POLICY NOTE

THE ENVIRONMENTAL REGULATION (ENFORCEMENT MEASURES) (SCOTLAND) AMENDMENT ORDER 2026

SSI 2026/XXX

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

Summary Box

To amend the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (2015 Order) to include offences created by The Deposit and Return Scheme for Scotland Regulations 2020 and The Digital Waste Tracking (Scotland) Regulations 2026.

Policy Objectives

This Order will amend the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 to enable the Scottish Environmental Protection Agency (SEPA) to use their civil sanction powers in respect of offences under:

i) The Deposit and Return Scheme for Scotland Regulations 2020 (as amended) (the DRS Regulations) when the Deposit Return Scheme goes live on 1 October 2027; except in relation to offences committed by the scheme administrator under regulation 31(7)(a), (7A), (11) or (12) which come into force at the same time as this Order.

ii) The Digital Waste Tracking (Scotland) Regulations 2026 (the DWT Regulations) when the scheme goes live on 1 January 2027.

The DRS Regulations place obligations on producers, retailers, groceries retailers, hospitality retailers, return point operators, takeback service providers and the scheme administrator (Exchange for Change) in relation to the deposit return scheme.

The DWT Regulations introduce the first phase of a mandatory digital reporting system for waste data, which replaces the current, largely paper-based system.

SEPA is responsible for enforcing the DRS Regulations and the DWT Regulations in Scotland. 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 within the scope of the 2015 Order. This SSI will enable SEPA to take proportionate enforcement action against organisations that have committed offences specified in the DRS Regulations or the DWT Regulations by allowing SEPA to impose civil sanctions for offences, rather than relying on criminal prosecution.

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 Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act."

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

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.

Impact Assessments

A full suite of impact assessments were updated and published when amendments were made to the DRS 2020 Regulations 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 amendments being made to the DRS Regulations.

Full impact assessment of the Digital Waste Tracking system has been undertaken and published by both the UK and Scottish Governments.

A Child Rights and Wellbeing Impact Assessment (CRWIA) was also completed for this Order.

Financial Effects

A full Business and Regulatory Impact Assessment (BRIA) has been completed and published for both the Deposit Return Scheme and Digital Waste Tracking. A separate BRIA was not completed for this SSI.

There are no direct financial effects associated with this SSI.

Scottish Government
Environment and Forestry Directorate

26 October 2026