

## SCHEDULE

### INSERTION OF SCHEDULE 5 OF THE 2020 REGULATIONS

#### “SCHEDULE 5

#### LOW VOLUME DRINK PRODUCTS

##### **Producer of a low volume drink product**

1. A producer in respect of a low volume drink product which meets the conditions set out in paragraph 2 is the person who markets, offers for sale or sells a low volume drink product to a consumer in Scotland (“the low volume drink product retailer”).
2. The conditions are that—
  - (a) an item of packaging, in which that low volume drink product is contained or sold, is filled and sealed by the low volume drink product retailer, and
  - (b) the low volume drink product is sold by the low volume drink product retailer to a consumer for consumption in any place other than on the premises of sale.
3. A producer in respect of any other low volume drink product is—
  - (a) in the case of a low volume drink product branded in the United Kingdom, the brand owner,
  - (b) in the case of a low volume drink product branded by a brand owner outside the United Kingdom, the importer.
4. The operator in respect of an online retail sale is to be regarded as the importer for the purposes of paragraph 3 where a low volume drink product is being sold—
  - (a) for the first time in the United Kingdom,
  - (b) to a consumer in Scotland, and
  - (c) by way of a retail sale.

##### **Application to be listed by producer of a low volume drink product**

5. An application must be made by a producer of a low volume drink product to SEPA to be listed as a producer of a low volume drink product.
6. An application under paragraph 5 must be made—
  - (a) before 12 January 2024,
  - (b) before 1 March in any subsequent relevant year,
  - (c) within 28 days of becoming a producer of a low volume product drink.
7. A application under paragraph 5 must be made in writing and contain the following information—
  - (a) the information set out in paragraphs 1 to 6 of schedule 1,
  - (b) 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),

- (c) the number of low volume drink products that share characteristics listed in sub-paragraph (b) 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,
  - (d) the number of low volume drink products which 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 application for listing is being made.
8. A application under paragraph 5 must be accompanied by a fee of £365, unless the producer—
- (a) has a taxable turnover of £85,000 or less in the previous financial year, or
  - (b) is a producer only by virtue of paragraph 1.
- 9.—(1) Within 42 days of receipt of an application made within the time limit specified in paragraph 6(a), SEPA must—
- (a) where the application complies with paragraph 7, grant it, or
  - (b) otherwise, refuse it.
- (2) Within 28 days of receipt of an application made within the time limit specified in paragraph 6(b) or (c), SEPA must—
- (a) where the application complies with paragraph 7, grant it, or
  - (b) otherwise, refuse it.
- (3) Where an application is granted, SEPA must, within 7 days of the date on which it is granted, give notice of that decision in writing to the producer.
- (4) Where an application has been granted, the listing takes effect from the relevant date in paragraph 10 until the date on which the producer’s listing is cancelled in accordance with paragraph 13.
10. The date for the purposes of paragraph 9(4) is—
- (a) 1 March 2024, where the application was made within the time limit specified in paragraph 6(a),
  - (b) 1 April in a relevant year, where the application was made within the time limit specified in paragraph 6(b),
  - (c) the date the application was received by SEPA, where the application was made within the time limit specified in paragraph 6(c),
  - (d) the date specified by SEPA in the notice provided in accordance with paragraph 9(2) in any other case.
11. SEPA must publish and maintain a list of listed producers in such manner as it considers appropriate.
12. Where an application is refused, SEPA must, within 7 days of the date on which it is refused, give notice of that decision in writing to the producer together with—
- (a) the reasons for it,
  - (b) a statement as to the right of appeal under Part 6.

**Cancellation of listing of producer of a low volume drink product**

- 13.—(1) SEPA may cancel the listing of a producer where it appears to it that—
- (a) a producer is in breach of any of the obligations of a listed producer specified in paragraph 14,
  - (b) a producer has failed to submit an application in accordance with paragraph 6(b),

- (c) an application of that producer has been refused,
  - (d) the producer knowingly or recklessly supplied false information in connection with an application.
- (2) SEPA must cancel the listing of a producer where it is informed under paragraph 14(d) or (e) that the producer has ceased to be a producer of low volume drink products.
- (3) Before cancelling the listing under sub-paragraph (1), SEPA must serve written notice on the producer of—
- (a) the decision to cancel and the reasons for it,
  - (b) the date when the cancellation is intended to take effect, not being earlier than the time limit for making an appeal against the decision provided for in Part 6,
  - (c) the opportunity to make representations to SEPA and the deadline for receipt of such representations, and
  - (d) the right of appeal under Part 6.
- (4) SEPA must consider any representations made by the producer before cancellation takes effect and may withdraw the notice at any time before it takes effect.
- (5) The date when the cancellation takes effect must not be earlier than—
- (a) in the case of cancellation under sub-paragraph (1), the expiration of the time limit for making an appeal against the decision provided for in Part 6,
  - (b) in the case of cancellation under sub-paragraph (2), 28 days from the date of the notification from the producer in accordance with paragraph 14(d) or (e),
  - (c) in the case where an application for appeal against the decision is submitted and the decision to cancel that producer’s listing is upheld, the date that the producer receives notification under regulation 27(7).

#### **Obligations of listed producer of a low volume drink product**

- 14.** A listed producer must—
- (a) submit any subsequent application for listing within the time limits in paragraph 6,
  - (b) provide any information reasonably requested by SEPA with regard to the information specified in paragraph 7,
  - (c) notify SEPA of any material change in the information provided in accordance with paragraph 7 within 28 days of the date of the change,
  - (d) notify SEPA in writing, within 28 days of becoming aware of the change, that a product is no longer a low volume drink product because the producer markets, offers for sale or sells for the purpose of its retail sale in Scotland that product in a quantity of more than 5000 units in a relevant year,
  - (e) notify SEPA in writing where the producer wishes to cancel the listing or has ceased to be a producer of low volume drink products in respect of a relevant year,
  - (f) collect and keep for at least four years from the date on which the information is collected a record of the information specified in paragraph 7(b), (c) and (d),
  - (g) provide that information to SEPA in such form and at such intervals as SEPA may require.

#### **Interpretation**

- 15.** In this schedule—

**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

“brand owner” means the person who, in the course of a trade, business, craft or profession puts a name, trade mark or other distinguishing mark on a low volume drink product or packaging, in which that low volume drink product is contained or sold, by which the person is held out to be a manufacturer or the originator of the low volume drink product, and “branded” is to be construed accordingly,

“importer” means the person who, in the course of a trade, business, craft or profession, first markets, offers for sale or sells the low volume drink product in the United Kingdom.”