

*Draft Regulations laid before the Scottish Parliament under section 96(4) of the Climate Change
(Scotland) Act 2009 for approval by resolution of the Scottish Parliament.*

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

ENVIRONMENTAL PROTECTION

**The Deposit and Return Scheme for
Scotland Amendment Regulations 2022**

<i>Made</i>	- - - -	2022
<i>Coming into force</i>	- -	2022

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 84, 89, 90 and 96(2) of the Climate Change (Scotland) Act 2009⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 84(6) of that Act, the Scottish Ministers consider that it is expedient to make these Regulations for the purpose of promoting and securing an increase in the recycling of materials.

In accordance with section 96(4) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Deposit and Return Scheme for Scotland Amendment Regulations 2022 and come into force on the day after the day on which these Regulations are made.

(2) In these Regulations, “the 2020 Regulations” means the Deposit and Return Scheme for Scotland Regulations 2020⁽²⁾.

Amendment of the 2020 Regulations

2. The 2020 Regulations are amended in accordance with regulations 3 to 14.

Amendment of commencement date

3. In regulation 1(5) (citation and commencement)—

(1) 2009 asp 12.
(2) S.S.I. 2020/154.

- (a) for “and 7” substitute “, 7 and 8”,
- (b) for “1 July 2022” substitute “16 August 2023”.

Definition of relevant year

- 4. In regulation 2(1) (interpretation)—
 - (a) insert after the definition of “non-scheme article”—
 - ““non-Scottish article” has the meaning given in regulation 3(2),”,
 - (b) in the definition of “relevant year”, for “any” substitute “the calendar year beginning 1 January 2023 or any subsequent”.

Scheme articles and scheme packaging

- 5. In regulation 3(2) (scheme articles and scheme packaging)—
 - (a) insert after the definition of “non-scheme article”—
 - ““non-Scottish article” means an article that meets the criteria in sub-paragraphs (a) and (b) of the definition of “scheme article” in this paragraph, but does not meet the criteria in sub-paragraph (c) of that definition,”
 - (b) in sub-paragraph (b) of the definition of “scheme article”, for “1 July 2022” substitute “16 August 2023”.

Obligations relating to charging deposits and marketing, offering for sale or selling articles

- 6. In regulation 5 (obligations relating to charging deposits and marketing, offering for sale or selling articles)—
 - (a) in paragraph (3), for “1 July 2022” substitute “16 August 2023”,
 - (b) after paragraph (3), insert—
 - “(3A) Any person who markets, offers for sale or sells a non-Scottish article in Scotland on or after 16 August 2023 to a purchaser other than a consumer must communicate to that purchaser at the point of sale that—
 - (a) the article is not a scheme article to which the requirements of these Regulations apply,
 - (b) an item of packaging in which that article is contained or sold cannot be returned in exchange for payment of a sum equal to a deposit.”.

Producers

- 7. In regulation 6 (producers)—
 - (a) before paragraph (1), insert—
 - “(A1) A producer in respect of a scheme article which meets the conditions set out in paragraph (B1) is the retailer.
 - (B1) The conditions are that—
 - (a) an item of scheme packaging containing the scheme article is filled and sealed by the retailer, and
 - (b) the scheme article is sold by the retailer to a consumer for consumption in any place other than on the premises of sale.”.
 - (b) in paragraph (1), for “in respect of a” substitute “in respect of any other”.

Application of registration of a producer

8. In regulation 7 (application for registration as a producer)—
- (a) in paragraph (2)(b), insert at the end “in any relevant year”,
 - (b) in paragraph (3)(d), for “£360” substitute “£365”,
 - (c) in paragraph (5)—
 - (i) the words from “with a taxable turnover” to the end become sub-paragraph (a), and
 - (ii) at the end, insert—
 - “, or
 - (b) who is a producer only by virtue of regulation 6(A1).”.

Producer registration

9. In regulation 8(1) (producer registration), after “an application” insert “during any relevant year”.

Takeback services

10. In regulation 21 (takeback services)—
- (a) in paragraph (2), for “paragraph (3)” substitute “paragraphs (3) and (3A)”,
 - (b) after paragraph (3), insert—
 - “(3A) If a single proposed return by a consumer contains a number of items of scheme packaging disproportionately greater than the number of scheme articles that a retailer providing a takeback service sells on average as part of a single transaction, that retailer may refuse to provide a takeback service to the consumer for that proposed return.”,
 - (c) in paragraph (5)—
 - (i) in sub-paragraph (c), omit “or”,
 - (ii) after sub-paragraph (d), insert—
 - “, or
 - (e) is part of a return where the retailer had refused to provide a takeback service under paragraph (3A).”.

Enforcement

11. In regulation 30 (enforcement authority)—
- (a) in paragraph (2)—
 - (i) the words from “whether these Regulations” to the end become sub-paragraph (a), and
 - (ii) at the end, insert—
 - “,
 - (b) whether, and if so to what extent, any financial benefit has accrued or is likely to accrue to a person in connection with a failure to comply with these Regulations”,
 - (b) in paragraph (4)—
 - (i) in sub-paragraph (g), the words from “to answer” to the end become head (i), and
 - (ii) at the end, insert—

“, and

(ii) without prejudice to the generality of sub-paragraph (c), to attend at such place and at such reasonable time as the authorised person may specify to answer those questions and sign such a declaration,”

(c) after sub-paragraph (g), insert—

“,

(ga) without prejudice to the generality of sub-paragraphs (c) and (g), to require any person whom the authorised person has reasonable cause to believe to be able to give any information relevant to an investigation under sub-paragraph (c), to provide that person’s name, address and date of birth,”

(d) after paragraph (10), insert—

“(11) Information obtained as a result of the exercise of an enforcement power under paragraph (4), with or without the consent of any person, is admissible in evidence against that or any person in any proceedings.

(12) Information provided to SEPA or the Scottish Ministers in accordance with regulations 10, 11, 12 and 16 is admissible in evidence in any proceedings against the person who provided the information or any other person.”

Offences

12. In regulation 31(1) (offences), after sub-paragraph (e) insert—

“,

(f) regulation 5(3A)”.

Collection targets

13. In schedule 3 (collection targets), omit sub-paragraph (a).

Registration of a voluntary return point operator: information to be contained in an application for registration

14. In schedule 4 (registration of a voluntary return point operator: information to be contained in an application for registration), for paragraph 6, substitute—

“6. Confirmation in writing that—

- (a) all registered producers have agreed that the applicant may operate a return point on their behalf,
- (b) in the case of producers registered through a scheme administrator, the scheme administrator on behalf of the producers has agreed that the applicant may operate a return point, or
- (c) in the case where no producers are registered, but a scheme administrator has been approved, the scheme administrator has agreed that the applicant may operate a return point.”

Transitional provision

15.—(1) Paragraph (2) applies where the Scottish Environment Protection Agency⁽³⁾, prior to the coming into force of these Regulations, has received an application under regulation 7 (application for registration as a producer) of the 2020 Regulations and has not, by that date, granted or refused it.

(2) An application may be treated for all purposes as having been received during a relevant year.

(3) In paragraph (2), “relevant year” has the same meaning as in regulation 2(1) (interpretation) of the 2020 Regulations⁽⁴⁾.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

⁽³⁾ The Scottish Environment Protection Agency is established under section 20 of the Environment Act 1995 (c. 25).

⁽⁴⁾ The definition of “relevant year” is amended by regulation 5 of these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Deposit and Return Scheme for Scotland Regulations 2020 (“the 2020 Regulations”) which make provision for the operation of a deposit and return scheme.

Regulation 1(2) defines the 2020 Regulations for the purposes of these Regulations. Regulation 3 inserts a reference to Part 8 of the 2020 Regulations into the commencement provisions (which had been omitted in error from the 2020 Regulations) and amends the coming into force date for the remaining provisions of the 2020 Regulations to 16 August 2023.

Regulation 4 inserts a definition of a non-Scottish article into regulation 2(1) of the 2020 Regulations and amends the definition of relevant year to exclude the calendar year beginning on 1 January 2022. Regulation 5 inserts the definition of a non-Scottish article into regulation 3(2) of the 2020 Regulations; it also amends the date in regulation 3(2)(b) (definition of scheme article) of the 2020 Regulations to 16 August 2023.

Regulation 6 amends the date in regulation 5(3) of the 2020 Regulations to 16 August 2023 and inserts a new provision into the 2020 Regulations to require any person who markets, offers for sale or sells a non-Scottish article in Scotland on or after 16 August 2023 to a purchaser other than a consumer to communicate certain information at the point of sale.

Regulation 7 inserts paragraphs (A1) and (B1) into regulation 6 of the 2020 Regulations to make provision for a new category of producer, namely retailers who fill and seal items of scheme packaging containing scheme articles for sale to a consumer for consumption in any place other than on the premises of sale. Regulation 8 amends regulation 7 of the 2020 Regulations. Regulation 7(2)(b) of the 2020 Regulations is amended to insert a reference to a relevant year. Regulation 7(3)(d) of the 2020 Regulations is amended to increase the producer registration fee to £365 and regulation 7(5) of the 2020 Regulations is amended to provide that a person who is a producer by virtue of the new regulation 6(A1) does not have to pay the producer registration fee. Regulation 9 amends regulation 8 of the 2020 Regulations to require SEPA to deal with an application within 28 days of receipt of an application during a relevant year.

Regulation 10 amends regulation 21 of the 2020 Regulations to allow a retailer to refuse to provide a takeback service where a single proposed return by a consumer contains a number of items of scheme packaging disproportionately greater than the number of scheme articles that the retailer sells on average as part of a single transaction; if the consumer still uses the takeback service even after refusal, the retailer is not required to comply with regulation 21(4) of the 2020 Regulations.

Regulation 11(a) amends regulation 30(2)(b) to allow SEPA to use its enforcement powers under regulation 30(4) for the purpose of establishing whether, and if so to what extent, any financial benefit has accrued or is likely to accrue to a person in connection with a failure to comply with the 2020 Regulations. Regulation 11(b) and (c) amends regulation 30(4) to provide two additional enforcement powers for SEPA; regulation 11(d) makes provision regarding admissibility of evidence obtained in the exercise of SEPA’s enforcement powers under regulation 30(4) or as a result of persons providing information under regulations 10, 11, 12 and 16 of the 2020 Regulations.

Regulation 12 inserts a contravention of the new regulation 5(3A) as an offence into regulation 31(1) of the 2020 Regulations. Regulation 13 amends schedule 3 to remove collection targets for the calendar year beginning on 1 January 2023. Regulation 14 amends schedule 4 to make provision where an application for a voluntary return point is submitted before any producers are registered.

Regulation 15 makes transitional provision for applications for producer registration received by SEPA before the coming into force of these Regulations.

The Business Regulatory Impact Assessment for the 2020 Regulations has been updated and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government, Environmental Quality Division, Area 3H South, Victoria Quay, Edinburgh, EH6 6QQ, and online at legislation.gov.uk