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Pàrlamaid na h-Alba

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# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 12 September 2023**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



[dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot)



0131 348 5212

# Committee Membership



**Stuart McMillan**  
Scottish National Party



**Bill Kidd**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Oliver Mundell**  
Scottish Conservative  
and Unionist Party



**Mercedes Villalba**  
Scottish Labour

# No points raised

1. At its meeting on 12 September, the Committee considered the following instruments and document under its remit and agreed not to draw them to the attention of the Parliament.

## Equalities, Human Rights & Civil Justice Committee

Act of Sederunt (Rules of the Court of Session 1994, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Miscellaneous) 2023 (SSI 2023/196)

- The Committee welcomed that this instrument fulfils a commitment by the Lord President to correct a cross-referencing error in SSI 2023 62, the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Sexual Harm Prevention Orders and Sexual Risk Orders) 2023.

## Heath, Social Care and Sports Committee

Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment (No. 2) Regulations 2023 (SSI 2023/243)

National Health Service (General Dental Services) (Miscellaneous Amendment) (Scotland) Regulations 2023 (SSI 2023/247)

## Net Zero, Energy and Transport Committee

Deposit and Return Scheme for Scotland (Miscellaneous Amendment) Regulations 2023 (SSI 2023/Draft)

- The Committee draws its correspondence with the Scottish Government to the attention of the Net Zero, Energy and Transport Committee as it provides further information on the policy intention which may be of interest to that committee.
- A copy of the correspondence can be found in the Annex.

Scotland's Guiding Principles on the Environment: Statutory Guidance (SG 2023/162)

# Annex

## Deposit and Return Scheme for Scotland (Miscellaneous Amendment) Regulations 2023 (SSI 2023/Draft)

On 17 August 2023, the Committee asked the Scottish Government:

### Transitional Provision

1. Regulation 11 of this instrument revokes regulation 22 of the Deposit and Return Scheme for Scotland Amendment Regulations 2023 and as a result there is no longer any transitional provision for a rollover of previous registrations/applications/fees paid.

The Policy Note simply states that “this transitional provision is no longer required.” While it is understood that this provision was in respect of the year beginning 1 March 2024 and that the new implementation date is 1 October 2025, it is not clear what the policy intention now is in relation to those producers who had already registered/applied/paid fees in advance of 30 June 2023. These producers who were covered by the transitional provisions were not required to re-apply or to pay a fee as either a registered producer of scheme articles under regulation 8 or as a listed producer of low volume drink products under schedule 5.

It would seem from the amendments made by this instrument to the Deposit and Return Scheme for Scotland Regulations 2020 (the “2020 Regulations”) that producers will now have to make new applications for registration or listing and pay the required fee by 13 August 2025 in advance of the new implementation date of 1 October 2025, however it is not clear what the status of previously paid fees will be, for example will these be refunded or set-off against the new applications?

We would welcome your clarification of the policy intention in these respects. Is the intention that previous fees paid would be lost without reimbursement or compensation?

### Fees

2. It appears from the proposed amendments to the 2020 Regulations that producers will now require to apply for registration/listing twice in a period of around 6 months, that is (a) by 13 August 2025 to take effect from 1 October 2025 and (b) by 1 March 2026 to take effect from 1 April 2026; and therefore the initial registration will only have effect for 6 months. This is based on:

- regulation 6 of this instrument which amends the dates by which a producer must apply for registration under regulation 7 of the 2020 Regulations to 13 August 2025; and to before 1 March in any relevant year beginning on or after 1 January 2026; and
- regulation 7 of this instrument which amends the dates registration takes effect from under regulation 8 of the 2020 Regulations, where the application is made by 13 August 2025, to 1 October 2025; and is 1 April in any subsequent relevant year where the application is made by 1 March.

It therefore seems that producers will require to pay the full fee of £365, where applicable, for an initial period of 6 months rather than a year, rather than the fee being pro-rated. Could you confirm that this is the policy intention?

On 5 September 2023, the Scottish Government responded:

Transitional Provision

1. The Scottish Government confirms that, since regulation 11 of this instrument revokes regulation 22 of the Deposit and Return Scheme for Scotland Amendment Regulations 2023, it is intended that there is no longer a transitional provision for a rollover of previous registrations/applications/fees paid. The Scottish Government also confirms that the effect of the amendments made by this instrument to the Deposit and Return Scheme for Scotland Regulations 2020 (the “2020 Regulations”) is that producers will have to make new applications for registration or listing and pay the required fee by 13 August 2025 in advance of the new implementation date of 1 October 2025.

When the Deposit and Return Scheme (DRS) was delayed until 1 March 2024, SEPA intended to retain the producer registration fees which had been paid to it during 2023. Under the regulation 22 of the Deposit and Return Scheme for Scotland Amendment Regulations 2023, the transitional provision would have ensured that producers who had already registered in 2023 would not have to pay a registration fee when they registered with SEPA for DRS in 2024. Under the 2020 Regulations producers are required to register annually and pay an annual registration fee. So, in effect, the registration fee that had been paid by producers in 2023 was simply being rolled over for their 2024 registration, and they suffered no disadvantage from having registered timeously in 2023 when DRS did not in fact go live as originally planned in August 2023.

When DRS was delayed further to October 2025, SEPA indicated that they would not retain these registration fees until 2025. There is therefore no rollover of any producer registration fees to 2025 and any fees paid in 2023 are being refunded to producers. This means that producers will start from scratch in relation to registration for DRS in 2025.

For completeness, the Committee may wish to note that Scottish Ministers withdrew from Circularity Scotland its approval as scheme administrator with effect from 18 August 2023. SEPA was then required, under regulation 17(6) of the 2020 Regulations, to contact producers in relation to their registration following the withdrawal of CSL’s approval. SEPA also took that opportunity to set out the refund process for their 2023 registration fees. SEPA wrote to producers on 28 August confirming that they would be refunding the registration fees received, and requesting bank details from the producers affected. SEPA will process all refunds after receiving bank details.

Fees

2. The Scottish Government confirms that the current intention is that the 2020 Regulations (as amended) require producers to pay the full fee of £365, where applicable, for an initial period of 6 months rather than a year, rather than the fee being pro-rated.



