
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the operation of a deposit and return scheme (“the scheme”) for “scheme articles”, which are drinks that are intended to be sold to consumers in Scotland and are contained in single-use packaging made from polyethylene terephthalate plastic, glass, aluminium and steel, and “scheme packaging”, being the packaging for those articles.

Regulations 2 and 3 define terms used in these Regulations, including scheme articles and scheme packaging to which these Regulations apply.

Regulation 4 prohibits the marketing (including through online retail or vending machine sales) or sale to a consumer in Scotland of scheme articles, if the producer of those articles did not make them available for the purposes of retail sale in Scotland, or if the producer is not registered with SEPA in accordance with chapter 2 of Part 3 of these Regulations.

Regulation 5 provides that when a scheme article is sold in Scotland a deposit of 20 pence must be charged. The seller must also make it clear by providing information to the purchaser that the product is a scheme article and its packaging can be returned in exchange for a deposit, and must inform the purchaser where the item is not a scheme article. These obligations do not apply in the case of sales of articles in export shops, exclusively for consumption on the premises of sale or made available for the purposes of their retail sale outside Scotland.

Regulation 6 defines producers as either the brand owner (for scheme articles branded in the United Kingdom) or the importer (for scheme articles branded outside the United Kingdom).

Regulations 7 to 9 and schedule 1 set out the requirements and procedures for registering producers for the purposes of the scheme. Producers can either register directly with SEPA and discharge the producer obligations themselves, or through a scheme administrator (approved in accordance with Part 4 of these Regulations), in which case that scheme administrator is responsible for discharging those obligations on behalf of those producers. Once registered a producer’s registration only ends if cancelled by SEPA. SEPA may cancel registration if a producer fails to comply with producer obligations, or fails to submit an application for registration annually.

Regulations 10 and 11, and schedule 3 make provision about the obligations on registered producers (which must be discharged by a registered producer, or by a scheme administrator on behalf of a producer registered through that scheme administrator). These include collection of a target percentage of the scheme packaging which they place on the market in a calendar year, collecting their own scheme packaging from retailers and return points, accepting the return of their scheme packaging from wholesalers and reimbursing deposits for any packaging returned or collected.

Regulation 12 makes provision about obligations on producers whose registration and obligations under regulations 10 and 11 are discharged by a scheme administrator.

Regulation 13 provides for a scheme administrator, defines what a scheme administrator is and provides for their approval by the Scottish Ministers.

Regulations 14 and 15, and schedule 2 provide for the procedure for approval by the Scottish Ministers of a scheme administrator. A scheme administrator must submit an application providing the information specified in schedule 2. Once registered a scheme administrator remains approved unless or until that approval is withdrawn by the Scottish Ministers. Regulation 16 sets out the obligations imposed on a scheme administrator and regulation 17 provides under which the Scottish Ministers may withdraw approval. Withdrawal of approval can be triggered by the scheme administrator’s failure to comply with the obligations imposed on them in regulation 16, the scheme

administrator knowingly or recklessly supplying false information to the Scottish Ministers or SEPA, if the scheme administrator commits an offence or if there is a change in the information provided on application for approval. The Scottish Ministers must withdraw approval if a scheme administrator notifies them that it intends to cease operating as a scheme administrator.

Regulation 18 defines a retailer as a person who markets, offers for sale or sells a scheme article to a consumer in Scotland (which includes online retail sale operators and vending machine operators).

Regulation 19 provides for obligations of retailers to operate a return point at a premises from which sales of scheme articles are made. Retailers who have been granted an exemption by the Scottish Ministers, retailers selling by way of distance sales and export shops, and vending machine operators are exempt from having to run a return point. Retailers must also ensure that information about how a deposit can be redeemed must be displayed where scheme articles are displayed for sale.

Regulation 20 provides for obligations of return point operators to accept (subject to certain exceptions) and retain for collection by or on behalf of producers, items of scheme packaging which have been returned by consumers, and to pay a deposit to the consumer for every item of packaging returned by that consumer.

Regulation 21 provides for obligations of retailers selling scheme articles by means of distance sales to provide takeback services to consumers who have purchased those items, to enable those consumers to return items of scheme packaging.

Regulations 22 to 24 enable the granting of exemptions by the Scottish Ministers (whether or not on receipt of an application by a retailer) in respect of the obligation to operate a return point at retail premises. That is subject to the Scottish Ministers being satisfied that there is an alternative return point within a reasonable proximity to the premises, and that consumers will still have reasonable access to a return point. An alternative exemption may be granted by the Scottish Ministers if they are satisfied that it is not possible for a retailer to operate a return point on their premises without significant risk of breaching legal obligations relating to environmental health.

Regulation 25 and schedule 4 make provision for a person to apply to register with the Scottish Ministers to operate a voluntary return point from premises other than retail premises.

Regulations 26 to 29 provide for a process for appeals against and reviews of decisions of SEPA or the Scottish Ministers including decisions in relation to registration of producers, and approval of scheme administrators.

Regulation 30 provides powers for SEPA (through persons authorised in writing for that purpose) to enforce the requirements arising under these Regulations, including powers of entry to premises other than domestic premises.

Regulation 31 provides for offences, and for penalties on conviction of an offence.

Regulation 32 requires the Scottish Ministers to review the operation of these Regulations. The review must be completed, and a report of the review must be laid before the Scottish Parliament, before 1 October 2026.

A draft of these Regulations was notified to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society Services (OJ No L 241, 17.9.2015, p.1).

A Business Regulatory Impact Assessment has been prepared 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.