
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

The Deposit and Return Scheme for Scotland Regulations 2020

PART 5

Retailers and return points

CHAPTER 3

Exemptions for return points

Exemptions for return points

22.—(1) Subject to paragraph (2), the Scottish Ministers may grant an exemption to a retailer (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 in one of the following circumstances—

- (a) where the following criteria are met—
 - (i) they consider that 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,
 - (ii) they consider that, if the exemption is granted, this will still provide consumers with reasonable access to a return point, and
 - (iii) they consider that, if the exemption is granted, it would not significantly impair the ability of a producer (or a scheme administrator on their behalf) to meet their collection targets,
- (b) where they are satisfied that the location, layout, design, or construction of the retail premises does not permit, or cannot be reasonably altered to permit, the operation of a return point on the premises without significant risk of the retailer being in breach of a legal obligation relating to any of the following—
 - (i) food safety,
 - (ii) health and safety,
 - (iii) fire safety,
 - (iv) environmental protection,
 - (v) public health.

(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 in writing notice of that decision, and the date that the exemption takes effect.

(3) The Scottish Ministers must publish and maintain a list of retailers that have been granted an exemption under this regulation in such manner as they consider appropriate.

(4) A retailer who has been granted an exemption under paragraph (1) must—

- (a) clearly display information at the retailer's premises indicating—

- (i) that by virtue of an exemption granted under these Regulations, they do not operate a return point, and
- (ii) the location of—
 - (aa) in the case of an exemption granted in accordance with paragraph (1)(a), the alternative return point, or
 - (bb) in the case of an exemption granted in accordance with paragraph (1)(b), the nearest return point, and
- (b) notify the Scottish Ministers of any material change to—
 - (i) any of the circumstances under which the exemption was granted as specified in paragraph (1)(a) or, as the case may be, (b),
 - (ii) any of the information provided as part of an application for exemption under regulation 24.

Revocation of an exemption for a return point

- 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 under which the exemption was granted as specified in regulation 22(1)(a) or, as the case may be, (b),
 - (b) in the case of an exemption granted in accordance with regulation 22(1)(a), maintaining the exemption will no longer provide consumers with reasonable access to a return point,
 - (c) the retailer has failed to comply with their obligations under regulation 22(4)(b), or
 - (d) the retailer has requested that the exemption be revoked.
- (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 of a return point

- 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 for exemption in accordance with regulation 22(1)(a) 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 that regulation, and
 - (c) include any other information requested by the Scottish Ministers.
- (3) An application for exemption in accordance with regulation 22(1)(b) must—
- (a) be made in writing,
 - (b) include information demonstrating that the location, layout, design, or construction of the retail premises does not permit, or cannot be reasonably altered to permit, the operation of a return point on the premises without significant risk of the retailer being in breach of legal obligations relating to any of the matters listed at regulation 22(1)(b), and
 - (c) include any other information requested by the Scottish Ministers.
- (4) Within 28 days of receipt of an application the Scottish Ministers may grant the application where satisfied that the relevant conditions in regulation 22(1)(a) or, as the case may be, (b), are met.

(5) 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.