



### About This Guidance

These notes have been produced by LACORS<sup>1</sup> and INCPEN<sup>2</sup> to aid businesses and local trading standards authorities. Their purpose is to offer preliminary guidance on complying with the new Packaging (Essential Requirements) Regulations 1998<sup>3</sup>.

Being general guidance it is not possible for these notes to offer a definitive view on the legislation as it affects individuals. Those requiring more detailed advice should refer to the legislation, the guidance produced by Government<sup>4</sup> and, where available, materials developed by trade bodies. A list of available guidance is maintained on the LACORS website which can be found at the following address: (<http://www.LACORS.org.uk/p&e/summary.htm>).

### The Legislation

The Packaging (Essential Requirements) Regulations implement European law. The legislation obliges packer/fillers of packaging (or importers or 'own brand' retailers) to ensure that:

- packaging (and individual packaging components) contain less than the following amount, in total, of lead, cadmium, mercury or hexavalent chromium:
  - no more than 600 parts per million (ppm) after 30 June 1998;
  - no more than 250 ppm after 30 June 1999; and
  - no more than 100 ppm after 30 June 2001.
- essential requirements are met regarding minimising packaging volume and weight in line with safety, hygiene and product/consumer acceptance; designing packaging to permit reuse and/or recovery and to minimise the impact of packaging waste on the environment; and manufacturing packaging to minimise the presence of hazardous substances in emissions, ash or leachate when packaging waste is incinerated or landfilled.

### Home Authority/Business Partnerships

Local trading standards authorities subscribe to the LACORS Home Authority Principle which promotes a partnership approach to compliance. For every business this means that there is one local authority, usually the authority in whose area the headquarters of the business is based, they can turn to for advice and guidance on compliance with a broad range of consumer protection legislation including the Packaging (Essential Requirements) Regulations. Wherever practicable, the Home Authority Principle means that enforcement is based around advice and support to business, the aim being to 'get it right first time'. On issues such as minimisation etc. the Home Authority Principle provides a ready means for addressing both business enquiries and interest from enforcing authorities.

### Applying the Law - The Starting Point

The new controls are expected to impact on over 25,000<sup>5</sup> packers and fillers in the UK. Others affected will be importers of packed or filled packaging and retailers supplying 'own brand' packaged goods. Each business may be responsible for hundreds or even thousands of different packaging lines. The legislation covers business-to-business supplies as well as those to consumers.

Packer/fillers will obviously need their suppliers (packaging converters) to guarantee that their packaging or packaging components meet the heavy metal limit requirements. However, suppliers cannot guarantee the other Essential Requirements because they do not produce the final packed item and cannot therefore judge if the pack put on the

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<sup>1</sup> Local Authorities Coordinating Body on Food and Trading Standards

<sup>2</sup> Industry Council for Packaging and the Environment

<sup>3</sup> Available from The Stationery Office quoting Statutory Instrument 1998 No.1165

<sup>4</sup> Government Guidance Notes on United Kingdom Regulations - DTI Publications Orderline 0870 1502 500 quoting URN 98/840

<sup>5</sup> Figure (for 1994) from the Office of National Statistics

market is optimum for purpose or even if it is recoverable because the packer/filler may have added a component that does not conform. Additionally, in most instances the converter has little control over the packaging which is usually produced to a specification provided by the packer/filler/retailer.

The Essential Requirements Regulations may be new law, but the obligations they impose will not be new to business. For many years there has been industry focus on packaging optimisation and the minimising of packaging waste, both to reflect environmental/governmental pressures and for economic reasons.

Products will require adequate packaging if damage is to be avoided but with distribution contributing significantly to overall product costs business has an obvious interest in designing packaging solutions which enable the safe transport of the largest number of items per consignment.

This should mean that business is already well-prepared to meet the essence of the legal requirements. Of course, with the publication of the legislation it is particularly important that new packaging is designed etc. for compliance. In two circumstances however, there is a specific exemption from the new controls, i.e.:

- for packaging used (packed/filled) prior to 31 December 1994; and
- for packaging lawfully manufactured prior to 1 January 1995 and placed on the market before 1 January 2000.

### **Heavy Metals**

The legislation requires the phased reduction of specified heavy metals (lead, cadmium, mercury and hexavalent chromium). The limits described above (which only apply the first time that packaging is placed on the market) draw upon American standards, the CONEG requirements, of long standing. It is therefore unlikely that UK businesses will encounter difficulties reaching even the lower threshold of 100 ppm required as of 30 June 2001.

Many packaging materials have no history of heavy metal use, e.g. untreated paper. However, these heavy metals can occur in some inks and coatings so a realistic approach to compliance requires an assessment as to the risk of packaging and packaging components breaching the requirements.

As testing will be costly, its consideration is likely to be restricted to those areas where strong colours are used and/or there is a particularly thick coating. Examples include:

- the enamels on decorated glass which may contain lead oxide or cadmium (for bright red or yellow pigments);
- drums used for industrial supplies may contain lead chromate or hexavalent chromium in the decorative coating; and
- yellow, orange or red pigments in some plastics, typically in non-food usage. An example are the crates and pallets used in distribution. A European-wide derogation is currently being considered for these.

In addition, recycling has resulted in the low level lead contamination of the glass stream. Negotiations in Europe are aimed at a derogation but in the interim LACORS advocates an enforcement tolerance where the current limit (of 600 ppm) is only narrowly exceeded.

### **Noxious and Hazardous Substances**

One of the essential requirements is that manufacture and composition of packaging should minimise the presence and release of noxious and hazardous substances. This requirement, whilst newly stated, complements other legal measures which have long regulated the impact of noxious substances in use. Businesses have, for example, needed to meet:

- the Materials and Articles in Contact with Food Regulations 1987 (as amended);
- the Plastic Materials and Articles in Contact with Food Regulations 1992; and
- the General Product (Safety) Regulations 1994.

Whilst the first two of these relate to food related packaging only, packaging producers (of which there are relatively small numbers) will likely treat the requirements as standard because packaging use may only be determined by the packer/filler etc.

## **Assessing Compliance - General**

Regard must be had to the overall packaging system. A false impression may be obtained if the focus is directed solely to goods in their end-packaging as opposed to following the items through the complete packaging system. For example:

- the sales packaging for multipacks of chocolate bars will be more than for single bars. However, the grouping packaging used in distribution may be so much less that the multipacks use less packaging overall; and
- delicatessen foods need far more packaging than the pre-packaged alternative both to protect against damage in transit and to facilitate their storage each night.

## **Changing Packaging Materials**

The Regulations oblige businesses to consider packaging design and composition, to take steps to minimise material usage and to facilitate recovery. They do not, however, impose an obligation to use particular materials or packaging forms. This remains a decision for individual businesses so, for example, perfume suppliers do not have to use standard 'medicine' bottles. Similarly, glass needn't be substituted by plastic - or vice versa. What is important is that the packaging decided upon is optimised to meet the requirements of the Regulations with regard to environmental impact.

## **Assessing Compliance - Luxury Items and Gifts**

The new controls do not outlaw luxury or gift packaging, indeed the Regulations specifically identify consumer acceptance as one of the criteria to have regard to when looking to reduce the quantity of materials used in any packaging. Thus packaging which forms an intrinsic part of a product, Easter eggs are an obvious example, is fine provided that packers/fillers can explain (if requested by a local authority) that the essential requirements are met and that consumer preference prevents further minimisation.

Whether or not an item is over-packaged (bearing in mind the need to look at the whole packaging system) is inevitably subjective. Whilst the courts can give a definitive view on any particular item there would appear considerable merit to the creation of an informal body composed of a few individuals from a range of sectors covering industry, enforcement, environmental and consumer interests, to provide advice on contentious areas. LACORS and INCPEN are currently looking at how such a body could be established.

## **Packaging Reuse**

When a system for reuse (for the same purpose as the original production) already exists, this will almost certainly satisfy the new requirement. The key point to note is that when re-use is no longer undertaken, the packaging must satisfy one of the recovery options (i.e. by recycling, energy recovery, composting or biodegradation).

## **Packaging Recovery**

Outside of certain closed-loop systems, businesses are unlikely to know where their packaging might end up as waste. They will not therefore know the nature of the waste management system for that waste. In general they should therefore aim to ensure that their packaging will not cause any problems in "typical" waste systems, i.e. be safe in controlled landfill, or capable of being handled safely in modern incinerators or, if intended to be recycled, be compatible with currently used processes.

It is important to note that compliance with the recovery requirements is based around the design and theoretical processing of packaging. The Regulations do not oblige packers/fillers to ensure that recovery is actually achieved.

## **Documenting Compliance**

The Regulations oblige packers/fillers etc. to provide, at the request of local authorities, appropriate documentation to demonstrate compliance with all of the requirements. Such information as is necessary to meet this obligation must be kept by the business for a minimum of four years from the placing on the market of the relevant pack.

It should be noted that the requirement is to provide adequate documentation on request; it is not an obligation to create and maintain a technical file for each pack line. Each business has to decide how the information is to be held, obvious

considerations include the approach of in-house quality management systems, EMAS accreditation, the number of packaging lines etc.

Other than the exemptions previously mentioned (see “Applying The Law - The Starting Point”) the obligations apply equally to new and existing packaging lines. Understandably, the compliance reality is that it will be easier for business to produce documents for newly developed packaging than those already on the market.

No time period is specified for responding to a local authority request for appropriate documentation. Whilst individual circumstances might dictate a more rapid response, it is thought that documentation should normally be available in no longer than 2-3 weeks.

As to the information itself, much will depend upon the focus of the local authority request. On occasion there may be reason to question compliance with all of the requirements, but equally the enquiry could relate only to one aspect such as reuse. It is possible to see a role for:

- existing technical documentation on design and use;
- existing QA and/or EMAS information; and
- materials relating to the adoption of the harmonised CEN Packaging Standards. These Standards, which may be finalised by mid-2000, are intended to provide a route for demonstrating compliance with all of the essential requirements. Businesses making use of this route may aid acceptance of their packaging in all EU Member States.

## **Europe**

Both businesses and local authorities will obviously want to see a consistent approach across Europe to the new obligations. DTI is understood to be discussing the creation of an EC forum on administrative cooperation with the European Commission. In the meantime, authorities pursuing enquiries in relation to packaging from other member states may wish to liase with LACORS.

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