
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 7

**The Packaging Waste (Data Reporting)
(Scotland) Regulations 2023**

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Packaging Waste (Data Reporting) (Scotland) Regulations 2023 and come into force on 28 February 2023.

Interpretation

2.—(1) In these Regulations—

“the Waste Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste(1) read in accordance with regulation 4,

“the 2007 Regulations” means the Producer Responsibility Obligations (Packaging Waste) Regulations 2007(2),

“approved person” means the person for the time being approved under regulation 24 for the purpose of verifying information provided by a producer—

(a) to SEPA under regulation 17(1),

(b) to the operator of a scheme under regulation 19(2)(a),

“brand owner” has the meaning given in regulation 8(2),

“bring site” has the meaning given in section 45C(7) of the Environmental Protection Act 1990(3),

“consumer” means an individual acting for purposes which are outside that individual’s trade, business, craft or profession,

“data collection obligations” means the obligations in regulation 16,

“data collection period” has the meaning given in regulation 16(7),

“data reporting obligations” means the obligations in regulation 17,

“disposal” has the meaning given in Article 3(19) of the Waste Directive,

(1) OJ L 312, 22.11.2008, p. 3, as amended by [Commission Regulation \(EU\) No 1357/2014](#) (OJ L 365, 19.12.2014, p. 89), [Commission Directive \(EU\) 2015/1127](#) (OJ L 184, 11.7.2015, p. 13), [Council Regulation \(EU\) 2017/997](#) (OJ L 150, 14.6.2017, p. 1) and [Directive \(EU\) 2018/851](#) (OJ L 150, 14.6.2018, p. 109). [Commission Directive \(EU\) 2015/1127](#) was corrected by [Corrigendum](#) (OJ L 297, 13.11.2015, p. 9) and [Commission Regulation \(EU\) No 1357/2014](#) was corrected by [Corrigendum](#) (OJ L 42, 18.2.2017, p. 43).

(2) [S.I. 2007/871](#); relevant amendments are [S.I. 2008/1941](#), [S.I. 2010/2849](#), [S.S.I. 2011/226](#), [S.S.I. 2012/360](#), [S.I. 2016/241](#), [S.I. 2016/696](#), [S.I. 2019/188](#), [S.I. 2020/904](#), [S.S.I. 2020/387](#) and [S.S.I. 2022/330](#).

(3) 1990 c. 43.

“distributor” means a person who manufactures or imports unfilled packaging and supplies that packaging to another person,

“drink” has the meaning given in regulation 5,

“exempt packaging” means packaging which is exempt in relation to a producer in accordance with regulation 12(2),

“fibre-based composite material” means packaging material which is made of paperboard or paper fibres, laminated with plastic, and which may also have layers of other materials, to form a single unit that cannot be separated by hand,

“household packaging” has the meaning given in regulation 7,

“importer” means—

- (a) the person responsible for importing filled packaging into the United Kingdom, whether or not that packaging ends up being supplied, or
- (b) where the person referred to in paragraph (a) of this definition is not present in the United Kingdom, the first person in the United Kingdom who takes ownership of the packaging,

“large producer” means a producer who satisfies the criteria in—

- (a) regulation 11(1),
- (b) regulation 11(3),

“licence agreement” has the meaning given in regulation 9(3),

“licensee” has the meaning given in regulation 9(3),

“licensor” has the meaning given in regulation 9(1),

“online marketplace operator” means the operator of a website, or any other means by which information is made available over the internet, which facilitates the sale of goods through the website or other means by persons other than the operator, whether or not the operator also sells goods through the online marketplace,

“operator” in relation to an online marketplace, means the person who controls access to, and the contents of, the online marketplace provided that the person is involved in—

- (a) determining any terms and conditions applicable to the sale of goods,
- (b) processing, or facilitating the processing, of payment for the goods, and
- (c) the ordering or delivery, or facilitating the ordering or delivery, of the goods,

“packaging” has the meaning given in regulation 6,

“packaging category” means one of the categories referred to in regulation 6(4),

“packaging materials” means materials used in the manufacture of packaging and includes raw materials and processed materials prior to their conversion into packaging,

“packaging waste” means any packaging or packaging material which is waste, but does not include packaging which is discarded and becomes waste outside the United Kingdom,

“packer/filler” means a person who puts goods into packaging,

“premises” has the meaning given in regulation 9(3),

“primary packaging” has the meaning given in regulation 6(1)(a),

“producer” has the meaning given in regulation 8,

“pub operating agreement” has the meaning given in regulation 9(3),

“pub operating business” has the meaning given in regulation 9(2),

“recovery” has the meaning given in Article 3(15) of the Waste Directive,

“recycling” has the meaning given in Article 3(17) of the Waste Directive,

“registered scheme” means a scheme which is registered in accordance with the 2007 Regulations,

“relevant year” means a calendar year in respect of which a person is a producer,

“reuse” has the meaning given to it in Article 3(13) of the Waste Directive,

“reusable packaging” means packaging which has been designed to be used multiple times by being refilled or reused for the same purpose for which it was conceived,

“scheme” means a scheme which is (or if it were registered in accordance with the 2007 Regulations would be) a scheme whose members for the time being are, by virtue of Part 3 of these Regulations and their membership of that scheme, exempt from the requirement to comply with their data reporting obligations,

“secondary packaging” has the meaning given in regulation 6(1)(b),

“seller” means a person who supplies packaging to a user or a consumer of that packaging, whether or not the packaging has been filled at the time of the supply,

“SEPA” means the Scottish Environment Protection Agency,

“service provider” means a person who supplies reusable packaging to a user of that packaging where the supply is made by hiring out or lending the packaging,

“shipment packaging” has the meaning given in regulation 6(1)(d),

“small producer” means a producer who satisfies the criteria in —

(a) regulation 11(2), but not those in regulation 11(1),

(b) regulation 11(4), but not those in regulation 11(3),

“tenant” has the meaning given in regulation 9(3),

“tertiary packaging” has the meaning given in regulation 6(1)(c),

“trade mark” has the same meaning as in section 1(1) of the Trade Marks Act 1994(4),

“turnover” means, in relation to a person, their turnover as defined in section 539 of the Companies Act 2006(5) but as if the references to a company were references to that person,

“UK regulator” means —

(a) in relation to England, the Environment Agency,

(b) in the relation to Wales, the Natural Resources Body for Wales,

(c) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs for Northern Ireland

“waste” has the meaning given in Article 3(1) of the Waste Directive, read with Articles 5 and 6 of that Directive,

“waste collection authority” has the meaning given in section 30(3)(c) of the Environmental Protection Act 1990(6),

(2) For the purposes of the definition of “online marketplace operator” an online marketplace facilitates the sale of goods if it allows a person to—

(a) offer goods for sale, and

(b) enter into a contract for the sale of those goods.

(3) In these Regulations—

(4) 1994 c. 26; section 1(1) was amended by S.I. 2018/825.

(5) 2006 c. 4; to which there are amendments not relevant to these Regulations.

(6) 1990 c. 43; section 30(3)(c) was amended by the Local Government etc. (Scotland) Act 1994, c. 39, schedule 13, paragraph 167(3).

- (a) any document which is to be provided or given to any person may be provided or given to that person by electronic means if the document is capable of being reproduced by that person in legible form,
- (b) any requirement to make, keep or retain a record or to maintain a register may be satisfied in electronic form if the text is capable of being produced by the person subject to the requirement in a legible documentary form,
- (c) any requirement for a signature may be satisfied by an electronic signature incorporated into the document, and for these purposes, “electronic signature” means data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign.

Establishment in Scotland and the United Kingdom

3.—(1) In these Regulations, a person is established in—

- (a) Scotland if—
 - (i) that person is habitually resident in Scotland,
 - (ii) the registered office of that person, or if they do not have a registered office, their head office, or principal place of business, is in Scotland,
 - (iii) paragraph (2) applies.
- (b) the United Kingdom if—
 - (i) that person is habitually resident in the United Kingdom,
 - (ii) the registered office of that person, or if they do not have a registered office, their head office, or principal place of business, is in the United Kingdom.

(2) This paragraph applies if—

- (a) the registered office of that person, or if they have no registered office, their head office or principal place of business of that person is outside the United Kingdom,
- (b) the person has a branch or postal address in Scotland, and
- (c) the person has not given notice to SEPA under paragraph (3).

(3) Where a person to whom paragraph (2)(a) applies has a branch or postal address in Scotland and in one or more other nations in the United Kingdom, that person may elect to be treated as established in one of those other nations instead of Scotland by giving notice to SEPA.

(4) A notice given under paragraph (3) must specify the nation in which the person giving the notice wishes to be treated as established for the purposes of these Regulations.

(5) When SEPA receives notice of an election under paragraph (3), SEPA must notify the UK regulator in the nation specified in the notice.

Modifications of the Waste Directive

4.—(1) For the purposes of these Regulations, the Waste Directive is to be read in accordance with this regulation.

(2) A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the authority, agency or local authority which, immediately before IP completion day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of Scotland.

(3) Article 5 is to be read as if—

- (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted,

- (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object is a by-product must be made—
 - (a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects, and
 - (b) having regard to any guidance published by the Scottish Ministers or SEPA for the purposes of this Article.”,
- (c) paragraphs 2 and 3 were omitted.
- (4) Article 6 is to be read as if—
 - (a) in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted,
 - (b) after paragraph 1 there were inserted—
 - “1A. Any decision as to whether a substance or object has ceased to be waste must be made—
 - (a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste, and
 - (b) having regard to any guidance published by the Scottish Ministers or SEPA for the purposes of this Article.”,
 - (c) in paragraph 2—
 - (i) the first subparagraph were omitted,
 - (ii) in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”,
 - (iii) the third and fourth subparagraphs were omitted,
 - (d) paragraph 3 were omitted,
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), SEPA,”,
 - (bb) the second sentence were omitted,
 - (ii) in the second subparagraph—
 - (aa) for “Member States” there were substituted “SEPA,”
 - (bb) “by competent authorities” were omitted.

Drink

- 5.—(1) For the purposes of these Regulations, except in regulation 12(4), drink means—
- (a) water suitable for human consumption,
 - (b) a beverage suitable for human consumption,
 - (c) a sports drink suitable for human consumption,
 - (d) a liquid which, when prepared in a specified manner, constitutes a beverage suitable for human consumption (including, for example, a fruit cordial or a fruit squash) or a sports drink.

(2) For the avoidance of doubt, paragraph (1)(d) does not apply to a liquid which is used only as a flavouring or sweetener in another liquid which itself constitutes a beverage suitable for human consumption.

(3) A liquid is prepared in a specified manner if it is—

- (a) diluted,
- (b) combined with crushed ice, or processed so as to create crushed ice,
- (c) combined with carbon dioxide,
- (d) prepared by way of a process that involves any combination of the processes mentioned in sub-paragraphs (a) to (c).

(4) In this regulation “sports drink” means a drink which is advertised or marketed as a product to enhance physical performance, accelerate recovery after exercise or build bulk, or other similar drink.

Packaging and packaging categories

6.—(1) “Packaging”, for the purposes of these Regulations, means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer, including non-returnable items used for the same purposes, but only where the products are—

- (a) primary packaging, which is packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase,
- (b) secondary packaging, which is packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is supplied as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale, and which can be removed from the product without affecting the product’s characteristics,
- (c) tertiary packaging, which is packaging conceived so as to facilitate handling and transport of a number of sales units or secondary packaging in order to prevent damage from physical handling and transport damage, and for the purposes of these Regulations, tertiary packaging does not include road, rail, ship and air containers,
- (d) shipment packaging, which is packaging, added in addition to primary packaging, on items which are sold online or by mail order which are either delivered direct to the purchaser or collected by the purchaser from a shop or other collection point after they have been purchased.

(2) The following items are also to be treated as packaging on the basis of the criteria set out below—

- (a) items that fulfil the definition in paragraph (1), without prejudice to other functions which the item may perform, unless the item is an integral part of a product and it is necessary to contain, support or preserve that product throughout its lifetime and all elements are intended to be used, consumed or disposed of together,
- (b) items designed and intended to be filled at the point of sale and disposable items supplied, filled, or designed and intended to be filled, at the point of sale, provided they fulfil a packaging function described in paragraph (1),
- (c) packaging components and ancillary elements integrated into packaging are considered to be part of the packaging into which they are integrated, and ancillary elements hung directly on, or attached to, a product which performs a packaging function are considered to be packaging unless they are an integral part of the product and all elements are intended to be used, consumed or disposed of together.

(3) Schedule 5 of the Packaging (Essential Requirements) Regulations 2015(7) contains illustrative examples of the rules set out in paragraph (2).

(4) For the purpose of these Regulations, packaging and packaging waste is to be treated, subject to paragraphs (5) and (6), as falling into one of the following packaging categories, depending on the material from which the packaging is made—

- (a) aluminium,
- (b) fibre-based composite materials,
- (c) glass,
- (d) paper or board,
- (e) plastic,
- (f) steel,
- (g) wood,
- (h) other materials.

(5) Packaging materials composed of a combination of the materials referred to in paragraph (4) (“paragraph (4) materials”) are to be treated as made of the material which is predominant by weight, unless paragraph (6) applies.

(6) Where packaging materials are composed of a combination of different paragraph (4) materials in equal proportions, each material of which the packaging materials are comprised is to be treated separately for the purpose of these Regulations.

Household packaging

7.—(1) In these Regulations, “household packaging” is primary or shipment packaging which is not supplied to a business which is the final user of that packaging.

(2) All primary packaging and shipment packaging is to be treated as household packaging unless the producer supplying that packaging can provide evidence that it has been supplied to a business which does not supply to any other person—

- (a) the packaging,
- (b) the product which the packaging contains in its packaged form.

(3) For the purposes of paragraph (2), a product is to be treated as being supplied in its packaged form unless all packaging is removed from the product before it is supplied to the final user of that product.

(4) SEPA may issue guidance on the evidence which may be used to demonstrate that primary packaging or shipment packaging is supplied to a business which is a final user of the packaging.

Producers

8.—(1) A person is a producer in relation to the packaging specified in this regulation if they perform in any nation of the United Kingdom the functions of one or more of the following classes in relation to packaging, either on their own behalf, or through an agent acting on their behalf, and in the course of business—

- (a) a brand owner,
- (b) a packer/filler,
- (c) an importer,
- (d) a distributor,

- (e) an online marketplace operator,
- (f) a service provider,
- (g) a seller.

(2) A person whose name, trade mark or other distinctive mark appears on an item of filled packaging (a “brand owner”), is a producer in relation to that item of packaging (“branded packaging”), and any item of packaging contained within branded packaging, or forming primary packaging together with the branded packaging, whether or not that item is also branded.

(3) A packer/filler is a producer in relation to any filled packaging—

- (a) which is filled by the packer/filler, and
- (b) for which there is no brand owner.

(4) An importer is a producer in relation to any filled packaging imported into the United Kingdom by the importer which is—

- (a) secondary packaging or tertiary packing,
- (b) any other packaging—
 - (i) for which there is no brand owner,
 - (ii) where the brand owner is not responsible for the import of the packaging,
 - (iii) for which the brand owner does not satisfy the criteria set out in regulation 11(1).

(5) A distributor is a producer in relation to any unfilled packaging which is—

- (a) manufactured or imported by the distributor, and
- (b) supplied to a person who is not a large producer subject to obligations under regulation 15(3),

except where a brand owner is treated as the producer of that packaging once it is filled.

(6) An online marketplace operator is a producer in relation to—

- (a) any packaging on items which are sold on their online marketplace by a person, acting in the course of business, who is not established in the United Kingdom,
- (b) any unfilled packaging supplied on their online marketplace—
 - (i) by a person, acting in the course of business, who is not established in the United Kingdom,
 - (ii) to a business which is not a large producer subject to obligations under regulation 15(3),

provided that the packaging is received in the United Kingdom.

(7) A service provider is a producer in relation to any reusable packaging, the first time that packaging is supplied, but not otherwise.

(8) A seller of filled packaging to the consumer of that packaging is a producer in relation to that packaging, and for these purposes, the consumer is the person who last uses the packaging in question before discarding it.

(9) Where a person performs the functions of more than one of the classes in sub-paragraph (1), whether or not in relation to the same packaging, or the same transaction or process, that person belongs to each class.

(10) For the purposes of this regulation, a person acts “in the course of business” if they act in the ordinary course of conduct of a trade, business, craft or profession.

Licensors and pub operating businesses

9.—(1) For the purposes of these Regulations, a person (“L”) is a licensor where L is a party to a licence agreement in or under which L grants a licence to use a trade mark to another.

(2) For the purposes of these Regulations, a person (“P”) is a pub operating business where—

- (a) P is a party to a pub operating agreement in or under which P grants a lease or tenancy of premises in Scotland to another, and
- (b) those premises are used by the tenant in order to carry on the activity of the sale of alcohol for consumption on the premises or both on and off the premises and in respect of which a premises licence is in force.

(3) In this regulation—

“alcohol” has the same meaning as in section 2 of the Licensing (Scotland) Act 2005⁽⁸⁾,

“licence agreement” means an agreement or number of related agreements in or under which the licensor grants the licensee a licence that allows the licensee to use a trade mark as the name under which the licensee sells from premises goods that are associated with that trade mark, and includes an obligation (whether expressed as a positive or as a negative obligation) on the licensee that relates to the presentation of those premises,

“licensee” means the party to a licence agreement to whom a licence to use a trade mark is granted,

“premises” means any sales outlet on which packaging is handled and includes any land, vehicle, vessel, mobile plant and stall,

“premises licence” has the same meaning as in section 17 of the Licensing (Scotland) Act 2005,

“pub operating agreement” means an agreement or number of related agreements in or under which one person (the pub operating business) grants a tenancy or lease of premises to another person (the tenant) that includes an obligation (whether expressed as a positive or as a negative obligation) on the tenant to purchase some or all of the alcohol to be sold or supplied on or from the premises, from the pub operating business or from a person or persons nominated or authorised by or on behalf of that business,

“sale of alcohol” includes the circumstances described in section 3 of the Licensing (Scotland) Act 2005,

“tenant” means the party to a pub operating agreement to whom the lease or tenancy of premises is granted.

Supply

10.—(1) In these Regulations, a person “supplies” packaging or packaging materials if that person does any of the following, either themselves or through an agent acting on their behalf, in relation to packaging or packaging materials owned by that person—

- (a) selling, hiring out or lending,
- (b) providing in exchange for any consideration other than money,
- (c) providing in or in connection with the performance of any statutory function,
- (d) giving as a prize or otherwise making a gift.

(2) Where the packaging or packaging materials are owned by a person who does not have a registered office or principal place of business in the United Kingdom, a supply takes place when a person who is established in the United Kingdom performs any of the functions in paragraph (1)(a) to (d) on behalf of the owner in relation to that packaging or packaging materials.

(8) 2005 asp 16; section 2 was amended by the Air Weapons and Licensing (Scotland) Act 2015 (asp 10), section 54.

(3) Where the packaging is branded packaging, within the meaning of regulation 8(2), the brand owner is to be treated for the purposes of these Regulations as supplying that packaging even if the brand owner does not do any of the actions listed in paragraph (1) in relation to the packaging.

(4) Paragraph (3) does not apply in relation to—

- (a) any packaging which is imported into the United Kingdom by—
 - (i) an importer, unless the importer is acting as an agent for the brand owner,
 - (ii) an online market operator,
- (b) any reusable packaging supplied by a service provider.

Threshold criteria for large and small producers

11.—(1) A person satisfies the criteria in this paragraph if—

- (a) that person's turnover in the last financial year—
 - (i) in respect of which audited accounts are available,
 - (ii) where audited accounts are not required for that person, in respect of which accounts are available,
 before the relevant date was more than £2,000,000, and
- (b) in the calculation year the person handled in aggregate more than 50 tonnes of packaging or packaging materials.

(2) A person satisfies the criteria in this paragraph if—

- (a) that person's turnover in the last financial year—
 - (i) in respect of which audited accounts are available,
 - (ii) where audited accounts are not required for that person, in respect of which accounts are available,
 before the relevant date was more than £1,000,000, and
- (b) in the calculation year the person handled in aggregate more than 25 tonnes of packaging or packaging materials.

(3) Each company in a group of companies which is a producer satisfies the criteria in this paragraph if—

- (a) the aggregate of the turnovers of the companies in the group which are producers was more than £2,000,000 in the last financial year in respect of which audited accounts are available before the relevant date, and
- (b) in the calculation year the aggregate of the amounts of packaging or packaging materials handled by each such company is more than 50 tonnes of packaging or packaging materials.

(4) Each company in a group of companies which is a producer satisfies the criteria in this paragraph if—

- (a) the aggregate of the turnovers in the last financial year in respect of which audited accounts are available before the relevant date of the companies in the group which are producers was more than £1,000,000, and
- (b) in the calculation year the aggregate of the amounts of packaging or packaging materials handled by each such company is more than 25 tonnes of packaging or packaging materials.

(5) Where the person (“MB”) is a corporate body which has been formed by the merger of two or more corporate bodies—

- (a) MB's turnover in the year of the merger is to be calculated for the purposes of this regulation as the sum of the turnovers in the last financial year of each company which has been merged, and
- (b) MB is to be treated as having handled in the year of the merger the sum of the amount of packaging or packaging materials handled by each of those companies in the calculation year.

(6) Where the assets and liabilities of a corporate body ("CB") have been divided between two or more corporate bodies ("new bodies"), and no audited accounts are yet available for the new bodies—

- (a) each new body is to be treated as having a turnover equal to—

$$\frac{A}{XA} \times XT$$

where—

- (i) "A" is the value of the assets of the new body following the division,
 - (ii) "XA" is the value of the assets of CB before the division,
 - (iii) "XT" is the turnover of CB in the year preceding the division year,
- (b) each new body is to be treated as having handled an amount of packaging or packaging materials equal to—

$$\frac{A}{XA} \times XP$$

where "A" and "XA" have the meaning given in sub-paragraph (a), and "XP" means the amount of packaging or packaging materials handled by CB in the year preceding the division year.

(7) For the purposes of this regulation—

- (a) audited accounts are to be treated as being available, where the person is a company, where annual accounts have been delivered to the registrar under section 441 of the Companies Act 2006⁽⁹⁾,
- (b) "the division year" is the calendar year in which the assets and liabilities of CB were divided between two or more companies,
- (c) the "relevant date" is 7 April in an obligation year,
- (d) a "group of companies" means a holding company and one or more subsidiaries, and for this purpose, "subsidiary" and "holding company" have the same meanings as they have in section 1159 of the Companies Act 2006.

(8) For the purposes of this regulation, the amount of packaging or packaging materials handled by a person ("P") is the amount supplied in any nation in the United Kingdom in respect of which P is a producer under regulation 8, calculated in tonnes to the nearest tonne—

- (a) including packaging or packaging materials which were imported into the United Kingdom by P or an agent acting on P's behalf (and for these purposes, packaging includes reusable packaging on the first occasion that packaging is used),
- (b) excluding exempt packaging.

(9) If P performs two or more functions as producer under regulation 8 in relation to the packaging—

(9) 2006 c. 46; section 441 was amended by S.I. 2008/393 and S.I. 2012/2301.

- (a) subject to sub-paragraph (b), all packaging in relation to which P performs a function is to be taken into account for the purposes of paragraphs (1)(b), (2)(b), (3)(b) and (4)(b),
 - (b) if the functions P performs are performed in relation to the same packaging, that packaging is only to be taken into account once for the purposes of paragraphs (1)(b), (2)(b), (3)(b) and (4)(b).
- (10) In this regulation—
- “calculation year” means the calendar year preceding an obligation year,
 - “obligation year” means a calendar year in respect of which it is being considered whether a person is subject to data collection requirements or data collecting and reporting requirements under these Regulations.

Exempt packaging

12.—(1) A producer is not subject to data collection obligations or data reporting obligations in relation to any packaging or packaging materials which are exempt in relation to that producer.

(2) Packaging and packaging materials are exempt in relation to a producer (“P”) for the purposes of these Regulations, where the packaging or packaging materials are—

- (a) reused packaging which is primary packaging,
- (b) production residues from the production of packaging or packaging materials or from any other production process occurring before, during or after P handled the packaging or packaging materials,
- (c) any packaging or packaging materials exported from the United Kingdom by P, including packaging or packaging materials which were exported through an agent acting on P’s behalf or which to P’s reasonable knowledge were otherwise exported from the United Kingdom (with the exception of any packaging or packaging materials exported from the United Kingdom to a marine installation),
- (d) reused secondary or tertiary packaging, with the exception of any such reused packaging imported into the United Kingdom.
- (e) packaging which is scheme packaging.

(3) In paragraph (2)(c),

“marine installation” means any artificial island, installation or structure at sea, other than a vessel.

(4) In paragraph (2)(e), “scheme packaging” means the packaging for a Scottish scheme article that is conceived or designed to come in direct contact with a drink (within the meaning of regulation 2 of the Deposit and Return Scheme for Scotland Regulations 2020)⁽¹⁰⁾ and does not include packaging conceived or designed to group together multiple components in a multipack.

(5) For the purposes of paragraph (4), a “Scottish scheme article” means a “scheme article” within the definition given in regulation 3(2) of the Deposit and Return Scheme for Scotland Regulations 2020, read as if, in sub-paragraph (b) of that definition, for “16 August 2023” there were substituted “1 January 2023”.

Exclusion of charities from data collection and data reporting obligations

13. These Regulations do not apply to a charity, and for these purposes, “charity” includes any body entered in the Scottish Charity Register kept under section 3 of the Charities and Trustee Investment (Scotland) Act 2005⁽¹¹⁾.

⁽¹⁰⁾ S.S.I. 2020/154, amended by S.S.I. 2022/76.

⁽¹¹⁾ 2005 asp 10.

Incapacity etc.

14.—(1) Where in a relevant year a producer dies, becomes bankrupt, or incapacitated (“the first producer”), that person ceases to be subject to any obligations under these Regulations for that year.

(2) Any person who carries on the activities of the first producer following that event is to be treated as a producer and to have the obligations of the producer for that year and subsequent years.

(3) Any person carrying on the activities of the first producer referred to in paragraph (1) must within 28 days of commencing to do so inform SEPA in writing of that fact and the date of the death, or the date of bankruptcy as the case may be, or the nature of the incapacity and the date on which it began.

(4) A producer which is a body corporate becomes bankrupt or incapacitated when it—

- (a) goes into liquidation,
- (b) enters administration under Part 2 of the Insolvency Act 1986⁽¹²⁾ or Part 3 of the Insolvency (Northern Ireland) Order 1989⁽¹³⁾,
- (c) has an administrative receiver (as defined in section 251 of the Insolvency Act 1986) appointed in respect of it.

(5) A producer who is an individual becomes bankrupt or incapacitated when the individual –

- (a) becomes subject to a bankruptcy restrictions order under section 155 of the Bankruptcy (Scotland) Act 2016⁽¹⁴⁾,
- (b) becomes incapacitated (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000⁽¹⁵⁾),
- (c) starts to serve a sentence of imprisonment or is remanded in custody in the United Kingdom,
- (d) is detained in hospital under the Mental Health (Care and Treatment) (Scotland) Act 2003⁽¹⁶⁾.

(6) A producer who is an individual or a partnership becomes bankrupt or incapacitated when the estate of that person –

- (a) is sequestrated under the Bankruptcy (Scotland) Act 2016,
- (b) is made subject to a protected trust deed (see section 163 of the Bankruptcy (Scotland) Act 2016).

(7) A body corporate, individual or partnership which, or who, is subject to the laws of a jurisdiction other than Scotland becomes bankrupt or incapacitated on the occurrence of circumstances analogous to those described in paragraphs (4) to (6).

PART 2

Producers and obligations

Producer obligations

15.—(1) This regulation applies to a producer (“P”) who is established in Scotland.

(12) 1986 c. 45.

(13) 1989 No. 2405 (N.I. 19), to which there are amendments not relevant to these Regulations.

(14) 2016 asp 21.

(15) 2000 asp 4.

(16) 2003 asp 3.

(2) If P is a small producer, but not an online marketplace operator or a seller, P is subject to the data collection obligations in regulation 16(2).

(3) If P is a large producer, but not an online marketplace operator or a seller, P is subject to—

(a) the data collection obligations in regulation 16(3), and

(b) the data reporting obligations in regulation 17.

(4) If P is a small producer who is an online marketplace operator, P is subject to the data collection obligations in regulation 16(4).

(5) If P is a large producer who is an online marketplace operator, P is subject to—

(a) the data collection obligations in regulation 16(4), and

(b) the data reporting obligations in regulation 17.

(6) If P is a small or large producer who is a seller, P is subject to the data collection obligations in regulation 16(5).

(7) The references in paragraphs (2) and (3) to an online marketplace operator and a seller are to an online market place operator or seller who performs the functions of no other class referred to in regulation 8(1).

(8) If P is a producer who is a licensor or a pub operating business, schedule 2 applies to determine whether P is subject to the data collection obligations in regulation 16(6) in that capacity.

Data collection obligations

16.—(1) The data collection obligations in this regulation are as follows.

Small producers, other than online marketplace operators and sellers

(2) A producer subject to the data collection obligations in this paragraph, must maintain for each data collection period, and retain for at least 7 years after the end of the data collection period to which they relate, records of the information referred to in paragraph 10(2) and 21(a) of schedule 1.

Large producers, other than online marketplace operators and sellers

(3) A producer subject to the data collection obligations in this paragraph must—

(a) maintain for each data collection period, and retain for at least 7 years after the end of the data collection period to which they relate, records of the information listed in schedule 1,

(b) retain for 7 years evidence—

(i) of the amount of packaging waste which they have collected and sent for recycling, as reported on under paragraph 23(1) and (3) of schedule 1,

(ii) that any relevant packaging waste included in the packaging waste referred to in head (i) has been recycled, and for these purposes “relevant packaging waste” has the same meaning as in paragraph 23(5) of schedule 1.

Online marketplace operators

(4) A producer subject to the data collection obligations in this paragraph must maintain for each data collection period and retain for at least 7 years after the end of the data collection period to which they relate, records of the information listed in Parts 4 and 5 of schedule 1.

Sellers

(5) A producer subject to the data collection obligations in this paragraph must maintain for each data collection period, and retain for at least 7 years after the end of the data collection period to which they relate, records of the information listed in Part 5 of schedule 1.

Licensors and pub operating businesses

(6) A producer subject to the data collection obligations in this paragraph must maintain for each data collection period, and retain for at least 7 years after the end of the data collection period to which they relate, records of the information listed in paragraphs 22 and 23(3) of Part 5 of schedule 1.

(7) For the purposes of this regulation, “data collection period” means—

- (a) the period from the date on which these Regulations come into force until 31 December 2023, and
- (b) in subsequent years, the period of 12 months starting on 1 January.

Data reporting obligations

17.—(1) A large producer (“LP”) who is subject to obligations in this regulation must, subject to paragraph (2), report the following information to SEPA every six months, in accordance with this regulation, in such form and manner as SEPA may direct—

- (a) the information in Part 2 of schedule 1, and
- (b) where LP is a brand owner, packer/filler, importer, or service provider, the information in Part 3 and paragraph 23 of schedule 1,
- (c) where LP is a distributor, the information in paragraphs 10 to 13, 16, 17 and 23 of schedule 1,
- (d) where LP is an online marketplace operator, the information in Part 4 and paragraph 23 of schedule 1.

(2) The first report required under paragraph (1) must be made—

- (a) for the six months ending on 30 June 2023, or
- (b) if LP does not have sufficient data to report on the period from 1 January to the date on which these Regulations come into force (“the commencement date”), for the period starting on the commencement date and ending on 30 June 2023,

and must be submitted on or before 1 October 2023.

(3) Subsequent reports must be submitted—

- (a) for the six months ending on 31 December, on or before 1 April in the following year,
- (b) for the six months ending on 30 June, on or before 1 October in the same year.

(4) LP must ensure that the information reported to SEPA under this regulation—

- (a) is as accurate as reasonably possible, and
- (b) is verified by the signature of the approved person of LP.

Notification of winding-up, receivership, administration, etc.

18.—(1) A producer must inform SEPA as soon as is practicable upon becoming aware that one or more relevant circumstances apply, or are about to apply, to them.

(2) For the purposes of this regulation “relevant circumstances” are—

- (a) in the case of a body corporate —
 - (i) a winding-up order has been made or a resolution for voluntary winding-up has been passed,
 - (ii) a determination for a voluntary winding-up has been made,
 - (iii) a receiver or a manager of the company or limited liability partnership’s undertaking has been duly appointed,

- (iv) it has entered administration,
- (v) a voluntary arrangement proposed for the purposes of Part 1 of the Insolvency Act 1986 has been approved under that Part of the Act,
- (b) in the case of an individual or partnership —
 - (i) the individual has become subject to a bankruptcy restrictions order under section 155 of the Bankruptcy (Scotland) Act 2016,
 - (ii) the individual has entered into a debt arrangement scheme within the meaning of Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002⁽¹⁷⁾,
 - (iii) the individual has been made subject to a protected trust deed (see section 163 of the Bankruptcy (Scotland) Act 2016),
 - (iv) the individual has been sequestrated under the Bankruptcy (Scotland) Act 2016,
- (c) in the case of a body corporate, individual or partnership which, or who, is subject to the laws of a jurisdiction other than Scotland, circumstances analogous to those described in sub-paragraphs (a) and (b).

PART 3

Producers and schemes

Producers and scheme membership

19.—(1) Where a producer is a member of a registered scheme throughout a relevant year, the producer is exempt from its data reporting obligations under regulation 17 for the relevant year.

(2) Paragraph (1) does not apply unless the producer—

- (a) provides any information the operator of the scheme requests for the purposes of meeting its obligations under regulation 20 within a reasonable period of receiving such a request,
- (b) ensures that the information provided—
 - (i) is in such form as the scheme operator and SEPA may direct,
 - (ii) is verified by the signature of the approved person of the producer,
 - (iii) is as accurate as reasonably possible,
- (c) pays any fee required for membership of the scheme.

Schemes: general provisions

20.—(1) The operator of a registered scheme (“OS”) must carry out the data reporting obligations under regulation 17 of each producer who is a member of the scheme that OS operates, provided that the producer satisfies the conditions in regulation 19(2).

(2) OS must retain records of any information provided to OS by its members to enable OS to make the reports required under paragraph (1), for at least 7 years after the date on which the report is submitted to SEPA.

Mid-year changes

21.—(1) This regulation applies with regard to changes in membership of a registered scheme.

⁽¹⁷⁾ 2002 asp 17; Part 1 was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), S.S.I. 2004/468 and S.S.I. 2011/141.

(2) Subject to paragraphs (3) and (4), where a person who is a producer in respect of a year becomes a member of a registered scheme during that year, the data reporting obligations of the producer for that year, referred to in regulation 20(1), must be performed through the scheme.

(3) Subject to paragraph (4), where a person who is a producer in respect of a year ceases to be a member of a registered scheme during that year, that person must comply with their data reporting obligations for that year.

(4) Where a person who is a producer in respect of a year ceases to be a member of one registered scheme (“the first scheme”) and becomes a member of another registered scheme (“the second scheme”) during that year, the first scheme is not required to perform any of the producer’s data reporting obligations, referred to in regulation 20(1), and all such obligations must be performed through the second scheme.

PART 4

SEPA’s powers and duties

Publication of items recycled by relevant authorities

22. SEPA must publish—

- (a) a list of the items which are collected for recycling from households by each waste collection authority in Scotland,
- (b) a list of those items which are collected for recycling from households by more than 75% of the waste collection authorities in Scotland,
- (c) in paragraphs (a) and (b) above, in relation to glass, “collected for recycling from households” includes glass deposited at a bring site by the occupier of a domestic property,

Monitoring

23.—(1) SEPA must monitor in accordance with this regulation—

- (a) compliance with their data collection obligations and data reporting obligations by persons who are or may be producers,
- (b) compliance by operators of schemes with the obligations referred to in regulation 20(1) and (2).

(2) The duty in paragraph (1) includes a duty to monitor the accuracy of—

- (a) the records kept by producers pursuant to regulation 16,
- (b) the information provided by producers in reports to SEPA pursuant to regulation 17.

(3) For the purposes of the discharge of its functions under these Regulations, SEPA may serve a notice in writing (“an information notice”) on—

- (a) any person who has, or who SEPA has reason to believe has, data collection obligations or data reporting obligations,
- (b) in relation to any person who is a member of a registered scheme, the operator of that scheme.

(4) An information notice may require that person to maintain records, and supply to SEPA any data specified in the notice which SEPA reasonably considers it needs for those purposes, in such form and within such period following service of the notice, or at such time, as is specified in the notice.

(5) Where SEPA considers that any information supplied to it by any person further to a notice issued under paragraph (3), or otherwise under these Regulations, is inaccurate in any respect, SEPA may require that person to supply corrected information.

Approved persons

24.—(1) SEPA may approve a person listed in paragraph (2) for the purposes of—

- (a) verifying information reported by a producer to SEPA under regulation 17(1),
- (b) verifying information provided by a producer to the operator of a scheme under regulation 19(2)(a).

(2) The persons listed are, where the producer—

- (a) is an individual, that individual,
- (b) is a partnership, a partner,
- (c) is a body corporate registered in the United Kingdom, a director or company secretary of that company,
- (d) is an unincorporated association, an individual who has control or management of that association,
- (e) is a body corporate which does not have a registered office in the United Kingdom, an individual who has control or management of the producer.

(3) Subject to regulation 25, SEPA may approve the delegation by an approved person of the person's functions to any other person.

(4) An approved person who has delegated functions under paragraph (3) may continue to perform those functions.

(5) For the purposes of these Regulations, an act of a delegate performing the functions of an approved person on that person's behalf is to be treated as an act of the approved person.

(6) In this regulation, and in regulation 25, "functions" means the functions referred to in paragraph (1)(a) and (b).

Delegation of approved persons' functions: procedure

25.—(1) An approved person who proposes the delegation of their functions to another person under regulation 24(3) must apply for approval to SEPA on a form supplied for that purpose by SEPA, signed by the approved person.

(2) An application for approval under paragraph (1) must, within 28 days of receipt of the application—

- (a) be granted where SEPA is satisfied that the proposed delegate, taking into account the factors specified in paragraph (3), is capable of carrying out the functions on behalf of the approved person,
- (b) otherwise be refused.

(3) The factors mentioned in paragraph (2)(a) are—

- (a) if the proposed delegate is an employee of the producer or the operator of the scheme, the proposed delegate's level of seniority,
- (b) if the proposed delegate is not an employee of the producer or the operator of the scheme, the nature of the proposed delegate's relationship with the approved person,
- (c) the degree of the proposed delegate's knowledge of, or access to, information necessary for the purposes of carrying out the functions on behalf of the approved person,

(d) any other factor which SEPA reasonably thinks is relevant.

(4) An approval granted in accordance with paragraph (2)(a) may be for such period, or subject to such other conditions, as SEPA may specify.

(5) Where an application for approval is granted in accordance with paragraph (2)(a), SEPA must notify the approved person in writing of this, and of any conditions it has imposed pursuant to paragraph (4), within 28 days of its decision.

(6) SEPA may decide to withdraw approval granted under paragraph (2)(a) and, if such a decision is taken, must serve on the approved person written notice of—

- (a) the decision to withdraw approval,
- (b) the reasons for the decision,
- (c) the date on which the withdrawal takes effect, not being earlier than 28 days from the date of the notice.

(7) If an approved person proposes to revoke a delegation granted under paragraph (2)(a), the person must serve written notice on SEPA of this and of the date when the revocation takes effect, not being earlier than 28 days from the date of the notice.

Entry and inspection

26.—(1) A person who appears suitable to SEPA may be authorised in writing by SEPA to exercise, in accordance with the terms of the authorisation, the powers of entry and inspection referred to in paragraph (2) in Scotland for the purpose of—

- (a) the exercise of SEPA’s functions under these Regulations,
- (b) assisting a UK regulator which has equivalent functions.

(2) The powers of entry and inspection are those set out in section 108(4)(a) to (l) of the 1995 Act (powers of enforcing authorities and persons authorised by them) in relation to Scotland.

(3) For this purpose, section 108(4) of the 1995 Act is to be read as if references to the authorised person were references to a person authorised under paragraph (1) of this regulation and as if—

- (a) “(or, in an emergency, at any time and, if need be, by force)” in section 108(4)(a) were omitted,
- (b) in section 108(4)(f), for “articles or substances” to the end, there were substituted “packaging and packaging materials found in or on any premises which that person has power to enter”,
- (c) section 108(4)(g) were omitted,
- (d) in section 108(4)(h)—
 - (i) the references to any article or substance were to any sample which is or may be taken under section 108(4)(f), as modified by sub-paragraph (b),
 - (ii) the reference in sub-paragraph (iii) to an offence under the pollution control enactments were to an offence under regulation 28 of these Regulations,
 - (iii) sub-paragraph (iv) were omitted,
- (e) the reference to records in section 108(4)(k)(i) were to the records and information required to be kept and provided to SEPA under these Regulations,
- (f) in section 108(4)(ka)—
 - (i) the reference in sub-paragraph (i) to an offence under the pollution control enactments or section 40(1) of the Regulatory Reform (Scotland) Act 2014 were to an offence under regulation 28 of these Regulations,
 - (ii) sub-paragraph (ii) were omitted,

(g) the reference in section 108(4)(1) to the power conferred by section 108 were to the power conferred by this regulation.

(4) The provisions of section 108(6) to (7E) and section 108A of the 1995 Act apply to the powers conferred by paragraphs (1) and (2) above as they apply to the powers conferred by section 108(4) of the 1995 Act respectively as it applies in relation to Scotland, but as if any reference to an authorised person were to a person authorised under paragraph (1) of this regulation, and as if—

- (a) in section 108(6) and (7), the words “Except in an emergency” were omitted,
- (b) in section 108(6), the words “or to take heavy equipment on to any premises which are to be entered” were omitted.

(5) The provisions of section 108(12) and (13) of the 1995 Act, as they apply in relation to Scotland, apply to the powers conferred by paragraphs (1) and (2) above as they apply to the powers conferred by section 108(4) of the 1995 Act.

(6) The provisions of paragraphs 2 to 6 of schedule 18 of the 1995 Act (supplemental provisions with respect to powers of entry), as they apply in relation to Scotland, apply to the powers conferred by this regulation as they apply to the powers conferred by section 108 of the 1995 Act respectively, but as if any reference—

- (a) to a designated person were to a person authorised in writing by SEPA to exercise on its behalf any power conferred by this regulation,
- (b) to a relevant power were to a power conferred by this regulation, including a power exercisable by virtue of a warrant under the provisions of the schedule as applied by this paragraph,
- (c) in paragraph 6(1) to section 108(4)(a) or (b) or (5) of the 1995 Act were to paragraph (1) of this regulation.

(7) In this regulation—

“the 1995 Act” means the Environment Act 1995(18),

“warrant” means a warrant under the provisions set out in schedule 18 of the 1995 Act as applied by paragraph (6) above.

Information sharing

27. SEPA may share any information it receives under these Regulations with the following entities to enable them to carry out their functions—

- (a) a UK regulator,
- (b) the Scottish Ministers,
- (c) any person or entity authorised by the Scottish Ministers to receive that information.

PART 5

Enforcement

Offences and penalties

28.—(1) A person who contravenes the requirement in regulation 14(3) (notice to SEPA) commits an offence.

(18) 1995 c. 25; section 108 was amended by the Pollution Prevention and Control Act 1999 (c. 24), schedule 3, paragraph 1 and the Regulatory Reform (Scotland) Act (asp 3), section 46 and schedule 3, paragraphs 5, 43 and 46, S.S.I. 2006/181, S.S.I. 2018/219 and S.I. 2019/458.

- (2) A producer who contravenes a requirement of—
- (a) regulation 16 (data collection obligations),
 - (b) regulation 17 (data reporting obligations),
 - (c) regulation 18 (notification of winding-up, receivership, administration etc.),
- commits an offence.
- (3) The operator of a registered scheme who contravenes a requirement under—
- (a) regulation 20(1) (data reporting obligations),
 - (b) regulation 20(2) (data collection obligations),
- commits an offence.
- (4) A person who furnishes any information to SEPA in connection with SEPA's functions under these Regulations commits an offence if, in furnishing the information, that person—
- (a) knows the information to be false or misleading in a material particular,
 - (b) provides such information recklessly, and the information is false or misleading in a material particular.
- (5) A person who fails without reasonable excuse to comply with any requirement imposed in a notice under regulation 23(3) commits an offence.
- (6) A person who intentionally delays or obstructs a person authorised by SEPA in the exercise of powers referred to in regulation 26 commits an offence.
- (7) A person who commits an offence under any of paragraphs (1) to (6) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (8) Subsection (9) applies where—
- (a) an offence under these Regulations is committed by a relevant organisation, and
 - (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of—
 - (i) a responsible official of the relevant organisation, or
 - (ii) an individual purporting to act in the capacity of a responsible official.
- (9) The responsible official (or, as the case may be, the individual purporting to act in that capacity), as well as the relevant organisation commits the offence.
- (10) In this regulation —
- “relevant organisation” means —
- (a) a company,
 - (b) a partnership (including a limited liability partnership),
 - (c) another body or association,
- “a responsible official” means—
- (a) in the case of a body corporate—
 - (i) a director, , secretary, manager or similar officer, or,
 - (ii) where the affairs of the body are managed by its members, a member,
 - (b) in the case of a limited liability partnership, a member,
 - (c) in the case of a partnership other than a limited liability partnership, a partner,

- (d) in the case of another body or association, a person who is concerned in the management or control of its affairs.

St Andrew's House,
Edinburgh
17th January 2023

LORNA SLATER
Authorised to sign by the Scottish Ministers