

Environmental

Guidance Document

The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and 2010 amendments

Basic Preamble

1. First proposed in August 1992 and implemented in June 1996, the European Packaging Directive (94/62/EC) seeks to harmonise marking and identification of packaging, create common standards and minimise packaging and its waste.
2. More specifically, the Directive has required national governments to put in place a system for the return and collection of used packaging. Having done so, each member state was initially required to meet minimum overall targets of 50% recovery and 25% recycling of packaging waste by mid 2001. These targets were subsequently revised and incorporated material specific recycling targets for each of six main materials. They were to be met by end 2008 and the EU has not revised them further.
3. Most member states elected to establish funded systems that placed a producer responsibility duty on the user of packaging to pay a contribution towards the eventual recovery and recycling of its packaging once discarded. This was achieved by so-called 'green dot' licensing by the packer/filler in the packaging chain, who paid a fee to a single recycling body.
4. The UK government introduced a quite different approach of shared producer responsibility and chose to establish a legal requirement to comply. This was introduced in March 1997 and implemented in January 1998 as the **Producer Responsibility Obligations (Packaging Waste) Regulations 1997**. More commonly referred to as the Packaging Waste Regulations (PWRs), the law was extended to Northern Ireland with effect from October 1999. The PWRs have been introduced under the Environment Act 1993 and come under the jurisdiction of DEFRA with responsibility for policing and control in the hands of the Environment Agency for England and Wales, SEPA in Scotland and the NIEA in Northern Ireland (the Agencies).
5. The PWRs were amended in 1999, again in 2003, 2007, 2009 and more recently in 2010. The changes to recovery and recycling targets are set out in the targets table below. Full details of the amendments can be found at <http://www.legislation.gov.uk/uksi/2010/2849/contents/made>
6. The PWRs require that ALL businesses in UK having a turnover of more than £2 million and handling more than 50 tonnes packaging per year should comply.
7. Compliance imposes three specific requirements on companies passing the two thresholds:
 - a. They must register, pay a fee and supply data
 - b. They must take steps to recover and recycle that which is assessed to be *obligated tonnage* and provide evidence (see below)
 - c. They must officially certify that they have complied
8. A company that fails to carry out each and every one of these can be prosecuted.
9. However, any company can choose to be exempt from the three requirements by joining a **compliance scheme**. The scheme then performs the various functions on behalf of the obligated company. All schemes must be approved by the Agencies, must provide an operational plan each year and are subject to annual audit by the Agencies.
10. In 2009 a total of 6,700 registrants representing some 13,000 individual companies were registered and 93% of them joined a compliance schemes. Nearly 90% of all firms have chosen to join a

compliance scheme but indications that the option for direct registration would be removed have changed.

11. Recovery and recycling evidence is provided in the form of a tradable permit called a **Packaging Waste Recovery Note (PRN)** issued by accredited reprocessors. It is the case that some packaging waste collected in UK cannot be recycled here and is exported for recycling overseas. Evidence of this traffic is provided by a **Packaging Waste Export Recovery Note (PERN)** issued by accredited exporters.
12. An open market exists for the purchase and trading of PRNs and PERNs. The principal buyers are compliance schemes and individually registered companies.
13. In 2006, following a highly successful initiative by the Advisory Committee on Packaging (ACP), a National Packaging Waste Database was designed and established. This now enables the transmission of producer data, records of reprocessing and exporting of waste and the issue and acceptance of PRNs and PERNs to be done on-line. Hard copy certificates are no longer in use.(www.npwd.environment-agency.gov.uk)

Application

14. The PWRs are applied annually and companies that pass the thresholds are obliged to register every year before a statutory deadline of **7th April**. Direct registrants, i.e. companies that choose to register directly with the Agencies, will be rejected by the Agencies if they seek to register after the deadline. However, it is acceptable for a company to join a compliance scheme and thus be registered by the scheme after the deadline. If that happens their registration will be subject to an additional fee.
15. A company passes the turnover threshold if its turnover exceeded £2 million **in the last financial year for which audited accounts are available before 7th April in the year in question**. Thus, in 2010, if the last available accounts are those relating to financial year ending, say, 31st March 2009, then it is that year's turnover that is relevant.
16. A company passes the packaging threshold if it handled more than 50 tonnes of packaging or packaging material **in the calendar year ending 31st December** before the year in question. So for 2011 registration the calculations are carried out on data from calendar year 2010.
17. In 2006, in an attempt by government to ease the burden of the PWRs on small businesses, an amendment was passed allowing businesses with a turnover of £5 million or below to opt for compliance using an "allocated" obligation directly linked to their turnover. The allocation for 2010 -12 is 29 tonnes per £1 million of turnover in the most predominant material used.
18. It is not possible to register retrospectively. A company that, for whatever reason, failed to register in a prior year is in default and could be subject to a future prosecution.
19. Many small, and almost all medium and larger, producers of packaging will meet the thresholds, as will many medium and large printers. To see if you pass the threshold, aggregate the weight of corrugated boxes, shrink wrap, stretch wrap, strapping and new pallets you used in the last calendar year. If you manufacture packaging eg: cartons, labels etc. you must also include these. If you don't have the information ask your suppliers. They are not legally bound to give you the data but most will do so for honest commercial reasons. This also applies to you when your customers ask.

What is packaging?

20. Packaging is defined in the PWRs as any product used for the containment, protection, handling, delivery and presentation of goods and this applies through the life cycle from inception to disposal.
21. A juice carton, for example, will be included from the production of carton board through to its disposal by the household consumer. Importantly, all transport or tertiary packaging is included. The main items of packaging relevant to the printing industry are cartons, corrugated boxes, labels, stretch wrap, strapping, reel cores, envelopes (where they contain goods), pallets, etc.
22. Process waste should not be included because it never becomes packaging. Similarly, packaging that becomes waste outside the UK should not be included. For this reason it is important to have data on both **direct and indirect exports**.

23. Postal packaging may fall within the PWRs. If the contents of an envelope or similar item are acquired as part of a sales contract and they are 'goods', then the postal package is classified as packaging and is obligated. However, unsolicited mail, correspondence and invoices etc are not goods and therefore the envelope or package is not packaging.
24. Labels, particularly self-adhesive labels, have been the subject of much debate and contention. Guidance from the Agencies is summarised on the separate Appendix A. Whilst it is difficult to visualise, the label or top-sheet must be considered and calculated independently and differently from the backing or release sheet.
25. Cores, used to preserve the integrity of a reel of paper, tissue, tape, cloth etc, are classified as packaging.
26. The materials for which data is required are:
 - i. Paper / Paperboard
 - ii. Glass
 - iii. Aluminium
 - iv. Steel
 - v. Plastic
 - vi. Wood
 - vii. Other (eg: hemp, sisal, rubber, fabric etc)

The Packaging Chain

27. There are four main activities or 'relevant functions' in the chain down which packaging travels and one additional function that can apply. The UK system of shared producer responsibility prescribes that every item of packaging or packaging material will be subject to these activities and businesses that perform them will be classified accordingly.
28. The four classifications are:
 - a. Manufacturer – the business that manufactures raw materials for packaging
 - b. Converter – the business that uses or modifies packaging materials in the production or formation of packaging
 - c. Packer/Filler – the business that puts goods into packaging
 - d. Seller – the business that supplies packaging to the user or consumer who generally discards it
29. The additional activity is Importing. This becomes relevant in businesses that import goods or materials. Packaging that is associated with imports, unless it is subsequently exported, becomes waste in the UK and is the responsibility of the company that imported it.
30. The PWRs set down percentage responsibilities according to these activities. It should be noted that, to pick up a particular responsibility, a business should own the packaging and supply it on down the chain.

Activity	% share of responsibility by weight	Examples
Manufacturer	6%	Cartonboard maker, paper mill
Converter	9%	Boxmaker, carton printer, label printer
Packer/Filler	37%	Printer supplying leaflets, books etc. in boxes
Seller	48%	Printer supplying a distributor who discards transport packaging

31. It should be noted that the final consumer has no responsibility.
32. A wholesaler or any company that effectively performs a wholesale function will have a seller responsibility on packaging discarded by their customer. In the event that a wholesaler supplies to another wholesaler or distributor then the first wholesaler will have no responsibility.
33. Classification of printers
- Typically a general printer will pick up the 37% pack/filler responsibility **plus** the 48% seller responsibility on all the packaging used to transport finished jobs to his client. This means that if you use, say, 65 tonnes of corrugated boxes and 5 tonnes of shrink film, you will have an obligation of $((65 + 5) \times 85\%) = 59.5$ tonnes.
 - A carton printer will pick up the 9% converter responsibility on the weight of all the cartons he manufactures. This weight will normally be computed by taking the tonnage of cartonboard purchased **less** the weight of process or skeletal waste that is discarded. In addition he will have the 85% pack/filler and seller obligation on transit packaging just as the general printer.
 - The implications of the Regulations for label printers are detailed in Appendix A

Recovery and Recycling Targets

34. Having calculated the total obligated tonnage for which you are responsible, the next and fundamental requirement of the PWRs is that you recover and recycle a proportion of it. This is a **notional** requirement based on targets set from time to time by government.
35. The European Packaging Directive has set the overall targets to be met by each member state and at the end of 2005 the UK government set new annual recovery and recycling targets designed to deliver these Euro targets by 2008 and then maintain the momentum going forward. The UK targets take account of the fact that more than 10% of the total packaging volume consumed in UK is handled by companies that are either below the two thresholds (*de minimis*) or choose to avoid their responsibilities, the so-called *free riders*.
36. The Targets are as shown in the table below:

2006	2007	2008	2009	2010	2011	2012
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RECOVERY TARGETS	66%	67%	68%	69%	74%	74%	74%
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RECYCLING TARGETS							
Paper	66.5%	67%	67.5%	68%	69.5%	69.5%	69.5%
Glass	65%	69.5%	73.5%	74%	81%	81%	81%
Aluminium	29%	31%	32.5%	33%	40%	40%	40%
Steel	56%	57.5%	58.5%	59%	69%	71%	71%
Plastic	23%	24%	24.5%	25%	29%	32%	32%
Wood	19.5%	20%	20.5%	21%	22%	22%	22%

37. It is a further requirement that in 2010 92% of all recovered packaging shall be recycled. This means that Energy from Waste (EfW) or incineration can only be used for up to a maximum of 8% of recovered packaging.

Evidence of Compliance

38. Following through on the example quoted in 33 a. above the general printer has a basic obligation of 59.5 tonnes and with a recovery target of 67% in 2007 his recovery obligation will be $(59.5 \times 67\%) = 40$ tonnes.
39. However, the introduction of material specific recycling targets adds a complexity to this calculation. The table below illustrates how the full requirement emerges.

EXAMPLE					
	Tonnage used	Pack/filler + seller obligation	Paper recycling target	Plastic recycling target	TOTAL RECYCLING
	<i>t</i>	85%	67%	24%	<i>t</i>
Corrugated boxes	65	55.25	37		37
Shrink film	5	4.25		1	1
					38

40. The situation is that the usage of 70 tonnes of packaging results in an overall recovery obligation of 40 tonnes made up of 37 tonnes paper, 1 tonne plastic and 2 tonnes nett recovery (EfW).
41. Evidence of compliance can **only** be provided by the acquisition of PRNs and/or PERNs (see paragraph 11 above).

Means for Compliance

42. There are two routes open for a company to meet its obligations and comply with the PWRs.
- The individual route
 - Joining an exemption or compliance scheme
43. If you go it alone then you must:
- Register before **7th April** with the Environment Agency (EA) if you are located in England or Wales, with SEPA if you are in Scotland or with the Environment & Heritage Service (EHS) if you in Northern Ireland. In submitting your registration you must pay the set fee and provide data of your packaging usage in the previous calendar year. A Director of the company must sign your data submission.
 - Having calculated your recovery and recycling obligation you must take steps to acquire PRNs or PERNs as evidence that you have complied.
 - Before 31st January** of the following year you must submit a formal Certificate of Compliance together with copies of the PRNs and/or PERNs that you have bought. A Director of the company must sign this document.
 - It is mandatory that where a direct registrant is a company or Group with a turnover of **more than £5 million**, the application for registration (a above) shall be accompanied by an operational plan similar to that required each year from all compliance schemes. This plan is a comprehensive description of the business, its obligation and from where it is intended that PRNs and PERNs shall be acquired for the current year and for the next two years. The applicant will also be required to provide estimates of where revenue arising from its purchases will be spent by the reproprocessors and exporters concerned.

44. If you choose to join a compliance scheme then your legal obligations pass to the scheme and the scheme will ensure that all elements of compliance are fulfilled on your behalf. However, the onus remains upon you to provide data on your packaging usage. Most schemes will require you to sign a legal agreement that provides indemnity for them against the consequences of providing negligent data.
45. The PWRs require that the data provided is **as accurate as reasonably possible**. There is, however, no definition of “reasonably”. This means that sensible commercial judgement can be exercised and, in the event of an audit or monitoring visit by an Agency official, that judgement might be challenged.
46. The current fees for registration with the Agencies are
- | | | <u>Direct</u> | <u>Scheme</u> |
|----|-------------|---------------|---------------|
| a. | EA and SEPA | £776 | £564 |
| b. | NIEA | £950 | £776 |
47. It remains mandatory that where a holding company and one or more of its subsidiaries, or two or more subsidiaries of the same holding company, each handles packaging, then, providing the **aggregate** turnover and tonnage pass the thresholds, a Group registration is required. It should be noted that in 2004 a new provision was introduced requiring additional fees for registration of subsidiaries when making a Group registration. These fees are:
- | | | |
|----|--|-----------|
| a. | For the first 4 subsidiaries | £180 each |
| b. | For the 5 th to 20 th subsidiary | £90 each |
| c. | For the 21 st and subsequent | £45 each |

Prosecutions

48. The Environment Agencies maintain a duty to police the Regulations and, in particular, they pursue a programme of monitoring compliance. The declared objective is to monitor one third of all registrants every year in order to satisfy themselves that data submissions are being accurately and properly compiled.
49. Regional officers make monitoring visits and the format of a visit follows a set procedure. It is not uncommon for a re-submission of data to be requested if it is judged that a significant error might have been made. In 2004, such re-submissions carry a fee to cover additional costs.
50. The other main aim of the policing role is to detect and prosecute ‘free riders’. Since 2000 the Environment Agency in England & Wales has investigated just under 2,700 businesses that were suspected of having avoided their obligations under the Regulations. There have been over 400 successful prosecutions that resulted in fines ranging from a few hundred pounds up to £100,000.
51. It is noticeable that the success rate is increasing and it is not uncommon to find that prosecutions are being pursued against small and medium-sized companies as well as larger firms with high profiles.
52. Reference to paragraph 7 shows that there are three basic requirements for an obligated company. The maximum fine of £5,000 per item means that failure to comply in any one year could result in a total fine of £15,000. If the Agency feels that a considerable saving has been made by failure to comply (i.e. with a company having a large obligation) then they might opt to have the case heard in a county court where the penalties available are much greater.

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