
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. These Regulations come into force on the day after the day on which they are made.

Regulation 2 defines the 2020 Regulations for the purposes of these Regulations.

Regulation 4 amends the date in regulation 1(5) of the 2020 Regulations (the date on which parts 2, 7 and 8, and certain provisions in Part 5, of the 2020 Regulations come into force).

Regulation 5 inserts a definition of a large retailer, a listed producer and a low volume drink product into regulation 2(1) of the 2020 Regulations and amends the definition of producer. Regulation 6 amends the definition of scheme article in the 2020 Regulations.

Regulation 7 inserts a new regulation 3A into the 2020 Regulations which prohibits the marketing or sale (including through online retail or vending machine sales to a consumer in Scotland) of a low volume drink product, unless the producer is listed or registered with SEPA. The seller must also inform the purchaser that the product is not a scheme article.

Regulation 8 amends regulation 5 of the 2020 Regulations so that the obligations there take effect from 1 March 2024. Regulation 9 amends the dates by which a producer must apply for registration under regulation 7 of the 2020 Regulations. Regulation 10 amends the dates from which a registration takes effect under regulation 8 of the 2020 Regulations. Regulation 11 is a consequential change to amend the reference to the registration date.

Regulation 12 amends regulation 19 of the 2020 Regulations to provide an exemption from operating a return point if the retailer sells ninety or more per cent of scheme articles for consumption on the premises of sale; a new requirement is placed on retailers exempt under regulation 19 to display information that the premises are exempt.

Regulation 13 amends regulation 20 of the 2020 Regulations to allow a return point operator to refuse the return of items of scheme packaging wholly or partly made of a particular material to ensure the return point operator is not at significant risk of being in breach of any legal obligation relating to food safety or health and safety. Regulation 14 inserts regulation 20A to require hospitality retailers to retain scheme packaging for collection by, or on behalf of, a producer or a scheme administrator.

Regulation 15 substitutes regulation 21 of the 2020 Regulations with a new regulation to require large retailers selling scheme articles by means of distance retail sales to provide a takeback service to consumers who meet certain criteria, to enable those consumers to return items of scheme packaging.

Regulation 16 amends regulation 26 to add a right of appeal to the Scottish Ministers if SEPA refuses an application for listing of a producer of a low volume drink product.

Regulation 17 inserts new offences into regulation 31 of the 2020 Regulations in relation to the new obligations contained in regulations 3A(1) and(3), 19(3) and(4), 20(5)(d), 20A, 21(3), (5)(a) and (b), (8) and (10), and paragraphs 5 to 8 and 14(c), (d), (f) and (g) of schedule 5 of the 2020 Regulations (as either inserted or amended by these Regulations).

Regulation 18 amends the date by which the 2020 Regulations must be reviewed.

Regulation 19 amends schedule 1 to allow registered producers to provide information to SEPA in relation to low volume drink products.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Deposit and Return Scheme for Scotland Amendment Regulations 2023 No. 201

Regulation 20 amends paragraph 1 of schedule 3 so that the collection target of the first full year of the scheme is 80% and the target for subsequent years is 90%.

Regulation 21 inserts a new schedule 5 to make provision in relation to low volume drink products.

Regulation 22 makes transitional provision for applications for producer registration received by SEPA before the coming into force of these Regulations.

An update to the Business Regulatory Impact Assessment will be published by the Scottish Government online at [gov.scot](https://www.gov.scot).