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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2023 No.**

**The Deposit and Return Scheme for  
Scotland Amendment Regulations 2023**

**Citation and commencement**

1. These Regulations may be cited as the Deposit and Return Scheme for Scotland Amendment Regulations 2023 and come into force on the day after the day on which these Regulations are made.

**Interpretation**

2. In these Regulations “the 2020 Regulations” means the Deposit and Return Scheme for Scotland Regulations 2020(1).

**Amendment of the 2020 Regulations**

3. The 2020 Regulations are amended in accordance with regulations 4 to 22.

**Amendment of commencement date**

4. In regulation 1(5)(2) (citation and commencement), for “16 August 2023” substitute “1 March 2024”.

**Interpretation**

5. In regulation 2(1) (interpretation)—

(a) after the definition of “hospitality retailer”, insert—

““listed producer” means a producer that has provided information to SEPA in accordance with paragraphs 5 to 8 of schedule 5, and “listing” is to be construed accordingly,”

“low volume drink product ” means a drink (regardless of whether it is sold alone or as part of a multipack) that—

(a) meets the criteria in sub-paragraphs (a), (b) and (c) of the definition of “scheme article” in regulation 3(2),

(b) the producer markets, offers for sale or sells for the purpose of its retail sale in Scotland in a quantity of less than 5000 units in a relevant year,”

(b) in the definition of “PET plastic”, for “polyethelene” substitute “polyethylene”,

(c) for the definition of “producer”, substitute—

““producer”, in relation to a—

(a) scheme article, has the meaning given in regulation 6(A1) to (2),

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(1) [S.S.I. 2020/154](#), as amended by [S.S.I. 2022/76](#).

(2) Regulation 1(5) is relevantly amended by [S.S.I. 2022/76](#).

- (b) low volume drink product, has the meaning given in paragraphs 1 to 4 of schedule 5.”.

### **Scheme articles and scheme packaging**

6. In regulation 3(2) (scheme articles and scheme packaging) in the definition of “scheme article”—

- (a) in sub-paragraph (a)(ii)(aa), for “50” substitute “100”,
- (b) in sub-paragraph (b), for “16 August 2023” substitute “1 March 2024”,
- (c) at the end of sub-paragraph (b), omit “and”,
- (d) at the end of sub-paragraph (c), insert—  
““, and  
(d) is not a low volume drink product”.

### **Low volume drink products**

7. After regulation 3 (scheme articles and scheme packaging), insert—

#### **“Low volume drink products**

**3A.—**(1) A person may only market, offer for sale or sell a low volume drink product to a consumer in Scotland if the producer is a—

- (a) listed producer, or
- (b) registered producer.

(2) For the purpose of paragraph (1), the following is to be regarded as the person who markets, offers for sale or sells the low volume drink product—

- (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) Any person who markets, offers for sale or sells a low volume drink product in Scotland on or after 1 March 2024 must communicate to the purchaser at the point of sale that—

- (a) the product is not a scheme article to which the requirements of these Regulations apply,
  - (b) an item of packaging in which that low volume drink product is contained or sold cannot be returned in exchange for payment of a sum equal to a deposit.
- (4) Schedule 5 makes further provision in relation to low volume drink products.”.

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

8. In regulation 5 (obligations relating to charging deposits and marketing, offering for sale or selling articles)—

- (a) in paragraph (3)(3), for “16 August 2023” substitute “1 March 2024”,
- (b) in paragraph (3A)(4), for “16 August 2023” substitute “1 March 2024”.

### **Amendment of application for registration as a producer**

- 9. In regulation 7(2) (application for registration as a producer)—
  - (a) in sub-paragraph (a), for “1 March in any relevant year” substitute “12 January 2024”,
  - (b) after sub-paragraph (a) insert—
    - “(aa) before 1 March in any relevant year beginning on or after 1 January 2025,”.

### **Amendment of producer registration**

- 10.—(1) In regulation 8 (producer registration)—
  - (a) before paragraph (1) insert—
    - “(A1) Within 42 days of receipt of an application made within the time limit specified in regulation 7(2)(a), SEPA must—
      - (a) where the application complies with regulation 7(3) and SEPA is satisfied that the applicant will comply with the obligations in regulation 10(1) and 11(1), grant it, or
      - (b) otherwise, refuse it.”,
  - (b) in paragraph (1), for “during any relevant year” substitute “made during any relevant year beginning on or after 1 January 2025”,
  - (c) in paragraph (4),—
    - (i) in sub-paragraph (a), for “1 April in a relevant year” substitute “1 March 2024”,
    - (ii) after sub-paragraph (a) insert—
      - “(aa) 1 April in any subsequent relevant year, where the application was made within the time limit specified in regulation 7(2)(aa),”.

### **Cancellation of registration of producers**

- 11. In regulation 9(1)(c) (cancellation of registration of producers), for “regulation 7(2)(a)” substitute “regulation 7(2)(aa)”.

### **Retailer obligations**

- 12. In regulation 19 (retailer obligations)—
  - (a) for paragraph (2)(e) substitute—
    - “(e) a retailer whose number of sales of scheme articles to consumers for consumption on the premises of sale constitute ninety per cent or more of that retailer’s total number of sales of scheme articles to consumers (excluding distance retail sales) in any calendar year,”.
  - (b) after paragraph (2) insert—

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(3) Regulation 5(3) is relevantly amended by [S.S.I. 2022/76](#).  
(4) Regulation 5(3A) was inserted by [S.S.I. 2022/76](#).

“(3) A retailer that does not operate a return point by virtue of paragraph (2)(b) to (e) must clearly display information at the retailer’s premises indicating—

- (a) that they are not required by virtue of these Regulations to operate a return point, and
  - (b) the location of the nearest return point.
- (4) A retailer that does not operate a return point by virtue of paragraph (2)(e) must—
- (a) keep a record of the number of sales of scheme articles to consumers for consumption off the premises of sale in each calendar year,
  - (b) retain such a record for a minimum period of at least two years beginning 1 January following the end of the calendar year to which the record relates.”.

### **Return points**

**13.** In regulation 20 (return points)—

- (a) in paragraph (2), for “paragraph (4)” substitute “paragraphs (4) and (5),
- (b) after paragraph (4)(f) insert—
  - “,
  - (g) the criteria specified in paragraph (5) are met.
- (5) The criteria specified are that—
  - (a) the return point operator does not permit scheme articles that are made wholly or partly of a particular type of material to be held on, or brought into, the premises within which the return point is operated,
  - (b) the item of scheme packaging is made wholly or partly of that type of material,
  - (c) the reason for the return point operator not permitting on the premises any scheme articles made wholly or partly of that type of material is to ensure that the return point operator is not at significant risk of being in breach of any legal obligation relating to either of the following—
    - (i) food safety,
    - (ii) health and safety, and
  - (d) in addition to the information referred to in paragraph (3), the return point operator clearly displays information at the return point indicating—
    - (i) that the return point does not accept items of scheme packaging made wholly or partly of a particular type of material and the reason why,
    - (ii) the nearest return point to which an item of scheme packaging made wholly or partly of that type of material can be returned.”.

### **Hospitality retailers**

**14.** After regulation 20 insert—

#### **“Hospitality retailers**

**20A.** A hospitality retailer must retain for collection by, or on behalf of, a producer or a scheme administrator the scheme packaging in which scheme articles were sold by that hospitality retailer for consumption on the premises of sale.”.

## Takeback services

15. For regulation 21 (takeback services), substitute—

### “Takeback services

21.—(1) For the purpose of these Regulations, a “takeback service” means a service provided by a large retailer enabling—

- (a) a reasonable number of items of scheme packaging in which scheme articles were contained to be collected by or on behalf of that large retailer from the site of delivery for the purposes of its return to—
  - (i) that large 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) For the purpose of this regulation—

- (a) “groceries” means food (other than sold for consumption on the retailer’s premises), pet food, drinks (alcoholic and non-alcoholic, other than sold for consumption on the retailer’s premises), cleaning products, toiletries and household goods, but excludes petrol, clothing, DIY products, financial services, pharmaceuticals, newspapers, magazines, greetings cards, CDs, DVDs, videos and audio tapes, toys, plants, flowers, perfumes, cosmetics, electrical appliances, kitchen hardware, gardening equipment, books, tobacco and tobacco products,
- (b) “large retailer” means a retailer with an annual turnover in the preceding financial year exceeding £1 billion with respect to the retail supply of groceries in the United Kingdom, or a subsidiary of a such a retailer,
- (c) “reasonable number of items of scheme packaging” means—
  - (i) no fewer than 21 items,
  - (ii) no more than a reasonable maximum number of items, taking into account the method of collection and storage of scheme packaging used by the large retailer.

(3) Subject to paragraph (7), a large retailer must provide a takeback service free of charge to a consumer that—

- (a) has purchased a scheme article from the large retailer through a distance retail sale,
- (b) makes a request to the large retailer within 6 months of the purchase of a scheme article for provision of a takeback service, and
- (c) states that they meet one of the eligibility criteria in paragraph (4).

(4) The eligibility criteria are that the consumer—

- (a) has a disability within the meaning of section 6 of the Equality Act 2010(5), or
- (b) is aged 66 or over.

(5) A large retailer providing a takeback service must—

- (a) do so within 4 weeks following receipt of a request from a consumer in accordance with paragraph (3)(b), and

- (b) clearly display information in any place where the scheme article is displayed for sale indicating—
  - (i) that the large retailer provides a free takeback service for consumers that meet the eligibility criteria in paragraph (4),
  - (ii) how the takeback service from the large retailer can be requested,
  - (iii) the circumstances in which the return of an item of packaging may be refused by the large retailer, and
  - (iv) the complaints procedure and the contact details for receipt of any complaint that may be made to that large retailer from a consumer concerning the provision of a takeback service.
- (6) A large retailer may refuse to provide a takeback service in relation to an item of packaging if—
  - (a) it is not identifiable as scheme packaging,
  - (b) it is soiled,
  - (c) it is not intact, or
  - (d) it is not empty.
- (7) A large retailer providing a takeback service may apply a charge not exceeding the cost of materials and labour used in respect of the collection and storage of that scheme packaging, subject to the requirement to reimburse the consumer in accordance with paragraph (8).
- (8) Unless paragraph (9) applies, a large 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 large retailer or, as the case may be, the producer, and
  - (b) reimburse the consumer for any charge applied under paragraph (7).
- (9) This paragraph applies where—
  - (a) the large retailer has refused to provide a takeback service under paragraph (6) in relation to an item of packaging, and
  - (b) the number of items of scheme packaging otherwise returned as part of the same return to the large retailer is less than 21.
- (10) Where a takeback service is provided voluntarily by a retailer other than a large retailer, that retailer must comply with the obligations of a large retailer in this regulation.”.

### Right of appeal or review

16. In regulation 26(1) (right of appeal or review) insert at the end of sub-paragraph (b)—
- “,
- (c) to cancel the listing of that producer under paragraph 13 of schedule 5”.

### Offences

17. In regulation 31 (offences)—
- (a) before paragraph (1)(a), insert—
    - “(za) regulation 3A(1),
    - (zb) regulation 3A(3),”
  - (b) after paragraph (2)(e), insert—

- “,
- (f) an application for listing as a producer of a low volume product submitted in accordance with paragraphs 5 to 8 of schedule 5,
  - (g) a notification of any material change in accordance with paragraph 14© of schedule 5,
  - (h) a notification that a product is no longer a low volume drink product in accordance with paragraph 14(d) of schedule 5”,
- (c) after paragraph (5), insert—
- “(5A) It is an offence for a listed producer to fail, without reasonable excuse, to comply with the obligations set out in paragraph 14(c), (d), (f) and (g) of schedule 5.”,
- (d) in paragraph (8),—
- (i) in sub-paragraph (a)(ii), for “21(2)” substitute “21(3)”,
  - (ii) after sub-paragraph (b), insert—
    - “(ba) to fail to comply with regulation 19(3),
    - (bb) to fail to comply with regulation 19(4),
    - (bc) to fail to comply with regulation 20(5)(d),
    - (bd) to fail to comply with regulation 20A,
    - (be) to fail to comply with regulation 21(5)(a) and (b),”,
  - (iii) in sub-paragraph (c), for “21(4)” substitute “21(8)”,
  - (iv) after sub-paragraph (c) insert—
    - “(ca) to fail to comply with regulation 21(10),”.

#### **Amendment of duty to review these regulations date**

**18.** In regulation 32(1) (duty to review these regulations) for “1 October 2026” substitute “1 October 2027”.

#### **Producer registration: Information to be contained in an application for producer registration**

**19.** In schedule 1 (producer registration: information to be contained in an application for producer registration)—

- (a) paragraph 10, for “place on the market for” substitute “market, offer for sale or sell for the purposes of”,
- (b) after paragraph 11, insert—

“**12.** If the producer is also a producer of a low volume drink product—

- (a) relevant information that supports the identification of low volume drink products first marketed, offered for sale or sold for the purposes of retail sale in Scotland by that producer, including—
  - (i) any trade mark or distinguishing marks placed on low volume drink products or their packaging which assists in identifying the producer,
  - (ii) any unique codes or marks designed to support the capture of data relating to the low volume drink product (for example, a European Article Number).

- (b) the number of low volume drink products that share characteristics listed in paragraph (a) first made available by that producer to be marketed, offered for sale or sold for the purposes of retail sale in Scotland in the previous calendar year,
- (c) the number of low volume drink products that the producer anticipates it will market, offer for sale or sell for the purposes of retail sale in Scotland in the calendar year in which the producer is registered.”.

### **Amendment of collection targets**

**20.** In paragraph 1 of schedule 3 (collection targets)—

- (a) in sub-paragraph (b), for “beginning 1 January 2024 and ending 31 December 2024” substitute “beginning 1 January 2025 and ending 31 December 2025”,
- (b) in sub-paragraph (c), for “1 January 2025” substitute “1 January 2026”.

### **Low volume drink products**

**21.** After schedule 4 (registration of a voluntary return point: information to be contained in an application for registration) insert the schedule contained in the schedule of these Regulations.

### **Transitional provision**

**22.—**(1) This paragraph applies to a registration which the Scottish Environment Protection Agency<sup>(6)</sup> has granted, prior to the coming into force of these Regulations, under regulation 8 (producer registration) of the 2020 Regulations in relation to a producer within the meaning of regulation 6 (producer) of the 2020 Regulations.

(2) A registration to which paragraph (1) applies is to be treated as taking effect from 1 March 2024.

(3) A producer to whose registration paragraph (1) applies does not need to make a further application, accompanied by a registration fee, under regulation 7 of the 2020 Regulations, for the relevant year beginning 1 January 2024.

(4) This paragraph applies to a registration which the Scottish Environment Protection Agency has granted prior to the coming into force of these Regulations under regulation 8 (producer registration) of the 2020 Regulations in relation to a producer within the meaning of paragraphs 1 to 4 of schedule 5<sup>(7)</sup> of the 2020 Regulations.

(5) A registration to which paragraph (4) applies is to be treated as a listing granted under paragraph 9 of schedule 5 of the 2020 Regulations as taking effect from 1 March 2024.

(6) A producer to whose registration paragraph (4) applies does not need to make a further application, accompanied by a listing fee, under paragraph 5 of schedule 5 of the 2020 Regulations, for the relevant year beginning 1 January 2024.

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

(8) An application from a producer within the meaning of regulation 6 (producer) of the 2020 Regulations to which paragraph (7) applies —

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<sup>(6)</sup> The Scottish Environment Protection Agency is established under section 20 of the Environment Act 1995 (c. 25).

<sup>(7)</sup> Schedule 5 is inserted by regulation 21 of these Regulations.



- (a) may be treated for all purposes as having been received before 12 January 2024 in the relevant year beginning 1 January 2024 in accordance with regulation 7(2)(a) of the 2020 Regulations,
  - (b) does not need to be accompanied by the registration fee set out under regulation 7(3)(d) (application for registration as a producer) of the 2020 Regulations for the relevant year beginning 1 January 2024.
- (9) An application from a producer within the meaning of paragraphs 1 to 4 of schedule 5 of the 2020 Regulations to which paragraph (7) applies—
- (a) may be treated for all purposes as having been received before 12 January 2024 in the relevant year beginning 1 January 2024 in accordance with paragraph 6(a) of schedule 5 of the 2020 Regulations,
  - (b) does not need to be accompanied by the listing fee set out under paragraph 8 of schedule 5 of the 2020 Regulations for the relevant year beginning 1 January 2024.
- (10) In this regulation, “relevant year” has the same meaning as in regulation 2(1) (interpretation) of the 2020 Regulations.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers