

CLIMATE CHANGE (SCOTLAND) ACT 2009

EXPLANATORY NOTES

THE ACT

Part 5 – Other Climate Change Provisions

Chapter 5 – Waste reduction and recycling

Waste prevention and management plans

Deposit and return schemes

173. **Section 84** enables the Scottish Ministers to make detailed provision, by regulations, setting up deposit and return schemes for packaging associated with specified products, the products themselves, or both, where Ministers are satisfied that it is necessary or expedient to do so in order to promote recycling. Some of the detail which may be included in the regulations is specified in subsections (3) to (5) and (7), but without prejudice to the generality of the power. Subsections (4)(d) and (5)(g) would confer power to require that materials returned under such a scheme were “recycled”, using the definition at the beginning of this Chapter, which includes re-use and recovery. Any scheme would have to take account of the waste hierarchy set out in the Waste Framework Directive (2008/98/EC), which prioritises re-use over recycling (narrowly defined), and both over recovery.
174. Subsection (5) would permit regulations to establish an administrative body (called a “scheme administrator”) to act on behalf of relevant producers and retailers in certain respects. This is dealt with in more detail in section 85. Subsection (7) deals with matters such as mechanisms for identifying articles and/or packaging as falling within a scheme, customer information and specification of the places to which packaging could be returned and the deposit reclaimed. The latter could for example be used to deal with return of packaging to a different retailer selling similar types of product. It also provides for a scheme of “split deposits”, whereby there could be an element added to the price which was *not* refundable. This could be used to fund the scheme.
175. It is very likely that a system of enforcement, including offences and penalties, would be required to ensure that deposits were actually taken and repaid, and subsection (7) (n) to (q) contain appropriate powers.