

Climate Change (Scotland) Act 2009

2009 asp 12

PART 5

OTHER CLIMATE CHANGE PROVISIONS

CHAPTER 5

WASTE REDUCTION AND RECYCLING

Waste prevention and management plans

78 Waste prevention and management plans

- (1) The Scottish Ministers may, by regulations, require persons of the kinds specified—
 - (a) to prepare plans for the prevention, reduction, management, recycling, use and disposal of waste produced by or otherwise associated with their activities;
 - (b) to comply with those plans.
- (2) The regulations may in particular include provision about—
 - (a) the circumstances in which plans must be prepared, including when more than one plan must be prepared;
 - (b) the kinds of waste in relation to which plans must be prepared;
 - (c) the periods—
 - (i) to which plans relate;
 - (ii) within which plans must be prepared;
 - (d) the content of plans;
 - (e) subject to section 89—
 - (i) the enforcement authority in relation to the regulations; and
 - (ii) the functions of that authority, including the approval by it of plans prepared under the regulations;
 - (f) the keeping of plans and other information and their production to the enforcement authority;
 - (g) the enforcement of the duties imposed by the regulations;

Changes to legislation: There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Chapter 5. (See end of Document for details)

- (h) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- (4) In this Chapter—
 - “recycling”, in relation to any waste, includes recovery and re-use (whether or not the waste is subjected to any process) (and cognate expressions are to be construed accordingly);
 - “specified” means specified in regulations (and cognate expressions are to be construed accordingly);
 - “waste” has the meaning given by section 75(2) of the Environmental Protection Act 1990 (c. 43) (the “1990 Act”).

Commencement Information

II S. 78 in force at 31.10.2009 by [S.S.I. 2009/341](#), [art. 2\(2\)\(a\)](#)

Waste data

79 Information on waste

- (1) The Scottish Ministers may, by regulations, require persons of the kinds specified to provide SEPA with information on the waste produced by or otherwise associated with such persons' activities.
- (2) The regulations may in particular include provision about—
 - (a) the circumstances in which information must be provided;
 - (b) the information required to be provided, including the periods to which the information relates;
 - (c) the form and manner in which information must be provided;
 - (d) the periods within which information must be provided;
 - (e) the functions of SEPA in relation to the regulations;
 - (f) the keeping of information and its production to SEPA;
 - (g) the enforcement of the duties imposed by the regulations;
 - (h) offences in relation to failures to comply with requirements of the regulations.
- (3) The power to make regulations under this section is without prejudice to section 34(5) of the 1990 Act and any other enactment to the same effect as that section; and any duty imposed on any person by regulations under this section is without prejudice to any duty to provide information on waste imposed by regulations under that section or by virtue of any other such enactment.
- (4) SEPA may give guidance to persons to whom the regulations apply on how to comply with the requirements of the regulations.
- (5) A draft of a statutory instrument containing the first regulations under subsection (1) must be laid before the Scottish Parliament no later than 12 months after the day on which this section comes into force.
- (6) In this section and in section 89, “SEPA” means the Scottish Environment Protection Agency.

Changes to legislation: There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Chapter 5. (See end of Document for details)

Commencement Information

I2 S. 79 in force at 31.10.2009 by [S.S.I. 2009/341](#), [art. 2\(2\)\(a\)](#)

Deposit of recyclable waste etc.

80 Recyclable waste: facilities for deposit etc.

- (1) The Scottish Ministers may, by regulations, require—
- (a) persons of the kinds specified to provide facilities for the deposit of waste;
 - (b) authorised persons—
 - (i) to collect waste deposited by virtue of paragraph (a);
 - (ii) to ensure, in so far as reasonably practicable, that such waste collected by or transferred to them (whether in accordance with section 34 of the 1990 Act or otherwise) is recycled.
- (2) The regulations may in particular include provision about—
- (a) the circumstances in which facilities must be provided, including the places at which they must be provided;
 - (b) the persons for whom facilities must be provided;
 - (c) the kinds of waste for which facilities must be provided;
 - (d) the circumstances in which authorised persons must collect waste, including which authorised persons must do so;
 - (e) the charging by authorised persons for collecting waste, for recycling waste and for otherwise ensuring waste is recycled;
 - (f) subject to section 89—
 - (i) the enforcement authority in relation to the regulations; and
 - (ii) the functions of that authority;
 - (g) the keeping of records and their production to the enforcement authority;
 - (h) the enforcement of the duties imposed by the regulations;
 - (i) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- (4) The Scottish Ministers may not, by regulations under this section, impose requirements on persons to provide facilities for the deposit of waste in circumstances in relation to which regulations under section 81 may be made.
- (5) In this section and in section 81, “authorised person” has the same meaning as in section 34(3) of the 1990 Act.

Commencement Information

I3 S. 80 in force at 31.10.2009 by [S.S.I. 2009/341](#), [art. 2\(2\)\(a\)](#)

Changes to legislation: There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Chapter 5. (See end of Document for details)

81 Recyclable waste: facilities for deposit at events etc.

- (1) The Scottish Ministers may, by regulations, confer power on local authorities to issue notices requiring—
- (a) persons responsible for organising temporary events open to the public to provide facilities for the deposit of waste by persons attending those events;
 - (b) authorised persons to—
 - (i) collect waste deposited by virtue of paragraph (a);
 - (ii) ensure, in so far as reasonably practicable, that such waste collected by or transferred to them (whether in accordance with section 34 of the 1990 Act or otherwise) is recycled.
- (2) The regulations may in particular include provision about—
- (a) the events in relation to which notices can be issued;
 - (b) the circumstances in which facilities must be provided, including the places at which they must be provided;
 - (c) the persons for whom facilities must be provided;
 - (d) the kinds of waste for which facilities must be provided;
 - (e) the persons to whom notices can be issued;
 - (f) the content of notices;
 - (g) the form of and manner in which notices can be issued, including the times at which notices can be issued;
 - (h) appeals against notices;
 - (i) the circumstances in which authorised persons must collect waste, including which authorised persons must do so;
 - (j) the charging by authorised persons for collecting waste, recycling waste and otherwise ensuring waste is recycled;
 - (k) subject to section 89—
 - (i) the enforcement authority in relation to notices; and
 - (ii) the functions of that authority;
 - (l) the keeping of records by persons to whom notices are issued and their production to the enforcement authority;
 - (m) the enforcement of duties imposed by notices;
 - (n) offences in relation to failures to comply with requirements of notices.
- (3) Local authorities must have regard to any guidance given by the Scottish Ministers to them in relation to the functions conferred on them by the regulations.
- (4) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.

Commencement Information

I4 S. 81 in force at 31.10.2009 by [S.S.I. 2009/341](#), [art. 2\(2\)\(a\)](#)

Changes to legislation: There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Chapter 5. (See end of Document for details)

Procurement of recyclate

82 Procurement of recyclate

- (1) The Scottish Ministers may, by regulations, require persons of the kinds specified to comply with the requirement in subsection (2).
- (2) That requirement is to ensure that things procured or constructed by or on behalf of such persons—
 - (a) comprise of; or
 - (b) include or contain a certain proportion of, recyclate.
- (3) The regulations may in particular include provision about—
 - (a) the circumstances in which the requirement applies;
 - (b) the kinds of things in relation to which the requirement applies;
 - (c) the proportion of recyclate that such things must include or contain;
 - (d) how such proportions are to be determined;
 - (e) the circumstances in which a person may apply to the Scottish Ministers to have the requirement disappplied;
 - (f) subject to section 89—
 - (i) the enforcement authority in relation to the regulations; and
 - (ii) the functions of that authority;
 - (g) the keeping of records and their production to the enforcement authority;
 - (h) the enforcement of the duties imposed by the regulations;
 - (i) offences in relation to failures to comply with requirements of the regulations.
- (4) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- (5) Persons to whom the regulations apply must have regard to any guidance given by—
 - (a) the Scottish Ministers;
 - (b) the enforcement authority,to them in relation to the requirements imposed by the regulations.
- (6) In this section, “recyclate” means waste that has been recycled.

Commencement Information

I5 S. 82 in force at 31.10.2009 by [S.S.I. 2009/341](#), [art. 2\(2\)\(a\)](#)

[^{F1}82A Procurement of recycled and recyclable products etc.

- (1) The Scottish Ministers may by regulations require specified contracting authorities to ensure that—
 - (a) a specified proportion of the goods or works procured by or on behalf of the authorities, or
 - (b) a specified proportion of the materials used in the production, provision or construction of goods, services or works so procured,fall within subsection (2).

Changes to legislation: There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Chapter 5. (See end of Document for details)

- (2) Something falls within this subsection if—
- (a) it has been used already (including where it has been refurbished since that use),
 - (b) it has been remanufactured, or
 - (c) it is designed to be repaired, reused, refurbished, remanufactured or recycled.
- (3) The regulations may, in particular, make provision about—
- (a) the circumstances in which the requirement applies,
 - (b) the kinds of things in relation to which the requirement applies,
 - (c) how the specified proportions are to be determined,
 - (d) the circumstances in which a person may apply to the Scottish Ministers to have the requirement disappplied,
 - (e) subject to section 89—
 - (i) the enforcement authority in relation to the regulations, and
 - (ii) the functions of that authority,
 - (f) the keeping of records and their production to the enforcement authority,
 - (g) the enforcement of the duties imposed by the regulations,
 - (h) offences in relation to failures to comply with requirements of the regulations.
- (4) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- (5) Persons to whom the regulations apply must have regard to any guidance given by—
- (a) the Scottish Ministers,
 - (b) the enforcement authority,
- to them in relation to the requirements imposed by the regulations.
- (6) In this section—
- “ contracting authority ” has the meaning given by section 1 of the Procurement Reform (Scotland) Act 2014,
- “ specified ” means specified in the regulations.]

Textual Amendments

F1 S. 82A inserted (18.4.2016) by [Procurement Reform \(Scotland\) Act 2014 \(asp 12\)](#), **ss. 36, 45**; [S.S.I. 2016/30](#), **art. 3** (with **art. 5**)

Reduction of packaging

83 Targets for reduction of packaging etc.

- (1) The Scottish Ministers may, by regulations—
- (a) set targets—
 - (i) for the reduction of packaging;
 - (ii) for the reduction of greenhouse gas emissions produced by the manufacture of or otherwise associated with packaging;
 - (b) require persons of the kinds specified to comply with those targets.
- (2) The regulations may in particular include provision about—

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- (a) the circumstances in which the requirement in subsection (1)(b) applies;
 - (b) the kinds of packaging in relation to which targets may be set;
 - (c) the targets in relation to such packaging (including how targets may be set);
 - (d) the methods of determining whether targets have been met;
 - (e) subject to section 89—
 - (i) the enforcement authority in relation to the regulations; and
 - (ii) the functions of that authority;
 - (f) the keeping of records and other information and their production to the enforcement authority (including the periods to which records or information must relate and within which it must be produced to the authority);
 - (g) the enforcement of the duties imposed by the regulations;
 - (h) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- (4) In this section and in section 84, “packaging” has the meaning given by Article 3 of Directive [94/62/EC](#) of the European Parliament and of the Council on packaging and packaging waste.

Commencement Information

16 S. 83 in force at 31.10.2009 by [S.S.I. 2009/341](#), [art. 2\(2\)\(a\)](#)

Deposit and return

84 Deposit and return schemes

- (1) The Scottish Ministers may, by regulations, establish deposit and return schemes.
- (2) A “deposit and return scheme” is a scheme under which—
- (a) the sale price of articles includes a returnable element (a “deposit”);
 - (b) persons who return—
 - (i) such articles;
 - (ii) the packaging associated with such articles (“returnable packaging”);
 - or
 - (iii) both such articles and such packaging,are entitled to be paid a sum equal to that deposit.
- (3) Retailers may be required, under a deposit and return scheme, to—
- (a) include a deposit in the price of articles placed on the market by them;
 - (b) accept the return to them of—
 - (i) such articles;
 - (ii) returnable packaging; or
 - (iii) both such articles and such packaging;
 - (c) pay a sum equal to the deposit to persons who return to them—
 - (i) such articles;
 - (ii) returnable packaging; or

Changes to legislation: There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Chapter 5. (See end of Document for details)

- (iii) both such articles and such packaging;
 - (d) return such articles to the producers of them;
 - (e) return returnable packaging to the producers of it or of the articles with which it is associated.
- (4) Producers may be required, under a deposit and return scheme, to—
- (a) include a deposit in the price of articles placed on the market by them;
 - (b) accept the return to them of—
 - (i) such articles;
 - (ii) returnable packaging; or
 - (iii) both such articles and such packaging;
 - (c) pay a sum equal to the deposit to retailers who return to them—
 - (i) such articles;
 - (ii) returnable packaging; or
 - (iii) both such articles and such packaging;
 - (d) recycle, or have recycled—
 - (i) such articles;
 - (ii) returnable packaging; or
 - (iii) both such articles and such packaging.
- (5) A deposit and return scheme may also provide for a person or body (a “scheme administrator”) to—
- (a) ensure that deposits are included in the price of articles placed on the market;
 - (b) accept the return of—
 - (i) such articles;
 - (ii) returnable packaging; or
 - (iii) both such articles and such packaging;
 - (c) pay sums equal to deposits to persons who return—
 - (i) such articles;
 - (ii) returnable packaging; or
 - (iii) both such articles and such packaging;
 - (d) return such articles to the producers of them;
 - (e) return returnable packaging to the producers of it or of the articles with which it is associated;
 - (f) recover sums equal to deposits from such producers;
 - (g) recycle, or have recycled—
 - (i) such articles;
 - (ii) returnable packaging; or
 - (iii) both such articles and such packaging.
- (6) The Scottish Ministers may make regulations under this section only where they consider it necessary or expedient to do so for the purpose of promoting or securing an increase in the recycling of materials.
- (7) The regulations may in particular include provision about—
- (a) the persons who are retailers and producers for the purposes of deposit and return schemes;
 - (b) the articles to which such schemes apply;

Changes to legislation: There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Chapter 5. (See end of Document for details)

- (c) the deposits to be included in the price of such articles;
- (d) the inclusion, in the sale price of articles, of a non-returnable element to cover the reasonable costs incurred by retailers, producers or a scheme administrator in administering such schemes;
- (e) the articles the return of which entitles persons to payment of sums equal to deposits;
- (f) the methods by which such articles are to be identified;
- (g) the packaging which is returnable packaging for the purposes of such schemes;
- (h) the methods by which returnable packaging is to be identified;
- (i) information on the operation of schemes (including notices on premises where articles are offered for sale and the content of such notices);
- (j) the places to which articles can be returned;
- (k) the places to which returnable packaging can be returned;
- (l) the registration of retailers and producers to whom schemes apply (including the reasonable fees payable in relation to such registration);
- (m) the scheme administrator;
- (n) subject to section 89—
 - (i) the enforcement authority in relation to the regulations; and
 - (ii) the functions of that authority;
- (o) the keeping of records and other information and their production to the enforcement authority;
- (p) the enforcement of the duties imposed by the regulations;
- (q) offences in relation to failures to comply with requirements of the regulations.

Commencement Information

I7 S. 84 in force at 31.10.2009 by [S.S.I. 2009/341](#), [art. 2\(2\)\(a\)](#)

85 Deposit and return schemes: designation of scheme administrator

- (1) The Scottish Ministers may, by order, designate—
 - (a) a body established under section 86(1); or
 - (b) such other person or body as they consider appropriate (an “existing body”), as a scheme administrator of a deposit and return scheme established by virtue of section 84.
- (2) An order under subsection (1)(b) may, in so far as the Scottish Ministers consider it necessary or expedient to do so, modify the functions of an existing body by—
 - (a) conferring functions on;
 - (b) removing functions from; or
 - (c) otherwise varying the functions of,the body.
- (3) That order may in particular include provision about—
 - (a) borrowing by the existing body (with the approval of the Scottish Ministers);

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- (b) the charging by the body, in respect of the exercise of its functions in relation to a deposit and return scheme, of such reasonable amounts as the Scottish Ministers consider appropriate.
- (4) In exercising functions in relation to a deposit and return scheme, a scheme administrator must comply with any written directions of a general or specific nature as the Scottish Ministers may from time to time give to it in relation to those functions.

Commencement Information

I8 S. 85 in force at 31.10.2009 by [S.S.I. 2009/341](#), [art. 2\(2\)\(a\)](#)

86 Power to establish scheme administrator

- (1) The Scottish Ministers may, by order, establish a body to be a scheme administrator of a deposit and return scheme established by virtue of section 84(1).
- (2) A body established under subsection (1) is to be a body corporate.
- (3) The body may do anything which appears to it—
 - (a) to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions in relation to a deposit and return scheme;
 - (b) to be conducive to the exercise of those functions.
- (4) In particular, the body may—
 - (a) enter into contracts;
 - (b) with the agreement of the Scottish Ministers, borrow money;
 - (c) charge, in respect of the exercise of its functions in relation to a deposit and return scheme, such reasonable amounts as the Scottish Ministers consider appropriate.
- (5) An order under subsection (1) may in particular include provision about—
 - (a) the status and constitution of the body;
 - (b) the status of the members and any employees of the body;
 - (c) the remuneration, allowances and pensions of such members and such employees;
 - (d) the conferral of functions on the body;
 - (e) the keeping by the body of accounts and accounting records.

Commencement Information

I9 S. 86 in force at 31.10.2009 by [S.S.I. 2009/341](#), [art. 2\(2\)\(a\)](#)

87 Finance of scheme administrator

- (1) The Scottish Ministers may, for the purpose of or in connection with the exercise by a scheme administrator of functions in relation to a deposit and return scheme—
 - (a) pay grants;
 - (b) make loans,
 to the administrator of such amounts as Ministers may determine.

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- (2) Any such grant or loan may be paid or, as the case may be, made, on such terms and subject to such conditions (including, in the case of a loan, conditions as to repayment) as the Scottish Ministers consider appropriate.
- (3) The Scottish Ministers may, from time to time after any grant or loan is paid or, as the case may be, made, vary the terms and conditions on which it was paid or made.
- (4) The Scottish Ministers may guarantee, in such manner and on such conditions as they consider appropriate, the discharge of any financial obligation in connection with any sums borrowed by a scheme administrator for the purpose of, or in connection with, the exercise of its functions in relation to a deposit and return scheme.

Commencement Information

110 S. 87 in force at 31.10.2009 by [S.S.I. 2009/341](#), **art. 2(2)(a)**

Carrier bag charges

88 Charges for supply of carrier bags

- (1) The Scottish Ministers may, by regulations, require suppliers of goods—
 - (a) to charge for carrier bags supplied at the place where the goods are supplied for the purpose of enabling the goods to be taken away or delivered;
 - (b) to apply the net proceeds raised by such charges to the advancement of environmental protection or improvement or to any other purposes that may be reasonably regarded as analogous.
- (2) The regulations may in particular include provision about—
 - (a) the circumstances in which the requirement applies;
 - (b) the suppliers to whom the requirement applies;
 - (c) the carrier bags to which the requirement applies;
 - (d) the minimum amount to be charged for each carrier bag;
 - (e) how the net proceeds raised by the charge are to be ascertained;
 - (f) the purposes to which those net proceeds are to be applied;
 - (g) subject to section 89—
 - (i) the enforcement authority in relation to the regulations; and
 - (ii) the functions of that authority;
 - (h) the keeping of records and their production to the enforcement authority;
 - (i) the enforcement of the duties imposed by the regulations;
 - (j) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.

Commencement Information

111 S. 88 in force at 31.10.2009 by [S.S.I. 2009/341](#), **art. 2(2)(a)**

Changes to legislation: There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Chapter 5. (See end of Document for details)

[^{F2}Carrier bag offences: fixed penalty notices

Textual Amendments

F2 S. 88A and cross-heading inserted (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 43(2), 61(2)**; [S.S.I. 2014/160](#), **art. 2(1)(2)**, Sch.

88A Offences relating to supply of carrier bags: fixed penalty notices

- (1) A person authorised for the purpose of this section by an enforcement authority may give a person a fixed penalty notice if the person so authorised has reason to believe that the person to whom the notice is given has committed a relevant offence.
- (2) In subsection (1), “relevant offence” means an offence provided for in regulations made under section 88.
- (3) The Scottish Ministers may by regulations make further provision about fixed penalty notices under subsection (1).
- (4) Subject to section 89, the regulations may in particular include provision about—
 - (a) the enforcement authority in relation to the regulations; and
 - (b) the functions of that authority in relation to fixed penalty notices.
- (5) Schedule 1A makes further provision about fixed penalties.]

General provision

89 Enforcement authorities

- (1) This section applies to any regulations made under this Chapter other than under section 79.
- (2) The enforcement authority provided for in the regulations is to be—
 - (a) SEPA;
 - (b) a local authority; or
 - (c) such other person or body as the Scottish Ministers consider appropriate.
- (3) The regulations may provide for the functions of the enforcement authority in relation to the regulations to be exercised by two or more such authorities and about the functions of each such authority.
- (4) The regulations may also provide for enforcement authorities to levy charges to recover the reasonable costs incurred by them in exercising their functions under the regulations.

Commencement Information

I12 S. 89 in force at 31.10.2009 by [S.S.I. 2009/341](#), **art. 2(2)(a)**

Changes to legislation: There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Chapter 5. (See end of Document for details)

90 Penalties

- (1) A person who commits an offence under regulations made under this Part is liable to such penalties, not exceeding those mentioned in subsection (2), as are provided for in the regulations.
- (2) Those penalties are—
 - (a) on summary conviction, a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, a fine.

Commencement Information

I13 S. 90 in force at 31.10.2009 by [S.S.I. 2009/341](#), **art. 2(2)(a)**

Changes to legislation:

There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Chapter 5.