
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.

Regulation 1(2) defines the 2020 Regulations for the purposes of these Regulations. Regulation 3 inserts a reference to Part 8 of the 2020 Regulations into the commencement provisions (which had been omitted in error from the 2020 Regulations) and amends the coming into force date for the remaining provisions of the 2020 Regulations to 16 August 2023.

Regulation 4 inserts a definition of a non-Scottish article into regulation 2(1) of the 2020 Regulations and amends the definition of relevant year to exclude the calendar year beginning on 1 January 2022. Regulation 5 inserts the definition of a non-Scottish article into regulation 3(2) of the 2020 Regulations; it also amends the date in regulation 3(2)(b) (definition of scheme article) of the 2020 Regulations to 16 August 2023.

Regulation 6 amends the date in regulation 5(3) of the 2020 Regulations to 16 August 2023 and inserts a new provision into the 2020 Regulations to require any person who markets, offers for sale or sells a non-Scottish article in Scotland on or after 16 August 2023 to a purchaser other than a consumer to communicate certain information at the point of sale.

Regulation 7 inserts paragraphs (A1) and (B1) into regulation 6 of the 2020 Regulations to make provision for a new category of producer, namely retailers who fill and seal items of scheme packaging containing scheme articles for sale to a consumer for consumption in any place other than on the premises of sale. Regulation 8 amends regulation 7 of the 2020 Regulations. Regulation 7(2)(b) of the 2020 Regulations is amended to insert a reference to a relevant year. Regulation 7(3)(d) of the 2020 Regulations is amended to increase the producer registration fee to £365 and regulation 7(5) of the 2020 Regulations is amended to provide that a person who is a producer by virtue of the new regulation 6(A1) does not have to pay the producer registration fee. Regulation 9 amends regulation 8 of the 2020 Regulations to require SEPA to deal with an application within 28 days of receipt of an application during a relevant year.

Regulation 10 amends regulation 21 of the 2020 Regulations to allow a retailer to refuse to provide a takeback service where a single proposed return by a consumer contains a number of items of scheme packaging disproportionately greater than the number of scheme articles that the retailer sells on average as part of a single transaction; if the consumer still uses the takeback service even after refusal, the retailer is not required to comply with regulation 21(4) of the 2020 Regulations.

Regulation 11(a) amends regulation 30(2)(b) to allow SEPA to use its enforcement powers under regulation 30(4) for the purpose of establishing whether, and if so to what extent, any financial benefit has accrued or is likely to accrue to a person in connection with a failure to comply with the 2020 Regulations. Regulation 11(b) and (c) amends regulation 30(4) to provide two additional enforcement powers for SEPA; regulation 11(d) makes provision regarding admissibility of evidence obtained in the exercise of SEPA’s enforcement powers under regulation 30(4) or as a result of persons providing information under regulations 10, 11, 12 and 16 of the 2020 Regulations.

Regulation 12 inserts a contravention of the new regulation 5(3A) as an offence into regulation 31(1) of the 2020 Regulations. Regulation 13 amends schedule 3 to remove collection targets for the calendar year beginning on 1 January 2023. Regulation 14 amends schedule 4 to make provision where an application for a voluntary return point is submitted before any producers are registered.

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 2022 No. 76

Regulation 15 makes transitional provision for applications for producer registration received by SEPA before the coming into force of these Regulations.

The Business Regulatory Impact Assessment for the 2020 Regulations has been updated and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government, Environmental Quality Division, Area 3H South, Victoria Quay, Edinburgh, EH6 6QQ, and online at legislation.gov.uk