



ENVIRONMENT
AGENCY



**THE PRODUCER RESPONSIBILITY OBLIGATIONS
(PACKAGING WASTE) REGULATIONS 1997**

**THE AGENCIES'
INTERPRETATION
OF 'PACKAGING'**

2nd EDITION

July 1999

INTRODUCTION

The EC Directive on Packaging and Packaging Waste, upon which the UK Regulations are based, only gives general guidance as to what is and is not to be regarded as packaging.

It is essential that a standard interpretation of the definition of 'packaging' exists within the UK so that the Agencies have a consistent basis for assessing obligations under the Regulations. The Agencies, in developing principles which apply the definition of packaging, must have regard to the common sense understanding of what is and is not packaging, the objective of sustainability and to the expressed purpose of the EC Directive which is to, "reduce the overall volume of packaging waste".

Included in this booklet is a summary of items where agreement on packaging status has been reached by Member States.

These notes set down **the Agencies' views** on how obligated producers (and Compliance Schemes) should assess the items of packaging and packaging materials for which they are responsible when compiling records and calculating recovery and recycling obligations.

This booklet replaces the first edition issued by the Environment Agency and the Scottish Environment Protection Agency (SEPA) in July 1997, reflecting both the constructive proposals from a number of packaging chain interests and the Agencies' practical experience of interpreting and enforcing the Regulations. It should be noted that it does not cover exemptions from the legislation, nor matters such as evidence, or calculation of obligations (which will depend on criteria such as ownership and the nature of supply).

Particular thanks are due to all those companies, trade associations and Compliance Schemes which responded to the consultation draft in April 1999.

THE EUROPEAN DIMENSION

There is a committee (The Article 21 Committee) which assists the European Commission in dealing with any difficulties encountered in applying the provisions of the Packaging Directive. All Member States are represented on the Committee, the UK by the Department of Trade and Industry.

One particularly helpful decision in early 1999 was to publish a list of items, the status of which is agreed by the Committee. The list (which is subject to change) is intended to promote common understanding. Some illustrative examples from the document are set out below.

The following are packaging

- ◆ Cake tins
- ◆ Sweet boxes
- ◆ Boxes for watchmaker's products
- ◆ Toy boxes for consumable toys
- ◆ Cigarette cartons
- ◆ Charcoal sacks
- ◆ Dosage delivery caps
- ◆ Paint tins
- ◆ Film overwrap around a CD case
- ◆ Match boxes
- ◆ Paper or plastic carrier bags *designed/ aimed for being filled at point of sale*
- ◆ Mascara brush *which forms part of the container closure*
- ◆ Sticky labels *attached to another packaging item*
- ◆ Accessory packaging *hung directly on or attached to the product*

The following are not packaging

- ◆ Toy boxes for durable toys
- ◆ Flower pots *intended to stay with the plant throughout its life*
- ◆ Ink cartridges
- ◆ Tool boxes
- ◆ First aid boxes
- ◆ Boxes for contact lenses
- ◆ Tea bags
- ◆ Sausage skins
- ◆ Stirrers
- ◆ Blood bags
- ◆ Urine bags

It is important to note that the above lists have no statutory force in the UK. Whether or not the above items are obligated packaging in the UK will depend upon whether they satisfy the other criteria for packaging given in the Regulations (e.g. ownership, nature of supply, etc).

INTERPRETATION TESTS

NOTES ON STEPS A TO F IN THE FLOW CHART

Step A – Identify the Sales Unit

The foundation of the interpretation tests is the sales unit (which comprises the product and its packaging); the purpose of Step A is to identify it. For example, the silver 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 B – Remove the Product

The product (or products if grouped) is that which is to be used or consumed after purchase. In the example given in Step A, this would be the preserves and the spoon.

Some items are regarded by the Agencies as products in their own right (although the boxes, bags, etc they come in are packaging); examples include tea bags, pencils, fire extinguishers, 35mm film cassettes and toner cartridges.

Step C – Durable Packaging for Durable Products

It is considered that only durable products which cannot be used up (or consumed) may require durable packaging for long-term storage. An item which provides such long-term storage for a durable product is not regarded as obligated packaging by the Agencies.

The Article 21 Committee consider that a durable item is to be understood in a flexible way as an item that a majority of consumers use for longer than five years, and is intended for repeated use and not for disposal after the first use.

Preserves are consumable so no part of the sales unit for them can be for long-term storage. In contrast, power tools are durable products, so it is reasonable to consider their carrying cases as providing long-term storage. This also applies to durable carrying cases or moulded containers designed to last the lifetime of durable items such as spectacles, laptop computers, electric razors, cutlery, and cameras.

Step D - The 'Function Test'

Regulation 2 states that '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....". The Agencies consider that a given item of packaging need not perform **all** of these functions, the performance of one such function is sufficient.

In the absence of any definitions of these specific functions in the Regulations, the Agencies consider that the ordinary dictionary meanings are appropriate, adapted as necessary to make sense in the context of the Regulations and the purpose of the Packaging Directive.

- a) "Containment" is the act or process of restraining or enclosing e.g. drums and cans;
- b) "Protection" means the defence from harm, e.g. bubble wrap;
- c) "Handling" means facilitating movement, e.g. carpet cores;
- d) "Delivery" is the conveyance of the product(s) to the final user or consumer; and
- e) "Presentation" means to exhibit or display the product(s), which may include attracting attention to them e.g. a label, or a brightly coloured box containing an Easter egg.

Step E - The 'Purposes Test'

Regulation 2 goes on to set out a second test. For an item of a sales unit to be packaging, it must **also** be:

"(a) sales packaging or primary packaging, that is to say packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;

(b) grouped packaging or secondary packaging, that is to say packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale; it can be removed from the product without affecting its characteristics;

(c) transport packaging or tertiary packaging, that is to say packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packs in order to prevent physical handling and transport damage; for the purposes of these Regulations transport packaging does not include road, rail, ship and air containers¹.

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.

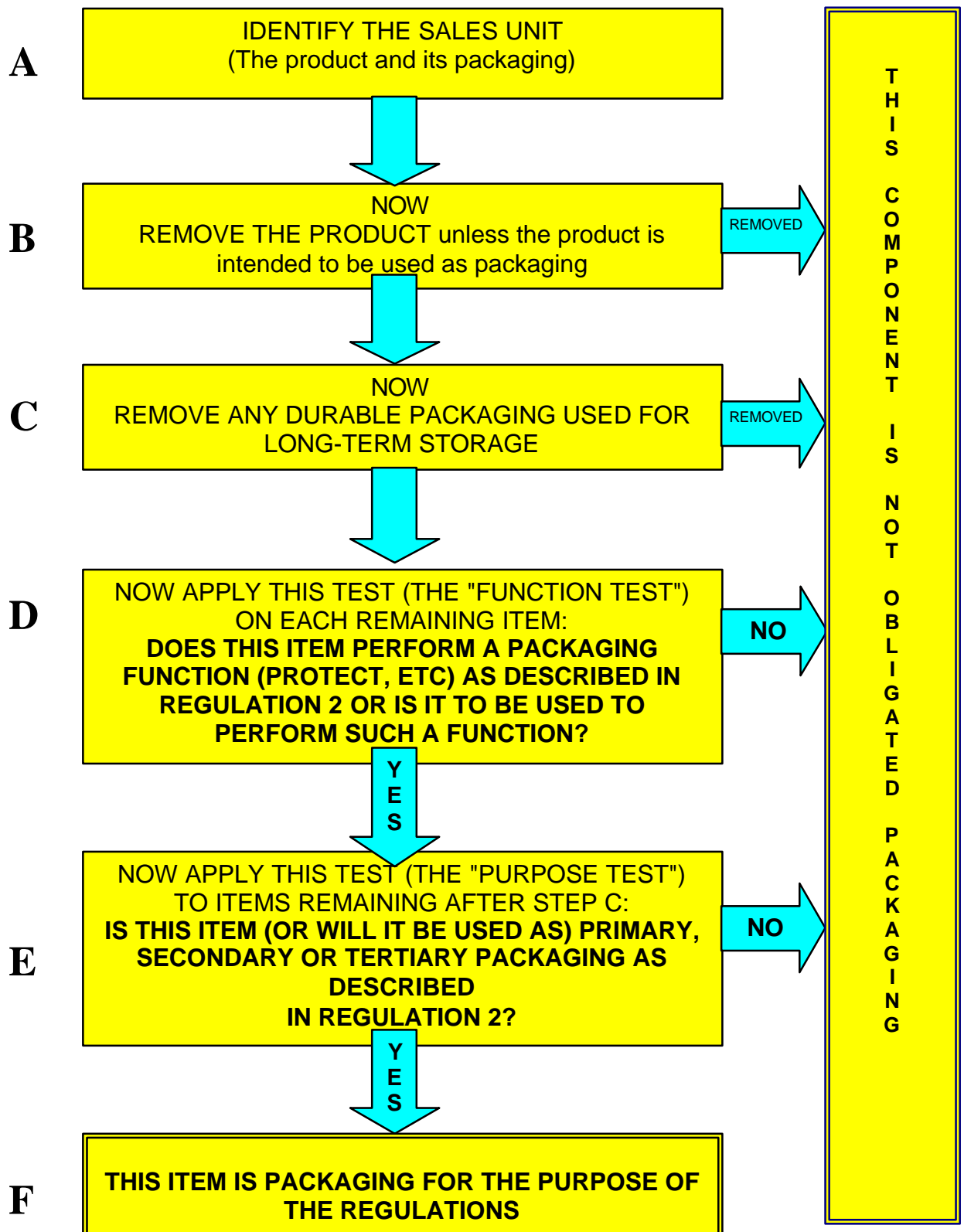
Step F

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

¹ Note: such containers are described in an Agencies' Explanatory Note.

INTERPRETATION – FLOW CHART

(To be used in conjunction with the explanatory text in this booklet)



Further Information

Legislation

- The European Parliament & Council Directive on Packaging & Packaging Waste (94/62/EC)
- The Environment Act 1995
- The Producer Responsibility Obligations (Packaging Waste) Regulations 1997; (as amended)

Government Publications

- The Packaging Waste Regulations 1997 Ready Reckoner. Department of the Environment, 1997
- The Packaging Waste Regulations 1997 User's Guide. Department of the Environment, 1997

Agency Publications

- The Packaging Waste Regulations - Guidance on Evidence of Compliance and Voluntary Accreditation of Reprocessors. (Booklet); Second Edition , 1999.

Explanatory Notes (ENs)

Explanatory Notes (ENs) are internal documents used to assist Agency officers in the interpretation and enforcement of the legislation. In the interests of transparency they are published on the Agencies' internet web-sites.

Environment Agency:- www.environment-agency.gov.uk

SEPA:- www.sepa.org.uk

Queries

General packaging queries should be directed to your local Agency office.

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Agency contacts