



The Scottish Parliament
Pàrlamaid na h-Alba

Published 9 June 2025
SP Paper 818
8th Report, 2025 (Session 6)

Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee report on the Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2025 (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 Transport and the Cabinet Secretary for Net Zero and Energy, with the exception of matters relating to just transition; and on matters relating to land reform, natural resources and peatland, Scottish Land Commission, Crown Estate Scotland and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands.



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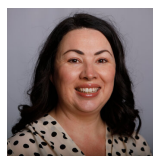
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Introduction

1. This report concerns the Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2025 (draft), laid before the Scottish Parliament by the Scottish Government on 2 May 2025. It is subject to the affirmative procedure – which means it cannot be made unless it has been approved by a resolution of the Parliament.
2. It is for the Net Zero, Energy and Transport Committee, as lead committee, to decide whether or not to recommend approval. On 9 May 2025, the Acting Cabinet Secretary for Net Zero and Energy lodged Motion [S6M-17471](#), proposing the Committee recommends the draft Order be approved.

About the instrument

3. The purpose of this order is to amend [the Environmental Regulation \(Enforcement Measures\) \(Scotland\) Order 2015](#) ("the 2015 Order") to include offences created by [the Producer Responsibility Obligations \(Packaging and Packaging Waste\) Regulations 2024](#) ("the 2024 Regulations").
4. According to the policy note, this amendment will enable the Scottish Environment Protection Agency (SEPA) to apply civil sanctions to offences committed under the UK's extended producer responsibility (EPR) regime for packaging, introduced by the 2024 Regulations (which came into force on 1 January 2025).
5. The 2024 Regulations impose various obligations on packaging producers, compliance scheme operators, 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 nation's regulators, including compliance notices, fixed and variable monetary penalties and enforcement undertakings.
6. In Scotland, SEPA is the designated regulator for the 2024 Regulations. The policy note explains that the 2015 Order already provides SEPA with a range of civil enforcement tools, including fixed and variable monetary penalties. By amending the 2015 Order to include the new offences under the 2024 Regulations, the policy note explains that SEPA will be equipped with "a flexible and proportionate set of tools for dealing with these offences to support it in discharging its responsibilities as regulator appropriately."

Consideration by the DPLR Committee

7. The Delegated Powers and Law Reform (DPLR) Committee is required to consider every instrument laid before the Parliament and decide whether to draw it to the attention of the Parliament on any of the “reporting grounds” set out in Rule 10.3 of the Parliament’s standing orders.
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.

Consideration by the Net Zero, Energy and Transport Committee

9. At its meeting on 27 May 2025, the Net Zero, Energy and Transport Committee took evidence on the instrument from:
 - Gillian Martin, Acting Cabinet Secretary for Net Zero and Energy, Scottish Government
 - Alex Brown, Packaging Senior Policy adviser, Scottish Government
 - Ailsa Heine, Solicitor, Scottish Government
 - Haydn Thomas, Producer Responsibility Unit Head, Scottish Government
10. The evidence taken at the meeting can be read in full in the Official Report, which is available here:
[Read the Official Report - 27 May 2025](#)
11. In her opening remarks, the Cabinet Secretary stated that commencing the packaging EPR scheme this year:

” will have a transformative effect on the packaging industry, impacting the packaging that we see on the shelves of our supermarkets and shops and the funding model for local authority recycling and waste management.”ⁱ
12. She said the packaging EPR will implement the polluter-pays principle by placing responsibility for funding the collection and disposal of household packaging waste on to the businesses that produce it. She explained that the order provides SEPA with access to civil enforcement measures, such as fixed and variable monetary penalties, rather than relying on criminal offences. She said the order “confers no additional responsibility on to SEPA”ⁱⁱ but provides it with a wider range of enforcement powers to allow a flexible and proportionate response to offences.
13. The Committee noted the Cabinet Secretary's comments regarding the polluter-pays principle and asked what the estimated income would be for Scotland's local authorities. The Acting Cabinet Secretary said it would amount to an estimated £160 million a year, to support the collection of household packaging waste, and that the payments will start in November 2025. She said that “... over time, local authorities will be able to divert a lot of their efforts in waste reduction and the recovery of materials into things that they may not formerly have had the scope or capacity to do.”ⁱⁱⁱ
14. She said she expected EPR to incentivise innovation to reduce costs and that “... packaging producers will be innovating in this space, and I am very hopeful that they will reduce the amount of packaging associated with household goods.”^{iv}

i Net Zero, Energy and Transport Committee, official report, 27 May 2025, Col: 44

ii Net Zero, Energy and Transport Committee, official report, 27 May 2025, Col: 44

iii Net Zero, Energy and Transport Committee, official report, 27 May 2025, Col: 44

15. The Committee sought to clarify what this would mean in practice: for instance could it mean a move from plastic to cardboard or a reduction in packaging entirely. The Acting Cabinet Secretary said that the EPR scheme had been put in place because there had not been enough of a reduction in the amounts or types of packaging: ,:

” It will be exciting to see what our supermarkets look like after five to 10 years of implementation. Hopefully, they will look very different. We are already seeing some of the packaging associated with household items changing in anticipation, with the use of cardboard over plastic and a reduction in overpackaging—that is certainly my experience as a consumer.^v

16. When asked about implications for SEPA's capacity, the Acting Cabinet Secretary said that no additional capacity to implement the new civil sanctions would be required because it is simply being granted the authority to impose them, rather than taking on new operational responsibilities. The powers include fixed monetary penalties of £300, £600, or £1,000 depending on the severity of the offence, and a variable monetary penalty up to £10,000, equivalent to the maximum fine on summary conviction. She said discussions with SEPA have not indicated any need for extra resources, and SEPA had not made any such requests to the Scottish Government.

17. The Committee probed the issue of SEPA resources and capacity further, noting that, if SEPA wanted to use the new powers, that would seem to require it to carry out more investigations. The Acting Cabinet Secretary said registration fees producers pay under EPR ought to cover any costs SEPA incurs from an investigation.

18. Finally, the Acting Cabinet Secretary explained that some items, for example, single-use packaging for takeaway items, would be regulated at local authority level rather than by SEPA. She further clarified that this Order only related to those items registered as part of the EPR scheme, which would be regulated by SEPA.

19. The Cabinet Secretary moved motion S6M-17471, and in the debate that followed, Sarah Boyack raised concerns about how the EPR scheme would be advertised to the general public and suggested there should be monitoring and analysis of the registration fees. In her response, the Acting Cabinet Secretary said that while it is important that the public understands the changes, “the beauty of EPR is that consumers will not have to do anything. It is the producers that will need to act, and we hope that they will reduce the amount of packaging. Local authorities will get money for dealing with the packaging as well.”^{vi}

iv Net Zero, Energy and Transport Committee, official report, 27 May 2025, Col: 45

v Net Zero, Energy and Transport Committee, official report, 27 May 2025, Col: 45

vi Net Zero, Energy and Transport Committee, official report, 27 May 2025, Col: 47

Conclusion

20. Following the conclusion of the debate, the committee agreed to motion [S6M-17471](#) :

That the Net Zero, Energy and Transport Committee recommends that the Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2025 [draft] be approved.

Recommendation

21. Accordingly, the Net Zero, Energy and Transport Committee recommends to the Parliament that the Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2025 [draft] be approved.

