POLICY NOTE

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

SSI 2023/69

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

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