
STATUTORY INSTRUMENTS

1998 No. 1165

ENVIRONMENTAL PROTECTION

The Packaging (Essential Requirements) Regulations 1998

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| <i>Made</i> | - - - - | <i>2nd May 1998</i> |
| <i>Laid before Parliament</i> | | <i>7th May 1998</i> |
| <i>Coming into force</i> | - - | <i>31st May 1998</i> |

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to the management of packaging and packaging waste, in exercise of the powers conferred upon her by that section and of all her other enabling powers, hereby makes the following Regulations:

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Packaging (Essential Requirements) Regulations 1998 and shall come into force on 31st May 1998.

Interpretation

2.—(1) In these Regulations—

- (a) “the Directive” means Directive [94/62/EC](#) of the European Parliament and the Council on packaging and packaging waste⁽³⁾;
- (b) “the 1987 Act” means the Consumer Protection Act 1987⁽⁴⁾; and
- (c) except for the references to the European Communities in the definition of “the Commission” and in relation to the Official Journal, a reference to the Community includes a reference to the EEA, and a reference to a member State includes a reference to an EEA State: for this purpose—

(1) [S.I.1996/266](#).

(2) [1972 c. 68](#).

(3) [O.J. No. L365, 31.12.94, p.10](#).

(4) [1987 c. 43](#).

- (i) the “EEA” means the European Economic Area;
- (ii) an “EEA State” means a State which is a Contracting Party to the EEA Agreement; and
- (iii) the “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993⁽⁵⁾.

(2) In these Regulations, unless the context otherwise requires—

“the Commission” means the Commission of the European Communities;

“energy recovery” means the use of combustible packaging waste as a means to generate energy through direct incineration with or without other waste but with recovery of the heat;

“enforcement authority” shall be construed in accordance with regulation 13;

“essential requirements” means the essential requirements in Annex II of the Directive and which are set out in the Schedule hereto;

“importer” means an importer of packaging which is packed or filled packaging into the United Kingdom;

“organic recycling” means the aerobic (composting) or anaerobic (biomethanization) treatment, under controlled conditions and using micro-organisms, of the biodegradable parts of packaging waste, which produces stabilised organic residues or methane; for the purpose of these Regulations landfill shall not be considered a form of organic recycling;

“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 packaging 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 packaging in order to prevent physical handling and transport damage; for the purposes of these Regulations transport packaging does not include road, rail, ship and air containers;

“packaging component” means any part of packaging that can be separated by hand or by using simple physical means;

“packaging materials” means materials used in the manufacture of packaging and includes raw materials and processed materials prior to their conversion into packaging;

“packaging waste” means any packaging or packaging material covered by the definition of waste in Article 1 of the Waste Directive but not including production residues;

“packaging waste management” means the management of waste as defined in the Waste Directive;

“ppm” means parts per million by weight;

(5) The application of the Directive was extended to the EEA from 1st December 1995 by virtue of Decision No. 67/95 of the EEA Joint Committee O.J. No. L8/38 which inserted a reference to that Directive after point 6 in Chapter XVII of annex II to the EEA Agreement.

“recovery” means any of the applicable operations provided for in Annex II B to the Waste Directive;

“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;

“responsible person” means in relation to packaging, the person who is responsible for packing or filling products into packaging (including, as the case may be, any person presenting himself as being so responsible by affixing to the packed or filled packaging his name, trade mark or other distinctive mark or the person who reconditions the packaging for reuse except that reuse in itself shall not constitute reconditioning of the packaging), or the importer;

“reuse” means any operation by which packaging, which has been conceived and designed to accomplish within its life cycle a minimum number of trips or rotations, is refilled or used for the same purpose for which it was conceived, with or without the support of auxiliary products present on the market enabling the packaging to be refilled and reused packaging shall be construed accordingly; such reused packaging will become packaging waste when no longer subject to reuse;

“Waste Directive” means Council Directive [75/442/EEC](#) on waste⁽⁶⁾

(3) Any reference in these Regulations to a numbered regulation is a reference to the regulation so numbered in these Regulations.

PART II

APPLICATION

Packaging

3.—(1) Subject to regulations 4 and 5, these Regulations apply to any packaging.

(2) Nothing in these Regulations with regard to packaging shall affect the application of existing quality requirements for packaging, including those regarding safety, the protection of health and hygiene of the packed products, existing transport requirements or the provisions of Council Directive [91/689/EEC](#) on hazardous waste⁽⁷⁾.

Excluded packaging

4. These Regulations shall not apply to packaging which was used for a given product prior to 31st December 1994.

Exclusion until 31st December 1999 of packaging complying with national rules in force on 31st December 1994

5. These Regulations shall not apply to packaging manufactured on or before 31st December 1994, placed on the market in the Community on or before 31st December 1999 and which complies with any health and safety requirements or any other Act or enactment with which it would have been required to comply for it to be lawfully placed on the market in the United Kingdom on 31st December 1994.

(6) O.J. No. L194, 25.7.75, p. 39; Articles 1 to 12 and Annexes I and IIB were amended by Directive [91/156/EEC](#), O.J. No. L78, 26.3.91, p. 32.

(7) O.J. No. L377, 31.12.91, p. 20.

PART III

GENERAL REQUIREMENTS

General duty relating to the placing on the market of packaging

6.—(1) Subject to regulations 7, 8 and 9, on or after the coming into force of these Regulations, no person who is a responsible person shall place on the market any packaging unless the essential requirements have been complied with in relation to it provided always that placing on the market for the purposes of this regulation shall not occur in respect of reused packaging.

(2) Packaging shall be taken to satisfy the essential requirements—

(a) if it satisfies national standards which implement the relevant harmonised standards;

or

(b) where there is no relevant harmonised standards, if it satisfies national standards of which the texts are communicated to the Commission pursuant to Article 9(3) of the Directive and which, pursuant to that provision, are notified by the Commission to the member States as being deemed to comply with the essential requirements.

(3) In paragraph (2) above, “harmonised standards” shall mean the standards of which the reference number is published in the Official Journal of the European Communities in pursuance of Article 9(2)(a) of the Directive.

Concentration levels of heavy metals present in packaging

7. On or after 30th June 1998, no person who is a responsible person shall place on the market packaging if the sum of the concentration levels of lead, cadmium, mercury and hexavalent chromium either in the packaging or in any of its packaging components, exceeds 600 ppm.

8. On or after 30th June 1999, no person who is a responsible person shall place on the market packaging if the sum of the concentration levels of lead, cadmium, mercury and hexavalent chromium either in the packaging or in any of its packaging components, exceeds 250 ppm.

9. On or after 30th June 2001, no person who is a responsible person shall place on the market packaging if the sum of the concentration levels of lead, cadmium, mercury and hexavalent chromium either in the packaging or in any of its packaging components, exceeds 100 ppm.

10. Regulations 7, 8 and 9 shall not apply to packaging which is made entirely of lead crystal glass as defined in Directive [69/493/EEC](#)(8).

Requirement for technical documentation

11. The responsible person shall at the request of the enforcement authority submit technical documentation or other information showing that packaging complies with the essential requirements and the heavy metals concentration limits set out in regulations 7, 8 and 9 above.

12. The responsible person shall ensure that he keeps such information as will enable him to submit to the enforcement authority the documentation referred to in regulation 11 for a period of four years from the date that he places packaging on the market.

(8) O.J. No. L326, 29.12.69, p.36; S.I. [1973/1952](#) implements Council Directive No. [69/493/EEC](#) relating to crystal glass.

PART IV

ENFORCEMENT

Enforcement Authorities

13.—(1) It shall be the duty of the following authorities to enforce these Regulations within their area—

- (a) in Great Britain, weights and measures authorities; and
- (b) in Northern Ireland, the Department of Economic Development.

(2) For the purposes of providing for the enforcement of these Regulations—

- (a) sections 14, 15, 28 to 35, 37, 38, 44 and 47 of the 1987 Act shall apply and in respect of proceedings for contravention thereof as if—
 - (i) references to safety provisions were references to these Regulations;
 - (ii) references to goods were references to packaging as the context may require;
 - (iii) in section 14, in sub-section (6), for “six months” there were substituted “three months”;
 - (iv) in sections 28, 29, 30, 33, 34 and 35, the words “or any provision made by or under Part III of this Act” on each occasion that they occur were omitted;
 - (v) in section 28, sub-sections (3), (4) and (5) were omitted;
 - (vi) in section 29, sub-section (4) was omitted;
 - (vii) in section 30, sub-sections (7) and (8) were omitted; and
 - (viii) in section 38(1), paragraphs (a) and (b) were omitted;
- (b) sections 39 and 40 of the 1987 Act shall apply to offences under section 32 of that Act as it is applied to these Regulations by sub-paragraph (a) above; and
- (c) in England and Wales, a magistrates' court may try an information in respect of an offence committed under these Regulations if the information is laid within twelve months from the time when the offence is committed, and in Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

(3) Nothing in this regulation shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

(4) No action shall be taken by virtue of paragraphs (1) and (2) above before 1 January 1999 unless it could have been taken otherwise than by virtue of these Regulations.

(5) An enforcement authority shall, whenever the Secretary of State so directs, make a report to the Secretary of State on the exercise of the functions exercisable by that authority under these Regulations.

Offences

14. Any person who—

- (a) contravenes or fails to comply with regulation 6, 7, 8 or 9; or
- (b) fails to supply or retain technical documentation or other information as required by regulations 11 and 12;

shall be guilty of an offence.

Penalties

15.—(1) A person guilty of an offence under regulation 14(a) shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
- (b) on conviction on indictment, to a fine.

(2) A person guilty of an offence under regulation 14(b) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

16.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulations 6, 7, 8 and 9, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against a person for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another; or
- (b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not later than 7 clear days before the hearing of the proceedings (or, in Scotland, the trial diet), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he took and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

Liability of persons other than the principal offender

17.—(1) Where the commission by any person of an offence under regulations 6, 7, 8 and 9 is due to an act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of any body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

2nd May 1998

Nigel Griffiths
Parliamentary Under-Secretary of State for
Competition and Consumer Affairs,
Department of Trade and Industry

THE SCHEDULE

Regulation 2(2)

(Annex II of the Directive)

ESSENTIAL REQUIREMENTS ON THE COMPOSITION AND THE REUSABLE AND RECOVERABLE, INCLUDING RECYCLABLE, NATURE OF PACKAGING

1. Requirements specific to the manufacturing and composition of packaging

- Packaging shall be so manufactured that the packaging volume and weight be limited to the minimum adequate amount to maintain the necessary level of safety, hygiene and acceptance for the packed product and for the consumer.
- Packaging shall be designed, produced and commercialised in such a way as to permit its reuse or recovery, including recycling, and to minimise its impact on the environment when packaging waste or residues from packaging waste management operations are disposed of.
- Packaging shall be so manufactured that the presence of noxious and other hazardous substances and materials as constituents of the packaging material or of any of the packaging components is minimised with regard to their presence in emissions, ash or leachate when packaging or residues from management operations or packaging waste are incinerated or landfilled.

2. Requirements specific to the reusable nature of packaging

The following requirements must be simultaneously satisfied:

- the physical properties and characteristics of the packaging shall enable a number of trips or rotations in normally predictable conditions of use,
- possibility of processing the used packaging in order to meet health and safety requirements for the workforce,
- fulfil the requirements specific to recoverable packaging when the packaging is no longer reused and thus becomes waste.

3. Requirements specific to the recoverable nature of packaging

(a) Packaging recoverable in the form of material recycling.

Packaging must be manufactured in such a way as to enable the recycling of a certain percentage of weight of the materials used into the manufacture of marketable products, in compliance with current standards in the Community. The establishment of this percentage may vary, depending on the type of material of which the packaging is composed.

(b) Packaging recoverable in the form of energy recovery.

Packaging waste processed for the purpose of energy recovery shall have a minimum inferior calorific value to allow optimisation of energy recovery.

(c) Packaging recoverable in the form of composting.

Packaging waste processed for the purpose of composting shall be of such a biodegradable nature that it should not hinder the separate collection and the composting process or activity into which it is introduced.

(d) Biodegradable packaging.

Biodegradable packaging waste shall be of such a nature that it is capable of undergoing physical, chemical, thermal or biological decomposition such that most of the finished compost ultimately decomposes into carbon dioxide, biomass and water.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Articles 9 and 11 of Directive [94/62/EC](#) of the European Parliament and the Council on packaging and packaging waste (O.J. No. L.365, 31.12.94, p.10) which relate to the essential requirements to be satisfied by packaging. References in the Regulations to the Community or a member State include respectively a reference to the EEA or an EEA State which are defined in regulation 2(1)(b).

Part II provides for the application of the Regulations. They apply to all packaging (as defined in regulation 2(2)) other than those excluded by regulation 4 or 5.

Part III sets out the general requirements of the Regulations. Regulation 6 imposes a duty on a “responsible person” (as defined in regulation 2(2)) who places packaging on the market to ensure that it satisfies the relevant essential requirements. The essential requirements are set out in the Schedule. Regulation 7 imposes a duty on a “responsible person” to ensure that the sum of the concentration levels of lead, cadmium, mercury and hexavalent chromium of packaging or of its packaging components, which is placed on the market on or after 30th June 1998 does not exceed 600 parts per million by weight. Regulation 8 imposes a duty on a “responsible person” to ensure that the sum of the concentration levels of lead, cadmium, mercury and hexavalent chromium of packaging or of its packaging components, which is placed on the market on or after 30th June 1999 does not exceed 250 parts per million by weight. Regulation 9 imposes a duty on a “responsible person” to ensure that the sum of the concentration levels of lead, cadmium, mercury and hexavalent chromium of packaging or of its packaging components, which is placed on the market on or after 30th June 2001 does not exceed 100 parts per million by weight. Regulations 7, 8 and 9 do not apply to packaging which is made entirely of lead crystal glass (regulation 10).

Regulations 11 and 12 make provision for the “responsible person” to keep technical documentation on compliance with the essential requirements and the heavy metals concentration limits in respect of packaging and to make this available at the request of the enforcement authority for a period of four years from the date the packaging is placed on the market.

Part IV relates to enforcement of the Regulations. The enforcement authorities are the weights and measures authorities in Great Britain and the Department of Economic Development in Northern Ireland (regulation 13). In Scotland, proceedings are brought by the procurator-fiscal or Lord Advocate. Regulation 14 provides for offences. Regulation 15 provides for penalties for breaches of the Regulations. There are also provisions relating to the defence of due diligence (regulation 16) as well as liability of persons other than the principal offender (regulation 17).

A Compliance Cost Assessment in respect of these Regulations is available and a copy may be obtained from the Department of Trade and Industry.