesses which are part of a group no longer have to have a turnover of between £2M and £5M to be eligible to use the allocation method. For such subsidiary businesses the eligibility is now solely based on having a turnover of below £5M.

5.0 Businesses experiencing financial difficulties

All business who experience financial difficulties, as defined below, are now required to inform us as soon as is practicable upon becoming aware of the situation. The situations where we should be advised are:

- Winding up order has been made or a resolution for voluntary winding up has been passed
- A determination for a voluntary winding up has been passed
- A receiver or a manager of the company or limited liability partnership undertaking has been duly appointed
- Its undertaking has entered administration
- A voluntary arrangement proposed for the purpose of Part 1 of the Insolvency Act 1986(a) has been approved.

6.0 Marine Installations

The amendments have clarified the position with regards to packaging that is moved offshore to marine installations (e.g. offshore oil platforms). Any packaging moved to such installations forms part of a producer's obligations and cannot be excluded.

7.0 Scheme registration deadline

The deadline for compliance schemes to submit all relevant details and the required fees has now been consolidated to a single date – 15th April. Previously schemes had to submit certain information by the 7th April with further information required by the 15th April.

8.0 Compliance scheme approval and evidence of approval

Compliance schemes are approved by Defra to operate and once approved they can register members with us each year. Where a scheme does not register any members with us in a compliance year, their approval will now be deemed to have expired. Where this occurs the scheme will have to seek approval from Defra again if they wish to register members in subsequent years.

Compliance schemes no longer have to submit each year confirmation of their approval from Defra. NPWD has been amended to reflect this.

9.0 Approved person

Compliance schemes are now required to submit their registration application, any subsequent membership and data changes and the statement of compliance by an approved person. The regulations set out who is eligible to be an approved person. We will create 'Authorised Signatories' within the NPWD based on acceptance of the nominated approved person(s) put forward by compliance schemes. We will shortly be sending information to compliance schemes setting out how to get approval for your nominated person(s).

10.0 Submission of operational plans

The amending regulations have now made it clear that we will refuse to register a compliance scheme where a satisfactory operational plan has not been provided to us in advance of the application to register. The only exception is where a scheme is registering for the first time and the operational plan can be provided with the application to register.

11.0 Defining scheme members

A producer can not now be regarded as being a member of a compliance scheme for the purposes of the packaging regulations unless they have provided the following:

- any information the scheme requests for the purposes of meeting its producer responsibility obligations within a reasonable period of receiving such a request, or
- any fee required for membership of the scheme (we would regard this as including the agency registration fee).

Where a compliance scheme fails to provide the required details for a producer, that producer will not be registered as part of the scheme application for registration. For example provision of a producer's name and address without any packaging data will result in that producer not being registered. If the producer has failed to provide the required fees and information to the scheme they will not be considered to be a member of the scheme. If the deadline for being registered has passed they will be investigated for the offence of failing to register.

12.0 Scheme members and producer class

Compliance schemes are now required by the regulations to provide details on the class of producer for each member i.e. raw material manufacturer, converter, pack/filler, seller, importer.

13.0 Provision of SIC codes

Small businesses who registered via compliance schemes were not obliged to provide their SIC codes. This has now been corrected and all producers must provide their SIC code as part of the registration process (either directly or via a compliance scheme).

Producers and schemes must now use 2007 SIC codes rather than the 2003 version.

14.0 PRN / PERN revenue reporting

The amendments have changed and increased the number of categories against which forecast and actual PRN/PERN revenue has to be reported by reprocessors and exporters. There are now six categories as follows:

- Investment in infrastructure and the development of capacity for the collection, sorting, treatment and reprocessing of packaging waste;
- Funding provided to other persons involved in the collection of packaging waste;
- Reductions in prices of, and the development of new markets for, materials or goods made from recycled packaging waste;
- The cost of complying with obligations in these regulations;
- Funds retained for future investment;
- The development of a communications strategy for consumers or packaging made from recyclable materials.

NPWD has been enhanced to enable the PRN/PERN forecast and actual expenditure to be reported to us via a specific online page within NPWD.

Forecast expenditure against these new categories for 2011 will need to be uploaded onto NPWD by all reprocessors and exporters who have been accredited for 2011.

Reprocessors and exporters who were accredited in 2010 will now be required to provide the PRN/PERN revenue expenditure report to us via the enhanced facility in NPWD and against the new categories. This report is now required by the 28th February 2011.

The amendment regulations now require reprocessors and exporters to explain differences between forecast and actual PRN/PERN expenditure within each category. To accommodate minor variations we have set the trigger for this requirement to be where the difference is more than 10%. The first time this will be required will be in the February 2012 PRN/PERN revenue report, when the first full cycle of forecast and actual PRN/PERN revenue against the new categories will have been completed.

We will provide separate specific guidance to reprocessors and exporters on the enhanced reporting facility for PRN/PERN revenue within NPWD.

15.0 Independent Audit Reports

The requirement for reprocessors and exporters to submit an independent audit report has been removed from the regulations. Therefore, we do not require a report to be submitted for the 2010 compliance period or any subsequent compliance periods.

16.0 Charges for Part C exporter applications

The charges for the submission of additional Part C applications, for additional overseas facilities to be included in an exporter accreditation, have been revised.

The charge is now £85 for the first Part C form submitted and £35 for each additional Part C form, when made as part of a single application. If an exporter wishes to add other overseas facilities at a later date the first Part C form of that subsequent application will attract the £85 fee and any additional Part C forms included in the subsequent application will attract the £35 fee.

17.0 Reprocessors and Exporters changing from 'small to 'large'

Operators who have been accredited to issue not more than 400tonnes of PRN/PERNs can go on to issue more than 400tonnes of evidence during the relevant compliance period. However, where this occurs they become liable to pay the difference between the lower and higher application charge, which is currently £2,111.

The regulations now require this payment to be made within 28 days of issuing PRN/ PERNs in excess of 400tonnes.