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Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee report on the Environmental Regulations (Enforcement Measures) (Scotland) Amendment Order 2023 [draft]

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Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero, Energy and Transport, with the exception of matters relating to rural land use, wildlife crime and animal welfare.



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Introduction

1. The Environmental Regulations (Enforcement Measures) (Scotland) Amendment Order 2023 [draft] (hereafter 'the Order') was laid before the Scottish Parliament on 19 January 2023 and is subject to the affirmative procedure. The draft instrument was referred to the Net Zero, Energy and Transport Committee for consideration.

2. It is for the Net Zero, Energy and Transport Committee to recommend to the Scottish Parliament whether the Order should be approved. The Minister for Green Skills, Circular Economy and Biodiversity, Lorna Slater, lodged motion S6M-07583 which recommended the Committee approve the Order.

3. The Policy Note accompanying the draft instrument stated its purpose is provide new powers to Scottish Environment Protection Agency (SEPA) to issue civil penalties for offences committed under the following Regulations—

   - The Packaging Waste (Data Reporting) (Scotland) Regulations 2023 (hereafter 'the Data Regulations'). This instrument is subject to the negative procedure and was considered later in the meeting.

   - Deposit and Return Scheme for Scotland Amendment Regulations 2022 (hereafter 'the Deposit Return Scheme Regulations').

4. In relation to the Data Regulations, the Order would allow SEPA to issue civil penalties for producers failing to collect and share accurate data on the amount of packaging they are supplying.

5. In relation to Deposit and Return Scheme Regulations, the Order provides powers for SEPA to issue civil penalties to businesses who fail to notify buyers at point of sale if items are not included in the Deposit Return Scheme.

Consideration by the Delegated Powers and Law Reform (DPLR) Committee

6. At its meeting on 31 January 2023, the DPLR Committee considered the draft Order. The Committee's report, published on 1 February 2023, determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Read the Official Report from 31 January 2023.

Consideration by the Net Zero, Energy and Transport Committee

7. At its meeting on 7 February 2023, the Committee took evidence on the draft Order from—

   - Lorna Slater, Minister for Green Skills, Circular Economy and Biodiversity, Scottish Government;
   - Carolyn Boyd, Solicitor, Scottish Government;
   - Charles Holmes, Head of Extended Producer Responsibility, Scottish Government; and
   - Tirion Rees Davies, Senior Policy Officer, Extended Producer Responsibility, Scottish Government.

8. In opening remarks, the Minister explained progress towards a UK-wide initiative called Extended Producer Responsibility. She provided detail on the Data Regulations and the Deposit Return Scheme Regulations, and explained the purpose of the draft Order within the context of those instruments. [i]

9. The Committee explored whether legislating for enforcement measures in relation to the Deposit Return Scheme should have been introduced after further details of the scheme were finalised. [ii] The Minister stated that the offence has already been established by the Deposit Return Scheme Regulations following industry concerns about fraudulence by grey-market operators, and this Order would give SEPA the powers to enforce the offence. The Minister further explained that the timing of introducing this legislation was a matter of efficiency, which meant it could be bundled with other related legislation.[iii]

10. The Committee sought clarification on the levels of penalties, including the statutory maximum under the Order. [iv] The Scottish Government explained that the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (hereafter 'the 2015 Order'), which this Order amends, sets out the values for the fixed monetary penalties. Those are set at £300, £600 or £1,000, depending on how serious the offence is assessed as being. The 2015 Order also provides for a variable monetary penalty up to a maximum of £10,000.

11. The Committee explored the discussions which had taken place with SEPA on their intended use of the powers. [v]The Minister said for SEPA this would be akin to existing powers around packaging regulation and no additional burden was envisaged with regard to larger operators.

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i Net Zero, Energy and Transport Committee. *Official Report, 7 February 2023* , cols 2-3.
ii Net Zero, Energy and Transport Committee. *Official Report, 7 February 2023* , cols 4-5.
iii Net Zero, Energy and Transport Committee. *Official Report, 7 February 2023* , cols 5-6.
iv Net Zero, Energy and Transport Committee. *Official Report, 7 February 2023* , col 6.
v Net Zero, Energy and Transport Committee. *Official Report, 7 February 2023* , cols 6-7.

12. Members asked what support and guidance the Scottish Government would provide for businesses to comply with requirements of the Deposit Return Scheme and Extended Producer Responsibility. [vi]The Minister stated further guidance would be provided in advance of Extended Producer Responsibility scheme coming into force in 2024 and extensive stakeholder engagement was being undertaken in advance of the start of the Deposit Return Scheme in 2023.[vii]

13. The Committee queried SEPA's discretion in assessing the seriousness of the offences and subsequent fines. [viii]Officials provided an indication of situations where higher penalties might be triggered. It was later intimated SEPA had guidance from the Lord Advocate on assessment of offences and subsequent sanctions. [ix] In relation to appealing decisions on enforcement actions, officials explained that where SEPA has made the decision to impose a civil sanction, in accordance with the Lord Advocate's guidance, it would relay that intent to the party. If, thereafter, SEPA continues down the enforcement route and imposes the penalty, there is then a right of appeal to the Scottish Land Court.

14. SEPA's ability to undertake additional enforcement duties without additional funding was explored. [x]The Minister stated SEPA was the body with responsibility for monitoring compliance and enforcing offences, adding there was a cost recovery mechanism in the scheme. A dedicated team within SEPA for the Deposit Return Scheme already exists. She also stated in the subsequent debate no additional burden was being placed on SEPA and the Order provided the body with another tool to support its existing work.[xi]

15. The Minister explained civil penalties would be a flexible and proportionate approach in response to questions on divergence from other UK administrations. She said it provided an alternative to pursuing criminal prosecutions for minor offences, a flexibility that is generally desired and supported by industry. [xii]

16. The Committee was also interested in how the funds raised from the proposed fines would be used.[xiii] Officials explained that there are the fines that are paid into the consolidated funds; there are the producer fees, which are charged from 2024 and are paid to the local authorities for running their systems; and there is a charge that SEPA and the other regulators can levy on producers to fund their operations. The Minister explained she would write to the Committee with further detail on how the revenue raised by fines for the consolidated fund relates to the funding for the Deposit Return Scheme.

17. The evidence taken and debate held at that meeting on this instrument can be

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vi Net Zero, Energy and Transport Committee. *Official Report, 7 February 2023* , col 7.

vii Net Zero, Energy and Transport Committee. *Official Report, 7 February 2023* , cols 7-8.
viii Net Zero, Energy and Transport Committee. *Official Report, 7 February 2023* , cols 8-9.

ix Net Zero, Energy and Transport Committee. *Official Report, 7 February 2023* , col 12.
x Net Zero, Energy and Transport Committee. *Official Report, 7 February 2023* , cols 9-10.

xi Net Zero, Energy and Transport Committee. *Official Report, 7 February 2023* , cols 16-17.
xii Net Zero, Energy and Transport Committee. *Official Report, 7 February 2023* , cols 10-11.
xiii Net Zero, Energy and Transport Committee. *Official Report, 7 February 2023* , cols 11-12.

found in the Official Report—

Read the Official Report from 7 February 2023.

18. Following the conclusion of evidence taking, the Minister moved motion S6M-07583 in her name—

That the Net Zero, Energy and Transport Committee recommends that the Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2023 [draft] be approved.

19. There was a debate in which various Members contributed, referring to matters covered in the earlier evidence session as reasons why they would, or would not, support the motion. After the debate, motion S6M-07583 was agreed to by division (For: 5, Against: 1, Abstain: 1).

Conclusion

20. The Net Zero, Energy and Transport Committee recommends that the Environmental Regulations (Enforcement Measures) (Scotland) Amendment Order 2023 [draft] be approved.

