

MEMORANDUM OF UNDERSTANDING

BETWEEN THE ENVIRONMENT AGENCY
AND

RECEIVED SEPA

17 JUN 2009

EAST KILBRIDE

THE SCOTTISH ENVIRONMENT PROTECTION AGENCY ('SEPA')

ON MATTERS RELATING TO THE INTERPRETATION, APPLICATION, MONITORING
AND ENFORCEMENT OF

THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE)
REGULATIONS 2007

1.0 BACKGROUND

- 1.1 The European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste, as amended by Directive 2004/12/EC ("the Packaging Directive") requires member states to achieve recovery and recycling targets. The UK has transposed the Directive recovery targets through the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 ('the Regulations'). The Regulations set out certain producer responsibility obligations that must be fulfilled by producers. The Regulations are administered and enforced by the Environment Agency in England and Wales and by SEPA in Scotland.
- 1.2 In this Memorandum of Understanding words and phrases have the meaning given to them by the Regulations.
- 1.3 It is recognised and accepted by each of the Agencies to this Memorandum of Understanding that it does not create any rights, liabilities or legal obligations which would have binding effect in law and nothing in this Memorandum of Understanding constitutes, or is intended to have the effect of constituting, a binding legal agreement between the parties or any of them. The Agencies agree that this Memorandum of Understanding shall not be the basis of any legal claim or action taken by or against any of them.
- 1.4 Nothing in this memorandum shall affect or be deemed to affect the ability of any of the Agencies to exercise any of their statutory powers or to undertake any of their statutory duties.
- 1.5 Under the Regulations each Agency may be required to register obligated producers that are located out with their jurisdiction. For example, Scottish producers may join Environment Agency registered compliance schemes and vice versa. Similarly, groups of companies that register with one Agency may have subsidiaries or sites that are within the jurisdiction of the other Agency. A Memorandum of Understanding between the Agencies is necessary to ensure effective administration, monitoring and enforcement of the Regulations.

2.0 INTRODUCTION

- 2.1 This Memorandum of Understanding has two principal aims. Firstly it is to ensure that the Regulations are applied consistently across Great Britain; secondly, it is to ensure that fees received by the Agencies under the Regulations are allocated and used appropriately.

3.0 CONSISTENT APPLICATION OF THE REGULATIONS

- 3.1 The Agencies will endeavour to maintain close liaison within the context of their respective duties under the Regulations. This includes development of relevant policy and guidance, administering the Regulations, the sharing of relevant information, monitoring compliance, carrying out such enforcement action as may be considered necessary, and providing the relevant government departments with such information as is required for planning purposes and for reporting to the European Commission.
- 3.2 The Agencies will endeavour to agree on all policy and interpretation matters.
- 3.3 The Agencies will endeavour to agree on matters related to acceptance of evidence of compliance. In particular, where a producer or compliance scheme submits evidence of compliance that has been obtained by a reprocessor or exporter accredited by the other Agency and which is considered by the accrediting Agency to have been validly issued, the Agency to whom that producer or scheme is presenting evidence should, unless there are extenuating and justifiable reasons, normally accept that evidence.
- 3.4 The Agencies will endeavour to work together in producing jointly badged documents. Where this is not possible, the Agencies should work together to ensure that the meaning of the documents is essentially the same.
- 3.5 Consistent application of the Regulations can only be achieved if staff at all levels within the Agencies ensure that good communication and liaison is maintained. The principal means by which the Agencies will liaise and communicate are:

3.5.1 Inter-Agency Group:

Both Agencies will participate in the Inter-Agency Group (IAG) on a regular basis. Chairmanship, administration and membership will be agreed between the Agencies.

3.5.2 The terms of reference of the Inter-Agency Group will include:

- 3.5.2.1 Considering cross-border issues referred to it by IAG members;
- 3.5.2.2 Discuss and endeavour to agree on matters of interpretation of the Regulations; the Packaging Directive; guidance; policy and practice (both legislative and operational);
- 3.5.2.3 Development of guidance (including non-statutory guidance and statutory guidance under section 94(4) of the 1995 Act); and
- 3.5.2.4 Discussion of other matters of common interest relating to packaging and packaging waste and implementing the Regulations
- 3.5.2.5 Maintenance and development of the National Packaging Waste Database (NPWD). A sub-group of the IAG may be set up to deal with matters relating to the NPWD.
- 3.5.2.6 The establishment of other sub-groups to discuss operational and technical issues as required.
- 3.5.2.7 Monitoring the implementation of this Memorandum of Understanding

3.5.3 Operational Matters:

Most contact between the Agencies will arise in the context of day to day operations. The Agencies will ensure there are appropriate mechanisms in place that enable staff to deal with such issues promptly.

3.5.4 Access to information, data:

- 3.5.4.1 Each Agency will, in so far as consistent with this Memorandum of Understanding and law, provide the other with any data or information that it reasonably requests.
- 3.5.4.2 Each Agency will give due consideration to the policies of each other regarding the confidentiality of shared information and data.
- 3.5.4.3 Each Agency will provide standard user access to one user from the other Agency to their respective section of the NPWD to enable updates to information as required.
- 3.5.4.4 Protection of this data is detailed in the Annex, which the Agencies agree to apply.
- 3.5.4.5 Each Agency accepts that it is the data controller of its own data, in terms of the Data Protection Act 1998. Each Agency accepts, conform to the rights and duties given to it in terms of the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002, the Environmental Information Regulations 2004 and the Environmental Information (Scotland) Regulations 2004 ("the aforesaid laws") respectively that each Agency may disclose information in compliance with the aforesaid laws or any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further, each Agency may also disclose all information submitted to it to the United Kingdom Parliament or Government or to the Scottish Parliament or Government (otherwise termed Executive) or any other department, office or agency of Her Majesty's Government whether in the United Kingdom generally or in Scotland (and therefore including all devolved departments, offices and agencies), in right of the United Kingdom or the Scottish Administration, and their servants or agents. Any such disclosure shall not be treated as a breach of this agreement. Each Agency shall endeavour to consult with the other Agency prior to making any disclosure and shall, in particular, endeavour to take account of any objections made by any Agency to any such intended disclosure.

3.5.5 Training:

The Agencies will keep one another informed of training issues of mutual importance relating to packaging and packaging waste issues and implementation of the Regulations. Where possible, resources should be shared in the preparation and delivery of such courses. Both Agencies will undertake to allow participation on training courses delivered both for staff from both Agencies and, where appropriate, for external stakeholders. The allocation of the costs of such training should be agreed on a case by case basis.

4.0 CROSS BORDER MONITORING AND DISTRIBUTION OF COST RECOVERY FEES

4.1 Purpose of Cross Border Monitoring:

Most of the Agencies' duties are dealt with in the country of jurisdiction. There will, however, be occasions when one Agency requires the other Agency to carry out an audit on its behalf. For example, a compliance scheme registered in England may have members based in Scotland and vice versa. In order that all producers and scheme members are subject to equal and consistent monitoring, each Agency must, as part of their Monitoring Plan make provision to undertake audits of producers and scheme members that are registered with the other Agency. Given that fees are paid by producers and scheme members to the Agency with which they are registered, it is essential that a

provision for reimbursement is in place for those circumstances in which one Agency has carried out monitoring activities on behalf of the other.

4.2 Both Agencies are of the opinion that the most practical means by which to make such reimbursements is to base payment on the balance of registrations i.e. the difference between the number of English/Welsh members of SEPA registered schemes and the number of Scottish members of EA registered schemes. This will be done on the assumption that monitoring of approximately one third of all producers and scheme members will be carried out on an annual basis. It is not intended that the Agencies undertake to carry out a third of monitoring with respect to the members of compliance schemes that are registered with the other Agency. Instead, the Agencies will reimburse one another on the basis of an overall annual inspection level of 33%, actual planned audits will be at the discretion of each Agency.

This will be done using the following calculation

$$\frac{S - E}{A} \times C$$

Where;

- S = number of English/Welsh members of SEPA registered Compliance Schemes
- E = number of Scottish members of EA registered Compliance Schemes
- A = percentage of audits that are to be carried out
- C = cost per audit.

For example, for registration year in year X, the calculation could be as follows

$$\frac{691 - 51}{3} \times £410$$

Therefore the payment to be made by SEPA to the EA is £84,466.67

Payment will be retrospective i.e. payment for the balance of registrations in the scenario detailed above would be made by end of March of the year following the year in respect of which the calculation is made. The EA undertakes to issue an invoice to SEPA for the appropriate amount on or before 1 February in the relevant year. If the number of English and Welsh companies registered with SEPA registered compliance schemes is less than the number of Scottish members of EA registered compliance schemes payment will be based on the following calculation and SEPA will issue an invoice to the EA.

$$\frac{E - S}{A} \times C$$

In order that provision can be made for payment, it is essential that the Agencies exchange information on registration numbers. Each Agency will endeavour to ascertain the approximate balance of registrations at 30 September each year and the Agencies agree to endeavour to ensure the relevant figures should be finalised and agreed at 31 January each year with a view to payment for that year being made by the end of March.

4.3 In addition to the above recharge formula SEPA also agrees to make payment to the EA for the continued maintenance and further development of the National Packaging Waste Database. This payment will be £ 8 per agency registration and £ 6 per scheme member registration it will also include £26 per "large" accreditation and £5 per "small accreditation" SEPA will undertake to agree with the EA on or before the 31 January each year how much this payment will be so that it can be incorporated into the invoice mentioned above.

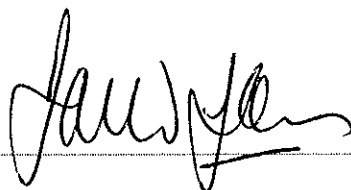
4.4 Reporting of Cross Border Monitoring

- 4. 4.1 The findings from any cross border monitoring visit should be made available to the Agency with which that producer or scheme member is registered, if requested. The report of the monitoring visit should be in a format and to a standard to be agreed between the Agencies.

- 4. 4.2 Following inspections or other investigations, the Agencies may consider that an offence has been committed. In straightforward cases, (such as refusal of entry to inspect premises on behalf of another Agency), there will be no dispute as to the country in which the offence was committed. However, cases may arise such as the provision of false information from one country to another, with the result that the offence has been committed within the jurisdiction of either Agency. The Agencies' [legal] staff will discuss and endeavour to agree (in conjunction with the Crown Office and Procurator Fiscal, where appropriate) as to which Agency shall have conduct of the proceedings or make a report to the Procurator Fiscal, as appropriate. Any such discussion between Agencies legal staff will have regard to internal Agency procedures to include the Agency Enforcement Policy.

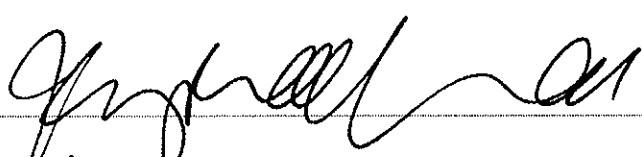
4.5 National Packaging Waste Database - Maintenance and Development

- 4.5.1 In consideration of SEPA's ongoing commitment to support the maintenance and further development of the National Packaging Waste Database through the re-direction of additional fee income relating to the system as outlined in 4.1 above, the EA will provide the opportunity for SEPA to be represented on any steering group and/or project board responsible for overseeing the maintenance of and the implementation of any further system development

Approved by: 

Date: 27/5/09

For and on behalf of the Environment Agency

Approved by:  CC

Witness: Karen A. Cochrane Witness

Date: 31/3/09

For and on behalf of the Scottish Environment Protection Agency

Witness
KAREN A. COCHRANE
ERSKINE COURT
CASTLE BUSINESS PARK
STIRLING
FK9 4TL

This is the Annex referred to in the foregoing Memorandum of Understanding between the Environment Agency and the Scottish Environment Protection Agency and dated of same dates herewith.

Annex: Data Protection

The Personal Data that are the subject of this agreement may include:

- i) Information contained within:
 - a) an application for approval as a scheme;
 - b) an application to register a producer;
 - c) a notification of a producer; and
- ii) Information submitted by a scheme or producer in accordance with the Regulations (the "Data").

In order to comply with data protection legislation, the Agencies agree to the following:


- i) the Agencies must only process the Data in strict accordance with the Memorandum of Understanding or instructions given under this Memorandum of Understanding;
- ii) the Agencies must ensure that there are appropriate security measures in place to safeguard against any unauthorised access loss destruction theft use or disclosure of the Data;
- iii) the Agencies must ensure that all the Data that is disclosed between them under this Memorandum of Understanding are kept confidential, and not used for any other purposes than those agreed;
- iv) only employees of the Agencies who may be required to assist in meeting the obligations under this agreement shall have access to the Data; and

- v) on termination of this agreement, for whatever reason, the Data shall be returned to the which ever of the Agencies is appropriate promptly and safely, together with all copies in the Agency's possession or control.

Approved by:  _____

Date: 27/5/09

For and on behalf of the Environment Agency

Approved by:  _____ CC

Date: 31/3/09

For and on behalf of the Scottish Environment Protection Agency

