

*Draft laid before Parliament under section 143(5) of the Environment Act 2021, for approval by resolution of each House of Parliament*

*DRAFT STATUTORY INSTRUMENTS*

## **ENVIRONMENTAL PROTECTION, ENGLAND**

## **ENVIRONMENTAL PROTECTION, NORTHERN IRELAND**

Made

Coming into force in accordance with regulation 1

The Secretary of State makes these in exercise of the powers conferred by sections 50, 54 and 143(1) of, paragraphs 1, 2 and 12 to 19 of Schedule 4 to and Schedule 8 to the Environment Act 2021<sup>1</sup> (“the 2021 Act”).

In accordance with sections 50(3) and 54(4) of the 2021 Act, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland has consented to the making of these Regulations.

In accordance with paragraph 8 of Schedule 4 to the 2021 Act, the Secretary of State has consulted those persons appearing to the Secretary of State to represent the interests of those likely to be affected by regulation 86 of these Regulations.

The Secretary of State is satisfied that regulation 86 of these Regulations satisfies the requirements set out in paragraph 9 of Schedule 4 to the 2021 Act.

In accordance with section 143(5) of the 2021 Act, a draft of this instrument was laid before and approved by a resolution of both Houses of Parliament.

### **Part 1**

#### **Introductory**

#### **Citation and commencement**

1.—(1) These Regulations may be cited as the Deposit Scheme for Drinks Containers (England and Northern Ireland) Regulations 2024.

(2) Except as provided in paragraph (3), these Regulations come into force on 1st October 2027.

(3) The following provisions come into force on the day after the day on which these Regulations are made—

(a) this Part;

(b) Part 2 (interpretation);

(c) Chapter 1 of Part 6 (items subject to overseas schemes);

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<sup>1</sup> 2021 c. 30.

- (d) Part 7 (the scheme administrator: the deposit management organisation);
- (e) Part 9 (enforcement), in so far as it relates to the functions of the deposit management organisation under Part 7;
- (f) Part 10 (appeals), in so far as it relates to the appointment of the deposit management organisation.

## **Extent and application**

- 2.—(1) These Regulations extend to England and Wales and Northern Ireland.
- (2) These Regulations apply only in England and Northern Ireland.
- (3) But nothing in these Regulations applies in relation to—
  - (a) the supply of container drinks in export shops or the supply of existing container drinks, or
  - (b) the bottles or cans in which any of those drinks are or were supplied.
- (4) In this regulation—

“existing container drink” means a container drink which is first supplied in any part of the United Kingdom before 1st October 2025;

“export shop” has the meaning given in regulation 2 of the Excise Goods (Export Shops) Regulations 2000 S.I. 2000/645.

## **Part 2**

### **Interpretation**

#### **Meaning of “drink”**

- 3.—(1) For the purposes of these Regulations “drink” means—
  - (a) water suitable for human consumption,
  - (b) a beverage suitable for human consumption,
  - (c) a sports drink suitable for human consumption, or
  - (d) a liquid which constitutes a beverage or sports drink suitable for human consumption if it is—
    - (i) diluted,
    - (ii) combined with crushed ice or processed so as to create crushed ice,
    - (iii) combined with carbon dioxide, or
    - (iv) prepared by way of a process which involves any combination of the processes mentioned in sub-paragraphs (i) to (iii), such as fruit squash or fruit cordial.
- (2) Paragraph (1)(d) does not include any liquid which is used only —
  - (a) to add flavour to, or enhance the flavour of, a beverage or sports drink suitable for human consumption; or
  - (b) to sweeten a beverage or sports drink suitable for human consumption.
- (3) “sports drink” means a liquid which is advertised or marketed as a product to enhance physical performance, accelerate recovery after exercise or to increase muscle mass, or other similar liquid.

#### **Meaning of “deposit item”, “scheme producer”, “scheme retailer”, “scheme supplier” and “supply” and related matters**

4.

—(1) For the purposes of paragraph 1(3) of Schedule 8 to the 2021 Act (items specified as “deposit items”), references in these Regulations to a “deposit item” mean a container drink other than a low volume product.

—(2) In these Regulations—

“scheme producer” means a person who is established in the United Kingdom and who performs one or more of the following activities—

(a)

a manufacturer of container drinks;

(b)

an importer;

(c)

a person who fills container drinks to order.

(3)

“scheme retailer” means a scheme supplier who supplies deposit items to scheme consumers.

(4)

“Scheme supplier” means a person who—

(a)

is established in the United Kingdom, and

(b)

supplies deposit items.

(5)

“Manufacturer”, in relation to a container drink, means—

(a)

the person who manufactures the drink, or

(b)

if the container drink is marketed or otherwise offered for supply under the name, trademark or other distinguishing mark of another person, that other person.

(6)

“Non-UK container drink” means a container drink from outside the United Kingdom.

(7)

A person fills a container drink to order if they fill the relevant container with drink and securely close it in response to an order from a consumer in the relevant area.

(8)

For the purposes of paragraph (7), it does not matter whether the consumer is present when the container is filled or securely closed (or both).

(9)

Subject to paragraph (10), a person (“S”) supplies a container drink if, in the course of a business, S—

(a)

supplies the container drink by way of sale, or in connection with the supply of other goods or services—

(i)

for consumption in the relevant area, or

(ii)

with a view to the drink being consumed in the relevant area, or

(b)

offers, or agrees, to supply the container drink by way of sale, or in connection with the supply of goods or services, for either of those purposes.

(10)

Where a container drink is offered for supply through a means of distance communication, S supplies that container drink only if—

(a)

they determine that it is to be offered for supply through that means of distance communication, and

(b)

they provide it for supply.

(11)

For the purposes of paragraph (10) it does not matter who undertakes—

(a)

to obtain payment for the container drink or the other goods or services, or

(b)

to operate or provide the relevant means of distance communication.

(12)

In the case of a cross-border distance supply of a deposit item, the deposit item is to be treated—

(a)

as supplied in England, where the person to whom it is supplied is located in England;

(b)

as supplied in Northern Ireland, where the person to whom it is supplied is located in Northern Ireland.

(13)

For the purposes of paragraph (12), “cross-border distance supply of a deposit item” means the supply of a deposit item through a means of distance communication when the person who orders the drink, or the relevant connected goods or services, from the scheme supplier—

(a)

is located in England and the scheme supplier is located outside England; or

(b)

is located in Northern Ireland and the scheme supplier is located outside Northern Ireland.

### **Meaning of “established in the United Kingdom”**

5.

In these Regulations “established in the United Kingdom” means—

(a)

in the case of an individual, where the individual is resident in the United Kingdom;

(b)

in all other cases, where the person has—

(i)

a registered or principal office in the United Kingdom, or

(ii)

a permanent place in the United Kingdom from which the person carries out activities which the person is constituted to perform.

## **The refund**

6.

—(1)

The refund in respect of a refund item is an amount equal to the greater of—

(a)

the deposit level on the date on which the refund item is returned, or

(b)

the deposit level on the date on which the refund item was supplied as part of the deposit scheme.

(2)

Where deposit levels are different for different deposit items on a particular date, the references in paragraph (1) to the deposit level are to be read as the deposit level for a deposit item which is comparable to the refund item.

(3)

For the purposes of this regulation, a deposit item is comparable to a refund item if the container of the deposit item—

(a)

is made wholly or mainly from the same in-scope material as the refund item,

(b)

is of the same size as the refund item, and

(c)

is offered for supply to consumers in a scheme multipack, if the refund item was supplied to a scheme consumer in a multipack.

## **General interpretation**

7.

—(1)

In these Regulations—

“brand name” means the primary name by which a drink is known;

“brand owner”, in relation to a container drink, means the person under whose name, trademark or other distinguishing mark that container drink is marketed or otherwise offered for supply in the relevant area;

“code” means a bar code, QR code or other code from which information can be obtained by scanning it electronically;

“collection administrator” means a scheme administrator (other than the deposit management organisation) who operates a return point or operates a take-back service (or both);

“connected goods or services” means any goods or services which, when purchased or received by a consumer, results in the consumer being provided with a free drink;

“consumer” means a person acting otherwise than in the course of a business who purchases goods and services solely for personal use;

“container” means a bottle or can, including any label affixed to it and its lid or other means of closure, in which drink is supplied and which—

(a)

is made wholly or mainly from in-scope material,

(b)

has a capacity of at least 150 millilitres but no more than three litres of liquid, and

(c)

is likely to be used only once, or for a short period of time, before being discarded;

“container drink” means a drink in a securely closed container;

“convenience store” means a retail store which carries a limited selection of basic items including packaged food, drinks and household products and which is open for long hours for the convenience of consumers living primarily within its vicinity;

“DAERA” means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

“deposit”, in relation to a deposit item, means a deposit of an amount determined in accordance with Chapter 3 of Part 7;

“deposit item” has the meaning given in regulation 4(1);

“deposit level” means the amount of the deposit in respect of deposit items;

“deposit management organisation” has the meaning given in regulation 51(1);

“drink” has the meaning given in regulation 3(1);

“fill to order” is to be construed in accordance with regulation 4(7);

“groceries” means one or more of the following—

(a)

food suitable for human consumption;

(b)

deposit items or other drinks;

(c)

pet food;

(d)

cleaning products;

(e)

toiletries and household goods, other than petrol, clothing, DIY products, financial services, pharmaceuticals, newspapers, magazines and books, greetings cards, CDs, DVDs, video and audio tapes, toys, plants and flowers, perfumes and cosmetics, electrical appliances, kitchen hardware, gardening equipment, tobacco and tobacco products;

“groceries retailer” means a supermarket of any size, a grocery store, a convenience store, or a newsagent but does not include premises which sell prepared food for consumption off the premises or a coffee shop whether or not it is selling food and drinks which may be consumed on the premises;

“the handling payment” has the meaning given in regulation 70(1);

“importer” means—

(a)

a person who—

(i)

imports a non-UK container drink into the United Kingdom, and

(ii)

who is the first person established in the United Kingdom or based in the Republic of Ireland to offer for supply on the market in the relevant area that non-UK container drink,

or

(b)

a person who is based in the Republic of Ireland who supplies container drinks into Northern Ireland and who complies with the obligations of a registered scheme producer under these Regulations.

“in-scope material” means—

(a)

aluminium,

(b)

polyethylene terephthalate (PET) plastic, or

(c)

steel;

“low volume product” has the meaning given in regulation 18(7);

“means of distance communication” means—

(a)

a website,

(b)

application software designed and developed for use on mobile devices, such as smartphones and tablets, or

(c)

any other method of communication which can be used, without the simultaneous physical presence of the person supplying an item and the person to whom it is supplied, for the conclusion of a contract by the two parties for the supply of an item or connected goods and services;

“mandatory return point operator” has the meaning given in regulation 35(4);

“mixed retail premises” means a premises at or on which a scheme retailer supplies deposit items both for consumption at or on those premises and for consumption off those premises;

“multipack” means any packaging which contains (whether fully or partially enclosing) SP container drinks, which are, or are intended to be, presented for supply to consumers;

“national enforcement authority” means—

(a)

in England, the Environment Agency;

(b)

in Northern Ireland, DAERA;

“NEA costs”, in relation to a national enforcement authority, means the costs incurred by the authority in exercising the functions conferred on it by or under these Regulations

“on-sale premises” means a premises at or on which a scheme retailer supplies deposit items only for consumption at or on those premises;

“operational plan” has the meaning given by paragraph 2(3)(e) of Schedule 5, and includes any revisions made to it in accordance with regulation 53;

“opt-out decision” has the meaning given in regulation 28(3);

“opted-out premises” means a premises in respect of which a scheme supplier has, for the time being, made an opt-out decision;

“overseas refund amount” has the meaning given in regulation 32(2);

“overseas scheme” means a scheme which is established outside of the United Kingdom and is equivalent to a deposit scheme;

“overseas scheme administrator” means a person who exercises functions in relation to a specified overseas scheme which are equivalent to those of the scheme administrator of a deposit scheme;

“overseas scheme item” means a container that is the subject of a specified overseas scheme;

“premises” includes land, buildings, moveable structures, vehicles, vessels, trains, aircraft and hovercraft;

“publication ” means a catalogue, a newspaper, a magazine, a periodical, or other similar publication;

“refund item” means the container from a deposit item;

“registered low volume product” has the meaning given in regulation 18(8);

“registered scheme producer” means a scheme producer who is registered with the deposit management organisation in accordance with regulation 10;

“registration fee” has the meaning given in regulation 64(2);

“relevant area” means—

(a)

in relation to the supply of a registered low volume product, the United Kingdom;

otherwise,

(b)

the scheme area;

“return amount” has the meaning given in regulation 8(4);

“return point” means a place in the scheme area where a person can return returnable items to a return point operator and obtain the return amounts for those items;

“return point exemption” has the meaning given in regulation 35(3);



“return point operator” means a person who operates a return point;

“returnable item” has the meaning given in regulation 8(4);

“the Scheme” has the meaning given in regulation 8(1);

“the scheme area” means the area comprising England and Northern Ireland;

“scheme collector” means—

(a)  
a return point operator, or

(b)  
a take-back service provider;

“scheme consumer” means a consumer in the scheme area;

“scheme logo” has the meaning given in regulation 56(1);

“scheme multipack” means a multipack which contains deposit items (whether or not it contains any other items);

“scheme packaging logo” has the meaning given in regulation 56(1);

“scheme producer” has the meaning given in regulation 4(2);

“scheme retailer” has the meaning given in regulation 4(3);

“scheme supplier” has the meaning given in regulation 4(4);

“scheme year” means—

(a)  
the period of 12 months beginning with DATE 3; or

(b)  
or a period of 12 months beginning with day month in any of the subsequent years;

“Scottish refund amount”, in relation to a Scottish scheme item, means a sum equal to the deposit payable for that item in accordance with the relevant Scottish deposit and return scheme;

“Scottish scheme item” means a container that is the subject of a Scottish deposit and return scheme;

“SP container”, in relation to a scheme producer, means the container from an SP container drink;

“SP container drink”, in relation to a scheme producer, means—

(a)  
a drink in a securely closed container which is produced by the scheme producer, or

(b)  
a drink in a securely closed container which is imported by the scheme producer, or

(c)  
a securely closed container which is filled to order by the scheme producer;

“the SP register” has the meaning given in regulation 11(1);

“specified overseas scheme” has the meaning given by regulation 33(2);

“take-back service” means a service under which returnable items are collected from scheme consumers from any place other than premises at or on which a scheme retailer sells groceries to consumers;

“take-back service provider” means a scheme retailer who is registered to provide a take-back service;

“vending machine” means an automatic machine for the supply of deposit items (whether alone or together with other products);

“Welsh deposit scheme” means a deposit scheme established by the Welsh Ministers;

“Welsh refund amount”, in relation to a Welsh scheme item, means a sum equal to the deposit payable for that item in accordance with the relevant Welsh deposit scheme;

“Welsh scheme administrator” means a scheme administrator of a Welsh deposit scheme;

“Welsh scheme item” means a container that is a deposit item under a Welsh deposit scheme;

(2)

For the purposes of these Regulations, any reference to the size of a multipack is a reference to the number of container drinks contained in the multipack.

(3)

It does not matter for the purposes of these Regulations whether deposit items are—

(a)

intended to be presented for supply to consumers in multipacks or as single items;

(b)

presented for supply to consumers in multipacks or as single items;

(c)

supplied to consumers in multipacks or as single items.

(4)

For the purposes of these Regulations, a person acts in the course of a business if they act in the ordinary course of conduct of a trade, business, craft or profession, and any reference to a person acting otherwise than in the course of a business is to be construed accordingly.

(5)

Where a scheme supplier—

(a)

offers to supply deposit items for immediate consumption at or on any particular premises, and

(b)

opens the relevant containers before supplying the drinks (whether wholly or partially) in those containers to the persons who have ordered them,

the containers are, for the purposes of these Regulations, to be treated as being securely closed when they are supplied (and accordingly are “deposit items”).

(6)

Any reference to “consumption of a drink” (however expressed) includes the consumption of the beverage or sports drink resulting from the preparation of a liquid as described in regulation 3(2).

(7)

A reference to a person supplying drinks in securely closed containers for “immediate consumption at or on a particular premises” includes a reference to the relevant drinks being supplied for consumption at or on an area in close proximity to those premises—

(a)

where seating is made available for that person's customers (whether by that person or another person), or

(b)

which the person's customers habitually use for the consumption of drinks supplied by that person.

### **Part 3**

#### **Establishment of a Deposit Scheme for Drinks Containers**

##### **Establishment of Deposit Scheme for Drinks Containers in England and Northern Ireland**

8.

—(1)

These Regulations establish, in England and Northern Ireland, a deposit scheme<sup>2</sup> in respect of containers in which drinks are supplied for the purposes of—

(a)

sustaining, promoting and securing an increase in the recycling of materials, including by securing higher quality material for recycling and supporting a circular economy, and

(b)

reducing the incidence of littering.

The deposit scheme in paragraph (1) is referred to in these Regulations as “the Scheme”.

(2)

Under the Scheme—

(a)

a person supplied with a deposit item by a scheme supplier pays a deposit to the scheme supplier, and

(b)

a person who provides a returnable item to a scheme collector is entitled to be paid the return amount for that item by the scheme collector.

(3)

Paragraph (2)(a) is subject to regulation 28 and paragraph (2)(b) is subject to regulation

9.

(4)

In these Regulations—

the “return amount” means—

(a)

in relation to an overseas scheme item, the overseas refund amount,

(b)

in relation to a Scottish scheme item, the Scottish refund amount,

(c)

in relation to a Welsh scheme item, the Welsh refund amount, or

(d)

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<sup>2</sup> See paragraph 1(2) of Schedule 8 to the Environment Act 2021 for the meaning of “deposit scheme”.

in relation to a refund item, a refund;

“returnable item” means—

(a)

an overseas scheme item,

(b)

a Scottish scheme item,

(c)

a Welsh scheme item, or

(d)

a refund item.

[JEST003]

### **Circumstances in which a person is not entitled to a relevant amount for a returnable item**

9.

—(1)

A person who provides a returnable item to a scheme collector is not entitled to be paid a return amount for that item if the scheme collector has a reasonable excuse not to accept the returnable item.

(2)

The circumstances in which a scheme collector has a reasonable excuse not to accept a returnable item from a person include, for example—

(a)

the scheme collector not being able to identify the container as a returnable item (including where it is not carrying a scheme logo or other equivalent logo or scheme return mark or other equivalent code);

(b)

the returnable item being soiled;

(c)

the returnable item not being empty;

(d)

the returnable item not being intact;

(e)

the returnable item being the container for a drink which the scheme collector does not or would not supply for reasons of the scheme collector’s faith or belief;

(f)

where the scheme collector is a scheme retailer, the person providing the returnable item is attempting to return a number of returnable items which is disproportionately greater than the number of deposit items that the scheme retailer would supply to a scheme consumer in an average single transaction.

(3)

For the purposes of paragraph (2)(d), a returnable item is to be treated as intact regardless of whether the lid or other similar item used to close it—

(a)

is not returned with the returnable item, or

(b)

is returned with the returnable item but is not attached to it.

(4)

For the avoidance of doubt, a scheme collector does not have a reasonable excuse not to accept a returnable item solely on the grounds that it is for a drink which the return point operator does not, or, if the return point operator were a scheme supplier, would not, supply otherwise than as provided for in paragraph (2)(e) .

## **Part 4**

### **Scheme producers**

#### **Chapter 1**

##### **Registration, information and related matters**

[JSPReg001]

##### **Requirement for scheme producers to be registered to supply SP container drinks**

10.

—(1)

A scheme producer may not supply SP container drinks unless the scheme producer is registered with the deposit management organisation.

(2)

Part 1 of Schedule 1 contains provision about the registration of scheme producers.

[JSPReg002]

##### **Register of scheme producers**

11.

—(1)

The deposit management organisation must publish and maintain a register of registered scheme producers (“the SP register”).

(2)

The entry in the SP register for a registered scheme producer must state—

(a)

whether or not the scheme producer is a brand owner;

(b)

whether or not the scheme producer is an importer;

(c)

if the scheme producer is a brand owner or an importer (or both), the brand name of each drink for which the scheme producer is the brand owner or importer;

(d)

whether or not the scheme producer fills containers to order;

(e)

the date on which the scheme producer’s registration application was granted;

(f)

whether or not the scheme producer produces, imports or fills containers to order with, any registered low volume products and if so, what those products are, and the date on which each of the products was registered as a low volume product.

(3)

The deposit management organisation must—

(a)

add an entry for a registered scheme producer to the SP register as soon as is reasonably practicable after the scheme producer's registration application is granted;

(b)

update the entry for a registered scheme producer as soon as reasonably practicable after the producer registers a low volume product.

(4)

The deposit management organisation must—

(a)

make the public register available for public inspection at all reasonable times, free of charge, and

(b)

permit members of the public to obtain copies of entries on its public register on payment of a reasonable charge.

[JSPReg003]

### **Requirement for registered scheme producers to keep records about supply of SP container drinks**

12.

—(1)

A registered scheme producer must—

(a)

as soon as is reasonably practicable after it supplies an SP container drink, make a record of the information specified in paragraph (2) for that SP container drink, and

(b)

keep that record for a period of seven years beginning with the day on which it is made.

(2)

The information mentioned in paragraph (1)(a) is—

(a)

the in-scope material from which the SP container was wholly or mainly made,

(b)

the capacity of the SP container,

(c)

if the SP container drink is intended to be presented for supply to consumers in a scheme multipack containing two or more such drinks, the size of the scheme multipack,

(d)

the part of the relevant area in which the SP container drink is, or is intended to be supplied for consumption;

(e)

whether the SP container drink is a registered low volume product.

(3)

Paragraph (4) applies if—

(a)

a registered scheme producer supplies SP container drinks to a person other than a consumer, and

(b)

the registered scheme producer does not supply those drinks to that person on condition that they are to be supplied for consumption in a specific part of the relevant area.

(4)

The registered scheme producer must, for the purposes of paragraph (2)(d), record the part of the relevant area in which the registered scheme producer reasonably expects the SP container drinks to be supplied for consumption.

[JSPReg004]

### **Deposit management organisation: power to obtain information from registered scheme producers**

13.

—(1)

The deposit management organisation may direct a registered scheme producer to provide it with such information as is specified in a notice (an “information notice”).

(2)

The deposit management organisation may only specify information which it reasonably requires for the purposes of carrying out its functions under, or in connection with, the Scheme.

(3)

An information notice—

(a)

must be in writing;

(b)

may be given to—

(i)

a specified registered scheme producer,

(ii)

all registered scheme producers of a specified description, or

(iii)

all registered scheme producers;

(c)

may require information to be provided—

(i)

in a specified form or manner (or both);

(ii)

by a specified time or at specified intervals;

(iii)

in respect of a specified period.

(4)

A registered scheme producer to whom an information notice is given must comply with it.

(5)

In paragraph (3) “specified” means specified in an information notice

[JSPReg005]

### **Persons ceasing to be scheme producers: cancellation of registration**

14.

Part 2 of Schedule 1 contains provision about the cancellation of a person’s registration with the deposit management organisation as a scheme producer.

[JSPReg006]

### **Persons ceasing to be scheme producers: requirements to record and provide information.**

15.

—(1)

The duties specified in paragraph (2) continue to apply to an outgoing producer on and after the registration cancellation date in so far as they relate to SP container drinks supplied by the outgoing producer before that date.

(2)

The duties mentioned in paragraph (1) are the duties in regulation 12(1)(b), 13(4) (whether the notice is given before, on or after the registration cancellation date), and regulation 22.

.

(3)

The deposit management organisation may direct an outgoing producer to provide it with such information as is specified in a notice (an “information notice”) on or after the registration cancellation date.

(4)

But the information specified in such a notice must relate to matters arising, or SP container drinks supplied, before the registration cancellation date.

(5)

Any reference to a registered scheme producer in regulations 12 to 14 and 22 (however expressed) is to be read as including a reference to the outgoing producer.

(6)

In this regulation and regulation 16—

“outgoing producer” means a person whose registration as a scheme producer is cancelled by the deposit management organisation in accordance with Part 2 of Schedule 1;

“registration cancellation date” means the day on which the cancellation of an outgoing producer’s registration as a scheme producer takes effect.

[JSPReg007]



## **Persons ceasing to be scheme producers: updating of the SP register**

16.  
—(1)

The deposit management organisation must—  
(a)

remove the entry relating to an outgoing producer from the SP register, and  
(b)

publish a notice of the change to the SP register in such manner as the deposit management organisation considers appropriate for the purposes of bringing that change to the attention of scheme suppliers.

## **Chapter 2**

### **Low volume products**

[JSPlv001]

### **Interpretation of Chapter**

17.  
—(1)

For the purposes of this Chapter, a “pre-packed drink line” is a group of containers in which a particular drink is made available for UK retail sale in a scheme year and which—  
(a)

is made wholly or mainly from the same in-scope material, and  
(b)

have the same capacity.  
(2)

For the purposes of this Chapter, a “container line” is a group of containers which are filled to order with a particular drink in a scheme year and which—  
(a)

is made wholly or mainly from the same in-scope material, and  
(b)

has the same capacity.  
(3)

For the purposes of paragraphs (1) and (2), it does not matter—  
(a)

whether or not the outward appearance of the containers is the same;  
(b)

whether or not all of the drinks are, or are intended to be, sold to consumers in the United Kingdom in multipacks;  
(c)

whether the products are produced in more than one phase of production or, where imported, are imported at different times.  
(4)

In this Chapter—

“product line” means a pre-packed drink line or a container line;

“UK retail sale” means supply by way of sale to consumers in the United Kingdom.  
[JSPIvp002]

### **Registration of product lines as “low volume”**

18.  
—(1)

The scheme producer of a product line may apply to register that line with the deposit management organisation as a low volume line in relation to a scheme year if the number of containers in the product line will not exceed 5000.

(2)

An application under paragraph (1) (an “LVL application”) must—

(a)

state the scheme year to which it relates,

(b)

be made in such form and manner, and contain such information as the deposit management organisation may direct.

(3)

Where the registered scheme producer is a partnership, the LVL application must, if made by only one partner, be made by that partner on behalf of all of the partners.

(4)

Where the deposit management organisation receives an LVL application, it must—

(a)

grant the application and register the relevant line, if it is satisfied that the threshold in paragraph (1) will not be exceeded;

(b)

otherwise, refuse the application.

(5)

The deposit management organisation must notify the applicant, in writing, of its decision on the relevant LVL application.

(6)

A notification under paragraph (5) must—

(a)

where the LVL application is granted, state the scheme year in relation to which the relevant product line is registered as a low volume line;

(b)

where the LVL application is refused, state the reasons for that decision and inform the applicant of their right under regulation 80 to ask the deposit management organisation to reconsider its decision.

(7) In these Regulations, a reference to a “low volume product” is to be read as a reference to a drink in a securely closed container—

(a) which, at the time it is made available for UK retail sale, is part of a pre-packed drink line; or

(b) is a filled to order drink;

and part of a product line of 5000 or fewer items.

(8) In these Regulations, a reference to a “registered low volume product” is to be read as a reference to a drink in a securely closed container—

(a)

which, at the time it is made available for UK retail sale, is part of a pre-packed drink line which is registered as a low volume line, or

(b)

in the case of filled to order drink, the container of which is from a container line which is, at the time the container is filled, registered as a low volume line.

[JSPIvp003]

### **Duration of registration of a product line as “low volume”**

19.

—(1)

The registration of a product line as a low volume line under regulation 18 ceases to have effect—

(a)

at the end of the scheme year in relation to which the line is registered as a low volume line, or

(b)

if earlier, at the end of the day on which the deposit management organisation cancels the registration.

(2)

The deposit management organisation—

(a)

must cancel the registration of a product line before the end of the relevant scheme year, if the scheme producer notifies the deposit management organisation that the producer intends to exceed the threshold in regulation 18(1) (“the size threshold”) in relation to that product line;

(b)

may cancel the registration of a product line before the end of the relevant scheme year if the deposit management organisation is satisfied that the size threshold has been exceeded in relation to that product line, otherwise than following a notification under sub-paragraph (a).

(3)

Where the deposit management organisation proposes to cancel a product line’s registration as a low volume line under paragraph (2)(b), the deposit management organisation must give a notice (a “proposal notice”) to the relevant scheme producer.

(4)

A proposal notice must be in writing and must—

(a)

state the reasons for which the deposit management organisation is proposing to cancel the registration,

(b)

specify the day on which the registration will be cancelled, if the proposal is made final,  
and  
(c)

specify—  
(i)

the form and manner in which any representations are to be made to the deposit  
management organisation about the proposal, and  
(ii)

the period within which such representations must be made, which must not be less than  
28 days from the date the proposal notice is given.  
(5)

The deposit management organisation—  
(a)

must consider any representations made to it in the form and manner, and by the date,  
specified for the purposes of paragraph (4)(c)(i);  
(b)

may consider any representations which are not made in the form and manner, or by the  
date, specified for the purposes of paragraph (4)(c)(i).  
(6)

Where the deposit management organisation decides, following consideration of any  
representations made by the relevant scheme producer, not to cancel the product line's  
registration as a low volume line, the deposit management organisation must give the  
scheme producer a notice in writing of its decision.  
(7)

Where—  
(a)

the deposit management organisation decides, following consideration of any  
representations made by the relevant scheme producer, to proceed with the cancellation  
of the product line's registration as a low volume line, or  
(b)

the relevant scheme producer does not make any representations to the deposit  
management organisation,

the deposit management organisation must give the relevant scheme producer an LVL  
cancellation notice.  
(8)

An "LVL cancellation notice" is a notice in writing which—  
(a)

states that the relevant product line's registration as a low volume line is being revoked  
and why,  
(b)

specifies the date on which the registration is to be cancelled, and  
(c)

states that the relevant scheme producer has a right under regulation 80 to ask the  
deposit management organisation to reconsider its decision.  
(9)

The date specified for the purposes of paragraph (8)(b) may not be before the end of the 28-day period specified in regulation 80.

[JSPlvp004]

### **Registration of product lines as “low volume”: updates to the SP register**

20.

—(1)

The deposit management organisation must—

(a)

update the entry relating to a registered scheme producer in the SP register if—

(i)

any product line produced by the scheme producer is registered as a low volume line in relation to a scheme year, or

(ii)

the registration of any product line as a low volume product line produced by the scheme producer is cancelled before the end of the relevant scheme year;

(b)

publish a notice of the change to the SP register in such manner as the deposit management organisation considers appropriate to bring the change to the attention of scheme suppliers.

(2)

The entry for a registered scheme producer must state—

(a)

each scheme year in relation to which the product line is registered as a low volume line,

and

(b)

if a product line’s registration as such a line is cancelled before the end of a scheme year, the date on which that cancellation takes effect.

## **Chapter 3**

### **Payments to the deposit management organisation**

[JSppay001]

#### **Producer registration fees**

21.

A registered scheme producer must pay any registration fee, or any instalment of such a fee, to the deposit management organisation.

[JSppay002]

### **Deposits**

22.

—(1)

A registered scheme producer must pay to the deposit management organisation an amount equivalent to the deposit for each deposit item which the scheme producer supplies to any person.

(2)

The registered scheme producer must pay any amount required to be paid to the deposit management organisation under paragraph (1)—

(a)

by such date, or at such intervals, as may be directed by the deposit management organisation;

(b)

by such means as may be directed by the deposit management organisation.

Part 5

### **Scheme suppliers**

[JSUP001]

#### **Prohibition on supply of drinks produced etc. by a scheme producer who is not registered with the deposit management organisation**

23.

A scheme supplier must not supply a deposit item unless the scheme producer of the deposit item—

(a)

is a registered scheme producer, or

(b)

if the scheme producer's registration with the deposit management organisation has been cancelled in accordance with paragraph 5 or 6 of Schedule 1, was a registered scheme producer at the time the deposit item was made available for supply by the scheme producer.

[JSUP002]

#### **Labelling of deposit items and scheme multipacks**

24.

—(1)

A scheme supplier may not supply a deposit item unless the deposit item carries—

(a)

the required item logo, and

(b)

a scheme return code,

regardless of whether the deposit item is or is intended to be supplied to scheme consumers in a multipack.

(2)

A scheme supplier may not supply a scheme multipack unless it carries the required packaging logo (if any).

(3)

But paragraph (2) does not apply where—

(a)

the deposit management organisation first issues a Scheme packaging logo after DATE 3,  
and

(b)

the scheme multipack was first made available for supply in the scheme area before the date specified for the purposes of regulation 56 in relation to that logo.

(4)

For the purposes of this regulation—

(a)

the required item logo in relation to a deposit item is—

(i)

the scheme logo, or

(ii)

if the deposit item was produced or imported before the date specified for the purposes of regulation 1 in relation to the logo mentioned in paragraph (i), the logo issued for the purposes of regulation 56 when the deposit item was produced or imported;

(b)

the required packaging logo in relation to a multipack is—

(i)

the Scheme packaging logo, or

(ii)

if the multipack was first made available for supply in the scheme area before the date specified for the purposes of regulation 56 in relation to the scheme packaging logo, the logo issued for the purposes of regulation 56 when the multipack was first made available for supply in the scheme area.

[JSUP003]

### **Labelling of registered low volume products**

25.

—(1)

A scheme supplier may not supply—

(a)

a drink as a registered low volume product, or

(b)

where the registration of a low volume product has ceased to have effect in accordance with regulation 20, a drink which was a registered low volume product at the time it was made available for supply in the scheme area by the registered scheme producer,

which carries a scheme logo or scheme return code (or both).

(2)

For the purposes of paragraph (1) it does not matter whether the registered low volume product is intended to be supplied as a single item or in a multipack.

(3)

Paragraph (1) does not apply if a drink was registered as a low volume product after it was produced or imported.

(4)

A scheme supplier may not supply a multipack which contains registered low volume products but no deposit items if the multipack carries the scheme packaging logo (if any).

(5)

Paragraph (4) does not apply if the multipack contains only SP container drinks which were registered as low volume products after the day on which the multipack was first made available for supply in the scheme area.

[JSUP004]

### **Duty to display information about the Scheme**

26.

—(1)

A scheme supplier must provide or display, or provide for display, the Scheme information, in accordance with this regulation.

(2)

A scheme supplier who offers to supply deposit items orally (for example, by telephone) must—

(a)

give the Scheme information to the person who orders the deposit items or connected goods or services before taking payment for those items, goods or services, and

(b)

if requested, provide the Scheme information in writing to that person.

(3)

A scheme supplier who displays or offers deposit items for supply on any premises must display the Scheme information on those premises—

(a)

so it is available to people choosing deposit items, and

(b)

so as to comply with paragraph (7).

(4)

But paragraph (3) does not apply—

(a)

to any on-sale premises which are opted-out premises, or

(b)

in respect of any deposit items which are displayed, or offered, for supply for immediate consumption on that part of mixed retail premises which is an opted-out premises.

(5)

A scheme supplier who offers deposit items for supply on a website, through a mobile application or in any kind of publication must—

(a)



ensure that the Scheme information is displayed so as to comply with paragraph (7) as part of the description of the deposit items on the website, in the mobile application or in the publication, or

(b)

if they are not responsible for the website, mobile application or publication, provide the Scheme information to the person who is responsible for the website, mobile application or publication, for display as part of the description of the deposit items on the website, in the mobile application or in the publication (as the case may be).

(6)

A person who is provided with the Scheme information in accordance with paragraph (5) (b) must be asked to display that information so as to comply with paragraph (7) as part of the description of the deposit items on the website, in the mobile application or in the publication.

(7)

A display of the Scheme information complies with this paragraph if it is—

(a)

easily visible,

(b)

clearly legible, and

(c)

not hidden or obscured in any way.

(8)

In this regulation “the Scheme information” means—

(a)

a statement that the scheme supplier is required by the Scheme to charge a deposit for each deposit item that the supplier supplies,

(b)

subject to paragraph (9), for each deposit item that the scheme supplier displays or offers for supply—

(i)

the amount payable for the deposit item excluding the deposit,

(ii)

the amount of the deposit, and

(iii)

the amount payable for the deposit item including the deposit, and

(c)

where the scheme supplier is a scheme retailer, a statement as to how a person can obtain a refund of any deposit item supplied to them.

(9)

A retailer need not duplicate in the Scheme information any amount which the retailer is required to indicate in accordance with article 4 or 5 of the Price Marking Order 2004 (obligations to indicate selling price and unit price).

[JSUP005]

### **Duty to display information about low volume products**

27.

—(1)

A scheme supplier must provide or display, or provide for display, the LVP information, in accordance with this regulation.

(2)

A scheme supplier who offers to supply LVPs orally (for example, by telephone) must—

(a)

give the LVP information to the person who orders the LVPs or connected goods or services before taking payment for those LVPs, goods or services, and

(b)

if requested, provide the LVP information in writing to that person.

(3)

A scheme supplier who displays, or offers, LVPs for supply at or on any premises must display the LVP information on those premises—

(a)

So it is available to people choosing LVPs, and

(b)

so as to comply with paragraph (6).

(4)

A scheme supplier who offers LVPs for supply on a website, through a mobile application or in any kind of publication must—

(a)

ensure that the LVP information is displayed so as to comply with paragraph (6) as part of the description of the LVPs on the website, in the mobile application or in the publication, or

(b)

if they are not responsible for the website, mobile application or publication, provide the LVP information to the person who is responsible for the website, mobile application or publication, for display as part of the description of the LVPs on the website, in the mobile application or in the publication (as the case may be).

(5)

A person who is provided with the LVP information in accordance with paragraph (4)

(b) must be asked to display that information so as to comply with paragraph (6) as part of the description of the LVPs on the website, in the mobile application or in the publication.

(6)

A display of the LVP information complies with this paragraph if it is—

(a)

easily visible,

(b)

clearly legible, and

(c)

not hidden or obscured in any way.

(7)

In this regulation—

“LVP” means a low volume product;

“the LVP information” means—

(a)

a statement that the scheme supplier is not required to charge a deposit in connection with the supply of any LVPs, and

(b)

a statement that no refund is payable for a container from an LVP.

[JEST002]

### **Requirement to charge a deposit**

28.

—(1)

A scheme supplier must charge a customer a deposit for each deposit item which the scheme supplier supplies to the customer.

(2)

But a scheme supplier who supplies deposit items for immediate consumption to customers at or on any mixed-retail or on-sale premises (“IC items”) may decide not to charge a deposit for IC items supplied at or on those premises (an “opt-out decision”).

(3)

The scheme supplier may reverse an opt-out decision at any time.

(4)

In this regulation “customer”, in relation to a scheme supplier, means a person to whom the scheme supplier supplies deposit items.

[JSUP006]

### **Duty to display information on opted-out premises**

29.

—(1)

A scheme retailer must display the opt-out information at or on any opted-out premises—

(a)

so as to comply with paragraph (2), and

(b)

so that it is available to persons choosing deposit items for immediate consumption at or on those premises.

(2)

A display of the opt-out information complies with this paragraph if it is—

(a)

easily visible,

(b)

clearly legible, and

(c)

not hidden or obscured in any way.

(3)

In this regulation “the opt-out information” means—

(a)

a statement that the scheme retailer is not required to charge a deposit for the deposit items which the scheme retailer supplies for immediate consumption on the premises,

and  
(b)

a statement requesting that empty containers are not removed from the premises.

[JSUP007]

### **Deposit management organisation: power to obtain information from scheme supplier**

30.

—(1)

The deposit management organisation may direct a scheme supplier to provide it with such information as is specified in a notice (an “information notice”).

(2)

The deposit management organisation may only specify information which it reasonably requires for the purposes of carrying out its functions under, or in connection with, the Scheme.

(3)

An information notice—

(a)

must be in writing;

(b)

may be given to—

(i)

a specified scheme supplier,

(ii)

all scheme suppliers of a specified description, or

(iii)

all scheme suppliers;

(c)

may require information to be provided—

(i)

in a specified form or manner (or both);

(ii)

by a specified time or at specified intervals;

(iii)

in respect of a specified period.

(4)

A scheme supplier to whom an information notice is given must comply with it.

(5)

In this regulation “specified” means specified in an information notice.

## **Part 6**

### **Return of returnable items**

#### **Chapter 1**

## **Items subject to overseas schemes**

### **Direction specifying an overseas scheme for the purposes of these Regulations**

31.

—(1)

The deposit management organisation may give a direction specifying an overseas scheme for the purposes of enabling containers which are the subject of that scheme to be returned to scheme collectors.

(2)

Such a scheme is referred to in these Regulations as a “specified overseas scheme”.

(3)

A direction under paragraph (1) must—

(a)

be in writing,

(b)

state the date on which it takes effect, and

(c)

be published in such manner as the deposit management organisation considers appropriate for the purposes of bringing it to the attention of scheme collectors and consumers.

(4)

A direction under paragraph (1) has effect until revoked by notice by the deposit management organisation.

(5)

A notice under paragraph (4) must—

(a)

be in writing,

(b)

state the date on which it takes effect, and

(c)

be published in such manner as the deposit management organisation considers appropriate for the purposes of bringing it to the attention of scheme collectors and consumers.

(6)

The date specified for the purposes of paragraph (3)(b) or (5)(b) must not be before the end of the period of three months beginning with the date on which the direction or notice is published.

(7)

Before giving a direction under paragraph (1) or revoking such a direction, the deposit management organisation must—

(a)

consult—

(i)

the Environment Agency,

(ii)

DAERA,  
(iii)

scheme collectors, and  
(iv)

such other persons (if any) as the deposit management organisation considers appropriate, and  
(b) have regard to the views expressed in responses to the consultation.

### **Determination of overseas refund amount**

32.  
—(1)

The deposit management organisation must, for each specified overseas scheme, determine the amount which is to be paid by scheme collectors in respect of overseas scheme items which are the subject of that scheme.

(2)

Such an amount is referred to in these Regulations as an “overseas refund amount”.  
(3)

The deposit management organisation may revise the overseas refund amount for the overseas scheme items which are the subject of a particular specified overseas scheme, but may not do so more than once in any 12-month period.  
(4)

Before making a determination under paragraph (1), or revising an overseas refund amount, the deposit management organisation must—  
(a)

consult—  
(i)

such persons as appear to the deposit management organisation to represent those likely to be affected by the determination or revision, and  
(ii)

such other persons (if any) as the deposit management organisation considers appropriate, and

have regard to the views expressed in responses to the consultation.  
(5)

The deposit management organisation must publish, in such manner as it considers appropriate, a notice of any determination or revision made under this regulation.  
(6)

A notice under paragraph (5) must specify—  
(a)

the overseas refund amount or revised overseas refund amount, and  
(b)

the date of the initial determination or, if the notice relates to the revision of an overseas amount, the date on which the revision takes effect.  
(7)

The date specified for the purposes of paragraph (6)(b) may not be before the end of the period of three months beginning with the date on which the relevant notice is published.

## **The amount of the additional scheme refund: supplementary provisions**

33.

—(1)

The deposit management organisation may determine that the overseas refund amount

—

(a)

is to be the same for all overseas scheme items subject to a particular specified overseas scheme, or

(b)

is to be different for different overseas scheme items subject to that scheme.

(2)

The deposit management organisation may, when determining or revising an overseas refund amount for an overseas scheme item, have regard to the deposit payable in connection with that item under the specified overseas scheme concerned.

(3)

For the purposes of paragraph (1)(b), the deposit management organisation may, in particular, determine an overseas refund amount by reference to any or all of the following—

(a)

the size of the container;

(b)

the in-scope material from which the container is wholly or mainly made;

(c)

the nature of the specified overseas scheme of which it is the subject.

(4)

But an overseas refund amount for an overseas scheme item may not in any case exceed the refund for a comparable refund item.

(5)

For the purposes of paragraph (4), a refund item is “comparable” to an overseas scheme item if—

(a)

it is of the same size,

(b)

it is made wholly or mainly from the same in-scope material, and

(c)

where the overseas scheme item is from a drink that was sold in a multipack, the refund item is from a deposit item that was supplied in a multipack.

## **Chapter 2**

### **Mandatory return points**

#### **Interpretation**

34.

In this Chapter

“MRP premises”, in relation to a groceries retailer, means a premises at, on or from which the retailer sells groceries to consumers other than—

(a)

a vehicle, vessel, train, aircraft or hovercraft,

(b)

a premises at, on or from which the retailer only sells deposit items and other groceries to scheme consumers by means of a vending machine, or

(c)

an on-sale premises.

[JRET002]

### **Requirement for groceries retailers to operate a return point at or on MRP premises**

35.

—(1)

A groceries retailer who supplies deposit items to consumers at, on or from an MRP premises must operate a return point in respect of those premises.

(2)

The return point must be operated—

(a)

at or on the MRP premises, or

(b)

at or on any premises adjacent to the MRP premises which are provided by, or on behalf of, the groceries retailer for use as parking by the retailer’s customers.

(3)

But paragraph (1) does not apply if an exemption has effect in respect of the RP premises (a “return point exemption”).

(4)

A groceries retailer who is required to operate a return point under paragraph (1) must register with the deposit management organisation and a groceries retailer so registered is referred to in these Regulations as a “mandatory return point operator”.

(5)

Schedule 2 contains further provision about registration as a mandatory return point operator.

(6)

Schedule 3 contains further provision about grant etc. of return point exemptions.

### **Exemption for small groceries retailers in urban areas**

36.

—(1)



A groceries retailer which has a retail space of less than 100m<sup>2</sup> and which is situated in an urban area is exempt from the requirement to operate a return point.

(2)

Groceries retailers which are exempt under paragraph (1) may apply to operate a return point under regulation 39 (voluntary operation of return points).

[JRET003]

### **Requirement for groceries retailers to provide information at or on retail premises without a return point**

37.

—(1)

A groceries retailer must display the information specified in paragraph (2) clearly and accessibly at any premises at, on or from which the retailer supplies deposit items to scheme consumers and which—

(a)

are neither MRP premises nor premises in respect of which the retailer is authorised to operate a return point in accordance with regulation 39, or

(b)

are premises in respect of which a return point exemption is, for the time being, granted.

(2)

The information mentioned in paragraph (1) is—

(a)

a statement that the retailer is not required to operate a return point in respect of those premises, and the reason why that is the case,

(b)

if a return point exemption has been granted to the retailer in respect of those premises, a statement as to how information about that exemption can be obtained, and

(c)

if the premises are not a vehicle, vessel, train, aircraft or hovercraft, the location of the return point nearest to those premises.

## **Chapter 3**

### **Voluntary return points**

#### **Interpretation of Chapter 3**

38.

In this Chapter “in-scope premises” means any premises which are not—

(a)

MRP premises within the meaning given for the purposes of Chapter 2 of this Part, or

(b)

premises at or on which the deposit management organisation operates a return point (see regulation 40).

[JRET005]

## **Voluntary operation of return points**

39.  
—(1)

A scheme supplier may operate a return point at any in-scope premises in respect of which they are authorised to operate that return point by the deposit management organisation.

(2)

A person who is not a scheme supplier may operate a return point at any in-scope premises in respect of which they are—

(a)

appointed as a collection administrator by the deposit management organisation, and

(b)

authorised by the deposit management organisation to operate a return point.

(3)

A groceries retailer which is exempt from the requirement to operate a return point under regulation 36 may operate a return point at the premises concerned if they are authorised to do so by the deposit management organisation.

(4)

Schedule 4 contains further provision about—

(a)

the appointment of persons as collection administrators,

(b)

authorisations to operate return points at or on in-scope premises.

(c)

.

[JRET006]

## **Operation of return points by the deposit management organisation**

40.

The deposit management organisation may operate a return point at any premises other than—

(a)

any premises in respect of which a person is required or authorised to operate a return point, or

(b)

any premises in respect of which a return point exemption is in effect.

## **Chapter 4**

### **Information to be provided at return points**

#### **Information to be provided at a return point**

41.

A return point operator must display the following information, clearly and accessibly, at the return point—

(a)

a statement that the return point operator may refuse to accept a returnable item if the return point operator has a reasonable excuse for doing so, and in those cases a return amount will not be paid,

(b)

a summary of the procedure put in place by the deposit management organisation for the making of any complaint about the operation of the return point, and

(c)

contact details for the deposit management organisation.

## **Chapter 5**

### **Take-back services and DMO collections**

#### **Provision of take-back services**

42.

—(1)

A person may provide a take-back service if—

(a)

they are a scheme retailer, and

(b)

they are registered with the deposit management organisation to provide that service.

(2)

Schedule 4 contains further provision about registration to provide a take-back service and related matters.

[JRET011]

#### **Information about take-back services**

43.

—(1)

A take-back service provider must provide or display the take-back service information, or provide that information for display, in accordance with this regulation.

(2)

Where a take-back service provider offers to supply deposit items orally (for example, by telephone) to a scheme consumer, the take-back service provider must—

(a)

give the take-back service information orally to the scheme consumer when they provide the Scheme information to that consumer, and

(b)

if requested to do so, provide the take-back service information in writing to that person.

(3)

A take-back service provider who displays or offers deposit items for supply at or on any premises must—

(a)

display the take-back service information on those premises so that it is available to people choosing deposit items, and so as to comply with paragraph (7), and provide the Scheme information , and

(b)

if requested to do so, provide the take-back service information in writing to a scheme consumer who purchases any deposit items.

(4)

A take-back service provider who offers deposit items for supply through any means of distance communication must—

(a)

ensure that the take-back service information is displayed so as to comply with paragraph (7) as part of the description of the deposit items on or in the relevant means of distance communication, or

(b)

if they are not responsible for the means of distance communication, provide the take-back service information to the person who is responsible for the relevant means of distance communication, for display as part of the description of the deposit items on or in the relevant means of distance communication

(5)

An operator provided with information under paragraph (4)(b) must be asked to display that information as part of the description of any deposit item supplied by the take-back service provider through the relevant means of distance communication so as to comply with paragraph (7).

(6)

The take-back service information is—

(a)

a statement as to how the consumer may accept the offer of the take-back service,

(b)

a statement that the take-back service provider may refuse to accept returnable items if they have a reasonable excuse for doing so, and in that case no return amount will be paid,

(c)

a statement as to any steps that the consumer must take to enable any returnable items to be collected by the take-back service provider (including, for example, if the consumer must book a collection slot and how such a slot may be booked and the means to be used to identify any returnable items provided by the scheme consumer),

(d)

if any return amount is to be paid otherwise than when the refund items are collected from the consumer, a statement as to how and when the return amounts will be paid to the consumer,

(e)

a summary of the procedure put in place by the deposit management organisation for the making of any complaint about the operation of the take-back service, and

(f)

contact details for the deposit management organisation.

(7)

A display of information complies with this paragraph if it is—

(a)

easily visible,

(b)

clearly legible, and

(c)

not hidden or obscured in any way.

[JRET012]

### **Collection or acceptance of returnable items by the deposit management organisation**

44.

—(1)

The deposit management organisation may collect or otherwise accept returnable items from any person (irrespective of the requirements imposed on the deposit management organisation under regulation 69).

(2)

The deposit management organisation must pay a refund for each returnable item that it accepts.

(3)

The deposit management organisation may make such arrangements as it considers appropriate for the purposes of paragraph (1), which may include provision about the means or manner in which any refund is to be paid by the deposit management organisation.

Chapter 6

The register of return points, the register of return point exemptions and the register of take-back service providers

[JRET007]

### **Register of return point operators and DMO return points**

45.

—(1)

The deposit management organisation must keep and maintain a register of—

(a)

return point operators, and

(b)

DMO return points.

(2)

An entry for a return point operator must identify—

(a)

the name of the return point operator, and

(b)

each of the premises in respect of which that operator is required or authorised to operate a return point.

(3)

The entry for a DMO return point must—

(a)

identify the premises concerned, and

(b)

specify that is operated by the deposit management organisation.

[(4)]

The deposit management organisation must update the register as soon as reasonably practicable after—

(a)

a person registers with it as a mandatory return point operator in accordance with Schedule 2;

(b)

a person is authorised to operate a return point at or on any premises in accordance with paragraph 5 of Schedule 4.

(5)

Where a person's authorisation as a return point operator is revoked in accordance with Schedule 4, the deposit management organisation must remove the entry for that person in the register—

(a)

at the end of the authorisation revocation date, or

(b)

if it is not practicable to amend the register at that time, as soon as is reasonably practicable after that time.

(6)

Where a person is no longer required to operate a return point at a premises in accordance with regulation 35(1) or a person's authorisation to operate a return point at or on a particular premises is revoked in accordance with Schedule 4, the deposit management organisation must—

(a)

update the entry for that person in the register so as to remove the relevant premises from that entry, or

(b)

if that is the only premises in respect of which, or at or on which, the person was required to or authorised to operate a return point, remove the entry for that person from the register.

(7)

Any amendment required to be made under paragraph (6) must be made—

(a)

at the end of the relevant revocation date, or

(b)

if it is not practicable to amend the register at that time, as soon as is reasonably practicable after that time.]

(8)

The register must be available for public inspection at all reasonable times, free of charge to members of the public.

(9)

In this regulation—

“authorisation revocation date” means the date on which the revocation of a person’s appointment as a collection administrator takes effect;

“DMO return point” means a return point operated by the deposit management organisation;

“relevant revocation date” means—

(a)

the date on which a person ceases to be required to operate a return point in accordance with regulation 35(1) in respect of a particular premises, or

(b)

the date on which the revocation of person’s authorisation to operate a return point at or on a particular premises takes effect.

[JRET008]

### **The register of return point exemptions**

46.

—(1)

The deposit management organisation must keep and maintain a register of return point exemptions.

(2)

An entry for a return point exemption must—

(a)

specify the scheme retailer to whom the exemption has been granted, and

(b)

the premises in respect of which the exemption is granted.

[(3)

The deposit management organisation must update the register as soon as reasonably practicable after the day on which a return point exemption is granted to a scheme retailer.

(4)

The deposit management organisation must remove the entry for a return point exemption which expires in accordance with paragraph 6(1)(a) of Schedule 3 as soon as reasonably practicable after it expires.

(5)

Where a return point exemption is revoked under paragraph 8 or 9 of Schedule 3, the deposit management organisation must remove the entry for the return point exemption from the register—

(a)

at the end of the day on which the revocation takes effect, or  
(b)

if it is not practicable to amend the register at that time, as soon as reasonably practicable after that time.]

(6)

The register must be available for public inspection at all reasonable times, free of charge to members of the public.

[JRET013]

### **The register of take-back service providers**

47.

—(1)

The deposit management organisation must keep and maintain a register of take-back service providers.

[(2)

The deposit management organisation must update the register as soon as reasonably practicable after the day on which a scheme retailer is registered as a take-back service provider.

(3)

Where a scheme retailer's registration as a take-back service provider is revoked under paragraph 12 or 13 of Schedule 4, the deposit management organisation must remove an entry for the take-back service provider from the register—

(a)

at the end of the day on which the revocation takes effect, or

(b)

if it is not practicable to amend the register at that time, as soon as reasonably practicable after that time.]

(4)

The deposit management organisation must—

(a)

make the public register available for public inspection at all reasonable times, free of charge; and

(b)

permit members of the public to obtain copies of entries on its public register on payment of a reasonable charge.

## **Chapter 7**

### **General obligations of scheme collectors**

#### **Form of return amount**

48.

—(1)



Subject to paragraph (2), a scheme collector may pay the total return amount for the returnable items that it accepts from any person using one or more of the following means—

(a)

money

(b)

a payment to a debit or credit card;

(c)

a refund voucher.

(2)

If the scheme collector is a scheme retailer (other than a cashless retailer), the scheme collector must—

(a)

offer to pay the total return amount in the form of money or a refund voucher to the person returning the returnable items to them (the “returner”) and

(b)

if the returner accepts the offer, pay the total return amount in the form of money or a refund voucher as requested by the returner.

(3)

A refund voucher—

(a)

may be provided in either a physical or electronic format, but

(b)

must be provided in physical format, if requested by the returner.

(4)

For the purposes of this regulation—

(a)

“refund voucher” means a voucher, token or similar item which is capable of being exchanged immediately for a sum of money or a payment to a debit or credit card, equal to the relevant total return amount, and

(b)

it does not matter whether a refund voucher is capable of being exchanged (whether with the scheme collector or with another person)—

(i)

for goods or services, or

(ii)

singly or together with any other refund vouchers or other vouchers or similar items;

(c)

the total return amount payable to a returner is the aggregate of each return amount payable for a returnable item presented by the returner and accepted by the scheme collector.

[JRET015]

### **Requirement for return point operators to retain returnable items**

49.

A return point operator (other than the deposit management organisation) must retain the returnable items that it accepts at the return point for collection by, or on behalf of, the deposit management organisation.

### **Requirement for take-back service providers to retain returnable items**

50.

A take-back service provider must either—

(a)

retain the returnable items that it accepts through the take-back service for collection by, or on behalf of the deposit management organisation, or

(b)

return the returnable items that it accepts through the take-back service to the deposit management organisation or a person acting on behalf of the deposit management organisation.

### **Part 7**

## **The scheme administrator: the deposit management organisation**

### **Chapter 1**

#### **Appointment and governance**

##### **The deposit management organisation**

51.

—(1)

The Secretary of State may, with the consent of DAERA, appoint one person as the scheme administrator of the Scheme (referred to in these Regulations as “the deposit management organisation”).

(2)

Parts 2 and 4 of Schedule 5 contain provision about the appointment of the deposit management organisation and related matters.

#### **Conditions**

52.

—(1)

A person’s appointment as the deposit management organisation may be subject to such conditions (if any) as the Secretary of State considers appropriate (see Schedule 5).

[2)

The Secretary of State may by notice in writing vary or revoke any condition to which the deposit management organisation is subject. —

(3) The deposit management organisation must comply with any conditions imposed by the Secretary of State under this regulation and Schedule 5.

### **Operational plan**

53.

—(1)

The deposit management organisation must act in accordance with its operational plan or any revision of it approved under this regulation.

(2)

The deposit management organisation—

(a) must consider how its operational plan would adapt to and manage any expansion of the types of in-scope material;

(b)

may review its operational plan at any time, and must do so—

(i)

by the end of the period of 12 months beginning with DATE 3, and

(ii)

subsequently at intervals not exceeding 12 months.

(3)

The deposit management organisation may revise its operational plan following a review under paragraph (2), and must submit any revision of it to—

—

to—

( )

the Secretary of State,

(b)

the Environment Agency, and

(c)

DAERA.

(4)

The appropriate authority may approve any revision of the operational plan, with or without modifications.

(5)

In this regulation “the appropriate authority” means—

(a)

the Environment Agency or DAERA, or

(b)

where a call-in notice has effect in respect of the proposed revision, the Secretary of State.

(6)

A call-in notice has effect where a notice in writing is given by the Secretary of State to the Environment Agency or DAERA that a revision of the operational plan is to be approved by the Secretary of State instead of by the Environment Agency or DAERA, as the case may.

(7)

A call-in notice may relate to—

(a)

a particular revision, or

(b)

such descriptions of revision as may be specified in the notice.

(8)

Before approving any revision to the operational plan, the appropriate authority must consult—

(a)

the appropriate bodies, and

(b)

the deposit management organisation.

(9)

For the purposes of paragraph (8)(a), the appropriate bodies are—

(a)

if the Environment Agency is the appropriate authority, DAERA;

(b)

if DAERA is the appropriate authority, the Environment Agency;

(c)

if the Secretary of State is the appropriate authority, the Environment Agency and DAERA.

(10)

An approval for the purposes of paragraph (4) must be given in writing.

(11)

The deposit management organisation must send a copy of any revision to its operational plan approved under paragraph (4) to—

(a)

the Secretary of State,

(b)

the Environment Agency, and

(c)

DAERA.

## **Annual and other reports**

54.

—(1)

The deposit management organisation must submit an annual report to the Secretary of State and the national enforcement authorities for each scheme year.

(2)

The annual report must set out how, and the extent to which, the deposit management organisation has in the relevant scheme year acted in accordance with its operational plan.

(3)

The annual report must be submitted to the Secretary of State and the national enforcement authorities as soon as is reasonably practicable, and in any event within a period of 6 weeks beginning with the close of the scheme year to which it relates.

## **Reserve fund**

55.  
—(1)

The deposit management organisation must—

(a)

establish a reserve fund within 5 years of the date of the appointment of the deposit management organisation, and

(b)

maintain the reserve fund in such amount as is necessary to fund the payments set out in paragraph (2), or

(c)

maintain the reserve fund in such amount as the Secretary of State may direct.

(2)

In this regulation “reserve fund” means a fund out of which, in the event of the deposit management organisation’s appointment being revoked, payments may be made by the interim scheme administrator in respect of—

(a)

expenditure incurred by the deposit management organisation in the exercise of its functions under or in connection with the Scheme before its appointment was revoked, and

(b)

expenditure incurred by the interim scheme administrator in the discharge of its functions under or in connection with the Scheme before the appointment of another person as the deposit management organisation (see further Chapter 7 of this Part).

## **Chapter 2**

### **Scheme logo, Scheme packaging logo and Scheme return code**

#### **Scheme logo and Scheme packaging logo**

56.  
—(1)

The deposit management organisation—

(a)

must issue to registered scheme producers a single logo designed to be carried on each deposit item to identify it as a deposit item (the “scheme logo”);

(b)

may issue to registered scheme producers a single logo designed to be carried on each container pack to identify the container pack as packaging which contains one or more deposit items (the “scheme packaging logo”).

(2)

A scheme logo or scheme packaging logo may from time to time be withdrawn or replaced by the deposit management organisation.

(3) Before deciding to issue, withdraw or replace a scheme logo or scheme packaging logo, the deposit management organisation must have regard to the likely impact of the decision on scheme producers.

(3)

Where the deposit management organisation issues or replaces any scheme logo or scheme packaging logo, the deposit management organisation must specify the date from which that logo is to be used by scheme producers and scheme suppliers.

(4)

The date specified for the purposes of paragraph (3) must be a date which the deposit management organisation is satisfied gives scheme producers and scheme suppliers sufficient notice of the change before it takes effect.

### **Publication of Scheme logo and Scheme packaging logo**

57.

The deposit management organisation must publish—

(a)

the Scheme logo, and

(b)

the Scheme packaging logo (if any),

in such manner as the deposit management organisation considers appropriate to bring them to the attention of scheme suppliers and consumers.

### **Scheme return code**

58.

—(1)

In these Regulations “scheme return code”, in relation to a deposit item, means a code which—

(a)

when scanned electronically, enables the scheme producer of the item to be identified, and

(b)

meets any code requirements.

(2)

For the purposes of paragraph (1), “code requirements”, in relation to a code, means any additional requirements specified for the time being by the deposit management organisation.

(3)

The requirements which the deposit management organisation may specify under paragraph (2) include—

(a)

requirements as to the technological or security standards that a code must meet to be used as a Scheme return code, or

(b)

requirements as to the information to be retrieved when the code is scanned electronically.

(4)

The deposit management organisation may—

(a)

specify the same requirements for the code to be used on all deposit items, or

(b)

specify different requirements for the codes to be used on different deposit items.

(5)

In determining whether, and if appropriate, what requirements to specify under paragraph (2), the deposit management organisation must take into account the likely impact of those requirements on scheme producers.

(6)

Before making changes to the requirements specified for any deposit item, the deposit management organisation must take into account the likely impact of those changes on scheme producers.

(7)

Where the deposit management organisation changes the requirements specified for any deposit item, the deposit management organisation must specify the date from which the logo is to be used.

(8)

The date specified for the purposes of paragraph (7) must be a date which the deposit management is satisfied gives scheme producers sufficient notice of the change before it takes effect.

(9)

The deposit management organisation must take such steps as it considers appropriate to ensure that scheme producers are aware of the code requirements (if any) and any changes to them.

### **Agreement on a common Scheme logo, Scheme packaging logo, and Scheme return code**

59.

—(1)

The deposit management organisation must use its best endeavours to reach agreement with any other scheme administrator or Scottish deposit administrator in the United Kingdom on a common single scheme logo, scheme packaging logo, and on return code requirements.

(2)

Before issuing a scheme logo or scheme packaging logo under regulation 56 or a scheme return code under regulation 58, the deposit management organisation must—

(a)

consult—

(i)

such persons as appear to the deposit management organisation to represent those likely to be affected by the deposit management organisation issuing such Scheme logo or Scheme packaging logo or Scheme return code;

(ii)

the scheme administrator of any other deposit scheme and the Scottish deposit administrator of any Scottish deposit and return scheme, and

(iii)

such other persons (if any) as the deposit management organisation considers appropriate, and

(b) have regard to the views expressed in responses to the consultation.

## **Chapter 3**

### **The deposit**

#### **Requirement to determine the amount of the deposit**

60.

—(1)

The deposit management organisation must determine the amount of the deposit (“deposit level”) in respect of deposit items.

(2)

In making a determination under paragraph (1), the deposit management organisation must—

(a)

use its best endeavours to reach agreement with any other scheme administrator or Scottish deposit administrator in the United Kingdom on setting the same deposit level for deposit schemes across the United Kingdom; and

(b)

have regard to any determinations on deposit levels made by other such administrators when determining the deposit management organisation’s own deposit levels.

(3)

The deposit management organisation must publish, in such manner as it considers appropriate, the deposit level in respect of deposit items.

(4)

The deposit management organisation must, on request from the Secretary of State or DAERA, inform them of the methodology, data and evidence relied upon to calculate and determine the deposit level.



## Revision of amount of the deposit

61.

—(1)

The deposit management organisation may revise the amount of the deposit level in respect of any deposit items.

(2)

The deposit management organisation must publish a notice, in such manner as it considers appropriate, which specifies—

(a)

the revised amount of the deposit level in respect of relevant deposit items, and

(b)

the date on which the revised amount of the deposit level takes effect.

(3)

The date specified for the purposes of paragraph (2)(b) may not be before the end of the period of three months beginning with the date on which the relevant notice is published.

[JDMO012]

## The amount of the deposit: supplementary provision

62.

—(1)

The amount of the deposit may be—

(a)

the same in respect of all deposit items, or

(b)

different in respect of different deposit items.

(2)

For the purposes of paragraph (1)(b), the deposit management organisation may determine the amount of the deposit items by reference to, for example—

(a)

the size of the containers;

(b)

the in-scope material from which the containers are wholly or mainly made;

(c)

whether the deposit items are supplied to scheme consumers as single items or in multipacks.

(3)

The deposit management organisation, when determining the amount of the deposit level for any deposit item, must have regard to—

(a)

the purposes of the Scheme,

(b)

the collection targets,

(c)

the likely impact of the amount of the deposit on the ability of scheme consumers to purchase deposit items,

(d)

the likely impact of the amount of the deposit on the use of containers by scheme producers (including the in-scope material used to make those containers, the size of the containers and the use of multipacks),

(e)

the likely impact on the purchase of deposit items by scheme consumers (including the in-scope material used to make those containers, the size of the containers purchased and purchase of multipacks or single items), and

(f)

the likely impact on scheme consumers, the purposes of the Scheme and the collection targets, if the amount of the deposit for the deposit item is different to any comparable amount payable for a comparable container under any other deposit scheme or any Scottish deposit and return scheme (if any);

(g)

the likely impact of a proposed deposit level on the operation of other deposit schemes in the United Kingdom.

(4)

Before making a determination under regulation 60 or 61, the deposit management organisation must—

(a)

consult—

(i)

such persons as appear to the deposit management organisation to represent those likely to be affected by the determination,

(ii)

the scheme administrator of any other deposit scheme and the Scottish deposit administrator of any Scottish deposit and return scheme, and

(iii)

such other persons (if any) as the deposit management organisation considers appropriate, and

(b) have regard to the views expressed in responses to the consultation.

(5)

For the purposes of this regulation, “comparable container”, in relation to a deposit item, means a container which can be returned under another deposit scheme or a Scottish deposit and return scheme and is—

(a)

made wholly or mainly from the same in-scope material as the container from the deposit item,

(b)

of the same size as the container from the deposit item, and

(c)

is supplied in a multipack, if the deposit item is supplied in a multipack.

[JDMO013]

Use of amounts received as deposits

63.

—(1)

The deposit management organisation—

(a)

may retain the amounts paid to it under regulation 22, and

(b)

must use those amounts to meet the cost of refunds under regulation 44(2).

(2)

If any amount remains after the costs mentioned in paragraph (1)(b) have been paid, the deposit management organisation must use such of that amount as is necessary to meet any of the NEA costs which have not otherwise been met.

(3) If any amount remains after the payments referred to in paragraph (2) have been made, the deposit management organisation may use that remaining amount for the purpose of meeting the costs of exercising any of the deposit management organisation's functions under or in connection with the Scheme.

Chapter 4

Fees for registration

[JDMO014]

Registration fees for scheme producers

64.

—(1)

The deposit management organisation may, for each scheme year, charge any scheme producer that is required to be registered with it under regulation 10 during all or part of that scheme year, a fee.

(2) The fee charged under paragraph (1) ("the registration fee") may be used for the purposes of meeting any or all of the following costs—

(a)

the NEA costs, and

(b)

the costs incurred by the deposit management organisation in exercising its functions under or in connection with the Scheme.

(3)

The amount of the registration fee payable by a scheme producer is the aggregate of the following amounts—

(a)

the producer amount for containers made wholly or mainly from PET plastic (if any),

(b)

the producer amount for containers made wholly or mainly from steel (if any), and  
(c)

the producer amount for containers made wholly or mainly from aluminium (if any).  
(4)

The producer amount for containers made wholly or mainly made from each type of in-scope material must be calculated as follows (and may be £0)—

$A \times B$

where—

“A” is the fee for the relevant scheme year for a container made wholly or mainly from the particular in-scope material (the “per container fee”), and

“B” is the total number of containers made wholly or mainly from that in-scope material which the deposit management organisation expects the relevant scheme producer to supply to scheme consumers in the relevant scheme year.

(5)

The per container fee for a container made wholly or mainly from a particular in-scope material—

(a)  
(a)

must be the same for all scheme producers, and  
(b)

may be £0.  
(6)

The deposit management organisation must, for the purposes of determining the registration fee, have regard to the likely value, or if known the actual value, of each type of in-scope material which the deposit management organisation expects to be recycled from all of the refund items which are collected by, or returned, to the deposit management organisation in the relevant year.

(7)

The per container fee for one in-scope material may not subsidise any of the relevant costs from any other in-scope material.

(8)

For the purposes of paragraph (7), “the relevant costs” for an in-scope material are the costs which the deposit management organisation expects to incur in the exercise of its functions under, or in connection with, the Scheme in relation to the collection, processing and recycling of refund items made wholly or mainly from that material.

(8)

Before determining, or re-determining, the registration fee, the deposit management organisation must consult (a)

scheme producers, and  
(b)

such other persons (if any) as the deposit management organisation considers appropriate, and have regard to the views expressed in responses to the consultation.  
(9)

The deposit management organisation must—

- (a) keep the registration fee under review; and
- (b) carry out a full review of the operation of the registration fee at least every 12 months; and
- (c) publish the registration fee in such manner as it considers appropriate to bring the registration fee to the attention of scheme producers.

(10)

The deposit management organisation may provide for the registration fee—

(a) to be payable—

- (i) at specified times or intervals; and
- (ii) by specified means or in a specified manner.

(b) to be reduced, waived, or refunded (whether in whole or in part) in specified circumstances;

(2) The deposit management organisation may provide different payment arrangements for different cases or different circumstances.

[JDMO015]

Use of registration fees

65.

—(1)

If the deposit management organisation charges registration fees only for the purposes of meeting any or all of the NEA costs, it must pay such amounts of the registration fees that it receives to the appropriate national authority for the purposes of meeting the relevant NEA costs.

(2)

If the deposit management organisation charges registration fees for the purposes of meeting any or all of the NEA costs and any or all of its own costs, the deposit management organisation—

(a)

must pay such amount of the registration fees that it receives as are necessary to meet the relevant NEA costs, and

(b)

if any amount remains, may use that amount to meet the costs of carrying out its functions under or in connection with the Scheme.

(3)

If the deposit management organisation charges registration fees only for the purposes of meeting any or all of its own costs, the deposit management organisation must use the registration fees that it receives for the purposes of meeting those costs.

Chapter 5

Collection etc. of returnable items

[JDMO018]

Review of operation of return points

66.

—(1)

The deposit management organisation must, at such intervals as it considers appropriate, carry out a review of the operation of all return points in the scheme area.  
(2)

In carrying out a review under paragraph (1), the deposit management organisation must in particular consider—

(a)

the number of existing return points;

(b)

the location of the existing return points, and in particular—

(i)

whether return points are being operated both in England and in Northern Ireland, and

(ii)

whether scheme consumers have reasonable access to at least one return point;

(c)

the numbers of returnable items that are returned through the existing return points;

(d)

the costs involved in the operation of the existing return points;

(e)

the likely impact on the numbers of returnable items returned through return points if the number of return points were to be increased or decreased or the location of return points changed without increasing or decreasing the number of those points;

(f)

the likely impact on the costs incurred in the operation of, or income derived from, the Scheme if the number of return points were to be increased or decreased or the location of return points changed without increasing or decreasing the number of return points;

(g)

litter levels of containers;

(h)

footfall in the area under review;

(i)

the need to provide sufficient access to return points for persons living in villages and rural areas.

(3)

Where the deposit management organisation considers that the number of return points could be decreased without either—

(a)

reducing the number of returnable items that are returned through the Scheme, or

(b)

reducing or removing reasonable access to return points in any part of the scheme area

the deposit management organisation may take any of the steps specified in paragraph (4).

(4)

The steps mentioned in paragraph (3) are—

(a)

the deposit management organisation may propose to any scheme retailer registered as a mandatory return point operator that they apply to the deposit management organisation for a return point exemption in respect of those premises specified by the deposit management organisation;

(b)

the deposit management organisation may propose to any person who is authorised to operate a voluntary return point at or on any premises that they request the cancellation of their authorisation to operate that return point;

(c)

the deposit management organisation may cease to operate any return point that it operates.

(5)

Where the deposit management organisation considers that an increase in the number of return points is needed to either—

(a)

increase the number of returnable items that are returned through the Scheme, or

(b)

improve access to return points for scheme consumers in any part of the scheme area, the deposit management organisation may take one or more of the steps specified in paragraph (6).

(6)

The steps mentioned in paragraph (5) are—

(a)

carry out a review of the current return point exemptions and decide whether to propose the revocation of any of them;

(b)

set up and operate one or more additional return points itself;

(c)

any other step the deposit management organisation considers appropriate.

(7)

For the purposes of any steps taken under paragraphs (3) to (6), the deposit management organisation must have regard to the likely impact on the costs of operating the Scheme;

(b)

may take different steps in relation to different parts of the scheme area.

[JDMO019]

Collection etc. of returnable items from scheme collectors and retailers and connected payment

69.

—(1)

The deposit management organisation must—

(a)

collect all of the returnable items accepted by the return point operators from those operators;

(b)

collect all of the refund items retained by retailer on-sale premises only, or mixed, retail premises;

(c)

collect, or accept the return of, all of the returnable items accepted by take-back service providers.

(2)

The deposit management organisation must pay each scheme retailer from whom it collects any refund items an amount equal to the total of the amount of refunds paid by the scheme retailer in respect of the collected refund items.

(3)

The deposit management organisation must pay each scheme collector from whom it collects, or accepts, returnable items—

(a)

the relevant return amount for each returnable item that it collects or accepts from the scheme collector, and

(b)

if the scheme collector is a return point operator, the handling payment.

(4)

The deposit management organisation may make any payment required under paragraph (2) or (3)(a)—

(a)

at such intervals, and

(b)

in such manner,

as are determined in accordance with its operational plan.

[JDMO020]

The handling payment

70.

—(1)

The deposit management organisation must provide for a payment (a “handling payment”) to be paid by the deposit management organisation to each return point operator (other than the deposit management organisation itself).

(2)

The deposit management organisation must determine the amount of the handling payment having regard to all relevant factors including—

(a)



the costs of purchasing or leasing any machinery, equipment or materials required for the collection or storage (or both) of returnable items;

(b)

the costs of staff time dedicated to the collection or storage (or both) of returnable items;

(c)

the rental value of the floor space or any other part of any premises used solely for the collection or storage (or both) of returnable items.

(3) The deposit management organisation may determine that the amount of the handling payment be different in different cases;

(4)

Before determining the amount of the handling payment under paragraph (2), the deposit management organisation must consult

(a) the Environment Agency,

(

(b)

DAERA,

(c)

return point operators or persons representing return point operators, and

d)

such other persons (if any) as the deposit management organisation considers appropriate, and

must have regard to the views expressed in responses to the consultation.

(5) A determination of the amount of the handling payment under paragraph (2) shall have effect for a period no longer than three years from the date of that determination.

(6) The deposit management organisation—

(a) may make a further determination under paragraph (2) of the amount of the handling payment at any time, and

(b) must make a further determination under paragraph (2) to take effect at the end of the period of three years from the date of the previous determination.

[JDMO021]

## Chapter 6

### Recycling of in-scope materials

[JDMO022]

### Recycling of in-scope material from returned refund items

72.

—(1)

The deposit management organisation must make arrangements for the recycling of the in-scope material from which returned items are made.

(2)

The arrangements made for the purposes of paragraph (1) must include provision conferring a right of first refusal, for each specified period, on registered scheme producers.

(3)

A right of first refusal is a right to purchase the appropriate quantity (if any) of each type of in-scope material that has been recovered from returned items (a “recovered material”) during the relevant specified period, for such consideration as represents the market value of that in-scope material.

(4)

For the purposes of paragraph (3)-

- (a) “the appropriate quantity” of a recovered material is an amount which does not exceed the relevant proportion of that recovered material;
- (b) “market value” means the price at which the in-scope material would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts”

(5)

The relevant proportion of a recovered material is to be calculated as follows—

SPA/TPA

where—

“SPA” is the number of deposit items with containers made wholly or mainly from the recovered material and supplied by the registered scheme producer during the specified period;

“TPA” is the total number of deposit items with containers made wholly or mainly from the recovered material and supplied by all registered scheme producers during the specified period.

(6)

In this regulation—

“returned items” means the refund items collected or accepted by the deposit management organisation under or in accordance with regulation 44 or 69;

“specified” means specified in arrangements made under paragraph (1).

[JDMO034]

Recycling of in-scope material from other returned items

73.

—(1)

The deposit management organisation must make arrangements with the relevant administrator for the recycling of, or facilitating the recycling of, the in-scope material from which relevant returned items are made.

(2)

The arrangements made for the purposes of paragraph (1) may be solely to return the relevant returned items to the relevant administrator.

(3)

In this regulation—

“relevant administrator” means—

(a)

an overseas scheme administrator,

(b)

a Scottish deposit administrator, or

(c)

a Welsh scheme administrator;

“relevant returned item”—

(a)

in relation to an overseas scheme administrator, means an overseas scheme item that—

(i)

is subject to the specified overseas scheme in relation to which the administrator exercises functions, and

(ii)

has been collected or accepted by the deposit management organisation under or in accordance with regulation 44 or 69;

(b)

in relation to a Scottish deposit administrator, means a Scottish scheme item that—

(i)

is subject to the deposit and return scheme in relation to which the Scottish deposit administrator exercises functions, and

(ii)

has been collected or accepted by the deposit management organisation under or in accordance with regulation 44 or 69.

(c)

in relation to a Welsh scheme administrator, means a Welsh scheme item that—

(i)

is subject to the Welsh deposit scheme in relation to which the Welsh scheme administrator exercises functions, and

(ii)

has been collected or accepted by the deposit management organisation under or in accordance with regulation 44 or 69.

[JDMO023]

Amounts received in connection with arrangements made under regulation 72 or 73

74.

—(1)

The deposit management organisation may retain any amount that it receives in connection with the arrangements made under regulation 72 or 73.

(2)

The deposit management organisation—

(a)

must use any amount retained under paragraph (1) to meet any NEA costs that have not otherwise been met;

(b)

may, if any amount remains, use that amount to meet the costs of carrying out its functions under or in connection with the Scheme.

Chapter 7

National enforcement authorities

[JDMO024]

Amounts to be paid to the national enforcement authorities

75.

The deposit management organisation must make any payment required to be made to a national enforcement authority under this Part by such means or in such manner and at such intervals as are agreed with the national enforcement authority.

[JDMO025]

Information about returns data

76.

—(1)

The deposit management organisation must—

(a)

supply returns data to its scheme producers;

(b)

provide each scheme producer, in such manner and at such intervals as the deposit management organisation considers appropriate, with information on how many of each of the scheme producer's deposit items were returned to the deposit management organisation and had deposits refunded, within a specified time period; and

(c)

make available the returns data to the national enforcement authorities.

(2)

In this regulation "returns data" includes—

(a)

information that enables producers to determine the number of containers returned or not returned under the Scheme, including the rate of returns by product;

(b)

information about deposits that are unredeemed;

(c)

information relating to the locations of returns; and  
(d)

information about returns received by the deposit management organisation from other scheme administrators.

[JDMO34]

## Co-operation

77.  
—(1)

The deposit management organisation must enter into and maintain arrangements with each national enforcement authority for securing co-operation and the exchange of information for the carrying out of any of the national enforcement authority's functions other than any relevant enforcement function.

(2)

The deposit management organisation and the national enforcement authority must—  
(a)

review the arrangements from time to time, and

(b)

revise them when they consider it appropriate to do so.

(3)

In this regulation “relevant enforcement function” means a function of a national enforcement authority under Part 9 in respect of any act or omission by the deposit management organisation.

## Chapter 8

### Working with other scheme administrators

[JDMO026]

#### Co-operation and joint working

78.  
—(1)

The deposit management organisation may—  
(a)

where it considers it appropriate to do so for the efficient and effective performance of the Scheme or any of its functions under the Scheme, co-operate or work jointly with a specified administrator;

(b)

provide advice or assistance to a specified administrator for the purposes of or in connection with the functions of the specified administrator under a deposit scheme, a Scottish deposit and return scheme or an overseas scheme

(2)

Such arrangements may, for example, include—

(a)

arrangements intended to simplify registration procedures for producers and importers who supply drinks in the scheme area and in other parts of the United Kingdom;

(b)

arrangements intended to simplify the process of returning returnable items for the final user or consumer;

(c)

arrangements for the recycling, or to facilitate the recycling of, any in-scope material recovered from--

(i)

refund items returned through a Welsh deposit scheme or a Scottish deposit and return scheme;

(iii)

overseas refund items.

(3)

In this regulation “specified administrator” means—

(a)

the scheme administrator of a Welsh deposit scheme,

(b)

a Scottish deposit administrator, or

(c)

a person having functions equivalent to those of a scheme administrator under a scheme which is—

(i)

established outside of the United Kingdom, and

(ii)

equivalent to a deposit scheme.

[JDMO027]

Payments to other scheme administrators

79.

—(1)

The deposit management organisation may make payments to a specified administrator in connection with the operation of the Scheme or a specified scheme.

(2)

Such payments may, for example, include payments equal to the total of any refunds paid by the specified administrator in respect of refund items returned through the specified scheme.

(3)

In this regulation—

“specified administrator” means—

(a)

the scheme administrator of a Welsh deposit scheme, or

(b)

a Scottish deposit administrator;

“specified scheme” means—

- (a)  
a Welsh deposit scheme, or
- (b)  
a Scottish deposit and return scheme.

## Chapter 9

### Review of decisions

[JDMO028]

#### Internal review of decisions made by the deposit management organisation

80.

—(1)

This regulation applies if—

(a)

the deposit management organisation makes a relevant decision, and

(b)

within a period of 28-days beginning with the date on which the affected person receives notice of the decision, or such longer period as the deposit management organisation may agree, the affected person applies to the deposit management organisation for reconsideration of the decision.

(2)

The decisions mentioned in column 1 of the table in this regulation are “relevant decisions”, and a person is an “affected person” in relation to such a decision if they are mentioned in the corresponding entry in column 2 of the table.

(3)

The deposit management organisation must carry out a review of the relevant decision in accordance with paragraph.

(4)

On conclusion of the review of a relevant decision, the deposit management organisation must—

(a)

confirm the decision (whether on the same or different grounds),

(b)

make such changes to the decision as the deposit management organisation considers appropriate, or

(c)

revoke the decision.

(5)

The deposit management organisation must notify the affected person of the decision on the review as soon as reasonably practicable after the decision is taken.

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Decision
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Decision to cancel a person's registration as a scheme producer
Decision as to the amount of a registration fee payable by a scheme producer
Decision to refuse a person's application to register a low volume line
Decision to cancel a product's registration as a low volume line
Decision to refuse an application for a return point exemption
Decision to refuse to renew a return point exemption
Decision to cancel a scheme retailer's registration as a mandatory return point operator
Decision to refuse a person's application for appointment as a collection administrator
Decision to refuse a person's application for authorisation to operate a return point
Decision to revoke a person's appointment as a scheme administrator
Decision to revoke a person's authorisation to operate a return point
Decision to refuse a person's application for registration as take-back service provider
Decision to revoke a person's registration as take-back service provider
Decision as to the amount of the handling payment payable to a return point operator

[JDMO029]

Internal review: procedure

81.

—(1)

The deposit management organisation may specify the procedure for the internal review (“review”) of a decision of the deposit management organisation and, in particular, may

—

(a)

set out the circumstances in which the deposit management organisation may accept an application after the end of the period specified in regulation 80(1)(b);

(b)

specify the form and manner in which an application for review is to be made;

(c)

specify the information which an application for review must contain or any documentation which must accompany such an application;

(d)

enable the deposit management organisation to request such further information or documentation as is reasonably required for the deposit management organisation to complete a review of the relevant decision, and specify—

(i)

the form and manner in which such further information or documentation is to be provided;

(ii)

the period within which such further information or documentation is to be provided;



(e)

include provision to allow the deposit management organisation to disregard any information or documentation not provided in the specified form or manner, or within the specified period.

(3)

The deposit management organisation may not require the payment of any fee in connection with an application for a review.

[JDMO030]

Status of certain decisions pending outcome of internal review

82.

—(1)

This regulation applies where an affected person applies for an internal review (“review”) of a relevant decision.

(2)

The effect of the relevant decision is suspended during the period—

(a)

beginning with the day on which the application for the review is made, and

(b)

ending with the end of the day on which the person is notified of the deposit management organisation’s decision on that application in accordance with regulation

80(5).

(3)

In this regulation “affected person” and “relevant decision” have the meanings given in regulation 80.

Chapter 10

Revocation of a person’s appointment as the deposit management organisation

[JDMO032]

Revocation of a person’s appointment as the deposit management organisation

83.

Parts 3 and 4 of Schedule 5 contain provisions about the revocation of a person’s appointment as the deposit management organisation and related matters.

[JDMO033]

Interim scheme administrator

84.

—(1)

This regulation applies where—

(a)

the Secretary of State revokes a person's appointment as the deposit management organisation (the "outgoing DMO"), and

(b)

the revocation takes effect before another person is appointed as the deposit management organisation.

(2)

The Secretary of State may—

(a)

carry out the essential DMO functions during the interim period, or

(b)

with the consent of DAERA, appoint another person to carry out those functions during the interim period.

(3)

The Scheme applies during the interim period with the following modifications.

(4)

Any reference to the deposit management organisation in—

(a)

any of the provisions mentioned in the definition of "essential DMO functions", and

(b)

regulations 31, 32, 33, 77 and 90(4)(d),

is to be read as a reference to the interim scheme administrator.

(5)

Any registration fee determined under regulation 64 which are in effect immediately before the revocation date are to have effect on and after that date as if determined by the interim scheme administrator.

(6)

Regulation 53 is to be treated as omitted for the purposes of the exercise of the DMO functions under this regulation.

(7)

For the purposes of regulations 80 to 82—

(a)

any decision made by the outgoing DMO has effect as a decision of the interim Scheme administrator;

(b)

any internal review procedures which are in effect immediately before the revocation date are to have effect on and after that date as if specified by the interim scheme administrator.

(8)

For the purposes of this regulation, the "essential DMO functions" are the functions of the deposit management organisation under—

(a)

regulation 10 and Schedule 1 (registration of scheme producers);

(b)

regulation 18 (registration of low volume products);

(c)

regulation 19 (cancellation of registration of low volume products);

(d)

regulation 22 (receipt of deposits);

(e)

regulation 35(4) and Schedule 2 (registration of mandatory return point operators);

(f)

regulation 35(5) and Schedule 3 (return point exemptions);

(g)

regulations 39 and 42 and Schedule 4 (voluntary return points and take-back services);

(h)

regulation 40, in so far as it relates to any return point operated by the deposit

management organisation immediately before the revocation date;

(i)

regulation 44, in so far as it relates to any arrangements made by the deposit

management organisation and remaining in effect immediately before the revocation

date;

(j)

regulation 63 (use of amounts received as deposits);

(k)

regulations 64 and 65, if there is no registration fee requirement in effect immediately

before the revocation date or alterations are required to any registration fee requirement

following a review under regulation 64(9);

(l)

regulation 69 (collection etc. of returnable items);

(m)

regulation 72 (recycling of in-scope material);

(n) regulation 74 (payment of NEA costs)

(o)

regulation 78 (cooperation with other administrators);

(p)

regulation 79 (payments to other administrators);

(q)

regulation 80 (internal review).

(9)

In this regulation—

“interim period” means the period—

(a)

beginning with the revocation date, and

(b)

ending at the end of the day preceding the day on which the next appointment of a person as the deposit management organisation takes effect;

“interim scheme administrator” means the Secretary of State or the person appointed under paragraph (2)(b);

“revocation date” means the date on which the revocation of the outgoing DMO’s appointment takes effect.

Part 8

## Targets

[JCLT001]

Collection targets: the deposit management organisation

85.

—(1)

The deposit management organisation must take reasonable steps to ensure that the Scheme, together with any reciprocal recycling arrangements, operates so as to ensure that at least the minimum total quantity of refund items is returned to the deposit management organisation.

(2)

The minimum total quantity of refund items is—

(a)

in the calendar year beginning on 1st January 2028—

(i)

70% of all refund items from deposit items supplied by registered scheme producers with a view to final consumption in England;

(ii)

70% of all refund items from deposit items supplied by registered scheme producers with a view to final consumption in Northern Ireland;

(b)

in the calendar year beginning on 1st January 2029—

(i)

80% of all refund items from deposit items supplied by registered scheme producers with a view to final consumption in England;

(ii)

80% of all refund items from deposit items supplied by registered scheme producers with a view to final consumption in Northern Ireland;

(c)

in each calendar year beginning on or after 1st January 2030—

(i)

90% of all refund items from deposit items supplied by registered scheme producers with a view to final consumption in England;

(ii)

90% of all refund items from deposit items supplied by registered scheme producers with a view to final consumption in Northern Ireland.

(3)

For the purposes of paragraph (2)(c)(i) and (ii), the quantity of containers returned must include—

(a)

at least 85% of the refund items made wholly or mainly from PET plastic, and

(b)

at least 85% of the refund items made wholly or mainly from any other in-scope material.

(4)

For the purposes of this regulation, a refund item which is—

(a)

subject to reciprocal recycling arrangements, and

(b)

returned to a person in Wales or in Scotland in accordance with those arrangements,

is to be treated as returned to the deposit management organisation.

(5)

In this regulation “reciprocal recycling arrangements” means—

(a)

arrangements made by the deposit management organisation with the scheme administrator of a Welsh deposit scheme for the recycling of refund items which are returned to scheme collectors in Wales, or

(b)

arrangements made by the deposit management organisation with a Scottish deposit administrator for the recycling of refund items which are returned to any place in Scotland where returnable packaging, or person to whom such packaging, may be returned in accordance with the Scottish deposit and return scheme in relation to which the Scottish deposit administrator is exercising functions.

[JCLT002]

Recycling targets: scheme producers

86.

—(1)

This regulation applies if there is no deposit scheme administrator and no interim scheme administrator.

(2)

A scheme producer must recycle, or make arrangements to facilitate the recycling of, the in-scope material from at least the minimum total quantity of SP containers.

(3)

The minimum total quantity of SP containers is—

(a)

70% of the SP containers supplied by the scheme producer in the calendar year beginning on 1st January 2028;

(b)

80% of the SP containers supplied by the scheme producer in the calendar year beginning on 1st January 2029;

(c)

90% of the SP containers supplied by the scheme producer in the calendar year beginning on 1st January 2030.

(4)

For the purposes of paragraph (3)(c), the total quantity of SP containers must include—

(a)

at least 85% of the SP containers made wholly or mainly from PET plastic, and

(b)

at least 85% of the SP containers made from any other in-scope material.

Part 9

Enforcement

Chapter 1

Interpretation

[JENF001]

Interpretation of Part 9

87.

—(1)

In this Part—

“appropriate authority” means—

(a)

the local weights and measures authority, in relation to the ALA provisions as they apply in the authority’s area;

(b)

the Environment Agency;

(c)

DAERA;

“the CS Table” means the Table in Part 2 of Schedule 6;

“enforcement action” means the exercise of enforcement powers and functions by the national enforcement authorities under this Part;

“local weights and measures authority” has the meaning given by section 69 of the Weights and Measures Act 1985 (local weights and measures authorities).<sup>3</sup>

(2)

For the purposes of this Part—

(a)

“the ALA provisions” are the following provisions of these Regulations—

(i)

regulation 23 (requirement to supply items from registered scheme producers) ;

(ii)

regulation 24(1)(a) (requirement for deposit items supplied to carry scheme logo);

(iii)

regulation 24(1)(b) (requirement for deposit items supplied to carry scheme return code);

(iv)

regulation 24(2) (requirement for scheme multipacks supplied to carry the packaging logo);

(v)

regulation 25(1) (prohibition on low volume product carrying scheme logo or return code);

(vi)

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<sup>3</sup> 1985 c. 72.

regulation 26(1) and (6) (requirement to provide or display scheme information);  
(vii)  
regulation 27(1) (requirement to provide or display low volume product information);  
(viii)  
regulation 28(1) (scheme retailer: requirement to charge deposit);  
(ix)  
regulation 29(1) (duty to display information on opted-out premises);  
(  
(x)  
regulation 35(1) (requirement to operate a return point);  
(xi)  
regulation 37(1) (requirement to display information where no return point is operated);  
(xii)  
regulation 41 (requirement to display information at a return point);  
(xiii)  
regulation 42 (requirement to register to operate a take-back service);  
(xiv)  
regulation 43(1) and (5) (requirement to provide or display information about take-back  
service);  
(xv)  
regulation 48(1) to (3) (requirements as to payment of total return amount);  
(xvi)  
regulation 49 (requirement to retain returnable items);  
(xvii)  
regulation 50 (requirement for take-back service providers to retain returnable items);  
(xviii)  
regulation 90(1) (provision of information).  
(b)

“the ANA provisions” are the provisions of these Regulations other than the ALA  
provisions and regulation 90.

## Chapter 2

### Enforcement powers

[JENF002]

### Enforcement powers: England

88.  
—(1)

A person who appears suitable to an appropriate authority in England may be authorised  
in writing by the appropriate authority for the purposes of its functions under these  
Regulations to exercise the powers of entry and inspection mentioned in paragraph (2).  
(2)

The powers of entry and inspection correspond to those set out in section 108(4)(a) to (f) and (h) to (ka) of the EA 1995 (powers of enforcing authorities and persons authorised by them).

(3)

For the purposes of paragraph (1), section 108(4) of the EA 1995 is to be read as if—

(a)

any reference to an authorised person (however expressed) were a reference to a person authorised under paragraph (1) of this regulation;

(b)

in section 108(4)(a), the words “(or, in an emergency, at any time and if need be, by force)” were omitted;

(c)

in section 108(4)(f)—

(i)

for “articles or substances found in or on any premises” there were substituted “containers (within the meaning of regulation 7 of the Deposit Scheme for Drinks Containers (England and Northern Ireland) Regulations 2024) found in or on any premises”;

(ii)

the words “, and of the air, water or land, in, on ,or in the vicinity of, the premises” were omitted;

(d)

in section 108(4)(h)—

(i)

in the words before sub-paragraph (i), for “article or substance as is mentioned in paragraph (g) above” there were substituted “container as is mentioned in paragraph (f) above”;

(ii)

in sub-paragraph (iii), for “an offence” to the end there were substituted “an offence under regulation 91 or 92, or the imposition of a civil sanction under regulation 95, of the Deposit Scheme for Drinks Containers (England and Northern Ireland) Regulations 2024 as those Regulations apply in relation to England;

(e)

in section 108(4)(k)—

(i)

after “computerised form” there were inserted “, including any information recorded electronically”;

(ii)

in sub-paragraph (i) for the words from “the pollution control enactments” to “he acts” there were substituted “the Deposit Scheme for Drinks Containers (England and Northern Ireland) Regulations 2024 as those Regulations apply in relation to England”;

(f)

in section 108(4)(ka), the words “(other than an article or substance within paragraph (g)” were omitted.

(4)



Section 108(6) to (7F) of the EA 1995 applies to the applied enforcement powers as it applies the powers in section 108(4) as modified by these Regulations and is to be read as if—

(a)

any reference to an authorised person (however expressed) were a reference to a person authorised under paragraph (1);

(b)

in section 108(6), the words “, or to take any heavy equipment on to any premises which are to be entered,” were omitted;

(c)

in section 108(6) and (7), the words “Except in an emergency” were omitted;”;

(d)

in section 108(7B), for “the pollution control enactments or flood risk activity enactments” there were substituted “the Deposit Scheme for Drinks Containers (England and Northern Ireland) Regulations 2024 as those Regulations apply in relation to England.”.

(5)

Section 108(12), (12A) and (13) of the EA 1995 applies to the applied enforcement powers as it applies in relation to the powers conferred by section 108(4) of the EA 1995 as modified by these Regulations

(6)

Paragraphs 2 to 6 of the Schedule 18 to the EA 1995 apply to the applied enforcement powers as they apply to the powers conferred by section 108(4) as modified by these Regulations but as if—

(a)

any reference to a designated person (however expressed) were a reference to a person authorised under paragraph (1);

(b)

any reference to a relevant power were a reference to an applied enforcement power, including any power exercisable by virtue of a warrant under the provisions of the Schedule as applied by this paragraph;

(c)

in paragraph 6(1), the reference to a power conferred by section 108(4)(a) or (b) or (5) were a reference to an applied enforcement power;

(d) any reference to “sheriff” were omitted.

(7)

In this regulation—

(a)

“the EA 1995” means the Environment Act 1995 as it applies in England;

(b)

“the applied enforcement powers” means the powers conferred by paragraphs (1) and (2).

[JENF003]

## Enforcement powers: Northern Ireland

89.

—(1)

A person who appears suitable to DAERA may be authorised in writing by DAERA for the purposes of its functions under these Regulations to exercise the powers of entry and inspection mentioned in paragraph (2).

(2)

The powers of entry and inspection are those set out in Article 72(2)(a) to (c), (e), (f) and (h) to (j) of the WCLO 1997.

(3)

For this purpose, Article 72 of the WCLO 1997 is to be read as if—

(a)

any reference to an authorised person (however expressed) were a reference to a person authorised under paragraph (1);

(b)

in Article 72(2)(a), the words “(or, in an emergency, at any time and, if need be, by force)” were omitted;

(c)

in Article 72(2)(f)—

(i)

for “articles or substances found in or on any premises” there were substituted “containers (within the meaning of regulation 7 of the Deposit Scheme for Drinks Containers (England and Northern Ireland) Regulations 2024) found in or on any premises”;

(ii)

the words “, and of the air, water or land in, on ,or in the vicinity of, the premises” were omitted;

(d)

in Article 72(2)(h)—

(i)

for “article or substance as is mentioned in paragraph (g) above” there were substituted “container as is mentioned in paragraph (f) above”;

(ii)

in sub-paragraph (iii), for “an offence” to the end there were substituted “an offence under regulation 91 or 92, or the imposition of a civil sanction under regulation 95, of the Deposit Scheme for Drinks Containers (England and Northern Ireland) Regulations 2024 as those Regulations apply in relation to Northern Ireland.”;

(e)

in Article 72(2)(j)—

(i)

after “computerised form” there were inserted “, including any information recorded electronically;

(ii)

in sub-paragraph (i) for the words from “the pollution control enactments” to “the acts” there were substituted “the Deposit Scheme for Drinks Containers (England and Northern Ireland) Regulations 2024 as those Regulations apply in relation to Northern Ireland”;

(f)  
in Article 72(2)(k), for “this Article” there were substituted “this Article as applied by the Deposit Scheme for Drinks Containers (England and Northern Ireland) Regulations 2024 as those Regulations apply in relation to Northern Ireland.”;

(g)  
after Article 72(2) there were inserted—

“  
(2A)

An authorised person may not exercise the powers in sub-paragraphs (2)(f), (h) or (j) without—

(a)

the consent of a person entitled to access to material on or accessible from the premises,

or

(b)

the authority of a warrant under Schedule 4 to this Order.

”

(4)

Article 72(4) and (5) of the WCLO 1997 applies to the applied enforcement powers as it applies to the powers in Article 72(2) of the WCLO 1997, but is if—

(a)

any reference to an authorised person (however expressed) were to a person authorised under paragraph (1);

(b)

in Article 72(4), the words “, or to take heavy equipment on to any premises which are to be entered,” were omitted;

(c)

in Article 72(4) and (5), the words “Except in an emergency” were omitted;

(d)

in section 108(7B), for “the pollution control enactments or the flood risk activity enactments” there were substituted “the Deposit Scheme for Drinks Containers (England and Northern Ireland) Regulations 2024.”.

(5)

Article 72(9) and (10) of the WCLO 1997 apply to the applied enforcement powers as it applies to the powers conferred by Article 72(2) of the WCLO 1997.

(6)

Paragraphs 2 to 5 of Schedule 4 to the WCLO 1997 apply to the applied enforcement powers as they apply to the powers conferred by Article 72(2) of the WCLO 1997, but as if—

(a)

any reference to an authorised person (however expressed) were a reference to a person authorised under paragraph (1);

(b)

any reference to a relevant power were a reference to an applied enforcement power, including any power exercisable by virtue of a warrant under the provisions of the Schedule as applied by this paragraph;

(c)

in paragraph 5, the reference to a power conferred by Article 72(2)(a) or (b) or (3) were a reference to the applied enforcement powers and the reference to the enforcing authority under whose authorisation the authorised person acts were a reference to

DAERA

(7)

In this regulation—

(a)

“the WCLO 1997” means the Waste and Contaminated Land (Northern Ireland) Order 1997S.I. 1997/2778 (N.I. 19). Article 72 was amended by sections 5 and 11 of the Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011 (c. 5) and by S.I.

2007/611 (N.I. 3) and 2019/584.;

(b)

“the applied enforcement powers” means the powers conferred by paragraphs (1) and

(2).

[JENF004]

Information

90.

—(1)

An appropriate authority may, by notice, require a duty-holder to provide information which the enforcing authority requires for the purposes of carrying out its functions under, or in connection with, the Scheme.

(2)

A notice under paragraph (1)—

(a)

must be in writing;

(b)

may be given to—

(i)

a specified duty-holder;

(ii)

duty-holders of a specified description;

(iii)

all duty-holders;

(c)

may require the information to be provided in a specified form or manner;

(d)

may require the information to be provided—

(i)

by a specified date or at a specified time, and

(ii)

in respect of a specified period.

(3)

A duty-holder who is given a notice under paragraph (1) must comply with it.

(4)

In this regulation—

“duty-holder” means—

(a)

a scheme producer,

(b)

a scheme supplier,

(c)

a scheme collector, or

(d)

the deposit management organisation;

“specified” means specified in a notice under paragraph (1).

Chapter 3

Offences

[JENF005]

Obstructing an authorised person

91.

—(1)

A person who intentionally obstructs, or fails to assist, an authorised person, in the carrying out of their enforcement functions is guilty of an offence.

(2)

An offence under paragraph (1) is punishable—

(a)

on conviction on indictment, with a fine;

(b)

on summary conviction—

(i)

in England, with a fine;

(ii)

in Northern Ireland, with a fine not exceeding the statutory maximum.

(3)

In this regulation—

“authorised person” means a person authorised under regulation 88 or 89;

“enforcement functions”, in relation to an authorised person, means the powers which that person is authorised to exercise under regulation 88 or 89.

[JENF006]

Failure to comply with civil sanction

92.

—(1)

A person who fails to comply with a civil sanction imposed under regulation 95 is guilty of an offence.

(2)

An offence under paragraph (1) is punishable—

(a)

on conviction on indictment, with a fine;

(b)

on summary conviction—

(i)

in England, with a fine;

(ii)

in Northern Ireland, with a fine not exceeding the statutory maximum.

[JENF007]

Liability of directors etc.

93.

—(1)

If—

(a)

a relevant offence is committed by a body corporate, a Scottish partnership or other unincorporated association, and

(b)

is proved to have been committed with the consent or connivance, or to be attributable only to neglect on the part of—

(i)

any relevant individual, or

(ii)

an individual purporting to act in the capacity of a relevant individual, the individual, as well as the body corporate, Scottish partnership or other unincorporated association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2)

Where a person (“A”) commits a relevant offence due to the act or default of some other person (“B”), B is also guilty of the offence and liable to be proceeded against and punished accordingly, whether or not proceedings for the offence are taken against A.

(3)

In this regulation—

“relevant individual—”

(a)

in relation to a body corporate, means—

(i)

a director, member of the committee of management, chief executive, manager, secretary of other similar officer of the body, or

(ii)

where the affairs of the body corporate are managed by its members, a member;  
(b)

in relation to a limited liability partnership, means a member;  
(c)

in relation to a relevant partnership, means a partner;  
(d)

in relation to an unincorporated association (other than a relevant partnership), means a person who is concerned in the management and control of the association;

“relevant offence” means an offence under regulation 91 or 92;

“relevant partnership” means a partnership, other than a limited liability partnership, and includes a Scottish partnership.

#### Chapter 4

#### Civil sanctions

[JENF0A8]

#### Interpretation of Chapter 4

94.

In this Chapter “enforcement authority” means—

(a)

the local weights and measures authority in relation to—  
(i)

an offence under regulation 91, where the person obstructed or not assisted was authorised by an authority under regulation 87;

(ii)

an offence under regulation 92, where the civil sanction was imposed by the local weights and measures authority;

(iii)

a civil sanction specified in the CS Table for—  
(aa)

any contravention of an ALA provision in the area of the local weights and measures authority or

(bb)

any contravention of regulation 89(3) in relation to a notice given by the authority, or the provision of false or misleading information in response to such a notice;

(b)

the Environment Agency in relation to—  
(i)

an offence under regulation 91, where the person obstructed or not assisted was authorised by the Agency under regulation 87;

(ii)

an offence under regulation 92, where the civil sanction was imposed by the Agency;

(iii)

a civil sanction specified in the CS Table for—

(aa)

any contravention of an ANA provision in England,

(bb)

any contravention of regulation 89(3) in relation to a notice given by the Agency, or the provision of false or misleading information in response to such a notice, or

(cc)

the provision of false or misleading information in response to a notice given by the deposit management organisation or under any provision of Schedule 2, 3 or 4;

(c)

DAERA in relation to—

(i)

an offence under regulation 91, where the person obstructed or not assisted was authorised by DAERA under regulation 88;

(ii)

an offence under regulation 92, where the civil sanction was imposed by DAERA;

(iii)

a civil sanction specified in the CS Table for—

(aa)

any contravention of an ALA provision in Northern Ireland,

(bb)

any contravention of an ANA provision in Northern Ireland.

(cc)

any contravention of regulation 90(3) in relation to a notice given by DAERA or the provision of false or misleading information in response to such a notice, or

(dd)

the provision of false or misleading information in response to a notice given by the deposit management organisation or under any provision of Schedule 2, 3 or 4

[JENF008]

Civil sanctions: introductory

95.

—(1) Where an enforcement authority is satisfied on the balance of probabilities that there has been an act, or a contravention of any requirement, specified in the first column of the CS Table and the corresponding entry for that act or requirement states “yes”, the enforcement authority may, in relation to that act or contravention—

(a)

impose a fixed monetary penalty in accordance with Part 3 of Schedule 6;

(b)

impose a variable monetary penalty in accordance with Part 4 of Schedule 6;

(c)

impose a compliance notice in accordance with Part 5 of Schedule 6;

(d)

accept an enforcement undertaking in accordance with Part 6 of Schedule 6

(2) An enforcement authority may recover a FMO or VMP as a civil debt or on the order of a court, as if payable under a court order.

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[JENF009]

#### Enforcement costs recovery notices

96.

—(1)

An enforcement authority may serve a notice (an “enforcement cost recovery notice”) on a person on whom a variable monetary penalty notice or compliance notice has been served requiring that person to pay the costs incurred by the enforcement authority in relation to the imposition of that notice up to the time of its imposition.

(2)

The costs mentioned in paragraph (1) include in particular—

(a)

investigation costs;

(b)

administration costs;

(c)

the costs of obtaining expert advice (including legal advice).

(3)

An enforcement cost recovery notice must specify—

(a)

the amount required to be paid,

(b)

how payment must be made,

(c)

the period within which payment must be made, which must be not less than 28 days

beginning with the date on which the notice is served,

(d)

the grounds for serving the notice,

(e)

the right of appeal, and

(f)

the consequences of failure to comply with the notice in the specified period.

(4)

A person on whom an enforcement costs recovery notice is served may require the enforcing authority to provide a detailed breakdown of the amount.

(5)

A person required to pay costs is not liable to pay the proportion of those costs which are shown by the person to have been unnecessarily incurred.

(6)

A person required to pay costs may appeal against—

(a)

the decision of the enforcement authority to impose the requirement to pay costs;

(b)

the decision of the enforcement authority as to the amount of those costs.

[JENF010]

Penalties and costs received under this Part

97.  
—(1)

The Environment Agency must pay any penalty and costs it receives under this Part into the Consolidated Fund.

(2)

DAERA must pay any penalty it receives under this Part into the Consolidated Fund of Northern Ireland.

(3)

A local weights and measures authority may retain any penalty that it receives under this Part.

[JENF011]

Withdrawing or amending a notice

98.

An enforcement authority may at any time, in writing—

(a)

withdraw a fixed penalty notice;

(b)

withdraw a variable monetary penalty notice or an enforcement costs recovery notice;

(c)

reduce the amount specified in a variable monetary penalty notice or an enforcement costs recovery notice;

(d)

withdraw a compliance notice;

(e)

amend the steps specified in a compliance notice so as to reduce the amount of work necessary to comply with the notice;

(f) vary a notice so as to extend the time in which to pay any penalty.

Chapter 5

Public register

Publication of enforcement action in public register

99.  
—(1)

Each national enforcement authority must maintain a register (a “public register”) containing information relating to any enforcement action taken.

(2)

The public register must contain details of—

(a)

any conviction for an offence under regulation 91, 92 or 93;

(b)

any civil sanction imposed under regulation 95 provided that—

(i)

the time for lodging any appeal in respect of the civil sanction has expired; or

(ii)

any appeal in relation to the civil sanction has been finally disposed of;

(c)

any enforcement undertaking accepted in accordance with Part 6 of Schedule 6;

(d)

any enforcement cost recovery notice served under regulation 96.

(3) Information relating to civil sanctions must be removed from the public register within a period no greater than 4 years after it was entered on the register.

(4)

Nothing in this regulation requires a public register to contain information relating to criminal proceedings, or anything which is the subject matter of criminal proceedings, before those proceedings are finally disposed of.

(5)

In paragraph (4), “criminal proceedings” includes prospective criminal proceedings.

(6)

Each national enforcement authority must enter information on the public register, subject to paragraph (4), as soon as reasonably practicable after it comes within that authority’s possession.

(7)

Each national enforcement authority must—

(a)

make the public register available for public inspection at all reasonable times, free of charge, and

(b)

permit members of the public to obtain copies of entries on its public register on payment of a reasonable charge.

(7)

A public register may be kept in any form but shall be indexed or arranged so that members of the public can readily trace information contained in it.

Spent convictions of individuals

100.

Each national enforcement authority must remove details of any conviction from the public register once the rehabilitation period for a sentence has ended in accordance with—

(a) section 5 of the Rehabilitation of Offenders Act 1974<sup>4</sup>. (rehabilitation periods for particular offences) as it applies in England;

(b) Article 3 of the Rehabilitation of Offenders (Northern Ireland) Order 1978<sup>5</sup>

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<sup>4</sup> 1974 c.53

<sup>5</sup> 1978 No. 1908 (N.I. 27).

## Part 10

### Appeals

#### Interpretation of Part 10

101.

In this Part—

“appeal body” means—

(a)

in relation to England or an appeal under paragraph 8 of Schedule 5, the First-tier Tribunal;

(b)

in relation to Northern Ireland, the appeals commission;

“appeals commission” means the planning appeals commission established in accordance with section 203 of the Planning Act (Northern Ireland) 2011<sup>2011</sup> c.25.;

“enforcement authority” has the meaning given for the purposes of Part 9 (enforcement).

#### Right of appeal

102.

A person may appeal to the appeal body against—

(a)

a decision to refuse the person’s application for appointment as the deposit management organisation under paragraph 3 of Schedule 5,

(b)

a decision to revoke the person’s appointment as the deposit management organisation under paragraph 5 of Schedule 5, or

(c)

a civil sanction imposed under a notice, or enforcement cost recovery notice issued under Part 9 which is subject to an appeal.

#### Procedure on appeal

103.

—(1)

Where an appeal is made to the appeal body under regulation 102—

(a)

subject to sub-paragraph (b) and regulation 104, the decision which is the subject of the appeal has effect until the appeal is finally determined or withdrawn, unless the appeal body determines otherwise;

(b)

any civil sanction imposed under a notice (other than a compliance notice), or an enforcement cost recovery notice, issued under Part 9, which is subject to an appeal is suspended until the appeal is finally determined or withdrawn.

(2)

The appeal body may, in relation to the decision or notice which is the subject of the appeal—

(a)

quash the decision or withdraw the notice (whether in whole or in part);

(b)

confirm the decision or notice (whether in whole or in part);

(c)

vary the decision or notice (whether in whole or in part);

(d)

take any steps that the Secretary of State or the appropriate authority could take in relation to the matters giving rise to the decision or the act or omission giving rise to the notice;

(e)

remit the decision, including any decision whether to confirm any matter relating to the decision or to confirm the notice, to the Secretary of State or the appropriate authority.

(3)

Where an appeal is made to the appeals commission, if the appellant so requests or the commission so decides, the appeal must be or continue in the form of a hearing.

(4)

Schedule 7 makes further provision about the procedure on an appeal.

Status pending appeal: decision to revoke a person's appointment as the deposit management organisation

104.

—(1)

In the case of an appeal against a decision to revoke a person's appointment as the deposit management organisation, the decision is ineffective until the appeal is granted, dismissed or withdrawn.

(2)

If the appeal is dismissed or withdrawn, the decision becomes effective from the end of the day on which the appeal is dismissed or withdrawn.

Determination of appeals

105.

—(1)

Where, following an appeal under this Part, the appeal body determines that a decision of a decision maker is to be varied or remitted to the decision maker, the decision maker must—

(a)

comply with any directions given to it by the appeal body, and

(b)

take any steps necessary to give effect to the appeal body's determination.

(2)

In this regulation "decision maker" means—

(a)

the Secretary of State, or

(b)

the enforcement authority.

## Part 11

### Functions of the national enforcement authorities

#### Operational plans

106.

Each national enforcement authority must consult on, and where satisfied may approve, any revision of a deposit management organisation's operational plan in accordance with regulation 53.

#### Enforcement

107.

—(1)

The national enforcement authorities shall take enforcement action set out in Part 9 (Enforcement).

(1)

The Environment Agency may, under regulation 88, authorise in writing a person who appears to be suitable for the purposes of its functions under Part 9, to exercise the powers of entry and inspection mentioned in regulation regulation 88(2).

(2)

DAERA may, under regulation 89, authorise in writing a person who appears to be suitable for the purposes of its functions under Part 9, to exercise the powers of entry and inspection mentioned in regulation regulation 89(2).

(3)

Each national enforcement authority must maintain a public register as set out under Chapter 5 of Part 9.

#### Co-operation with deposit management organisations

108.

Each national enforcement authority must, under regulation 77, enter into arrangements with deposit management organisations for securing co-operation and the exchange of information for the carrying out of any of their functions other than any relevant enforcement functions.

#### Annual reports from deposit management organisations

109.

The national enforcement authorities must—

- (a) consider the Annual reports submitted by a deposit management organisation under regulation 54;

- (b) shall request such additional reports from the deposit management organisation as are permitted and as the national enforcement authorities consider necessary.

#### Monitoring functions

110—(1) Each national enforcement authority must monitor—

- (a) compliance by scheme producers with the obligations of a registered scheme producer under these Regulations;
- (b) compliance by the deposit management organisation with the obligations imposed on the deposit management organisation under these Regulations;
- (c) compliance by scheme retailers with the obligations imposed on scheme retailers under these Regulations;
- (d) the registration of scheme producers;
- (e) the registration of scheme retailers;
- (f) the accuracy of the information provided by scheme producers;
- (g) the accuracy of the information provided by scheme retailers;
- (h) the accuracy of the information provided by the DMO.

#### Monitoring reports

111.  
—(1)

Each national enforcement authority must no later than 1st September 2027 and, in each subsequent year no later than 1<sup>st</sup> December of that year, provide to the appropriate authority a report setting out its proposed monitoring plan.

(2) Each national enforcement authority must no later than the 30th September 2027 and, in each subsequent year no later than 31st December of that year, publish its proposed monitoring plan.

(3) The monitoring plan referred to in paragraph (1) must give—

(a) details of the authority's policy for the following calendar year in relation to performing its functions under **regulation 110**;

(b) details of the monitoring the authority proposes to carry out during the following calendar year including its monitoring relating to scheme producers and to deposit management organisations.

(4) Each national enforcement authority must no later than **31st March 2029 227** and, in each subsequent year no later than the 31st March of that year, publish a report setting out—

(a) the monitoring and enforcement activities it has undertaken during the year commencing with 1st January of the preceding calendar year] and ending on **31st December of that year**, and

(b) the extent to which by those activities the authority has implemented its monitoring plan for the year reported on, including a description of its performance against the monitoring plan.

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## Appeals

111.

Where an appeal body under regulation 105 determines that a decision of a national enforcement authority is to be varied or remitted to that authority, the national enforcement authority must comply with any directions given to it by the appeal body, and take any steps necessary to give effect to the appeal body's determination.

## Part 12

## Review

## Review

112.

—(1)

The Secretary of State must, from time to time—

(a)

carry out a review of the regulatory provisions contained in these Regulations,

(b)

set out the conclusions of the review in a report, and

(c)

publish the report.

(2)

Section 30(4) of the Small Business, Enterprise and Employment Act 2015<sup>2015 c.</sup>

26. requires that the report must in particular—

(a)

set out the objectives intended to be achieved by the regulatory regime established by the regulatory provisions referred to in paragraph (1)(a),

(b)

assess the extent to which those objectives are achieved, and

(c)

assess whether those objectives remain appropriate, and if so, the extent to which they could be achieved by a system which imposes less onerous regulatory provision.

(3)

The first report must be published before the end of the period of five years beginning with DATE 3.

(4)

Subsequent reports must be published at intervals not exceeding five years.

(5)

In this regulation "regulatory provision" has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

DRAFT

Name 1



Minister of State

Department for Environment, Food and Rural Affairs

Schedules

Schedule 1

Regulations 10 and 14

Scheme producers: registration with the deposit management organisation

Part 1

Registration

Interpretation of Part 1

1.

—(1)

In this Part—

“applicant” means a person making an application for registration with the deposit management organisation as a scheme producer;

“registration application” means an application for registration with the deposit management organisation as a scheme producer;

“registration information” has the meaning given in sub-paragraph (2).  
(2)

“Registration information”, in relation to an applicant, means—

(a)

the applicant’s name and business name (if different);

(b)

the address and telephone number of the applicant’s registered or principal office;

(c)

an address for service, if different from the address mentioned in paragraph (b);

(d)

if the applicant is a company, the company registration number;

(e)

if the applicant is a partnership, the names of all of the partners;

(f)

the name and contact details (including an email address where available) of the person appointed as the point of contact for the applicant in relation to the Scheme;

(g)

the applicant’s SIC code;

(h)

a statement as to whether or not the applicant is a brand owner;

(i)

a statement as to whether or not the applicant is an importer;

(j)

a statement as to whether or not the applicant fills closed containers with drink to order;

(k)

if the applicant is a brand owner or importer, the brand name of each drink for which the applicant is the brand owner or importer;

(1)

the total number of deposit items which the applicant expects to supply in the relevant area in the period of 12 months following their registration with the deposit management organisation, together with—

(i)

information about the in-scope materials from which the applicant expects the in-scope bottles and cans to be wholly or mainly made,

(ii)

the expected capacity of each type of those bottles and cans, and

(iii)

if the applicant expects any of the deposit items to be made available for supply in scheme multipacks, the expected size of those multipacks.

(3)

For the purposes of sub-paragraph (2)(g) “SIC code” means a code included in the UK Standard Industrial Classification of Economic Activities 2007 (SIC 2007) published by the Office for National Statistics in December -0-230-21012-7.978-0-230-21012-7.

Registration application

2.

—(1)

A person seeking registration with the deposit management organisation as a scheme producer must make a registration application to the deposit management organisation.

(2)

A registration application must—

(a)

be made in such form and manner as the deposit management organisation directs,

(b)

contain the registration information, and

(c)

such other information (if any) as the deposit management organisation may direct in compliance with sub-paragraph (4).

(3)

Where the applicant is a partnership, the registration application must be made by one of the partners on behalf of the partnership.

(4)

The deposit management organisation may only direct an applicant to provide information in their registration application which the deposit management organisation reasonably requires for the purposes of its functions under, or in connection with, the Scheme.

Decision on registration application

3.

—(1)

The deposit management organisation—

(a)  
must grant the registration application and register the applicant as a scheme producer,  
if the deposit management organisation is satisfied that the registration applicant meets  
the requirements of paragraph 2(2), or

(b)  
otherwise, must refuse the registration application.

(2)  
The deposit management organisation must notify the applicant—

(a)  
of its decision concerning the registration application,  
(b)

if the application is granted, of the date on which the registration takes effect, and  
(c)

if the registration application is refused, of the reasons for that decision.

(3)  
A notification under sub-paragraph (2) must be in writing.

(4)  
The deposit management organisation must complete the steps required by sub-  
paragraphs (1) and (2) within a reasonable period of receiving the registration  
application.

Requirement to notify the deposit management organisation of changes in registration  
information

4.  
—(1)

A registered scheme producer must notify the deposit management organisation of any  
change to any of the relevant information.

(2)  
In this paragraph “relevant information” means—  
(a)

the registration information, or  
(b)

any other information that the applicant was directed to include in their registration  
application by the deposit management organisation.

Part 2

Cancellation of registration

Cancellation of registration on the request of the registered person

5.  
—(1)

The deposit management organisation must cancel a person’s registration as a scheme  
producer if—

(a)  
that person notifies the deposit management organisation that they have ceased to be a  
scheme producer, and

(b)

the deposit management organisation is satisfied that is the case.

(2)

Where the deposit management organisation cancels a person's registration as a scheme producer following a notification under sub-paragraph (1), the deposit management organisation must give the person a notice, which—

(a)

states that the person's registration as a scheme producer has been cancelled, and

(b)

specifies the date on which that cancellation takes effect.

Deposit management organisation's power to cancel registration

6.

—(1)

The deposit management organisation may cancel a person's registration as a scheme producer if the deposit management is satisfied, without a notification having been given under paragraph 5, that the person has ceased to be a scheme producer.

(2)

Before cancelling a person's registration as a scheme producer in accordance with sub-paragraph (1), the deposit management organisation must give that person a proposal notice.

(3)

The proposal notice must be in writing and must—

(a)

state why the deposit management organisation is proposing to cancel the person's registration as a scheme producer,

(b)

specify the date on which the cancellation of the person's registration as a scheme producer is proposed to take effect,

(c)

state that the person to whom the notice is given may make representations to the deposit management organisation about the proposal, and

(d)

specify the form and manner in which such representations are to be made and the period within which they must be made, which may not be less than 28 days from the date on which the proposal notice is given.

(4)

The deposit management organisation—

(a)

must consider any representations made by the relevant person by the date specified in the proposal notice;

(b)

may reject any representations made by that person after that date.

(5)

The deposit management organisation must notify that person in writing of its decision.

(6)

Where

the deposit management organisation decides to proceed with the cancellation of the person's registration as a scheme producer

the deposit management organisation must give that person a cancellation notice.  
(87)

A cancellation notice must be in writing and must—

(a)

state that the person's registration as a scheme producer is being revoked and why,

(b)

specify the date on which the cancellation of the registration takes effect, and

(c)

state that the person has a right under regulation 81 to ask the deposit management organisation to reconsider the decision.

(8)

The date specified for the purposes of sub-paragraph (8)(b) must not be before the end of the 28-day period from the date of the cancellation notice.

Schedule 2

regulation 35(5)

Registration of mandatory return point operators

Interpretation

1.

In this Schedule—

“the application information”, in relation to an in-scope retailer, means—

(a)

the retailer's name, and if different, business name,

(b)

the address and telephone number of the retailer's registered or principal office,

(c)

an address for service, if different from the address mentioned in sub-paragraph (b),

(d)

where the retailer is a company, the company registration number,

(e)

where the retailer is a partnership, the names of all of the partners,

(f)

the name and contact details (including an email address where available) of the person appointed as the point of contact for the retailer in relation to the Scheme, and

(g)

the address of each of the MRP premises in respect of which the retailer is required to operate a return point in accordance with regulation 35(1);

“in-scope retailer” means a scheme retailer who is required to operate a return point in respect of an MRP premises in accordance with regulation 35(1).

Application for registration

2.

—(1)

A person who, immediately on the coming into force of regulation 35, becomes an in-scope retailer must within 7 days of that date, make a registration application to the deposit management organisation.

(2)

Where the in-scope retailer is a partnership, the application for registration must, if made by only one partner, be made by that partner on behalf of all of the partners.

(3)

A registration application must—

(a)

be made in such form and manner as the deposit management organisation may direct, and

(b)

contain—

(i)

the application information, and

(ii)

such other information (if any) as the deposit management organisation may direct.

(4)

Where a person becomes an in-scope retailer after DATE 3, the retailer must make a registration application within such period as the deposit management organisation may direct.

Application for registration: decision

3.

—(1)

Where the deposit management organisation receives a registration application, the deposit management organisation must—

(a)

register the in-scope retailer in relation to each of the MRP premises in respect of which the retailer is required to operate a return point, and

(b)

notify the in-scope retailer in writing that the retailer has been registered as a mandatory return point operator.

Cancellation of registration

4.

—(1)

The deposit management organisation must—

(a)

cancel in-scope retailer's registration as a mandatory return point operator in respect of any particular MRP premises, if—

(i)

the retailer notifies the deposit management organisation that they no longer supply deposit items at or on those premises, or

(ii)

the deposit management organisation grants a return point exemption in respect of those premises;

(b)

cancel a person's registration as a mandatory return point operator, if—

(i)

the person notifies the deposit management organisation that they are no longer an in-scope retailer, or

(ii)

the deposit management organisation grants a return point exemption in respect of all of the in-scope retailer's premises which are MRP premises.

(2)

The deposit management organisation may—

(a)

cancel a scheme retailer's registration as a mandatory return point operator in respect of any particular premises, if the deposit management organisation is satisfied that the retailer no longer supplies deposit items at or on those premises (without a notification having been given under sub-paragraph (1)(a)(i));

(b)

cancel a person's registration as a mandatory return point operator, if the deposit management organisation is satisfied that the person is no longer an in-scope retailer (without a notification having been given under sub-paragraph (1)(b)(i)).

(3)

Before cancelling a person's registration in accordance with sub-paragraph (2), the deposit management organisation must notify the person—

(a)

that it proposes to cancel the retailer's registration in accordance with sub-paragraph (2)

(a) or (b),

(b)

of the date on which the cancellation of the registration will take effect, and

(c)

state that the person has a right under regulation 81 to ask the deposit management organisation to reconsider its decision.

(4)

The date on which the registration is cancelled must not be before the end of the 28-day period specified in regulation 81.

Schedule 3

regulation 35(6)

Return point exemptions

Interpretation of Schedule 3

1.

—(1)

In this Schedule—

“exemption application” means an application made under paragraph 2(1);

“exemption holder”, in relation to a return point exemption, means an MRP retailer to whom the return point exemption has, for the time being, been granted;

“MRP retailer” means a scheme retailer whose business consists wholly or mainly of the sale or supply of groceries to scheme consumers;

“renewal application” means an application under paragraph 6(3).

(2)

For the purposes of this Schedule—

(a)

an exemption application is made on the proximity grounds if it is made on the grounds that—

(i)

there is one or more alternative return points located within reasonable proximity to the premises specified in the application, and

(ii)

if the exemption were granted, it would not affect the deposit management

organisation’s ability to meet the collection targets (see regulation 85);

(b)

an exemption application is made on the premises grounds if it is made on the grounds that the location, layout, size, design, or construction of the specified premises does not permit, does not easily permit, or cannot reasonably be altered to permit, the operation of a return point in respect of those premises,

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Applications for return point exemptions

2.

—(1)

A groceries retailer may apply to the deposit management organisation for a return point exemption in respect of the premises specified in the exemption application.

(2)

An exemption application must be made on either the proximity grounds or the premises grounds.

(3)

An exemption application must—

(a)

be made in such form and manner as may be directed by the deposit management organisation,

(b)

contain the application information, and

(c)

contain such other information (if any) as the deposit management organisation may direct

(4)

In this paragraph—

“the application information” means—

(a)



if an exemption application is made on the proximity grounds—

(i) the size of the applicant;

(ii)

information about the alternative return point or points which are located in reasonable proximity to the specified premises, and

(iii)

confirmation that the operator of each of those return points has been consulted about the retailer's application for a return point exemption, and none of them has objected to the potential increase in the number of returnable items likely to be returned to their return point if the return point exemption is granted;

(iv) any further information the applicant considers may be relevant.

(b)

if an exemption application is made on the premises grounds, information which is sufficient to demonstrate that the location, layout, size, design or construction of the specified premises does not permit, does not easily permit, or, as the case may be, cannot easily be altered to permit the operation of a return point in respect of those premises;

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Decision on applications for return point exemptions

3.

—(1)

Where the deposit management organisation receives an exemption application from a groceries retailer ("the applicant"), it must, within a reasonable period of time—

(a) consider the application information supplied by the applicant under paragraph 2 of this Schedule, and

(b) in making a decision on the exemption application, have regard to all relevant factors including—

(i) the number of applications for exemption made in the proximity of the applicant;

(ii) the decisions taken with regard to such other applications;

(iii) any representations made by members of the public, or by groups representing sections of the public, regarding exemptions from the requirement to operate a return point.

(2) The deposit management organisation must—

(a) subject to sub-paragraph (3), decide whether or not to grant the return point exemption, and

(b) give a notice regarding its decision to the applicant.

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(3)

The deposit management organisation may not grant an exemption application made on the premises grounds if that application is made only on the grounds that the particular MRP premises are located in or on English NHS premises or HSS premises.

(3)

A notice under sub-paragraph (2) must be in writing, and—

(a)

if the deposit management organisation grants the exemption—

(i)

specify the premises in respect of which the exemption is granted,

(ii)

specify the date on which the exemption takes effect, and

(iii)

include a statement that, unless the exemption is revoked or renewed, it will expire at the end of the period of three years beginning with that date;

(b)

if the deposit management organisation refuses the exemption—

(i)

state the reasons for that decision, and

(ii)

state that the groceries retailer has a right under regulation 81 to ask the deposit management organisation to reconsider its decision.

(4)

In this paragraph—

(a)

“English NHS premises” means—

(i)

any hospital vested in, or managed by, an NHS trust established under section 25 of the National Health Service Act 2006<sup>6</sup>), all or most of whose hospitals, establishments and facilities are situated in England, or an NHS foundation trust authorised under section 35 of that Act),

(ii)

any building or other structure, or vehicle, associated with the hospital and situated on the hospital grounds (whether or not vested in, or managed by, the NHS trust or NHS foundation trust), and

(iii)

any hospital grounds;

(b)

“hospital grounds” means any land in the vicinity of a hospital and associated with it.

(c)

“HSS premises” means—

(i)

any hospital vested in, or managed by an HSS trust,

(ii)

any building or other structure, or vehicle, associated with the hospital and situated on the hospital grounds (whether or not vested in, or managed by, the HSS trust), and

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<sup>6</sup> ? 2006 c.41.

(iii)

any hospital grounds;

(d)

“HSS trust” means a Health and Social Care Trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991<sup>7</sup>.

Effect of making an application for a return point exemption: applications ongoing on DATE 3

4.

—(1)

This paragraph applies where—

(a)

a groceries retailer makes an exemption application before DATE 3, and

(b)

the deposit management organisation has not made a decision on that application by the end of DATE 3 - 1 day.

(2)

Irrespective of the final outcome of the exemption application, the groceries retailer is not required to operate a return point in respect of the premises specified in the exemption application during the period—

(a)

beginning with DATE 3, and

(b)

ending—

(i)

if the return point exemption is granted, immediately before the exemption takes effect;

(ii) if the return point exemption is refused and the retailer has asked the deposit management organisation to review its decision under regulation 81, the end of the period during which the review is carried out.

(3)

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Effect of making an application for a return point exemption: person becoming a groceries retailer on or after DATE 3

5.

—(1)

This paragraph applies where a person who becomes a groceries retailer on or after DATE 3 (a “new retailer”) makes their first exemption application.

(2)

The new retailer is not required to operate a return point in respect of the premises specified in the exemption application during the period—

(a)

beginning with the day on which the exemption application is made, and

(b)

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<sup>7</sup> S.I. 1991/194 (NI 1).

ending—

(i)

if the return point exemption is granted, immediately before the exemption takes effect;

(ii)

if the return point exemption is refused, at the end of the period within which the retailer may ask the deposit management organisation to review its decision under regulation

81.

(3)

Duration, and renewal, of a return point exemption

6.

—(1)

A return point exemption—

(a)

continues in force for a period of three years beginning with the date specified for the purposes of paragraph 3(3)(a)(ii);

(b)

may be renewed by the deposit management organisation on one or more occasions.

(2)

A return point exemption may not on any occasion be renewed for a period of more than three years.

(3)

An exemption holder may apply for the return point exemption to be renewed at any time before the exemption expires.

(4)

The deposit management organisation may only renew a return point exemption if—

(a)

a renewal application is made by the exemption holder, and

(b)

the grounds on which the exemption was originally granted continue to apply.

(5)

A renewal application must—

(a)

be made in such form and manner as the deposit management organisation may direct,

(b)

contain the exemption grounds information, and

(c)

such other information (if any) as the deposit management organisation may direct.

(6)

In sub-paragraph (5) “the exemption grounds information” means—

(a)

if the exemption was granted on the proximity grounds—

(i)

information about the alternative return point or points which are located in reasonable proximity to the specified premises, and

(ii)

confirmation that the operator of each of those return points has been consulted about the retailer's application for a return point exemption, and each of those operators has agreed to continue to accept returnable items which could otherwise have been returned the retailer making the renewal application;

(b)

if the exemption was granted on the premises grounds, information which is sufficient to demonstrate that the location, layout, size, design or construction of the specified premises still does not permit, does not easily permit, or, as the case may be, cannot easily be altered to permit the operation of a return point in respect of those premises.

(7)

Where the deposit management organisation receives a renewal application, it must, within a reasonable period of receiving that application—

(a)

decide whether or not to renew the relevant return point exemption, and

(b)

notify the exemption holder of its decision.

(8)

A notice under sub-paragraph (7)(b) must be in writing and—

(a)

if the deposit management organisation renews the return point exemption—

(i)

specify the further period for which the exemption is to continue in force, and

(ii)

specify the date at the end of which the return point exemption will expire unless it is renewed or revoked;

(b)

if the deposit management organisation decides not to renew the return point exemption

—

(i)

state the reasons for that decision, and

(ii)

state that the groceries retailer has a right under regulation 81 to ask the deposit management organisation to reconsider its decision.

(9)

But this paragraph is subject to paragraphs 8 and 9.

Duty to notify the deposit management organisation of a relevant change of circumstances

7.

—(1)

An exemption holder must notify the deposit management organisation of any change of circumstances relevant to the grounds on which the relevant return point exemption was granted or, as the case may be, renewed.

(2)

A notice under sub-paragraph (1) must be given to the deposit management organisation within the period of 28 days beginning with the day on which the change occurs.

Revocation of a return point exemption at the request of the exemption holder

8.

—(1)

An exemption holder may request that any return point exemption granted to them be revoked.

(2)

A request under sub-paragraph (1) must be made in such form and manner as the deposit management organisation may direct.

(3)

Where the deposit management organisation receives a request under this paragraph, the deposit management organisation must—

(a)

revoke the relevant return point exemption, and

(b)

notify the exemption holder in writing of the date on which the revocation of the return point exemption takes effect.

Revocation of a return point exemption on initiative of the deposit management organisation

9.

—(1)

The deposit management organisation may revoke a return point exemption if the deposit management organisation is satisfied that—

(a)

there has been a change of circumstances relevant to the grounds on which the exemption was granted,

(b)

if the exemption was granted on the proximity grounds, the continuing operation of the exemption will mean that there are scheme consumers who no longer have reasonable access to a return point.

(2)

Where the deposit management organisation proposes to revoke a return point exemption under sub-paragraph (1), the deposit management organisation must give the exemption holder a notice (a “proposal notice”).

(3)

A proposal notice must—

(a)

state the reasons for which the deposit management organisation is proposing to revoke the return point exemption,

(b)

specify the day at the end of which the return point exemption will cease to have effect, if the proposal is upheld,

(c)

specify—

(i)

the form and manner in which any representations are to be made to the deposit management organisation about the proposal, and

(ii)

the period within which any such representations must be made, which may not be less than 28 days from the date the proposal notice was given.

(4)

The deposit management organisation—

(a)

must consider any representations made to it in the specified form and manner and by the specified date;

(b)

may reject any representations that are made otherwise than in the specified form and manner or after the specified date (or both).

(5)

The deposit management organisation must notify the exemption holder in writing of its decision.

(6)

Where—

(a)

the deposit management organisation decides to proceed with the revocation of the relevant return point exemption,

the deposit management organisation must give the exemption holder a revocation notice.

(7)

A revocation notice must be in writing and must—

(a)

state that the relevant return point exemption is being revoked, and the reasons why,

(b)

specify the day at the end of which the return point exemption will cease to have effect, and

(c)

state that the exemption holder has the right under regulation 81 to ask the deposit management organisation to reconsider its decision.

(8)

A notice under sub-paragraph (5), together with any revocation notice, must be given before the end of the period of seven days beginning with the day on which the deposit management organisation makes its decision.

(9)

The day specified for the purposes of sub-paragraph (7)(b) may not be before the end of the 28-day period specified for the purposes of regulation 81.

regulations 39 and 42

Voluntary operation of return points and provision of take-back services

## Part 1

### Introductory

#### Interpretation of Schedule 4

1.

In this Schedule—

“the applicant information” means—

(a)

the name of the person making the application and, if different, their business name,

(b)

the address and telephone number for the person’s registered or principal office,

(c)

an address for service if different from the address mentioned in sub-paragraph (b),

(d)

where the person making the application is a company, the company registration number,

(e)

where the person making the application is a partnership, the names of all of the partners, and

(f)

the name and contact details (including an email address where available) of the person appointed as the point of contact in connection with the application;

“notice” means a notice in writing;

“the RP authorisation information” means—

(a)

the address of the premises at or on which it is proposed to operate a return point,

(b)

information about the accessibility of the return point, including—

(i)

its proposed location,

(ii)

the access routes to it, and

(iii)

its proposed hours of operation,

(c)

the type of return point that the person making the application proposes to operate, and

(d)

information which demonstrates—

(i)

that the person making the application has sufficient resources to set up and operate the return point for a period of at least 12 months,

(ii)



the number of returnable items that the person making the application estimates will be returned to the return point each month, and the basis for that estimate, and  
(iii)

how the person making the application intends to manage the expected volume of returns of returnable items;

“the TBS authorisation information” means information which demonstrates—  
(a)

that the scheme retailer applying for registration has sufficient resources to set up and operate the proposed take-back service for at least 12 months,  
(b)

the number of returnable items that the scheme retailer estimates will be collected during each month and the basis for that estimate, and  
(c)

how the scheme retailer intends to manage the expected volume of returns of returnable items.

Part 2

Application for appointment as a collection administrator

Application for appointment as a collection administrator

2.  
—(1)

Any person, other than a person who is a scheme producer or a scheme supplier, may apply to the deposit management organisation to be appointed as a collection administrator.

(2)

An application under this paragraph must—

(a)

be made in such form and manner as the deposit management organisation may direct,  
(b)

contain the applicant information, and  
(c)

contain such other information (if any) as the deposit management organisation may direct.

(3)

Where the relevant person is a partnership, the application must, if made by only one partner, be made by that partner on behalf of all of the partners.

(4)

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Decision on application

3.  
—(1)

Where the deposit management organisation receives an application under paragraph 2, the deposit management organisation must, within a reasonable period of receiving the application—

- (a) decide whether to grant or refuse the application, and
- (b) give the applicant a notice of its decision.

(2)

A notice under sub-paragraph (1)(b) must—

- (a) where the deposit management organisation grants the application, specify the date on which the appointment takes effect;

(b)

where the deposit management organisation refuses the application—

(i)

state the reasons for the decision, and

(ii)

state that the applicant has a right under regulation 81 to ask the deposit management organisation to reconsider its decision.

Duration of appointment as a collection administrator

4.

A person's appointment as a collection administrator has effect until revoked by the deposit management organisation.

Part 3

Application for authorisation to operate a return point

Application for authorisation to operate a return point at or on any in-scope premises

5.

—(1)

A scheme duty-holder may apply to the deposit management organisation to operate a return point at or on an in-scope premises.

(2)

An application under this paragraph must—

(a)

be made in such form and manner as the deposit management organisation may direct, and

(b)

contain—

(i)

the applicant information,

(ii)

the RP authorisation information, and

(iii)

such other information (if any) as the deposit management organisation may direct.

(3)

Where the scheme duty-holder is a partnership, the application must be made by one of the partners on behalf of all of the partners.

(4)

In this paragraph “scheme duty-holder” means—

(a)

a scheme producer,

(b)

a scheme supplier, or

(c)

a collection administrator.

Decision on application

6.

—(1)

Where the deposit management organisation receives an application under paragraph 5, the deposit management organisation must, within a reasonable period of receiving the application—

(a)

decide whether to grant or refuse the application, and

(b)

notify the applicant of its decision.

(2)

A notice under sub-paragraph (1)(b) must—

(a)

where the deposit management organisation grants the application, specify the date on which the authorisation takes effect;

(b)

where the deposit management organisation refuses the application must—

(i)

state the reasons for that decision, and

(ii)

state that the applicant has a right under regulation 81 to ask the deposit management organisation to reconsider its decision.

Duration of a person’s authorisation to operate a return point

7.

A person’s authorisation to operate a return point at the premises in respect of which the authorisation was granted has effect until it is revoked by the deposit management organisation.

Part 4

Registration of scheme retailer as provider of a take-back service

Registration of a scheme retailer as a take-back service provider

8.

—(1)

A scheme retailer may make an application to the deposit management organisation for registration as a take-back service provider.

(2)

Where the scheme retailer is a partnership, the application must, if made by only one partner, be made by that partner on behalf of all of the partners.

(3)

A registration application must—

(a)

be made in such form and manner as the deposit management organisation may direct,

(b)

contain the applicant information, and

(c)

contain such other information (if any) as the deposit management organisation may direct.

Decision on application

9.

—(1)

Where the deposit management organisation receives a registration application under paragraph 8, the deposit management organisation must, within a reasonable period of receiving the application—

(a)

decide whether to grant or refuse the application, and

(b)

give the applicant a notice of its decision.

(2)

A notice under sub-paragraph (1)(b) must—

(a)

where the deposit management organisation grants the application, specify the date on which the authorisation takes effect;

(b)

where the deposit management organisation refuses the application must—

(i)

state the reasons for that decision, and

(ii)

state that the applicant has a right under regulation 81 to ask the deposit management organisation to reconsider its decision.

Duration of a scheme retailer's registration as a take-back service provider

10.

A scheme retailer's registration as a take-back service provider has effect until it is revoked by the deposit management organisation.

Part 5

Information

Duty to notify the deposit management organisation of a change in the applicant information, RP authorisation information or TBS information

11.  
—(1)

A collection administrator must notify the deposit management organisation if there is any change in the applicant information submitted in connection with that person's appointment.

(2)

A person who is authorised to operate a return point at or on a particular premises must notify the deposit management organisation if there is any change in the RP authorisation information submitted in connection with that person's authorisation.

(3)

A scheme retailer who is registered to provide take-back services must notify the deposit management organisation if there is any change in the applicant information or the TBS information submitted in connection with that person's registration.

(4)

A notice under this paragraph must be given within the period of 28 days beginning with the date on which the change occurs.

Part 6

Revocation of appointment or authorisation

Revocation of appointment or authorisation on request

12.  
—(1)

The deposit management organisation must, if requested to do so by a person appointed as a collection administrator, revoke—

(a)

the person's appointment as such, and

(b)

any authorisation given to the person to operate a return point at or on any particular premises.

(2)

The deposit management organisation must, if requested to do so by the person authorised to operate a return point at or on a particular premises, revoke the person's authorisation to operate that return point.

(3)

The deposit management organisation must, if requested to do so by the scheme retailer, revoke the scheme retailer's registration as a take-back service provider.

(4)

Where the deposit management organisation revokes a person's appointment, authorisation or registration under this paragraph, the deposit management organisation

must give the person a notice, specifying the day at the end of which the appointment, authorisation or, as the case may be, registration, ceases to have effect.

Revocation of appointment or authorisation on initiative of the deposit management organisation

13.

—(1)

The deposit management organisation may revoke—

(a)

a person's appointment as a collection administrator together with all of the authorisations that the person has to operate return points at or on particular premises,

(b)

a person's authorisation to operate a return point at or on a particular premises, or

(c)

a scheme retailer's registration to provide take-back services,

otherwise than following a request under paragraph 12.

(2)

The deposit management organisation may only revoke a person's appointment and authorisations under sub-paragraph (1)(a) on one of the following grounds—

(a)

the person has failed to comply with any of their obligations as a scheme collector under or in connection with the Scheme;

(b)

there has been a change of circumstances since the CA appointment was made.

(3)

The deposit management organisation may only revoke a person's authorisation

under sub-paragraph (1)(b) on one of the following grounds—

(a)

the person has failed to comply with any of their obligations as a scheme collector under or in connection with the Scheme;

(b)

there has been a change of circumstances since the authorisation was granted, including any change such that—

(i)

the location, layout, design, or construction of the premises to which the authorisation relates can no longer, or can no longer easily permit the operation of a return point and cannot be reasonably altered to allow the continued operation of a return point;

(ii)

the operation of the return point to which the authorisation relates is no longer viable.

(4)

The deposit management organisation may only revoke a scheme retailer's registration to provide take-back services under sub-paragraph (1)(c) on one of the following grounds

—

(a)

the scheme retailer has failed to comply with any of their obligations as a scheme collector under or in connection with the Scheme;

(b)

there has been a change of circumstances since the registration was granted;

(c)

the take-back service is no longer viable.

(5)

Where the deposit management organisation proposes to revoke an appointment, authorisation or registration, it must give that person a proposal notice.

(6)

A proposal notice must—

(a)

state the reasons for which the deposit management organisation is proposing to revoke the appointment, authorisation or registration,

(b)

specify the day at the end of which the revocation is expected to take effect, if the proposal is upheld, and

(c)

specify the form and manner in which, and the period within which the relevant person may make representations to the deposit management organisation about the proposed revocation, which may not be less than 28 days from the date of the proposal notice.

(7)

The deposit management organisation—

(a)

must consider any representations made to it in the specified form and manner and by the specified date;

(b)

may consider any representations made otherwise than in the specified form or manner or after the specified date (or both).

(8)

The deposit management organisation must notify the scheme producer in writing of its decision.

(9)

Where the deposit management organisation decides to proceed with the revocation of a person's appointment and authorisation or registration, it must give the person a notice which—

(a)

states the reasons for that decision,

(b)

specifies the day at the end of which the revocation will take effect, and

(c)

state that the person has a right under regulation 81 to ask the deposit management organisation to reconsider its decision.

(10)

The date specified for the purposes of sub-paragraph (9)(b) may not be before the end of the 28-day period specified in regulation 80.

Schedule 5

regulation 51

Appointment etc. of the deposit management organisation

Part 1

Introductory

Interpretation of Schedule 5

1.

In this Schedule—

“DMO applicant” means a person who makes a DMO appointment application;

“the DMO application period” means—

(a) a period during which DMO appointment applications may be made; or  
(b) where no DMO appointment applications are made before the end of that period, or a person’s appointment as the deposit management organisation is, or is to be, revoked, such other period as may be determined.;

“DMO appointment application” means an application to be appointed as the deposit management organisation;

“DMO function” means a function conferred on the deposit management organisation by or under the Scheme;

“not-for-profit body corporate” means a body corporate which uses money earned by, or donated to, that body corporate solely to pursue its objectives and which does not distribute income to its members, directors, or officers;

“notice” means a notice in writing;

“specified” means specified in a notice given by the Secretary of State.

Part 2

Appointment of the deposit management organisation

Application for appointment as the deposit management organisation

2.

—(1)

A person may make a DMO appointment application to the Secretary of State before the end of the DMO application period.

(2)

A DMO appointment application must—

(a)

be in writing,

(b)

be made in the specified manner,



(c)

contain the information specified in sub-paragraph (3), and  
(d)

contain such other information (if any) as may be specified.  
(3)

The information mentioned in sub-paragraph (2)(c) is—

(a)

the name and, if different, the business name of the DMO applicant,

(b)

the address and telephone number of the DMO applicant's registered or principal office,

(c)

an address for service if different from the address mentioned in paragraph (b),

(d)

information that is sufficient to demonstrate that—

(i)

the DMO applicant is a not-for-profit body corporate, and

(ii)

the DMO applicant is likely to continue in existence as a not-for-profit body corporate for a period of at least five years beginning with the end of the DMO application period, and

(e)

a plan for the administration of the Scheme and the exercise of the DMO functions (referred to in these Regulations as an "operational plan") which is sufficient to demonstrate that the DMO applicant is suitable to be appointed as the deposit management organisation.

Decision on DMO appointment applications

3.

—(1)

The Secretary of State must, as soon as is reasonably practicable after the end of the DMO application period—

(a)

having assessed each DMO appointment application received before the end of that period, determine which DMO applicant is proposed to be appointed as the successful

DMO applicant,

(b)

obtain the consent of DAERA to the proposed appointment of the successful DMO applicant, and

(c)

give each DMO applicant a notice of the decision made in respect of their DMO appointment application.

(2)

The Secretary of State may only propose that a DMO applicant is appointed as the deposit management organisation if the Secretary of State is satisfied that the DMO

applicant—

(a)

is a not-for-profit body corporate but is not a charity, and

(b)

is suitable for appointment as the deposit management organisation, having regard in particular to—

(i)

the level of support for the DMO applicant's DMO application amongst scheme producers and scheme suppliers;

(ii)

the DMO applicant's proposed finance strategy, including in particular how the DMO applicant intends to ensure that the Scheme becomes and remains self-financing;

(iii)

the DMO applicant's proposed strategy for ensuring that the views of all scheme producers and scheme suppliers (irrespective of their size), and of consumers, are obtained and taken into account in the carrying out of the DMO functions;

(iv)

the DMO applicant's proposed strategy for minimising the environmental impact of the Scheme and facilitating the recycling of in-scope material;

(v)

the arrangements which the DMO applicant intends to put in place to ensure cooperation with any scheme administrator of another deposit scheme or any Scottish deposit administrator of a Scottish deposit and return scheme, in particular in connection with—

(aa)

the operation of the Scheme;

(bb)

the operation of the other deposit schemes;

(cc)

the operation of the Scottish deposit and return schemes;

(dd)

facilitating and improving the ease of return by consumers of drinks containers purchased in one part of the United Kingdom and returned in another part of the United Kingdom;

(ee)

facilitating and improving the registration process for those who produce, or import, drinks for the UK market;

(vi)

the DMO applicant's proposed strategy for reducing and eliminating any fraud in the Scheme;

(vii)

the purposes for which the DMO proposes to use any amounts which they are permitted to retain under the Scheme but which are not needed to finance the Scheme itself.

(3)

A notice under sub-paragraph (1)(c) must—

(a)

if the Secretary of State grants the DMO applicant's DMO appointment application and DAERA consents the appointment—

(i)

state that the application has been granted,  
(ii)

specify the date on which the person's appointment as the deposit management organisation take effect, and  
(iii)

state the DMO appointment conditions (if any);  
(b)

if the Secretary of State refuses the DMO applicant's DMO appointment application—  
(i)

state the reasons for the decision, and  
(ii)

state that the DMO applicant may appeal against the decision, and include a statement, in general terms, as to how such an appeal may be brought.  
(4)

Where there are two or more DMO applicants, the date specified for the purposes of sub-paragraph (3)(a)(ii) may not be before the end of the period within which a person may bring an appeal against the decision to refuse their DMO appointment application (disregarding any extension of that period).  
(5)

In this paragraph "charity" means a body established for charitable purposes only (whether or not it is registered as a charity in any part of the United Kingdom).

Part 3

Revocation of a person's appointment as deposit management organisation

Revocation of a person's appointment as the deposit management organisation: on notice

4.  
—(1)

The person appointed as the deposit management organisation ("the resigning DMO") may give notice (a "revocation notice") to the Secretary of State stating that they wish to cease to be the deposit management organisation.  
(2)

If the Secretary of State receives a revocation notice, the Secretary of State must—  
(a)

revoke the resigning DMO's appointment as the deposit management organisation, and  
(b)

give the resigning DMO a notice which specifies the date on which the revocation takes effect.  
(3)

The date specified for the purposes of sub-paragraph (2)(b) may not be before the end of the period of 18 months beginning with the date on which the Secretary of State receives the revocation notice.

Revocation of a person's appointment as the deposit management organisation:  
discretion of the Secretary of State

5.

—(1)

The Secretary of State may, with the consent of DAERA, revoke a person's appointment as the deposit management organisation if—

(a)

it appears to the Secretary of State that the person—

(i)

has been convicted of an offence involving financial impropriety or fraud;

(ii)

has become bankrupt;

(iii)

has become subject to insolvency or winding-up proceedings;

(iv)

has had assets made subject to administration or receivership, including by a liquidator

or court,

(v)

has entered into an arrangement with the person's creditors;

(vi)

has become subject to a petition or application for any such procedures or arrangements referred to in sub-paragraphs (ii) to (v) ; or

(vii)

has, in any jurisdiction, been subject to a procedure or an application which corresponds to any procedure or application mentioned in paragraphs (ii) to (v);

(viii)

has failed for three years to meet the collection targets for a deposit management organisation;

(ix)

has knowingly or recklessly supplied false information in connection with its DMO appointment application or in connection with any of its obligations as the deposit management organisation under or in connection with the Scheme;

(x)

has failed to comply with notices or fines issued by a national enforcement authority;

(xi)

has repeatedly refused or failed to pay NEA costs after being invoiced for those costs;

(xii)

has failed to meet one or more of that person's conditions of appointment; or

(b)

the person has notified the Secretary of State of a change of circumstances which the Secretary of State considers is likely to prevent the person from complying with that person's conditions of appointment.

(2)

The Secretary of State—

(a)

must revoke a person’s appointment as the deposit management organisation if the Secretary of State considers—

(i)

that a mandatory exclusion ground set out in Schedule 6 to the Procurement Act 2023<sup>8</sup> (mandatory exclusion grounds) (“the 2023 Act”), applies to that person or to a connected person, and

(ii)

the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again, or

(iii)

the person, or a connected person, is on the debarment list under section 62 of the 2023 Act (debarment list) by virtue of a mandatory exclusion ground set out in Schedule 6 to that Act.

(b)

may, with the consent of DAERA, revoke a person’s appointment as the deposit management organisation if the Secretary of State considers—

(i)

that a discretionary exclusion ground set out in Schedule 7 to the 2023 Act (discretionary exclusion grounds) applies to that person or to a connected person, and

(ii)

the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again, or

(iii)

the person, or a connected person, is on the debarment list under section 62 of the 2023 Act by virtue of a discretionary exclusion ground set out in Schedule 7 to that Act.

(3)

In this regulation, “connected person” has the same meaning as that given to ‘connected person’ in paragraph 45 of Schedule 6 to the 2023 Act in relation to a supplier

(4)

If the Secretary of State proposes to revoke a person’s appointment as the deposit management organisation it must give the person a proposal notice.

(5)

A proposal notice must—

(a)

state that the Secretary of State, with the consent of DAERA, proposes to revoke the person’s appointment as the deposit management organisation, and why,

(b)

specify the date on which the revocation is proposed to take effect,

(c)

state that the person may make representations in connection with the proposed revocation of their appointment, and

(d)

specify the form and manner in, and date by, which any such representations must be made to the Secretary of State.

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<sup>8</sup> 2023. c.54.

(6)

The date specified for the purposes of sub-paragraph (5)(b) must not be before the end of the period within which the person may make an application for a review of the decision to revoke their appointment as the deposit management organisation (disregarding any extension of that period).

(7)

The Secretary of State—

(a)

must consider any representations that are made in the specified form and manner, and by the specified date;

(b)

may disregard any representations that are not made in the specified form and manner or are made after the specified date.

(8)

The Secretary of State must notify the deposit management organisation in writing of the decision.

(9)

The Secretary of State must give a copy of any notice under sub-paragraph (8) to DAERA.

(10)

Where the Secretary of State decides to proceed with the proposed revocation, the

Secretary of State must give that person a revocation notice.

(11)

The revocation notice must—

(a)

state that the person's appointment as the deposit management organisation has been revoked, and

(b)

specify the date on which the revocation takes effect.

(12)

The Secretary of State must give a copy of any revocation notice to DAERA.

Transfer of assets etc.

6.

—(1)

The Secretary of State may transfer relevant property, rights and liabilities of the outgoing DMO to the new DMO, or to the Secretary of State as interim scheme administrator, as a consequence of the outgoing DMO ceasing to be the deposit management organisation.

(2)

The relevant property, rights and liabilities of the outgoing DMO that may be transferred under paragraph (1) are as follows—

(a)

data created and compiled specifically for the scheme;

(b)

land assets;

(c)

intellectual property, including scheme branding;

(d)

deposits;

(e)

IT systems;

(f)

contracts entered into by the outgoing DMO for the purpose of the scheme;

(g)

collection and processing infrastructure;

(h)

staff and human resources systems.

(3)

The Secretary of State may only transfer such of the relevant property, rights and liabilities set out in paragraph (2) as constitute the minimum assets required to keep the scheme operational and to protect consumer interests.

(4)

The transfer of any property, rights and liabilities is effective on the new appointment date.

(5)

The property, rights and liabilities that may be transferred under this paragraph include property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the outgoing DMO.

(6)

A transfer of property, rights and liabilities under this paragraph takes effect despite the absence of any required consent or concurrence to or with the transfer and as if—

(a)

no liability existed in respect of a contravention of a requirement for consent or concurrence, and

(b)

there were no interference with any property or right,

that would otherwise exist by reason of any provision (whether under any enactment or agreement or otherwise) having effect in relation to the terms on which the outgoing DMO is entitled to the property or right, or subject to the liability, in question.

(7)

For the purposes of this paragraph any property, right or liability of the outgoing DMO is relevant property, or a relevant right or liability, only if it was acquired by, or the outgoing DMO became subject to it, in the course of the exercise of its functions as the deposit management organisation under or in connection with the Scheme.

(8)

In this paragraph and paragraph 7—

“the new appointment date” means the date on which the new DMO’s appointment takes effect;

“the new DMO” means the person next appointed as the deposit management organisation following the revocation of the outgoing DMO’s appointment;

“the outgoing DMO” means the person whose appointment as the deposit management organisation is revoked under paragraph 4 or 5.

Transitional provision in connection with paragraph 6

7.

—(1)

Anything that—

(a)

is done (or has effect as if done) by or in relation to the outgoing DMO in respect of any property, right or liability transferred to the new DMO under paragraph 6, and

(b)

has effect immediately before the new appointment date,

is to be treated as done by or in relation to the new DMO.

(2)

There may be continued by or in relation to the new DMO anything (including legal proceedings) that—

(a)

relates to any property, right or liability transferred under paragraph 6, and

(b)

is in the process of being done by, on behalf of or in relation to the outgoing DMO immediately before the new appointment date.

Part 4

Appeals in connection with Parts 2 and 3

Right of appeal

8.

—(1)

A DMO applicant may appeal against a decision of the Secretary of State to refuse their DMO appointment application.

(2)

A person may appeal against a decision of the Secretary of State under paragraph 5 to revoke their appointment as the deposit management organisation.

(3)

An appeal under sub-paragraph (1) or (2) is to the First-tier Tribunal.

Schedule 6

regulation 95

Civil Sanctions

Part 1

Introductory

Interpretation of Schedule 6

1.



In this Schedule—

“FMP” means a fixed monetary penalty;

“VMP” means a variable monetary penalty.

## Part 2

### The Table of Civil Sanctions

Requirement or act
<b>Scheme producers</b>
Regulation 10 and Part 1 of Schedule 1 (registration)
Regulation 12(1)(a) or (b) (requirement to make or keep records)
Regulation 13(4) (requirement to comply with a direction to provide information).
Providing information in response to an information notice under regulation 13, or to an application for registration under paragraph 4 or 5 of Schedule 1, where— (a) the person providing the information knows it to be false or misleading in a material particular, or (b) the person providing it does so recklessly and the information is false or misleading in a material particular.
Providing information in an application under regulation 18 for registration of an SP container drink as a scheme producer, where— (a) the person providing the information knows it to be false or misleading in a material particular, or (b) the person providing it does so recklessly and the information is false or misleading in a material particular.
Regulation 21 (requirement to pay a producer registration fee)
Regulation 22 (requirement to pay deposits to the deposit management organisation)
Regulation 85 (collection targets)
<b>Scheme suppliers</b>
Regulation 23 (prohibition on supply of items by a scheme producer not registered with the deposit management organisation)
Regulation 24(1)(a) (requirement for deposit item to carry scheme logo)
Regulation 24(1)(b) (requirement for deposit item to carry scheme return code)
Regulation 24(2) (requirement for scheme multipack to carry scheme packaging logo)
Regulation 25(1) (prohibition on supply of a low volume product carrying a scheme logo or scheme return code)
Regulation 26(1) or (6) (requirement to provide or display, or provide for display, the Scheme information)
Regulation 27(1) (requirement to provide or display, or provide for display, the LVP information)

Requirement or act

Regulation 28(1) (requirement to charge a deposit), where the scheme supplier is a scheme retailer

Regulation 28(1), where the scheme supplier is not a scheme retailer

Regulation 29(1) (requirement to display opt-out information)

Regulation 30(4) (requirement to comply with a direction to provide information).

Providing information in response to a notice under regulation 30 where— (a) the person providing the information is in a material particular, or (b) the person providing it does so recklessly and the information is false or misleading in a material particular

### **Return of returnable items**

Regulation 35(1)  
(requirement to operate a return point)

Regulation 35(4) and (5) and Schedule 2 (requirement to register, or renew registration, with the deposit management organisation operator)

Providing information under paragraph 2 or 4 of Schedule 2 where— (a) the person providing the information is in a material particular, or (b) the person providing it does so recklessly and the information is false or misleading in a material particular

Providing information under paragraph 7 of Schedule 3 (return point exemption: duty to notify deposit management organisation)

Providing information under paragraph 2, 7 or 9 of Schedule 3 where— (a) the person providing the information is in a material particular, or (b) the person providing it does so recklessly and the information is false or misleading in a material particular

Regulation 37(1) (requirement to display information where no return point is operated)

Regulation 41 (requirement to display information at a return point)

Regulation 42 (requirement to be a scheme retailer and registered in order to provide a take-back service)

Regulation 43(1) or (5) (requirement to provide or display information about a take-back service)

Providing information in an application under paragraph 2, 5 or 8 of Schedule 4 of that Schedule, where— (a) the person providing the information is in a material particular, or (b) the person providing it does so recklessly and the information is false or misleading in a material particular

Paragraph 11 of Schedule 4 (duty to notify the deposit management organisation of a change in information)

Regulation 48(1), (2) or (3)(b) (requirements as to the payment of the total return amount)

Regulation 49 (requirement to retain returnable items)

Requirement or act

Regulation 50 (requirement to retain or return returnable items)

### **The deposit management organisation**

regulation 52(3) (requirement to comply with conditions of appointment)

regulation 53(1) (requirement to act in accordance with operational plan)

Regulation 54(1) (requirement to submit annual report)

Regulation 55(1) (requirement to establish and maintain a reserve fund)

Regulation 56 (scheme logo and scheme packaging logo: requirement to issue)

Regulation 57 (Publication of scheme logo and scheme packaging logo)

Regulation 58 (scheme return code)

Regulation 69(1) (requirement to collect returnable items etc. from return point operators etc)

Regulation 69(2) (requirement to pay sums for returnable items)

Regulation 72 (requirement to recycle or make arrangements for recycling of in-scope material from refu

Regulation 73 (requirement to make arrangements for the recycling of in-scope material from items oth

Regulation 75 (requirement to pay NEA costs)

Regulation 76 (information about supplies)

Regulation 85 (collection targets)

### **Matters connected with enforcement**

Regulation 90(3) (requirement to comply with an information notice), where the notice is given by an ap

Providing information to an appropriate local authority in response to an information notice under regula  
knows it to be false or misleading in a material particular, or (b) the person providing it does so reckless  
particular

Regulation 90(3) (requirement to comply with an information notice), where the notice is given by a nat

Providing information to a national enforcement authority under regulation 90 where — (a) the person p  
material particular, or (b) the person providing it does so recklessly and the information is false or misle

Regulation 91(1) (obstructing or failing to assist an authorised person), where the authorised person wa

Regulation 91(1) (obstructing or failing to assist an authorised person), where the authorised person wa

Regulation 92(1) (failure to comply with a civil sanction), where the civil sanction was imposed by a loca

Requirement or act
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Regulation 92(1) (failure to comply with a civil sanction), where the civil sanction was imposed by DAER.
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### Part 3

#### Fixed monetary penalties

##### Power to impose an FMP

1.

—(1)

An enforcement authority may, by notice, impose an FMP on a person—

(a)

in relation to an act or contravention of a requirement mentioned in the CS Table, if the CS Table indicates that an FMP is available for that act or contravention of that requirement

(b)

where the enforcing authority has reasonable grounds to suspect that the person has committed an offence under regulation 91 or 92, if regulation 95 indicates that the penalty is available.

(2)

Before doing so, the enforcement authority must be satisfied on the balance of probabilities that the person has acted or contravened the relevant requirement as set out in the CS Table or regulation 95 (as the case may be).

(3)

“Fixed monetary penalty” means a requirement to pay to the enforcing authority a penalty in relation to an act or contravention of a requirement mentioned in the CS Table, the amount indicated in the CS Table for that act or contravention of that requirement;

##### Notice of intention to impose an FMP

2.

—(1)

Where an enforcement authority proposes to impose an FMP on a person, the authority must give that person a notice of what is proposed (referred to in this Part of this Schedule as a “notice of intent”).

(2)

A notice of intent must be in writing and must—

(a)

state the grounds for imposing the FMP,

(b)

state the amount of the FMP, and

(c)

include information as to—

(i)

the right to make representations and objections within the period of 28 days beginning with the day on which the person receives the notice (referred to in this Part of this Schedule as “the 28-day period”).

Making representations and objections

3.

—(1)

A person who is given a notice of intent may, within the 28-day period, make representations or objections to the enforcing authority in relation to the proposed imposition of the FMP.

(2)

Any representations or objections under paragraph (1) must be in writing.

Final notice of decision to impose an FMP

4.

—(1)

The enforcement authority must, after considering any representations or objections made within the 28-day period, notify the person concerned in writing of its decision.

(2)

Where the decision is made to impose the FMP (with or without modifications to the original terms of the notice of intent) the enforcement authority must serve a final notice in writing and must include the following information—

(a)

the amount of the FMP,

(b)

the grounds for imposing the FMP,

(c)

how payment of the FMP is to be made,

(d)

the date by which payment must be made, calculated on the basis of a period of 56 days beginning with the day of receipt of the final notice,

(e)

details of the late payment penalties,

(f)

information as to the right of appeal, and

(g)

the consequences of non-payment.

Appeal

5.

—(1)

A person may appeal against a final notice.

(2)

The grounds for appeal are—

(a)

that the decision was based on an error of fact;

(b)

that the decision was wrong in law;

(c)

that the decision is unreasonable for any reason.

Non-payment after 56 days

6.

—(1)

An FMP must be paid within the period of 56 days beginning with the day of receipt of the final notice, unless the final notice is appealed, in which case regulation 103(1)(b) applies

(2)

If the FMP is not paid within that period, the amount payable is the original amount of the FMP plus 50% of that figure.

(3)

Where a final notice is appealed and the appeal is unsuccessful or withdrawn—

(a)

the FMP is payable within the period of 28 days beginning with the day on which the appeal is determined or withdrawn (as the case may be), and

(b)

if the FMP is not paid within that period, the amount payable is the original amount of the FMP plus 50% of that figure.

Part 4

Variable monetary penalty

Power to impose a VMP

7.

—(1)

An enforcement authority may, by notice, impose a VMP on a person—

(a)

in relation to an act or contravention of a requirement mentioned in the CS Table, if the CS Table indicates that a VMP is available for the act or contravention, or

(b)

where the enforcement authority has reasonable grounds to suspect that the person has committed an offence under regulation 91 or 92, if regulation 95 indicates that a VMP is available.

(2)

A requirement under this paragraph may not be imposed on a person on more than one occasion in relation to the same act or omission, unless the act or omission is a continuing act or omission.

(3)

Before serving a notice relating to a variable monetary penalty for failure to comply with a compliance notice or enforcement undertaking, the enforcement authority may require a person to provide such information as is reasonable to establish the amount of any benefit arising from the failure to comply with the compliance notice or enforcement undertaking.

(4)

Where a variable monetary penalty is imposed in relation to the contravention of a requirement or act and that contravention or act is an offence under regulation 91 or 92 punishable on summary conviction by a fine, the amount of the variable monetary penalty may not exceed the maximum amount (if any) of that fine.

(5)

In this Schedule “variable monetary penalty” means a requirement to pay a penalty of such amount as the enforcement authority may determine.

Notice of intention to issue a VMP

8.

—(1)

Where an enforcement authority proposes to impose a VMP on a person under this Part of this Schedule, the authority must give the person a notice of what is proposed (a “notice of intent”).

(2)

A notice of intent must be in writing and must include—

(a)

the grounds for imposing the VMP,

(b)

the amount of the penalty,

(c)

information as to the right to make representations within the period of 28 days beginning with the day on which the person receives the notice (referred to in this Part of this Schedule as “the 28-day period”).

Representations and objections

9.

—(1)

A person on whom a notice of intent is served may within the 28-day period make representations to the enforcement authority about the proposed imposition of the VMP.

(2)

Any representations or objections under this paragraph must be in writing.

Service of final notice

10.

—(1)

The enforcement authority must, after considering any representations made within the 28-day period, notify the person concerned of its decision, with or without modifications].

(2)

1. .  
(2)

Where the enforcement authority decides to impose a VMP, the enforcement authority must give a notice (referred to in this Part of this Schedule as a “final notice”) to the relevant person.

(3)

The final notice must be in writing.

Contents of final notice

11.

A final notice must include—

(a)

the grounds for imposing the VMP,

(b)

the amount of the penalty,

(c)

how the payment may be made,

(d)

the period within which the payment must be made, which may not be less than 28 days, from when the final notice is given.

(e)

information as to the right of appeal, and

(f)

information as to the consequences of failing to comply with the notice.

Appeal against a final notice

12.

—(1)

A person who receives a final notice may appeal against it.

(2)

The grounds of appeal are—

(a)

that the decision was based on an error of fact;

(b)

that the decision was wrong in law;

(c)

that the amount of the penalty was unreasonable;

(d)

that the decision is unreasonable for any other reason.

Part 5

Compliance Notices

Issue of a compliance notice

13.

—(1)

An enforcement authority may, by notice, impose a requirement on a person to take such steps as the authority may specify, within such period as the authority may specify, to secure that the contravention of a requirement does not continue or recur—

(a)



in relation to an act or a contravention of a requirement mentioned in the CS Table, if the CS Table indicates such penalty is possible for the act or contravention, or

(b)

where the enforcement authority has reasonable grounds to suspect that the person has committed an offence under regulation 91 or 92, if regulation 95 indicates that the penalty is available.

Such a notice is referred to in this Schedule as a “compliance notice”.

(2)

Before imposing any such requirement, the enforcement authority must be satisfied that there are reasonable grounds for considering that the person has contravened or will contravene the relevant requirement.

(3)

A requirement may not be imposed on a person on more than one occasion in relation to the same act or omission unless the act or omission is a continuing act or omission.

(4)

But sub-paragraph (3) does not prevent an equivalent requirement being imposed on a person in a compliance notice if any earlier requirement imposed on that person in relation to the same act or omission has first been withdrawn.

Contents of a compliance notice

14.

—(1)

A compliance notice must include—

(a)

information as to the grounds for imposing the requirement,

(b)

information as to the compliance or restoration which is required and the period within which it must be completed,

(c)

information about the right of appeal, and

(d)

information as to the consequences of failing to comply with the notice.

Appeal against a compliance notice

15.

—(1)

A person who receives a compliance notice may appeal against it.

(2)

The grounds for appeal are—

(a)

that the decision was based on an error of fact;

(b)

that the decision was wrong in law;

(c)

that the nature of the requirement is unreasonable;

(d)

that the decision was unreasonable for any other reason.

## Part 6

### Enforcement undertaking

#### Power to accept an enforcement undertaking and related matters

16.

—(1)

An enforcement authority may accept an enforcement undertaking from a person in a case where—

(a)

in relation to an act or a contravention of a requirement mentioned in the CS Table, the CS Table indicates that the penalty is available for that act or contravention, or

(b)

the enforcement authority has reasonable grounds to suspect that the person has committed an offence under regulation 91 or 92, if regulation 95 indicates that the penalty is available.

(2)

For the purposes of this Schedule, an “enforcement undertaking” is an undertaking, in writing, to take the action specified in that undertaking within the period specified in that undertaking.

(3)

Before accepting any enforcement undertaking, the enforcement authority concerned must first establish a procedure appropriate to such undertakings.

(4)

The enforcement authority must—

(a)

consult such persons as it considers appropriate before establishing the procedure, and

(b)

publish the procedure established.

#### Contents of an enforcement undertaking

17.

—(1)

An enforcement undertaking must—

(a)

specify a relevant action,

(b)

specify the period within which that action must be completed, and

(c)

include—

(i)

a statement that the undertaking is made in accordance with this Part of this Schedule,

(ii)

the terms of the undertaking, and

(iii)

a statement as to how and when the person giving the undertaking should be considered to have discharged the undertaking.

(2)

An enforcement undertaking may be varied, or the period within which the relevant action is to be taken extended, if agreed in writing by the enforcement authority and the person who gave the enforcement undertaking.

(3)

For the purposes of this paragraph “relevant action” means—

(a)

in a case falling within paragraph 16(1)(a)—

(i)

action to secure that the contravention of the requirement of these Regulations does not continue or recur,

(ii)

action to secure that the position is, so far as possible, restored to what it would have been had the contravention not occurred, or

(iii)

action (including the payment of a sum of money) to benefit or improve the environment, such as action to prevent littering or increase the recycling of in-scope material from which containers are made;

(b)

in a case falling within paragraph 16(1)(b)—

(i)

action to secure that the offence does not recur,

(ii)

action (including the payment of a sum of money) to the benefit of any person affected by the offence, or

(iii)

action (including the payment of a sum of money) to benefit or improve the environment, such as action to prevent littering or increase the recycling of in-scope material from which containers are made.

Effect of acceptance of an enforcement undertaking

18.

—(1)

If an enforcement authority accepts an enforcement undertaking from a person in a case falling within paragraph 16(1)(a), the enforcement authority may not impose any other civil sanction in respect of the act or the contravention to which the enforcement undertaking relates.

(2)

If an enforcement authority accepts an enforcement undertaking from a person in a case falling within paragraph 16(1)(b)—

(a)

the person may not at any time be convicted of the offence in respect of the act or omission to which the enforcement undertaking relates, and

(b)

the enforcement authority may not at any time impose any other civil sanction in respect of the act or omission to which the enforcement undertaking relates.

(3)

But sub-paragraph (1) or sub-paragraph (2) (as the case may be) ceases to apply if the person fails to comply with the relevant enforcement undertaking or any part of it.

Publication of enforcement undertakings

19.

An enforcement authority must publish each enforcement undertaking it accepts in such manner as it considers appropriate for the purposes of bringing it to the attention of persons who may be affected.

Discharge of an enforcement undertaking

20.

—(1)

If an enforcement authority is satisfied that an enforcement undertaking has been complied with, the enforcement authority must issue a certificate (a “discharge certificate”) to that effect.

(2)

An enforcement authority may require a person who has given an enforcement undertaking to provide sufficient information for the purposes of determining whether the person has complied with that undertaking.

(3)

A person who has given an enforcement undertaking may apply, at any time, for a discharge certificate.

(4)

Where an enforcement authority receives an application under sub-paragraph (3), the authority must within the relevant period—

(a)

decide whether to issue a discharge certificate, and

(b)

notify the person making the application of that decision.

(5)

The “relevant period” is the period of 14 days beginning with the day on which the enforcement authority receives the application in question.

Rights of appeal

21.

—(1)

A person who has given an enforcement undertaking to an enforcement authority may appeal against a decision of that authority not to issue a discharge certificate.

(2)

The grounds of appeal are—

(a)

that the decision was based on an error of fact;

(b)

that the decision was wrong in law;

(c)

that the decision was unfair or unreasonable;

(d)

that the decision was wrong for any other reason.

Inaccurate, incomplete or misleading information

22.

—(1)

A person who gives inaccurate, incomplete or misleading information in relation to an enforcement undertaking is to be regarded as not having complied with it.

(2)

An enforcement authority may revoke a discharge certificate if it was issued on the basis of inaccurate, incomplete or misleading information.

Partial compliance with an enforcement undertaking

23.

If a person has partly complied with an enforcement undertaking, the enforcement authority must take that into account when imposing any other civil sanction.

Schedule 7

regulation 103

Procedure on Appeal

Application

1.

—(1)

Paragraph 2 applies to a person in England who wishes to appeal to the First-tier Tribunal under regulation 102 (such a person is referred to in this Schedule as an “FTT appellant”).

(2)

Paragraphs 3 to 6 apply to a person in Northern Ireland who wishes to appeal to the appeals commission under regulation 102 (such a person is referred to in this Schedule as a “PACNI appellant”).

(3)

In this Schedule, “appeals commission” means the planning appeals commission established in accordance with section 203 of the Planning Act (Northern Ireland) 2011.

Appeal to the First-tier Tribunal

2.

—(1)

A FTT appellant may appeal to the First-tier Tribunal in accordance with the GRC Rules 2009.

(2)

The GRC Rules 2009 apply to the appeal, subject to the modification in sub-paragraph

(3).

(3)

Rule 22 of the GRC Rules 2009 applies to an appeal brought under regulation 102 of these Regulations as if paragraph (1)(b) of that rule required the appeal to be brought within two months of the date on which the notice to which the appeal relates was sent to the FTT appellant.

(4)

In this paragraph “the GRC Rules 2009” means the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 S.I. 2009/1976.

Appeal to the appeals commission: notice of appeal

3.

—(1)

A PACNI appellant must appeal to the appeals commission by sending a notice to the appeals commission (“the notice of appeal”).

(2)

The notice of appeal must be in writing and must be accompanied by the relevant fee.

(3)

The relevant fee is the amount specified in regulation 9(1) of the Planning Fees (Deemed Planning Applications and Appeals) Regulations (Northern Ireland) 20152015 No. 136.

(4)

The notice of appeal must be accompanied by—

(a)

a statement of the grounds of appeal,

(b)

a copy of the notice, which is the subject of the appeal,

(c)

a copy of any correspondence between the PACNI appellant and the deposit management organisation or the national enforcement authority and any other document relevant to the appeal,

(d)

a copy of any other document on which the PACNI appellant intends to rely for the purposes of the appeal, and

(e)

a statement indicating whether the PACNI appellant wishes the appeal to be in the form of a hearing or to be determined on the basis of written representations.

Appeal to the appeals commission: time for bringing appeal

4.

—(1)

The notice of appeal under paragraph 3(1) must be given to the appeals commission before the end of the period of 2 months beginning with the date on which the notice to which the appeal relates as was given to the appellant.

Appeal to the appeals commission: decision on appeal

5.

—(1)

The appeals commission must notify the PACNI appellant in writing of the decision on the appeal and the reasons for that decision.

(2)

If the appeals commission determines the appeal after a hearing, the appeals commission must provide the appellant with a copy of any report made by the person who conducted the hearing.

(3)

The appeals commission must, at the same time as notifying the appellant of the decision on the appeal, send a copy of any document sent to the appellant under this paragraph to the national enforcement authority.

Explanatory Note

(This note is not part of the Regulations)

These Regulations are the first to be made under powers which include Schedule 8 to the Environment Act 2021 (c.30). They establish, in England and Northern Ireland, a deposit scheme container drinks which are supplied for consumption in England or Northern Ireland. The relevant containers are single-use closed bottles and cans made from PET plastic, steel or aluminium which contain between 150ml and 3 litres of liquid.

From DATE 3, anyone in England or Northern Ireland who is supplied with a container drink to which these Regulations apply must pay a deposit to the person who supplies them with that drink, and a person who returns an empty container to a collector will be entitled to a refund. Under the scheme it will also be possible to return and claim a refund for certain empty containers from drinks which were purchased outside of England and Northern Ireland.

Part 1 of the Regulations contains introductory provisions.

Part 2 contains provisions on interpretation.

Part 3 contains provisions relating to the establishment of a deposit scheme for container drinks in England and Northern Ireland. This Part also sets out the circumstances in which a person is not entitled to a refund for a returnable item.

Part 4, chapter 1 contains provisions on registration requirements for scheme producers, the obligation of deposit management organisations to keep a register of registered scheme producers and provisions requiring scheme producers to keep records relating to the supply of container drinks. Deposit management organisations have powers to obtain information from registered scheme producers and powers relating to the cancellation of registration. Chapter 2 contains provisions relating to low volume products . Chapter 3 contains provisions relating to payments by scheme producers to deposit management organisations.

Part 5 contains provisions relating to scheme suppliers, including a prohibition on the supply of drinks produced by a scheme producer who is not registered, and provisions relating to the labelling of deposit items, of scheme multipacks and of registered low volume products. Part 5 also contains provisions requiring scheme suppliers to display information about the deposit scheme and about low volume products and also provisions giving deposit management organisations the power to obtain information from scheme suppliers.

Part 6 contains provisions relating to the return of returnable items. Chapter 1 of Part 6 contains provisions on items subject to overseas schemes. Chapter 2 contains provisions relating to mandatory return points for container drinks and chapter 3 contains provisions relating to voluntary return points. Chapter 4 contains provisions on information to be provided at return points and chapter 5 contains provisions on take-back services and on the collection or acceptance of returnable items by deposit management organisation. Chapter 6 contains provisions on the register of return points, the register of return point exemptions and the register of take-back service providers and chapter 7 contains provisions on the general obligations of scheme collectors to offer payment for returnable items and to retain them for collection.

Part 7 contains provisions relating to the role of the deposit management organisation as scheme administrator. Chapter 1 of Part 7 contains provisions on the appointment and governance of a deposit management organisation and chapter 2 contains provisions on the issue and administration arrangements for scheme logo, scheme packaging logo and scheme return code. Chapter 3 contains provisions relating to deposits, including determining the amount of the deposit and the use that may be made of amounts received as deposits. Chapter 4 contains provisions relating to fees for registration, and chapter 5 contains provisions relating to the collection of returnable items, including reviews of the operation of return points. Chapter 6 contains provisions on the recycling of in-scope materials from drinks containers which have been returned. Chapter 7 contains provisions relating to national enforcement authorities and chapter 8 contains provisions relating to deposit management organisations working with other scheme administrators established in Wales, Scotland or overseas. Chapter 9 contains provisions relating to the internal review of decisions made by deposit management organisations. Chapter 10 contains provisions relating to the revocation of a person's appointment as the deposit management organisation and includes provisions relating to the Secretary of State (or another person) acting as interim scheme administrator until a person is appointed as the deposit management organisation.

Part 8 contains provision relating to targets for deposit management organisations and for scheme producers.



Part 9 contains provisions relating to enforcement. Chapter 2 of Part 8 sets out enforcement powers applicable in England and Northern Ireland respectively and contains provisions requiring the provision of information. Chapter 3 contains provisions relating to offences and chapter 4 provisions relating to civil sanctions. Chapter 5 contains provisions relating to the publication of enforcement action in a public register.

Part 10 sets out provisions relating to rights of appeals and the procedure on appeal.

Part 11 sets out the functions of the national enforcement authorities.

Part 12 contains provisions for a review of the regulatory provisions contained in these Regulations

[impact assessment].