

Producer Waste Responsibility

About 5,500 businesses in England and Wales are obligated under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 as amended ("the Regulations"). The Regulations obligate companies to recover and recycle packaging waste to meet national targets. The UK recycled over 6,000,000 tons of packaging waste in 2006 as a result of these Regulations. Businesses must have two threshold tests to become obligated producers. They must have a turnover of £2m or above and handle 50 tons or more of packaging in a calendar year.

Companies who are part of a group should be aware that the turnover threshold applies to the cumulative group turnover. Producers are defined in the Regulations and include manufacturers, converters, importers, packer fillers and sellers, who supply to another part of the chain or to the end user.

Obligated producers have a choice either to register with a compliant scheme or to register themselves with the Environment Agency. This must be done on an annual basis. Producers' recovery and recycling obligations are based on packaging handled in the previous year. Producers must register by 7 April in each registration year. Compliant schemes aim to fulfil the obligations of their members.

History

The European Parliament and Council Directive 94/62/EC Unpackaging and Packaging Waste ("the Directive") came into force in 1994 and was amended in 1997. Together these Regulations set targets as to recovery and recycling which are to be met in the UK. These targets are a minimum recovery of 60% and a recycling target of 55% to 80%. There are also minimum material specific recycling targets. The Directive is implemented in the UK by the Producer Responsibility Obligations (Packaging Regulations) 2005 ("the Regulations").

Who Do The Regulations Apply To?

The Regulations apply to any business which handles more than 50 tons of packaging per year and has a turnover of more than £2m per year. (A group of companies must consider the total across the group) and which is involved in the manufacturing of the raw materials for packaging (manufacturer) converting of raw materials into packaging "converter" filling packing filler, selling packaged goods to the final user ("the seller"), a service provider or importer of packaging/packing materials/packaged goods into the UK for any of the above activities. The 2005 Regulations added the following categories to the business list:-

- Those who lease or hire out packaging, e.g. plastic or wooden pallets, lessors
- Pulp operating companies and other similar companies will be responsible for certain packaging or associated goods bearing their trademark, franchisors and licensors;
- All imported transit packaging.

If a business is obliged to comply with the Regulations it must carry out its obligations under the Regulations itself or join a registered compliance scheme which renders the company exempt from its obligations as the compliant scheme will take on obligations and discharge them for the company.

The 2005 Regulations amended the original 1997 Regulations so that businesses with a turnover of £2m and £5m can choose to have a recycling obligation allocated to them rather than having to collate and provide data each year and calculate their own obligations.

Where a company opts for the allocation option, this will be based upon the company's turnover in the previous year and recycling must be carried out in the main material handled. Although the allocation option is voluntary it must be used for at least 3 years so long as the turnover remains below £5m. This method provides annual tonnage allocations.

What must a company do to comply with its obligations

- Register with the Environment Agency no later than 7 April each year.
- Assess the amount of packaging that went through the business during the previous year, complete a Data Form and calculate the tonnage obligations for the amount of recovery and recycling of packaging waste it must discharge that year and provide this information to the Environment Agency when registering.
- Pay a registration fee to cover the registration and agencies costs of monitoring and data analysis and management.
- Ensure that the required amount of packaging waste is recovered and recycled that year.
- Confirm compliance with its obligations to the Environment Agency by 31 January of the following year.
- Provide certain information to consumers, if the company is a retailer or seller.

Compliance Schemes

Approximately 90% of businesses in 2005 joined a compliance scheme. The compliance scheme takes on the legal obligations of the company and carries out the recovery and recycling obligations for it. A reduced registration fee will be payable to the Environment Agency and the company must still calculate the tonnage of packaging that it handles. There are 19 registered compliance schemes in England and Wales.

Following the 2005 Regulations, compliance schemes and large producers are now required to submit their operational plans to DEFRA as well as the Environment Agency.

Calculating the amount of packaging that must be recovered or recycled calculation is
 $\text{packaging handle} \times \text{activity obligation} \times \text{UK recovery target} = \text{recovery obligation}.$

$\text{Packaging handled by material} \times \text{activity obligation} \times \text{UK recycling target} = \text{recycling obligation by material}.$

Packaging Handled

The tonnage of packaging and packaging materials that were handled not packaging waste in a previous calendar year activity obligation what activity was performed by the business on each material and the percentage obligation associated with each activity raw material 6% conversion 9% pack or filling 37% selling 48% service providing 85% importing 100%.

UK Recovery and Recycling Targets

These can be found for each year in the DEFRA publication.

Evidence of Compliance

The business or its compliant scheme must demonstrate compliance by purchasing or acquiring evidence that the required amount of packaging or packaging waste has been recovered or recycled. Evidence may only be presented in the form of a Packaging Waste Recovery Note (PRN) and/or Packaging Waste Export Recovery Note (PERN). PRN's or PERN's can only be issued by packaging waste repossessors and exporters respectively that have been accredited by the Environment Agency.

The PRN assists company which finds it impractical to meet their packaging waste obligations through their own recycling efforts. The PRN system allows companies to pay for the recovery and recycling of an equivalent amount of packaging in order to offset their obligation. When waste is recycled or recovered the accredited repossessor will issue a PRN Certificate which can be purchased by obligated companies as evidence that they have met their obligation.

Offences

It is an offence for an obligated business not to discharge its obligation under the Regulations. The penalties are criminal and can be heard in the High Court. It is also an offence for a producer not to be registered if the threshold test had been met. On 13 November 2008 Fittings pleaded guilty to not complying with the Regulations and

were fined £21,000 which added to the costs and compensation order cost the company in excess of £32,000. There is no retrospective compliance, but there can be retrospective liability.