POLICY NOTE

THE ENVIRONMENTAL REGULATION (ENFORCEMENT MEASURES) (SCOTLAND) AMENDMENT ORDER 2020

SSI 2020/XXX

The above Instrument was made by the Scottish Ministers in exercise of the powers conferred by sections 20 to 32, 53, and 58(1) of the Regulatory Reform (Scotland) Act 2014 and all other powers enabling them to do so. The Instrument is subject to affirmative procedure.

Purpose of the instrument.

This Instrument amends the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 in order to include the offences created by The Deposit and Return Scheme for Scotland Regulations 2020. In doing so, it confers powers on the Scottish Environment Protection Agency (SEPA) to enable it to enforce the requirements of the Regulations.

Policy Objectives

The policy objectives of The Deposit and Return Scheme for Scotland Regulations 2020 ("the Regulations") are discussed in the Accompanying Statement and Policy Note for that Instrument. The Regulations provide for the establishment of a deposit return scheme for single-use drinks containers and create a series of offences in relation to the operation of that scheme.

The Scottish Environment Protection Agency (SEPA) will be responsible for regulating the scheme. SEPA has a suite of enforcement measures under the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015, including the imposition of both fixed and variable monetary penalties and the power to accept enforcement and other undertakings. These enforcement measures are designed to offer SEPA a proportionate set of tools for dealing with specifed offences and it has been considered appropriate to extend these measures so as to apply in respect of compliance monitoring and enforcement activity for the deposit return scheme.

This Order, therefore, amends the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 so as to include the offences under the Regulations.

The Regulations 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 the Order, with particular regard to which penalties should be applicable to the range of offences.

While no specific public consultation has been undertaken on this Order, the Regulations to which it relates were the subject of a 91 day period during which representations could be made. A number of those who offered their views noted the need for a robust enforcement

framework to be established in respect of the deposit return scheme. This aspect of the scheme's operation was also highlighted by the Environment, Climate Change and Land Reform Committee in their report on the Regulations.

The design of the deposit return scheme was also the subject of an extensive public consultation. Participants in that exercise signalled widespread endorsement of the importance of effective regulation and governance of the scheme, with the majority suggesting an existing body such as SEPA or local authority trading standards be tasked with the role.

Impact Assessments

No specific impact assessments have been undertaken for this Order. A range of impact assessments have, however, been undertaken for the Deposit and Return Scheme for Scotland Regulations 2020.

Financial Effects

A Final Business and Regulatory Impact Assessment was published to coincide with the laying of the Regulations to establish the scheme alongside an Addendum to the Scottish Government's "Deposit Return Scheme for Scotland: Full Business Case (FBC)Stage 1".

The Addendum estimates costs of £965,000 per annum associated with SEPA's compliance role in relation to the scheme.

Scottish Government
Environment and Forestry Directorate

16 March 2020