POLICY NOTE

THE DEPOSIT AND RETURN SCHEME FOR SCOTLAND AMENDMENT REGULATIONS 2026

SSI 2026/XXX

The above instrument was made in exercise of the powers conferred by sections 84, 89, 90 and 96(2) of the Climate Change (Scotland) Act 2009. The instrument is subject to the affirmative procedure.

Summary Box

Purpose of the instrument is to amend the Deposit and Return Scheme for Scotland Regulations 2020 primarily to (i) allow SEPA to charge the scheme administrator for its regulatory enforcement activities in advance of 1 October 2027 and to bring offences in relation to the scheme administrator into force, (ii) remove the exemption from certain obligations for export shops, and (iii) introduce operational flexibility and associated communication requirements for hospitality retailers with respect to charging deposits for drinks intended for consumption exclusively on their premises. The instrument also corrects a number of drafting errors in the Deposit and Return Scheme for Scotland Regulations 2020.

These amendments align with schemes due to be introduced in England and Northern Ireland on 1 October 2027 and support the successful implementation and operation of the Deposit Return Scheme

Policy Objectives

The main policy driver for Scotland's Deposit Return Scheme (DRS) is to promote and secure an increase in recycling of materials by applying a deposit to single-use drinks containers made of PET plastic and metal from 1 October 2027.

This forms part of the Scottish Government's response to the global climate emergency by ensuring the targeted materials are collected in larger quantities and separately to other materials, making them easier to recycle.

The Scottish Government initially announced the design of a DRS on 8 May 2019 and published draft Regulations on 10 September 2019. The DRS design and the draft Regulations were informed by extensive public consultation, international best practice and engagement with a broad range of stakeholders.[1]

The Deposit and Return Scheme for Scotland Regulations 2020 ("the 2020 Regulations") were approved by the Scottish Parliament in May 2020 and have subsequently been amended

1 https://www.gov.scot/policies/managing-waste/deposit-return-scheme/

by the Deposit and Return Scheme for Scotland Amendment Regulations 2022, the Deposit and Return Scheme for Scotland Amendment Regulations 2023, the Deposit and Return Scheme for Scotland (Miscellaneous Amendment) Regulations 2023 and the Deposit and Return Scheme for Scotland Amendment Regulations 2025. In addition, the scheme administrator is designated under the Deposit and Return Scheme for Scotland (Designation of Scheme Administrator) Order 2025 ("the Designation Order).

The Scottish Government, alongside the UK Government, DAERA, and the Welsh Government have a shared ambition to increase recycling rates of single-use plastic and metal drinks containers to at least 90%, to significantly cut littering, and to expand opportunities to collect and reprocess high quality materials.

This policy note relates to the Deposit and Return Scheme for Scotland Amendment Regulations 2026, referred to in this note as "this instrument". This instrument amends the 2020 Regulations. The Deposit and Return Scheme for Scotland (Designation of Scheme Administrator) Order 2026) ("the 2026 Order") was made at the same time and amends the Designation Order. Therefore the 2020 Regulations (as amended) and the Designation Order (as amended by the 2026 Order) both comprise the legislation which establishes the DRS in Scotland, and should therefore be read together. The policy note for the 2026 Order explains in more detail the provisions contained within the 2026 Order.

This instrument in particular makes the following amendments to the 2020 Regulations:

<u>SEPA regulatory and enforcement charging and offences by the scheme administrator</u>

The instrument will enable SEPA to recover regulatory and enforcement costs from Exchange for Change (the scheme administrator) from the commencement date (expected to be the end of December) and 01 October 2027. This will enable SEPA to fulfil its regulatory and enforcement functions in relation to the functions of the scheme administrator and support scheme implementation prior to launch on 1 October 2027, in line with the principle of producer responsibility. The instrument therefore amends the coming into force provisions in relation to SEPA's enforcement powers so that they apply in relation to functions of the scheme administrator; in addition offences under regulation 31(7)(a), (7A) (11) and (12) are also brought into effect in relation to the scheme administrator.

Scheme administrator annual report

A minor amendment is made to change the deadline for submission of the scheme administrator's annual report so that Exchange for Change will have 12 weeks (instead of 6 weeks) from the end of each relevant year of operation of DRS to submit its report to the Scottish Ministers. The change requested by Exchange for Change, provides greater flexibility for the scheme administrator in meeting the relevant requirement

<u>Export shops</u>

Export shops in Scotland are currently exempt from the requirements of the DRS to charge the deposit, and to communicate the amount of deposit and nearest return point to customers. This exemption was initially introduced for high value drinks sold in glass bottles (e.g. whisky, wine) that were not able to be consumed in Scotland after purchase. However, the exemption is no longer considered to be required without glass drinks bottles in scope of the

DRS. This instrument removes the exemption that currently applies to export shops to ensure consistency with other retailers which operate in the same airport locations as export shops.

Obligations in relation to hospitality retailers

This instrument provides hospitality retailers (such as hotels, cafes, restaurants and bars) with greater flexibility in determining how deposits are charged for drinks that are intended for exclusive consumption by customers on the premises of sale.

The DRS Regulations currently exempt a hospitality retailer which sells drinks intended exclusively for consumption on the premises of sale from requirements to charge the deposit, and to communicate the amount of the deposit and nearest return point to customers, and require the hospitality retailer to retain empty containers for collection by the scheme administrator. This instrument amends the DRS Regulations to require hospitality retailers, similar to existing obligations on other retailers, to charge deposits on scheme articles that they market, offer for sale or sell to consumers whether or not the drinks are for consumption on or off the premises of sale. In these circumstances hospitality retailers must then meet obligations to communicate the amount of the deposit and the location of the nearest return point to a consumer.

However, where a hospitality retailer markets, offers for sale or sells a scheme article exclusively for consumption on the premises of sale, they still have the option to be exempt from charging the deposit on such drinks. In these circumstances they must communicate that no deposit is required to be charged and that customers are not to remove empty containers from the premises. The instrument also removes the requirement (currently in regulation 20A of the DRS Regulations) on a hospitality retailer to retain empty containers for collection by the DRS scheme administrator. The requirement on the scheme administrator to collect from a hospitality retailer is also amended by this instrument so that the scheme administrator is only required to provide a collection if one is requested by the hospitality retailer. Any such collection would be free of charge.

The amendments in this instrument bring obligations placed on hospitality retailers into alignment with schemes across the UK and clarify the options and respective obligations associated with selling DRS scheme articles which are intended exclusively for consumption on the premises. The instrument does not impact on the existing duty of care in relation to managing controlled waste under section 34 of the Environmental Protection Act 1990 and the related code of practice, as well as the duty to take reasonable steps to apply the waste hierarchy, which apply more generally to hospitality retailers. Therefore, recycling targets are not expected to be affected by this amendment.

Offences

Some minor amendments are made to the offences provision in regulation 31 of the 2020 Regulations. New offences are inserted in the appropriate places in regulation 31 to make it an offence for registered producers, groceries retailers and takeback service providers to fail to provide information to the scheme administrator when there is a material change in information related to its registration; this was already an offence in relation to voluntary return point operators so this provides consistency across similar requirements under to the 2020 Regulations. Some other minor changes are made to ensure drafting consistency across the offences provisions.

Corrective Action

This instrument amends various provisions of the 2020 Regulations to correct errors in amendments which were made by the Deposit and Return Scheme for Scotland Amendment Regulations 2025 (SSI 2025/188). This meets the undertaking given to the Delegated Powers and Law Reform Committee to take corrective action in relation to SSI 2025/188.

In particular this instrument corrects the errors as follows –

- regulation 4 corrects errors in regulation 2 of the 2020 Regulations by re-inserting the definitions of "sum equal to the deposit" and "returnable packaging" in the correct alphabetical order;
- regulation 9 removes the opening words of regulation 20(2) of the 2020 Regulations which then removes a minor error in those opening words;
- regulation 11 substitutes erroneous cross-references in regulations 20ZB and 20ZC of the 2020 Regulations so that they now refer to regulation 22(a) or (b) (instead of regulation 20ZA);
- regulation 12 corrects regulation 31 of the 2020 Regulations to remove references to paragraphs (5A) and (13) which are no longer required since the corresponding requirements no longer exist in the 2020 Regulations;
- regulation 14 amends paragraph 8 of schedule 1C of the 2020 Regulations to insert the missing word "size" in relation to information required in an application for an return point exemption. –

In addition, regulation 13 amends paragraph 3 of each of schedules 1, 1A, 1B and 1C of the 2020 Regulations to remove unnecessary wording relating to a register kept by Companies House to ensure drafting is more consistent with normal practice.

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 Act), the Scottish Ministers certify that, in their view, the Deposit and Return Scheme for Scotland Amendment Regulations 2026 are compatible with the UNCRC requirements as defined by section 1(2) of the Act."

EU Alignment Consideration

The relevant EU legislation that relates to Scotland's DRS includes Directive (EU) 2019/904 on the reduction of the impact of certain plastic products on the environment; Directive 94/62/EC on packaging and packaging waste (PPWD); and Regulation (EU) 2025/40 on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (PPWR).

PPWR came into force in August 2026 and establishes further requirements for extended producer responsibility, packaging waste prevention, such as the reduction of unnecessary packaging and the re-use or refill of packaging. It also introduces further collection, treatment

and including recycling requirements for packaging waste. In particular, it obliges EU member states, by 1 January 2029, to ensure the separate collection of at least 90% per year by weight of the following packaging formats which are introduced on to its market for the first time in a given calendar year:

- single-use plastic beverage bottles with a capacity of up to 3 litres;
- single-use metal beverage containers with a capacity of up to 3 litres.

To achieve these targets, EU member states must ensure that deposit and return systems (DRS) are set up for the relevant packaging formats and that a deposit is charged at the point of sale, unless such collection requirements are already being met by other means.

The PPWR also stipulates minimum requirements that DRS systems must meet, including:

- ensuring equal access and fair conditions for all economic operators,
- establishing control procedures and reporting systems,
- fixing a minimum deposit amount to achieve the collection targets,
- obliging final distributors to accept the deposit bearing packaging,
- deposit bearing packaging is clearly labelled.

The 2020 Regulations (as amended) together with the Designation Order (as amended by the 2026 Order) provide the necessary legislation to align with the requirement of the PPWR to increase recycling rates of single-use plastic and metal drinks containers to at least 90% and to establish a DRS to do so.

Consultation

An extensive public consultation was carried out in 2018 to inform the design of Scotland's DRS. The Scottish Government reviewed the implementation timetable in 2022 following an independent gateway review and engagement with industry stakeholders, resulting in a revised implementation date of 16 August 2023.

Stakeholder engagement has been part of scheme assurance processes since 2023, and has included producers, retailers, wholesalers, the scheme administrator, SEPA and hospitality sector representatives.

More recently, stakeholder engagement has continued on a three-nation basis alongside the UK Government Department for Environment, Food and Rural Affairs (Defra), and the Department for Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland. Scottish Government officials have met regularly with representative organisations and individual businesses to address any issues identified as the scheme is implemented. The proposed amendments have been requested by the affected stakeholders following this engagement and during their implementation of the DRS, and have been discussed with industry representatives, the DRS scheme administrator, and SEPA.

This instrument and the 2026 Order have been made to provide sufficient time for businesses to prepare ahead of 1 October 2027.

Impact Assessments

A full suite of impact assessments were updated and published when amendments were made to the DRS Regultions in 2025, including a Business and Regulatory Impact Assessment (BRIA), Fairer Scotland Duty (FSD) assessment, Equality Impact Assessment (EQIA), and Island Communities Impact Assessment (ICIA). An addendum to the BRIA has been completed for this policy. A Child Rights and Wellbeing Impact Assessment (CRWIA) was also completed for this instrument.

It is recognised, taking into account experiences of existing deposit return schemes in other countries, that the scheme imposed by the 2020 Regulations and the Designation Order will have an impact upon industry and consumers. The DRS will be reviewed once it is fully operational and sufficient time has passed to allow data to be available to evaluate its impact on all sectors. Scottish Ministers must complete a review of the scheme by October 2032.

Financial Effects

An Addendum to the Final Business and Regulatory Impact Assessment (BRIA) has been completed for this policy and will be published alongside this instrument.

Scottish Government
Environment and Forestry Directorate

26 October 2026