



# **Positions and technical interpretations: producer responsibility for packaging**

Version: 1.19

## Agreed positions and technical interpretations - producer responsibility for packaging

This document has all the technical interpretations made by the agencies (Environment Agency, Natural Resources Wales, Northern Ireland Environment Agency and Scottish Environment Protection Agency) on whether an item is packaging or not.

It includes information from the document "The agencies' interpretation of packaging" 3<sup>rd</sup> edition 2013 as well as the current Acknowledged Methodologies for 2021.

This document is based on information in the EC Directive on Packaging and Packaging Waste and the 2007 regulations and associated guidance. It may change in the light of regulatory changes, future government guidance or experience in regulating this type of waste. The principal purpose of this document is to enable the agencies' officers to interpret and enforce the regulations. In the interests of transparency, it is available to others but it has no status other than as internal guidance to our staff.

All references to the regulations in this document refer to The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended).

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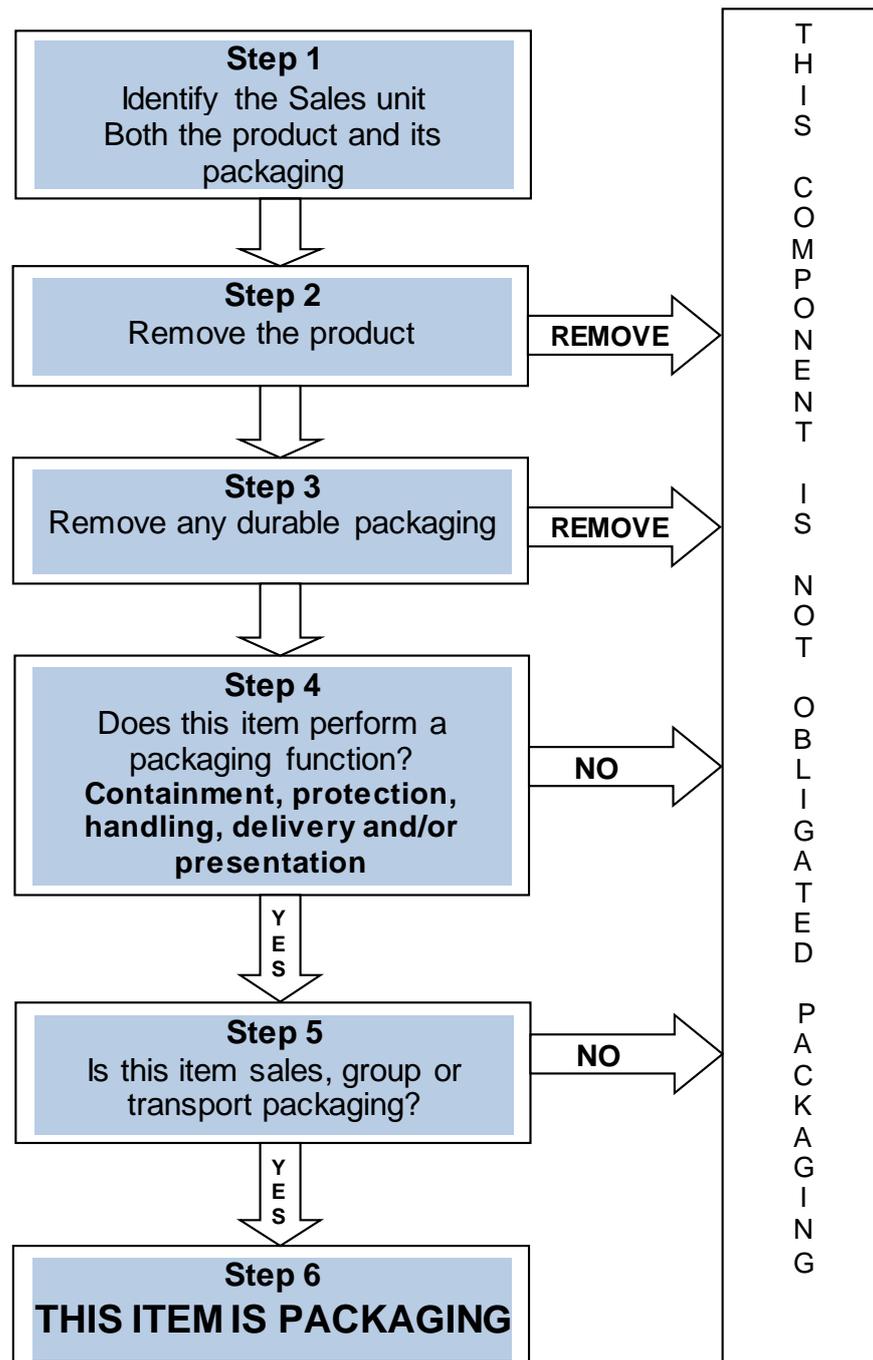
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# Part 1

## 1. Agencies' interpretation of packaging

There is only general guidance as to what is and is not packaging in the EC Directive on Packaging and Packaging Waste so the environment agencies have developed guidance and examples of what they consider to be obligated packaging along with some principles for assessing obligations under the Regulations.

## 2. 6 steps decision chart



### 3. 6 Steps Explanation

#### Step 1 – Identify the Sales Unit

Identify the sales unit which comprises the product and its packaging. For example, spoon, preserves, jars, caps, labels, plastic sleeve, and price label all comprise the sales unit of a presentation pack of preserves with serving spoon.

#### Step 2 – Remove the product

The product (or products if grouped) is used or consumed after purchase. In the example given in Step 1, this is the preserves and the spoon.

Some products cannot be removed from an outer layer that could be considered to be packaging, but is actually an integral part of the product. Examples include tea bags for tea, wooden pencil around lead, cassettes around 35mm film and cartridges containing ink.

#### Step 3 – Exclude Durable Packaging

Long-lasting products which cannot be consumed may have durable packaging for long-term storage. Durable packaging is not obligated. Long-lasting items are those that a majority of consumers would use repeatedly and for longer than 5 years.

For example, power tools are durable products. It is reasonable to assume their carrying cases provide long-term storage. This also applies to durable carrying cases or moulded containers designed to last the lifetime of durable items such as spectacles, board games, electric razors, cutlery and cameras.

#### Step 4 - The 'Function Test'

The Packaging Directive says '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....".

An item of packaging needs to do at least one of these functions to meet the definition.

The dictionary definitions of these functions are:

"**Containment**" is the act or process of restraining or enclosing, for example, bottles and cans

"**Protection**" means defence from harm, for example, bubble wrap

"**Handling**" means facilitating movement, for example carpet cores

"**Delivery**" is the conveyance of the product(s) to the final user or consumer, for example a pallet

"**Presentation**" means to exhibit or display, which may include attracting attention for example, a label or a brightly coloured box

#### Step 5 - The 'Purposes Test'

The Packaging Directive states that for an item of a sales unit to be packaging, it must also be one of the following:

- **sales** or **primary** packaging – packaging conceived as a sales unit to the final user or consumer.
- **grouped** or **secondary** packaging - packaging conceived to group a certain number of sales units whether sold to the final user or consumer or a means to stock shelves at the point of sale; it can be removed from the product without affecting its characteristics;
- **transport** or **tertiary** packaging - packaging conceived to aid handling and transport of a number of sales units or grouped packs in order to prevent physical handling and transport damage; transport packaging does not include road, rail, ship and air containers

One important word found in the descriptions of primary secondary and tertiary packaging is "conceived". For an item to be primary, secondary or tertiary packaging it does not have to have

been conceived as such at the manufacturer stage in the packaging chain, but at any stage. Once it passes both tests, it is deemed to have been packaging throughout the chain. This highlights the need for information to be passed between activities in the packaging chain.

N.B If an item is conceived as packaging, is fully formed and meets the function and purpose test it can have ePRNs/ePERNs issued on it.

## **Step 6 Packaging**

All items which have reached this point in the flow diagram are considered to be packaging for the purposes of the Regulations.

## Part 2

# 1.Registration

### Group registrations

If a producer is a holding company with two or more subsidiaries that handle packaging in the UK, or that handle packaging and so do one or more of their subsidiaries, those producers are a group and must combine all their yearly turnovers and weights of packaging handled to see if they are an obligated packaging producer. A company includes any body corporate, for example cooperatives, mutuals, independent and provident societies.

Groups can register:

- as one group, the holding company can do this even if it's not a packaging producer as long as two companies in the group handle packaging; or
- as individual producers

“Subsidiary” and “holding company” are defined in Section 1159 of the Companies Act 2006 (separate legislation for Northern Ireland) – a company is a subsidiary of another company if that other company:

- i. holds a majority of the voting rights in it, or
  - ii. is a member of it and has the right to appoint or remove the majority of its board of directors, or
  - iii. Is a member of it and controls alone, pursuant to an agreement with other members, a majority of voting rights in it, or
- or if it is a subsidiary of a company that is itself a subsidiary of that other company

### Dormant companies

A dormant company can act as a holding company and register under the packaging regulations. Dormancy means that the company is not actively trading and undertaking transactions which would require the preparation of accounts. A company registered under the packaging regulations will attract obligations under Schedule 8(5). Obligations include to make the group registration (Sch. 8(5) (b)), provide consumer information (Sch. 8(5) (c)) and to furnish records and returns and provide a certificate of compliance (Sch. 8(5) (d)). In the event that the dormant company does not fulfil its obligations, it can still be held accountable under the regulation 40 offences.

### Multi-site registrations

Each producer must only have one registration and one NPWD code. They must either be a direct registrant or registered with one scheme. There is no option to register separate divisions or departments of the same company or legal entity. If a company has a number of divisions and packaging data is collected separately, this must be collated before being submitted to the agency.

### Signatures

An application to register with us (whether a group registration or not) must be signed by an approved person (as defined in regulation 34, including, in the case of a company, a director or company secretary) under regulation 7(4)(c) and failure to comply with that requirement allows us to refuse registration under regulation 7(6).

If there is a company without either a director or company secretary the agencies should refuse registration of the company for failing to comply with the requirements of the packaging regulations. If the company has a director but not a company secretary or vice versa, the company could comply with the requirements of regulation 7 and there would be no grounds for refusal of registration. If there is an overseas company with no registered address in the UK then there only has to be an individual who has control or management of the relevant person.

### **Delegation of Authority**

If an approved person is not normally available to sign documents or other information, then that responsibility can be assigned to another person. This must be done using the appropriate form (available from the agencies) and submitted either to the agency of compliance scheme. Such approval remains in place until circumstances change (such as the director resigns or delegate employee leaves for example) or it is cancelled.

### **Rounding issues with the data**

NPWD calculates both the recovery obligation and the material specific obligations from the whole tonnes data entered in the data tables. Packaging data must be entered in whole tonnes. Where a producer handles less than 500kg of a material it should be rounded down to 0 and not included in the obligation. Do not add any rounded down figures to another material; this is no longer in the regulations. Scheme members should round their data into tonnes before sending to the scheme.

### **Deregistration of members for non-payment of fees**

A compliance scheme's reasons for member termination and the process for this is part of the contractual arrangement between the scheme and the member. A member should remain a member of a scheme until their membership is terminated – generally by serving notice. Non-payment of fees is a reason to serve notice. The notice may give the member a chance to pay the fee and take effect after a period of time. It is only when the notice takes effect that membership is terminated and the scheme can inform the relevant agency of the change in their membership by resubmitting their registration template to us. For the time period between the 'missed fee' and when the notice takes effect, the producer is still considered a member of the scheme and the scheme will still hold the obligation for that member.

If the date when the termination notice takes effect is up to and including 31 December then the producer cannot rely on the exemption of being a member of the scheme and they will be required to register and meet their own obligations to ensure compliance.

If the date when the termination notice takes effect is after 31 December the scheme will be responsible for the compliance of that member for the year, irrespective of whether the member has paid or not.

### **Previous years' non-registration – civil sanctions**

Civil sanctions are available as an alternative to prosecution for some of the offences in the regulations. The main civil sanction used has been Enforcement Undertakings for companies that have failed to register and failed to obtain the required packaging recovery notes as evidence of their obligation. Civil Sanctions do not apply in Northern Ireland.

## **2. Charity Exemption**

Charities are exempt from the packaging regulations.

Each charitable organisation should be assessed and must supply evidence or justification that

they are a registered charity and that any profits obtained or funds raised are invested for charitable purposes. Where the profits or funds are used for charitable purposes the charity can rely on the exemption.

Profit-making limited companies that are attached to charities are not exempt.

Gift aid is included within the calculation of the turnover figures for a charity.

## 3. Contracts and ownership

### **Converters handling packaging materials they do not own.**

Where a converter is making packaging that their packer-filler customer owns, the obligations for the conversion process falls on that packer-filler, because the converter is acting as an agent and does not own the packaging.

### **Rolled-up importer's obligations.**

The obligation falls on the first company, based in the United Kingdom (UK) that owns the packaging materials or packaged products. An importing agent does not own the packaging if they merely acted as an 'order-taker'. They could be simply the sales office of the foreign-based principal.

Where a payment is made direct by the buyer to an overseas supplier, the obligated importer is the GB buyer. If the payment is made to a sales office based in GB, then that suggests that the sales office have effectively taken ownership of the products between the overseas provider and their buyer and that the sales office is the importer.

### **Sales office**

Overseas companies may not have a registered office in the UK but may have a sales office to manage sales from the overseas company to the UK customer. Where a payment is made direct by the buyer to an overseas supplier, the obligated importer is the GB buyer. If the payment is made to a sales office based in GB, then that suggests that the sales office have effectively taken ownership of the products between the overseas provider and their buyer and that the sales office is the importer.

### **UK Presence**

Having a presence here means an address, which could be a warehouse, PO Box, an office or someone's domestic premises if they are used for the purpose of the business. See section on overseas issues below.

### **Importer**

An importer is generally defined as the party (or an authorised agent acting on behalf of that party) responsible completing necessary legal import customs clearance procedures and formalities on arrival of goods in to GB. Normally, this party is named either as the consignee in the shipping documents and/or as the buyer in the exporter's invoice. The consignee is the party whom is taking ownership of the products once the goods are cleared for free circulation. Therefore, importer is the first UK presence (e.g. a company with a registered office address in the United Kingdom) that owns goods that are shipped to UK from an overseas supplier.

The import obligation falls on the first company, based in the United Kingdom (UK) that owns the packaging materials or packaged products. An importing agent does not own the packaging if they

merely acted as an 'order-taker'. They could be simply the sales office of the foreign-based principal.

Where a payment is made direct by the buyer to an overseas supplier, the obligated importer is the GB buyer. If the payment is made to a sales office based in GB, then that suggests that the sales office have effectively taken ownership of the products between the overseas provider and their buyer and that the sales office is the importer.

### **Contracted-out packer-filler activities**

It is important to establish who owns the packaging at the point of pack/filling, as the obligation for that activity falls on the owner.

If the contract packer purchases the packaging materials and pack/fills for their client, the contract packer is the owner of the packaging and thus picks up the obligation.

If the packaging materials are owned by the client company, at the time they are pack/filled by the contract packer, it is the client company that picks up the obligation.

### **Agent**

An importing agent does not own the packaging if they merely acted as an 'order-taker'.

### **Transit packaging owned by a third party.**

Some re-usable crate systems and pallets used by the packer-filler are hired over a time period or for a single journey from the system's owner (for example, a leasing-finance company). The system owner picks up the pack/filler and seller obligation (85%) as a 'service provider'.

### **What obligations arise when the owner, who is also the end user of packaging, gives it to its supplier for pack/filling and for supply back to itself?**

Where the packaging is for one trip only, no pack/fill or sell obligation arises. The pack/filler does not own the packaging and thus is not obligated. The owner and eventual end user cannot supply itself, thus there is no seller obligation. If the packaging is part of a re-use system then the owner of the packaging would pick up the rolled up service provider obligation of 85%.

## **4.Overseas issues**

### **Great Britain/Northern Ireland**

Great Britain (GB) consists of England, Scotland and Wales. The United Kingdom (UK) consists of GB plus Northern Ireland (NI). The Channel Islands and Isle of Man are outside the UK.

Movements between GB and NI do not constitute exports and imports. Transfers of packaging and packaging materials from NI into GB bring no 'rolled up' obligation (even if originally imported from outside the UK). This is because you cannot 'import' into GB from another part of the UK. The company which originally imported the goods into NI picks up the rolled up obligations.

Packaging and packaging materials sent to NI are not exports for the purposes of these regulations. Packaging that is shipped from GB to NI and subsequently exported should be declared as third party exports. Transfers of packaging waste into GB (which has originated in Northern Ireland) can be used to fulfill recovery and recycling obligations, as can packaging waste sent from GB to NI for reprocessing.

## **Registration of overseas producers**

The regulations apply only to the United Kingdom. Anyone within the UK that is doing an activity covered by the regulations must comply. Where an overseas company is operating in the UK **and** has a presence here and is carrying out packaging activities, including importing, the agencies would expect them to register. Having a presence here means an address, which could be a warehouse, PO Box, an office or someone's domestic premises if they are used for the purpose of the business. An overseas company with employees present in the UK for most of the time has a UK presence even if the employees use offices or premises not owned or occupied by the company.

## **Turnover of overseas companies**

The packaging regulations require turnover to be determined by reference to audited accounts. A company's audited accounts are treated as being available when they are filed with Companies House. Overseas companies do not have to submit accounts currently, although regulations may be made in future. The agencies can assess the turnover of an overseas company using their usual accounts. There is no need to separate out turnover for the UK only. This position is consistent with the way we assess UK registered companies, where we do not discount any overseas activities. It will be the turnover submitted by the 7<sup>th</sup> April in the given registration year.

## **Groups**

A holding company and the relevant subsidiary company (ies) must be operating and present in GB in order to have a group registration. The agencies apply the same rules to groups as to other overseas companies, so the holding company does not need to have a registration with Companies House.

**Example:** A holding company incorporated in Germany has an office in GB or NI. Two of its subsidiary companies operate and have a presence here (they may even be UK registered companies). The holding company can register as a group as there is a group presence in the UK. However, if the holding company didn't have a presence here, it can't make a group registration and the two subsidiaries must consider their obligations separately.

## **Handling packaging in NI**

The regulations require a person to determine if they are a producer by assessing the amount of packaging handled in the UK (GB + NI). The agencies allow businesses that meet the registration threshold through their combined operations in GB and NI, but who handle less than 50 tonnes in one or both locations, to make one registration with the agency where their business is based. The single registration will cover packaging handled in GB and NI. A business that operates in GB and NI and handles 50 tonnes or more packaging in each location must still make two separate registrations for GB and NI.

## **Airline and Ship Packaging**

### **End users**

Where supply takes place in UK (usually on domestic flights or cruise), passengers and crew are the end users. For domestic flights, airlines and shipping lines are the sellers, regardless of whether it is a direct sale or included in ticket price.

For overseas flights and cruises, where waste is not returned to the UK, food packaging is destined for export and carries no obligations. Primary packaging around goods sold or consumed on board

aircraft, ships or trains destined for the UK from overseas carry no obligations.

### **Duty free shops**

HM Customs exercises strict control on duty free goods. Any goods sold in duty free shops (in airports, on ships and on international journeys), and on which no duty has been paid, **must be taken out of the UK**. Consequently, the Agencies consider that duty free goods are exported by the seller, who therefore has no obligation for them under the regulations.

Duty free privileges do not apply in the EC.

### **US Air Force bases**

Are imports of packaging from the US to US Air Force bases in the UK regarded as imports for the purposes of the regulations?

Yes. All US bases in the UK are regarded as UK territory by the MoD.

### **Importer**

The importer is generally identified as the first UK business to take ownership.

### **Imports via bonded warehouses**

The regulations do not make a special allowance for imported products that are placed into bonded warehouses. It is not linked to the payment of tax or duties nor to the nationality of the company that owns the goods. Our view is that the obligation should rest with the importer - the person who brought the goods into the UK.

## **5. End-users**

### **Car servicing**

Where a customer has ordered a car service, the garage will order any spare or replacement parts therefore the garage is the end user of any associated packaging. (For example around brake pads or replacement oil.) The garage is providing a service and is not considered to have supplied the packaging to its customer.

### **Home/commercial deliveries**

Businesses supplying goods and removing packaging before or during delivery are regarded as the seller of the packaging as the packaging is considered to have been supplied to the end user at the point of sale. Removal of the packaging following delivery does not remove the obligation from the seller.

Businesses supplying goods and offering a fitting service, for example supplying a new kitchen or bathroom are considered to still be the supplier of packaging to the consumer, even if the packaging is removed prior to the installation. The consumer has ordered goods (as well as a service) and the cost of the associated packaging would be included in the price.

However, where a service is procured, for example, electrician to fix an electrical supply or a plumber to fix a boiler, the service provider (that is, the electrician or plumber) is considered to be the end user of any spare parts or replacements, along with the packaging they order as part of

that service. The seller is the person supplying the electrician with the goods.

The same principles apply for goods being delivered on a rental basis. If packaged goods are being supplied to the end user, the business supplying the rental goods will attract the selling obligation.

### **Shoe boxes - who picks up seller obligation?**

The wholesaler will be the seller if the retailer never supplies the shoebox. The retailer will be the seller if they offer the box to customers, whether or not the customer takes the box.

## **6. Supply**

### **Internal supply/transfer**

Movement of packaging within a company or between sites of the same company is not obligated as no supply has taken place. The company number must be the same for all sites where the transfer takes place, but the geographical location may differ. Where packaging is supplied from one subsidiary company to another within the same group, a supply has taken place and the packaging is obligated, because they are different registered companies. Where packaging has been used for internal supply and is subsequently used for external supply (for example, to a customer), it becomes obligated.

### **Packaging imported for internal supply.**

If a business is importing packaging for internal supply it must be included in the dataform as the business is classed as an importer and carrying out a class A supply "(i) the final use or consumption by an importer of imported packaging or packaging materials". Usually, if the business is importing for end use the business would attract 100% obligation on the imported packaging otherwise the rolled up obligation would apply.

### **Sale or return**

Can returned packaging be discounted from a company's obligation?

No. A supply has taken place. However, in the event of the product being resold in exactly the same packaging, the packaging would not be declared a second time.

### **Third party supply, such as reward schemes**

Where a customer purchases goods with reward points, the seller obligation will fall to the supplier of the goods and not the issuer of the reward points.

## **7. Packaging activities**

### **Recyclates as raw materials**

Raw materials manufacturers who are also reprocessors, such as paper mills, will attract producer obligations on their total output of packaging materials including the recyclate content (that is, recyclates used as raw materials count in the same way as virgin raw materials).

**Example:** A reprocessor blends virgin material with recycle to make a packaging raw material. It incurs a manufacturer obligation (6%) on the total output. The supplier of the virgin raw material to the reprocessor has no obligation on the materials supplied, because the reprocessor picks up the manufacturer's obligation.

**Example for plastic:** reprocessor who processes plastic waste into plastic pellets are classed as a raw material manufacturing

A reprocessor who processes Non Packaging Plastic Packaging (NPPP) flake it into a plastic Raw Material would be classed as the raw material manufacture not the flaker

**Example for glass:** Glass raw material manufacturing is only picked up by companies making molten glass. A glass bottle manufacturer will be the raw material manufacturer and converter of molten glass.

Recyclate sold to converters as a packaging raw material (in competition with virgin materials) should be treated as packaging manufacturing output and attracts a 6% manufacturing obligation.

## Conversion

Where a conversion and pack/filling activity is taking place on the same packaging **as part of the same process** by the same business, the conversion obligation will pass back to the person who has 'part converted' the packaging material.

### Examples

**Preforms** - plastic bottles are often provided to bottling plants as a pre-form, not the fully blown bottle. Bottling plants will then blow the pre-form to the final shape and pass it on for filling, **as part of the same continuous process**. In such cases the bottling plant will only attract the pack/filling obligation. The conversion obligation will fall to the pre-form manufacturer.

**Packing crisps** - crisp bags are formed (converted) from a continuous roll of film at the same time as the crisps are added (pack/filled) to the bags, as part of the same continuous process. The conversion obligation will fall to the film manufacturer.

**Flow wrapping** - products, for example baked goods, are sealed between two layers of thermoformable films. Where this is part of a continuous process, only the pack/fill obligation will be picked up. The conversion obligation will fall to the film manufacturer.

**Heat treated labels** - The labels are heat treated to generate information on the label and applied to the packaging as a part of the same continuous process. The company who buys and applies pre-cut labels which have thermal reactive coating on them will attract the pack filling obligation for the label, as the final conversion and pack fill activities are part of the same process. The conversion obligation for the label will fall to the label manufacturer.

**Printing on labels and pack filling** - where labels are printed and applied to packaging as part of the same continuous process, only the pack/fill obligation will be picked up. The conversion activity will fall to the manufacturer of the blank label. If the company prints labels and at some later stage applied these labels to packaging, this would not be considered to be part of the same process. The company would have both converter and pack/filler obligations for these labels.

## Export and subsequent import of packaging

### **Exports - packaging exported, pack-filled, then imported by the same producer**

The rolled up import obligation applies, unless the producer can demonstrate that the raw material manufacturer and conversion obligations have already been picked up in the UK.

### **Internal transfer - Imported packaging for use in internal transfer.**

This needs to be included in the dataform as obligated packaging. They are an importer and carrying out a class A supply "(i) the final use or consumption by an importer of imported packaging or packaging materials".

## 8. Packaging Materials

### **Composite/multi-material packaging**

**Composite** packaging materials are multi-layered sheets of dissimilar materials which are bonded together and cannot be separated by hand - often referred to as laminates;

**Example:** paperboard laminated with plastic coating and plastic with aluminum foil. Some laminates consist of more than two materials. In all cases, record the whole weight of the packaging item as the predominant material by weight.

200 grams per square metre (gsm) paperboard laminated to a 50 gsm aluminum foil and to a 2 gsm plastic film counts as 252 gsm of paper packaging.

**Example:** If fiberglass is used as a packaging item it is to be considered as a composite.

**Multi-material packaging** is made from components of different materials during the converter or packer-filler activities. There are many multi-material packages that could be constructed by attaching separate dissimilar components to each other by a means designed to be durable and not able to be separated by hand.

**Example:** A blister-pack made from cardboard and plastic. They could be, but are not always separable by hand (see below). Record the weights as the different component materials (these weights should be available in the supplier chain or at the point of assembly).

In summary, 'composites' are materials constructed as multi-layer laminates. Multi-material packages are constructed of assembled components of different materials.

## 9. Re-used packaging

With the exception of imports, packaging is only obligated on its first trip through the packaging chain. Once it has reached the end user, it can be used again in its original form and for the same

purpose, without picking up any further obligation.

### **Imported packaging re-used for export - which tables to use**

Imported packaging that is removed from goods has a 100% obligation. Record it in only Table 3b of the packaging data form. This is the same for both new and reused packaging. If the packaging then goes on for re-use within the UK, it will attract no further obligation after declaration in Table 3b.

Producers will only attract an obligation on packaging which becomes waste in the UK. So there may be occasions when packaging discarded from imported goods is put to one side and then re-used for export. Record this packaging in only Table 3c if there is an adequate audit trail to confirm import and subsequent export of the same packaging. Also use Table 3c for specific packaging items that have been imported and subsequently exported whether or not further activities have been performed on them. This figure is not entered in any of the other tables.

**Examples:** Boxes which are imported, the contents removed for a production process and then placed back in the same packaging and subsequently exported. Boxes taken from one pallet and re-packed with other items on to another.

### **Re-using packaging and using packaging waste for pack-filling**

Re-use of packaging is using packaging items **in their original form and for the same purpose** and carries no obligation.

**Example:** A packer-filler uses the cardboard boxes in which raw materials were delivered as cardboard boxes to package its own products for sale. This incurs no obligation. The subsequent selling activity on these boxes attracts no recovery and recycling obligation.

However, packaging waste or other waste may be reprocessed and so become a 'new' packaging material.

### **Examples:**

1. A company shreds old cardboard boxes to make a bulky filling material that is then used in its own pack-filling activities or sold to others to use. This process is a conversion activity which carries an obligation, along with any subsequent pack/filler and seller activity. It is also a recovery/recycling operation. The company could seek registration as an accredited reprocessor and issue PRNs in respect of the quantities of packaging waste reprocessed. They may then use these to offset all or part of the company's obligation to recover and recycle.

2. Pallets can be recycled when the operator is dismantling a pallet and grading/resizing the components to manufacture a new product or shredding to produce a finished product.

### **Repairs to packaging**

Any part of packaging or auxiliary product (for example, a tap on a drum) which is removed during repair and discarded is packaging waste.

Any new material (for example a repair patch) or auxiliary product (for example a stopper) used in repairing packaging for re-use is packaging, with the obligations falling on the manufacturer and converter of that material or product (**not** the re-conditioner), that is, the manufacturer of the repair

patch/stopper.

**Example:**

A wooden 'A' frame is added to a previously used pallet and the company doing this activity have the conversion obligation on the 'A' frame only. If they then add goods to the 'A' frame they would have pack/fill obligations on the 'A' frame but not the previously used pallet – this also applies to any possible selling obligation.

If wooden slats are used to repair a previously used pallet, the company doing the repair would have a conversion activity on the wooden slats used for the repair. If they then add goods to this pallet, the company would have pack/fill obligation on the repairs to the pallets (wooden slats) and not the previously used pallet – this also applies to any possible selling obligation.

Repair must not change the type of packaging in order to claim the 'reused' exemption (for example, turning a pallet into a box is not a repair but is processing to become a new packaging material, which will pick up the activity obligations).

**Re-usable packaging systems**

For a new system, the producer can spread the obligation equally over four years, beginning with the year the packaging is first used. For example if 1000 plastic crates weighing 4kg each were purchased in 2014, the producer would include 1 tonne in the 2014 dataform for the 2015 compliance year, and 1 tonne in each of the subsequent compliance years - 2016, 2017 and 2018. The agency must be satisfied that the reusable packaging is durable and likely to have a life exceeding four years.

## 10. Packaging around waste

The packaging would be considered obligated if the waste is considered to be goods and it is still in the commercial cycle, for example it is being supplied for reprocessing. It does not necessarily need to have a monetary value. Packaging would be obligated if it was around sorted and bailed materials going for reprocessing, re-manufacture or as feedstock for a process. If it was waste that was heading for disposal that had plastic or banding around it, the plastic and banding would not be considered to be obligated.

If the off cuts/recyclate can be used as feedstock without any further processing the by-products test would be satisfied and the offcuts/recyclate would not be regarded as waste. Therefore they would be classified as goods, in the same way as any other raw material, and so there would be an obligation attached to the packaging around the recyclate.

## 11. Catering and Hospitality

Pubs, clubs and other licensed premises are the sellers of bottled/canned drinks where the bottles/cans are opened and the contents supplied for consumption on the premises, even where the bottle/can is retained by the seller. This includes both alcoholic and non-alcoholic drinks. The supplier to these establishments is not the seller of the drinks' packaging and the pub/club/hotel is the seller of the bottle and not the brewer. This was decided through a judicial review in 2002.

**Are pubs and clubs the sellers of spirit bottles?**

No. The spirit bottle is not normally sold to any one customer and therefore a supply is not made by the pub/club. The pub/club is the end user and the brewery/wholesaler is the seller.

### **Are pubs and clubs the sellers of wine bottles?**

Depends. When the pub/club/restaurant supplies the wine by the glass they are then the end user of the bottle. When they supply the bottle to a customer they are the seller of the bottle.

### **Take-away or fast food businesses**

**Examples:** chip shops, burger bars, and vendors at shows.

They may perform one activity (pack/filling) and then perform another (selling to final user or consumer). When this occurs, the business is deemed to have supplied to another stage in the packaging chain (Class A or deemed supply) and should pick up the relevant obligations for both activities.

### **Disposable vending cups**

A company that places product (for example, a teabag, soup or coffee granules) in disposable vending cups is the pack-filler. The seller is normally the company that operates and maintains the vending machine or, where the cups are supplied to a catering company, the company that adds the water and supplies the cup to the end user (for example, the operator of a buffet car on board a train).

### **Vending machines - who is the pack/filler/seller?**

The pack/filler is the person putting coffee/tea in the cup. The seller is the owner of the packaged items supplied through the vending machine and would normally be the operator (owner) of the machine.

### **Durable items of tableware**

Ceramic and glass plates, bowls, cups, jugs and glasses are **not** packaging. However, paper plates can perform a packaging function and can be obligated in some circumstances.

### **Sauces/portion packs**

We regard catering establishments as the end users of items which are provided for communal use (for example, a bottle of ketchup placed on a table in a café). However, where single portion condiments (for example, wrapped butter, sugar or jam portions) are made available to the customer (either with or without a charge), a supply has taken place and the establishment will pick up the seller obligation.

### **Hotel free issue sachets/shampoos**

Hotels supplying free sachets/bottles of shampoo, conditioners and so on are judged to have supplied the goods to the customer and the establishment will pick up the seller obligation.

### **Drinking straws, disposable cutlery, and serviettes**

These do not normally perform a packaging function and are not regarded as packaging. Their wrappers are packaging.

## 12. Healthcare

### Medical/healthcare packaging

NHS Trusts and NHS hospital pharmacies are generally not acting in the course of business when supplying packaging and therefore would not pick up any obligations. They may either be the end-user of packaging where they supply drugs to patients on wards or the obligation is lost, for example where they supply dispensed drugs in packaging and in a paper bag to a patient being discharged.

Healthcare goods supplied to the NHS from an intermediary company (logistics or healthcare companies) will have the selling obligation where the NHS is the end user.

We regard persons providing treatment and/or healthcare directly to patients (at, or on behalf, of medical, nursing, dental, veterinary or similar establishments, whether in the public or private sector) as the end user of any packaging materials associated with the delivery of that healthcare. For practical reasons, we regard them as the end user even in respect of healthcare products given to and unwrapped by patients, including healthcare products taken home by patients upon their discharge. So the companies supplying these establishments will be performing (at least) the seller activity.

We regard ancillary retailing activities at healthcare establishments (for example, independent pharmacies, restaurants, newsagents, coffee shops, sales of dental products at dentists, sales of pet food at vets and so on) where goods are supplied 'over the counter' to customers or patients, as sellers of the associated packaging. These persons may also carry out any other relevant packaging activities, such as pack/filling. These companies may have obligations if they meet the standard threshold and turnover tests. Where private healthcare companies are providing or dispensing medicines to out-patients, for example to patients in their own homes, the healthcare companies will be the sellers of packaging around any medicines subject to the usual rules of ownership and supply.

See the table of packaging decisions for specific medical items such as inhalers and syringes.

## 13. Labels

We believe that the majority of labels perform a 'presentation' function and are therefore packaging. The presumption is that a label is packaging. We treat a label as packaging, whether applied directly to the sales unit or to other packaging associated with the sales unit, where it provides a presentation function to the end user of the label. We also recognise that there are instances where a label may not perform a presentation function to the end user or consumer, for example a label showing **only** a barcode which provides no 'presentation' function to the end-user.

The points of obligation for labels (face paper only) can be summarised:

- **manufacturer** - the manufacturer of the initial roll of label face paper;
- **converter** - normally the person supplying finished labels;

Labels are likely to be supplied in or on other packaging, such as release paper for self-

adhesive labels;

- **packer/filler** - normally the person attaching or applying the labels, for example, removing release paper and applying the label;
- **seller** - the person supplying packaged/labelled goods to the end-user.

### **Backing release paper for labels**

The agencies consider release paper, in relation to the face-paper (for example, label paper), fulfils several of the packaging functions including 'containment', 'handling' and 'delivery', from the producer to the user and consumer. All release paper, except in very limited circumstances, is regarded as packaging. We recognise that circumstances can arise where release paper is itself part of a product, has the same life as the face paper and is not discarded prior to use of face paper, for example, certain types of car-park ticket. These exceptions are rare and any producers should contact the appropriate agency to confirm the particular case. The points of obligation for release paper can be summarised:

- **manufacturer** - the manufacture of raw materials (rolls of paper). The obligation is normally on the supplier of rolls of paper to the converter.
- **converter** - the conversion activity is the production of release paper, that is, coating the paper with silicone. The obligation is normally on the supplier to the packer/filler.
- **packer /filler** - the activity combines the goods with the packaging, which is rolling face paper on to release paper. The pack/fill obligation is normally this initial process.
- **seller** - the activity is supplying packaging to the end-user. For any material, the clearest way to understand the point of obligation is to first identify the end-user, that is, the person who removes packaging from the goods.

**Examples:** End-users for release paper might include:

- a food manufacturer or pharmaceutical packer who uses specialist machinery to place labels on to goods or other packaging items; an office which uses labels for application on to envelopes;
- a householder who places self-adhesive film around a book;
- a warehouse depot which places self-adhesive document wallets on to boxes for shipment.

Having identified the end-user, the seller is usually evident. The examples above indicate how the seller obligation could rest with many different sorts of businesses.

See also Table 2 for decisions on specific types of labels and Table 3 for glue, ink and silicone.

## **14. Licensors, including franchisors and pub operating businesses**

The obligations falling to franchisors, pub operating businesses or other business operating with similar licensing arrangements are set out in regulation 38 and Schedule 9.

In brief, a franchiser or pub operating company or other licensor – henceforth called “licensors” but also referred to in Schedule 9 as “head organisations” – must take on the relevant obligations of any of their franchisees, tenant pubs or licensees – henceforth called “licensees” – where they do not satisfy the threshold tests. Licensees that satisfy the threshold tests are not covered by these

provisions and must themselves consider whether they are obligated under the Regulations. If a licensee or tenanted pub satisfies the threshold tests and are producers then they are obligated in their own right for all of the packaging that they handle and are outside the new licensor/licensee provisions.

## Licensors

The Regulations (regulation 38(3)) say that “a person is a licensor where he is a party to a licence agreement in or under which he grants a license to use a trade mark to another”. A “licensee’ means the party to a licence agreement to whom a licence to use a trade mark is granted”.

A licence agreement is defined in regulation 38(7) and further details detailing the packaging that is affected by these provisions are also included in the regulations.

Only the licensees that don’t meet the thresholds in their own right, must together satisfy the tonnage threshold test.

Where a licensor has licensees operating under an agreement, the licensor is the producer, and has obligations, for the packaging activities carried out by his licensees that don’t meet the thresholds themselves. The licensor also has obligations relating to his own activities.

### **Example:**

A business has a licensing agreement with 7 smaller businesses, none of which satisfy the threshold tests in the Regulations, but all of which handle packaging. The business makes pies which it packs itself (it is therefore a packer/filler and has the pack/filling obligations). It sells the pies through its seven licensees who are required to sell the pies in cartons with the licensor’s logo on them, and, when supplying them to customers, to put them in paper bags which also bear the licensor’s logo. The seven smaller businesses operate out of premises which are also identified with the licensor’s logo.

The licensor supplies the pies, in the cartons, to the licensees. The licensees are required to purchase the paper bags from a specific supplier with which the licensor has reached an arrangement and the supplier will inform the licensor of the weight of paper bags supplied to the seven licensees. Because the seven licensees sell the cartons and the paper bags to the final user, the licensor is deemed to be a seller of the relevant tonnages of paper associated with the sales made by his seven licensees.

## **Pub Operating Companies**

The Regulations (regulation 38(4)) provide details on who is classed as pub operating business and licensee. As is the case with a licensor, where a pub operating business has a pub operating agreement with tenants, the pub operating business is the producer and has obligations for the activities carried out by his tenants that are under the thresholds. The pub operating business also has obligations relating to his own activities.

A pub operating agreement is defined in regulation 38(7).

The effect of these provisions for pub operating companies and licensors is to bring packaging under the regulations that would not be obligated otherwise.

The licensor or pub operating business does not have to obtain information about packaging handled from tenants or licensees. The licensor or pub operating business will have information on packaging they supply, and should get information from the supplier for packaging supplied by a third party under an arrangement they negotiated. If the licensor or pub operating business does not have, or cannot get, all this information they can produce a best estimate. This is set down in paragraph 8 of Schedule 9.

## 15. Incapacity

Due to the differences in commercial law between Scotland and England and Wales, the following guidance applies to English/Welsh companies and individuals registered with the Environment Agency or Natural Resources Wales. You will need to contact Scottish Environment Protection Agency for guidance on Scottish registered companies.

The regulations make specific rules for incapacity – that is producers who die, are bankrupt or incapacitated and companies that have gone into liquidation, administration or receivership – in Schedule 10, part III, paragraphs 18 to 20. (Schedule 11 in Northern Ireland Regulations)

Incapacity of companies

### **Liquidation**

If a company is insolvent it may be wound up in one of two ways:

- (i) compulsory winding up: this is where a person (usually a creditor) presents a petition to the court to wind up a company;
- (ii) creditors' voluntary winding up: this is where the members of a company pass a resolution to wind it up.

In both cases the winding up will be administered by a liquidator who will become the agent of the company. The management of the company's affairs will be taken out of the hands of the directors and the assets will be realised in order to meet (as far as possible) the company's liabilities. The company will then be dissolved, that is, it will be removed from the register of companies and will cease to exist as a legal entity. Any obligation under the packaging regulations will cease to exist when the company is dissolved.

The appointment of a liquidator has no effect on the existence of the producer. Subject to the rules in the Schedule 10, the producer must still comply with packaging regulations. However, the liquidator's primary role is to wind up the company, and the producer is likely to cease trading.

If the company goes into liquidation in January of a year, it would still have the certifying obligation in respect of the previous year and should furnish a certificate of compliance by 31 January.

### **Administration**

Administration is an insolvency procedure which applies to companies and partnerships. Its primary aim is to rescue a company or a partnership as a going concern. If this is not achievable, the administrator will seek to recover more for creditors than would be possible if the company were wound up. Only if these options fail, will the administrator seek to sell the assets of the business.

A company which is selling on assets to generate capital is not in administration. It is not a case of incapacity when a company sells off part of its operation, even if the sale is to ensure the continuation of the company. For a company to be in administration, there must be a formal appointment of an administrator. The words 'in administration' will be added to the name of the company.

An administrator is in the same position as any other officer of the company, who should ensure that the company complies with the law, in this situation, the Regulations.

One of the main features of administration is that it creates a moratorium which restricts most actions against the business. During the moratorium, permission to take action may be sought from the administrator or, if this is not forthcoming, from the court. Any third party rights may still be pursued once the moratorium is lifted.

The appointment of an administrator has no effect on the existence of the producer as a legal entity. Subject to the rules in the Schedule 10, the producer must still comply with packaging regulations. The rules in paragraph 18 of schedule 10 mean that in the year in which the company goes into administration, the company will have no producer responsibility obligation for that year. However, given that the purpose of administration is to keep the company as a going concern, it may well be the case that the company has packaging obligations in the year following administration. The company would be required to meet those obligations.

If the company goes into administration in January of a year it would still have the certifying obligation in respect of the previous year and should furnish a certificate of compliance by 31 January.

### **Receivership**

A receiver is likely to be a representative of a bank engaged to recover an unpaid debt through the sale of assets to the cost of the debt.

A producer may still be in a position to continue trading once the receiver has recovered their costs, although in many cases the appointment of a receiver is likely to result in liquidation. Even where trading continues, however, under paragraph 18 of schedule 10 the appointment of a receiver means that the producer will have no obligation for the year in which a receiver is appointed. The producer will have obligations in previous years and, if they continue to trade, may have obligations in subsequent years.

The appointment of a receiver has no effect on the existence of the producer. However, the directors' powers over the assets affected by the receivership will be suspended and the receiver will act on the company's behalf.

### **Incapacity of individuals**

#### **Death**

Where a producer is a sole trader, that person's death will bring an end to any obligations under the Regulations.

If there is a partnership and one of the partners dies, the remaining partners will continue to be obligated under the Regulations (see continuation of packaging activities below).

## **Bankruptcy**

Bankruptcy is the process by which a debtor's property is brought under court control and distributed to the bankrupt's creditors. An individual producer or a member of a partnership may be declared bankrupt. Bankruptcy orders are made after the presentation of a petition, usually by the debtor or one of his creditors. The bankruptcy will be administered by the official receiver or an insolvency practitioner acting as a trustee in bankruptcy (the trustee).

When the bankruptcy order is made, the bankrupt's estate immediately vests in the trustee. We are able to exercise all our powers under the regulations against the trustee.

The trustee collects in the bankrupt's assets. They may sell the business. Having paid the costs of the bankruptcy, the trustee distributes any available funds firstly to any preferential creditors and then to any other creditors.

The bankruptcy comes to an end if it is discharged (usually within 12 months unless there is an application to extend) or annulled by the court.

Paragraph 18 of schedule 10 means that in the year in which a person becomes bankrupt, they will have no producer responsibility obligations. They will have obligations in respect of the previous year and may have obligations in respect of subsequent years, which can be enforced.

## **Other incapacity**

The Regulations refer to a person becoming incapacitated. Legal incapacity usually means the absence of legal ability, competence, or qualifications. For example, mental incapacity requiring a person to be appointed to conduct an individual's affairs would fall into this category. Where this is the case, it is unlikely that an individual producer will continue to perform packaging functions and it is unlikely that there will be an obligation under the packaging regulations.

## **If the producer activities are continued by another**

The second part of the paragraph 18 of schedule 10 deals with the situation that despite the death, bankruptcy, incapacity, liquidation, administration or receivership of a producer some other person or legal entity carries on the packaging activity.

Note the second rule in paragraph 18 of schedule 10 only applies where the first producer has become incapacitated. It does not apply if the first producer is re-organising, downsizing or selling off assets or parts of a business in the ordinary course of business.

Where the first producer has died, become bankrupt, otherwise incapacitated or gone into liquidation, administration or receivership and a separate legal entity carries on all or some of the packaging activity that separate legal entity will be deemed by operation of law to be a producer for that year in relation to the packaging functions it carries on. Where this happens, it is not necessary to assess the deemed producer against the thresholds tests of 50 tonnes of packaging handled and a £2 million turnover. The business that carries on the activities of the incapacitated producer will automatically take on their obligation for that year, irrespective of whether the new company satisfies the threshold tests of producer.

When a business buys all or part or an activity of another company, they will normally carry out due diligence checks. These can best be thought of as a fact finding exercise so that the new company knows what assets and obligations it is taking on. Due diligence checks should reveal potential

obligations under paragraph 18 of schedule 10, so this obligation should not come as a surprise to the new company.

Where a company continues the first producer's packaging activity it must inform its regulatory body (SEPA, Environment Agency, NRW or NIEA) within 28 days of doing so and within the same 28 days apply to register as a producer either directly or with a Producer Compliance Scheme. A fee is payable in these circumstances. If registration takes place with a scheme, the scheme must notify the relevant agency of change of membership in the usual way.

In subsequent years, the business carrying on the activities would need to be assessed against the threshold tests. Assuming the business exceeds the thresholds, they will need to register as a producer in the normal way.

## Table 1 Specific packaging items - obligated or not?

Any packaging items not included in the table are presumed obligated packaging unless the producer can provide adequate justification for it to be excluded.

Any new decisions or changes made to this table since the last document was produced are highlighted in yellow.

Item	Obligated	Comments
Airlines - food packaging	Yes	Protects and presents food
Disposable tray	Yes	Protects and presents food
Durable tray	No	No packaging function
Knives and forks	No	No packaging function
Analytical bottles containing an environmental sample	No	Analytical bottles are not obligated packaging since an environmental sample cannot be classed as goods, and do not constitute a sales unit
Barbecue foil trays (for disposable BBQ)	No	Integral part of product
Barrels and kegs	Yes	Obligated on first trip
Basket for presentation of goods	Yes	Presumption is that basket performs packaging (presentation, containment etc.) function and is obligated The goods are unlikely to satisfy the definition of 'durable'
Beverage Capsules	Depends	A perforated coffee capsule where the coffee is discarded with the capsule would not be obligated, following the adoption of the criteria in the Packaging Directive Amendment. The amendment to the packaging directive came into effect on 1 March 2013.
Blood bags	No	Not part of sales unit. Blood is neither bought nor sold in the UK.
Boxed sets of books (slipcasses)	No	Providing it is the intention and likelihood that books will be stored in the box
Boxes containing tools	No	Usually for long-term storage (for example, drill case)
Cash bags	No	Cash is not goods. Regulations only relate to packaging around goods.
Card boxes for calligraphy pens, model kits etc.	Yes	Not considered long-term storage
Carrier bags	Yes	Unless sold to end user as a product (for example, bag for life) The introduction of a carrier bag tax will not affect whether the bag has an obligation or not. The obligation will still be based on whether the bag has been designed for a long life or not

Catalogues	Depends	If the catalogue is requested then associated packaging is obligated. If catalogue is unsolicited counted as junk mail, so not obligated.
Ceramic jar containing cheese or biscuits	Yes	Contains a consumable product that does not meet the requirements of long-term storage. Cheese or biscuits cannot be considered to be durable products so the pots should always be obligated
CDs - plastic film	Yes	Protective packaging function
CDs - cardboard sleeves	No	Usually long-term storage
CDs - lyric books/inserts	No	Part of product
CDs - plastic ('jewel') cases for CDs	No	Long-term storage. However, the multi-pack case with the spindle, base and hard plastic cover would all be regarded as packaging. This is because it is not regarded as long-term storage.
CDs - plastic ('jewel') case for goods other than CDs (for example, iron on patches)	Yes	Protection function - once patches are removed, case usually discarded
CD cases for promotional goods	Depends	Need to consider type of CD: if for time limited offer (for example, internet access), yes obligated
Charcoal sacks	Depends	A standard sack for charcoal would be obligated packaging. A paper sack that has been impregnated with a combustible material and designed to burn with the charcoal is not obligated.
Cheese rinds/wax	No	Excluded by amendment directive 2004/12/EC
Coat hangers	Depends	<p>Coat hangers are not obligated packaging if they are sold to the end user as a product. Examples include wooden coat hangers sold in packs by a retailer and empty hangers supplied to a retailer who retains the hangers (the retail customer does not take home).</p> <p>Coat hangers are obligated packaging if they are used for the presentation, handling and protection of clothing. For example, plastic coat hangers used for the display of clothing in retail shops</p> <p>Where the purchaser of the goods leaves the shop with the clothing and coat hanger he or she is the end-user of the packaging.</p> <p>In all other cases the retailer is the end user of the packaging.</p> <p>Coat hangers which are reused do not pick up an obligation, unless they have been imported.</p>

Collectors toys - boxes	No	Product intended to be kept with box for lifetime. Labels still obligated
'Cool packs'	Depends	Reusable plastic 'ice packs' are product. Single trip 'cool packs' made up of foam pads, liquid and cardboard sleeve packaging and perform a protection function <b>the weight of the water or ice isn't included</b>
Cores, reels, spools	Depends	They will be obligated if they are fulfilling a packaging activity and supplied to the next stage in the chain. They are not obligated if used for internal transfer only.
Cosmetics in mock cases	Yes	Unlikely case would be kept after product consumed
Crayons - paper sleeves	No	Part of product
Credit/bank card packaging	No	Not considered to be goods
Cups (plastic) supplied with bottles/cans/packaged drinks	No	No packaging function
Cups - disposable, in which drinks are provided (for example, tea/coffee)	Yes	
Cut out templates on card boxes (for example, mask on cereal box)	Yes	Part of box performing packaging function
Display stands	No	Unless being used for a packaging function prior to being used for display (for example, for transport of goods)
Dosage delivery caps (for example, medical)	Yes	But only if an integral part of the container for example, forms part of the closure
<b>Dry Ice</b>	<b>No</b>	<b>Dry ice is not classified as packaging</b>
Dunnage (packaging around goods in holds of ships)	No	Usually old, re-used bits of wood etc.
Dunnage (bearers and sticks in timber trade)	Yes	
Envelopes for greeting cards	No	Product
<b>Envelope peel off strips</b>	<b>Yes</b>	<b>The peel off strip protects the adhesive on the envelope.</b>
<b>Epi Pens</b>	<b>No</b>	<b>A prefilled medical injection is designed as an integral part of the drug delivery system for a fixed number of doses or days. The Epi pen is not considered packaging but the glass canister containing the drug is obligated</b>
<b>Fat balls - Net around the fat balls – bird food</b>	<b>Yes</b>	<b>Performs a containment function</b>
Film - canisters	Yes	
Film - rolls containing the film	No	Product
Fire extinguishers	No	Product

Fireworks	No	Any secondary packaging around fireworks i.e. box, packet, film would be regarded as packaging
First Aid kit boxes	No	Long-term storage
Freight Containers (road, rail, ship and air)	No	Not packaging. Defined in line with the generic characteristics of a container in ISO 830.
Frames used within freight containers	Yes	The frames are obligated transport packaging. They are used to facilitate the protection, handling and delivery of the goods they contain.
Fumigant canisters	Yes	Canister performs a packaging function
Games boxes	No	Long-term storage
Gas cylinders	Yes	Commercial and industrial cylinders included by Directive amendment 2013/2/EU from 1 October 2013. Fire extinguishers are not packaging.
Gift voucher envelopes	No	As card envelopes, product
Gift card packaging	Yes	We consider the gift card is a sales unit, purchased for the value of the information contained upon it and as such, whatever the gift card is surrounded by for the purposes of containment, protection, handling, delivery and presentation will be obligated. The product will be the gift voucher/plastic card. Any information separately included regarding the experience/booking details would not be classed as packaging.
Glass containing wax beads and candle wick	Depends	Presumption is that glass performs packaging (presentation, containment etc.) function and is obligated
Grow bags	No	Considered integral part of the product
Haggis skin	Yes	Packaging as it's not edible and the filling is the product
Hat boxes	No	Long-term storage
IBCs	Yes	Analogy with pallet containing packaged goods
IBC liners	Yes	
Inhaler - plastic holder	No	Product
Inhaler - cartridge	Yes	Packaging
Inhaler (asthma or nasal) - whole unit disposable	Yes	All packaging
Jars (designed to be tumblers after use)	Yes	After use is irrelevant. Presumption is that glass performs packaging (presentation containment etc.) function and is obligated.

Jewellery/watch boxes	Yes	In exceptional circumstances where box is specifically designed and bespoke, it may be considered as long-term storage and not packaging.
Junk mail	No	Not regarded as goods and therefore associated packaging not obligated. If an item ordered is a sales unit (for example, paid for catalogue), this is regarded as goods and associated packaging is obligated
Kebab skewer	No	Part of product/sales unit
Knives and forks - disposable	No	No packaging function
Laundry/dry cleaning packaging	Yes	Pack/fill and sell
Lighters - disposable	No	Whether refillable or not
Lipstick tubes	Yes	
Liquid correction fluid brush	Yes	Integral part of a packaging component
Lolly stick	No	Part of product/sales unit
Manicure set case	Depends	If intent is for long-term storage, not packaging
Mascara brush	Yes	Where it forms part of the lid, not where sold as a product in isolation
Masterbatch	Depends	No obligation for manufacturers. Converters account for pigment as part of overall weight of plastic packaging produced and supplied
Match boxes	Yes	
Meat packaging - absorbent paper	Yes	Forms part of sale unit
Mobile phone top up card packaging	Yes	Card is a sales unit and therefore packaging is obligated
Nozzles (for sealant dispensers)	Yes	If also forming the function of a closure
Packaging as a product	Depends	Where packaging materials such as jiffy bags, cardboard boxes, envelopes, bags and sacks are sold as a product they are not obligated.
Pallet nails	Yes	The converter will declare the weight used. Pack/fillers and sellers will not be expected to determine the individual weight of the nails, but take the overall weight of the pallet
Party poppers	No	Container, card top and string are all considered to be part of the product
PC games/software boxes	No	Considered long-term storage
Pencil cases/purses with sweets	No	Pencil cases/purses are product
Pens - disposable	No	Product
Petri dishes containing agar	No	Product
Photograph wallets <b>outer envelopes</b>	No	Photograph wallets are long-term storage
<b>Outer envelope around the photograph wallet</b>	Yes	<b>The envelope used to present or deliver the wallet is packaging whether it is collected or delivered.</b>
Plant ID labels	Yes	Presentation function

Plant pots	Yes	Except when biodegradable and intended to be planted with the plant, or when sold containing a plant intended to stay in the pot for example, a house/patio plant
Plates - disposable	No	Product where supplied separately
Postal packaging on goods/requested catalogues	Yes	If the contents are acquired as part of a contract (mail order goods, goods on approval, paid for or requested catalogues) they are goods and the packaging is obligated
Postal packaging on mail/general correspondence	No	Postal packaging on mail/general correspondence
Pre-packed sandwich/cake cartons	Yes	Performs protection/presentation functions
Presentation packs	Yes	Contains products
Printer cartridges	No	Part of product
Promotional leaflets/poster/freebies and associated packaging	Yes	Packaging around promotional goods supplied is regarded as packaging
Razor handle holders	No	Regarded as long-term packaging
Razor blade holders	Yes	The plastic tray holder containing the razor blades is packaging
Removal boxes	No	Not normally part of a sales unit
Reed diffuser bottles	Yes	The bottle contains oil for the diffusers and is regarded as packaging
Re-used packaging	Depends	Yes if imported. Not where on second and subsequent trips, but obligated on first trip
Roll cages	Yes	Same as pallets, unless internal supply
Roll on deodorant	Yes	
Room deodorisers (plastic outer for re-filling)	No	Durable, part of product
Saline bags	Yes	Sales unit containing product
Santa Claus cards (replies from Royal Mail) - associated packaging	No	Not considered goods
Sausage skins	No	Part of product
Security tags on CDs	Depends	Tags which do not perform any packaging functions are not obligated. If they act as a closure (for example, label on CD opening), they are obligated
Silica gel bags (desiccants)	Yes	Protection function, therefore obligated
Silage Wrap	No	Silage wrap is a system/vessel which enables the process of fermentation to take place and is integral to the process. Silage is made either by placing cut green vegetation in a silo or pit, by piling it in a large heap and compressing it down so as to leave as little oxygen as possible and then covering it with a plastic sheet, or by wrapping large round bales tightly in plastic film. Therefore, silage wrap's primary function is to produce the product.
Skip bags (pre-paid)	No	Not part of a sales unit
Spectacle cases	No	Long-term storage
Spoons/leaflets with medicines	No	No packaging functions

Sterile medical packaging	Yes	Protection function, therefore packaging. The FACT that it's sterile does not remove the potential for being obligated.
Stillages (for example, metal open crates used in the automotive industry)	Yes	Transit packaging on first trip (not a road/rail/ship container)
Storm matches - boxes	Yes	Match box performs packaging functions
Sunglasses - tags and labels (for example, UV rating; care instructions etc.)	Yes	Presentation packaging function
Syringes Empty - used for drawing up  Pre-packed with medicine  Plastic needle caps on syringes	No  Yes  No	Product (although wrapping around syringe will be packaging) Syringe and any labels, wrapping and so on, will be packaging – performs delivery and protection function (see Epi pen) Part of the product (syringe)
Tampon Applicator	No	The applicator is considered part of the product and not packaging.
Tea bags	No	Integral part of product, including string in drawstring teabags. String, label and staple attached to ordinary teabags are obligated
Tea lights - foil cups	No	Integral part of product
Tea caddies	Yes	Contains a consumable product that does not meet the requirements of long-term storage
Teat supplied separately with baby milk	No	If the teat is supplied separately and is not the main closure as they also come with a lid, which you take off and put on the teat. This is analogous to a nozzle, which is only packaging when it's forming the closure.
Toner cartridges	No	Part of product
Toys in boxes and trays (for example, small figures)	Yes	Boxes and trays considered to be disposed after opening
Totes (plastic crates)	Yes	For first trip only. Not obligated if only used for internal transfer.
Trays - bread and bakery	Yes	When supplied (including hiring and lending - service provider) with goods (on first trip only)  The definition of supply given in Schedule 1 of the Regulations includes "selling, hiring out or lending". In this case the bakery maintains ownership of these trays but lends them to their customer. Therefore a supply has been made. These trays are normally reusable packaging so the bakery would be obligated on their first trip.
Trays - disposable food tray	Yes	Protects and presents food

Tray - durable food tray	No	No packaging function
Urine bags	No	Not part of sales unit. Urine is not goods.
Vending toys ('egg' container)	Yes	
Vial (pre-packed with medicine)	Yes	Glass vial containing medicines, all included as packaging including metal crimp lid and rubber/plastic valve.
Video card boxes	No	Long-term storage
Water filter cartridges (containing membrane)	No	Part of product
Wooden bucket with shower goods	Yes	Shower goods are consumable products and not durable goods. See Jars (designed to be tumblers after use) for a comparable product.
Wrapping paper	Depends	No when sold as a product. Yes when used to wrap goods for supply

## Table 2 Labels

Label	Obligated	Comments
Barcode ONLY	No	No packaging function
Barcode plus number	No	No packaging function
Handle with Care reactive labels	Yes	Labels which indicate if a product has received an impact – this label is protecting and aiding the handling of the product and is therefore packaging
Hazchem label only (including all legally required information e.g. company name, address, description)	No	No packaging function even though it legally requires a name and address.
Label with description/picture of product and/or company name	Yes	Presentation function
Pharmacy labels – name and address of the pharmacy, dosage instructions for the patient at the point of dispensing and no logo	No	No packaging function

## Table 3 Packaging Materials

The materials included in the table below should be included in the data form as the material identified in the 'Packaging Material' column.

Material	Packaging Material
Biodegradable packaging – starch based material	Paper/board
Bio-degradable plastics – compostable plastics made of plant-based products	Other

Cellulose based products	Paper/board
Chipboard	Wood
<b>Composite</b> packaging materials - multi-layered sheets or laminates of dissimilar materials which are bonded together and cannot be separated by hand	Record the whole weight of the item in the predominant material by weight
Cork	Other
Cotton	Other
Flax based products	Other
Glue	Other Declare separately when applied at conversion or pack/fill stage, but not at manufacturing stage. At other stages, it will be included in the overall weight of the packaging material
Hardboard	Wood
Ink	Other Declare separately when applied at conversion or pack/fill stage, but not at manufacturing stage. At other stages, it will be included in the overall weight of the packaging material
MDF (medium density fibreboard)	Wood
<b>Multi-material packaging</b> - components of different materials assembled during the converter or packer-filler stages	Record the weights as the different component materials (these weights should be available in the supplier chain or at the point of assembly)
Nitrile	Other
Non fossil fuel derived plastic / bio plastic	Plastic - Non fossil fuel derived plastic / bio plastic should be classified as plastic for the purposes of the Packaging Regulations. Even though they are non-fossil sourced, these materials are chemically similar to fossil derived polyethylene (PE) and can be recycled as part of the same process as other PE films
Oxy-degradable plastics – made of petro chemicals	Plastic
Particle board, OSB	Wood
Plywood	Wood

Plastics chemically similar to normal petrochemical derived plastic	Plastic
Rubber	Other
Sawn timber	Wood
Silicone	Other
Sugar cane based products	Paper/board
Vermiculite	Other
Wax (EXCEPT for cheese production)	Other

## Table 4 Groups

The references are to Schedule 10, Part II

WHEN A COMPANY JOINS A GROUP (4a)		
The company is obligated in its own right?	RESPONSIBILITY FOR THE REGISTRATION YEAR IN WHICH IT JOINS THE GROUP	
YES	Company registers as part of a group	Holding company responsible for the whole year (6)
	Company registers individually	Company responsible for the whole year (7)
NO	Company registers as part of a group	Holding company responsible for the proportion* of the year the company is in the group (8)
	Company registers individually	Company responsible for the proportion* of the year in which it joins the group (9)
WHEN A COMPANY LEAVES A GROUP (4b)		
The company is obligated in its own right?	RESPONSIBILITY FOR THE REGISTRATION YEAR IN WHICH IT LEAVES THE GROUP	
YES	Company <u>was not</u> registered as part of a group	If not registered, company becomes obligated for that year (7(3)(d)) and must register individually within 28 days (10)
		If already registered individually, then company is responsible for the whole year (12)
	Company <u>was</u> registered as part of a group	Holding company responsible for the year company was in the group (11)
	Company registered individually	Company responsible for the year in which it leaves the group (12)
NO	Company registered as part of a group	Holding company responsible for the year (13)
	Company registered individually	Holding company responsible for the year (14)
WHEN A COMPANY LEAVES ONE GROUP (1 <sup>st</sup> GROUP) AND JOINS ANOTHER (2 <sup>nd</sup> GROUP)		
Registered as a group	Carry on registration as part of a group	1 <sup>st</sup> group responsible for the registration year in which it leaves 2 <sup>nd</sup> group responsible the second and subsequent years (15a)

	Leaves group registration and registers individually	1 <sup>st</sup> group responsible for registration year in group Company responsible for second and subsequent years (15c) 1st group registration will update their registration to remove the subsidiary name but not update their obligation.
Registered individually	Continue to register individually	Company responsible for the whole registration year (15b)
	Was individually registered but joins group membership	Company responsible for registration year not in group 2 <sup>nd</sup> group responsible for second and subsequent years (15d)  The Company would maintain the individual obligation for Year 1 and then they would move into the group for year 2 and so on.

\*PROPORTION =  $\frac{G}{H}$  G= number of days in a relevant year a company was in a group  
H = number of days in the relevant year

## Part 3

### Acknowledged methodologies

A number of trade bodies, compliance schemes, and consultants have generated methodologies and protocols to help determine a producer's packaging obligation. Methodologies can be beneficial when there are justifiable reasons within the industry sector concerned, for example, large number of products with highly variable packaging associated with the products.

Where such methodologies or protocols are used, we will continue to require that data is as accurate as reasonably possible. Any methodology or system which is initially acknowledged by the Agency will have to be periodically reviewed with regard to the accuracy of the packaging data they generate.

We will review all methodologies and protocols sent to us. If they provide data which is considered to be as accurate as reasonably possible for that sector, we will 'acknowledge' them. This will provide our staff with the confirmation that when used as prescribed, the resulting data will be acceptable. This will be subject to Area Officers verifying the correct use of the methodology and that any supporting information (for example, sales data) is correct.

We will not agree or endorse such methodologies or protocols.

The table below provides a summary of methodologies that we have acknowledged. The list is definitive - that is, anything not included here has not been reviewed or acknowledged at a national level.

Companies may develop methodologies for their own use, or for a group of companies. The fact that they have not been presented to the Agencies does not mean that they are not valid. In such circumstances, the Area Officer must review them as part of the normal compliance monitoring process.

Details of agreed national protocols for packaging waste in material being sent for reprocessing are detailed in guidance on accreditation of reprocessors and exporters on [gov.uk](http://gov.uk)

Owner	Name	Target Business Sector	Status	Expiry Date	Comments
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Biffpack	Builders Merchants Ready Reckoner	Builders merchants	Current	Reviewed	Provides a series of co-efficients for product groups.
British Glass		Glass container manufacturers	Current	No expiry date	Range of percentages agreed for third party exports of glass containers. Beers - 11% Food - 5% Spirits - 83% Flavoured Alcoholic Beverages - 8% Pharmaceutical - 40% Wine - 2% Soft drinks - 0.03% Cider - 7% Dairy - 0%
Confederation of Paper Industries (CPI) Formerly Corrugated Packaging Association (CPA)	Ready Reckoner	Corrugated paper converters	Current	Annually reviewed	3 <sup>rd</sup> party export percentage - covers packaging exported with products and exported as a product. Figure for 2021 is <b>29.0%</b> The agreement applies to all UK companies that convert corrugated board into boxes, whether this is their primary business (e.g. as a sheet plant) or in the case where it is a supplementary/ancillary business  If their display products happen to be made out of corrugated then this is outside any such agreement, given that it is not packaging)
DHL	Packaging Data Store	Grocery sector - but expanding	Current	Reviewed	

Ecoveritas Data Services		A variety of sectors (e.g. wholesalers, food and drink, retail, pharmaceutical, entertainment)	Current	No expiry date	The weight data held is bespoke for each client, and is collated and calculated through ecoVeritas' PackMan system
Ecoveritas Data Services	REPR (Retailer's Producer Responsibility Association)	Large department stores	Current	No expiry date	This system uses unit sales against actual and extrapolated packaging weights
Fresh Produce Consortium	FPC Guide	Fresh produce importers	Current	Annually reviewed Last reviewed December 2020 for 2021	Ready reckoner style workbook.
Green Streets Environmental Resources	Grip	A wide range of clients	Current	No expiry date	
Horticultural Trade Association (HTA)	HTA Workbook	Horticultural	Current	Annually reviewed Last reviewed December 2020 for 2021	Members download direct from the HTA website
J Williams & Associates	JWA Automotive Aftermarket Process	Automotive Aftermarket (vehicle parts, equipment, chemicals and accessories)	Current	Reviewed	Agreed 22/1/2015
J Williams & Associates	JWA Wine Wholesalers and Importers Process.	Wines, Beers, spirits and soft drinks wholesalers and importers	Current	Reviewed	Agreed 20/06/16
PAPCO	PAPCO matrix	Paper merchants	Current	No expiry date	Provides standard weights for packed paper products
Timber Trade Federation		Timber merchants Volume to weight ratio for packaging wood	Current	No expiry date	Standard weight agreed at 507kg/m
Valpak	Valpak Data Solutions	Wide range of clients but mainly in the retail sectors	Current	Reviewed	

Wastepack	Buildpack	Builders merchants	Current	No expiry date	A web based system that uses unit sales against actual packaging weights
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