

Net Zero, Energy and Transport Committee
Tuesday 4 March 2025
9th Meeting, 2025 (Session 6)

Note by the Clerk on the Environmental Protection (Injurious Articles) (Fixed Penalty Notices and Miscellaneous Amendments) (Scotland) Regulations 2025 (SSI 2025/28)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 27 March 2025. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instruments is summarised below:

Title of instrument: [Environmental Protection \(Injurious Articles\) \(Fixed Penalty Notices and Miscellaneous Amendments\) \(Scotland\) Regulations 2025](#)

Laid under: the [Environmental Protection Act 1990](#)

Laid on: 7 February 2025

Procedure: Negative

Deadline for committee consideration: 24 March 2025 (Advisory deadline for any committee report to be published)

Deadline for Chamber consideration: 27 March (Statutory 40-day deadline for any decision whether to annul the instrument)

Commencement: 31 March 2025

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.

5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).
6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered this instrument on 25 February and reported on it in its [13th Report 2025](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

8. This instrument amends the coming into force date of the Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024 from 1 April 2025 to 1 June 2025 and makes other minor amendments to those Regulations. It also provides enforcement officers with the power to issue fixed penalty notices for offences committed under the:
 - Environmental Protection (Single-Use Vapes) (Scotland) Regulations 2024
 - Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021
 - Environmental Protection (Cotton Buds) (Scotland) Regulations 2019
 - Environmental Protection (Microbeads) Regulations 2018.
9. The policy note explains that the [Environmental Protection \(Single-use Vapes\) \(Scotland\) Regulations 2024](#) (which the Committee considered on [3 September 2024](#) and [reported](#) on 19 September) prohibits the sale and supply of single-use vapes in Scotland. The Scottish Parliament approved the Vapes Regulations on 25 September 2024, which were signed into law on 1 October 2024.
10. They were scheduled to come into force on 1 April 2025 and similar legislation has been introduced in England, Wales and Northern Ireland. The policy note explains that a coming into force date of 1 April 2025 had previously been agreed upon by the four UK Nations to ensure alignment. However, due to the impact of the 2024 UK General Election, the UK Government was unable to meet the 1 April 2025 coming into force date for their regulations. A new coming into force date of 1 June 2025 has been agreed at a four nations level and included in the English, Welsh and Northern Irish Regulations. As the Scottish Regulations had been made prior to this change of date, they currently come into force on 1 April 2025 as previously agreed. This amendment will change the coming into force date of the Vapes Regulations to 1 June 2025, to ensure alignment across UK nations.

11. The regulations also amend the Vapes Regulations to correct a minor typographical error and clarify certain of the powers which may be utilised by an enforcement officer when investigating an offence under the Vapes Regulations.
12. In addition, these regulations amend the instruments set out above to provide a fixed penalty notice procedure in relation to certain offences under those regulations as an alternative to criminal prosecution. The policy note explains that the amendments to the Vapes regulations will also provide that the Scottish Ministers may issue a direction that single-use vapes supplied in the course of an offence under the regulations are to be treated as waste and disposed of or treated in accordance with the direction. This would apply to any single-use vapes in respect of an FPN has been issued, and the fixed penalty paid.

Committee consideration

13. So far, no motion recommending annulment has been lodged.
14. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:
 - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
 - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

15. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
16. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Clerks to the Committee
March 2025

Annexe A: Scottish Government Policy Note

THE ENVIRONMENTAL PROTECTION (INJURIOUS ARTICLES) (FIXED PENALTY NOTICES AND MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2025 (SSI 2025/28)

The above instrument was made in exercise of the powers conferred by sections 140(1)(b) and (c), (3)(c) and (d) and (9) of the Environmental Protection Act 1990. The instrument is subject to negative procedure.

Summary Box

This instrument amends the coming into force date of the Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024 from 1 April 2025 to 1 June 2025, and makes other minor amendments to those Regulations. It also provides enforcement officers with the power to issue fixed penalty notices for offences committed under the Environmental Protection (Single-Use Vapes) (Scotland) Regulations 2024, the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021, the Environmental Protection (Cotton Buds) (Scotland) Regulations 2019 and the Environmental Protection (Microbeads) Regulations 2018.

Policy Objectives

The Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024 (“the Vapes Regulations”) prohibit the sale and supply of single-use vapes in Scotland. The Scottish Parliament approved the Vapes Regulations on 25 September 2024, which were signed into law on 1 October 2024. They are scheduled to come into force on 1 April 2025. Similar legislation has been introduced in England, Wales and Northern Ireland. A coming into force date of 1 April 2025 had previously been agreed upon by the four UK Nations so as to ensure alignment.

Due to the impact of the 2024 UK General Election, the UK Government was unable to meet the 1 April 2025 coming into force date for their regulations. A new coming into force date of 1 June 2025 was agreed at a four nations level and included in the English, Welsh and Northern Irish Regulations. As the Scottish Regulations had been made prior to this change of date, they currently come into force on 1 April 2025 as previously agreed. This amendment will change the coming into force date of the Vapes Regulations to 1 June 2025, to ensure alignment across UK nations.

The regulations also amend the Vapes Regulations to correct a minor typographical error and clarify certain of the powers which may be utilised by an enforcement

officer when investigating an offence under the Vapes Regulations. In addition, these regulations amend the:

- Environmental Protection (Microbeads) (Scotland) Regulations 2018
- Environmental Protection (Cotton Buds) (Scotland) Regulations 2019
- Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021
- Environmental Protection (Single-Use Vapes) (Scotland) Regulations 2024

so as to provide a fixed penalty notice (FPN) procedure in relation to certain offences under those regulations as an alternative to criminal prosecution. The amendments to the Vapes regulations will also provide that the Scottish Ministers may issue a direction that single-use vapes supplied in the course of an offence under the regulations are to be treated as waste and disposed of or treated in accordance with the direction. This would apply to any single-use vapes in respect of an FPN has been issued, and the fixed penalty paid.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, The Environmental Protection (Injurious Articles) (Fixed Penalty Notices and Miscellaneous Amendments) (Scotland) Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

There is currently no EU legislation banning the sale or supply of single-use vapes, meaning there are no EU alignment consequences as a result of this instrument. Interventions by individual EU member states, with the sale of disposable e-cigarettes banned in Belgium from 1 January 2025, indicate no detrimental impact as a result of this instrument on the Scottish Government's policy to maintain alignment with the EU where possible and meaningful to do so.

The Environmental Protection (Cotton Buds) (Scotland) Regulations 2019 and Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 bring the Scottish Government into partial alignment with article 5 of the EU Directive 2019/904 on the reduction of the impact of certain plastic products on the environment. The Environmental Protection (Microbeads) (Scotland) Regulations 2018 pre-date, but align with, action taken at the EU-level in 2023 in respect of the use of micro-plastics in cosmetics, personal care products and detergents. The addition of an FPN procedure as an enforcement tool in these regulations does not impact upon that alignment and there is no detrimental

impact as a result of the amendments made by this instrument on the Scottish Government's policy to maintain alignment with the EU where possible and meaningful to do so.

Consultation

In accordance with section 140(6) of the Environmental Protection Act 1990, notifications were published in the Edinburgh and London Gazettes as to the Scottish Ministers intention to introduce these regulations, and views were sought on the draft regulations in general, and in particular the approach to the FPN element of these regulations through the [Environmental Protection \(Single-Use Vapes\) \(Scotland\) Regulations 2024 - fixed penalty notice amendment: consultation](#)¹ which ran from 9 December 2024 to 9 January 2025. We received 25 responses to this consultation, 11 from individuals and 14 from organisations, with these being primarily Local Authority Trading Standards who are responsible for the enforcement of each of the instruments to be amended by these regulations. These responses were taken into account in finalising the regulations, including the addition of the direction-making provision in the Vapes Regulations. We will publish the government response to the consultation in February 2025.

Officials have also engaged with The Society of Chief Officers of Trading Standards in Scotland (SCOTSS) and The Convention of Scottish Local Authorities (COSLA) on enforcement requirements and to inform the introduction of FPNs.

Impact Assessments

The following impact assessments have been completed to evaluate the likely impacts of the policy.

- A Child Rights and Wellbeing Impact Assessment (CRWIA) has been completed and will be published in February 2025.
- Business and Regulatory Impact Assessment (BRIA) for the proposed prohibition on the sale and supply of single-use vapes in Scotland, published on 10 June 2024².
- Prohibition of the sale and supply of single-use vapes: Island Communities Impact Screening Assessment (ICIA), published on 10 June 2024³.
- Prohibition of the sale and supply of single-use vapes: Equality Impact Assessment (EQIA), published on 10 June 2024⁴.

- Prohibition of the sale and supply of single-use vapes: Fairer Scotland Duty

¹ <https://consult.gov.scot/environment-forestry/environmental-protection-injurious-articles-fixe/>

² <https://www.gov.scot/publications/prohibition-sale-supply-single-use-vapes-full-business-regulatory-impact-assessment/>

³ <https://www.gov.scot/publications/prohibition-sale-supply-single-use-vapes-island-communities-impact-screening-assessment-2/>

⁴ <https://www.gov.scot/publications/prohibition-sale-supply-single-use-vapes-equality-impact-assessment-results/pages/3/>

Summary (FSDA), published 10 June 2024⁵.

- Prohibition of the sale and supply of single-use vapes: Child Rights and Wellbeing Impact Assessment (CRWIA) Stage 2, published 10 June 2024⁶.
- Prohibition of the sale and supply of single-use vapes: strategic environmental assessment (SEA) - environmental report, published 2 April 2024⁷.
- Business and Regulatory Impact Assessment (BRIA) for The Environmental Protection (Microbeads) (Scotland) Regulations 2018⁸.
- Business and Regulatory Impact Assessment (BRIA) for The Environmental Protection (Cotton Buds) (Scotland) Regulations 2019⁹¹⁰.
- Business and Regulatory Impact Assessment, Fairer Scotland Duty Impact Assessment, Island Communities Impact Assessment, Strategic Environment Assessment and Equality Impact Assessment for the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021¹¹.

Financial Effects

It is not anticipated that this policy will have any significant financial effects, and as such a Business and Regulatory Impact Assessment has not been completed for this instrument.

Business and Regulatory Impact Assessments have been completed for the Single-use Vapes Regulations (2024), Microbeads Regulations (2018), Cotton Buds Regulations (2019), and Single-use Plastic Products Regulations (2021), as referenced in the previous section.

Scottish Government
Environment and Forestry Directorate
January 2025

⁵ <https://www.gov.scot/publications/prohibition-sale-supply-single-use-vapes-fairer-scotland-duty-summary/>

⁶ <https://www.gov.scot/publications/prohibition-sale-supply-single-use-vapes-child-rights-wellbeing-impact-assessment-crwia-stage-2/>

⁷ <https://www.gov.scot/publications/prohibition-sale-supply-single-use-vapes-strategic-environmental-assessment-environmental-report/>

⁸ https://www.legislation.gov.uk/ssi/2018/162/pdfs/ssifia_20180162_en.pdf

⁹ https://www.legislation.gov.uk/ssi/2019/271/pdfs/ssifia_20190271_en.pdf

¹⁰ For the Microbeads and Cotton Buds Regulations it was determined that a full EQIA was not required. These were the only IAs required at the time of publishing.

¹¹ <https://www.legislation.gov.uk/ssi/2021/410/resources>