
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 154

ENVIRONMENTAL PROTECTION

The Deposit and Return Scheme for Scotland Regulations 2020

Made - - - - 19th May 2020

Coming into force

*for the purpose of
regulation 1(2) 20th May 2020*

*for the purpose of
regulation 1(3) 1st January 2021*

*for the purpose of
regulation 1(4) 1st January 2022*

*for the purpose of
regulation 1(5) 1st July 2022*

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 84, 89, 90 and 96(2) of the Climate Change (Scotland) Act 2009⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 84(6) of that Act, the Scottish Ministers consider that it is expedient to make these Regulations for the purpose of promoting and securing an increase in the recycling of materials.

In accordance with section 97(2) to (5) of that Act, a copy of the proposed regulations and a statement setting out the reasons for proposing to make them were laid before the Scottish Parliament for a representation period of 91 days.

In accordance with section 97(6) and (7) of that Act, the Scottish Ministers have had regard to any representations on the proposed regulations made to them, and to any report relating to the proposed regulations published by any committee of the Scottish Parliament for the time being appointed by virtue of standing orders, and have laid with these Regulations a statement setting out the details of such representations and reports and the changes made to the proposed regulations in response to such representations and reports, and the reasons for those changes.

In accordance with section 96(4) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

⁽¹⁾ 2009 asp 12.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Deposit and Return Scheme for Scotland Regulations 2020.

(2) Parts 1, 4 and 6 come into force on the day after the day on which these Regulations are made.

(3) In Part 5, regulations 22 to 25 come into force on 1 January 2021.

(4) Part 3 comes into force on 1 January 2022.

(5) Parts 2 and 7, and the remaining provisions of Part 5 come into force on 1 July 2022.

Interpretation

2.—(1) In these Regulations—

“authorised person” means a person authorised by SEPA under regulation 30(3),

“consumer” means a person who is acting for purposes which are outside that person’s trade, business, craft or profession,

“deposit” has the meaning given in regulation 5(1),

“drink” means a beverage intended for human consumption, including concentrated soft drinks,

“enforcement powers” means the powers specified in regulation 30(4),

“export shop” has the same meaning as in regulation 3 of the Excise Goods (Export Shops) Regulations 2000(2),

“hospitality retailer” is a retailer that sells a scheme article exclusively for the purpose of its consumption on the premises of sale,

“non-scheme article” has the meaning given in regulation 3(2),

“online retail sale” is a retail sale through a website or online marketplace, and related expressions are to be construed accordingly,

“operator” in relation to a website or online marketplace means the person who controls access to, and the content of, the website or online marketplace,

“PET plastic” means polyethylene terephthalate,

“producer” has the meaning given in regulation 6,

“registered producer” means a producer registered with SEPA for the purposes of these Regulations in accordance with chapter 2 of Part 3,

“registered through a scheme administrator” has the meaning given in regulation 12(1),

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

“retailer” has the meaning given in regulation 18(1),

“retail sale” means a sale to a consumer,

“return point” means a place at which a person (whether the purchaser of the scheme article or otherwise) can return scheme packaging and receive payment of a sum equal to the deposit for each item of scheme packaging returned,

“return point operator” has the meaning given in regulation 20(1),
“scheme administrator” means a person that has been approved to carry out the functions specified in regulation 13(2) and to fulfil the obligations specified in regulation 16,
“scheme article” has the meaning given in regulation 3(2),
“scheme packaging” has the meaning given in regulation 3(2),
“SEPA” means the Scottish Environment Protection Agency⁽³⁾,
“single-use packaging” has the meaning given in regulation 3(2),
“takeback service” has the meaning given in regulation 21(1),
“vending machine” means an automatic machine for the sale of a scheme article (regardless of whether the machine also sells other products),
“wholesaler” has the meaning given in regulation 11(4),
“writing” and “written” include electronic communications within the meaning of section 15(1) (general interpretation) of the Electronic Communications Act 2000⁽⁴⁾, which have been recorded and are consequently capable of being reproduced in written form.

(2) In the definition of “drink”, “concentrated soft drink” means any soft drink in liquid form intended for human consumption after dilution, but does not include concentrates used in the manufacture of soft drinks and which are not intended for retail sale without further processing.

(3) In the definitions of “online retail sale” and “operator”, “online marketplace” means any means by which information is made available over the internet, through which a person other than the operator is able to offer goods for sale (whether or not the operator also does so).

Scheme articles and scheme packaging

3.—(1) The deposit and return scheme established by these Regulations applies to—

- (a) a scheme article, and
- (b) scheme packaging in which a scheme article is contained or sold.

(2) For the purposes of these Regulations—

“non-scheme article” means an article that meets the criteria in sub-paragraphs (a) and (c) of the definition of “scheme article” in this paragraph, but does not meet the criteria in sub-paragraph (b) of that definition,

“scheme article” means a drink (regardless of whether it is sold alone or as a unit in a multipack) that is—

- (a) contained and sold in packaging that—
 - (i) is made wholly or mainly from PET plastic, glass, steel or aluminium,
 - (ii) is conceived or designed to—
 - (aa) contain at least 50 millilitres and no more than 3 litres of liquid, and
 - (bb) be sealed in an airtight and watertight state at the point of sale,
 - (iii) cannot be returned to its state at the point of sale by the consumer, and
 - (iv) is single-use packaging,
- (b) first made available to be marketed, offered for sale or sold by the producer on or after 1 July 2022, and

⁽³⁾ SEPA is established by section 20 of the Environment Act 1995 (c.25).

⁽⁴⁾ 2000 c.7. Section 15(1) was amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c.21).

- (c) made available to be marketed, offered for sale or sold by the producer for the purposes of its retail sale in Scotland.

“scheme packaging” means the packaging for a scheme article that is conceived or designed to come in direct contact with the drink, and does not include packaging conceived or designed to group together multiple components in a multipack.

“single-use packaging” means packaging for a drink that is not conceived, designed or placed on the market to accomplish, within its life span—

- (a) multiple refills by a consumer,
- (b) multiple trips or rotations by being returned to a producer to be refilled by that producer for the same purpose for which it was conceived.

PART 2

The deposit and return scheme

Sale of articles

4.—(1) Where an article meets the criteria in both sub-paragraphs (a) and (b) of the definition of “scheme article” in regulation 3(2), a person may only market, offer for sale or sell that article to a consumer in Scotland if it also complies with paragraph (c) of that definition.

(2) A person may only market, offer for sale or sell a scheme article to a consumer in Scotland if the producer of that article for the purposes of regulation 6(1), is a registered producer.

(3) For the purpose of paragraphs (1) and (2) the following is to be regarded as the person who markets, offers for sale or sells the scheme article—

- (a) in the case of an online retail sale, the operator,
- (b) in the case of a vending machine sale—
 - (i) where the machine is marked with the name and address of its owner, that owner, or
 - (ii) otherwise, the person with the management and control of the premises on which the machine stands or to which it is affixed.

Obligations relating to charging deposits and marketing, offering for sale or selling articles

5.—(1) A deposit is a redeemable sum of 20 pence that does not form part of the consideration paid for the scheme article.

(2) Subject to paragraph (4), any person who markets, offers for sale or sells a scheme article in Scotland must—

- (a) charge a deposit when marketing, offering for sale or selling a scheme article in Scotland, and
- (b) clearly display information in any place where the scheme article is displayed for sale by that person indicating—
 - (i) that the article is a scheme article to which the obligation to charge a deposit under these Regulations applies,
 - (ii) the amount of the deposit.

(3) Subject to paragraph (4), any person who markets, offers for sale or sells a non-scheme article in Scotland on or after 1 July 2022 must communicate to the purchaser at the point of sale that—

- (a) the article is not a scheme article to which the requirements of these Regulations apply,

- (b) an item of packaging in which that article is contained or sold cannot be returned in exchange for payment of a sum equal to a deposit.
- (4) The obligations in paragraphs (2) and (3) do not apply—
 - (a) in the case of a scheme article or non-scheme article which is marketed, offered for sale or sold in Scotland—
 - (i) in an export shop, or
 - (ii) exclusively for consumption on the premises of sale,
 - (b) in the case of a scheme article or non-scheme article which is intended for retail sale outside Scotland.

PART 3

Producers

CHAPTER 1

Definition of a producer

Producers

- 6.—**(1) A producer in respect of a scheme article is—
- (a) in the case of a scheme article branded in the United Kingdom, the brand owner,
 - (b) in the case of a scheme article branded by a brand owner outside the United Kingdom, the importer.
- (2) The operator in respect of an online retail sale is to be regarded as the importer for the purposes of paragraph (1) where a scheme article is being sold—
- (a) for the first time in the United Kingdom,
 - (b) to a consumer in Scotland, and
 - (c) by way of a retail sale.
- (3) In this regulation—
- “brand owner” means the person who, in the course of a trade, business, craft or profession, puts a name, trade mark or other distinguishing mark on a scheme article or scheme packaging by which the person is held out to be a manufacturer or the originator of the scheme article, and “branded” is to be construed accordingly,
- “importer” means the person who, in the course of a trade, business, craft or profession, first markets, offers for sale or sells the scheme article in the United Kingdom.

CHAPTER 2

Registration of a producer

Application for registration of a producer

- 7.—**(1) An application for registration of a producer must be made to SEPA—
- (a) by a producer, or
 - (b) by a scheme administrator on behalf of a producer.
- (2) An application for producer registration must be made—
- (a) before 1 March in any relevant year,