POLICY NOTE

THE DEPOSIT AND RETURN SCHEME FOR SCOTLAND AMENDMENT REGULATIONS 2023

SSI 2023/201

The above instrument was made in exercise of the powers conferred by sections 84, 89, 90 and 96(2) of the Climate Change (Scotland) Act 2009. The instrument is subject to the affirmative procedure.

Purpose of the instrument. To amend the Deposit and Return Scheme for Scotland Regulations 2020 ("the original Regulations"); specifically, to alter the full implementation date for Scotland's Deposit Return Scheme ("DRS") to 1 March 2024 make other amendments designed to support delivery and operation of a successful DRS, and technical amendments.

Policy Objectives

The main policy driver for Scotland's Deposit Return Scheme (DRS) is to promote and secure an increase in recycling of materials by applying a deposit of 20p. This forms part of the Scottish Government's response to the global climate emergency by ensuring the targeted materials are collected in larger quantities and separately to other materials, making them easier to recycle.

The original Regulations have already been amended by the Deposit and Return Scheme for Scotland Amendment Regulations 2022 to alter the original full implementation date to 16 August 2023.

This instrument makes further amendments to delay the implementation date from 16 August 2023 and to simplify the scope of the DRS. This as a result of the uncertainty caused by the UK Government delaying the decision to exclude the scheme from the UK Internal Market Act 2020, and in response to an independent Gateway Review, an internal review of scheme readiness, and wider stakeholder concerns.

The main amendments made by this instrument are set out below. In addition, this instrument also makes a small number of other minor amendments to the original Regulations and makes transitional provisions in relation to producers who have already been registered by SEPA or applied to be registered.

The Annex to this policy note summarises the provisions in this instrument in relation to each of the main policy topics in order to assist with the understanding of the amendments to the original Regulations.

Change to implementation date

Regulation 4 amends the commencement date of the original Regulations from 16 August 2023 to 1 March 2024, following an internal review and independent Gateway review of the readiness of the Deposit Return Scheme in 2023, and engagement from stakeholders which suggested that many businesses would not be ready to implement the scheme by 16 August

2023. One of the reasons for businesses not being ready was a delay in investment caused by the fact that an exclusion to the UK Internal Market Act 2020 has yet to be agreed by the UK Government.

As a consequence of this change, a number of further amendments are made in order to bring the rest of the regulations in line with the revised launch date, in particular:

- in the definition of "scheme article" in regulation 3(2) of the original Regulations.
- in the information display obligation relating to sale of a non-scheme article in Scotland.
- in the dates by which producers must apply for registration in 2024 and subsequent years, noting that the last registration date before DRS commences is 12 January 2024.
- in the dates from which a producer registration takes effect in 2024 and subsequent years.

Revised takeback obligations

This instrument revises obligations in relation to online takeback. The purpose of this amendment is to reduce the overall burden on the retail sector for enabling a 'takeback' service (collection of scheme items and returning of the deposit), through two key mechanisms: requiring only the largest grocery retailers to provide a takeback service (either directly or such as through a third party service on their behalf), and requiring those retailers to provide that service only to customers who state that they have a disability (within the meaning of the Equality Act 2010) or are aged 66 years and over. Consumers will not be asked to provide proof of eligibility to access a takeback service. Retaining a service for these consumers ensures that they are able to return scheme packaging and obtain a refund of deposits paid.

Eligible consumers are required to make a request for the provision of a takeback service from the large retailer within 6 months of purchase of a scheme article from that large retailer.

The amendments define large retailer in line with the definition of 'designated retailer' in the Groceries (Supply Chain Practices) Market Investigation Order 2009. This Order sets out a Groceries Supply Code of Practice (GSCOP) with which 'designated retailers' must comply. This means that in practice, the retailers who will be obligated under the new takeback obligation are the same retailers who are designated retailers under GSCOP and who also sell scheme articles online to consumers in Scotland. The CMA has determined that those retailers have a groceries turnover of £1 billion and they therefore meet the definition of 'large retailer' in the amendments. As at 16 May 2023, the GSCOP currently applies to Amazon, Coop, Sainsbury's, Iceland, Morrisons, ASDA, Marks &Spencer, Waitrose, Tesco, Lidl, Aldi, B&M, Ocado, and Home Bargains. Retailers will not be obligated under the new takeback provisions unless they do distance retail sales of scheme articles in Scotland.

Revised takeback obligations follow Scottish Government consultation with the retail sector, which highlighted significant delivery challenges in providing an online takeback service,

particularly for smaller retailers. Feedback from industry indicated that the existing takeback obligation, since it requires all online retailers to provide the service to all customers, is very burdensome, challenging to deliver, and creates additional complexity and environmental impact.

This instrument also ensures that retailers other than large retailers can choose to provide a distance takeback service. If they do, they are required to comply with the obligations of large retailers.

Consideration has been given to the minimum and maximum numbers of items of scheme packaging which should be collected. This followed consultation with stakeholders regarding the delivery challenges associated with the regulation 21(3A) of the original Regulations:

> "(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"

This instrument therefore sets a minimum threshold of 21 items of scheme packaging, in order to ensure that retailers are not obliged to provide a takeback service for a disproportionately small number of items. The requirement is to collect a reasonable maximum number of items of scheme packaging and ensures that the reasonable maximum number must take account of the modes of collection and storage used by the large retailer. This minimises the risk around very high numbers of scheme articles being returned in a single collection which cannot feasibly be transported or handled by the large retailer (or the takeback service operating on their behalf).

This instrument introduces a right for large retailers to refuse packaging to address concerns raised by retailers as to the potential operational challenges and business impacts of the online takeback obligation. Therefore a large retailer may refuse to provide a takeback service relating to the condition of the scheme packaging to be returned – for example if the packaging is damaged, soiled or still full or if the packaging is not from a scheme article.

There are also new obligations on large retailers to ensure that the scheme is accessible and visible to eligible consumers:

- there is a time limit of 4 weeks for a large retailer to provide a takeback service following receipt of a request
- large retailers providing a takeback service are required to provide certain information to consumers regarding the takeback service.

Exclusion of low volume products

This instrument provides for a new category of 'low volume drink products'. These are products which would otherwise meet the definition of a scheme article but of which fewer than 5,000 units are marketed, offered for sale or sold by a producer to consumers in Scotland per year. Engagement with stakeholders, including drinks producers, wholesalers and specialist retailers, has highlighted that a large number of unique products are sold into

Scotland at very low volumes. This places a disproportionate burden on producers of those products, particularly at the initial launch of DRS.

A low volume drink product cannot be marketed, offered for sale or sold to a consumer in Scotland unless the producer is either a registered producer or a listed producer with the Scottish Environment Protection Agency (SEPA). Producers of low volume drink products must provide to SEPA as part of their application estimated annual sales figures for each product in order to justify categorisation of a product as a low volume drink product. A producer of only low volume drink products must pay a listing fee of £365 unless annual turnover is under £85,000 per year, in line with requirements for registered producers. This provision reflects stakeholder concerns around the potential impacts of the scheme obligations on production and import of these small-scale products. Registered producers can also sell low volume drink products and if they do so, they are required as part of their registration process to provide to SEPA their estimated annual sales figures for each product in order to justify categorisation of a product as a low volume drink product.

Low volume drink products are removed from the definition of scheme articles, and therefore are exempt from all obligations associated with scheme articles – most notably the requirement to carry a deposit, and the requirements for producers to collect scheme articles from retailers. The Scottish Government considered the potential impacts of removing this obligation for such products on the overall viability of the scheme, given that no deposit will be chargeable for such items, and consumers will be unable to return packaging through DRS return points. However, analysis shows that low volume products represent an estimated 0.5% of total scheme articles, and the impact on the overall scheme will therefore be minimal while reducing regulatory costs for producers of specialist products and preserving consumer choice.

In order to ensure that consumers are aware that the drink product they are purchasing is not a scheme article, this instrument also requires a person selling or marketing a low volume drink product to make clear to the purchaser at the point of sale the fact that it is not a scheme article and therefore cannot be returned for a deposit.

Schedule 5 sets out further detail of the process for producers of low volume drinks products to apply for listing with SEPA. The requirements are similar to the requirements for registered producers of scheme articles, but reflect the reduced number of obligations and reporting requirements for producers of low volume products.

Amended minimum volume of scheme articles

This instrument adjusts the minimum volume of a scheme article from 50ml, to 100ml, thereby excluding drinks containers of under 100ml from the definition of a scheme article. Engagement with stakeholders has highlighted several operational challenges for small containers under 100ml. These include labelling with compliant barcodes due to the small size of containers, and acceptance of small containers by reverse vending machines.

Exemption for retailers from acting as a return point where 90% or more of scheme articles are sold for consumption on the premises of sale

This instrument provides an exemption from acting as a return point for retailers that sell 90% or more of scheme articles for consumption on their premises. Hospitality retailers which exclusively sold scheme articles for consumption on the premises were already exempted from acting as return points, reflecting the fact that it was likely that very few scheme articles would leave the hospitality premises, and that these scheme articles would be retained by hospitality retailers for collection by producers or a scheme administrator.

Engagement with stakeholders has highlighted that many hospitality retailers sell a small proportion of scheme articles for consumption off the premises, which would mean, under the original Regulations, that they would have been required to operate a return point. However, acting as an open return point would be challenging for most hospitality retailers already selling the majority of containers for consumption on the premises, and was not considered to be significant in creating a returns network.

This instrument amends the original Regulations to provide that retailers selling 90% or more of scheme articles for consumption on the premises are exempted from operating as a return point. This threshold aligns with 90% collection targets for scheme articles set in schedule 3 of the original Regulations, enabling this target to be met by scheme packaging retained by the hospitality retailer on the premises from their sales of scheme articles for consumption on the premises. It also reflects the policy intent that the exemption from operating a return point applies only to hospitality retailers who are primarily selling drinks for consumption on the premises.

Retailers who are exempt from operating a return point on the basis of the low number of sales for consumption off the premises must keep records of the number of scheme articles sold for consumption both on and off the premises in order to be able to evidence their eligibility for this exemption to SEPA. Distance retail sales are not included for calculating the total number of sales of scheme articles sold by the retailer for the purposes of this exemption.

Retailers selling more than 10% of scheme articles for consumption off the premises are still able, as under the original Regulations, to apply for an exemption from acting as a return point on the basis of either of proximity to another return point or of environmental health reasons.

Analysis indicates that the overall impact of this exemption on the number of return points available will be minimal.

Right to refuse packaging in specific circumstances

This instrument provides for return point operators to refuse to accept returns of scheme packaging, based on packaging material type, where they do not permit any scheme articles made of that material type to be brought into, or held on, the premises for reasons of compliance with food safety or health and safety obligations.

Engagement with stakeholders has highlighted that, in some situations, a retailer wishes to operate a return point but cannot allow some particular material types of scheme articles or scheme packaging onto the premises for health and safety or food safety concerns. For example, some leisure centres, schools and swimming pools do not permit any drinks containers made from glass to be brought into the premises, but they may wish to act as return points for other types of materials. The original Regulations did not permit this as a return point must accept returns of scheme packaging made of any type of material. However, an exemption from acting as a return point could have been granted where access to the premises with one or multiple materials would have created a significant risk to health and safety or food safety. This could have had the unintended effect of removing a number of possible return points from the network that could not permit specific materials onto the premises, but wish to accept others, and with no other option but to apply for a full exemption from operating a return point.

A return point operator which makes use of this new provision must clearly display which materials they do not accept, the reason why, and the nearest return point which accepts this material, in order to ensure that the impact on the consumer's ability to return the item is minimal.

Retention of scheme packaging by hospitality retailers

This instrument places a new duty on hospitality retailers to retain scheme packaging for collection by, or on behalf of, a producer or a scheme administrator. Under the original Regulations, producers have a duty to collect scheme packaging from hospitality retailers, but there was no corresponding requirement for hospitality retailers to retain packaging for collection.

Definition of placed on the market

This instrument makes a technical amendment to the wording in paragraph 10 of Schedule 1 of the original Regulations by substituting "place on the market for" with "market, offer for sale or sell for the purposes of". The intention of this amendment is to make the provision consistent with wording in paragraphs 7, 8, and 9 in respect of information to be provided by producers to SEPA.

Consultation

An extensive public consultation was carried out in 2018 to inform the design of Scotland's Deposit Return Scheme. The Scottish Government reviewed the implementation timetable in 2022 following an independent gateway review and engagement with industry stakeholders, resulting in a revised implementation date of 16 August 2023.

Stakeholder engagement as part of scheme assurance processes throughout March and April 2023 included producers, retailers, the scheme administrator and hospitality sector representatives and raised concerns about scheme readiness. As a result of this and further stakeholder engagement these amendments to delay and simplify the scheme have been drafted to provide certainty of the scheme scope and sufficient time for businesses to prepare ahead of 1 March 2024.

Impact Assessments

The following impact assessments were published alongside the original Regulations: a final Equality Impact Assessment, a Fairer Scotland Impact Assessment, an Islands Communities Impact Assessment, a final Business and Regulatory Impact Assessment, and a Strategic Environmental Assessment.

Updates will be made to the Equality Impact Assessment, Fairer Scotland Impact Assessment, Islands Communities Impact Assessment, and Business and Regulatory Impact Assessment to reflect the changes proposed in these amendments to the regulations. As the amendments are assessed to have a non-significant impact on environmental outcomes, no update will be made to the Strategic Environmental Assessment.

Financial Effects

The modelling work undertaken by Zero Waste Scotland taking into account these amendments estimates that Scotland's Deposit Return Scheme will have an estimated Net Present Value (NPV) over 25 years in the range of **£564.2m - £583.0m.**

Scottish Government
Directorate for Environment and Forestry

May 2023

Annex

Description of provisions of the Deposit and Return Scheme for Scotland Amendment Regulations 2023

Delay in the full implementation date

1. Regulation 4 amends the commencement date of the original Regulations from 16 August 2023 to 1 March 2024.

2. Regulation 6(b) amends the date from which a drink is first made available to be marketed, offered for sale or sold by the producer from 16 August 2023 to 1 March 2024 in the definition of "scheme article" in regulation 3(2) of the original Regulations.

3. Regulation 8 amends the date from which information display obligations apply to any person who sells a non-scheme article or a non-Scottish article in Scotland from 16 August 2023 to 1 March 2024 in regulation 5 of the original Regulations.

4. Regulation 9 amends the dates by which a producer must apply for registration under regulation 7 of the original Regulations. Regulation 9(a) substitutes "1 March in any relevant year" with "12 January 2024". Regulation 9(b) inserts a new sub-paragraph (aa) to which provides that, on or after 1 January 2025, an application must be made before 1 March in any relevant year.

5. Regulation 10(a) inserts a new provision to allow SEPA 42 days to consider an application for registration made before 12 January 2024. Regulation 10(b) substitutes "during any relevant year" with "made during any relevant year beginning on or after 1 January 2025" so that SEPA has 28 days to consider an application for registration made in any subsequent year.

6. Regulation 10(c)(i) amends the relevant date from which the registration takes effect from 1 April in a relevant year to 1 March 2024. Regulation 10(c)(ii) inserts a new sub-paragraph (aa) which provides that the relevant date from which the registration takes effect is 1 April in any subsequent relevant year.

7. Regulation 18 amends regulation 32(1) of the original Regulations by substituting 1 October 2026 with 1 October 2027 as the date by which the Regulations must be reviewed by the Scottish Ministers.

8. Regulation 20 amends paragraph 1 of schedule 3 to alter the collection targets as a result of the delayed implementation date. Regulation 20(a) substitutes "beginning 1 January 2024 and ending 31 December 2024" with "beginning 1 January 2025 and ending 31 December 2025" for the 80% collection target. Regulation 20(b) substitutes "1 January 2025 with 1 January 2026", so that the 90% collection target applies from 2026 onwards.

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

10. Paragraph (2) of regulation 22 provides that a producer registration granted by SEPA before the coming into force date of these Regulations will take effect from 1 March 2024.

Paragraph (3) provides that a producer in these circumstances does not need to make a further application for the relevant year beginning 1 January 2024, nor pay a further fee.

11. Paragraphs (7) and (8) of regulation 22 provide that where an application for registration as a producer (within the meaning of regulation 6) has been received by SEPA but not yet determined before the coming into force date of these Regulations, the application is to be treated as having been received before 12 January 2024 in the relevant year beginning 1 January 2024 and does not need to be accompanied by the registration fee.

Distance Takeback

12. Regulation 15 substitutes regulation 21 of the original Regulations with a new regulation.

13. New regulation 21(1) defines a takeback service as being provided by a large retailer for a reasonable number of items of scheme packaging to enable the consumer to redeem the deposit.

14. New regulation 21(2)(b) defines a large retailer as having an annual turnover exceeding £1 billion with respect to the retail supply of groceries in the United Kingdom, or a subsidiary of such a retailer. A definition of groceries is provided at new regulation 21(2)(a).

15. New regulation 21(2)(c) defines a reasonable number of containers, so that there is a minimum threshold of scheme packaging for collection of 21 items and the reasonable maximum number of items takes account of the mode of collection and storage used by the large retailer.

16. New regulation 21(3) obligates large retailers to provide a takeback service free of charge to consumers who meet the eligibility criteria in new regulation 21(4). Eligible consumers are required to make a request for the provision of a takeback service from the large retailer within 6 months of purchase of a scheme article from that large retailer.

17. New regulation 21(4) contains the criteria for a consumer to be eligible for the provision of a takeback service from a large retailer. The criteria are that the consumer has a disability within the meaning of the Equality Act 2010, or is aged 66 or over.

18. New regulation 21(5)(a) stipulates a time limit of 4 weeks for a large retailer to provide a takeback service following receipt of a request. New regulation 21(5)(b) sets out the information display obligations for large retailers providing a takeback service.

19. New regulation 21(6) sets out the circumstances in which a large retailer may refuse to provide a takeback service in relation to the physical condition of the scheme packaging for which a takeback service has been requested.

20. New regulation 21(7) enables a large retailer providing a takeback service to apply a charge in respect of the collection and storage of scheme packaging, provided that the charge is reimbursed in certain circumstances.

21. Unless paragraph (9) applies, new regulation 21(8)(a) requires a large retailer to pay the deposit amount to the consumer for each item of scheme packaging returned to the large

retailer or producer; and new regulation 21(8)(b) requires any charge applied by the large retailer in respect of the collection and storage of scheme packaging in accordance with new regulation 21(7) to be returned to the consumer.

22. New regulation 21(9) sets out the circumstances in which the requirement to pay the deposit amount and reimburse any charge applied to the consumer in accordance with new regulation 21(8) does not apply. The circumstances are (a) that a takeback service has been refused due the condition of the item of scheme packaging in accordance with new regulation 21(6) and consequently as a result of the refusal (b) that the number of items of scheme packaging does not otherwise meet the minimum threshold of 21 items.

23. New regulation 21(10) ensures that retailers other than large retailers can choose to provide a distance takeback service, and that if they do, they are required to comply with the obligations of large retailers as set out in new regulation 21.

24. New offences in relation to distance takeback obligations are inserted into regulation 31(8) of the original Regulations. Regulation 17(d)(i) makes it an offence to contravene new regulation 21(3) (obligation to provide takeback service); regulation 17(d)(ii) makes it an offence to contravene new 21(5)(a) and (b) (obligation to provide a takeback service within 4 weeks of receipt of a request and to display information relating to the takeback service).

25. Regulation 17(d)(iii) makes it an offence to contravene new regulation 21(8) (obligation to pay a deposit sum and reimburse a charge to the consumer).

26. Regulation 17(d)(iv) makes it an offence to contravene new regulation 21(10) (voluntary provision of a takeback service voluntarily).

Exclusion of low volume products

27. Regulation 5 inserts definition of ‘listed producer” and a new category of “low volume drink products” into regulation 2(1) of the original Regulations. It also amends the definition of “producer” in the original Regulations to include producers of low volume drink products.

28. Regulation 6(d) excludes low volume drink products from the definition of scheme article in regulation 3(2) of the original Regulations. Low volume drink products are therefore excluded from obligations associated with scheme articles.

29. Regulation 7 inserts a new regulation 3A in relation to low volume drink products.

30. New regulation 3A(1) prohibits a person from marketing, offering for sale or selling low volume drink products to a consumer in Scotland unless the producer is listed or registered (with SEPA) where those products are marketed, offered for sale or sold to a consumer in Scotland.

31. New regulation 3A(2) provides that person who markets, offers for sale or sells low volume drink products by an online retail sale is the operator; and for vending machine sales it is the owner of the vending machine, or the person with control and management of the premises in which it stands.

32. New regulation 3A(3) sets out the information display obligations for any person who markets, offers for sale or sells a low volume drink product in Scotland. New regulation 3A(4) sets out that schedule 5 (being inserted by regulation 21) makes further provision in relation to low volume drink products.

33. Regulation 16 inserts a new sub-paragraph (c) to regulation 26(1) of the original Regulations to provide a right of appeal to the Scottish Ministers if SEPA refuses an application for listing of a producer of a low volume drink product.

34. New offences in relation to low volume drink products are inserted into regulation 31(1) and (2) of the original Regulations. Regulation 17(a) inserts provision into regulation 31(1) to make it an offence to contravene new regulation 3A(1) and (3) (obligations in relation to low volume drink products).

35. Regulation 17(b) inserts provision into regulation 31(2) to make it an offence to knowingly or recklessly supply false information in connection an application for listing as a producer of a low volume product under paragraphs 5 to 8 of schedule 5, a notification of any material change in accordance with paragraph 14(c) of schedule 5 or a notification that a product is no longer a low volume drink product under paragraph 14(d) of schedule 5.

36. Regulation 19(b) amends schedule 1 of the original Regulations by inserting a new paragraph 12 which allows a registered producer to provide information to SEPA in relation to low volume drink products that it produces.

37. Regulation 21 inserts a new schedule 5 to make provision in relation to low volume drink products. Paragraphs 1 to 4 of new schedule 5 provide a definition of a producer in respect of a low volume drink product. This is similar to the definition of a producer of scheme articles in regulation 6 of the original Regulations.

38. Paragraphs 5 to 12 of new schedule 5 set out the application process for producers of low volume drink products to apply to be listed with SEPA and the dates by which an application must be made. Producers of low volume drink products must pay the registration fee of £365 per year, noting that any producer with an annual turnover under £85,000 per year is exempt from this fee. Producers of low volume drink products must also provide to SEPA as part of their application for listing estimated annual sales figures for each product in order to justify categorisation as a low volume product.

39. Paragraph 13 of new schedule 5 sets out the circumstances and process to be followed by SEPA where SEPA may cancel the listing of a producer. Paragraph 14 contains the listed producer obligations in respect of subsequent applications for listing and notification requirements.

40. Paragraphs (4) to (6) of regulation 22 provides that where a producer of a low volume drink product had already had a producer registration granted by SEPA before the coming into force date of these Regulations, that registration will be treated as a listing granted, taking effect from 1 March 2024. In these circumstances a producer does not need to make a further application accompanied by a listing fee.

41. Paragraphs (7) and (9) of regulation 22 provide that where an application for registration as a producer (now within the meaning of paragraphs 1 to 4 of schedule 5) had

been received by SEPA but not yet determined before the coming into force date of these Regulations, the application is to be treated as having been received before 12 January 2024 in the relevant year beginning 1 January 2024 and does not need to be accompanied by the listing fee.

Amend minimum container size to 100ml

42. Regulation 6(a) increases the minimum volume of a scheme article from 50 millilitres to 100 millilitres in the definition of scheme article in regulation 3(2) of the original Regulations.

Exemption for retailers from acting as a return point where 90% or more of scheme articles are sold for consumption on the premises of sale

43. Regulation 12(a) amends regulation 19 of the original Regulations to provide an exemption from operating a return point for a hospitality retailer that sells ninety or more per cent of scheme articles for consumption on the premises of sale. Distance retail sales are no included in the calculation of the total number of sales of scheme articles.

44. Regulation 12(b) inserts new paragraphs (3) and (4) to regulation 19 which place new requirements on retailers exempt under regulation 19 to display information stating that the premises are exempt and to keep and retain records.

45. Regulation 17(d)(ii) inserts a contravention of the new requirements in regulation 19(3) and 19(4) for retailers exempt under regulation 19(2) to display information and keep records as an offence into regulation 31(8) of the original Regulations.

Right to refuse returns of scheme packaging made of certain types of materials

46. Regulation 13 inserts new sub-paragraph (g) to regulation 20(4) which introduces a new right to refuse an item of scheme packaging if the criteria in paragraph (5) of regulation 20 are met.

47. Regulation 13 inserts new paragraph (5) to regulation 20 which contains criteria for the right to refuse an item of scheme packaging introduced by new regulation 20(4)(g).

48. The criteria contained in new regulation 20(5) are that the premises does not permit a particular type of material type on the premises for the purpose of ensuring that 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, and that the scheme article is made of that type of material. In these circumstances where there is a right to refuse certain materials, new regulation 20(5)(d) provides information display obligations.

49. Regulation 17(d)(ii) inserts a contravention of the new requirement in regulation 20(5)(d) to display information as an offence into regulation 31(8) of the original Regulations.

Retention of scheme packaging by hospitality retailers

50 . Regulation 14 inserts new regulation 20A which places a duty on hospitality retailers to retain scheme packaging for collection by, or on behalf of, a producer or a scheme administrator.

51. Regulation 17(d)(ii) inserts a contravention of the requirement in new regulation 20A for hospitality retailers to retain scheme packaging for collection as an offence into regulation 31(8) of the original Regulations.

Definition of placed on the market

52. Regulation 19(a) amends the wording in paragraph 10 of Schedule 1 of the original Regulations by substituting "place on the market for" with "market, offer for sale or sell for the purposes of", making it consistent with wording in paragraphs 7, 8, and 9 in respect of information to be provided by producers to SEPA.