



Compliance Monitoring and Enforcement Activity in 2018

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We help people and wildlife adapt to climate change and reduce its impacts, including flooding, drought, sea level rise and coastal erosion.

We improve the quality of our water, land and air by tackling pollution. We work with businesses to help them comply with environmental regulations. A healthy and diverse environment enhances people's lives and contributes to economic growth.

We can't do this alone. We work as part of the Defra group (Department for Environment, Food & Rural Affairs), with the rest of government, local councils, businesses, civil society groups and local communities to create a better place for people and wildlife.

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Foreword

The Producer Responsibility Obligations (Packaging Waste) Regulations 1997 through regulation 25 place a duty on the Environment Agency (The Agency) to monitor registered producers and those who may have an obligation but are not registered. The regulations also require The Agency to publish its policy on monitoring, together with the minimum number of persons (monitoring target) it proposes to monitor. This report provides a statement on the actual monitoring done and successes during 2018.

Executive summary

The 2018 policy and monitoring targets were published in the 2018 Compliance Monitoring plan. The Agency set a minimum target of 116 persons to be monitored during the 2018 calendar year. In 2018 calendar year The Agency monitored a total of 136 persons, which is 17% above the published target.

Using a risk based approach, we carried out compliance monitoring of packaging producers, compliance schemes, accredited reproprocessors and accredited exporters. Site inspections were completed via pre-arranged visit or unannounced visits.

Where non-compliance is identified, The Agency follows its published enforcement policy and associated guidelines to determine the appropriate enforcement action. During 2018, we imposed 32 suspensions on accredited reproprocessors and exporters and cancelled 2 exporter accreditations. Furthermore, we rejected 9 accreditation applications.

A total of 23 enforcement undertakings (EUs) were received from packaging producers in 2018. This resulted in £421,991.49 in financial contributions to environmental charities. Since the introduction of Civil Sanctions for the packaging regulations in 2011 we have accepted 265 Enforcement Undertakings, which have made financial contributions of £5,501,432.60 to environmental charities.

In 2018 the reported UK packaging recovery rate was 70.71%, of which 64.27% was reported as being recycled. These recovery and recycling rates exceed the EU directive targets of 60% recovery and 55% recycling.

- The final 2018 UK Total Recovery Obligation was 8,107,726t (an increase of 167kt on the 2017 final UK obligation)
- All UK Schemes met their 2018 obligations (the UK scheme obligation was at 7,444,596t)
- 99.8% (464) of all UK Direct Registrants purchased their PRN's in order to offset the UK obligation (the UK Direct Registrant obligation was at 663,130t)
- It was identified that 0.2% (1) Direct Registrant failed to buy all their PRN's (this equates to 51t of PRNs)
- Low levels of carry over PRNs issued into the 2019 obligation year (from 490Kt in 2017 to 354Kt in 2018 - a drop of 136.5Kt on the previous year's Carry Over PRNs)
- Year ended with the highest number of accredited plastic and paper exporters ever

We are responding positively to the changing and emerging risks around compliance. We have observed increasing levels of intent to mask and hide non-compliance. As a result we have refocused some of our resources into a dedicated national investigations team, specifically focussed on Producer Responsibility. This team went live in January 2018, following a trial period of 12 months to fully evaluate the benefits of such a team.

This dedicated team has enabled us to increase our compliance checks and utilise various investigative tools to help ensure compliance and disrupt non-compliance. The team works closely with our national intelligence team and also our waste crime team. This ensures they have access to the latest information on operators and we are working as one organisation.

The Agency's performance in 2018 in respect of monitoring is summarised below; further details are contained in the body of this report.

Compliance Monitoring 2018 – Companies Monitored

	2018 target	2018 actual	Compliance with plan
Producers	30	56	187%
Accredited Operators	80	75	94%
Compliance schemes	6	5	83%

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1. Introduction

1.1. The Agency's duty to monitor

The Environment Agency monitors businesses to ensure that:

- packaging producers in England meet EU Packaging Directive recovery and recycling targets
- all obligated producers register
- producer compliance schemes fulfil their statutory duties on behalf of producer members
- they publish accurate data on the packaging that's handled, recovered and recycled in the UK
- there is accurate data on registered producers
- treatment, recovery and export operators comply with accreditation conditions
- waste packaging is recycled and recovered to directive standards
- waste packaging is not directed through illegal routes

Our compliance activities include:

- site inspections
- desk based document reviews
- validation checks on data submissions
- data trend analysis looking for errors and anomalies

2. Monitoring

2.1. 2018 Performance

In 2018, The Agency set a minimum target of 116 persons to be monitored during the 2018 calendar year. In 2018 calendar year The Agency monitored a total of 136 persons, which represents an increase of 17% above the published target.

2.2. Monitoring of Registered Producers

We continued to monitor producers who are registered directly with The Agency and those registered via compliance schemes.

Our monitoring programmes are inclusive with respect to the registration route. We do not currently differentiate between direct registrants and those registered via compliance schemes or between those registered with different compliance schemes when establishing our national monitoring priorities or local monitoring programmes.

At registration stage, we monitored the submitted information and data from all (around 7000) registered producers, including comparing data submissions with those from previous years. We reviewed and validated all direct registration applications to ensure national publication contain accurate data. Where necessary explanations and corrections were sought where submitted data was deemed to be inaccurate.

Following registration, 56 producers were monitored by the area officers.

Success

An audit was prioritised to a company, who was a direct registrant as they had reported handling 81,702 tonnes of packaging, resulting in an obligation cost of about £3m in terms of the purchase of evidence. With a turnover of £19m, this would be an unusual amount of packaging – they had reported that they imported 17000 tonnes of pallets – which would be around 1.1m of pallets per year. They had not bought any evidence by early November and did not appear to be aware of the implication of the costs.

The audit identified they actually handled 217 tonnes of packaging – an error of 99.8%. This was due to decimal point errors, incorrect weights, misunderstanding the regulations and being unclear on the requirements to buy evidence. The audit and subsequent resubmission meant that they could now qualify as a small producer and this also reduced the pressure on wood PRN's by several thousand tonnes as well as the overall market.

2.3. Monitoring of unregistered producers (Free riders and drop offs)

It is not possible to determine the actual number of free riders, as there are no readily available centralised records or information, which can easily identify who would have responsibilities under the packaging regulations. We continually review all our internal processes and in 2018 we adopted a new revised approach on free riders which was implemented. Main changes included:-

- centrally managing the initial process and then escalating the free rider work to areas
- introducing a process for national mutual aid, whereby PRRS support Area teams when required and undertake any necessary free rider escalation, including the serving of notices and dealing with any subsequent investigation/enforcement action that may be required. This adoption of a 'one team approach' ensures that ultimately the free rider work gets done, irrespective of who delivers it
- central records of all free rider work set up to improve transparency

Where we have investigated and identified that an obligated producer is not registered ('free riding') we considered the enforcement options in line with the enforcement and prosecution policy. In certain cases, an enforcement undertaking was accepted. Details are provided below in table 1.

Table 1: Number of free riders investigated in 2018

Contacted	54	This is the combined total under the old (pre-September) and new (post-September) process.
Not obligated	10	
Registered	5	
Obligated and in process of registering	8	All contacted under the new process, obligated and in the process of registering with schemes. Many appear to have past offences that we are in the process of investigating. Some have indicated that they are in the process of submitting enforcement undertaking offers.

After the registration deadline in April 2018, we had 476 businesses that failed to re-register without providing an explanation (drop offs). Initially these were queried with compliance schemes. Following additional information from schemes which explained the business no longer needed to register, the number reduced to 311. These businesses were then targeted to bring them into compliance and/or confirm they were no longer a packaging producer. Through this work we resolved 302 of the businesses.

2.4. Monitoring of Compliance Schemes

In 2018 there were 26 approved packaging Compliance schemes registered with The Agency. The Agency principally monitors Scheme operators through analysing data returns, record keeping and comparing them with data obtained from the monitoring of individual scheme members. The aim is to check conditions of approval have been complied with and to identify and address any failures. Desk top monitoring of all 26 compliance schemes was carried out throughout 2018 in addition to quarterly monitoring of all producer compliance schemes which also involved a discussion about their compliance position. During 2018, 5 compliance schemes were subjected to site based compliance monitoring which was below our target of 6.

In October 2018 we hosted a packaging scheme day to build relationships and work collaboratively with schemes and other agencies to help ensure compliance and address key issues facing the regime. Positive feedback was received from this event.

2.5. Monitoring of Accredited Reprocessors and Exporters

The Agency accredits and monitors the activities of reprocessors and exporters of UK packaging waste. This activity involves an initial site inspection to determine the application and compliance monitoring activity during the period of accreditation. Accreditation's have to be renewed each year.

We monitored (on a risk basis) sampling and inspection plans at the application stage of accreditation to ensure they were robust and reliable. This was carried out via desk based monitoring and site visits.

Once accredited we monitored the application of all sampling and inspection plans both during site inspections and through desk top monitoring.

During 2018 a total of 75 operators were compliance monitored via site inspections. (against a target of 80). As a result of compliance assessments (both site based and desk based) we suspended 32 accreditations and cancelled 2 exporter accreditations. These decisions were made by Producer Responsibility Regulatory Services and the area officers working closely together. These decisions were actively communicated to industry, both to inform them on reduced availability of evidence onto the market and also to send a deterrent message on the consequences of non-compliance. This shows we are working towards our priority of reducing fraud as well as encouraging compliance. This enforcement activity has also helped to inform decisions on applications for accreditation.

Success

In the summer of 2018, following increased media attention on exported plastics, West Midlands Area targeted (using a risk based approach) a total of 7 Plastic Accredited Exporters and Reprocessors for compliance monitoring audits. Following these audits, the following outcomes were achieved:

- 2 operators suspended
- 2 operators cancelled
- 2 operators refused for 2019 accreditation year
- 1 received a minded to refuse letter
- Non-compliance issues included:
 - PERNs issued before overseas destination site had been approved and added to the exporter accreditation
 - Export of waste to sites not included in the exporter accreditation
 - waste exported in contravention of TFS requirements (waste exported was not green list waste)
 - operator not following their accredited sampling & inspection plan
 - PERN issued on non packaging waste

3. Enforcement

The enforcement powers available to The Agency include warning letters, issuing formal cautions, taking a prosecution or accepting an enforcement undertaking. Under the packaging regulations we can exercise our enforcement powers when offences are committed by registered producers, unregistered producers, compliance scheme operators and accredited reprocessors & exporters.

During 2018, 23 enforcement undertakings were concluded.

3.1. PRI Team

The PRI Team have worked with PRRS & Area to withdraw accreditation of 5 businesses operating under the packaging system who had been illegally issuing evidence.

They have established links with the Intelligence and Illegal Waste Exports teams in the National Enforcement Service (NES) to ensure that they have access to the latest information on operators and are working as 'one organisation'.

The team are continually seeking to liaise with overseas competent authorities to help us corroborate whether sites are able or permitted to recycle plastic. We have built up strong relationships with Dutch, German and Polish authorities and currently actively engaging with Malaysian and Turkish authorities. We also have long standing working relationships with many of the far eastern authorities.

Furthermore, the team have identified areas of risk to the business such as the large tonnages being exported to Turkey and the Netherlands and continued exports to Malaysia and are working with teams in Producer Responsibility and Illegal Exports team to develop our understanding of these export markets.

As a result of the work carried out on plastics, PRI Team, PRRS and Area have gained experience into what areas of a company's operation are best to look into and how best to identify offending. This best practice will be incorporated into training, guidance and templates for future audits and investigations.

Success

Area officers and members of the PRI team worked together throughout the enforcement stage of a large exporter. By the EA working closely together it ensured the appropriate enforcement work was undertaken including the formal inspections of a number of the returned containers. This work was led by the TFS investigation team with support from Area. This joined up working is an excellent example of what it takes to ensure consistent and proportionate enforcement of companies who may be breaching the conditions of their accreditation.

4. Further information

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