

**Producer Responsibility Obligations (Packaging Waste)**  
**Regulations 1997 (As Amended)**

**Consultation Paper on Meeting Directive Targets in 2008.**

**Response of The Environment Exchange ([www.t2e.co.uk](http://www.t2e.co.uk))**

The Environment Exchange ([www.t2e.co.uk](http://www.t2e.co.uk)), the market place for PRNs, provides information, transaction and settlement services to our participants. t2e has 704 active participants which consist of 224 accredited compliance schemes, exporters and reproprocessors and 523 obligated companies and their representatives.

At the request of its participants The Environment Exchange has established a PRN Stakeholder Group which consists of participants from all sectors in which issues pertinent to the participants are discussed. The Environment Exchange also chairs a multi-material group that has been looking at the issues involved in the independent auditing of accredited reproprocessors and exporters.

Views on the consultation have been taken in these fora and also during individual conversations with participants. Many of the issues involved in this consultation outwith the changes to targets have a more significant impact on the operation of compliance schemes and companies that do not currently have an obligation and will not have a significant impact on the majority of participants of t2e.

However this has not reduced the concern that has been expressed about the Government's desire to introduce a number of significant changes in the regulations which may impact on the market without given the participants sufficient time to consider the implications. In particular there is a concern that the changes could lead to a reduction in choice in compliance options and a restriction of competition within the PRN market. It is felt that if the consultation had restricted itself to the targets as original proposed then the shorter time period which the Government requires in order to ensure that the revised regulations are in place by 2006 would have not only been desirable but achievable.

Participants await the long proposed consultation on the PRN system with interest. While participants appreciate that there is room for improvement in the PRN system the vast majority like and understand what they have got. They also appreciate that due to the volatile nature of the export market on which the UK is reliant to achieve national compliance there is the risk that there may be in any individual year a shortage in specific materials. However they would prefer to see more market orientated measures taken to resolve these issues. In particular the introduction of non-criminal penalties that acted as a deterrent to non-compliance but was proportional to the offence and retains the funds within the PRN system such as a daily fine until the requisite tonnage of PRNs is obtained. The introduction of carry-back tonnage to match carry forward tonnage is gaining favour. There have also been suggestions of a 'penalty PRN' which is paid back into the recycling system like the ROC penalty.

Participants are concerned that the actions of Government and the Agencies in trying to control the acquisition of PRNs is having an impact on the price and contributing to the volatility of the market particularly at crucial times such as the transition period between compliance years. Additionally quarterly purchasing will have a detrimental impact if as a result of an heavily contracted market there is no flexibility to meet shortfalls early in the year.

Participants note a conflict between the encouragement by the Government for three year partnerships and their desire to accredit compliance schemes, reprocessors and exporters annually. The latter without the presumption of re-accreditation (e.g. an opt out rather than an opt in) would appear to encourage short-termism.

Also greater efficiency and consistency in the approach of the Agencies to regulation and accreditation would be appreciated. While the former would be improved by the introduction of better IT within the Agencies it is not clear how the proposed consolidation within DEFRA will improve issues. In fact there is concern that it would further delay decisions. While participants are sympathetic to the Agencies suggestion that they are underfunded to carry out all of their tasks, they do not believe that the Agencies are underfunded to carry out their regulatory duties for this regulation and there is concern that fees taken are being utilised by the Agencies elsewhere to the detriment of the implementation of this regulation.

Finally there must be sustainability questions raised if the Net Present Value of increasing recycling of materials is negative regardless of whether the benefits to date have been positive.

**Q1. Do you agree that this definition of license agreement (and therefore the definition of licensor) covers all of the cases that the Government intends to obligate under this head, namely businesses that operate “franchise” and similar arrangements?**

While it is understood that the Government wishes to include tonnage that is not obligated at the moment, it is not clear whom the government intends to cover. Is it trying to include or exclude businesses with this definition. It would be best to list examples of those businesses and activities that the Government wishes to be covered by this definition.

**a) If no, which type of businesses are not included in this definition?**

As Q1.

**b) Why do these businesses not come within the definition?**

As Q1.

**c) What are the essential features of the agreements those type of businesses have entered into with their licensees?**

No comment.

**d) How would you modify the definition in order to cover those businesses**

No comment.

**Q2. Do you agree that this definition of pub operating agreement (and therefore the definition of pub operating business) covers all of the cases the Government intends to obligate under this head, namely pub operating companies?**

Yes.

**a) If no, which type of businesses are not included in this definition?**

As Q2.

**b) Why do these businesses not come within the definition?**

As Q2.

**c) What are the essential features of the agreements those type of businesses have entered into with their tenants?**

No comment.

**d) How would you modify the definition in order to cover those businesses?**

No comment.

**Q3. Do you agree that the packaging that should be obligated is that packaging (or packaging materials) supplied by the licensee that bears the trade mark of the licensor or have been purchased by the licensee as a result of the agreement, or in the case of the tenant, that packaging (or packaging materials) that the tenant purchases that are associated with the purchasing obligation as indicated?**

Yes, the obligation should only apply to the packaging handled by the licensee/tenant pub that had to be purchased through direct agreement with the licensor/pub operating business.

**Q4. The Government would welcome comments on the targets shown in scenarios 3, 4, and 5. Do you agree that the targets should be set to rise in roughly equal amounts (tonnes) each year or do you prefer front-loaded targets? Or back-loaded targets?**

On the basis of the figures in the data note dated 30 August 2005 and taking into account historical % of obligated tonnage, recommended targets for 2008 are (Justification is at Annex A):

	Minimum	Alternatives	Recommended	Alternatives
Paper	67.5%		71.0%	
Glass	72.5%		76.0%	
Steel	60.0%	60.0%	63.0%	63.5%
Aluminium	31.5%	31.5%	34.5%	31.5%
Plastic	24.5%		25.5%	
Wood	26.0%		27.0%	
Recovery	71.5%	70.5%	75.0%	72.0%

General

92.0%

93.0%

92.0%

95.0%

Targets should be set to rise in equal amounts each intervening year. This is the most cost-effective way to meet the Directive's targets. Significant concerns lie at the achievability and the consequent cost of the recommended metals targets therefore the minimum targets are preferable in this instance.

**Q5. Do you agree with the proposal that compliance schemes should re-apply for approval from the Secretary of State or Scottish Minister each year?**

No. It is difficult to understand how this additional scrutiny will benefit the operation of the PRN system or compliance schemes. The crucial issue is to provide clear guidance to the Agencies on how compliance scheme plans should be monitored. Great caution should be exercised to avoid stifling innovation in achieving compliance. The single issue that will contribute most to non-compliance by the UK is PRN and PERN fraud not the scrutiny of compliance scheme operational plans.

**Q6. Do you agree that when a scheme re-applies, it should submit its operational plan both to the relevant Agency and to DEFRA/the Scottish Executive so that additional scrutiny can be carried out?**

Yes, on the understanding that the same rules apply to schemes and direct registrants.

**Q7. Do you agree that it would be helpful and facilitate the monitoring of schemes' and producers' operational plans if these were submitted in the proposed two part format with a template that can be entered into the scrutiny database relatively easily?**

Any system which facilitates the ease in which data is entered on a database is welcomed. Any new system must be robust enough to ensure there are no delays or confusion during the registration process, must be fully compatible with new systems being introduced under DEFRA's waste data strategy and must ensure that companies confidential information cannot be accessed by other parties. See Q5 it is not clear that this system is best operated by DEFRA rather than the Agencies.

**Q8. Do you agree with the proposed circumstances listed above as the basis for Approval not to be granted?**

No. This is a complex area which would benefit from more detailed consideration. There are a considerable number of circumstances that might result in reasonable efforts being taken to comply but being unable to achieve compliance.

Because of the potential implications for members of compliance schemes issues that involve the de-registration of schemes should be orientated around deliberate non-compliance rather than inadvertent and tried in a court of law.

**Q9. Do you agree with the proposed meaning of "to meet" obligations?**

No. See Q8

**Q10. Do you agree with the proposed meaning of “to fail to a significant degree” to meet one of the material-specific recycling obligations?**

No, see Q8.

**Q11. If you do not, what would you propose instead?**

No, see Q8.

**Q12. Do you agree with the proposed fee structure of £110 per member when schemes are granted conditional approval?**

No, see Q8.

**Q13. Do you agree with the suggested criteria for conditional approval to be granted? If not, what would you suggest instead?**

Possibly but this needs to be part of a wider discussion considering a broader range of options than currently suggested.

**Q14. Do you agree with the proposed introduction of “conditional approval”? Do you agree with the proposed conditions with which a scheme granted conditional approval would have to comply?**

No. See Q8 and Q13.

**Technical changes to the proposed Regulations:**

1. Regulation 7 (4) (f). This should be related to obligation not packaging handled. It should be introduced at an obligation of 1,000 tonnes.
2. Regulation 7 (6). It is unclear what action to take if registration is refused. Effectively by refusing registration the Agency is forcing an obligated company to break the law. Is this legal?
3. Schedule 7 2. The public register for accredited reproprocessors and exporters should show whether an independent audit report is qualified or unqualified, whether its accreditation has been suspended or cancelled and the date of suspension or cancellation if appropriate.
4. Schedule 5 1. (q) The requirement for an independent audit should be linked to the previous years status not the current years status (e.g. if a large reproprocessor re-accredits as a small reproprocessor or even does not re-accredit they still require an independent audit on the previous year).