
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

The Deposit and Return Scheme for Scotland Regulations 2020

PART 7

Enforcement and offences

Offences

- 31.**—(1) It is an offence to contravene—
- (a) regulation 4(1),
 - (b) regulation 4(2),
 - (c) regulation 5(2)(a),
 - (d) regulation 5(2)(b),
 - (e) regulation 5(3).
- (2) It is an offence for a person to knowingly or recklessly supply false information in connection with—
- (a) an application for producer registration submitted in accordance with chapter 2 of Part 3,
 - (b) an application for approval of a scheme administrator submitted in accordance with Part 4,
 - (c) an application for exemption of a retailer from the obligation to operate a return point submitted in accordance with chapter 3 of Part 5,
 - (d) an application for registration of a voluntary return point submitted in accordance with chapter 4 of Part 5,
 - (e) a notification to SEPA or the Scottish Ministers of any material change in accordance with regulation—
 - (i) 10(1)(c),
 - (ii) 16(1)(c),
 - (iii) 22(4)(b),
 - (iv) 25(8)(b).
- (3) It is an offence for a producer whose registration has been cancelled in accordance with regulation 9(1) to fail, without reasonable excuse, to comply with the obligations specified in—
- (a) regulation 9(7)(a),
 - (b) regulation 9(7)(b).
- (4) It is an offence for a registered producer to fail, without reasonable excuse, to comply with the producer obligations set out in regulations 10(1)(b) and (c).
- (5) It is an offence for a registered producer that has registered in accordance with regulation 7(1) (a) to fail, without reasonable excuse, to comply with the obligations in—
- (a) regulation 11(1)(a) and (b),

- (b) regulation 11(1)(c) to (h).
- (6) It is an offence for a producer registered through a scheme administrator to fail, without reasonable excuse, to comply with the obligations in regulation 12(2).
- (7) It is an offence for a scheme administrator to fail, without reasonable excuse, to comply with the obligations set out in—
- (a) regulation 16(1)(a)(i),
 - (b) regulation 16(1)(a)(ii),
 - (c) regulation 16(1)(b),
 - (d) regulation 16(1)(c).
- (8) It is an offence for a retailer—
- (a) to fail, without reasonable excuse, to comply with—
 - (i) regulation 19(1)(b),
 - (ii) regulation 21(2),
 - (iii) regulation 22(4)(b),
 - (b) to fail to comply with regulation 19(1)(c),
 - (c) to fail to comply with regulation 21(4),
 - (d) to fail to comply with regulation 22(4)(a),
- (9) It is an offence for a return point operator—
- (a) to fail, without reasonable excuse, to comply with regulation 20(2),
 - (b) to fail to comply with regulation 20(3).
- (10) It is an offence for a registered voluntary return point operator to fail, without reasonable excuse, to comply with regulation 25(8)(b).
- (11) It is an offence for a person to obstruct or fail to assist an authorised person exercising the enforcement powers under regulation 30(4).
- (12) It is an offence for a person served with a notice in accordance with regulation 30(4)(l) to fail, without reasonable excuse, to comply with that notice.
- (13) It is an offence for a person to purport to act as a scheme administrator without being approved under regulation 15.
- (14) Where a person is charged with an offence under paragraphs (1), (8)(b) to (d), or (9)(b), it is a defence for that person to show that person took all reasonable precautions and exercised all due diligence to prevent the offence being committed.
- (15) A person guilty of an offence under this regulation is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (16) Where—
- (a) an offence has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
 - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual, or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(17) In paragraph (16), “relevant individual” means—

(a) in relation to a body corporate—

(i) a director, manager, secretary or some other similar officer or person,

(ii) where the affairs of the body are managed by its members, a member,

(b) in relation to a Scottish partnership, a partner,

(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.