
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

The Deposit and Return Scheme for Scotland Regulations 2020

PART 7

Enforcement and offences

Enforcement authority

30.—(1) SEPA has the powers described in paragraph (4).

(2) The enforcement powers are exercisable for the purpose of establishing whether these Regulations are being, or have been, complied with.

(3) The enforcement powers are exercisable by any person authorised in writing by SEPA for that purpose.

(4) The enforcement powers are—

- (a) to enter onto any premises at any reasonable time, except premises used wholly or mainly as a private dwelling,
- (b) to take with the authorised person on entering onto any premises in accordance with sub-paragraph (a)—
 - (i) any equipment or materials required,
 - (ii) if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of the authorised person’s duty, a constable,
 - (iii) any other person authorised in writing by SEPA,
- (c) to make such examination and carry out such investigation as is necessary,
- (d) to direct that any premises which the authorised person has power to enter in accordance with sub-paragraph (a), or anything on those premises, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c),
- (e) to take such measurements and photographs or any other digital record, and to make such recordings as are necessary for the purposes of any examination or investigation under sub-paragraph (c),
- (f) to take samples, or cause samples to be taken, of any articles, packaging, packaging material, products or parts of products found in, on or in the vicinity of any premises over which the power of entry applies in sub-paragraph (a),
- (g) to require any person who the authorised person has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of any person other than a person nominated by that person to be present and any person whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask, and to sign a declaration of the truth of that person’s answers,

- (h) to have access to, inspect, copy and print any document or record (in whatever form it is held) or seize and detain such document or record to enable it to be copied, printed or retained as evidence,
 - (i) to have access to, inspect and check the operation of any computer and any associated apparatus, or material which is or has been used in connection with a document or record, and for this purpose to require any person having charge of, or otherwise concerned with the operation of the computer, apparatus or material to give the authorised person such assistance as may reasonably be required and, where a document or record is kept by means of a computer, to require the document or record to be produced in a form in which it can be taken away,
 - (j) to make test purchases of articles,
 - (k) to make test returns of scheme packaging to a return point or to a distance retailer,
 - (l) by written notice, for the purposes of the discharge of their functions under these Regulations, to require any person to provide such information as is specified in the notice, in such form and within such period as is specified in the notice.
- (5) A sheriff, a summary sheriff or a justice of the peace may by warrant authorise an officer of SEPA to enter any land or premises, if necessary using reasonable force, if satisfied by evidence on oath that—
- (a) there are reasonable grounds for an authorised person to enter the land or premises concerned, and
 - (b) that—
 - (i) entry to the land or premises has been refused, or is likely to be refused and notice of intention to apply for a warrant has been given to the occupier, or
 - (ii) an application for admission, or the giving of such notice, would defeat the object of entry, or that the case is one of urgency, or that the land is, or the premises are, unoccupied or the occupier is temporarily absent.
- (6) A warrant expires—
- (a) when it is no longer needed for the purposes for which it is granted,
 - (b) if earlier, when any period as may be specified in it expires.
- (7) Where documents, records, packaging, material, products or parts of products are seized in accordance with paragraph (4), the authorised person must—
- (a) allow the person who is the occupier of the premises from which documents or records are seized at the time those documents or records are seized to make copies of any documents or records seized, if requested to do so, and
 - (b) provide on request from the person who is the occupier of the premises from which documents, records, packaging, material, products or parts of products are seized, a receipt in respect of anything so seized.
- (8) An authorised person who enters any unoccupied premises must leave them as effectively secured as they were before those premises were entered.
- (9) Nothing in paragraph (4) is to be construed as requiring any person to answer any question if to do so might incriminate that person.
- (10) Nothing in this regulation confers power on an authorised person to seize an item which that person has reasonable grounds to believe would in legal proceedings be protected from disclosure on grounds of confidentiality of communications or legal professional privilege.

Offences

31.—(1) It is an offence to contravene—

- (a) regulation 4(1),
- (b) regulation 4(2),
- (c) regulation 5(2)(a),
- (d) regulation 5(2)(b),
- (e) regulation 5(3).

(2) It is an offence for a person to knowingly or recklessly supply false information in connection with—

- (a) an application for producer registration submitted in accordance with chapter 2 of Part 3,
- (b) an application for approval of a scheme administrator submitted in accordance with Part 4,
- (c) an application for exemption of a retailer from the obligation to operate a return point submitted in accordance with chapter 3 of Part 5,
- (d) an application for registration of a voluntary return point submitted in accordance with chapter 4 of Part 5,
- (e) a notification to SEPA or the Scottish Ministers of any material change in accordance with regulation—
 - (i) 10(1)(c),
 - (ii) 16(1)(c),
 - (iii) 22(4)(b),
 - (iv) 25(8)(b).

(3) It is an offence for a producer whose registration has been cancelled in accordance with regulation 9(1) to fail, without reasonable excuse, to comply with the obligations specified in—

- (a) regulation 9(7)(a),
- (b) regulation 9(7)(b).

(4) It is an offence for a registered producer to fail, without reasonable excuse, to comply with the producer obligations set out in regulations 10(1)(b) and (c).

(5) It is an offence for a registered producer that has registered in accordance with regulation 7(1) (a) to fail, without reasonable excuse, to comply with the obligations in—

- (a) regulation 11(1)(a) and (b),
- (b) regulation 11(1)(c) to (h).

(6) It is an offence for a producer registered through a scheme administrator to fail, without reasonable excuse, to comply with the obligations in regulation 12(2).

(7) It is an offence for a scheme administrator to fail, without reasonable excuse, to comply with the obligations set out in—

- (a) regulation 16(1)(a)(i),
- (b) regulation 16(1)(a)(ii),
- (c) regulation 16(1)(b),
- (d) regulation 16(1)(c).

(8) It is an offence for a retailer—

- (a) to fail, without reasonable excuse, to comply with—
 - (i) regulation 19(1)(b),

- (ii) regulation 21(2),
- (iii) regulation 22(4)(b),
- (b) to fail to comply with regulation 19(1)(c),
- (c) to fail to comply with regulation 21(4),
- (d) to fail to comply with regulation 22(4)(a),
- (9) It is an offence for a return point operator—
 - (a) to fail, without reasonable excuse, to comply with regulation 20(2),
 - (b) to fail to comply with regulation 20(3).
- (10) It is an offence for a registered voluntary return point operator to fail, without reasonable excuse, to comply with regulation 25(8)(b).
- (11) It is an offence for a person to obstruct or fail to assist an authorised person exercising the enforcement powers under regulation 30(4).
- (12) It is an offence for a person served with a notice in accordance with regulation 30(4)(l) to fail, without reasonable excuse, to comply with that notice.
- (13) It is an offence for a person to purport to act as a scheme administrator without being approved under regulation 15.
- (14) Where a person is charged with an offence under paragraphs (1), (8)(b) to (d), or (9)(b), it is a defence for that person to show that person took all reasonable precautions and exercised all due diligence to prevent the offence being committed.
- (15) A person guilty of an offence under this regulation is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (16) Where—
 - (a) an offence has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
 - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual, or
 - (ii) an individual purporting to act in the capacity of a relevant individual,
 the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.
- (17) In paragraph (16), “relevant individual” means—
 - (a) in relation to a body corporate—
 - (i) a director, manager, secretary or some other similar officer or person,
 - (ii) where the affairs of the body are managed by its members, a member,
 - (b) in relation to a Scottish partnership, a partner,
 - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.