

Statutory Instrument 1997 No. 648

The Producer Responsibility Obligations (Packaging Waste) Regulations 1997

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STATUTORY INSTRUMENTS

1997 No. 648

ENVIRONMENTAL PROTECTION

The Producer Responsibility Obligations (Packaging Waste) Regulations 1997

Made

5th March 1997

Coming into force

6th March 1997

ARRANGEMENT OF REGULATIONS

PART I

GENERAL

1. Citation and commencement
2. Interpretation and notices

PART II

PRODUCERS AND OBLIGATIONS

3. Producers and producer responsibility obligations
4. Exclusions and limitations

PART III

REGISTRATION

5. Producer registration obligation
6. Application for producer registration
7. Requirements for producer registration
8. Continuation of producer registration
9. Forms and fees for producer registration
10. Refusal to register producers
11. Cancellation of registration of producers
12. Application for registration of a scheme
13. Conditions of registration of a scheme
14. Continuation of registration of a scheme
15. Forms and fees for registration of a scheme
16. Refusal to register a scheme
17. Cancellation of registration of a scheme

PART IV

REGISTRATION OF SCHEMES - APPEALS

18. Right of appeal
19. Procedure of appeals

- 20. Determination of appeals
- 21. Status pending appeal

PART V

RECORDS, RETURNS AND CERTIFICATE

- 22. Producers - records and returns
- 23. Producers - certifying obligation
- 24. Schemes - records and returns

PART VI

AGENCIES' POWERS AND DUTIES

- 25. Monitoring
- 26. Public register
- 27. Approval of persons to issue certificates of compliance
- 28. Entry and inspection

PART VII

GROUPS OF COMPANIES AND MID-YEAR CHANGES

- 29. Groups of companies
- 30. Mid-year changes

PART VIII

COMPETITION SCRUTINY

- 31. Competition scrutiny

PART IX

THE RESTRICTIVE TRADE PRACTICES ACT 1976

- 32. The 1976 Act
- 33. Agreements to which the 1976 Act applies

PART X

OFFENCES

- 34. Offences and penalties

SCHEDULES

SCHEDULE 1 - PRODUCERS

SCHEDULE 2 - RECOVERY AND RECYCLING OBLIGATIONS

- SCHEDULE 3 - PART I: - DEFINITION OF WASTE
PART II: - DEFINITION OF RECOVERY
PART III: - DEFINITION OF SPECIAL PRODUCERS
PART IV: - SPECIAL PRODUCERS - OBLIGATIONS
PART V: - SPECIAL PRODUCERS - RECORDS AND RETURNS
- SCHEDULE 4 - INFORMATION
- SCHEDULE 5 - PROCEDURE ON APPEALS
- SCHEDULE 6 - INFORMATION IN CERTIFICATE OF COMPLIANCE
- SCHEDULE 7 - PUBLIC REGISTER
- SCHEDULE 8 - GROUPS OF COMPANIES
- SCHEDULE 9 - MID-YEAR CHANGES
- SCHEDULE 10 - UNITED KINGDOM'S RECOVERY AND RECYCLING TARGETS

Explanatory Note

The Secretary of State for the Environment, as respects England and Wales, and the Secretary for Scotland, as respects Scotland, in exercise of the powers conferred upon them by sections 93, 94 and 95 of the Environment Act 1995[1], for the implementation of article 6(1) of Directive 94/62/EC[2] and of all other powers enabling them in that behalf, after consultation in accordance with section 93(2) of that Act, and after having regard to the matters specified in section 93(6) of that Act as required by section 93(5) of that Act, hereby make the following Regulations, a draft of which has been laid before and approved by a resolution of each House of Parliament: -

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 and shall come into force on the day after the day on which they are made.

Interpretation and notices

2. - (1) In these Regulations -

"the Act" means the Environment Act 1995;

"the 1990 Act" means the Environmental Protection Act 1990[3];

"the Director" means the Director General of Fair Trading;

"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;

"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 stabilized organic residues or methane; for the purposes 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 packagings 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 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 Directive 75/442 EC[4] ("the Waste Directive") which, together with Annex 1 to that Directive, is reproduced in Part I of Schedule 3 to these Regulations, other than production residues and, by virtue of article 2(1)(b)(i) of the Waste Directive, radioactive waste;

"preceding year" has the meaning given in regulation 3;

"producer" has the meaning given in regulation 3 and the classes of producer are those set out in column 4 of the Table in Schedule 1;

"producer responsibility obligations" are the producer registration, recovery and recycling, and certifying obligations specified in regulation 3;

"recovery" means any of the applicable operations provided for in Annex IIB to the Waste Directive, reproduced in Part II of Schedule 3;

"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;

"relevant year" has the meaning given in regulation 3;

"reprocessor" means a person who, in the ordinary course of conduct of a trade, occupation or profession, carries out the activities of recovery or recycling;

"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; such reused packaging will become packaging waste when no longer subject to reuse;

"scheme" means a scheme which is (or, if it were to be registered in accordance with these Regulations would be) a scheme whose members for the time being are, by virtue of these Regulations and their membership of that scheme, exempt from the requirement to comply with their producer responsibility obligations and "registered scheme" means a scheme which is registered with the appropriate Agency in accordance with these Regulations;

"transit packaging" means -

(a) grouped packaging or secondary packaging, as defined in paragraph (b) of the definition of packaging in this regulation; or

(b) transport packaging or tertiary packaging as defined in paragraph (c) of that definition of packaging; and

"year" means a calendar year beginning on 1st January.

(2) Where notices are to be served on a producer under regulations 6(6), 10, and 11(3), information is to be provided by a producer under regulations 7 and 8, fees are to be paid by a producer under regulation 9(2), and records and returns are to be maintained and furnished by a producer under regulation 22, they shall be served on, provided, paid, or maintained and furnished, by

(a) in the case of a partnership with a principal place of business in England and Wales, the partner notified under regulation 6(4)(e), or in accordance with the undertaking referred to in regulation 7(a)(ii), or

(b) in the case of a partnership with a principal place of business in Scotland, by a partner acting on behalf of the partnership,

and references in these Regulations to the producer shall be read accordingly.

(3) Where the operator of a scheme is a partnership, or where this is not the case but there is more than one operator of a scheme -

(a) notices to be served on the operator of the scheme under regulations 12(6), 16, 17(3), 31(5) and (10), shall be served on the partner or operator, respectively, notified under regulation 12(3)(h), or in accordance with the condition referred to in regulation 13(d)(ii); and

(b) where information is to be provided by the operator of the scheme under regulations 13 and 14, fees are to be paid by the operator of the scheme under regulation 15(3), records and returns are to be maintained and furnished by the operator of the scheme under regulation 24, and appeals may be made by the operator of the scheme under regulation 18, they shall be provided, paid, or maintained and furnished, and such appeals may only be made, by the partner or operator, respectively, notified under regulation 12(3)(h), or in accordance with the condition referred to in regulation 13(d)(ii),

and references in these Regulations to the operator of the scheme shall be read accordingly.

Notes:

[1] 1995 c.25; *see* section 93(8) for the definitions of "prescribed" and "regulations".back

[2] O.J. No. L365, 31.12.94, p. 10.back

[3] 1990 c.43.back

[4] 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.back

PART II

PRODUCERS AND OBLIGATIONS

Producers and producer responsibility obligations

3. - (1) This regulation is subject to regulations 4, 29 and 30.

(2) In respect of a year a person is a producer of a class specified in an entry in column 4 of the Table set out in Schedule 1 if -

(a) in that year and the preceding year he performs the relevant functions of the class of producer specified in Column 1 of that Table in relation to that entry;

(b) in the preceding year he made supplies of the materials or products specified in Column 2 of that Table in relation to that entry of a class in Column 3 of that Table in relation to that entry; and

(c) in relation to that year he satisfies the threshold tests as provided by paragraph 3 of that Schedule,

and the other provisions of that Schedule shall also have effect for the purposes of determining whether a person is a producer of any class.

(3) Where in respect of a year a person is a producer and satisfies the provisions of Columns 1 to 3 of the Table in Schedule 1 in relation to more than one class of producer specified in an entry in Column 4 of that Table, whether or not in relation to the same materials or products specified in Column 2 of that Table, or the same transaction or process, for that year that person belongs to each such class.

(4) For the purposes of these Regulations -

(a) "relevant year" is the year referred to in paragraph (2) above, that is to say a year in respect of which a person is a producer; and

(b) "preceding year" is the year immediately preceding a relevant year.

(5) A person who is a producer in respect of a year has producer responsibility obligations in respect of that year, that is to say he shall -

(a) be registered as provided in regulation 5 (in these Regulations referred to as the "producer registration obligation"); and

(b) for the year 1998 and subsequent years -

(i) 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, and

(ii) furnish a certificate of compliance in respect of his recovery and recycling obligations in accordance with regulation 23 (in these Regulations referred to as the "certifying obligation").

(6) The recovery and recycling obligations of producers are to enable the United Kingdom to attain the recovery and recycling targets for Member States set out in article 6(1) of Directive 94/62/EC and those targets are set out in Schedule 10.

Exclusions and limitations

4. - (1) Where a producer is a member of a registered scheme throughout a relevant year -

(a) the producer is exempt from complying with his producer responsibility obligations for the relevant year; and

(b) the recovery and recycling obligations with which, but for his membership of the scheme, the producer would have had to comply in relation to the relevant year shall be performed through the scheme.

(2) These Regulations do not apply to a charity within the meaning given in section 506 of the Income and Corporation Taxes Act 1988[1].

(3) The producer responsibility obligations of the producer class of wholesaler apply only in respect of the year 2000 and subsequent years.

(4) A special producer as defined in Part III of Schedule 3 shall have producer responsibility obligations as provided in Part IV of that Schedule and shall provide records and returns to the appropriate Agency in accordance with Part V of that Schedule.

PART III

REGISTRATION

Producer registration obligation

5. Subject to regulations 4(3) and (4), 29 and 30, a producer shall be registered with an appropriate Agency in respect of a relevant year, or any part of that year, during which he is not a member of a registered scheme.

Application for producer registration

6. - (1) Subject to paragraph (3) below, a producer who is required by regulation 5 to be registered and who is not registered shall, on or before 1st April in a relevant year, make an application for producer registration to the appropriate Agency, being -

(a) the Agency, where at the beginning of the relevant year the applicant's registered office or principal place of business is in England or Wales;

(b) SEPA, where at the beginning of the relevant year the applicant's registered office or principal place of business is in Scotland; or

(c) either the Agency or SEPA where at the beginning of the relevant year the applicant does not have a registered office or principal place of business in Great Britain.

(2) Where the producer is a partnership, where the principal place of business of the partnership is in England or Wales, the application shall be made by all the partners, and where the principal place of business of the partnership is in Scotland, the application shall be made by any partner acting on behalf of the partnership.

(3) Where -

(a) the relevant year is the year 1997, the application for registration shall be made on or before 31st August 1997; or

(b) any of the following occurs in a relevant year -

(i) the application for registration of a scheme of which the applicant was a member is refused,

(ii) the registration of a scheme of which the applicant was a member is cancelled,

(iii) the applicant's membership of a scheme is discontinued,

(iv) the applicant becomes a producer in respect of that year, or

(v) an application to register made within the time limit in paragraph (1) or sub-paragraph (a), above, is refused,

an application for registration shall be made within 28 days of the occurrence.

(4) An application for producer registration shall -

(a) be made in writing;

(b) contain the initial information set out in Part I of Schedule 4;

(c) subject to paragraphs (7) and (8) below, be accompanied by the further information specified in, and provided on a form corresponding to, the form set out in Part II of Schedule 4, or provided on a form substantially to that effect,

(d) be accompanied by the fee referred to in regulation 9; and

(e) where the applicant is a partnership whose principal place of business is in England and Wales, be accompanied by a statement as to which partner is able to accept notices and act on behalf of the partnership as provided in regulation (2).

(5) An application for producer registration shall be granted where -

(a) the producer has complied with paragraph (4)(a), (b), (d) and (e) above and, where applicable, paragraph (8) below;

(b) the Agency is satisfied that the information provided in accordance with paragraph (4)(c) above, or (8) below, has been provided in accordance with paragraph (7) below; and

(c) the producer has given the undertakings referred to in regulation 7, which have been required by the appropriate Agency;

and shall otherwise be refused.

(6) Where an application for producer registration is granted -

(a) the appropriate Agency shall, within 28 days of it being granted confirm to the producer in writing that he is registered with it; and

(b) the producer shall be treated as having been registered from the beginning of the relevant year or, where the producer has applied to be registered for part of a year, from the date specified in the confirmation, until any cancellation of the producer's registration in accordance with regulation 11.

(7) The further information shall -

(a) where the application for registration, or compliance with regulation 8, is in respect of any of the years 1997, 1998 1999, be provided using the producer's reasonable estimates of the information required; and

(b) where the application for registration, or compliance with regulation 8, is in respect of the year 2000 or any subsequent year, the information provided shall be as accurate as reasonably possible.

(8) Where the application to register is made in one of the circumstances set out in paragraph (3)(b) above, the further information referred to in paragraph (4)(c) above need not accompany the application but shall be provided within 56 days of the application being made.

Requirements for producer registration

7. As requirements for producer registration the appropriate Agency may require the applicant to undertake that he will -

(a) inform the appropriate Agency of -

(i) any change in the circumstances of the producer which relate to the registration of the producer, and where the producer is a partnership, any change of partners;

(ii) any change in the person who is the partner who is able to accept notices and act on behalf of the partnership as stated as required in regulation 6(4)(e);

(iii) any material change in the initial information provided in accordance with regulation 6(4)(b), or

(iv) any material change in the further information provided in accordance with regulation 6(4)(c), or (8), as the case may be, or regulation 8,

within 28 days of the occurrence of any such change;

(b) comply with the requirements of regulation 8;

(c) provide records and returns to the appropriate Agency as required by regulation 22; and

(d) apply to the appropriate Agency to cancel his registration where he has become a member of a registered scheme or has ceased to be a producer in respect of a year.

Continuation of producer registration

8. On or before 1st April in a relevant year a producer who is registered shall provide to the appropriate Agency -

(a) in accordance with regulation 6(7), the further information referred to in regulation 6(4)(c); and

(b) the fee referred to in regulation 9.

Forms and fees for producer registration

9. - (1) The appropriate Agency shall provide a copy of any form referred to in regulation 6 free of charge to any person requesting one.

(2) The fee which is to be charged by an appropriate Agency on an application for producer registration or continuation of producer registration is £750.

Refusal to register producers

10. Any decision of the appropriate Agency under regulation 6(5) to refuse to register a producer shall be notified within 28 days of the decision to the producer in writing together with the reasons for the decision and a statement as to the offence specified in regulation 34(1)(a).

Cancellation of registration of producers

11. - (1) An appropriate Agency may cancel the registration with it of a producer where -

- (a) the information or the fee required by regulation 8 are not provided;
- (b) it appears to the appropriate Agency that -
 - (i) the producer is in breach of any of the undertakings referred to in regulation 7 and given by him to that Agency,
 - (ii) the producer knowingly supplied false information in connection with his application for registration, or with compliance with any undertaking referred to in regulation 7, or with regulation 8; or
 - (iii) information provided pursuant to regulation 8 was not provided in accordance with regulation 6(7).

(2) An appropriate Agency shall cancel the registration with it of a producer where it is notified that the producer has become a member of a registered scheme or has otherwise ceased to be subject to the producer registration obligation in respect of a year.

(3) Before cancellation of a registration under paragraphs (1) or (2) above, an appropriate Agency shall serve on the producer concerned written notice of -

- (a) its decision to cancel;
- (b) the reasons for the decision; and
- (c) the date when cancellation will take effect, not being earlier than -
 - (i) in the case of cancellation under paragraph (1) above, 28 days from the date of the notice, and
 - (ii) in the case of cancellation under paragraph (2) above, 5 days from the date of the notice.

Application for registration of a scheme

12. - (1) Subject to paragraph (8) below, an application for registration of a scheme in relation to a year shall be made by the operator of the scheme, on or before 1st April in the year, to the appropriate Agency, being -

- (a) the Agency, where at the date of the application the registered office or principal place of business of the operator of the scheme is in England or Wales;
- (b) SEPA, where at the date of the application the registered office or principal place of business of the operator of the scheme is in Scotland; or
- (c) either the Agency or SEPA, where at the date of the application the operator of the scheme does not have a registered office or principal place of business in Great Britain, or there is more than one operator of the scheme and such operators have

registered offices or principal places of business in England and Wales, and in Scotland.

(2) Where the operator of the scheme is a partnership the application for registration shall, where at the date of the application the principal place of business of the partnership is in England and Wales, be made by all the partners, and where at that date the principal place of business of the partnership is in Scotland, be made by any partner acting on behalf of the partnership.

(3) An application for registration of a scheme shall -

(a) be made in writing;

(b) contain the initial information set out in Part III of Schedule 4;

(c) subject to paragraph (7) below, be accompanied by the information specified in, and provided on a form corresponding to, the form set out in Part II of Schedule 4, or provided on a form substantially to that effect, for each class of producer, and aggregating the information in relation to all of the scheme's members who belong to that class;

(d) be accompanied by a published statement as provided in Part IV of Schedule 4;

(e) be accompanied by an operational plan for the scheme as provided in Part IV of Schedule 4;

(f) be accompanied by an undertaking by the operator of the scheme that the conditions referred to in regulation 13 will be complied with;

(g) be accompanied by a fee calculated as provided in regulation 15; and

(h) where the operator of the scheme is a partnership whose principal place of business is in England and Wales, or where there is more than one operator of the scheme, be accompanied by a statement as to which partner or operator, respectively, is able to accept notices or act on behalf of all the partners, or all the operators of the scheme, as the case may be, as provided in regulation 2 above.

(4) A scheme shall not be registered unless it has been approved by the Secretary of State and the operator of the scheme has been notified under regulation 31(5) that it meets the requirements of competition scrutiny referred to in regulation 31, and the operator of the scheme shall supply evidence of that approval and notification to the appropriate Agency -

(a) where such approval or notification is obtained before making the application to register the scheme, at the time of the application; or

(b) where such approval or notification is obtained after the application to register is made, as soon as possible after receipt.

(5) An application for registration shall be granted where -

(a) the operator has complied with paragraphs (3)(a), (b), (d), (f), (g) and (h) and (4) above;

(b) the appropriate Agency is satisfied that the information provided in accordance with paragraph (3)(c) above, has been provided in accordance with paragraph (7) below; and

(c) the appropriate Agency is satisfied as to the contents of the operational plan provided as required by paragraph (3)(e) above

and shall otherwise be refused.

(6) Where an application for registration of a scheme is granted -

(a) the appropriate Agency shall, within 28 days of it being granted confirm to the operator of the scheme in writing that the scheme is registered with it; and

(b) the scheme shall be treated as registered from the beginning of the year of application until any cancellation of the scheme's registration in accordance with regulation 17, except that for the purposes of regulations 32 and 33 the scheme shall be treated as registered from the date of confirmation until any such cancellation.

(7) The further information shall -

(a) where the application for registration, or compliance with regulation 14, is in relation to any of the years 1997, 1998 or 1999 be provided using the reasonable estimates of the operator of the scheme; and

(b) where the application for registration, or compliance with regulation 14, is in relation to the year 2000 or any subsequent year, be as accurate as reasonably possible.

(8) Where an application for registration is made in the year 1997 the application shall be made on or before 31st August 1997,

Conditions of registration of a scheme

13. Registration of a scheme shall be subject to the following conditions -

(a) that the recovery and recycling obligations of all of its members referred to in regulation 4(1)(b) will be performed through the scheme;

(b) that the operator of the scheme will provide information at the request of the appropriate Agency with regard to the obligations referred to in paragraph (a) above;

(c) that the operator of the scheme will notify the appropriate Agency in writing at intervals as required by the Agency of any change in the membership of the scheme and that any such notification will be accompanied by the additional fee calculated as provided in regulation 15(3);

(d) that the operator of the scheme will inform the appropriate Agency in writing of -

(i) any change in the person who is the operator of the scheme, and in the case where the operator of the scheme is a partnership, or where there is more than one operator of a scheme, any change of partners or operators,

(ii) any change in the person who is the partner or operator who is able to accept notices and act on behalf of the partners or operators as stated as provided in regulation 12(3)(h),

(iii) any material change in the initial information provided in accordance with regulation 12(3)(b), or

(iv) any material change in the further information provided in accordance with regulations 12(3)(c) or 14,

within 28 days of the occurrence of any such change;

(e) that the operator of the scheme will comply with the requirements of regulation 14;

(f) that the operator of the scheme will provide records and returns to the appropriate Agency as required by regulation 24; and

(g) that the operator of the scheme will inform the appropriate Agency in writing if the Secretary of State withdraws approval of the scheme or notifies the operator under regulation 31(10) that he has ceased to be satisfied that the scheme meets the requirements of competition scrutiny.

Continuation of registration of a scheme

14. On or before 1st April in a relevant year and in respect of a scheme which is registered, the operator of the scheme shall provide to the appropriate Agency -

(a) in accordance with regulation 12(7), the further information referred to in regulation 12(3)(c); and

(b) a fee calculated as provided in regulation 15.

Forms and fees for registration of a scheme

15. - (1) The appropriate Agency shall provide a copy of any form referred to in regulation 12 free of charge to any person requesting one.

(2) The fee which is to be charged by an appropriate Agency on an application for registration of a scheme, and under regulation 14, is calculated as follows -

$$A \times B = F$$

where -

A is the number of members of the scheme at the date of the application, or the date of compliance with regulation 14, whichever is applicable,

B is an amount calculated by reference to the number of members of the scheme at that date as follows -

2 to 500 members £600
501 to 1500 members £450
1501 to 3000 members £300
Over 3000 members £100, and F is the fee. (3) The fee which is to be paid by an operator of a scheme in compliance with the condition referred to in regulation 13(c) is calculated as follows -

$$A \times B = AF$$

where -

A is the number of new members of the scheme which are the subject of the notification,

B is the amount referred to in B in paragraph (2) above except that it is calculated by reference to the number of members of the scheme at the date of notification to the appropriate Agency, and

AF is the fee.

Refusal to register a scheme

16. Any decision of the appropriate Agency under regulation 12(5) to refuse to register a scheme shall be notified, within 28 days of the decision, to the operator of the scheme in writing together with -

- (a) the reasons for the decision;
- (b) a statement as to the right of appeal under Part IV of these Regulations; and
- (c) a statement as to the offence specified in regulation 34(1)(a).

Cancellation of registration of a scheme

17. - (1) Subject to the right of appeal under Part IV of these Regulations, the appropriate Agency may cancel the registration with it of a scheme where -

- (a) the information or the fee required by regulation 14 are not provided; or
- (b) it appears to the appropriate Agency that -
 - (i) any of the conditions referred to in regulation 13 has been broken,
 - (ii) the operator knowingly supplied false information in connection with the application for registration, or with compliance with the conditions referred to in regulation 13, or with regulation 14, or
 - (iii) information provided pursuant to regulation 14 was not provided in accordance with regulation 12(7).

(2) An appropriate Agency shall cancel the registration with it of a scheme if the Secretary of State withdraws his approval of the scheme or gives notice under regulation 31(10) that he has ceased to be satisfied that the scheme meets the requirements of competition scrutiny.

(3) Before the cancellation of a registration an appropriate Agency shall serve on the operator of the scheme written notice of -

- (a) its decision under paragraph (1) or (2) above to cancel the registration;
- (b) the reasons for the decision;

(c) where the decision is made under paragraph (1) above, the right of appeal under Part IV of these Regulations; and

(d) the date when cancellation will take effect, not being earlier than -

(i) in the case of cancellation under paragraph (1) above, the expiration of the time limit for an appeal against the notice provided for in paragraph 2 of Schedule 5, or

(ii) in the case of cancellation under paragraph (2) above, 5 days from the date of the notice.

PART IV

REGISTRATION OF SCHEMES - APPEALS

Right of appeal

18. The operator of a scheme may appeal to the Secretary of State against a decision of the appropriate Agency -

(a) to refuse registration under regulation 12(5), except where the refusal arises from failure to comply with regulation 12(4); or

(b) to cancel registration under regulation 17(1).

Procedure of appeals

19. - (1) Where an appeal is made to the Secretary of State, he may -

(a) appoint any person to exercise on his behalf, with or without payment, the function of determination of the appeal; or

(b) refer any matter involved in the appeal to such person as the Secretary of State may appoint for the purpose, with or without payment.

(2) If the operator of the scheme so requests, or the Secretary of State so decides, the appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held or held to any extent in private).

(3) Schedule 5 shall have effect with respect to the procedure on any such appeal.

Determination of appeals

20. Where, on such an appeal, the Secretary of State determines that the decision of the appropriate Agency shall be altered it shall be the duty of the appropriate Agency to give effect to the determination.

Status pending appeal

21. Where an appeal is pending in a case falling within regulation 17(1), the decision to cancel registration shall be ineffective until the appeal is disposed of; and if the appeal is dismissed or withdrawn the decision shall become effective from the end of the day on which the appeal is dismissed or withdrawn.

PART V

RECORDS, RETURNS AND CERTIFICATE

Producers - records and returns

22. - (1) A producer who is subject to the certifying obligation shall maintain, and retain for at least 4 years after the record is made, records of the information referred to in paragraph (2) below and shall, at the same time as he furnishes a certificate of compliance to the appropriate Agency in accordance with regulation 23, make a return to that Agency of that information.

(2) The information is, in respect of the year 1998 and subsequent years -

(a) the amount in tonnes, to the nearest tonne, of packaging waste provided to a reprocessor by or on behalf of the producer;

(b) the amount in tonnes, to the nearest tonne, of each packaging material comprised in the packaging waste referred to in sub-paragraph (a) above, received by a reprocessor from the producer or a person acting on the producer's behalf; and

(c) the dates on which, and the name and address of the reprocessor to which, the packaging waste referred to in sub-paragraph (a) above, was so provided.

(3) For the purposes of paragraph (2) above, for the year 1998 and subsequent years, packaging materials means the materials mentioned in paragraph 6(1)(b) of Schedule 2.

Producers - certifying obligation

23. - (1) Subject to regulations 4 and 29, a producer shall furnish in accordance with this regulation a certificate of compliance to the appropriate Agency.

(2) A certificate of compliance shall be furnished as evidence of whether or not the producer has complied with its recovery and recycling obligations for a relevant year and shall be furnished on or before 31st January in the year immediately following the relevant year.

(3) The provisions of Schedule 6 shall apply as regards the information to be contained in a certificate of compliance.

Schemes - records and returns

24. - (1) The operator of a scheme shall maintain, and retain for at least 4 years after they are made, records of the information referred to in paragraphs (2) and (3) below, and make returns of the information referred to in paragraph (3) below to the appropriate Agency upon request.

(2) In respect of the year 1997 the information is, for each producer which is a member of the scheme in that year, the information referred to in regulations 12(3)(c) and 14, together with any changes notified in accordance with the condition referred to in regulation 13(d)(iv).

(3) In respect of the year 1998 and subsequent years the information is, in addition to the information referred to in paragraph (2) above -

- (a) the amount in tonnes, to the nearest tonne, of packaging waste provided to a reprocessor through the scheme;
- (b) the amount in tonnes, to the nearest tonne, of each packaging material comprised in the packaging waste referred to in sub-paragraph (a) above, provided to a reprocessor through the scheme; and
- (c) the dates on which, and the name and address of the reprocessor to which, the packaging waste referred to in sub-paragraph (a) above was so provided.

(4) For the purposes of paragraph (3) above, for the year 1998 and subsequent years packaging materials means the materials mentioned in paragraph 6(1)(b) of Schedule 2.

PART VI

AGENCIES' POWERS & DUTIES

Monitoring

25. - (1) An appropriate Agency shall monitor in accordance with this regulation -

- (a) compliance with their producer responsibility obligations by persons who are or may be producers; and
- (b) the discharge through schemes registered with it of the obligations of their members referred to in regulation 4(1)(b).

(2) The duty referred to in paragraph (1) above includes a duty to monitor -

- (a) the registration of producers as required by regulation 5;
- (b) the accuracy of the initial information and the further information provided by producers and referred to in regulations 6 and 8, together with any changes notified in accordance with the undertakings referred to in regulation 7(a)(iii) and (iv);
- (c) the accuracy of the returns furnished to the Agency by a producer under regulation 22 or Part V of Schedule 3;
- (d) the accuracy of the information contained in certificates of compliance furnished to the Agency under regulation 23;
- (e) the accuracy of the initial information and the further information provided by an operator of a scheme and referred to in regulations 12 and 14, together with any changes notified in accordance with the conditions referred to in regulation 13(d)(iii) and (iv); and
- (f) the accuracy of the returns provided to the Agency by an operator of a scheme under regulation 24.

Public register

26. - (1) The appropriate Agency shall maintain and make available in accordance with this regulation a register relating to the producers and schemes registered with it in accordance with regulations 5 to 16 and containing -

(a) the information relating to producer registration prescribed in paragraph 1 of Schedule 7; and

(b) the information relating to registration of schemes prescribed in paragraph 2 of Schedule 7.

(2) The appropriate Agency shall -

(a) secure that the register is open for inspection at its principal office by members of the public free of charge at all reasonable hours; and

(b) permit members of the public to obtain copies of entries in the register on payment of reasonable charges.

(3) The register may be kept in any form but shall be indexed and arranged so that members of the public can readily trace information contained in it.

(4) An appropriate Agency shall amend the relevant entry in the register to record any change to the information entered and shall note the date on which the amendment is made.

(5) Nothing in this regulation shall require a register maintained by an appropriate Agency to contain information relating to, or to anything which is the subject-matter of, any criminal proceedings (including prospective proceedings) at any time before those proceedings are finally disposed of.

(6) Nothing in this regulation shall require a register maintained by an appropriate Agency to contain any information which has been superseded by later information after 4 years have elapsed from that later information being entered in the register.

Approval of persons to issue certificates of compliance

27. For the purposes of issuing certificates of compliance an appropriate Agency may approve -

(a) where the producer is an individual, that individual;

(b) where the producer is a partnership, a partner; or

(c) where the producer is a company, a director of that company.

Entry and inspection

28. - (1) A person who appears suitable to an appropriate Agency may be authorised in writing by that Agency for the purposes of its functions under these Regulations to exercise the powers of entry and inspection referred to in paragraph (2) below.

(2) The powers of entry and inspection are those set out in section 108(4)(a) to (l) of the Act (powers of enforcing authorities and persons authorised by them) and for this purpose

section 108(4) shall be read as if references to the authorised person were references to the appropriate Agency's servant or agent and as if -

- (a) the words "(or, in an emergency, at any time and, if need be, by force)" in section 108(4)(a) were omitted;
- (b) the power set out in section 108(4)(b) were omitted;
- (c) the reference to measurements in section 108(4)(e) were omitted;
- (d) the reference in section 108(4)(f) to articles or substances in relation to which samples may be taken were to records and packaging and packaging materials and as if the power in that paragraph to take samples of the air, water or land in, on, or in the vicinity of, the premises were omitted;
- (e) the power set out in section 108(4)(g) were omitted;
- (f) the reference in section 108(4)(h) to any article or substance were to any sample as is mentioned in paragraph (d) above and as if the reference to an offence in section 108(4)(h)(iii) were to an offence under regulation 34 of these Regulations;
- (g) the reference to records in section 108(4)(k)(i) were to the records and returns required to be kept and provided to the appropriate Agency under regulations 22 and 24 and Part V of Schedule 3; and
- (h) the reference to the power in section 108(l) were to the power conferred by this regulation.

(3) The provisions of section 108(6) and (7) of the Act shall apply to the powers conferred by paragraphs (1) and (2) above as they apply to the powers conferred by section 108(4) of the Act, but as if any reference to an authorised person were to the appropriate Agency's servant or agent, and as if -

- (a) in section 108(6) and (7) the words "except in an emergency" were omitted; and
- (b) in section 108(6) the words "or to take heavy equipment on to any premises" were omitted.

(4) The provisions of section 108(12) and (13) of the Act shall apply to the powers conferred by paragraphs (1) and (2) above as they apply to the powers conferred by section 108(4) of the Act.

(5) The provisions of paragraphs 2 to 6 of Schedule 18 to the Act (supplemental provisions with respect to powers of entry) shall apply to the powers conferred by this regulation as they apply to the powers conferred by section 108 of the Act, but as if any reference -

- (a) to a designated person were to a person authorised in writing by an appropriate Agency to exercise on its behalf any power conferred by this regulation;
- (b) to a relevant power were to a power conferred by this regulation, including a power exercisable by virtue of a warrant under the provisions of that Schedule as

applied by this paragraph;

(c) in paragraph 2(3) to subsection (6) of section 108 of the Act were to paragraph (2) of this regulation;

(d) in paragraph 4(1) to section 108(12) of the Act were to paragraph (4) of this regulation; and

(e) in paragraph 6(1) to section 108(4)(a) or (b) or (5) of the Act were to paragraph (1)(a) or (b) of this regulation.

(6) In this regulation "warrant" means a warrant under the provisions set out in Schedule 18 to the Act as applied by paragraph (5) above.

PART VII

GROUPS OF COMPANIES AND MID-YEAR CHANGES

Groups of companies

29. The provisions of Schedule 8 shall apply with regard to groups of companies as defined in that Schedule.

Mid-year changes

30. The provisions of Schedule 9 shall apply with regard to changes in a year in respect of a person who is a producer in respect of that year and any change in membership of a group of companies or of a scheme by such a producer, or other event affecting a producer in the relevant year.

PART VIII

COMPETITION SCRUTINY

Competition scrutiny

31. - (1) For the purposes of this regulation, the requirements of competition scrutiny in relation to a scheme are that -

(a) the scheme does not have, and is not likely to have, the effect of restricting, distorting or preventing competition or, where it appears to the Secretary of State that the scheme has or is likely to have any such effect, the effect is or is likely to be no greater than is necessary for achieving the environmental or economic benefits mentioned in section 93(6) of the Act; and

(b) the scheme does not lead, and is not likely to lead, to an abuse of market power.

(2) An operator who intends to apply for registration of a scheme under regulation 12 shall apply to the Director for the purpose of competition scrutiny, and shall submit with the application the information referred to in regulation 12(3)(h) and the information set out in Part III of Schedule 4.

(3) The Director shall advise the Secretary of State whether, in the Director's opinion, the Secretary of State may be satisfied that the scheme meets the requirements of competition scrutiny.

(4) For the purpose of the Director's advice under paragraph (3) above or (8) below as to whether, in his opinion, a scheme may meet or no longer meets the requirements of competition scrutiny, the words "where it appears to the Director" shall be substituted for the words "where it appears to the Secretary of State" in paragraph (1)(a) above.

(5) If, after considering the advice of the Director, the Secretary of State decides that he is satisfied that the scheme meets the requirements of competition scrutiny, he shall give notice in writing to the appropriate Agency, and to the operator of the scheme to that effect.

(6) The Secretary of State shall send a copy of any notice given under paragraph (5) above to the Director.

(7) The Director shall keep under review the operation of -

(a) any registered scheme; and

(b) any scheme in respect of which an application for registration is pending and the Secretary of State has given notice under paragraph (5) above.

(8) Subject to paragraph (9) below, if at any time the Director is of the opinion that any scheme whose operation he is keeping under review no longer meets the requirements of competition scrutiny, he shall advise the Secretary of State of his opinion and the reasons therefor.

(9) Paragraph (8) above shall not require the Director to repeat advice in respect of any scheme which he has previously given under paragraphs (3) or (8) above in respect of that scheme unless there has been a material change of circumstances since the advice was given.

(10) If at any time after giving a notice under paragraph (5) above the Secretary of State decides, after considering any advice on the matter from the Director, that he has ceased to be satisfied that the scheme meets the requirements of competition scrutiny, he shall give notice to the appropriate Agency and to the operator of the scheme to that effect.

(11) The Secretary of State shall send a copy of any notice given under paragraph (10) above to the Director.

(12) For the purposes of, or otherwise in connection with, competition scrutiny, the Director may, by notice in writing, require any person to provide within a specified time such information as may be specified or described in the notice and which that person has, or which he may at any future time acquire, relating to any scheme or to any acts or omissions of an operator of such a scheme or of any person dealing with such an operator.

PART IX

THE RESTRICTIVE TRADE PRACTICES ACT 1976

The 1976 Act

32. - (1) In this Part "the 1976 Act" means the Restrictive Trade Practices Act 1976[1].

(2) The 1976 Act shall not apply to any agreement for the constitution of a body (whether corporate or unincorporated) which operates a registered scheme by reason of -

(a) any term of the agreement; or

(b) any implied term deemed to be contained in the agreement by virtue of section 8(2) or section 16(3) of the 1976 Act;

being in either case a term which is required or contemplated by that scheme.

(3) Where an agreement ceases by virtue of this regulation to be subject to registration under the 1976 Act -

(a) the Director shall remove from the register maintained by him under the 1976 Act any particulars which are entered or filed in that register in respect of the agreement; and

(b) any proceedings in respect of the agreement which are pending before the Restrictive Practices Court shall be discontinued.

(4) Where an agreement which has been exempt from registration under the 1976 Act by virtue of paragraph (2) above ceases to be exempt in consequence of the cancellation of the registration of a scheme under regulation 17, the time within which particulars of the agreement are to be furnished in accordance with section 24 of and Schedule 2 to the 1976 Act shall be the period of one month beginning with the day on which the agreement ceased to be exempt from registration under the 1976 Act.

Agreements to which the 1976 Act applies

33. - (1) In this regulation, "the Court", "information provision" and "restriction" have the same meanings as they have in the 1976 Act.

(2) This regulation applies to an agreement to which the 1976 Act applies -

(a) at least one of the parties to which is an operator of a registered scheme; and

(b) which is made for the purposes of that scheme.

(3) If it appears to the Secretary of State -

(a) that the restrictions in an agreement to which this regulation applies do not have and are not intended or likely to have the effect of restricting, distorting or preventing competition; or

(b) in a case where all or any of those restrictions have, or are intended or likely to have, that effect, that the effect is not greater than is necessary for achieving the environmental or economic benefits mentioned in section 93(6) of the Act;

he may give a direction to the Director requiring him not to make an application to the Court under Part 1 of the 1976 Act in respect of the agreement.

(4) If it appears to the Secretary of State that one or more (but not all) of the restrictions in an agreement to which this regulation applies -

(a) do not have, and are not intended or likely to have, the effect mentioned in paragraph (3) above; or

(b) if they have, or are intended or likely to have, that effect, that the effect is not greater than is necessary for achieving the benefits mentioned in paragraph (3) above,

he may make a declaration to that effect and give notice of it to the Director and to the Court.

(5) The Court shall not in any proceedings begun by an application made after notice has been given to it of a declaration under this regulation make any finding or exercise any power under Part 1 of the 1976 Act in relation to a restriction in respect of which the declaration has effect.

(6) Before making an application to the Court under Part 1 of the 1976 Act in respect of an agreement to which this regulation applies, the Director shall -

(a) notify the Secretary of State of his intention to do so and give him particulars of the agreement together with such other information as he considers will assist the Secretary of State in deciding whether to exercise his powers under this regulation, or as the Secretary of State may request; and

(b) advise the Secretary of State as to his opinion -

(i) of the effects or likely effects on competition of the restrictions in the agreement, and

(ii) as to whether any such effects are necessary for achieving the benefits mentioned in paragraph (3) above.

(7) The Director shall not make an application to the Court under Part 1 of the 1976 Act in respect of an agreement to which this regulation applies unless the Secretary of State has either notified him that he does not intend to give a direction or make a declaration under this regulation or has given him notice of a declaration in respect of it.

(8) The Secretary of State may -

(a) revoke a direction or declaration under this regulation;

(b) vary any such declaration; or

(c) give a direction or make a declaration notwithstanding a previous notification to the Director that he did not intend to give a direction or make a declaration,

if he is satisfied that there has been a material change of circumstances since the direction, declaration or notification was given.

(9) The Secretary of State shall give notice to the Director of the revocation of a direction and to the Director and the Court of the revocation or variation of a declaration; and no such variation shall have effect so as to restrict the powers of the Court in any proceedings begun by an application already made by the Director.

(10) A direction or declaration under this regulation shall cease to have effect if the agreement in question ceases to be an agreement to which this regulation applies.

(11) This regulation applies to information provisions as it applies to restrictions

PART X

OFFENCES

Offences and penalties

34. - (1) Subject to paragraph 5 of Schedule 8, a producer who contravenes a requirement of -

(a) subject to paragraph (2) below, regulation 3(5)(a);

(b) regulation 3(5)(b)(i); or

(c) regulation 3(5)(b)(ii),

is guilty of an offence.

(2) A producer is not guilty of an offence under paragraph (1)(a) above in respect of any period during which, under regulation 6(6), he is treated as having been registered.

(3) A person who -

(a) furnishes a certificate of compliance under regulation 23 and either -

(i) knows the information provided in or in connection with the certificate to be false or misleading in a material particular, or

(ii) furnishes such information recklessly and it is false or misleading in a material particular;

(b) fails without reasonable excuse to furnish any information required by the Director in accordance with regulation 31(12); or

(c) furnishes any information to the appropriate Agency in connection with its functions under these Regulations, or to the Secretary of State or to the Director in connection with the functions of either of them under Part VIII of these Regulations, and either -

(i) knows the information to be false or misleading in a material particular, or

(ii) furnishes such information recklessly and it is false or misleading in a material particular,

is guilty of an offence.

(4) A person who intentionally delays or obstructs a person authorised by an appropriate Agency in the exercise of powers referred to in regulation 28 is guilty of an offence.

(5) A person guilty of an offence under any of paragraphs (1) to (4) above shall be liable -

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

John Gummer

Secretary of State for the Environment

5th March 1997

Lindsay

Parliamentary Under-Secretary of State, Scottish Office

5th March 1997

SCHEDULES

SCHEDULE 1

Regulation 3(2) and (3)

PRODUCERS

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Relevant function performed in Years 1 and 2</i>	<i>Subject matter of supply in Year 1</i>	<i>Class of supply in Year 1</i>	<i>Class of producer in Year 2</i>
Manufacturer	Packaging materials	A B or C	Manufacturer
Convertor, subject to paragraph	Packaging or	A B or C	Convertor

1(2)	packaging materials		
Packer/filler	Packaging or packaging materials	A B or C	Packer/filler
Importer	Packaging or packaging materials	A B or C	Importer
Wholesaler	Packaging	D	Wholesaler
Seller	Packaging	E	Seller
Manufacturer, Convertor, Packer/filler, Wholesaler, or Importer	Transit packaging	B or F	Secondary provider

1. - (1) For the purposes of Column 1 in the above Table -

(a) "relevant function" means the performance by a person of the functions of one of the following -

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

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

(b) "convertor" means a person who uses or modifies packaging materials in the production or formation packaging;

(c) "importer" means a person who imports packaging or packaging materials into the United Kingdom;

(d) "manufacturer" means a person who manufactures raw materials for packaging;

(e) "packer/filler" means a person who puts goods into packaging;

(f) "seller" means any person who supplies packaging to a user or a consumer of that packaging, whether or not the filling has taken place at the time of the supply;

(g) "wholesaler" means a person who supplies packaging to a seller but who does not carry out the functions of a packer/filler in relation to that packaging;

(h) "Year 1" means the preceding year; and

(j) "Year 2" means the relevant year.

(2) Where a person performs the functions of a convertor and a packer/filler at the same time, and as part of the same packing/filling process, and in relation to the same packaging, as regards supplies of packaging or packaging materials made to or by him in connection with those functions, or that process, he is treated for the purposes of these Regulations as a producer of the class of packer/filler only.

(3) For the purposes of this Schedule a person acts "in the course of business" if he acts in the ordinary course of conduct of a trade, occupation or profession.

2. For the purposes of Column 3 of the above Table, and Schedule 2 -

(a) "Class A supply" means a deemed supply;

(b) "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;

(c) "Class C supply" means a supply, other than a Class F supply, to a person for the application by that person of a relevant function other than that of an importer;

(d) "Class D supply" means a supply to a seller who, at the time of the supply, was not a producer;

(e) "Class E supply" means a supply, other than a supply of transit packaging in respect of which a Class F supply has already been made, to a user or consumer other than a person who performed a relevant function;

(f) "Class F supply" means a supply -

(i) to a person who performed a relevant function,

(ii) to a user or consumer, or

(iii) to a person who acts as a distributor,

using the transit packaging supplied to perform the functions of a packer/filler and seller; and

(g) "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 (including trading stamps within the meaning of section 10 of the Trading Stamps Act 1964[1]) other than money,
- (iii) providing in or in connection with the performance of any statutory function, or
- (iv) giving as a prize or otherwise making a gift,

and "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.

3. A person satisfies the threshold tests if -

(a) his turnover -

- (i) where the obligation year is 1997, 1998 or 1999, in the last financial year in respect of which audited accounts are available before the relevant date, was more than £5,000,000, and
- (ii) where the obligation year is the year 2000 or any subsequent year, in the last financial year in respect of which audited accounts are available before the relevant date, was more than £1,000,000; and

(b) in the calculation year the person handled in aggregate more than 50 tonnes of packaging or packaging materials.

4. - (1) For the purposes of paragraph 3 above -

(a) "financial year" in relation to a person -

- (i) where the person is a company is determined as provided in section 223(1) to (3) of the Companies Act 1985[2], and

(ii) in any other case has the meaning given in section 223(4) of the Companies Act 1985, but as if the reference there to an undertaking were a reference to that person;

(b) "obligation year" means a year in respect of which it is being considered whether a person is a producer and "calculation year" means a year immediately before an obligation year;

(c) "relevant date" means -

(i) subject to sub-paragraph (iii) below, where the obligation year is 1997, 31st August 1997,

(ii) subject to sub-paragraph (iii) below, where the obligation year is 1998 or any subsequent year, 1st April in the year, and

(iii) where an application for registration is made in a circumstance set out in regulation 6(3), or as required by paragraph 11 of Schedule 9, the date of the application;

(d) a persons "turnover" means his turnover as defined in section 262(1) of the Companies Act 1985[3] but as if the references to a company were references to that person; and

(e) the references to audited accounts being available are, where the person is a company, the annual accounts delivered to the registrar under section 242 of the Companies Act 1985[4].

(2) For the purposes of paragraph 3 above, and Schedule 2, the amount of packaging or packaging materials handled is the amount in respect of which the producer made a supply referred to in Column 3 of the Table, other than a Class A supply, calculated in tonnes to the nearest tonne by -

(a) including packaging or packaging materials so supplied which were imported into the United Kingdom by the producer, either himself or through an agent acting on his behalf; and

(b) excluding -

(i) any packaging or packaging materials so supplied which were exported from the United Kingdom by the producer, either himself or through an agent acting on his behalf, or which to the producer's reasonable knowledge were otherwise exported from the United Kingdom,

(ii) production residues, and

(iii) reused packaging.

Notes to First Schedule:

Notes:

[1] 1964 c.71.back

[2] 1985 c.6; section 223 was inserted by section 3 of the Companies Act 1989 c.40.back

[3] Section 262 was inserted by section 22 of the Companies Act 1989.back

[4] Section 242 was inserted by section 11 of the Companies Act 1989.back

SCHEDULE 2

Regulation 3(5)(b)(i)

RECOVERY AND RECYCLING OBLIGATIONS

1. A producer's obligations to recover and recycle packaging waste in a relevant year are, in relation to each class of producer to which he belongs -

(a) to recover an amount of packaging waste as provided in paragraph 2(1) below;

(b) to recover by recycling a proportion of that packaging waste, as provided in paragraph 2(2) below; and

(c) as part of the obligation to recover packaging waste as provided in sub-paragraph (a) above, to recover by recycling an amount of packaging materials which is packaging waste, as provided in paragraph 2(3) below,

and are calculated by aggregating his obligations in relation to each class of producer to which he belongs in respect of that year.

2. - (1) The amount of packaging waste to be recovered by a producer in relation to a class of producer to which he belongs is calculated as follows -

$$P \times C \times X = Z$$

where -

P is the amount in tonnes to the nearest tonne of packaging and packaging materials handled by the producer in the preceding year,

C is the percentage prescribed in paragraph 3 below in relation to the class of producer,

X is the percentage prescribed in paragraph 4 below as the recovery target for the relevant year, and

Z is the amount by tonnage of packaging waste which is to be recovered within the relevant year.

(2) The proportion of the packaging waste referred to in sub-paragraph (1) above which is to be recovered by recycling is, for the year 2001 and subsequent years, in relation to a class of producer to which the producer belongs, not less than 50% of the amount by tonnage of packaging waste represented by "Z" in sub-paragraph (1) above.

(3) The obligations of a producer to recover by recycling an amount of packaging materials which is packaging waste in relation to a class of producer to which he belongs are calculated in relation to each packaging material which he handled in the preceding year, as follows -

$$M \times C \times Y = Q$$

where -

M is the amount in tonnes to the nearest tonne of the packaging material handled by the producer in the preceding year,

C is the percentage prescribed in paragraph 3 below in relation to the class of producer,
 Y is the percentage prescribed in paragraph 5 below as the recycling target for the relevant year, and
 Q is the amount by tonnage of packaging waste of that packaging material which is to be recycled in the relevant year.

3. - (1) The following percentages are prescribed as the percentages for the following classes of producer -

(a) manufacturer	6%;
(b) convertor	11%;
(c) packer/filler	36%;
(d) seller or wholesaler	47%; and
(e) secondary provider	83%.

(2) The following percentages are prescribed for the class of importer -

(a) the manufacturer's percentage, that is 6% -

(i) on Class A supplies, where the importer also carries out the functions of a convertor,

(ii) on Class B supplies, where the relevant packaging or packaging materials are supplied, by the distributor who receives them, to a convertor, and

(iii) on Class C supplies to a convertor;

(b) the manufacturer's and the convertor's percentages aggregated, that is $6\% + 11\% = 17\%$ -

(i) on Class A supplies, where the importer also carries out the functions of a packer/filler,

(ii) on Class B supplies, where the relevant packaging or packaging materials are supplied, by the distributor who receives them, to a packer/filler, and

(iii) on Class C supplies to a packer/filler;

(c) the manufacturer's, the convertor's and the packer/filler's percentages aggregated, that is $6\% + 11\% + 36\% = 53\%$ -

(i) on Class A supplies where the importer also carries out the functions of a seller,

(ii) on Class B supplies where the relevant packaging or packaging materials are supplied, by the distributor who receives them, to a seller, and

(iii) on Class C supplies to a seller; and

(d) the manufacturer's, the convertor's, the packer/filler's and the seller's percentages aggregated, that is $6\% + 11\% + 36\% + 47\% = 100\%$ -

(i) on Class F supplies, and

(ii) on Class A supplies, where the importer is also the final user or consumer.

4. The following is prescribed as the recovery target "X" -

(a) for the years 1998 and 1999, 38%;

(b) for the year 2000, 43%; and

(c) for any subsequent year, 52%.

5. The following is prescribed as the recycling target "Y" -

(a) for the years 1998 and 1999, 7%;

(b) for the year 2000, 11%; and

(c) for any subsequent year, 16%.

6. - (1) In this Schedule -

(a) for the purposes of paragraph 2(1) above and for the years 1998 and 1999 "packaging materials" means any of the following -

(i) glass,

(ii) aluminium,

(iii) steel,

(iv) paper/fibreboard, or

(v) plastic;

(b) for the purposes of paragraph 2(1) above, and for the year 2000 and subsequent years, "packaging materials" means any of the materials referred to in sub-paragraph (a) above together with wood and other packaging materials; and

(c) for the purposes of paragraph 2(3) above "packaging materials" means any of the materials referred to in sub-paragraph (a) above.

(2) For the purposes of sub-paragraph (1) above, packaging materials composed of a combination of the materials there referred to are to be treated as made of the material which is predominant by weight

SCHEDULE 3

PART I

Regulation 2

DEFINITION OF WASTE - ARTICLE 1 OF AND ANNEX 1 TO THE WASTE DIRECTIVE

Article 1

1. "Waste" shall mean any substance or object in the categories set out in Annex 1 which the holder discards or intends or is required to discard.

Annex 1

Categories of waste

Q1	production or consumption residues not otherwise specified below;
Q2	off-specification products;
Q3	products whose date for appropriate use has expired;
Q4	materials spilled, lost or having undergone other mishap, including any materials, equipment, etc., contaminated as a result of the mishap;
Q5	materials contaminated or soiled as a result of planned actions (for example, residues from cleaning operations, packing materials, containers etc.);
Q6	unusable parts (for example, reject batteries, exhausted catalysts etc.);
Q7	substances which no longer perform satisfactorily (for example, contaminated acids, contaminated solvents, exhausted tempering salts etc.);
Q8	residues of industrial processes (for example, slags, still bottoms etc.);
Q9	residues from pollution abatement processes (for example, scrubber sludges,

	baghouse dusts, spent filters etc.);
Q10	machining/finishing residues (for example, lathe turnings, mill scales etc.);
Q11	residues from raw materials extraction and processing (for example, mining residues, oil field slops etc.);
Q12	adulterated materials (for example, oils contaminated with polychlorinated biphenyls etc.);
Q13	any materials, substances or products whose use has been banned by law;
Q14	products for which the holder has no further use (for example, agricultural, household, office, commercial and shop discards etc.);
Q15	contaminated materials, substances or products resulting from remedial action with respect to land; and
Q16	any materials, substances or products which are not contained in the above categories.

PART II

Regulation 2

DEFINITION OF RECOVERY - ANNEX IIB TO THE WASTE DIRECTIVE

2. This Part is intended to list recovery operations as they are carried out in practice; in accordance with article 4 of the Waste Directive, waste must be recovered without endangering human health and without the use of processes or methods likely to harm the environment -

R1	solvent reclamation/regeneration;
R2	recycling/reclamation of organic substances which are not used as solvents;
R3	recycling/reclamation of metals and metal compounds;
R4	recycling/reclamation of other inorganic materials;
R5	regeneration of acids or bases;
R6	recovery of components used for pollution abatements;
R7	recovery of components from catalysts;

R8	oil re-finishing or other re-uses of oil;
R9	use principally as a fuel or other means to generate energy;
R10	spreading on land resulting in benefit to agriculture or ecological improvement, including composting and other biological transformation processes, except in the case of waste excluded under article 2(1)(b)(iii), of the Waste Directive;
R11	use of wastes obtained from any of the operations numbered R1 - R10;
R12	exchange of wastes for submission to any of the operations numbered R1 - R11; and
R13	storage of materials intended for submission to any operation in this Part, excluding temporary storage, pending collection, on the site where it is produced.

PART III

Regulation 4(4)

DEFINITION OF SPECIAL PRODUCERS

3. A special producer is a producer who in the preceding year handled -

(a) primary packaging, that is to say packaging within part (a) of the definition of packaging in regulation 2, any of which, in his reasonable opinion, when discarded was -

(i) likely to be special waste as defined in regulation 2 of the Special Waste Regulations 1996[1]; or

(ii) likely to have been used to contain or used in connection with the containment of such waste; or

(b) packaging which is a package within the meaning given in regulation 2 of the Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations 1996[2] and which in his reasonable opinion was likely to be subject to the requirements of regulations 8 to 10 of those Regulations (particulars to be shown on packages containing dangerous goods) other than any package referred to in regulation 8(5) of those Regulations.

Notes to Part III:

[1] S.I. 1996/No. 972. Regulation 2 was substituted by S.I. 1996/No. 2019.back

[2] S.I. 1996/No. 2092.back

PART IV

Regulation 4(4)

SPECIAL PRODUCERS - OBLIGATIONS

4. For the purposes of the provision of further information by a special producer under regulations 6(4), or (8), if applicable, and 8, such information shall only be in respect of packaging or packaging materials other than packaging referred to in Part III of this Schedule.

5. For the purposes of the calculation of the recovery and recycling obligations of a special producer, Schedule 2 to these Regulations shall apply and item "P" in that Schedule shall be the amount by tonnage of packaging and packaging materials handled by the producer in the preceding year other than packaging referred to in Part III of this Schedule.

PART V

Regulation 4(4)

SPECIAL PRODUCERS - RECORDS AND RETURNS

6. A special producer shall, in relation to any relevant year -

(a) make records and returns as required under regulation 22 in relation to the packaging and packaging materials referred to in paragraph 4 above, and in relation to such packaging and packaging materials when it becomes waste; and

(b) in addition to any records and returns he is required to make under regulation 22 maintain, and retain for at least 4 years after the record is made, records of the information referred to in paragraph 7 below in respect of each relevant year, and shall make a return to the appropriate Agency of that information on or before 31st January in the year immediately following the relevant year.

7. The information is -

(a) the amount in tonnes to the nearest tonne of packaging handled by the producer in the preceding year;

(b) the amount in tonnes to the nearest tonne of the packaging referred to in sub-paragraph (a) above which was packaging referred to in Part III of this Schedule; and

(c) any steps taken by the producer to promote or increase the recovery of the packaging referred to in sub-paragraph (b) above when it becomes waste.

8. In relation to a special producer the reference in regulation 7(c) to regulation 22 shall be read as a reference to regulation 22 and this Part of this Schedule.

SCHEDULE 4
INFORMATION

PART I

Regulation 6(4)

Information to be contained in application for producer registration

1. The address and telephone number of the registered office of the producer or, if not a company, the principal place of business of the producer.
2. The business name of the producer if different from that referred to in paragraph 1 above.
3. The address for service of notices on the producer if different from that referred to in paragraph 1 above.

PART II

Regulations 6, 8, 12 and 14

Producer and Scheme Registration

Further Information

FOR PROVISION OF FURTHER INFORMATION BY OBLIGATED PRODUCERS AND
ON BEHALF OF SCHEMES AS REQUIRED UNDER REGULATIONS 6, 8, 12 AND 14
OF THE PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE)
REGULATIONS 1997

EA/SEPA reference number:

Please complete in black ink. 'Producers' are obligated businesses, that is companies, partnerships, sole traders etc.

As indicated below parts of the form are optional but will assist in any future review of your sector's obligations.

Please supply DATA IN METRIC TONNES and for PREVIOUS YEAR

SECTION 1

Name of _____
Business:

Address of
registered
office or
principal
place of
business:

Post Code:

Telephone
number:

Fax
number:

Name and
position of
Contact:

Where a
group
registration,
name of
group to
which
companies
belong, if
any:

Tick main activity performed with regard to packaging:

Manufacturing of packaging raw materials	<input type="checkbox"/>
Conversion	<input type="checkbox"/>
Packing/filling	<input type="checkbox"/>
Wholesaling*	<input type="checkbox"/>
Selling	<input type="checkbox"/>

Importing	
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* Wholesalers who perform no other activity are obligated with effect from 1 January 2000 only.

SECTION 2

1. In accordance with regulations 6(7) and 12(7) you are required in the initial years to give reasonable estimates in tonnes per annum and in subsequent years to give information which is as accurate as reasonably possible in terms of the activities and materials set out in the following tables. You should attach a short description of how the data was obtained (Section 4). Tables 1-5 are (where applicable) required under Regulations 6 and 12. Tables 6-8 are optional but will assist in any future review of your sector's obligations.

2. Schedule 1 paragraph 2(f) and Schedule 2 paragraph 3(1)(e) apply an obligation of 83% to transit or "secondary provider" packaging. This is the sum of the packer/filler and seller obligations on the transit packaging you use to pack and sell goods to customers (36% + 47% = 83%). Transit packaging should therefore be included in Tables 1 and 2a according to the activities performed on it.

3. Imports carry a cumulative or "rolled up" obligation depending on the stage at which they are imported (see Schedules 1 and 2).

4. Composite packaging should be included according to the predominant material by total weight.

5. Where an entry amounts to less than 1 tonne, it does not need to be recorded separately but should be aggregated with the principal packaging material handled by the business.

6. In calculating tonnages of packaging handled you may use your own information or any ready reckoner or guidance published by or in association with the Environment Agencies.

Table 1: Packaging/Packaging Materials Supplied

	<i>Paper</i>	<i>Glass</i>	<i>Metals</i>		<i>Plastic</i>	<i>Wood</i>	<i>Other</i>
			<i>Al</i>	<i>Steel</i>			
Raw material manufacture							
Conversion							
Pack/filling							
Selling							

Conversion							
Pack/filling							
Selling							
Transit packaging round imports							

As of 1 January 1999 and in subsequent years (see below for 1997 and 1998), you will be required to calculate and declare your obligation to recover and recycle, and fill in Table 4 below. ITS SHOWS YOUR OBLIGATION. IT IS FOR THE CURRENT YEAR AND IS BASED ON DATA FROM THE PREVIOUS YEAR.

Summary Table 4: Statement of Obligations

<i>Recovery Obligation</i>		
Of which, Recycling Obligation for	paper	
	glass	
	Metals	Aluminium
		Steel
	plastic	

SECTION 3

Table 5 Optional: Re-Use

You do not have to answer this question, but if you can, please note below the tonnage of reused packaging excluded by material.

Paper	
Glass	
Metals	Aluminium
	Steel
Plastics	
Wood from 1.1.2000	

Other from 1.1.2000	
---------------------	--

Table 6 Optional: Composites

You do not have to answer this question, but if you can, please note below the tonnage of packaging included in your obligated tonnage that was composite packaging, for each material.

Paper		
Glass		
Metals	Aluminium	
	Steel	
Plastics		
Wood from 1.1.2000		
Other from 1.1.2000		

Table 7 Optional IN 1997 AND 1998 ONLY: please provide an assessment of your levels of recovery and recycling (by material) of packaging waste in years 1996 and 1997 respectively:

Recovery		
Recycling	paper	
	glass	
	Metals	Aluminium
		Steel
	plastic	

SECTION 4

Basis of Assessment

How did you arrive at this assessment? Data from your own systems? Data from a Materials

Organisation, from a Trade Association or Guidance from the Environment Agencies? Data from your suppliers? Other source? - please specify, using a separate sheet if necessary.

**Please return completed form by [] to the Agency with which you are registering.
You must retain a copy for yourself.**

Environment Agency
Hampton House
20 Albert Embankment
London SE1 7TJ
Fax: 0171 840 6147

Scottish Environment Protection Agency
Erskine Court
The Castle Business Park
Stirling FK9 4TR
Fax: 01786 446885

PART III

Regulations 12(3)(b) and 31(2)

Information to be included in application for registration of a scheme or competition scrutiny

4. The name of the scheme.
5. The name of the operator, and where the operator is a partnership whose principal place of business is in Scotland, the names of all the partners.
6. The address and telephone number of the registered office of the operator or, if not a company, the principal place of business of the operator, and, if more than one, all the operators.
7. The address for service of notices if different from that referred to in paragraph 6 above.
8. The names and addresses of the registered offices, or, if not companies, the principal places of business, of the scheme's members.
9. Full particulars of the agreement for the constitution of the scheme including any rules or regulations to be observed by its members.

PART IV

Regulation 12(3)(d) and (e)

Statement of the scheme's policies and scheme's operational plan

10. The matters to be contained in the statement with regard to the scheme's policies referred to in regulation 12(3)(d) are -

- (a) the steps intended to be taken through the scheme to increase the use of recycled packaging waste in the manufacture of packaging, packaging materials or other products or materials supplied by its members; and
- (b) the principal methods by which packaging waste is to be recovered and recycled through the scheme, together with information about the steps the user or consumer may take to assist the scheme in applying these methods.

11. The matters to be contained in the scheme's operational plan referred to in regulation 12(3)(e) are matters which demonstrate -

- (a) that sufficient financial resources and technical expertise will be available to enable the recovery and recycling obligations of the scheme's members referred to in regulation 4(1)(b) to be discharged through the scheme;
- (b) that the arrangements for recovery and recycling through a scheme take account of any statement which, where the scheme is to be registered with the Agency, contains the Secretary of State's policies in relation to the recovery and disposal of waste in England and Wales, and which is made under section 44A[1] of the 1990 Act, and, where the scheme is to be registered with SEPA, contains that Agency's policies in relation to the recovery and disposal of waste in Scotland, and which is made under section 44B of the 1990 Act;
- (c) that there are arrangements in place to enable the operator to supply further information as required under regulation 14;
- (d) how the recovery and recycling obligations of its members referred to in regulation 4(1)(b) will be performed as regards each of the packaging materials relevant to those obligations including -
 - (i) the names and addresses of the reprocessors it is intended to use,
 - (ii) the names of any waste collection or disposal authorities from whom packaging waste is intended to be obtained,
 - (iii) the proportions in which the packaging waste which is to be recovered and recycled is to be obtained from the waste of a producer who is a member of the scheme, other industrial or commercial waste, household waste or other waste,
 - (iv) the amounts to the nearest tonne of packaging waste it is proposed to recover in the three years immediately following registration, and
 - (v) the amounts to the nearest tonne of each such packaging material which it is proposed to recycle in the three years immediately following registration; and

(e) the steps it is proposed to take to recover and recycle any of the packaging materials relevant to the recovery and recycling obligations of the scheme's members in order not to adversely affect the interests of any member of the scheme, or any other producer, whose recovery and recycling obligations are predominantly in relation to another such packaging material.

12. - (1) For the purposes of paragraph 11(d)(ii) above "waste collection authority" and "waste disposal authority" shall have the meanings given in section 30 of the 1990 Act.

(2) For the purposes of paragraph 11(d)(iii) above "household waste", "industrial waste" and "commercial waste" shall have the same meanings as in section 75 of the 1990 Act.

Notes to Schedule 4:

[1] Sections 44A and 44B were inserted by section 92 of the Environment Act 1995. At the date of making these Regulations no such policies have been prepared.

SCHEDULE 5

Regulation 19

PROCEDURE ON APPEALS

1. - (1) An operator of a scheme who wishes to appeal to the Secretary of State under regulation 18 shall do so by notice in writing given or sent to the Secretary of State.

(2) The notice shall be accompanied by -

(a) a statement of the grounds of appeal;

(b) where the appeal relates to refusal of registration under regulation 16, a copy of the appellant's application and any supporting documents;

(c) where the appeal relates to cancellation of registration under regulation 17(1), a copy of the notification of the decision and any supporting documents;

(d) a copy of any correspondence relevant to the appeal;

(e) a copy of any other document relevant to the appeal; and

(f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be determined on the basis of written representations.

(3) The appellant shall serve a copy of his notice of appeal on the appropriate Agency together with copies of the documents mentioned in sub-paragraph (2) above.

2. - (1) Subject to sub-paragraph (2) below, notice of appeal shall be given before the

expiry of the period of 6 months beginning with the date of the decision which is the subject of the appeal.

(2) The Secretary of State may at any time allow notice of an appeal to be given after the expiry of the period mentioned in sub-paragraph (1) above.

3. Where under regulation 19(2) the appeal is by way of a hearing, the person hearing the appeal shall, unless he has been appointed to determine an appeal under regulation 19(1)(a), make a written report to the Secretary of State which shall include his conclusions and recommendations or his reasons for not making any recommendations.

4. - (1) The Secretary of State or other person determining an appeal shall notify the appellant in writing of his decision and of his reasons.

(2) If the Secretary of State determines an appeal after a hearing under regulation 19(2) he shall provide the appellant with a copy of any report made to him under paragraph 3 above.

(3) The Secretary of State or other person determining an appeal shall, at the same time as notifying the appellant of his decision, send the appropriate Agency a copy of any document sent to the appellant under this paragraph.

SCHEDULE 6

Regulation 23

INFORMATION IN CERTIFICATE OF COMPLIANCE

The information to be contained in a certificate of compliance is as follows -

- (a) the name and address of the approved person who is issuing the certificate;
- (b) the date of the certificate;
- (c) the producer in respect of whom the approved person is issuing the certificate ("the relevant producer");
- (d) the initial and further information provided by the relevant producer to the appropriate Agency in accordance with regulations 6(4)(b), 6(4)(c) or (8), as the case may be, and regulation 8, together with any changes made to such information and provided to the appropriate Agency in accordance with the undertakings referred to in regulations 7(a)(iii) and (iv);
- (e) a statement by the approved person that the certificate has been issued in accordance with any guidance issued by the appropriate Agency under section 94(4) of the Act; and

(f) certification by the approved person as to whether the relevant producer has complied with his recovery and recycling obligations.

SCHEDULE 7

Regulation 26

PUBLIC REGISTER

Information regarding producer registration

1. The information to be contained in the register shall be -

(a) for the years 1997 and 1998, the name and address of the registered office or principal place of business of the producer registered; and

(b) for the year 1999 and subsequent years, the information referred to in sub-paragraph (a) above together with a statement in relation to each producer registered and each relevant year as to whether a certificate of compliance has been furnished.

Information regarding scheme registration

2. The information to be contained in the register shall be -

(a) for the years 1997 and 1998 -

(i) the name of the scheme,

(ii) the name and address of the registered office or principal place of business of each operator of the scheme, and

(iii) the name and address of the registered office or principal place of business of the members of the scheme; and

(b) for the year and subsequent years, the information referred to in sub-paragraph (a) above together with a statement in relation to each scheme member and each year as to whether the scheme has discharged the recovery and recycling obligations of its members referred to in regulation 4(1)(b).

SCHEDULE 8

Regulation 29

GROUPS OF COMPANIES

1. This Schedule applies in relation to a relevant year -

(a) where a holding company and one or more of its subsidiaries, or two or more subsidiary companies of the same holding company (in either case referred to in this Schedule and Schedule 9 as "a group of companies") each satisfies the provisions of Columns 1 to 3 of the Table in Schedule 1 in relation to a class or classes of producer; and

(b) where the aggregate of the turnovers, and the aggregate of the amounts of packaging or packaging materials handled by each such company, are sufficient to satisfy the threshold tests as provided by paragraph 3 of Schedule 1.

2. Subject to regulation 4, in respect of a year each company referred to in paragraph 1 above is a producer of a class specified in an entry in Column 4 of the Table set out in Schedule 1 if -

(a) in that year and the preceding year he performs the relevant functions specified in Column 1 of that Table in relation to that entry; and

(b) in the preceding year he made supplies of the materials or products specified in Column 2 of that Table in relation to that entry of a class specified in Column 3 of that Table in relation to that entry;

and the other provisions of that Schedule, other than paragraph 3, shall also have effect for the purposes of determining to which class of producer such a company belongs.

3. For the purposes of this Schedule and Schedule 9 "subsidiary" and "holding company" have the same meanings as they have in section 736(1) of the Companies Act 1985[1].

4. Subject to regulation 4, companies who are producers and are in a group of companies shall comply with their producer registration obligations for a relevant year by either -

(a) being registered for that year with the appropriate Agency as required by regulation 5, in which case each company so registered has its own recovery, recycling and certifying obligations; or

(b) the holding company and one or more of the subsidiaries being registered together for that year with the appropriate Agency, (in this Schedule and Schedule 9 referred to as a "group registration") in which case paragraphs 5 and 6 below shall apply.

5. Where there is a group registration -

(a) the subsidiary companies in the group registration are exempt from complying with their producer responsibility obligations for the relevant year;

(b) the holding company has a producer registration obligation for the relevant year which is an obligation to make the group registration and for this purpose regulations 5 to 11, and Parts I and II of Schedule 4, shall be read as if -

(i) references to the applicant or the producer were references to the holding company,

(ii) references to information to be provided regarding the producer were to

information to be provided regarding each company in the group registration, and

(iii) the references in regulations 6(4)(d) and 9 to a fee for producer registration were read as references to a fee for group registration;

(c) the holding company has recovery and recycling obligations for the relevant year which are the aggregate of its own obligations in respect of that year, if any, and the obligations which the subsidiary companies in the group registration would have had but for the group registration;

(d) the holding company shall furnish records and returns and provide a certificate of compliance, and references in regulation 23 and Schedule 6 -

(i) to a producer shall be read as references to the holding company, and

(ii) to information shall be read as references to information regarding each company in the group registration; and

(e) regulation 34(1) (offences) shall not apply to the companies in the group and paragraphs 6 and 7 below shall apply instead.

6. Where in accordance with this Schedule there is a group registration the holding company is guilty of an offence if -

(a) it does not comply with its recovery and recycling obligations referred to in paragraph 5(c) above; or

(b) it does not furnish a certificate of compliance in accordance with paragraph 5(d) above.

7. A person guilty of an offence under paragraph 6 above shall be liable -

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

8. This Schedule is subject to the provisions of Schedule 9.

SCHEDULE 9

Regulation 30

MID-YEAR CHANGES

PART I

SCHEME MEMBERSHIP

1. Subject to paragraph 4 below, where a person who is a producer in respect of a year becomes a member of a registered scheme during that year, the recovery and recycling obligations of the producer for that year, referred to in regulation 4(1)(b), shall be performed through the scheme.

2. Subject to paragraph 3 below, where a person who is a producer in respect of a year ceases to be a member of a registered scheme during that year, he shall comply with his recovery and recycling obligations for that year, calculated as provided in regulation 3 and Schedule 2.

3. Where a person who is a producer in respect of a year ceases to be a member of a registered scheme, because the registration of the scheme has been cancelled in accordance with regulation 17, during that year he shall comply with a proportion of his recovery and recycling obligations for the year, calculated as follows -

$$\frac{D}{E}$$

where -

D is the number of days in the relevant year from the date when such membership ceased, and

E is the number of days in the relevant year.

4. Where a person who is a producer in respect of a year ceases to be a member of one registered scheme ("the first scheme") and becomes a member of another registered scheme ("the second scheme") during that year, the first scheme shall not be required to perform any of the producer's recovery and recycling obligations, referred to in regulation 4(1)(b), and all such obligations shall be performed through the second scheme.

PART II

GROUP MEMBERSHIP

5. This Part applies where -

(a) a company joins a group of companies and becomes a company to which paragraph 1 of Schedule 8 applies; or

(b) a holding company or subsidiary company to which paragraph 1 of Schedule 8 applies ceases to belong to a group of companies.

6. Where paragraph 5(a) above applies the company shall either -

(a) be registered separately with the appropriate Agency as required by regulation 5; or

(b) be registered with the appropriate Agency as part of a group registration under Schedule 8 and for the purposes of this paragraph -

(i) such registration is effected upon notice being given by the holding company to the appropriate Agency of the change in the group registration, and

(ii) where prior to joining the group of companies the company was registered with an appropriate Agency, the Agency shall cancel the company's registration on receipt of that notice and regulations 11(2) and (3) shall apply to that cancellation.

7. Where -

(a) paragraph 5(a) above applies;

(b) in relation to the obligation year the company itself satisfies the threshold tests; and

(c) the company is registered as part of a group registration;

the holding company shall be required to comply with the requirements of the company's recovery and recycling obligations for the year in which it joins the group.

8. Where -

(a) paragraph 5(a) above applies;

(b) in relation to the obligation year the company itself satisfies the threshold tests; and

(c) the company is registered separately with the appropriate Agency;

the company shall comply with its recovery and recycling obligations for the year in which it joins the group.

9. Where -

(a) paragraph 5(a) above applies;

(b) in relation to the obligation year the company itself does not satisfy the threshold tests; and

(c) the company is part of a group registration;

the holding company shall comply with a proportion of the requirements of the company's recovery and recycling obligations for the year in which it joins the group, such proportion being calculated as provided in paragraph 17(1) below.

10. Where -

(a) paragraph 5(a) above applies;

(b) in relation to the obligation year the company itself does not satisfy the threshold tests; and

(c) the company is registered separately with the appropriate Agency;

the company shall comply with a proportion of its recovery and recycling obligations for the year in which it joins the group, such proportion being calculated as provided in paragraph 17(1) below.

11. Where -

(a) paragraph 5(b) above applies; and

(b) in relation to the obligation year the company itself satisfies the threshold tests;

it shall register with the appropriate Agency as required by regulation 5 within 28 days of ceasing to be a member of a group and regulations 6 to 11 shall apply as if this were an occurrence specified in regulation 6(3).

12. Where -

(a) paragraph 5(b) above applies;

(b) in relation to the obligation year the company itself satisfies the threshold tests; and

(c) the company was registered as part of a group registration;

the following shall apply -

(i) the holding company shall comply with a proportion, calculated as provided in paragraph 17(1) below, of the requirements of the company's recovery and recycling obligations for the year in which it ceases to be a member of the group, and

(ii) the company shall comply with a proportion of its recovery and recycling obligations for that year, such proportion being calculated as provided in paragraph 17(1) below, except that for this purpose G is the number of days in the relevant year during which the company was not a member of the group.

13. Where -

(a) paragraph 5(b) above applies;

(b) in relation to the obligation year the company itself satisfies the threshold tests; and

(c) the company is registered separately with the appropriate Agency;

the company shall comply with its recovery and recycling obligations for the year in which it ceases to be a member of the group.

14. Where -

- (a) paragraph 5(b) above applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and
- (c) the company was registered as part of a group registration;

the holding company shall be required to comply with a proportion of the requirements of the company's recovery and recycling obligations for the year in which it ceases to be a member of the group, such proportion being calculated as provided in paragraph 17(1) below.

15. Where -

- (a) paragraph 5(b) above applies;
- (b) in relation to the obligation year the company itself does not satisfy the threshold tests; and
- (c) the company was registered separately with the appropriate Agency;

the holding company shall comply with a proportion of the requirements of the company's recovery and recycling obligations for the year in which it ceases to be a member of the group, such proportion being calculated as provided in paragraph 17(1) below.

16. Where in a relevant year paragraph 5 above applies to a company as a result of that company ceasing to be a member of one group ("the first group") and becoming a member of another group ("the second group") -

- (a) where in relation to each group the company is registered as part of a group registration, each holding company shall comply with the requirements of a proportion of the company's recovery and recycling obligations, such proportion being calculated as provided in paragraph 17(2) below;
- (b) where in relation to each group the company is registered separately with the appropriate Agency, the company shall comply with its recovery and recycling obligations for the year;
- (c) where in relation to the first group the company was registered as part of a group registration and in relation to the second group the company is registered separately with the appropriate Agency, the holding company in relation to the first group, and the company, shall each comply with a proportion of the company's recovery and recycling obligations, such proportion being calculated as provided in paragraph 17(2) below; or
- (d) where in relation to the first group the company was registered separately with the appropriate Agency and in relation to the second group the company is registered as

part of a group registration, the company, and the holding company in relation to the second group, shall each comply with a proportion of the company's recovery and recycling obligations, such proportion being calculated as provided in paragraph 17(2) below.

17. - (1) The proportion referred to in paragraphs 9, 10, 12(c)(i) and (ii), 14 and 15 above shall be calculated as follows -

$$\frac{G}{H}$$

where -

G is the number of days in the relevant year during which the company was a member of the group, and

H is the number of days in the relevant year.

(2) The proportion referred to in paragraph 16(a), (c) and (d) above shall be calculated as provided in sub-paragraph (1) above except that for this purpose G is the number of days in the relevant year during which the company was a member of the group in relation to which the calculation is being made.

18. For the purposes of this Part of this Schedule -

(a) the "threshold tests" means the threshold tests provided in paragraph 3 of Schedule 1; and

(b) "obligation year" has the meaning given in that Schedule for the purposes of the definition of the threshold tests.

PART III

INCAPACITY

19. Where in a relevant year a producer dies or becomes bankrupt or incapacitated ("the first producer") that person shall cease to have any producer responsibility obligations for that year and any person who carries on the activities of the first producer following that event shall be treated as a producer and shall have the producer responsibility obligations of the producer for that year.

20. Any person carrying on the activities of the first producer referred to in paragraph 19 above shall within 28 days of commencing to do so -

(a) inform the appropriate Agency in writing of that fact and the date of the death, the date of bankruptcy or the nature of the incapacity and the date on which it began; and

(b) apply to be registered as required by regulation 5 and for this purpose the requirement in regulation 6(4)(d) (payment of a fee) shall not apply.

21. In relation to a producer which is a company, the references to a person becoming bankrupt or incapacitated in paragraph 19 above shall be construed as references to it going into liquidation or receivership or to an administration order being made in relation to it.

SCHEDULE 10

Regulation 3(6)

UNITED KINGDOM'S RECOVERY AND RECYCLING TARGETS

The United Kingdom's recovery and recycling targets are -

- (a) no later than the year 2001 between 50 per cent as a minimum and 65 per cent as a maximum by weight of the packaging waste is to be recovered; and
- (b) within this general target and with the same time limit between 25 per cent as a minimum and 45 per cent as a maximum by weight of the totality of packaging materials contained in packaging waste are to be recycled with a minimum of 15 per cent by weight for each packaging material.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose on producers obligations to recover and recycle packaging waste, and related obligations, in order to attain the targets in article 6(1) of Directive 94/62/EC.

A producer (defined in regulation 3) who in a year ("a relevant year") has a specified level of turnover (set out in Schedule 1) and handles (as defined in Schedule 1) packaging or packaging materials (defined in regulation 2) weighing more than 50 tonnes has an obligation in the following year to recover and to recycle packaging waste, as set out in Schedule 2 ("the individual route"). These obligations will apply from the year 1998, except in relation to wholesalers to whom they will only apply from the year 2000.

Certain categories of producer are excluded by regulation 4. In particular, a producer who joins a scheme which undertakes to meet the recovery and recycling targets of all its members is not required to comply with its obligations. In such cases the obligations are performed through the scheme.

There are special provisions for groups of companies (regulation 29 and Schedule 8) and special producers (regulation 4 and Schedule 3 Parts III to V). "Packaging", "packaging waste", "recovery", "recycling" and "reuse" are defined as in Directive 94/62/EC.

Under regulation 5 producers who are not members of registered schemes need to be registered with the Environment Agency or, in Scotland, the Scottish Environment Protection Agency. The producer applies in accordance with regulation 6 and must supply, in particular, the information set out in Parts I and II of Schedule 4. The Agency will normally require the applicant to undertake to inform the Agency of material changes and to give the other undertakings mentioned in regulation 7. An applicant who complies with the relevant requirements (regulation 6(5)) will be registered. Registration will continue unless and until cancelled, but is subject to an updating of information before 1 April each year (regulation 8). There is provision for cancellation of registration where, for example, a producer fails to provide information (regulation 11(1)) or joins a registered scheme (regulation 11(2)).

There are similar registration requirements for schemes in regulations 12 to 17. To be registered must have the approval of the Secretary of State and satisfy the requirements of competition scrutiny in regulation 31 (regulation 12(4)).

Registered producers, and operators of schemes, are required to maintain records and furnish returns to the appropriate Agency (regulations 22 and 24). Registered producers are also to provide certificates of compliance with their recovery and recycling obligations (regulation 23).

Regulations 25 and 26 set out the duties of the appropriate Agencies to monitor compliance and in relation to a public register. Regulations 27 and 28 concern the powers of the appropriate Agencies to approve persons to issue certificates of compliance and of entry and inspection. Regulations 32 and 33 exclude and modify the Restrictive Trade Practices Act 1976 respectively.

Under regulation 34 it is an offence to contravene the producer responsibility obligations to register, recover and recycle packaging waste, and furnish a certificate of compliance to the appropriate Agency, or to provide false or misleading information, or to prevent the appropriate Agencies from exercising their powers of entry and inspection, or to fail to furnish information in connection with competition scrutiny.

An assessment which shows the cost of compliance to businesses (a "compliance cost assessment") in respect of these Regulations may be obtained from the Department of the Environment, Environment Business and Management Division, Branch EBM2, Room C9/02, 2 Marsham Street, London SW1P 3EB. A copy has been placed in the library of each of the Houses of Parliament.