

# **The Deposit and Return Scheme for Scotland Regulations 2020**

**Accompanying Statement  
and Proposed Regulations**

**September 2019**

## **The Deposit and Return Scheme for Scotland Regulations 2020 Accompanying Statement and Proposed Regulations**

1. This statement accompanies the draft of The Deposit and Return Scheme for Scotland Regulations 2020 laid before the Scottish Parliament on 10 September 2019 for a 91-day representation period until 10 December 2019.
2. The above Instrument is proposed to be made in exercise of the powers conferred by sections 84, 89, 90 and 96(2) of the Climate Change (Scotland) Act 2009 (“the Act”). This statement fulfils the requirement of Section 97(2)(b) of the Act to set out the reasons for making this Instrument.

### Policy Objectives

3. The main policy drivers for this Instrument are to promote and secure an increase in recycling of materials, forming part of the Scottish Government’s response to the global climate emergency.
4. The Scottish Government is committed to creating a more circular economy where products and materials are kept in a high-value state of use for as long as possible – maximising resources to benefit the economy and the environment. We recognise that fresh interventions are needed to bring about the systemic and behavioural change necessary to fulfil these aspirations.
5. It was against this backdrop that in the 2017 Programme for Government, the Scottish Government announced its intention to introduce a Deposit Return Scheme (DRS) for drinks containers for Scotland. Many other countries operate similar schemes, including:

- Croatia
- Denmark
- Estonia
- Finland
- Germany
- Iceland
- Lithuania
- Netherlands
- Norway
- Sweden

6. An extensive programme of consultation and stakeholder engagement followed the Scottish Government’s announcement and on 8 May 2019 the Scottish Ministers published “A Deposit Return Scheme for Scotland Full Business Case Stage 1”.<sup>1</sup> That document (“the FBC”) identifies the Scottish

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<https://www.gov.scot/binaries/content/documents/govscot/publications/publication/2019/05/deposit-return-scheme-scotland-full-business-case-stage-1/documents/deposit->

Government's preferred scheme design for DRS, building on the Outline Business Case<sup>2</sup> ("the OBC") published in May 2018 and the further evidence-gathering and analysis that has subsequently taken place. The regulations are based on the scheme design set out in the FBC.

7. The design enables consumers to take single-use containers back and redeem a 20p deposit from any retailer selling drinks covered by the scheme. This is within the range of deposit levels adopted by successful international schemes, adjusted for inflation. The scheme will include plastic bottles made from polyethylene terephthalate ("PET plastic", which is the most common type of bottle for products such as fizzy drinks and bottled water), aluminium and steel cans and glass bottles.

8. Businesses that sell drinks to be opened and consumed on-site, such as pubs and restaurants, will have the choice as to whether to charge the deposit to the public and will only be required to return the containers they sell on their own premises.

9. Online retailers will be included in the scheme. This means that those customers who are dependent on online delivery, because for a variety of reasons they are unable to travel to shops, are able to easily get back the deposits paid on containers.

10. Non-retail spaces will be able to act as return locations. These could include recycling centres, schools or other community hubs. While retailers will be required by legislation to provide a return service, non-retail spaces will operate on an opt-in basis.

11. Bigger retailers with more space may install machines to both collect the bottles and cans and enable people to redeem deposits. Smaller retailers with less space have the option to return deposits over the counter, collecting the containers manually.

12. The FBC demonstrates how a successful DRS will contribute to Scotland's 2025 target to increase the national recycling rate to 70%. Scotland's household recycling rate has increased substantially in the last decade. The latest figures, published in September 2018 by the Scottish Environment Protection Agency (SEPA), confirm that in 2017 the household recycling rate reached 45.6%. That same year, for the first time, there was more Scottish waste recycled (1.12 million tonnes) than was landfilled (1.11 million tonnes).

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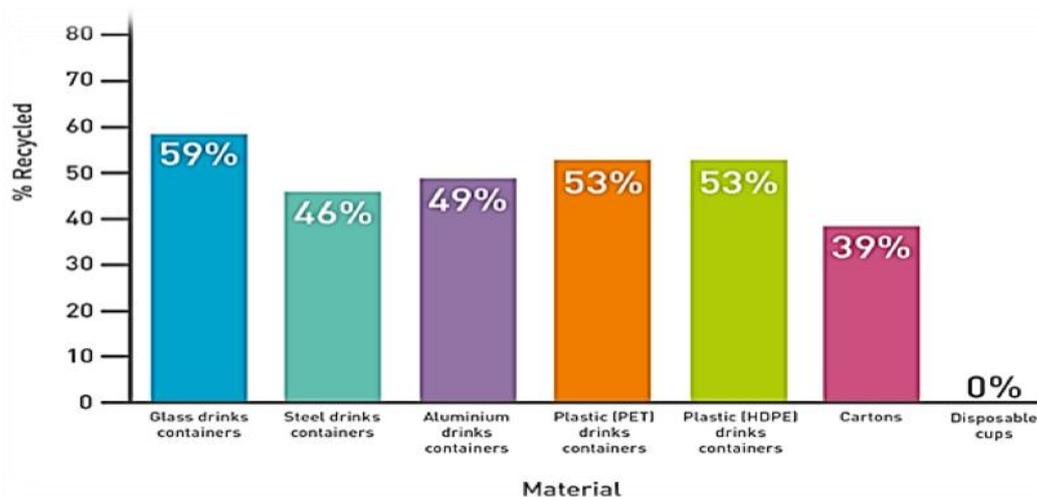
[return-scheme-scotland-full-business-case-stage-1/deposit-return-scheme-scotland-full-business-case-stage-1/govscot%3Adocument/deposit-return-scheme-scotland-full-business-case-stage-1.pdf](https://consult.gov.scot/environment-forestry/deposit-return-scheme/scotland-full-business-case-stage-1/govscot%3Adocument/deposit-return-scheme-scotland-full-business-case-stage-1.pdf)

2 [https://consult.gov.scot/environment-forestry/deposit-return-scheme/supporting\\_documents/DRS%20%20Outline%20Business%20Case.pdf](https://consult.gov.scot/environment-forestry/deposit-return-scheme/supporting_documents/DRS%20%20Outline%20Business%20Case.pdf)

13. This has been driven by substantial investment by central and local government in kerbside collections. The result has been significant increases in the number of households that have access to kerbside recycling facilities.

14. Despite these efforts, the rate of growth in household recycling rates has been slowing. Since 2014, following the introduction of a new methodology for calculating household recycling rates, the rates have only increased by 2.8%. The 2017 rate was only a 0.6% increase on the 2016 figures. It is, therefore, clear that further intervention is required to stimulate growth in household recycling rates.

15. There are limitations in the available Scottish-specific data in relation to sales, waste by material type and material reprocessing of drinks containers. The below table sets out the Household Waste Compositional Analysis estimates of recycling rates by material through local authority collections:



\* Source: DRS Full Business Case Stage 1, p18. Disposable cups did not exist as a separate category in the compositional analysis.

16. Plastic, glass and metal containers are widely targeted for recycling, either via kerbside collections or recycling points and centres. Despite this there is clearly scope for improving recycling rates and we believe this can be best achieved through DRS.

17. The quality of material captured for recycling remains a challenge, with financial and operational constraints limiting the level of segregation that can be achieved at the kerbside. The Scottish Government believes the scheme will improve segregation of materials, thereby decreasing the opportunities for contamination and increasing the total amount of material collected in Scotland that is suitable for higher-value recycling.

18. The FBC also demonstrates how an effective DRS would support the delivery of “Towards a Litter-Free Scotland”,<sup>3</sup> the national litter strategy which

<sup>3</sup> <https://www.gov.scot/publications/towards-litter-free-scotland-strategic-approach-higher-quality-local-environments/>

aims to effect a wholesale shift in national policy and practice towards prevention.

19. The Scottish Government is committed to delivering these outcomes through DRS and to do so in a way which maximises the wider social and economic benefits which can be achieved through such schemes.

### Policy Summary

20. The Instrument will:

- Prohibit the marketing or sale in Scotland of **single-use drinks containers made of polyethylene terephthalate (PET plastic), steel, aluminium or glass**, if the producer of those articles is not registered with the Scottish Environment Protection Agency (SEPA). The producer is either the brand owner (for products branded in the United Kingdom) or the importer (for products branded outside the United Kingdom).
- Require that a **20p deposit** is applied each time one of those single-use drinks containers is sold in Scotland. The seller must also make clear that the packaging can be returned in exchange for reimbursement of the deposit. These obligations do not apply to products sold in export (duty-free) shops, on hospitality premises where a closed loop exists, or for sale to a consumer outside Scotland.
- Require **producers to collect a target percentage of the scheme packaging** which they place on the market in a calendar year, by collecting their own scheme packaging from retailers and return points, and accepting the return of their scheme packaging from wholesalers. Producers will reimburse deposits for any packaging returned or collected.
- Provide for **targets** which will increase over the first three years of the scheme's operation (70% in year 1, 80% in year 2 and 90% in year 3). This approach builds on the experience in other countries which have successfully introduced similar schemes.
- Provide for producers to appoint a **scheme administrator** to meet the above obligations on their behalf. Anyone seeking to act as a scheme administrator must be approved by the Scottish Ministers.
- **Require retailers to operate a return point at premises from which sales of scheme products are made.** This involves accepting (subject to certain exceptions) packaging returned by consumers, reimbursing deposits for that packaging and retaining the packaging for collection by or on behalf of producers.
- Provide that, where specified criteria are met, the Scottish Ministers may **exempt** a retailer from acting as a return point and may approve any other person who wishes to act as a return point.
- Require retailers selling products by means of **distance sales** (e.g. through an online grocery sale and delivery service) to provide takeback services from the site of delivery to consumers who have purchased those items.

21. The 20p deposit will provide a strong incentive for shoppers to return single-use drinks containers for recycling, thereby increasing the number of these containers which are recycled (and reducing the number which could potentially end up as litter). This has been demonstrated through schemes elsewhere, some of which are well established and have helped countries like Sweden, Norway and Germany achieve high recycling rates and clean environments.

22. The Instrument applies consistently to all producers, retailers and material types within scope. The Instrument currently indicates a commencement date of 1 April 2021 for key provisions concerning the scheme's operation. It is at this point that DRS would be considered fully operational. The timetable for implementation of the scheme is the subject of ongoing discussion with stakeholders, supported through the Scottish Government's DRS Implementation Advisory Group. The various commencement dates included in the draft regulations are caveated for this reason.

### Enforcement

23. The enforcement authority for the purposes of the Instrument is the Scottish Environment Protection Agency (SEPA). It is the intention that a separate Instrument be brought forward to include specified offences in relation to DRS in the **Environmental Regulation (Enforcement Measures) (Scotland) Order 2015**. This will allow SEPA to impose civil enforcement measures on persons in relation to those offences

24. The Instrument provides for criminal penalties for failure to comply with the Regulations (on summary conviction a fine not exceeding the statutory maximum of £10,000, or on indictment and conviction an unlimited fine).

### Consultation

25. The Scottish Government public consultation on proposals for DRS<sup>4</sup> ran between June and September 2018, and 54 questions were posed.

26. The consultation received 3,215 submissions, which included 1,048 campaign responses organised by campaign group Have You Got the Bottle.<sup>5</sup> Of the remaining responses, 159 were from organisations and 2,008 from individuals.

27. There was widespread agreement amongst both organisational and individual respondents that a well-run and appropriately targeted DRS could provide opportunities in relation to improving the environment, changing people's attitudes to recycling and littering, and building the circular economy.

28. Respondents identified potential benefits (for employment, small retailers, charities and individuals) and risks (both general and specific) of

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4 [https://consult.gov.scot/environment-forestry/deposit-return-scheme/user\\_uploads/00537484.pdf](https://consult.gov.scot/environment-forestry/deposit-return-scheme/user_uploads/00537484.pdf)

5 <http://www.haveyogotthebottle.org.uk/>

establishing a DRS in Scotland. They also suggested ways to maximise opportunities and mitigate risks.

29. An independent analysis of the consultation responses<sup>6</sup> was completed by Griesbach & Associates and Jennifer Waterton Consultancy. This was published by the Scottish Government on 21 February 2019.

### Financial Impacts

30. The FBC for DRS follows Her Majesty's Treasury's Five Case Model of business case development and comprises: the Strategic Case, the Socio-Economic Case, the Commercial Case, the Financial Case and the Management Case.

31. The Financial Case includes a number of assumptions in recognition of the fact that drinks producers and retailers (rather than the Scottish Ministers) will manage the day-to-day operation of the scheme. With that caveat, the Financial Case indicates direct operational costs for the scheme of approximately £75 million a year which will be met through unredeemed deposits (42%) and sale of materials (26%), with the balance met by producers (32%). Establishing the scheme is likely to require an upfront capital investment of £28 million, again to be met by producers.

32. A full business and regulatory impact assessment (BRIA)<sup>7</sup> assessing the regulatory impacts of deposit return for businesses in Scotland has also been undertaken.

### Equality Impact

33. A Full Equality Impact Assessment (EQIA)<sup>8</sup> has been conducted in respect of the proposals, as has a Fairer Scotland Impact Assessment and an Islands Screening Assessment.

### Representations

34. Any representations on the proposed Regulations should be submitted using the form at **Annex A**. Responses should be submitted through Citizenspace (<https://consult.gov.scot/environment-forestry/deposit-scheme-for-scotland>), by emailing: [DRSinScotland@gov.scot](mailto:DRSinScotland@gov.scot), or by writing to Deposit Return Scheme Consultation, Environmental Quality and Circular Economy Division, Area 3H, Victoria Quay, Leith Docks, Edinburgh, EH6 6QQ.

35. The deadline for responses is 10 December 2019.

**Scottish Government - Environmental Quality and Circular Economy  
Division  
September 2019**

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6 <https://www.gov.scot/publications/deposit-return-scheme-scotland-analysis-responses/>

7 <https://www.gov.scot/publications/deposit-return-scheme-scotland-full-business-regulatory-impact-assessment/>

8 <https://www.gov.scot/publications/deposit-return-scheme-scotland-equality-impact-assessment/>

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D R A F T   S C O T T I S H   S T A T U T O R Y   I N S T R U M E N T S

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**2020 No.**

**ENVIRONMENTAL PROTECTION**

**The Deposit and Return Scheme for Scotland Regulations 2020**

*Made* - - - -

*Coming into force* - -

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 84, 89, 90 and 96(2) of the Climate Change (Scotland) Act 2009(a) and all other powers enabling them to do so.

In accordance with section 84(6) of that Act, the Scottish Ministers consider that it is expedient to make these Regulations for the purpose of promoting and securing an increase in the recycling of materials.

In accordance with section 97 of that Act, a copy of the proposed regulations and a statement setting out the reasons for proposing to make them has been laid before the Scottish Parliament for a representation period of 91 days.

In accordance with section 96(4) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

**PART 1**

**General**

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Deposit and Return Scheme for Scotland Regulations 2020.

(2) The following provisions come into force on the day after the day on which these Regulations are made—

(a) Parts 1, 4, and 6,

(b) in Part 5, regulations 22 to 25.

(3) Part 3 comes into force on [1 January 2021].

(4) Parts 2 and 7, and the remaining provisions of Part 5 come into force on [1 April 2021].

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(a) 2009 asp 12.

## Interpretation

### 2.—(1) In these Regulations—

“area of the local authority” means the area of a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a),

“authorised person” means a person authorised by SEPA under regulation 30(3),

“consumer” means a person who is acting for purposes which are outside that person’s trade, business, craft or profession,

“deposit” means the deposit which must be included in the sale price of a scheme article as specified in regulation 5(1),

“drink” means a beverage intended for human consumption, including concentrated soft drinks,

“enforcement powers” means the powers specified in regulation 30(4),

“export shop” has the same meaning as in regulation 3 of the Excise Goods (Export Shops) Regulations 2000(b),

“first placed on the market for retail sale in Scotland” means when an article (including the scheme packaging for that article) is first made available by the producer to be marketed, offered for sale or sold for the purposes of its retail sale in Scotland, and related expressions are to be construed accordingly,

“non-scheme article” has the meaning given in regulation 3(2),

“online retail sale” is a retail sale through a website or online marketplace, and related expressions are to be construed accordingly,

“operator” in relation to a website or online marketplace means the person who controls access to, and the content of, the website or online marketplace,

“PET plastic” means polyethylene terephthalate,

“primary packaging” has the meaning given in regulation 3(2),

“producer” has the meaning given in regulation 6,

“registered producer” means a producer registered with SEPA for the purposes of these regulations in accordance with chapter 2 of Part 3,

“relevant year” means any calendar year in which a person is a producer,

“retailer” has the meaning given in regulation 18(1),

“retail sale” means a sale to a consumer,

“return point” means a place at which a person (whether the purchaser of the scheme article or otherwise) can return scheme packaging and receive payment of a sum equal to the deposit for each item of scheme packaging returned,

“return point operator” has the meaning given in regulation 20(1),

“sale price” means the price advertised and charged for the purchase of a scheme article,

“scheme administrator” means a person that has been approved to carry out the functions specified in regulation 13(2) and to fulfil the obligations specified in regulation 16,

“scheme article” has the meaning given in regulation 3(2),

“scheme packaging” has the meaning given in regulation 3(2),

“SEPA” means the Scottish Environment Protection Agency(c),

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(a) 1994 c.39. Section 2(2) was amended by paragraph 232(1) of schedule 2 of the Environment Act 1995 (c.25).

(b) S.I. 2000/645.

(c) SEPA is established by section 20 of the Environment Act 1995 (c.25).

“single-use packaging” has the meaning given in regulation 3(2),

“takeback service” has the meaning given in regulation 21(1),

“vending machine” means an automatic machine for the sale of a scheme article (regardless of whether the machine also sells other products),

“wholesaler” means a person other than a producer that markets, sells or offers to sell a scheme article in Scotland other than by way of retail sale,

“writing” and “written” include electronic communications within the meaning of section 15(1) (general interpretation) of the Electronic Communications Act 2000(a), which have been recorded and are consequently capable of being reproduced in written form.

(2) In the definition of “drink”, “concentrated soft drink” means any soft drink in liquid form intended for human consumption after dilution but does not include concentrates used in the manufacture of soft drinks and which are not intended for retail sale without further processing.

(3) In the definitions of “online retail sale” and “operator”, “online marketplace” means any means by which information is made available over the internet, through which a person other than the operator is able to offer goods for sale (whether or not the operator also does so).

### **Scheme articles**

3.—(1) The deposit and return scheme established by these Regulations applies to—

- (a) a scheme article, and
- (b) scheme packaging in which a scheme article is contained or sold.

(2) For the purposes of these Regulations—

“non-scheme article” means a product that would be a scheme article but for the fact it was first placed on the market for retail sale in Scotland before [1 April 2021],

“primary packaging” is packaging conceived so as to constitute a sales unit to the final user or consumer at the point of sale,

“scheme article” means a drink contained and sold in an item of scheme packaging regardless of whether it is sold alone or as part of a multipack,

“scheme packaging” means primary packaging that—

- (a) contains a scheme article first placed on the market for retail sale in Scotland on or after [1 April 2021],
- (b) is single-use packaging,
- (c) contains a drink at the point of sale,
- (d) is made wholly or mainly from PET plastic, glass, steel or aluminium,
- (e) is conceived or designed to—
  - (i) contain at least 50 millilitres and no more than 3 litres of liquid, and
  - (ii) be sealed in an airtight and watertight state at the point of sale,
- (f) cannot be returned to its original state at the point of sale by the consumer,

“single-use packaging” means packaging for a product that is not conceived, designed or placed on the market to accomplish, within its life span—

- (a) multiple uses by a consumer,
- (b) multiple trips or rotations by being returned to a producer to be re-filled by that producer for the same purpose for which it was conceived.

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(a) 2000 c.7. Section 15(1) was amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c.21).

## PART 2

### The deposit and return scheme

#### Sale of scheme articles

4.—(1) A person may only market, offer for sale or sell a scheme article if—

- (a) that article has been made available by the producer of that article for the purposes of its retail sale in Scotland, and
- (b) the producer of that article is a registered producer.

(2) For the purpose of paragraph (1) the following is to be regarded as the person who markets, offers for sale or sells the scheme article—

- (a) in the case of an online retail sale, the operator,
- (b) in the case of a vending machine sale—
  - (i) where the machine is marked with the name and address of its owner, that owner, or
  - (ii) otherwise, the person with the management and control of the premises on which the machine stands or to which it is affixed.

#### Deposits

5.—(1) A deposit is 20 pence.

(2) Subject to paragraph (4), any person who markets, offers for sale or sells a scheme article in Scotland must—

- (a) include a deposit in the sale price,
- (b) clearly display information in any place where the scheme article is displayed for sale by that person indicating—
  - (i) that the article is a scheme article to which the obligation to charge a deposit under these Regulations applies,
  - (ii) the amount of the deposit.

(3) Subject to paragraph (4), any person who markets, offers for sale or sells a non-scheme article in Scotland on or after [1 April 2021] must communicate to the purchaser at the point of sale that—

- (a) the article is not a scheme article to which the requirements of these Regulations apply,
- (b) an item of packaging in which that article is contained or sold cannot be returned in exchange for payment of a sum equal to a deposit.

(4) The obligations in paragraph (2) and (3) do not apply—

- (a) in the case of a scheme article or non-scheme article which is marketed, offered for sale or sold in Scotland—
  - (i) in an export shop, or
  - (ii) exclusively for consumption on the premises of sale,
- (b) in the case of a scheme article or non-scheme article which is intended for retail sale outside Scotland.

## PART 3

### Producers

#### CHAPTER 1

##### Definition of a producer

##### **Producers**

6.—(1) A producer in respect of a scheme article is—

- (a) in the case of a scheme article branded in the United Kingdom, the brand owner,
- (b) in the case of a scheme article branded by a brand owner outside the United Kingdom, the importer.

(2) The operator in respect of an online retail sale is to be regarded as the importer for the purposes of paragraph (1) where a scheme article is being sold—

- (a) for the first time in the United Kingdom,
- (b) to a consumer in Scotland, and
- (c) by way of a retail sale.

(3) In this regulation—

“brand owner” means the person who, in the course of a trade, business, craft or profession, puts a name, trade mark or other distinguishing mark on a scheme article or scheme packaging by which the person is held out to be a manufacturer or the originator of the scheme article, and “branded” is to be construed accordingly,

“importer” means the person who, in the course of a trade, business, craft or profession, first markets, offers for sale or sells the scheme article in the United Kingdom.

#### CHAPTER 2

##### Registration of a producer

##### **Application for registration of a producer**

7.—(1) An application for registration of a producer must be made to SEPA—

- (a) by a producer, or
- (b) by a scheme administrator on behalf of a producer.

(2) An application for producer registration must be submitted—

- (a) before 1 March in any relevant year,
- (b) within 28 days of the date of any of the following events in a relevant year—
  - (i) the person becomes a producer,
  - (ii) the producer receives notification in writing in accordance with regulation 8(6) and (7) that a previous application by a producer or scheme administrator to register that producer has been refused,
  - (iii) the producer receives notification in writing that the producer’s registration has been cancelled in accordance with regulation 9,
- (c) in the case where the producer was registered through an approved scheme administrator in respect of a relevant year, within 28 days of the date of any of the following events in that relevant year—
  - (i) the producer receives notification in writing that the scheme administrator’s approval has been withdrawn in accordance with regulation 17,
  - (ii) the producer receives notification in writing that the scheme administrator is no longer acting on behalf of that producer, or

- (iii) the producer sends notification in writing to the scheme administrator that the producer no longer wishes the scheme administrator to act on behalf of that producer.
- (3) An application must—
- (a) be made in writing,
  - (b) subject to paragraph (4), contain the information set out in schedule 1,
  - (c) contain any other information requested by SEPA, and
  - (d) be accompanied by a registration fee of £209.
- (4) If agreed in advance with SEPA, where there has been an event of the type set out in paragraph (2)(c), the information provided in an application may be limited to the operational plan referred to in paragraph 11 of schedule 1.

### **Producer Registration**

- 8.**—(1) Within 28 days of receipt of an application, SEPA must—
- (a) where the application complies with regulation 7(3), grant it, or
  - (b) otherwise refuse it.
- (2) Where an application is granted, SEPA must, within 7 days of the date on which it is granted, give notice of that decision in writing—
- (a) in the case of an application made by a producer, to the producer,
  - (b) in the case of an application made on behalf of a producer by a scheme administrator, to the producer and the scheme administrator.
- (3) Where an application has been granted, the registration applies from the date mentioned in paragraph (4) until the date on which the producer's registration is cancelled in accordance with regulation 9.
- (4) The date for the purposes of paragraph (3)—
- (a) where the application was made within the time limit specified in regulation 7(2)(a), is 1 April in a relevant year,
  - (b) where the application was made within the time limit specified in regulation 7(2)(b)(i), is the date the application was received by SEPA,
  - (c) where the application was made within the time limit specified in regulation 7(2)(b)(ii) or (iii), is the date the producer received the notification,
  - (d) where the application was made within the time limit specified in regulation 7(2)(c)(i) or (ii), is the date the producer received the notification, or
  - (e) where the application was made within the time limit specified in regulation 7(2)(c)(iii), is the date the producer sent the notification.
- (5) SEPA must publish and maintain a list of registered producers in such manner as it considers appropriate.
- (6) Where an application is refused, SEPA must, within 7 days of the date on which it is refused, give notice of that decision in writing together with—
- (a) the reasons for it,
  - (b) a statement as to the right of appeal under Part 6 of these Regulations.
- (7) Notification under paragraph (6) must be given—
- (a) in the case of an application made by the producer, to the producer,
  - (b) in the case of an application made on behalf of the producer by a scheme administrator, to the producer and the scheme administrator.

## **Cancellation of registration of producers**

- 9.**—(1) SEPA may cancel the registration of a producer where it appears to it that—
- (a) the producer is in breach of any of the producer obligations specified in regulation 10,
  - (b) a registered producer has failed to submit an application in accordance with regulation 7(2),
  - (c) an application for registration of that producer has been refused,
  - (d) the producer or a scheme administrator acting on behalf of the producer knowingly or recklessly supplied false information in connection with an application for registration, or compliance with any of the producer obligations specified in regulation 10.
- (2) SEPA must cancel the registration of a producer where it is notified under regulation 10(e) that the producer has ceased to be a producer.
- (3) Before cancelling the registration under paragraph (1), SEPA must serve written notice of—
- (a) the decision to cancel and the reasons for it,
  - (b) the date when the cancellation will take effect, not being earlier than the time limit for making an appeal against the decision provided for in Part 6, and
  - (c) in the case of cancellation under paragraph (1), the right of appeal under Part 6.
- (4) SEPA must consider any representations made by the scheme administrator before the notice under paragraph (3) takes effect and may withdraw the notice at any time.
- (5) The date when the cancellation will take effect must not be earlier than—
- (a) in the case of cancellation under paragraph (1), the expiration of the time limit for making an appeal against the decision provided for in regulation 26(1),
  - (b) in the case of cancellation under paragraph (2), 28 days from the date of the notice,
  - (c) in the case where an application for appeal against the decision is submitted and the decision to cancel that producer's registration is upheld, the date that the producer receives notification under regulation 27(7).
- (6) The notice must be given to—
- (a) the producer, or
  - (b) where a producer was registered through a scheme administrator, the producer and the scheme administrator.
- (7) Despite the cancellation of a producer's registration in accordance with this regulation, the producer must continue to comply with regulation 11(2)(b) to (h) as if that producer was still a registered producer.
- (8) For the purposes of paragraph (7), the reference in regulation 11(2)(f), (g) and (h) to "the producer's operational plan" means the operational plan submitted with that producer's most recent application for registration that was granted by SEPA.

## **CHAPTER 3**

### **Producer Obligations**

#### **Producer obligations: general**

- 10.** A registered producer must—
- (a) comply with the producer obligations set out in regulation 11 or 12, as the case may be,
  - (b) submit any subsequent application for registration within the time limits in regulation 7(2),
  - (c) provide any information reasonably requested by SEPA with regard to the producer obligations referred to in paragraph (a),

- (d) inform SEPA of any material change in the information provided in accordance with regulation 7(3)(b) and (c), within 28 days of the date of the change,
- (e) notify SEPA in writing where the producer wishes to cancel the registration or has ceased to be a producer in respect of a relevant year.

**Producer obligations: directly registered producers**

**11.**—(1) For the purpose of this regulation, a “directly registered producer” is one that is registered following an application made by that producer in accordance with regulation 7(1)(a).

(2) A directly registered producer must—

- (a) include a deposit in the sale price when marketing, offering for sale or selling a scheme article in Scotland in accordance with regulation 5,
- (b) collect and keep for at least four years from the date on which the information is collected a record of the information specified in paragraph (3),
- (c) provide that information to SEPA in such form and at such intervals as SEPA may require,
- (d) accept the return by a retailer or wholesaler of any scheme packaging that was first placed on the market for retail sale in Scotland as sold by that producer to that retailer or wholesaler,
- (e) pay a sum equal to the deposit to a retailer or wholesaler for each item of scheme packaging returned in accordance with sub-paragraph (d),
- (f) within the time limits specified in the producer’s operational plan, collect scheme packaging first placed on the market for retail sale in Scotland by that producer from any of the following—
  - (i) a return point operator,
  - (ii) a retailer operating a takeback service,
  - (iii) a hospitality retailer,
- (g) within the time limits specified in the producer’s operational plan, pay to a person from whom the producer has collected scheme packaging in accordance with sub-paragraph (f) a sum equal to the deposit for each item of scheme packaging collected,
- (h) within the time limits specified in the producer’s operational plan, pay to the person from whom the producer has collected scheme packaging in accordance with sub-paragraph (f) a reasonable handling fee charged by that person for each item of scheme packaging collected,
- (i) meet the minimum collection targets specified in schedule 3 in respect of scheme packaging containing a scheme article first placed on the market for retail sale in Scotland by that producer.

(3) The information mentioned in paragraph (2)(b) is—

- (a) the number of scheme articles first placed on the market for retail sale in Scotland by that producer,
- (b) whether the scheme packaging in which those scheme articles were contained or sold were made wholly or mainly from PET plastic, glass, steel or aluminium,
- (c) the number of scheme articles and items of scheme packaging returned to the producer by wholesalers and retailers,
- (d) the number of items of scheme packaging collected by the producer from each return point, retailer providing a takeback service and hospitality retailer.

- (4) For the purposes of this regulation—
- a “reasonable handling fee” is—
- (a) in the case of a fee charged by a return point operator or retailer providing a takeback service, a fee that takes into account the following—
    - (i) the costs of purchase, lease, maintenance or upkeep of any infrastructure associated with the collection and storage of scheme packaging, including any vehicle solely used for the purpose of collecting scheme packaging,
    - (ii) the cost of materials used in respect of the collection and storage of scheme packaging,
    - (iii) the rental value of any floor space utilised solely for the collection and storage of scheme packaging,
    - (iv) staff time dedicated solely to the collection and storage of scheme packaging,
  - (b) in the case of a fee charged by a hospitality retailer, a fee that takes into account the cost of materials used in respect of the collection and storage of scheme packaging,
- a “hospitality retailer” is a retailer that sells a scheme article exclusively for consumption on the premises of sale.

#### **Producer obligations: producers registered through a scheme administrator**

**12.**—(1) For the purpose of these Regulations, a “producer registered through a scheme administrator” is a producer that is registered following an application made by a scheme administrator on behalf of that producer under regulation 7(1)(b).

- (2) A producer registered through a scheme administrator must—
- (a) include a deposit in the sale price when marketing, offering for sale or selling a scheme article in Scotland in accordance with regulation 5,
  - (b) pay a sum equal to the deposit to that scheme administrator for each scheme article first placed on the market for retail sale in Scotland,
  - (c) maintain a record of the number and type of scheme articles first placed on the market for retail sale in Scotland,
  - (d) supply any information reasonably requested by that scheme administrator for the purposes of the scheme administrator’s compliance with the obligations mentioned in regulation 16(1)(a).

## **PART 4**

### **Scheme administrator**

#### **Scheme administrator**

**13.**—(1) The Scottish Ministers may, in accordance with this chapter, approve a scheme administrator

- (2) A scheme administrator is a legal person approved under this chapter which is responsible for—
- (a) submitting an application for producer registration on behalf of a producer under regulation 7(1)(b) where requested by a producer to do so, and
  - (b) complying with regulations 10 and 11(2)(b) to (i) on behalf of such a producer.

#### **Application for approval of a scheme administrator**

**14.**—(1) In order to be approved, a scheme administrator must apply to the Scottish Ministers.

- (2) An application must—
- (a) be made in writing,
  - (b) contain the information set out in schedule 2, and
  - (c) include any other information requested by the Scottish Ministers.

#### **Approval of scheme administrator**

- 15.**—(1) Within 28 days of receipt of an application for approval the Scottish Ministers must—
- (a) where the scheme administrator has complied with regulation 14(2), grant it, or
  - (b) otherwise, refuse it.

(2) Where the application is granted, the Scottish Ministers must, within 7 days of the date on which it is granted, give notice of that decision in writing to the scheme administrator.

(3) Where the application has been granted, the approval of the scheme administrator takes effect from the date of the decision to grant it until any withdrawal of that approval in accordance with regulation 17.

(4) The Scottish Ministers must publish a list of approved scheme administrators in such manner as they consider appropriate.

(5) Where the application is refused, the Scottish Ministers must, within 7 days of the date on which it is refused give notice of that decision in writing to the scheme administrator together with—

- (a) the reasons for it, and
- (b) a statement as to the right of review under Part 6 of these Regulations.

#### **Obligations of a scheme administrator**

- 16.**—(1) An approved scheme administrator must—

- (a) subject to paragraph (2), comply with regulation 10 and 11(2)(b) to (i) on behalf of any producer registered following the grant of an application made by that scheme administrator under regulation 7(1)(b),
- (b) provide any information requested by the Scottish Ministers or SEPA for the purposes of monitoring compliance with the requirements mentioned in sub-paragraph (a),
- (c) inform the Scottish Ministers and SEPA in writing of any material change in the information provided in accordance with regulation 14(2)(b) and (c), within 28 days of the date of that change,
- (d) notify the Scottish Ministers in writing where the scheme administrator intends to withdraw from acting as a scheme administrator.

(2) In the case where more than one producer is registered through that scheme administrator—

- (a) the obligation in regulation 11(2)(i) applies as if, for “that producer” there were substituted “all producers registered through the scheme administrator”,
- (b) schedule 3 applies as if—
  - (i) for “a producer must meet” there were substituted “must be met in relation to all of the producers registered through the scheme administrator”,
  - (ii) for “that producer” in each place where it appears, there were substituted “all of the producers registered through the scheme administrator”.

#### **Withdrawal of approval of a scheme administrator**

**17.**—(1) The Scottish Ministers may withdraw the approval of a scheme administrator where it appears to them that—

- (a) the scheme administrator is in breach of any of the obligations specified in regulation 16,

- (b) the scheme administrator knowingly or recklessly supplied false information in connection with the application for approval or compliance with any of the obligations specified in regulation 16,
- (c) the Scottish Ministers have received notification from the scheme administrator under regulation 16(1)(c) that there has been a material change of circumstances,
- (d) the scheme administrator has been convicted of an offence.

(2) The Scottish Ministers must withdraw the approval of a scheme administrator where they are notified under regulation 16(1)(d) that the scheme administrator intends to withdraw from acting as a scheme administrator.

(3) Before withdrawing approval under paragraphs (1) or (2), the Scottish Ministers must—

- (a) serve on the scheme administrator written notice of—
  - (i) the decision to withdraw approval and the reasons for it,
  - (ii) the date when the withdrawal will take effect, and
  - (iii) in the case of withdrawal under paragraph (1), the right to apply for review of the decision under part 6,
- (b) inform SEPA for the purpose of SEPA notifying all producers on whose behalf that scheme administrator has registered.

(4) In the case of a withdrawal under paragraph (1), the date in paragraph (3)(a)(ii) must not be earlier than the time limit for making an application for review of the decision provided for in Part 6.

(5) The Scottish Ministers must consider any representations made by the scheme administrator before the notice under paragraph (3) takes effect and may withdraw the notice at any time.

(6) A scheme administrator must within 14 days of the withdrawal of the approval taking effect, give notice in writing to each producer on whose behalf it has registered containing the following information—

- (a) a statement that approval of the scheme administrator has been withdrawn and the date when the withdrawal took effect,
- (b) the reasons for the withdrawal,
- (c) the requirement of the producer to make an application for registration within the time limit specified in regulation 7(2)(c)(i),
- (d) the obligations with which a producer will be required to comply under regulations 10 and 11(2).

## PART 5

### Retailers and Return points

#### CHAPTER 1

##### Retailers

#### **Retailers**

**18.—**(1) For the purposes of these Regulations a “retailer” is a person who markets, offers to sell or sells a scheme article to a consumer in Scotland.

(2) For the purpose of paragraph (1) the following is to be regarded as the person who markets, offers for sale or sells the scheme article—

- (a) in the case of an online retail sale, the operator,
- (b) in the case of a vending machine sale—
  - (i) where the machine is marked with the name and address of its owner, that owner, or

- (ii) otherwise, the person with the management and control of the premises on which the machine stands or to which it is affixed.

(3) Where an article is sold or is to be sold to a consumer in Scotland, the article is to be treated for the purpose of these Regulations as having been marketed or offered for retail sale, or sold by way of retail sale, in Scotland regardless of whether the retailer has a registered or principal office in Scotland, or where the site of sale is.

(4) In this Part—

“distance retail sale” is a sale of a scheme article to a consumer in Scotland where the site of delivery and the site of sale are a distance from each other,

“site of delivery” is the place where the consumer first gains physical possession of the scheme article,

“site of sale” is the premises of the retailer where the order for purchase of a scheme article is received.

### **Retailer obligations**

**19.**—(1) Subject to paragraph (2), a retailer must—

- (a) comply with the obligations in regulations 5(2)(a) and (b) and (3), subject to regulation 5(4),
- (b) operate a return point in accordance with regulation 20 at any retail premises in Scotland in which a scheme article is sold,
- (c) clearly display information about how a deposit can be redeemed—
  - (i) in the case of a scheme article marketed, offered for sale or sold on the retailer’s premises, on that premises,
  - (ii) in the case of a scheme article marketed, offered for sale or sold by way of distance retail sale, in any place where the scheme article is displayed for sale,
  - (iii) in the case of a scheme article marketed, offered for sale or sold by way of a vending machine, on the vending machine.

(2) Paragraph (1)(b) does not apply to premises—

- (a) in respect of which an exemption has been granted in accordance with regulation 22,
- (b) that are an export shop,
- (c) where the sale of a scheme article on those premises is solely by way of a vending machine,
- (d) where the sale of a scheme article on those premises is solely by way of a distance retail sale (in which case the obligation in regulation 21 applies).

## **CHAPTER 2**

### **Return of scheme packaging**

#### **Return points**

**20.**—(1) For the purposes of these Regulations a “return point operator” is any person who operates a return point, including a retailer and a voluntary return point operator registered in accordance with regulation 25.

(2) Subject to paragraph (4), a return point operator must—

- (a) accept an item of scheme packaging returned to the return point operator,
- (b) pay to the consumer a sum equal to the deposit for each item of scheme packaging accepted,
- (c) retain the scheme packaging for collection by, or on behalf of, a producer or a scheme administrator.

- (3) A return point operator must clearly display information at the return point about—
  - (a) the complaints procedure and the contact details for receipt of any complaint that may be made to that operator from a consumer concerning the operation of the return point,
  - (b) the contact details of SEPA.
- (4) A return point operator may refuse to accept an item of packaging if—
  - (a) it is not identifiable as scheme packaging,
  - (b) it is soiled,
  - (c) it is not empty, or
  - (d) the retailer has requested a collection of scheme packaging by a producer or scheme administrator and the collection has not been carried out in accordance with that producer or scheme administrator’s operational plan.

**Takeback services**

**21.**—(1) For the purpose of these Regulations, a “takeback service” is a service provided by the retailer enabling—

- (a) an item of scheme packaging in which a scheme article is contained and sold by a retailer to a consumer to be collected by or on behalf of that retailer from the site of delivery for the purposes of its return to—
  - (i) that retailer (including through a return point), or
  - (ii) the producer, and
- (b) the payment to that consumer of a sum equal to the deposit for each item of scheme packaging so collected and returned.

(2) Subject to paragraph (3), a retailer that has sold a scheme article through a distance retail sale must provide a takeback service free of charge to the consumer that purchased the scheme article.

(3) A retailer providing a takeback service may apply a charge not exceeding the cost of materials used in respect of the collection and storage of that scheme packaging, subject to the requirement to reimburse the consumer in accordance with paragraph (4).

- (4) Unless paragraph (5) applies, a retailer providing a takeback service must—
  - (a) pay to the consumer a sum equal to the deposit for each item of scheme packaging returned to the retailer or, as the case may be, the producer, and
  - (b) reimburse the consumer for any charge applied under paragraph (3).

- (5) This paragraph applies if any returned item of packaging—
  - (a) is not identifiable as scheme packaging,
  - (b) is soiled, or
  - (c) is not empty.

CHAPTER 3

Exemptions for return points

**Exemptions for return points**

**22.**—(1) The Scottish Ministers may grant an exemption (whether or not an application under regulation 24 is made to them) from the obligation specified in regulation 19(1)(b) in relation to retail premises where they consider that—

- (a) there is an alternative return point located within reasonable proximity to the premises, and the operator of that return point has agreed to accept the return by consumers of items of scheme packaging on behalf of the retailer, and

- (b) if the exemption is granted, this will still provide consumers with reasonable access to a return point throughout the area of the local authority in which the retail premises are located.

(2) Where the Scottish Ministers decide to grant an exemption they must within 7 days of the date of that decision give to the retailer notice of that decision in writing and the date that the exemption takes effect.

(3) A retailer who has been granted an exemption under paragraph (1) must clearly display information at the retailer's premises indicating—

- (a) that by virtue of an exemption granted under these Regulations, they do not operate a return point, and
- (b) the location of the alternative return point.

### **Revocation of an exemption**

**23.**—(1) The Scottish Ministers may revoke an exemption where they consider that—

- (a) there has been a material change in relation to any of the circumstances specified in regulation 22(1), or
- (b) maintaining the exemption will no longer provide consumers with reasonable access to a return point throughout the area of the local authority in which the retail premises are located.

(2) Before revoking an exemption under paragraph (1), the Scottish Ministers must serve on the retailer written notice of—

- (a) their decision to revoke it and the reasons for it, and
- (b) the date on which the revocation takes effect.

### **Application for exemption**

**24.**—(1) A retailer may apply to the Scottish Ministers for an exemption from the obligation specified in regulation 19(1)(b).

(2) An application must—

- (a) be made in writing,
- (b) include information about the location of the alternative return point and the agreement of that return point operator as required under regulation 22(1)(a), and
- (c) include any other information requested by the Scottish Ministers.

(3) Within 28 days of receipt of an application the Scottish Ministers may grant the application where satisfied that the conditions in regulation 22(1) are met.

(4) Where an application is refused, the Scottish Ministers must within 7 days of the date on which it is refused give notice of that decision in writing to the retailer, together with the reasons for it.

## **CHAPTER 4**

### **Voluntary return point operators**

#### **Voluntary return point operators**

**25.**—(1) A person may operate a return point at a place other than a retail premises if they are registered with the Scottish Ministers as a voluntary return point operator in accordance with this regulation.

(2) An application for registration must—

- (a) be made in writing,

- (b) contain the information set out in schedule 4, and
  - (c) include any information requested by the Scottish Ministers.
- (3) Within 28 days of receipt of an application the Scottish Ministers must—
- (a) where the application complies with paragraph (2), grant it, or
  - (b) otherwise refuse it.
- (4) Where the application is granted the Scottish Ministers must, within 7 days of the date on which it is granted give notice of that decision in writing to the voluntary return point operator and the date that it takes effect.
- (5) Where the application is granted, the return point operator will be treated as registered from the date specified in the notification given under paragraph (4) until any cancellation of the registration in accordance with paragraph (9).
- (6) The Scottish Ministers must publish and maintain a list of registered return points in such manner as they consider appropriate.
- (7) Where the application is refused, the Scottish Ministers must, within 7 days of the date on which it is refused give notice of that decision together with the reasons for it.
- (8) A registered voluntary return point operator must comply with the obligations in regulation 20 from the date of receipt of the notice referred to in paragraph (4), or any later date specified in that notice.
- (9) The Scottish Ministers may cancel the registration of a voluntary return point operator where it appears that the operator has not complied with the obligations in regulation 20.
- (10) Before cancelling the registration under paragraph (9), the Scottish Ministers must serve on the return point operator written notice of—
- (a) the decision to cancel and the reasons for it,
  - (b) the date when the cancellation will take effect.

## PART 6

### Appeals or reviews

#### **Right of appeal or review**

**26.**—(1) A producer may, within 28 days of the date on which the decision has been notified, appeal to the Scottish Ministers against a decision of SEPA—

- (a) to refuse to register a producer under regulation 8(1)(b),
- (b) to cancel the registration of that producer under regulation 9(1).

(2) A scheme administrator may, within 28 days of the date on which a decision has been notified apply to the Scottish Ministers for a review of a decision—

- (a) to refuse an application for approval of that scheme administrator under regulation 15(1)(b),
- (b) to withdraw the approval of that scheme administrator under regulation 17(1).

#### **Procedure**

**27.**—(1) Where an appeal or an application for review is made, the Scottish Ministers may—

- (a) appoint any person to exercise on their behalf, with or without payment, the function of determining the appeal or application for review, and
- (b) refer any matter in relation to the appeal or application for review to such person as the Scottish Ministers may appoint for the purpose, with or without payment.

(2) If the appellant or applicant for review so requests, or if the Scottish Ministers so decide, the appeal or review may be, or continue, in the form of a hearing.

(3) An appeal or application for review must be made by notice in writing given or sent to the Scottish Ministers (a copy of which must be sent to SEPA) setting out—

- (a) the grounds of appeal or review,
- (b) any other information relevant to the appeal or review including a copy of any relevant correspondence with the decision maker,
- (c) a statement indicating whether the appellant or applicant for review wishes the appeal or review to be in the form of a hearing or on the basis of written representations.

(4) An appellant or applicant for review may withdraw the appeal or application for review at any time by notifying SEPA and the Scottish Ministers in writing.

(5) Where the appeal or review is in the form of a hearing, the person hearing the appeal or review must, unless that person has been appointed to determine the appeal or review under paragraph (1)(a), make a written report to the Scottish Ministers which includes that person's conclusions and recommendations, or reasons for not making any recommendations.

(6) The Scottish Ministers or any other person appointed to determine the appeal or review must notify the appellant or applicant for review of the decision in writing and the reasons for it.

(7) If the Scottish Ministers determine an appeal or review after a hearing under paragraph (2), they must provide the appellant or applicant for review with a copy of any report made to them under paragraph (5).

(8) The Scottish Ministers or any other person appointed to determine the appeal or review must, at the same time as notifying the appellant or applicant for review of the decision under paragraph (7), send SEPA a copy of any document sent to the appellant or applicant for review under this regulation.

### **Determination of appeals**

**28.** Where, following an appeal as mentioned in regulation 26(1), the Scottish Ministers determine that the decision of SEPA must be changed, SEPA must give effect to that determination.

### **Status pending appeal**

**29.** The decision appealed against or subject to an application for review will not take effect until the day following the day on which the appeal or review is finally determined or withdrawn.

## **PART 7**

### **Enforcement and offences**

#### **Enforcement authority**

**30.—**(1) SEPA has the powers described in paragraph (4).

(2) The enforcement powers are exercisable for the purpose of establishing whether these Regulations are being, or have been, complied with.

(3) The enforcement powers are exercisable by any person authorised in writing by SEPA for that purpose.

(4) The enforcement powers are—

- (a) to enter onto any premises at any reasonable time, except premises used wholly or mainly as a private dwelling,
- (b) to take with the authorised person on entering onto any premises in accordance with sub-paragraph (a)—

- (i) any equipment or materials required,
- (ii) if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of the authorised person's duty, a constable,
- (iii) any other person authorised in writing by SEPA,
- (c) to make such examination and carry out such investigation as is necessary,
- (d) to direct that any premises which the authorised person has power to enter in accordance with sub-paragraph (a), or anything on those premises, is left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c),
- (e) to take such measurements and photographs or any other digital record, and to make such recordings as are necessary for the purposes of any examination or investigation under sub-paragraph (c),
- (f) to take samples, or cause samples to be taken, of any articles, packaging, packaging material, products or parts of products found in, on or in the vicinity of any premises over which the power of entry applies in sub-paragraph (a),
- (g) to require any person who the authorised person has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of any person other than a person nominated by that person to be present and any person whom the enforcement officer may allow to be present) such questions as the enforcement officer thinks fit to ask, and to sign a declaration of the truth of that person's answers,
- (h) to have access to, inspect, copy and print any document or record (in whatever form it is held) or seize and detain such document or record to enable it to be copied, printed or retained as evidence,
- (i) have access to, inspect and check the operation of any computer and any associated apparatus, or material which is or has been used in connection with a document or record, and for this purpose require any person having charge of, or otherwise concerned with the operation of the computer, apparatus or material to give the authorised person such assistance as may reasonably be required and, where a document or record is kept by means of a computer, require the document or record to be produced in a form in which it can be taken away,
- (j) to make test purchases of articles,
- (k) to make test returns of scheme packaging to a return point.

(5) A sheriff, a summary sheriff or a justice of the peace may by warrant authorise an officer of SEPA to enter any land or premises, if necessary using reasonable force, if satisfied by evidence on oath that—

- (a) there are reasonable grounds for an authorised person to enter the land or premises concerned, and
- (b) that—
  - (i) entry to the land or premises has been refused, or is likely to be refused and notice of intention to apply for a warrant has been given to the occupier, or
  - (ii) an application for admission, or the giving of such notice would defeat the object of entry, or that the case is one of urgency, or that the land is, or the premises are, unoccupied or the occupier is temporarily absent.

(6) A warrant expires—

- (a) when it is no longer needed for the purposes for which it is granted,
- (b) if earlier, when any period as may be specified in it expires.

(7) Where documents, records, packaging, material, products or parts of products are seized in accordance with paragraph (4), the authorised person must—

- (a) allow the person who is the occupier of the premises from which documents or records are seized at the time those documents or records are seized to make copies of any documents or records seized, if requested to do so,
- (b) provide on request from the person who is the occupier of the premises from which documents, records, packaging, material, products or parts of products are seized, a receipt in respect of anything so seized.

(8) An authorised person who enters any unoccupied premises must leave them as effectively secured as they were before those premises were entered.

(9) Nothing in paragraph (4) is to be construed as requiring any person to answer any question if to do so might incriminate that person.

(10) Nothing in this regulation confers power on an authorised person to seize an item which that person has reasonable grounds to believe would in legal proceedings be protected from disclosure on grounds of confidentiality of communications or legal professional privilege.

## **Offences**

**31.**—(1) It is an offence to contravene—

- (a) regulation 4(1),
- (b) regulation 5(2),
- (c) regulation 5(3),

(2) It is an offence for a producer whose registration has been cancelled in accordance with regulation 9(1) to fail, without reasonable excuse, to comply with the obligations specified in regulation 9(7).

(3) It is an offence for a registered producer to fail, without reasonable excuse, to comply with the producer obligations set out in regulations 10(c) and (d).

(4) It is an offence for a directly registered producer to fail, without reasonable excuse, to comply with the obligations in regulation 11(2)(b) to (i).

(5) It is an offence for a producer registered through a scheme administrator to fail, without reasonable excuse, to comply with the obligations in regulation 12(2)(b) to (d).

(6) It is an offence for a scheme administrator to fail, without reasonable excuse to—

- (a) comply with the obligations set out in regulation 16(1)(a) to (c),
- (b) comply with regulation 17(6).

(7) It is an offence for a retailer—

- (a) to fail, without reasonable excuse, to comply with—
  - (i) regulation 19(1)(b) (unless an exemption applies under regulation 22),
  - (ii) regulation 21(2),
- (b) to fail to comply with regulation 21(4),
- (c) to fail to comply with regulation 19(1)(c),
- (d) to fail to comply with regulation 22(3).

(8) It is an offence for a return point operator—

- (a) to fail to comply with regulation 20(2)(a),
- (b) to fail, without reasonable excuse, to comply with regulation 20(2)(b) and (c),
- (c) to fail to comply with regulation 20(3).

(9) It is an offence for a person to obstruct or fail to assist an authorised person exercising the enforcement powers under regulation 30(4).

(10) It is an offence for a person to purport to act as a scheme administrator without being approved under regulation 15.

(11) Where a person is charged with an offence under paragraphs (1), (7)(b), (c) and (d), and (8)(a) and (c), it is a defence for that person to show that person took all reasonable precautions and exercised all due diligence to prevent the offence being committed.

(12) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to a fine.

(13) Where—

- (a) an offence has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual, or
  - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(14) In paragraph (13), “relevant individual” means—

- (a) in relation to a body corporate—
  - (i) a director, manager, secretary or some other similar officer or person,
  - (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a Scottish partnership, a partner,
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

*Name*

A member of the Scottish Government

St Andrew’s House,  
Edinburgh  
Date

# SCHEDULES

## SCHEDULE 1

Regulations 7(3)(b) and (4)

### Producer Registration: Information to be contained in an application for producer registration

1. The name (including business name) of the producer.
2. The address and telephone number of the registered or principal office of the producer.
3. The company registration number as kept by Companies House.
4. The address for service of notices on the producer if different from that referred to in paragraph 2.
5. The name and telephone number of a contact person for the producer, and, where available, a fax number and email address for that person.
6. Where the producer is a partnership, the names of all the partners.
7. Where relevant, the code for an activity in the UK Standard Industrial Classification of Economic Activities 2007 (SIC 2007)(a), as amended from time to time.
8. The date on which the application is made.
9. The number of scheme articles first placed on the market for retail sale in Scotland by that producer in the previous calendar year.
10. The number of scheme articles the producer anticipates it will place on the market for retail sale in Scotland in the calendar year in which the application is being made.
11. An operational plan that demonstrates how the producer intends to comply with regulations 10 and 11.

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(a) A copy of the UK Standard Industrial Classification by Economic activity can be found at: <https://www.ons.gov.uk/methodology/classificationsandstandards/ukstandardindustrialclassificationofeconomicactivities>.

## SCHEDULE 2

Regulation 14(2)(b)

### Scheme administrator approval: Information to be contained in an application for scheme administrator approval

1. The name (including business name) of the scheme administrator.
2. The address and telephone number of the registered or principal office of the scheme administrator.
3. The address for service of notices if different from that in paragraph 2.
4. Information which demonstrates—
  - (a) that the scheme administrator is likely to subsist for a period of at least 5 years,
  - (b) in the form of an operational plan, how the scheme administrator intends to comply with regulations 10 and 11 on behalf of any producer registered or to be registered following the grant of an application made or to be made by the scheme administrator in accordance with regulation 7(1)(b).
5. A copy of the constitution of the scheme administrator or founding document if it exists.
6. A copy of the rules and procedures applicable to producers that the scheme administrator is acting on behalf of.

## SCHEDULE 3

Regulation 11(2)(i)

### Collection targets

1. The minimum collection targets which a producer must meet in respect of scheme packaging containing a scheme article each calendar year are as follows—

- (a) for the calendar year beginning 1 January 2022 and ending 31 December 2022, 70% of the number of items of scheme packaging first placed on the market for retail sale in Scotland by that producer in that year,
- (b) for the calendar year beginning 1 January 2023 and ending 31 December 2023, 80% of the number of items of scheme packaging first placed on the market for retail sale in Scotland by that producer in that year,
- (c) subject to sub-paragraph (d), for the calendar year beginning 1 January 2024 and each subsequent calendar year, 90% of the number of items of scheme packaging first placed on the market for retail sale in Scotland by that producer in that calendar year,
- (d) the target in sub-paragraph (c) must include a minimum of—
  - (i) 85% of the number of items of scheme packaging first placed on the market for retail sale in Scotland by that producer made mainly or wholly from PET plastic,
  - (ii) 85% of the number of items of scheme packaging first placed on the market for retail sale in Scotland by that producer made mainly or wholly from glass,
  - (iii) 85% of the number of items of scheme packaging first placed on the market for retail sale in Scotland by that producer made mainly or wholly from steel or aluminium.

## SCHEDULE 4

Regulation 25(2)(b)

### Registration of a voluntary return point operator: Information to be contained in an application for registration

1. The name (including business name), of the person who will be the return point operator.
2. The address or telephone number of the registered or principal office of that operator.
3. The address and telephone number of the proposed return point if different from that in paragraphs 1 and 2.
4. Information about the accessibility of the proposed return point including—
  - (a) the physical location of it,
  - (b) routes of access to it, and
  - (c) its proposed hours of operation.
5. Confirmation in writing that all registered producers have agreed that the return point may operate a return point on their behalf (or in the case of producers registered in accordance with regulation 7(1)(b), a scheme administrator on their behalf).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the operation of a deposit and return scheme (“the scheme”) for “scheme articles”, which are drinks that are intended to be sold to consumers in Scotland and are contained in “scheme packaging”, being single-use packaging made from polyethylene terephthalate plastic, glass, aluminium and steel.

Regulations 2 and 3 define terms used in these Regulations, including scheme articles and scheme packaging to which these Regulations apply.

Regulation 4 prohibits the marketing (including through online retail or vending machine sales) or sale in Scotland of scheme articles, if the producer of those articles is not registered with SEPA in accordance with chapter 2 of Part 2 of these Regulations.

Regulation 5 provides that when a scheme article is sold in Scotland a deposit of 20 pence must be included in the sale price. The seller must also make it clear by providing information to the purchaser that the product is a scheme article and its packaging can be returned in exchange for a deposit and must inform the purchaser where the item is not a scheme article. These obligations do not apply in the case of sales of articles in export shops, exclusively for consumption on the premises of sale or for consumption outside Scotland.

Regulation 6 defines producers as either the brand owner (for scheme articles branded in the United Kingdom) or the importer (for scheme articles branded outside the United Kingdom).

Regulations 7 to 10 and schedule 1 set out the requirements (including the provision of information) and procedures for registering producers for the purposes of the scheme. Producers can either register directly with SEPA and discharge the producer obligations themselves, or through a scheme administrator (approved in accordance with Part 4 of these Regulations), in which case that scheme administrator is responsible for discharging those obligations on behalf of those producers. Once registered a producer’s registration only ends if cancelled by SEPA. SEPA may cancel registration if a producer fails to comply with producer obligations, or fails to submit an application for registration annually.

Regulation 11 and schedule 3 make provision about the obligations on directly registered producers (or a scheme administrator on their behalf). These include collection of a target percentage of the scheme packaging which they place on the market in a calendar year, collecting their own scheme packaging from retailers and return points, accepting the return of their scheme packaging from wholesalers and reimbursing deposits for any packaging returned or collected.

Regulation 12 makes provision about obligations on producers whose registration and obligations under regulation 11 are discharged by a scheme administrator.

Regulation 13 provides for a scheme administrator, defines what a scheme administrator is and provides for their approval by the Scottish Ministers.

Regulations 14, 15 and 17 and schedule 2 provide for the procedure for approval by the Scottish Ministers of a scheme administrator (defined as a legal person which is responsible for submitting registration applications on behalf of producers and complying with scheme obligations on their behalf). A scheme administrator must submit an application providing the information specified in schedule 2. Once registered a scheme administrator remains approved unless or until that approval is withdrawn by the Scottish Ministers. Withdrawal of approval can be triggered by the scheme administrator’s failure to comply with the obligations in regulation 16, the scheme administrator knowingly or recklessly supplying false information to the Scottish Ministers or SEPA, if the scheme administrator commits an offence or if there is a change in the information provided on application for approval. The Scottish Ministers must withdraw approval if a scheme administrator notifies them that it intends to cease operating as a scheme administrator.

Regulation 18 defines retailers as a person who markets, offers to sell or sells a scheme article to a consumer in Scotland (which includes online retail sale operators and vending machine operators).

Regulation 19 provides for obligations of retailers to operate a return point at a premises from which sales of scheme articles are made. Retailers who have been granted an exemption by the Scottish Ministers, retailers selling by way of distance sales, export shops and vending machine operators are exempt from having to run a return point. Retailers must also ensure that information about how a deposit can be redeemed must be displayed where scheme articles are displayed for sale.

Regulation 20 provides for obligations of return point operators to accept (subject to certain exceptions) and retain for collection by or on behalf of producers, items of scheme packaging which have been returned by consumers, subject to reimbursement of the deposit.

Regulation 21 provides for obligations of retailers selling scheme articles by means of distance sales to provide takeback services to consumers who have purchased those items, to enable those consumers to return items of scheme packaging.

Regulations 22 to 24 enable the granting of exemptions by the Scottish Ministers (whether or not on receipt of an application by a retailer) in respect of the obligation to operate a return point at retail premises. That is subject to the Scottish Ministers being satisfied that there is an alternative return point within a reasonable proximity to the premises, and that consumers will still have reasonable access to a return point throughout the local authority area in which the retail premises are located.

Regulation 25 and schedule 4 make provision for a person to apply to register with the Scottish Ministers to operate a voluntary return point from premises other than retail premises.

Regulations 26 to 29 provides for a process for appeals and reviews against decisions of SEPA or the Scottish Ministers in relation to registration of producers, and approval of scheme administrators.

Regulation 30 provides powers for SEPA (through persons authorised in writing for that purpose) to enforce the requirements arising under these Regulations, including powers of entry to premises other than domestic premises.

Regulation 31 provides for offences, and for penalties on conviction of an offence.

A draft of these Regulations was notified to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society Services (OJ No L 241, 17.9.2015, p.1).

A Business Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Environmental Quality Division, Area 3H South, Victoria Quay, Edinburgh, EH6 6QQ, and online at [legislation.gov.uk](http://legislation.gov.uk).

## **Responding to this Consultation**

We are inviting responses to this consultation by 10 December 2019.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/environment-forestry/deposit-scheme-for-scotland>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 10 December 2019.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Circular Economy Team  
Scottish Government  
3-H North  
Victoria Quay  
EH66QQ

## **Handling your response**

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

## **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at [DRSinScotland@gov.scot](mailto:DRSinScotland@gov.scot).

### **Scottish Government consultation process**

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

**THE DEPOSIT AND RETURN SCHEME FOR  
SCOTLAND REGULATIONS 2020  
ACCOMPANYING STATEMENT**

**RESPONSE FORM**

**RESPONDENT INFORMATION FORM**

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

**Information for organisations:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

**COMMENTS**

**Comments on Part 1 – General**

**Comments on Part 2 – The deposit and return scheme**

**Comments on Part 3 – Producers**

**Comments on Part 4 – Scheme administrator**

**Comments on Part 5 – Retailers and Return points**

**Comments on Part 6 – Appeals or reviews**

**Comments on Part 7 – Enforcement and offences**

A large, empty rectangular box with a thin black border, intended for providing comments on the enforcement and offences section of Part 7.



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