

Net Zero, Energy and Transport Committee
Tuesday 27 May 2025
19th Meeting, 2025 (Session 6)

Note by the Clerk on the Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2025 (draft)

Overview

1. At this meeting, the Committee will take evidence from the Acting Cabinet Secretary for Net Zero and Energy and Scottish Government officials on the Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2025 before debating a motion in the name of the Acting Cabinet Secretary inviting the Committee to recommend approval of the instrument.
2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

Title of instrument: [The Environmental Regulation \(Enforcement Measures\) \(Scotland\) Amendment Order 2025](#) (draft)

Laid under: [Regulatory Reform \(Scotland\) Act 2014](#)

Laid on: 2 May 2025

Procedure: Affirmative

Lead committee to report by: 10 June 2025

Commencement: If approved, the instrument comes into force on the day after the day on which it is made.

Procedure

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.

6. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
 - an evidence session with the Acting Cabinet Secretary and officials, followed by
 - a formal debate on a motion, lodged by the Acting Cabinet Secretary, inviting the lead committee to recommend approval of the instrument.
7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument

Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee considered the instrument on 20 May 2025 and reported on it in its [35th Report, 2025](#). The DPLR Committee drew the instrument to the attention of the Parliament on the general reporting ground in light of the misplaced footnote and the typographical error in the reference to the title of the Principal Order. The Committee also highlighted its [correspondence](#) with the Scottish Government to the Net Zero, Energy and Transport Committee, noting that the Scottish Government intends to correct the errors in the signing copy of the instrument.

Purpose of the instrument

9. The purpose of this order is to amend [the Environmental Regulation \(Enforcement Measures\) \(Scotland\) Order 2015](#) to include offences created by [the Producer Responsibility Obligations \(Packaging and Packaging Waste\) Regulations 2024](#).
10. The policy note explains that the order will enable SEPA to use civil sanctions in relation to offences under the UK packaging extended producer responsibility (EPR) regulations, [the Producer Responsibility Obligations \(Packaging and Packaging Waste\) Regulations 2024](#), which came into force on 1 January 2025.
11. The 2024 Regulations impose various obligations on packaging producers, compliance scheme operators and, reprocessors and exporters of packaging waste - with related offences for breaching those obligations. The 2024 Regulations also include civil sanctions which can be used by the other three UK nations regulators, including compliance notices, fixed and variable monetary penalties and enforcement undertakings.
12. SEPA is responsible for regulating the 2024 Regulations in Scotland. According to the policy note, the 2015 order provides SEPA with a suite of civil enforcement measures, including the imposition of both fixed and variable monetary penalties. The policy note also states that amending the 2015 Order to include the offences within the 2024 regulations will provide SEPA “with a flexible and proportionate set

of tools for dealing with these offences to support it in discharging its responsibilities as regulator appropriately.”

13. The Policy Note accompanying the instrument is included in the annexe. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Report

14. The Convener may invite the Committee to delegate to him authority for considering and approving a draft report prepared by the clerks after the meeting. In relation to any report finalised in this way, Committee Members may ask to see the draft and comment on it before the Convener authorises it for publication.

Clerks to the Committee
May 2025

Annexe: Scottish Government Policy Note

POLICY NOTE

THE ENVIRONMENTAL REGULATION (ENFORCEMENT MEASURES) (SCOTLAND) AMENDMENT ORDER 2025

SSI 2025/XXX

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

Summary Box

To amend the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (2015 Order) to include offences created by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024.

Policy Objectives

This SSI will enable SEPA to use civil sanctions in relation to offences under the UK packaging extended producer responsibility (EPR) regulations, the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 (the “2024 Regulations”) which came into force on 1 January 2025.

The 2024 Regulations impose various obligations on packaging producers, compliance scheme operators and, reprocessors and exporters of packaging waste with related offences for breaching those obligations. The 2024 Regulations also include civil sanctions for the other three UK nations regulators, including compliance notices, fixed and variable monetary penalties and enforcement undertakings.

SEPA is responsible for regulating the 2024 Regulations in Scotland. The 2015 Order provides SEPA with a suite of civil enforcement measures, including the imposition of both fixed and variable monetary penalties and the power to accept enforcement and other within the scope of the 2015 Order we will provide SEPA with a flexible and proportionate set of tools for dealing with these offences to support it in discharging its responsibilities as regulator appropriately.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children’s rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Environmental Regulation (Enforcement Measures) (Scotland)

Amendment Order 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

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

Consultation

As the responsible regulator, SEPA was involved in the development of this Order, and the Scottish Ministers have had regard to SEPA's views on which penalties should be applicable to the range of offences.

Impact Assessments

A Fairer Scotland Duty (FSD) assessment, Equality Impact Assessment (EQIA), and Island Communities Impact Assessment (ICIA) have been completed and published in respect of extended producer responsibility for packaging. A [Child Rights and Wellbeing Impact Assessment \(CRWIA\)](#) was also completed for this SSI.

Financial Effects

A partial and final Business and Regulatory Impact Assessment¹ (BRIA) has been published for extended producer responsibility for packaging. A separate BRIA was not completed for this SSI.

Scottish Government
Directorate for Environment and Forestry

April 2025

¹ Supporting documents - Packaging - extended producer responsibility: full business and regulatory impact assessment (BRIA) - gov.scot <https://www.gov.scot/publications/extended-producer-responsibility-packaging-full-business-regulatory-impact-assessment-bria/documents/>