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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2020 No.**

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

**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 made—
- (a) before 1 March in any relevant year,
  - (b) within 28 days of that person becoming a producer,

- (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  - (i) the producer receives notification in writing that the scheme administrator’s approval has been withdrawn in accordance with regulation 17,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) subject to paragraph (5), be accompanied by a registration fee of £360.
- (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.
- (5) Paragraph (3)(d) does not apply to an application by a producer with a taxable turnover of £85,000 or less in the previous financial year.

### **Producer registration**

- 8.—**(1) Within 28 days of receipt of an application, SEPA must—
- (a) where the application complies with regulation 7(3) and SEPA is satisfied that the applicant will comply with the obligations in regulation 10(1) and 11(1), 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 takes effect from the relevant date 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) is—
- (a) 1 April in a relevant year, where the application was made within the time limit specified in regulation 7(2)(a),
  - (b) the date the application was received by SEPA, where the application was made within the time limit specified in regulation 7(2)(b),
  - (c) the date the producer received the notification, where the application was made within the time limit specified in regulation 7(2)(c)(i) or (ii),
  - (d) the date the producer sent the notification, where the application was made within the time limit specified in regulation 7(2)(c)(iii), or
  - (e) the date specified by SEPA in the notice provided in accordance with paragraph (2) in any other case.

(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.

(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 regulations 10(1) or 11(1),
- (b) the producer is in breach of the obligation specified in regulation 5(2)(a),
- (c) a registered producer has failed to submit an application in accordance with regulation 7(2) (a) or (c),
- (d) an application for registration of that producer has been refused,
- (e) 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(1) or 11(1).

(2) SEPA must cancel the registration of a producer where it is notified under regulation 10(1) (d) 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 is intended to take effect, not being earlier than the time limit for making an appeal against the decision provided for in Part 6,
- (c) the opportunity to make representations to SEPA and the deadline for receipt of such representations, and
- (d) the right of appeal under Part 6.

(4) SEPA must consider any representations made by the producer or, as the case may be, a scheme administrator before cancellation takes effect and may withdraw the notice at any time before it takes effect.

(5) The date when the cancellation takes 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 Part 6,
- (b) in the case of cancellation under paragraph (2), 28 days from the date of the notification from the producer in accordance with 10(1)(d),
- (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 referred to in paragraph (3) must be served on—

- (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 the following regulations as if that producer was still a registered producer—

- (a) regulation 11(1)(a) and (b),
- (b) regulation 11(1)(c) to (h).

(8) For the purposes of paragraph (7), the reference in regulation 11(1)(e), (f) and (g) 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.**—(1) A registered producer must—

- (a) submit any subsequent application for registration within the time limits in regulation 7(2),
- (b) provide any information reasonably requested by SEPA with regard to the producer obligations in regulation 11(1) or, as the case may be, 12(2),
- (c) notify 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,
- (d) 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.

(2) The obligations in paragraph (1) must be discharged—

- (a) where the producer is registered in accordance with regulation 7(1)(a), by the producer, or
- (b) where the producer is registered through a scheme administrator, by that scheme administrator, in accordance with regulation 16(1)(a).

##### **Producer obligations: further provision**

**11.**—(1) A registered producer must—

- (a) 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 (2),
- (b) provide that information to SEPA in such form and at such intervals as SEPA may require,
- (c) accept the return by a retailer or wholesaler of any scheme packaging that was—
  - (i) first made available by the producer to be marketed, offered for sale or sold for the purposes of its retail sale in Scotland, and
  - (ii) sold by that producer to that retailer or wholesaler,
- (d) pay a sum equal to the deposit to a retailer or wholesaler for each item of scheme packaging returned in accordance with sub-paragraph (c),
- (e) within the time limits specified in the producer's operational plan, collect scheme packaging first made available by that producer to be marketed, offered for sale or sold for the purposes of its retail sale in Scotland from any of the following—
  - (i) a return point operator,
  - (ii) a retailer operating a takeback service,

- (iii) a hospitality retailer,
  - (f) 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 (e) a sum equal to the deposit for each item of scheme packaging collected,
  - (g) 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 (e) a reasonable handling fee charged by that person for each item of scheme packaging collected,
  - (h) meet the minimum collection targets specified in schedule 3 in respect of scheme packaging containing a scheme article first made available by that producer to be marketed, offered for sale or sold for the purposes of its retail sale in Scotland.
- (2) The information referred to in paragraph (1)(a) is—
  - (a) the number of scheme articles first made available by that producer to be marketed, offered for sale or sold for the purposes of its retail sale in Scotland,
  - (b) whether the scheme packaging in which those scheme articles were contained or sold was made wholly or mainly from PET plastic, glass, steel or aluminium,
  - (c) the number of 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 operator, retailer providing a takeback service and hospitality retailer.
- (3) The obligations in paragraph (1) must be discharged—
  - (a) where the producer is registered in accordance with regulation 7(1)(a), by the producer, or
  - (b) where the producer is registered through a scheme administrator, by that scheme administrator, in accordance with regulation 16(1)(a).
- (4) For the purposes of this regulation—
  - a “reasonable handling fee” is—
    - (a) a fee charged by a return point operator in relation to scheme packaging returned by a consumer to that return point that takes into account the following—
      - (i) the costs of purchase, lease, maintenance and upkeep of any reverse vending machine associated with the collection and storage of 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, and
      - (iv) staff time dedicated solely to the collection and storage of scheme packaging,
    - (b) a fee charged by a retailer providing a takeback service in relation to scheme packaging returned through that takeback service, that takes into account the following—
      - (i) costs associated with use of a vehicle to collect scheme packaging,
      - (ii) the cost of materials used in respect of the collection and storage of that scheme packaging,
      - (iii) the rental value of any floor space utilised solely for the collection and storage of that scheme packaging,
      - (iv) staff time dedicated solely to the collection and storage of that scheme packaging, and

- (v) the delivery costs associated with return of that scheme packaging,
- (c) a fee charged by a hospitality retailer in relation to scheme packaging of scheme articles sold exclusively for the purposes of consumption on the premises of sale, that takes into account the cost of materials used in respect of the collection and storage of scheme packaging.

“wholesaler” means a person other than a producer that markets, offers for sale or sells a scheme article in Scotland other than by way of retail 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) maintain a record of the number and type of scheme articles first made available by that producer to be marketed, offered for sale or sold for the purposes of its retail sale in Scotland, and
  - (b) supply any information reasonably requested by that scheme administrator for the purposes of the scheme administrator’s compliance with the obligations in regulation 16(1) (a) to (c).