



STATUTORY INSTRUMENTS.

S.I. No. 599 of 2021



SEPARATE COLLECTION (DEPOSIT RETURN SCHEME)
REGULATIONS 2021

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I, EAMON RYAN, Minister for the Environment, Climate and Communications, having regard to section 4 of the European Communities Act 2007 (No. 18 of 2007), and in exercise of the powers conferred on me by section 29(4)(f) of the Waste Management Act, 1996 (No. 10 of 1996), and for the purpose of giving further effect to Directive (EU) 2019/904/EC of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastics on the environment¹ which imposes obligations on the State that relate, in whole, to matters to which the said section 29(4)(f) relates, hereby make the following regulations:

PART I

Preliminary and General

Citation and commencement

1. (1) These Regulations may be cited as the Separate Collection (Deposit Return Scheme) Regulations 2021.

(2) These Regulations shall come into operation on 20th November 2021.

Interpretation

2. In these Regulations, save where the context otherwise requires -

“Act” means the Waste Management Act 1996 (No. 10 of 1996) and every other enactment which is to be read together with that Act;

“Agency” means the Environmental Protection Agency established by section 19 of the Environmental Protection Agency Act 1992 (No. 7 of 1992);

“approved body” means any person, association or body corporate approved by the Minister to operate a deposit return scheme in accordance with Regulation 7;

“authorised person” means a person who is appointed in accordance with Section 5(1) of the Act;

“beverage” means a liquid intended for human consumption by drinking, it does not include milk or other dairy-based products;

“consumer” means a natural person who is acting for purposes unrelated to the person’s business or profession and includes, in the context of a return of an in-scope bottle or in-scope container a person, whether or not the person bought the relevant in-scope product from a retailer;

¹ OJ No L155, 12.6.2019, p.1

“deposit return scheme” means a scheme under which the consumer at the point of sale pays an amount that is not part of the sales transaction, referred to in these Regulations as “the deposit”, for in-scope product within the scope of these Regulations, on condition that the deposit is refunded to the consumer when the empty in-scope bottle or in-scope container is returned to an approved return point;

“Directive” means Directive (EU) 2019/904/EC of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastics on the environment ²;

“green procurement” means procurement whereby goods, services, works and utilities that have a reduced impact on the environment throughout their life cycle are selected over alternative products or solutions;

“in-scope bottle” means a beverage bottle described in Regulation 3(1) without the beverage contained in it;

“in-scope container” means an aluminium or steel beverage container described in Regulation 3(2) without the beverage contained in it;

“in-scope product” means an in-scope beverage bottle or in-scope beverage container described in Regulation 3 together with its contents when sold;

“local authority” has the same meaning as it has in Section 5 (1) of the Act;

“Minister” means the Minister for the Environment, Climate and Communications;

“placed on the market” means the first sale or supply of an in-scope product for the purpose of trade or otherwise in the course of business in the State;

“producer” means any person, irrespective of the selling technique used, who is first to place in-scope products on the market in the State;

“retailer” means any person who for the purpose of trade or otherwise in the course of business sells or otherwise supplies in-scope products to a final consumer;

“return point” means a premises registered in accordance with Regulation 15 to take back in-scope bottles and in-scope containers.

Scope

3. These Regulations shall apply to -

(1) Beverage bottles which are manufactured from polyethylene terephthalate (PET bottles) with a capacity of up to 3 litres and their component parts which are used and sealed for the sale of a product contained in them, and for which a deposit under Regulation 17 has been paid.

(2) Beverage containers which are manufactured from aluminium or steel with a capacity of up to 3 litres and their component parts which are used and sealed, for the sale of a product contained in them, and for which a deposit under Regulation 17 has been paid.

² OJ No. L155, 12.6.2019, p.1

- (3) These Regulations shall not apply to -
- (a) Plastic beverage bottles which are not manufactured from PET.
 - (b) Aluminium or steel containers which are not designed to contain a beverage.

PART II

ESTABLISHMENT OF A DEPOSIT RETURN SCHEME

4. (1) Producers shall establish a Deposit Return Scheme (hereafter “the scheme”) to operate in respect of in-scope bottles, in-scope containers and in-scope products.

(2) Producers may appoint a person to apply to the Minister in accordance with these Regulations to operate the scheme referred to in paragraph (1) on their behalf.

- (3) (a) The costs of operating a scheme shall be recouped from –
- (i) registration fees set by an approved body,
 - (ii) producer fees set by an approved body on the basis of quantity and material type placed on the market,
 - (iii) unredeemed deposits as provided for in these Regulations,
 - (iv) revenue derived from the sale of returned in-scope bottles and containers,
 - (v) any other income source created by an approved body.
- (b) An approved body shall set any producer and registration fees to meet only its costs of operation and not for profit.

PART III

APPROVED BODY

Functions of an Approved Body

- 5.** (1) An approved body shall –
- (a) carry out all the functions for which they are approved effectively and in a financially sound manner,
 - (b) achieve separate collection rates for recycling of in-scope bottles in accordance with the Directive,
 - (c) achieve EU recycling targets for in-scope containers,
 - (d) audit the producers registered with it in accordance with these Regulations,
 - (e) audit the retailers registered with it in accordance with these Regulations,

- (f) engage with approved waste collectors to ensure separate collection, appropriate processing and counting of in-scope bottles and in-scope containers,
- (g) provide the Minister, the Agency and the relevant local authority with information relating to producers, retailers and return point operators registered with it in accordance with these Regulations,
- (h) gather information from producers, retailers and return point operators in connection with their participation in the Deposit Return Scheme,
- (i) provide the Minister, the Agency and a local authority with all reasonable information they may seek in order to verify compliance with these Regulations and relevant requirements of the Directive,
- (j) advise the Minister of any developments in the area of waste management which in the opinion of the approved body could improve the effectiveness of the scheme including the potential future benefits of such a scheme for other materials and new waste collection methodologies,
- (k) advise the Minister on the appropriate level of deposit and the type of deposit or both.

Application for approval

6. (1) An application to the Minister for approval of a person to operate a Deposit Return Scheme shall be made in writing and accompanied by the following,

- (a) (i) where the applicant is a body corporate:
 - (I) a copy of the Articles of Association of the body corporate,
 - (II) the appropriate certificate issued by the Companies Registration Office,
 - (III) the names and addresses in the State of the officers of the body corporate or agent applying for approval and its board of directors,
 - (IV) the registered office and the address of the secretary, if different from the registered office,
- (ii) where the applicant is not a body corporate, the names and addresses in the State of officers of the applicant,
- (b) proposals relating to corporate governance of the applicant in line with any guidance from the Minister in relation to such governance,
- (c) proposals for the composition of the board of the approved body,

- (d) a business plan in relation to the proposed scheme,
- (e) a financial plan in relation to the proposed scheme,
- (f) proposals for a contingency reserve to cover all the costs, including the consequential expenses, associated with the winding up of an approved body which has its approval revoked, goes into liquidation, examination or receivership or bankruptcy, as appropriate or enters into a scheme of arrangement or compromise in accordance with the provisions of section 449 of the Companies Act 2014,
- (g) proposals for engagement with retailers,
- (h) proposals for determining the minimum threshold scope for all materials to which these Regulations apply,
- (i) proposals for the achievement of separate collection targets established in the Directive of in-scope bottles returned to retailers or return points,
- (j) proposals on engagement with authorised waste collectors to ensure separate collection for in-scope bottles and in-scope containers returned to retailers or return points,
- (k) proposals for achieving EU targets for recycling of in-scope containers,
- (l) proposals on engagement with recovery operators for achieving food quality recyclate of separately collected in-scope bottles and in-scope containers,
- (m) proposals relating to co-operation with other approved bodies, authorised waste collectors and recovery operators,
- (n) proposals in relation to Rules of Membership for producer members, retailer members and return point members of the approved body participating in the scheme together with details of relevant participation fees,
- (o) proposals for reconciliation and audit of information supplied by producer members, retailer members and return point members of the approved body,
- (p) proposals for obtaining information from local authorities who facilitate return points,
- (q) proposals for obtaining information from producers, retailers and return point operators in connection with their participation in the Deposit Return Scheme, in such form and at such frequency as may be specified by the approved body with whom they are registered,
- (r) an undertaking to submit information, in such form and at such frequency as may be specified by a local authority or, as appropriate, the Agency in relation to activities carried out and information held by the approved body,

- (s) proposals for the certification of membership of producers, retailers and return point operators for the purposes of Regulations 13, 14 and 15,
- (t) proposals for the establishment of return points separate to retailers that will maximise the separate collection and recycling of in-scope bottles and in-scope containers,
- (u) proposals for engagement with charitable, sporting and community groups to enable their participation in the scheme,
- (v) proposals relating to green procurement,
- (w) proposals relating to the awareness raising measures the approved body will take to inform purchasers of the location and operation of retailers and return points,
- (x) proposals for the methods of collection, sorting, storage, transportation and management of returned material, including proposals for engagement with relevant contractors, service providers and authorised waste collectors,
- (y) proposals detailing the nature and frequency of information (including financial accounts) to be submitted by the body concerned to the Minister or to such other person as may be specified by the Minister, as appropriate, to enable the monitoring of the achievement or not of the targets, and
- (z) proposals detailing the methods of repayment that may be used by a retailer or other return point in returning the deposit to a consumer.

Grant or refusal of approval

7. (1) An approval granted by the Minister to a person to operate a scheme shall oblige an approved body to implement the proposals agreed as part of the application process.

(2) Subject to Regulations 8 and 10, an approval granted by the Minister under this Regulation shall be for a period of not more than 10 years.

(3) An approval granted under paragraph 1 shall be reviewed by the Minister by the end of the second quarter of the third year after the grant of approval and by the end of the second quarter of each third year following.

(4) An approval in accordance with the provisions of paragraph 1 shall be subject to such conditions as the Minister may specify as appropriate, including conditions relating to –

- (a) the articles of association of the body corporate,
- (b) the appropriate certificate issued by the Companies Registration Office,
- (c) corporate governance,

- (d) the representation of micro, small and medium enterprises on the board of the approved body and the composition of the board of directors,
- (e) the business plan,
- (f) a contingency reserve,
- (g) co-operation with other approved bodies and individual producers,
- (h) any aspects of the scheme to be undertaken by the approved body for the environmentally sound management of in-scope containers and in-scope bottles,
- (i) the achievement of the collection rates and targets as referred to in Regulation 5,
- (j) the determination and verification of the effects of measures to be undertaken with regard to the environmentally sound management of in-scope containers and in-scope bottles,
- (k) the rules of membership of the body corporate and the membership fee structure,
- (l) non-discrimination against any producer on the grounds of the quantity or, as appropriate, type of in-scope products that he or she places on the market in the State,
- (m) the certification of producers for the purpose of Regulation 13,
- (n) green procurement,
- (o) measures to be undertaken by the body concerned relating to the dissemination of information to the public regarding the Deposit Return Scheme,
- (p) the nature and frequency of information (including financial accounts) to be submitted by the body concerned to the Minister or to such other person as may be specified by the Minister,
- (q) any other matters the Minister may consider appropriate.

(5) The Minister may, by notice in writing, from time to time attach a new condition or, as the case may be, vary any existing condition attached to an approval under this Regulation.

(6) Without prejudice to paragraph 4(f), in the event that an approved body:

- (a) has its approval revoked in accordance with the provisions of Regulation 10,
- (b) goes into liquidation, examination or receivership, as appropriate,
- (c) enters into a scheme of arrangement or compromise in accordance with the provisions of section 449 of the Companies Act 2014,

the contingency reserve provided for in Regulation 6, shall not be used by any person or persons, including the liquidator, examiner, receiver or, as

appropriate, administrator concerned for any purpose, including the discharge of liabilities to creditors, whether secured creditors, preferential creditors, creditors claiming under retention of title, creditors with claims supported by guarantees or indemnities, ordinary creditors or, as appropriate, subordinated creditors, other than for fulfilling the obligations of the producer, supplier or, as appropriate, authorised waste collector concerned as laid down in these Regulations.

Review of approval

8. (1) Subject to paragraph (2), where it appears to the Minister that,

- (a) new targets are set for the separate collection of in-scope bottles or in-scope containers,
- (b) it is necessary to ensure equitable distribution of producer or retailer responsibility obligations, or
- (c) a review of an approval granted in accordance with the provisions of Regulation 7 is required because the Minister is of the opinion that there is a risk of a failure to comply with the approval, the Minister may seek submissions and proposals from the approved body to meet the new circumstances.

(2) Where the Minister proposes, separate to a review under Regulation 7(3), to review an approval granted in accordance with the provisions of Regulation 7 the Minister shall:

- (a) give notice in writing to the approved body of the proposal and the reasons therefore,
- (b) specify a period of not less than 3 months within which the approved body may make a submission to the Minister in relation to a review or make new proposals as the case may be, and
- (c) consider any submissions, or proposals so made.

(3) Following the consideration of any submissions or proposals made in accordance with paragraph (2), the Minister may issue a revised approval, varying any condition attaching to the approval or attach any additional conditions which he or she considers appropriate.

(4) The issue of a revised approval by the Minister on the basis of new proposals made by the approved body shall oblige the approved body to implement the new proposals upon which the Minister has confirmed the approval.

Expiry of approval

9. Where an approval granted in accordance with the provisions of Regulation 7 or a revised approval granted in accordance with Regulation 8 is due to expire, the approved body concerned shall:

- (a) not later than 6 months before the expiry of the approval, notify the Minister, in writing, if it intends to cease operating as an approved body, or
- (b) not later than 12 months before the expiry of the approval, if intending to continue to operate a Deposit Return Scheme, make an application to the Minister under Regulation 6.

Revocation of approval

10. (1) Subject to paragraph 2, where it appears to the Minister that an approved body is not,

- (a) complying with the terms of the approval,
- (b) complying with conditions attached to such approval, or
- (c) meeting the relevant targets for separate collection or recycling,

the Minister may revoke an approval under Regulation 7 or revised approval under Regulation 8.

- (2) (a) Where the Minister proposes to revoke an approval or a revised approval, the Minister shall:
 - (i) give notice in writing to the approved body of the proposed decision and the reasons therefor,
 - (ii) specify a period of not less than 4 weeks within which the approved body may make a submission to the Minister in relation to the proposed decision, and
 - (iii) consider any submission so made.
- (b) Following his or her consideration of a submission made by the approved body, the Minister may decide -
 - (i) to seek proposals from the approved body for the purpose of issuing a revised approval in accordance with Regulation 8, or
 - (ii) revoke the approval or revised approval.

Use of logo adopted by an approved body

11. No person shall, other than with the written consent of an approved body, display at any premises or on or in any product, packaging, advertisement or notice, any logo or other mark or symbol designed and adopted by that approved body.

Information to the Agency

12. The Minister may oblige an approved body to provide the Agency or a relevant local authority with any data necessary in relation to activities carried out by producers, retailers or return points registered with that body, to enable

the Agency or local authority to fulfil its obligations under these Regulations or the Directive.

Part IV
OBLIGATIONS OF PRODUCERS

13. (1) A producer shall not place in-scope products on the market unless he or she is a member of an approved body.

(2) A producer will pay the deposit to an approved body for the in-scope products they place on the market at the point when they place them on the market.

(3) A producer shall charge a deposit on all in-scope products he or she places on the market in the State and provide the consumer with proof of payment of the deposit.

(4) A producer shall –

- (a) register with an approved body,
- (b) provide details to the approved body with whom they have registered of all in-scope products they place on the market,
- (c) pay any registration and producer fee as required by the approved body,
- (d) furnish information in connection with their participation in the Deposit Return Scheme, in such form and at such frequency as may be specified by the approved body with whom they are registered,
- (e) label an in-scope product as prescribed by an approved body.

PART V
OBLIGATIONS OF RETAILERS

14. (1) Where a deposit under these Regulations is applicable, a retailer shall charge the deposit on the in-scope product to the customer and provide the consumer with proof of payment of the deposit.

(2) A retailer shall –

- (a) register with an approved body,
- (b) display in a manner that is visible to all customers the certificate of registration with the approved body,
- (c) ensure that the payment of the deposit is itemised on the proof of payment in the manner agreed with the approved body,
- (d) furnish information, in such form and at such frequency as specified by the approved body,
- (e) ensure that the facility for taking back in-scope bottles or in-scope containers or both on their premises is visible and easily accessible to persons who may wish to return in-scope bottles or in-scope containers,
- (f) take back every in-scope bottle and in-scope container returned to it by a consumer in a manner agreed between the retailer and the approved body,
- (g) provide storage for the in-scope bottles and in-scope containers or both taken back in a manner agreed with the approved body,
- (h) display in a manner that is visible to all customers the location of the closest return point that has agreed to accept the return by customers of in-scope bottles and in-scope containers on behalf of the retailer where a take-back arrangement, other than that at paragraph (f), has been agreed with the approved body, and
- (i) return to an approved body, in a manner agreed with said body, all returned in-scope bottles and in-scope containers.

(3) (a) A retailer shall immediately reimburse the value of the original deposit paid, in a manner prescribed by the approved body, to a consumer who presents an in-scope bottle or in-scope container for return, irrespective of where the in-scope product was purchased and the deposit first paid.

(b) A retailer shall not be required to take back –

- (i) an in-scope bottle or in-scope container that is damaged,
- (ii) an in-scope bottle or in-scope container that is not empty,
- (iii) an in-scope bottle or in-scope container that does not have marking that indicates a deposit was payable on the purchase of the in-scope product to which it relates.

PART VI**OBLIGATIONS OF RETURN POINT OPERATORS**

15. (1) A return point shall –
- (a) register with a an approved body,
 - (b) display in a manner that is visible to all customers the certificate of registration with the approved body,
 - (c) furnish information, in such form and at such frequency as specified by the approved body,
 - (d) take back every in-scope bottle and in-scope container returned to it by a consumer in the manner agreed between the return point and the approved body,
 - (e) ensure that the facility for taking back in-scope bottles or in-scope containers is visible and easily accessible to persons who may wish to return in-scope bottles or in-scope containers,
 - (f) provide storage for the returned in-scope bottles and in-scope containers in a manner agreed with the approved body, and
 - (g) return to an approved body, in a manner agreed with said body, all returned in-scope bottles and in-scope containers.
- (2) (a) A return point operator shall immediately reimburse the value of the original deposit paid, in a manner prescribed by the approved body, to a consumer who presents an in-scope bottle or in-scope container, irrespective of where the in-scope product was purchased.
- (b) A return point shall not be required to take back –
- (i) an in-scope bottle or in-scope container that is damaged,
 - (ii) an in-scope bottle or in-scope container that is not empty,
 - (iii) an in-scope bottle or in-scope container that does not have marking that indicates a deposit was payable on the purchase of the in-scope product to which it relates.

PART VII
EXEMPTIONS FROM PART V OBLIGATIONS

16. Where an in-scope product is purchased and consumed on the premises, the retailer shall be exempted from the obligation to charge a deposit under Regulation 14.

PART VIII
THE DEPOSIT

17. (1) The deposit shall be as set out in Schedule 1.

(2) The deposit shall be itemised as a separate line item on any invoice, receipt, credit note, dispatch and delivery docket containing the price of in-scope products.

(3) The Minister may set, and adjust, the deposit amount or amounts after consultation with an approved body, where it appears that –

- (a) the cost is insufficient to incentivise consumers to return in-scope bottles and in-scope containers to the scheme, or
- (b) the revenues returned to the approved body from the scheme are exceeding or are insufficient to cover operational costs.

(4) The refundable nature of the deposit shall be made clear to the consumer in all material promoting the scheme and all points of sale.

PART IX
ENFORCEMENT

18. (1) Each local authority shall be responsible for the enforcement of the provisions of these Regulations within their functional areas and shall appoint authorised persons to take such steps as are necessary for this purpose.

(2) An authorised person may exercise the powers conferred on such a person under section 14 of the Principal Act for the purposes of enforcing Regulations 13(1), 13(2), 13(3), 13(4)(a), 13(4)(b), 13(4)(c), 13(4)(e), 14(2)(b), 14(2)(e), 14(2)(f), 14(2)(g), 14(2)(h), 14(2)(i), 14(3)(a), 15(1)(b), 15(1)(d), 15(1)(e), 15(1)(f), 15(1)(g) and 15(2) of these Regulations and, accordingly, a reference in that Act includes a reference to these Regulations.

PART X
MISCELLANEOUS

19. *Offences*

(1) Any person who contravenes or fails to comply with a provision or provisions of Regulation 11, 13, 14 or 15 shall be guilty of an offence.

(2) Where an offence under these Regulations is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

20. *Prosecutions and Penalties*

A prosecution for an offence determined in accordance with Regulation 19 will be subject to the penalties in section 10 of the Act and prosecuted in accordance with section 11, 12 and 13 of the Act.

First Schedule**Deposit to be charged in accordance with Regulation 17 of these Regulations**

Deposit for an item mentioned in column (2) of the Schedule at any reference number opposite is fixed at the amount mentioned in column (3) of that Schedule at that reference number

Reference Number (1)	Item (2)	Amount (3)
1	In-scope bottles	0.00c
2	In-scope containers	0.00c



GIVEN under my Official Seal,
17 November 2021.

EAMON RYAN
Minister for the Environment, Climate and
Communications.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations enable the establishment of a Deposit Return Scheme in Ireland. They are intended, in particular, to achieve the separate collection targets for PET plastic bottles contained in Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment and the recycling targets for aluminium established in Directive (EU) 2018/852 of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste, with a view to promoting the recovery and recycling of packaging waste.

In summary, they introduce the following:

- A requirement on producers of in-scope products to establish a Deposit Return Scheme or to appoint a body to operate it on their behalf.
- The Deposit Return Scheme will apply to beverage bottles manufactured from PET with a capacity of up to 3 litres and beverage containers manufactured from aluminium or steel with a capacity of up to 3 litres.
- An application and approval process for the appointment of an approved body to operate the scheme and the functions to be carried out by such an approved body.
- The obligations required of producers to comply with these Regulations.
- The obligations required of retailers and return points to comply with these Regulations.
- Provisions relating to the deposit to be paid.

Enforcement provisions and reporting requirements are also contained in the Regulations.

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