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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2020 No.**

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

**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 for sale 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) and (3),
- (b) operate a return point in accordance with regulation 20 at any retail premises in Scotland in which a scheme article is marketed, offered for sale or sold by that retailer,
- (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),
  - (e) of a hospitality retailer that does not sell any scheme articles for consumption off the premises of sale.

## 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,
  - (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, and
  - (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 intact,
  - (d) it is not empty,
  - (e) the return point operator 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, or
  - (f) it is part of a single proposed return by a consumer that contains a number of items of scheme packaging disproportionately greater than the number of scheme articles that retailer sells, on average, as part of a single transaction.

## 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,
- (c) is not intact, or
- (d) is not empty.

## 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.

## 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 premises on which a return point must be operated under regulation 19(1)(b), 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 (10).
- (6) The Scottish Ministers must publish and maintain a list of voluntary return points whose operators are registered under this regulation, 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—
- (a) comply with the obligations in regulation 20, and
  - (b) notify the Scottish Ministers of any material change in the information provided in accordance with paragraph (2).
- (9) A registered voluntary return point operator must comply with paragraph (8) from the date of receipt of the notice referred to in paragraph (4), or any later date specified in that notice.

(10) The Scottish Ministers may cancel the registration of a voluntary return point operator where it appears that—

- (a) the operator has not complied with the obligations in paragraph (8),
- (b) there has been a material change in the information provided in accordance with paragraph (2), or
- (c) the registered voluntary return point operator has requested their registration be cancelled.

(11) Before cancelling the registration under paragraph (10), the Scottish Ministers must serve on the return point operator written notice of—

- (a) the decision to cancel and the reasons for it, and
- (b) the date when the cancellation will take effect.