

# Net Zero, Energy and Transport Committee

## 5<sup>th</sup> Meeting, 2023 (Session 6)

Tuesday 7 February 2023

### SSI cover note for: The Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2023 [draft]

**Title of Instrument:** [The Environmental Regulation \(Enforcement Measures\) \(Scotland\) Amendment Order 2023](#)

**Type of Instrument:** Affirmative

**Laid Date:** 19 January 2023

**Circulated to Members:** 20 January 2023

**Meeting Date:** 7 February 2023

**Minister to attend meeting:** Yes

**Motion to approve:** [S6M-07583](#)

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?** No

**Reporting deadline:** 8 March 2023

## Background

1. The Scottish Environment Protection Agency (SEPA) has a regulatory role in ensuring businesses and the wider public are compliant with statutory obligations relating to circular economy.
2. SEPA has enforcement authority for the operation of the Deposit Return Scheme. This Order would confer new enforcement powers to allow SEPA to issue civil and monetary penalties to businesses who fail to notify buyers if items such as single-use containers are not included in the Deposit Return Scheme.

3. The instrument also gives SEPA new enforcement powers to issue civil and monetary penalties for offences committed under [The Packaging Waste \(Data Reporting\) \(Scotland\) Regulations 2023](#) for producers failing to collect and share data to local authorities on the amount of packaging they are supplying. These Regulations have been laid under the negative procedure and will be considered by the Committee later in the meeting.
4. An electronic copy of the Order is available at: <https://www.legislation.gov.uk/sdsi/2023/9780111056257/contents>
5. A copy of the Scottish Government's Policy Note is included in **Annexe A**.

## Purpose

6. To amend the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 to include the offences created by the Deposit and Return Scheme for Scotland Amendment Regulations 2022 and the Packaging Waste (Data Reporting) (Scotland) Regulations 2023.

## Delegated Powers and Law Reform Committee consideration

7. At its meeting on 31 January 2023, the Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

## Procedure for Affirmative instruments

8. The draft Regulations were laid on 19 January 2023 and referred to the Net Zero, Energy and Transport Committee. The Regulations are subject to affirmative procedure (Rule 10.6).
9. It is for the Net Zero, Energy and Transport Committee to recommend to the Parliament whether the Order should be approved. The Minister for Green Skills, Circular Economy and Biodiversity has, by motion [S6M-07583](#) (set out in the agenda), proposed that the Committee recommends the approval of the Order.
10. It is usual practice for the lead committee to take evidence from the relevant Scottish Minister in advance of the motion for approval being formally moved. The Committee can use this evidence session to ask the Cabinet Secretary or Minister and their officials questions about the instrument.
11. Once the motion is moved, the Committee may debate the instrument. Only Committee Members and the relevant Minister may take part in the debate which is on whether the lead committee recommend that the draft instrument be approved.

## Recommendation

12. The Committee must decide whether or not to agree to the motion, and then report to Parliament accordingly, by 8 March 2023.

Clerks  
Net Zero, Energy and Transport Committee

# Annexe A

## Scottish Government Explanatory Note

This Order confers additional powers on the Scottish Environment Protection Agency (“SEPA”) to enable it to enforce the requirements of the Deposit and Return Scheme for Scotland Regulations 2020 (“the DRS regulations”) by reflecting an additional offence added by the Deposit and Return Scheme for Scotland Amendment Regulations 2022, and to enforce the requirements of the Packaging Waste (Data Reporting) (Scotland) Regulations 2022 (“the Data Reporting Regulations”).

It amends the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (“the 2015 Order”) so that, where the additional offence is committed under the DRS Regulations or offences are committed under the Data Reporting Regulations, SEPA may also exercise its powers under the 2015 Order to impose a fixed or variable monetary penalty, or to accept an enforcement undertaking.

## Scottish Government Policy Note

### POLICY NOTE

#### THE ENVIRONMENTAL REGULATION (ENFORCEMENT MEASURES) (SCOTLAND) AMENDMENT ORDER 2023

#### SSI 2023/XXX

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by sections 20(1), 23(1), 27(1) and 58(1) of the Regulatory Reform (Scotland) Act 2014 and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

**Purpose of the instrument.** To amend the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 to include the offences created by the Deposit and Return Scheme for Scotland Amendment Regulations 2022 and the Packaging Waste (Data Reporting) (Scotland) Regulations 2023.

### Policy Objectives

This Order supports the Scottish Government’s efforts to build a more circular economy by amending the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (“the 2015 Order”) to include the offences created by two Scottish Statutory Instruments:

- The Deposit and Return Scheme for Scotland Amendment Regulations 2022 (“the DRS Regulations”);
- The Packaging Waste (Data Reporting) (Scotland) Regulations 2023 (“the Data Regulations”).

The detailed policy objectives of each instrument are set out in its accompanying Policy Note.

The DRS Regulations were made on 24 February 2022 and amended the Deposit and Return Scheme for Scotland Regulations 2022 to (inter alia) create a new offence of failing to declare at the point of sale of certain articles that they are not scheme articles for the purposes of the Deposit Return Scheme.

The Data Regulations were made on 17 January 2023 and laid before the Scottish Parliament on 19 January; they are subject to the negative procedure. The Data Regulations impose data reporting and collection obligations upon producers of products placed in packaging. These data will be used to calculate recycling obligations and disposal costs for certain producers. The Data Regulations (inter alia) create a set of offences for failing to collect or report certain information to the Scottish Environment Protection Agency (SEPA), furnishing false or misleading information to SEPA, or obstructing SEPA in its duties as regulator.

SEPA is responsible for regulating the Deposit Return Scheme and is also the responsible regulator for the Data Regulations. The 2015 Order provides SEPA with a suite of civil enforcement measures, including the imposition of both fixed and variable monetary penalties and the power to accept enforcement and other undertakings. By including the offences created by the DRS Regulations and the Data Regulations within the scope of the Certified copy from legislation.gov.uk Publishing 2015 Order we will provide SEPA with a flexible and proportionate set of tools for dealing with these offences to support it in discharging its responsibilities as regulator appropriately.

Both instruments also provide for wide-ranging criminal penalties (on summary conviction a fine not exceeding the statutory maximum of £10,000, or on conviction on indictment an unlimited fine).

## **Consultation**

As the responsible regulator, SEPA was involved in the development of this Order, and the Scottish Ministers have had regard to SEPA's views on which penalties should be applicable to the range of offences.

See the individual policy notes for the DRS Regulations and the Data Regulations for details of the consultations carried out on the underlying policies.

## **Impact Assessments**

See the individual policy notes for the DRS Regulations and the Data Regulations for details of the impact assessments carried out for the underlying policies.

## **Financial Effects**

See the individual Business and Regulatory Impact Assessments (BRIA) for the DRS Regulations and the Data Regulations.

Scottish Government  
Directorate for Environment and Forestry  
January 2022

## Scottish Government - Other documents

- [Partial Business and Regulatory Impact Assessment](#)