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Net Zero, Energy and Transport Committee
The Scottish Parliament
Edinburgh
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Dear Edward

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

Thank you for the opportunity to speak to the Committee on 7 February regarding the Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2023 (“the Order”) and the Packaging Waste (Data Reporting) (Scotland) Regulations 2023 (“the data regulations”). I am grateful for the Committee’s support for these instruments and am writing to follow up on a small number of points from the Committee meeting.

Liam Kerr asked about the number of businesses that would be in scope of these instruments and the value of any monetary penalties which could be imposed. Businesses will potentially be liable to an enforcement measure under the Order insofar as they are subject to obligations under the data regulations, and/or the obligation on persons selling articles to persons other than a consumer created by the Deposit and Return Scheme for Scotland Amendment Regulations 2022 (“the amending DRS regulations”).

Producers with obligations under the *data regulations* are either “large producers” (over £2m turnover and 50 tonnes of packaging) or “small producers” (over £1m turnover and 25 tonnes of packaging but under the large producer threshold). Most large producers are already obligated to report under the existing packaging producer responsibility system, and this number is not expected to change significantly; at present there are 300 Scottish-based producers registered with SEPA and potentially subject to their enforcement powers. The UK Impact Assessment for the new extended producer responsibility system estimates that there will be around 3,100 small producers.¹ This is a UK-wide figure and no Scottish

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063588/epr-final-impact-assessment.pdf, p.90.

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breakdown is available. Until producers actually register, estimating the number of Scottish-based small producers is subject to a degree of uncertainty.

Producers and wholesalers will be in scope of the obligation imposed by the *amending DRS regulations*. At the outset of developing the scheme, approximately 4,500 companies were estimated to have an interest as producers. However, significantly fewer will have to register – for example, once groups of companies registering under one producer registration are identified, the number of individual producers is estimated to be below 2,000. We do not have an estimate of the number of wholesalers selling drinks in Scotland, but it may be helpful to note that the Scottish Wholesale Association lists 68 wholesale members.² As I explained to the Committee, this new obligation is intended to prevent fraud and so I would expect that the vast majority of honest producers and wholesalers would not fall foul of the provision.

Neither the Scottish Government nor SEPA has carried out any estimate of the total amount expected to be levied as fines under the Order. This would be challenging to estimate because, as I explained to the Committee, the intention behind the Order is to provide SEPA with a flexible set of tools to allow it to respond in a proportionate manner to individual instances of offending. It is up to SEPA (in line with both their own guidance and that issued by the Lord Advocate) to determine, based on the circumstances of the offence and that of the offender, whether to use a civil enforcement measure, that is a fixed monetary penalty, a variable monetary penalty (and if so at what level) or an enforcement undertaking, or whether it is appropriate to refer the matter to the Procurator Fiscal to consider criminal proceedings.

As with the civil enforcement measures which SEPA already has available to it in relation to environmental offences already listed in the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (which the Order amends), the purpose of adding newly-created offences to SEPA's civil enforcement measures is not to raise revenue. It is to deter, and sanction those who commit these new offences under either the data regulations and the amending DRS regulations, thereby promoting the effective functioning of the Deposit Return Scheme and the extended producer responsibility system for packaging. The amendments being made by this Order also ensure that SEPA can act consistently in relation to its enforcement of all environmental offences by having the same range of available sanctions.

As my officials explained, these monies are paid into the Scottish Consolidated Fund (SCF), and I am happy to add some detail to that to answer Liam Kerr's question on this matter. The SCF is the account in which receipts due to the Scottish Ministers are held, including penalties levied under the existing Environmental Regulation (Enforcement Measures) (Scotland) Order 2015, which covers a wide range of offences in existing environmental legislation. Funding is then drawn down from the SCF to support Scottish Government spending priorities, as well as spending by other bodies receiving funds from the SCF, including the Scottish Parliamentary Corporate Body, following consideration of overall available funding as part of the budget setting process, and subject to Parliamentary approval of the annual Budget Act. The audited financial statements for the SCF are published on the Scottish Government website, providing information on receipts to, and payments from, the fund.

² <https://www.scottishwholesale.co.uk/members/>

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Finally, I wish to clarify the point about the greenhouse gas reduction to which I referred in my opening remarks. I can confirm that this is estimated at 2.2 megatonnes CO₂ equivalent by 2033 as set out in the final UK Impact Assessment for the policy.³ I apologise for any confusion.

I hope that this information is useful to you and other members of the Committee.

Kind regards

LORNA SLATER

³ Op. cit., p.2.

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