



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 7 May 2020  
SP Paper 725  
3rd Report (Session 5)

**Environment, Climate Change and Land Reform  
Committee**  
**Comataidh Atharrachadh Clìomaid is Ath-leasachaidh  
Fearann**

**Deposit and Return Scheme for  
Scotland Regulations 2020 [Draft]**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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# Environment, Climate Change and Land Reform Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Environment, Climate Change and Land Reform.



<http://www.parliament.scot/environment-committee>



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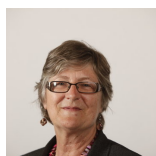
# Committee Membership



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Scottish National Party



**Deputy Convener**  
**Finlay Carson**  
Scottish Conservative  
and Unionist Party



**Claudia Beamish**  
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**Angus MacDonald**  
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**Mark Ruskell**  
Scottish Green Party



**Stewart Stevenson**  
Scottish National Party



**Annie Wells**  
Scottish Conservative  
and Unionist Party

# Background and Parliamentary procedure

1. The draft SSI and various accompanying documents<sup>i ii iii iv v vi</sup>, including an accompanying statement<sup>vii</sup> and a letter from the Cabinet Secretary for Environment, Climate Change and Land Reform<sup>viii</sup> (included at Annexe A) providing additional information on the design and operation of the deposit and return scheme for Scotland, were laid on 16 March 2020. The draft SSI was referred to the Environment, Climate Change and Land Reform Committee, with a reporting deadline of 10 May 2020.
2. The draft SSI was made by the Scottish Ministers in exercise of the powers conferred by sections 84, 89, 90 and 96(2) of the Climate Change (Scotland) Act 2009.<sup>ix</sup>The draft Instrument is subject to affirmative procedure.
3. The affirmative parliamentary procedure is set out in Chapter 10 of the Parliament's [Standing Orders](#). Instruments subject to the affirmative procedure cannot come into force unless they are approved by the Parliament.

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i [The Deposit and Return Scheme for Scotland Regulations 2020](#).

ii [Deposit return scheme for Scotland: full business case addendum](#).

iii [Deposit return scheme for Scotland: strategic environmental assessment addendum](#).

iv [Deposit return scheme for Scotland: equality impact assessment](#).

v [Deposit return scheme for Scotland: business and regulatory impact assessment](#).

vi [Deposit return scheme for Scotland: islands communities impact assessment](#).

vii [Deposit Return Scheme \(Scotland\) Regulations 2020: accompanying statement](#).

viii [Letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the Environment, Climate Change and Land Reform Committee, 16 March 2020](#).

ix [Climate Change \(Scotland\) Act 2009](#).

## Purpose of the regulations

4. The Deposit and Return Scheme for Scotland Regulations 2020 (“the Regulations”) <sup>x</sup>make provision for the operation of a deposit and return scheme (“the scheme”) for “scheme articles”, which are drinks that are intended to be sold to consumers in Scotland and are contained in single-use packaging made from polyethylene terephthalate plastic, glass, aluminium and steel.
5. The Regulations provide for the establishment of a deposit return scheme for single-use drinks containers and create a series of offences in relation to the operation of that scheme.
6. The main policy driver for the Regulations is to promote and secure an increase in recycling of materials, forming part of the Scottish Government’s response to the global climate emergency. The Regulations are part of the Scottish Government’s commitment to “creating a more circular economy where products and materials are kept in a high-value state of use for as long as possible – maximising resources to benefit the economy and the environment”. <sup>xi</sup>

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<sup>x</sup> [The Deposit and Return Scheme for Scotland Regulations 2020](#).

<sup>xi</sup> [Deposit Return Scheme \(Scotland\) Regulations 2020: accompanying statement](#).

# Delegated Powers and Law Reform Committee

7. The Delegated Powers and Law Reform Committee considered the instrument on 24 March 2020 and had no comment to make on the draft regulations.<sup>xii</sup>

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<sup>xii</sup> [Report of the Delegated Powers and Law Reform Committee: Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 24 March 2020.](#)



# Consideration by the Environment, Climate Change and Land Reform Committee

8. Draft regulations for the proposed Deposit and Return Scheme were pre-laid by the Scottish Government under the enhanced affirmative process on 10 September 2019.<sup>xiii</sup> The Committee wrote to the Scottish Government outlining a number of initial questions on 19 September 2019.<sup>xiv</sup> The Scottish Government responded on 1 October 2019.<sup>xv</sup>
9. The Committee [issued a call for views](#) on the proposed draft regulations (the regulations) on 17 September 2019 and [the Committee received 69 written submissions](#). The Committee heard from Scottish Government officials on [8 October 2019](#), from 22 organisations in three round-table sessions on [12 November 2019](#) including: representative bodies - retailers; packaging manufacturers; producers; waste management organisations; NGOs and the third sector; wholesale organisations; and local authorities. Public engagement was undertaken by the Community Outreach Team to explore potential barriers to engagement with the Scheme. Views were sought from a range of people within the following groups: island and rural communities; older people; people with learning and or physical disabilities; young people; and people who are socially and/or economically excluded. Workshops were held in the Western Isles, with the Tenant Participation Advisory Service, with the Learning Disability Alliance Scotland (LDAS) and with the Scottish Youth Parliament. Sixty-three members of the public engaged in September and October 2019. The Committee also sought the views of young people. Twelve schools, thirty-six classes and students of Edinburgh College offered their views on the Scheme. The Committee concluded its evidence taking by hearing from the Cabinet Secretary for Environment, Climate Change and Land Reform on [19 November 2019](#).
10. The updated regulations as laid, reflect some, but not all, of the Committee's recommendations. An initial assessment of the extent to which the regulations address the recommendations of the Committee was published with the Committee papers for the Committee meeting of [29 April 2020](#) (included as Annexe B).
11. Following consideration of the regulations, the Committee wrote to the Cabinet Secretary on 26 March 2020 (Annexe C). The Cabinet Secretary responded on 1 April 2020 (Annexe D) and on 23 April 2020 (Annexe E).

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<sup>xiii</sup> [The Deposit and Return Scheme for Scotland Regulations 2020: accompanying statement and proposed regulations, 10 September 2019.](#)

<sup>xiv</sup> [Letter from the Convener of the Environment, Climate Change and Land Reform Committee to the Cabinet Secretary for Environment, Climate Change and Land Reform, 19 September 2019.](#)

<sup>xv</sup> [Letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the Environment, Climate Change and Land Reform Committee, 1 October 2019.](#)

12. At its meeting on the [29 April 2020](#), the Committee took evidence on the Deposit and Return Scheme for Scotland Regulations 2020 [Draft] from—
  - Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform;
  - Don McGillivray, Deputy Director, Environmental Quality and Circular Economy Division;
  - Emily Freeman, Solicitor, Scottish Government.
13. All Members of the Committee support the introduction of the deposit and return regulations in principle. However, some Members expressed concerns about the timing of the introduction of the regulations and the timescale for the regulations coming into force.
14. Some Members were concerned about bringing the regulations forward for consideration during the current health crisis and had particular concerns about the potential impact of this on businesses which may be struggling to operate as a result of the health crisis.
15. Some Members expressed concerns that the 'baseline' information and the context within which the regulations were formulated may shift as a result of the health crisis.
16. Other Members were concerned as they considered that the timing of commencement of the deposit and return scheme (2022) was later than they considered to be desirable and achievable.
17. Following the evidence session, the Cabinet Secretary moved motion S5M-21535—

That the Environment, Climate Change and Land Reform Committee recommends that the Deposit and Return Scheme for Scotland Regulations 2020 [draft] be approved.
18. Following debate, the motion was agreed to by division: For 3, Against 2, Abstentions 2.
19. The evidence taken and debate held at that meeting on this instrument can be found in the [Official Report](#).

**The Environment, Climate Change and Land Reform Committee recommends that the Deposit and Return Scheme for Scotland Regulations 2020 [draft] be approved.**

# Annexe A

## Correspondence from the Cabinet Secretary to the Convener, 16 March 2020

Dear Gillian

I am writing to confirm that I have today laid the Deposit and Return Scheme for Scotland Regulations 2020 before Parliament. The Regulations provide for an ambitious deposit return scheme and mark an important milestone in our efforts to shift towards a more circular economy which properly values and utilises our resources.

I have also today laid an accompanying statement which details the range of representations received on the draft version of the Regulations which we published in September of last year. I am grateful to the Environment, Climate Change and Land Reform Committee for its detailed scrutiny of those proposals and I have carefully considered the conclusions contained in your report.

As well as making a number of suggestions regarding the content of the Regulations, the Committee also used its report to request additional information regarding operational aspects of the proposed scheme. Some of this information is included in the accompanying statement, and a further response to that request for additional information is included as an Annex to this letter.

Finally, alongside the Regulations I have laid The Environmental Regulation (Enforcement Measures) (Scotland) Amendment Order 2020. That Order confers additional powers on the Scottish Environment Protection Agency (SEPA) to enable it to enforce the requirements of the Regulations.

I hope this is helpful and look forward to engaging further with the Committee regarding our legislative proposals in this area over the coming weeks.

Yours sincerely

**ROSEANNA CUNNINGHAM**

## THE DEPOSIT AND RETURN SCHEME FOR SCOTLAND REGULATIONS 2020

### Additional Information on the Design and Operation of Scotland's Deposit Return Scheme

#### Introduction

1. The Environment, Climate Change and Land Reform (ECCLR) Committee undertook an extensive programme of evidence gathering and scrutiny of the draft Deposit and Return Scheme for Scotland Regulations ("the Regulations") during the pre-laying period.
2. The Committee subsequently published a report detailing this evidence and their conclusions on 10 December 2019. The report highlighted the broad support which exists for the principle of introducing a Deposit Return Scheme (DRS) in the context of the need to transition to a circular economy and respond to the climate emergency. At the same time, it recommended a number of areas where the Regulations should be re-visited. A separate report has been prepared which responds to those suggestions.

3. Additionally, the Committee requested further information on a number of aspects of the scheme and its anticipated impacts. This document provides further detail on those matters.

### Recycling Rates

4. The Committee requested further information on the methodology for assessing recycling rates for target materials. The method used to estimate drinks container recycling rates in Scotland takes the weight of material that is recycled and divides this by the total weight of material that is disposed by recycling or other routes. This method uses waste data figures reported by local authorities and waste composition analysis of household waste. The Scottish Environment Protection Agency uses the same local authority waste management weights to calculate the national household recycling rate. This approach is particularly helpful when assessing the impacts of DRS on local authority waste management costs, as it reflects what local authorities manage.

5. The current recycling rates for each material to be included in the DRS are provided in the table below: Material Recycling rate Aluminium 48% Plastic (PET) 50% Glass 63%

6. As well as delivering increases in the above recycling rates, DRS is also anticipated to significantly improve the quality of recyclate going forward. We acknowledge that further steps to improve product labelling and consistency in collections across Scotland could reduce contamination within the kerbside recycling streams. However, the quality of recycled material from mixed collections at kerbside is always likely to be lower than that of a DRS which separates material at the point of collection. DRS therefore ensures the return of high value material into the reprocessing cycle and this is one of the strategic objectives of the policy intervention.

### Full Business Case Stage 2

7. Commenting on the infrastructure requirements of DRS and any associated domestic reprocessing activity, the Committee requested that the Scottish Government publish the Full Business Case Stage 2 for DRS prior to laying the final Regulations to establish the scheme.

8. The Business Case for DRS takes account of the recommended standard for the preparation of business cases within central government departments and their agencies. Under that process, development of the Full Business Case generally takes place within the procurement phase of a project, following detailed negotiations with potential service providers/suppliers prior to the formal signing of contracts and the procurement of goods and services.

9. Consistent with the principle of producer responsibility, commercial decisions concerning the establishment and operation of Scotland's DRS are ultimately a matter for producers and any scheme administrator acting on their behalf. To account for this, it was decided that the Full Business Case for DRS be presented in two stages.

- A Full Business Case Stage 1 providing the overarching framework for the preferred scheme design and commercial approach.
- A Full Business Case Stage 2 providing a greater level of technical and commercial detail following supplier engagement and procurement activity led by producers operating through a scheme administrator.

10. From discussions with industry in the period since publication of the Full Business Case Stage 1, it is clear that a scheme administrator will only be established once the Regulations have been finalised. It is only at this point that producers and others will have certainty about the nature of the legal obligations being placed on them.

11. The Scottish Government and Zero Waste Scotland, working with Deloitte, have nevertheless been working closely with representatives of the producer, wholesale and retail sectors to update key aspects of the economic and financial cases presented in the Full Business Case Stage 1. It is on the basis of the evidence gathered through that exercise that the following summary of the financial and economic impacts of the scheme has been compiled.

12. This includes an updated and refined analysis of the key areas that have been of interest to the Committee and stakeholders, namely the total cost, the handling fee and the producer fee, as well as the overall economic case for the scheme. In line with guidance, the figures allow for areas of remaining uncertainty through the use of optimism bias/sensitivity analysis.

13. The intention is that this analysis will be provided to industry to allow them to progress commercial negotiations which will then form the basis for the business plan of a scheme administrator. The figures presented in this document therefore represent the Government's final view of these key elements of the scheme, ahead of the handover to industry leadership of the implementation process.

#### Economic Case for DRS

14. An updated socio-economic case for DRS (forming part of an addendum to the Full Business Case Stage 1) can be viewed at: <https://www.gov.scot/isbn/9781839605895>

15. In summary, a number of inputs (a mixture of assumptions and recognised measures) have been re-visited since publication of the Full Business Case Stage 1:

- The estimated number of containers falling within the scope of the scheme has been increased from 1.67 billion to 2.17 billion based on an alternative estimate provided by industry representatives. Additional adjustments to average weights for containers (for PET, aluminium, steel and glass), the proportion of drink to non-drink glass containers and the split between on-sale and off-sale containers have also been made based on stakeholder feedback.
- Scheme administrator costs and retailer costs have been updated to reflect the increased costs of handling a larger number of containers and other minor changes have been made to estimated costs.
- Benefits to the public have increased since the Full Business Case Stage 1 following revisions to the value of carbon based on current traded carbon values (£/tCO<sub>2</sub>e) provided by the UK Government Department for Business, Energy and Industrial Strategy.

16. Accounting for these changes, it remains clear that a strong economic case exists for the implementation of DRS. It is anticipated that the scheme will now generate a Net Present Value of £590 million over the 25 year appraisal period.

17. Our analysis acknowledges the significant proportion of the cost base for DRS which is accounted for by the handling fees which return point operators will charge to producers in exchange for the collection of scheme packaging. The setting of the handling fees is a

matter for retailers and will be the subject of negotiation with drinks producers, likely facilitated by a single scheme administrator. While we are clear that businesses operating as return points for DRS packaging should be recompensed for costs associated with operating that return point, we offer no view on the rates at which any handling fees should be set. Based on discussions led by our DRS Scheme Administrator Working Group, we have assessed the impact of a higher handling fee than that modelled for the Full Business Case Stage 1.

18. The potential areas of change are:

- An increase in the number of RVMs operated by return points for the purpose of the scheme. Our upper estimate assumes an increase from 3,100 to 3,888 RVMs.
- A further increase in the amount of lost staff time compensated for through the handling fee. Our upper estimate assumes that up to 7 hours per week of staff time would be accounted for through the handling fee (up from the estimate of 1.5 hours we have adopted based on experience elsewhere and feedback from RVM manufacturers).

19. The cumulative impact of the above changes would mean a further significant increase in annual operating costs of the scheme. It should be noted that the handling fee that results from the use of these higher estimates would exceed that adopted in other European schemes.

20. Under this scenario, there still remains a clear economic case for proceeding with DRS, with the scheme expected to generate a Net Present Value of £96 million over the 25 year appraisal period. Introducing an enhanced kerbside packaging producer responsibility scheme as an alternative to DRS.

21. The Committee has requested further information on the rationale for proceeding with DRS as opposed to an alternative extended producer responsibility (EPR) scheme based predominantly on enhanced kerbside collection services.

22. In light of the Committee's request and further representations from a number of stakeholders, we have given further careful consideration to the benefits of progressing DRS as opposed to an enhanced kerbside collection system and our Business Regulatory Impact Assessment (BRIA) compares the relative benefits of each of these options. A final BRIA for the scheme has been published to coincide with the laying of the Regulations and can be viewed at: <https://www.gov.scot/isbn/9781839606014>

23. It concludes that, by tonnage, DRS will deliver greater economic benefit than would be achieved through an enhanced kerbside packaging producer responsibility scheme. It follows that an approach to extended producer responsibility which consists of a DRS for single-use drinks containers and an enhanced kerbside scheme for other forms of packaging will deliver greater economic benefit than would be the case if all packaging were to be captured through an enhanced kerbside scheme. This is the Scottish Government's preferred approach to the delivery of extended producer responsibility arrangements which comply with requirements of the EU Circular Economy Package.

24. The Scottish Government recognises that the inclusion of single-use drinks containers in an enhanced kerbside collection scheme could potentially facilitate recycling efforts by those consumers already engaged. However, such an approach does not incentivise participation in the same way that a DRS will and is therefore unlikely to drive the same increases in household recycling and reductions in littering that are likely through a DRS.

Our modelling assumes a kerbside EPR scheme would achieve a 71% recycling rate by year 9 while DRS is anticipated to secure a 90% capture rate by the end of year 3.

25. There has been some suggestion that the introduction of DRS should be aligned with, or delayed until after, implementation of a wider EPR scheme covering other forms of packaging. Work is underway to deliver such a scheme but this is unlikely to be in place until 2023 at the earliest. As the Committee has recognised, the Scottish Government's climate change commitments dictate the need for prompt action to improve our use of resources. Given that the case for proceeding with DRS as opposed to an alternative EPR scheme for single-use drinks containers is clear, we can see no reason to delay implementation.

#### DRS Operating Costs

26. As outlined above, we have continued to refine our modelling following publication of the Full Business Case Stage 1. We have subsequently assessed the impact this will have on the costs of establishing and operating the scheme from the perspective of a scheme administrator. Again, this analysis has been provided to the Committee in the form of an addendum to the Full Business Case Stage 1.

27. In summary, as a result of incorporating those changes set out under paragraph 15 of this document, we estimate that industry will incur the following costs associated with the direct operation of the scheme:

#### Capital Investment

28. The overall investment required by the scheme administrator is an upfront capital injection of £27.6 million. The investment will be used to acquire and fit out facilities with counting and bulking equipment. The funding of the facilities is modelled to be 100% debt-financed and therefore requires no upfront capital contribution from the public sector. The cost of this debt service is passed through to producers through producer fees.

#### Operating Costs

29. The Scottish Government is clear that the purpose of the deposit is to incentivise consumer participation in the scheme. However, it is acknowledged that not all deposits will be redeemed, with a proportion ultimately remaining with producers or their scheme administrator. Based on expert advice and with reference to the experience in other jurisdictions, we have assumed that accrued cash will not be recognised as "unredeemed deposits" in the profit and loss accounts of any scheme administrator until Year 6 onwards, at which point it is anticipated that sufficient evidence will have been collated to satisfy auditors about the proportion of deposits which are unlikely to ever be redeemed. In practice, the observatory period will be dictated by the volume and quality of evidence the scheme administrator is able to collate in the initial years of the scheme.

30. The direct operational costs of the scheme administrator under the preferred scheme design average £92.9 million a year across the steady state (i.e. from year 6 onwards). We expect the direct operational cost base will be funded by income from unredeemed deposits (46%) and sale of materials (20%), with the balance from producer fees (33%). The indicative producer fees equate to £31.9 million per annum or 1.4p per container during steady state operations.

31. As outlined at paragraph 17, further work has been undertaken with industry to understand the potential for movement in handling fee rates charged by return point

operators and the impact this would have on overall operating costs. If the upper estimates are used across all of the handling fee components outlined at paragraph 18, this would result in average annual operating costs of £121.3 million during steady state. Under this scenario, the indicative producer fees would equate to £60.2 million or 2.7p per container. Unredeemed deposits would account for 36% of the scheme administrator's income.

32. Based on the above, we understand that any scheme administrator would attract a private sector accounts classification, thereby minimising the call on Scottish Government budgets.

#### Costs to the supply chain

33. The Scottish Government also recognises that the wider supply chain will incur costs as a result of the introduction of DRS. The Final Business Regulatory Impact Assessment (BRIA) accounts for these costs and, in particular, the costs associated with the potential introduction of distinct labelling for DRS obligated products. The estimates included in that document have been developed on a "per Stock Keeping Unit (SKU) / product basis" and are based on the best information that has been presented since our original call for evidence in 2017.

34. One-off set up costs for establishing new Scottish SKUs are estimated to be £46 million, whilst ongoing costs associated with inefficiencies created in production, logistics and storage are estimated to be £73 million (spread over 25 years). These costs are designed to take account of the entire supply chain (i.e. costs incurred by producers, wholesalers and retailers).

35. Clearly, there are a number of variables which will impact on the extent to which these costs will be realised. It is challenging to estimate the additional storage space that will be required until decisions have been taken by producers about the labelling of their products. Progress with plans to deliver a DRS for England, Wales and Northern Ireland will also have a bearing on the extent to which these costs are realised and over which period. It should be noted that a 20% optimism bias has been applied to these estimates for the purposes of economic modelling. Accounting for this, there still remains a clear economic case for proceeding with DRS.

#### DRS Scheme Design

36. The Committee requested some further information on aspects of the Scottish Government's preferred scheme design announced on 8 May 2019.

#### Materials within scope

37. In relation to the scope of materials to be included within the scheme, the Committee has requested further information on the status of discussions regarding the potential future inclusion of additional materials. The Scottish Government has, in particular, noted the support which exists amongst carton manufacturers for the inclusion of this packaging format within the scheme. Throughout the development of DRS, Zero Waste Scotland has been engaged with the Alliance for Beverage Cartons and the Environment (ACE) UK and has spoken directly with carton manufacturers. The Scottish Government will continue this engagement going forward.

38. All of the materials currently proposed for inclusion in Scotland's DRS commonly feature in other international schemes. Accordingly, the operational risks associated with their successful inclusion are lower. Nevertheless, Ministers are content to explore whether



DRS could in future be used to improve recycling rates for other materials and so will commit to a statutory review of the scheme once it is fully established. The inclusion of further materials on a statutory basis would require the making of affirmative Regulations.

#### Size of containers

39. The Full Business Case Stage 1 sets out the rationale for the container size limits which have been adopted for the scheme: The size range of containers accepted by the four main RVM manufacturers is above and including 50ml and below and including 3 litres. Adoption of RVMs will improve the efficiency of the scheme by the automated capture of 85-90% of containers in scope, reflecting experience in other EU Schemes. This will be achieved in part through compaction of plastic bottles and metal cans (after being verified as deposit bearing containers) which significantly reduces storage and transport costs.

40. The Committee report noted the fact that higher volume containers (1.5 litres and above) are generally consumed in households which are in receipt of existing kerbside recycling services. On this basis, it could be argued that a DRS need not include such containers.

41. It is clear that growth in household recycling rates has been slowing in recent years despite significant investment in these services. We are confident that DRS will drive a substantial increase in the recycling of containers currently disposed of through household residual waste services.

#### Return Point Arrangements

42. The Committee has requested further information on the composition of the return point landscape. The Full Business Case Stage 1 estimates that the scheme will involve collections from approximately 17,400 return points and hospitality retailers.

43. This consists of approximately 5,900 retailers (e.g. supermarkets and convenience stores etc.), a further 2,300 hospitality businesses selling drinks for off-site consumption (e.g. cafes and takeaway restaurants) and approximately 9,200 hospitality businesses selling drinks for consumption on the premises. Where a retailer is only selling drinks for consumption on the premises, they are not required to accept the return of containers sold elsewhere.

44. It is assumed that approximately 3,000 of these return points will operate automated returns, accepting 85% of all packaging returned by consumers. This is consistent with the experience in other comparable schemes. It should be noted that it will be open to any publicly accessible return point operator (i.e. any retailer or off-site hospitality business) to operate a Reverse Vending Machine (RVM) should they choose. The Scottish Government is committed to introducing a 100% Non-Domestic Rates relief for RVMs in preparation for the scheme's implementation. We continue to engage with Scottish National Investment Bank to explore whether it might be able to provide support to retailers in accessing the necessary funding to purchase RVMs and dialogue is ongoing with major RVM manufacturers regarding the potential financing options which may be open to retailers.

45. Where return point operators choose to accept returns manually, the Regulations allow flexibility about how this should be achieved. To aid return point operators in identifying the solutions most suitable to their needs, Zero Waste Scotland has undertaken work to test different collection and storage arrangements.

46. The testing took place over a one-month period across four different test sites. Accordingly, while the tests provide a useful insight, we anticipate that return point operators (working with a scheme administrator) will wish to build on the outputs before deciding on preferred storage solutions. Manual lifting limits, ease of transportation in vehicles and handling efficiency at waste transfer stations/counting centres will all need to be considered as part of this process.

47. The receptacle options tested included wheeled bins, caddies, tote boxes and bottle crates for glass drinks containers; and in the case of PET plastic bottles and metal cans, plastic bags of varying sizes with and without holders, and caddies.

48. In summary, it was found that:

- Glass bottle breakage and barcode damage varied from 0.6% to 2.8% across different solutions. Wheeled bins performed worst and tote boxes best. All of the containers tested other than bottle crates had an attached lid as a means of limiting the potential escape of broken glass, thereby minimising environmental health concerns. Participating businesses all had different preferences for the method of glass collection (wheeled bin, caddie or tote box), because of availability of storage space and work practices. However, it was generally acknowledged that all options could be made to work.
- 80 litre plastic bags worked well for co-mingled aluminium/steel cans and PET bottles, and a bag holder with a lid ensured ease and optimisation of use, as well as health and safety alignment.

49. Separately, we have been engaging with the Royal Environmental Health Institute of Scotland (REHIS) to better understand potential risks associated with operating a return point in a retail setting in relation to food safety, health and safety, environmental and public health impacts. We recognise that retailers, particularly those who prepare food on their premises, will need to put in place controls in order to avoid these impacts. The consistent advice from REHIS has been that larger retailers are likely to implement these controls with ease and we will work with REHIS to develop guidance for retailers, particularly smaller businesses, to support them in implementing DRS in a way that is consistent with their obligations. This guidance may also be of assistance to distance sellers operating takeback services.

50. We recognise that some very small retailers may be set up in such a way that they cannot reasonably implement controls required to comply with legislation. In response to this concern we have amended the Regulations to allow Ministers to grant an exemption where they are satisfied that the location, layout, design, or construction of the retail premises does not permit, or cannot be reasonably altered to permit, the operation of a return point on the premises without significant risk of the retailer being in breach of legal requirements relating to:

- food safety,
- health and safety,
- fire safety,
- environmental protection, or
- public health.

51. We will work with representatives of the retail sector, REHIS, local authorities, and other relevant stakeholders to draw up guidelines to accommodate this within the exemptions process in a manner that is robust and evidence-based.

#### Fraud Prevention Measures

52. The Committee has requested further information on the steps taken within other international schemes to mitigate fraud.

53. A scheme administered centrally (i.e. by a single scheme administrator), which requires producers to report the number of containers they place on the market and monitors the number of deposits reclaimed, will be able to determine where deposit returns are higher than the number of items sold. This will be a good indicator that fraud is occurring and will allow targeted action to be taken.

54. It is open to industry to identify what further measures should be taken to mitigate the potential for fraud to occur. This will include consideration being given to the merits of adopting distinct labelling as a means of identifying those drinks containers which have attracted a deposit. This would serve as a strong deterrent to fraud but would involve a level of cost for industry. Labelling is a common feature of other European schemes although it should be noted that this approach is often one of a suite of measures adopted by producers.

55. Where producers do not wish to introduce distinct labelling, a number of international schemes instead allow for those businesses to pay a slightly higher contribution to the operating costs of the scheme in order to compensate for any financial losses through the fraudulent return of their containers. This would likely take the form of a per container fee charged by the scheme administrator, and may be a preferable solution for producers who only sell a small proportion of their products (and a relatively low overall quantity of drinks) on the Scottish market.

56. The Scottish Government has been engaging with the Competition and Markets Authority (CMA) regarding the design and delivery of DRS. They have noted the importance of any scheme administrator acting in accordance with UK competition law, including by taking account of the needs of all market participants. A scheme administrator will wish to be mindful of this when taking decisions about matters such as fraud prevention controls. A copy of the CMA's briefing note regarding DRS has been provided separately.

57. In conjunction with the DRS Producer Working Group, Zero Waste Scotland recently commissioned research looking at the prevalence of, and response to, fraud in other international schemes as a direct result of different labelling options. The report was shared with our DRS Producer Working Group to inform industry considerations about the most appropriate fraud mitigation measures for the scheme.

#### Accessibility of the scheme

58. Throughout the development of Scotland's DRS, we have been keen to maximise the scheme's accessibility in order to ensure that all members of society can effectively participate. An underpinning principle of our approach is that it should be as easy to return a single-use drinks container as it is to purchase one.

59. Decisions regarding the scheme design have been made with particular reference to people with protected characteristics, people with limited mobility or access, those in

remote or rural areas and those on low incomes. To support those decisions, a number of impact assessments have been prepared.

i) A Final Equality Impact Assessment (EQIA) was published to coincide with the laying of the final Regulations. That document builds on an Interim EQIA published in June 2018 and a Full EQIA published in July 2019. A copy of the Final EQIA can be viewed at: <https://www.gov.scot/isbn/9781839605857>

ii) A Fairer Scotland Impact Assessment was published in September 2019 and can be viewed at: <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2019/09/deposit-return-scheme-scotland-regulations-accompanying-statement-proposed-regulations/documents/fairer-scotland-impact-assessment/fairer-scotland-impact-assessment/govscot%3Adocument/fairer-scotland-impact-assessment.pdf>

iii) An Islands Communities Impact Assessment was published to coincide with the laying of the final Regulations. That document builds on the Islands Communities Screening Assessment published in September 2019. A copy can be viewed at: <https://www.gov.scot/isbn/9781839605833>

60. Based on the work undertaken, we believe all necessary measures have been adopted to ensure the delivery of a DRS which is widely accessible and reflective of the needs of all groups in Scottish society.

61. We recognise the important role that a scheme administrator will have in the day-to-day delivery of the scheme and we are clear that we would expect any scheme administrator to comply with best practice and all applicable legislation in ensuring that the scheme is equally accessible to all.

62. It is recognised that early activity will be required to inform the public of the passage of the legislation to establish DRS. This activity will be led by Scottish Government with support from Zero Waste Scotland. Ultimately, it will be in the interests of the scheme administrator to ensure the necessary levels of public awareness and support for the scheme. After all, it is only by securing the public's participation that it will be possible to meet the statutory collection targets set out through the Regulations. Accordingly, the Scottish Government anticipates that a scheme administrator will play a critical role in the provision of information and support to consumers in the run-up to the scheme's implementation. We expect this activity will be timed so as to maximise awareness and impact in the months prior to commencement.

63. Separately, engagement will continue between SEPA and industry, with guidance being developed to support producers, sellers and return point operators to prepare for the scheme's introduction. This is a central element of SEPA's compliance and enforcement function and extensive planning is now underway within SEPA in preparation for DRS. 6. Implementation Considerations Infrastructure requirements

64. The Committee requested further information on the infrastructure that will be required to establish and operate Scotland's DRS. Ultimately, decisions regarding the commercial delivery model for DRS will be a matter for drinks producers, likely operating through a single scheme administrator.

65. For the purpose of the Full Business Case Stage 1, we estimated that four industrial facilities would be required by a scheme administrator in order to support the bulking and counting of material collected from return points. For the purposes of financial modelling, it was assumed that the scheme administrator will purchase all facilities upfront and manage

them directly. However, it is equally possible that a scheme administrator will look to utilise existing infrastructure, either through leasing these facilities or by contracting an external supplier to undertake this activity on their behalf. We would encourage any scheme administrator to engage constructively with both public and private sector bodies who may have a role to play in supplying or operating the infrastructure necessary to deliver the scheme.

66. Further research by Zero Waste Scotland supports our assessment that the most efficient means of transporting DRS material (to counting centres and for onward processing) will be to operate a series of bulking points and counting centre(s). Analysis indicates there may be value in adapting existing waste transfer facilities to incorporate bulking points and adapting existing Material Recovery Facilities for use as counting centres.

67. Any scheme administrator will also require an Information and Communication Technology (ICT) system to support the management of data and payments between producers and return point operators. Such systems are a common feature of other well-established international schemes.

68. Finally, the scheme administrator will need to develop or procure a solution for the collection and transport of scheme packaging from return points. Again, this is a function that the scheme administrator could deliver directly or by contracting an external supplier. Our modelling assumes that the function will be outsourced. There may be scope for a scheme administrator to enter into arrangements with retailers to support the backhaul of material, thereby minimising the environmental impacts associated with collections. Backhaul or alternative local solutions may also prove to be particularly effective when servicing island and remote communities, limiting the impacts on existing community and transport infrastructure while creating potential economic opportunities.

#### Timeline

69. We have given detailed consideration to each of the above factors when working to finalise the implementation timeline. In addition, we have worked with industry through the DRS Implementation Advisory Group to understand its view of a deliverable timetable. The establishment of fully operational return points (involving adjustments to medium and large stores to accommodate RVMs) has emerged as the critical path to delivering the scheme. Having considered feedback from retail stakeholders, we consider that a commencement date of 1 July 2022 will provide sufficient time for preparations to be made. This revised commencement date is reflected in the final Regulations.

70. Some retailers, especially larger operators, are likely to seek to alter or extend stores and/or create an additional external structure to house RVMs, for example in a car park. Depending on the circumstances this work may require planning permission and/or a building warrant.

71. To help streamline the planning permission process for retailers, we are considering options to extend the existing Permitted Development Rights (PDR) for retailers under class 9A of the Town and Country (General Permitted Development) (Scotland) Order 1992. A PDR is essentially a blanket grant of planning permission (subject to certain restrictions) set out in legislation. We are involving retailers and planning authorities closely in this process and hope to be able to confirm our planned approach shortly.

72. We understand that the Type Approval process provided by Local Authority Building Standards Scotland (LABSS) is potentially helpful in cases requiring a building warrant. Where there is a standardised design for the work required, a business can apply for Type Approval from LABSS; this can speed up the building warrant application process as all local authorities accept a Type Approval certificate as evidence of compliance with building standards. We have been working with LABSS to raise awareness of DRS and would encourage retailers to explore whether Type Approval could help support their application.

73. We recognise that no possible solution will cover every single case where a store makes alterations in order to install an RVM, but we believe the above steps will streamline the process and support retailers in delivering the necessary return point capacity by the planned go-live date.

74. The Committee asked whether there were plans to phase the introduction of the scheme and, if so, what the impacts of such an approach would be for different groups. To phase the introduction of the scheme by either locality or product type would be extremely difficult, creating additional supply chain complexities and introducing the potential for significant public confusion. There are therefore no plans to do so.

75. Parts of the Regulations relating to approval of the scheme administrator, registration of producers, grant of exemptions for return points and registration of voluntary return points will however come into force before the scheme becomes fully operational.

#### Wider impacts of DRS

##### Environmental Impacts

76. In line with the Committee's request, a supplement to the Strategic Environmental Assessment for DRS has now been prepared which fully reflects the final scheme design. It concludes that the preferred scheme design will support greater levels of recycling and greater carbon savings overall for target materials when compared with the four example schemes included in our initial public consultation on DRS. The scheme design is expected to save an estimated 3,909 ktCO<sub>2</sub>e between 2023 and 2048.

77. A copy of the full Assessment can be viewed at: <https://www.gov.scot/isbn/9781839605840>

##### Financial Implications for local authorities

78. The Committee has also requested further information on the impact that DRS will have on individual local councils.

79. Our updated Economic Case assumes total costs to councils of £46 million over 25 years and a corresponding total benefit of £214 million. The net benefit is therefore £168 million. There has been a reduction in benefits since the Full Business Case Stage 1 due to changes in the split between DRS and non-DRS containers, which has increased the quantity of materials remaining at kerbside for collection and the associated disposal costs incurred by local councils. Local councils are still expected to save approximately £137 million in disposal costs over 25 years as a result of DRS.

80. Zero Waste Scotland has undertaken work with each individual local council to assess the impacts of the introduction of DRS on current household waste management services. The commercially sensitive nature of that information means it would not be appropriate for the Scottish Government to publish a full analysis on a per local council basis.

81. Our modelling predicts the tonnage of material displaced from different services (recycling and residual waste) and then uses current gate fee prices to predict the financial impact. As this impact is several years away, the outputs from the model need to be contextualised as indicative, as opposed to expected returns. Recycling gate fees fluctuate regularly and are inherently linked to market volatility and oil prices, making assessment of the financial impact on recycling services particularly challenging. The average reduction in residual waste collected across Scotland following the introduction of DRS is estimated at 6%, with an average 10% reduction in material captured through recycling collections. However, the values vary widely between local councils depending on factors such as population and current recycling rates. The greatest savings come from displacement of waste that is not currently recycled. Zero Waste Scotland's assessment suggests that 23 local councils will benefit financially from DRS, with 3 local councils being financially disadvantaged. The position is finely balanced for the remaining 6 councils.

82. It is acknowledged that local councils may need to adjust their waste collection services once DRS is in place and could incur costs doing so. The extent to which individual local councils may realise benefits associated with DRS and the period over which this occurs will be largely dependent on local decisions regarding the design and delivery of individual waste and recycling services. In particular, the point at which any benefits start to be felt will be largely dependent on the nature of existing contractual arrangements for the collection and disposal of recyclate and residual waste. The ongoing review of the Household Recycling Charter Code of Practice will also be influential in identifying how the additional capacity within local authority kerbside collections should be focussed going forward.

83. The Scottish Government has extended the membership of the DRS Programme Board so as to ensure that local councils are appropriately represented in the next phase of the programme.

#### Impact of DRS on consumption

84. When considering the potential impact that DRS could have on consumer purchasing behaviours, we believe it is important not to conflate the price of products with the proposed deposit level. Indeed, the Regulations require that the deposit level be advertised separately from the price of all products sold in obligated containers and we anticipate that at least 90% of deposits paid by consumers will be redeemed once DRS is fully established. Redeemed deposits will then be used to offset future purchases. This should help to minimise any impact on consumer purchasing.

85. The Scottish Government is clear that DRS is a form of extended producer responsibility and so the cost of the scheme will be borne by drinks producers. As part of the final BRIA, we have carried out an analysis of the potential for a proportion of the producer fee to be passed on to consumers. While there is limited evidence on the impact of other deposit return schemes on consumer prices internationally, as in any competitive market, it is for drinks producers themselves to determine how much, if any, of this cost they pass on to consumers. It is not clear how producers are likely to respond in Scotland.

86. Analysis undertaken for the purposes of our BRIA concludes that DRS could impact consumer behaviour, incentivising a shift, to some extent, towards purchasing larger sized products compared to what they were purchasing before. However, the scale of this change is likely to be small and would not be expected to cause consumers to change their choice or preference for a certain brand. The decision to pursue a scheme design

which maximises consumer convenience and targets a high capture rate should also help to mitigate this impact.

87. Turning to the impact that DRS could have on the availability of products, the scheme has been designed to mitigate the risk of a reduction in consumer choice. In particular, by placing responsibility for the scheme's operation with producers (or a scheme administrator operating on their behalf), we are allowing industry to operate the scheme in the most efficient and effective way possible, particularly in relation fraud mitigation measures. As outlined at paragraph 54, it is recognised that some producers may choose to adopt distinct product labelling as their primary mechanism to prevent fraud within the system. Labelling is a common feature of other international schemes although it should be noted that this approach is often one of a suite of measures adopted by producers.

88. Where distinct labelling is introduced as a result of DRS, this will result in increased costs associated with stock management arrangements, including stock monitoring, storage and distribution. Such costs will be incurred by producers, wholesalers and large retailers who operate in both Scotland and the rest of the UK. A number of producers, wholesalers and retailers have suggested that these additional costs could result in decisions to de-list products from the Scottish market. This risk is most likely to affect low volume, marginal lines. The scale of this effect depends to some extent on decisions made by the scheme administrator but, as highlighted previously, there are arrangements in place in other international schemes that would help to mitigate any impact.

89. Finally, the Committee has noted that many of the above costs could be mitigated should producers voluntarily accelerate plans to deliver a DRS elsewhere in the UK. A statutory scheme is not expected in England, Wales and Northern Ireland until 2023 at the earliest. Subject to that scheme assuming the same characteristics as the Scottish DRS, the need for distinct labelling would likely no longer be necessary at that point.

#### Employment impacts associated with DRS

90. The Committee requested further information on the employment impacts and opportunities associated with the introduction of DRS.

91. The establishment of a scheme administrator will present a number of new employment opportunities. Any such entity will likely require to be supported by a team of administration staff responsible for the central co-ordination of activities, supplemented by a workforce tasked with operating counting centres. Based on a high-level assessment of workforce requirements as informed by consultation with existing schemes in other jurisdictions, that workforce could reasonably be expected to comprise supervisory and management staff, counting and sorting machinery specific staff, administrative and general facility staff and other technical staff.

92. DRS will also result in an increase in the amount of material being transported across the country to dedicated counting centres for counting and processing. It will be important to explore how existing infrastructure, including that operated by public sector and commercial suppliers, can be best utilised to support this activity.

93. As outlined above, we believe DRS is unlikely to result in a significant shift in consumer purchasing patterns, with any impact on consumption or changes in product preferences expected to be marginal. We have also been careful to deliver a scheme which is comprehensive in scope and so favours no particular packaging material. This will help to guard against any particular industry being disproportionately impacted by the



scheme although packaging design choices are ultimately a matter for individual producers.

94. It is recognised that a significant volume of material currently collected through kerbside and bottle bank collections will be diverted into DRS. Work has commenced to review the Household Recycling Charter Code of Practice in order to consider how it will need to be adjusted to reflect the introduction of DRS, including how best to utilise any new capacity within local authority waste collection services going forward. Opportunities for domestic reprocessing

95. Scotland's DRS will significantly increase the quantity and quality of recyclate, creating an aggregated and high quality feedstock for reprocessing. We are committed to working with industry to maximise the economic opportunities associated with this.

96. Zero Waste Scotland continues to engage with a range of re-processors and potential re-processors around the opportunities that may arise from the introduction of DRS. There is a significant reprocessing industry for glass in Scotland and discussions have taken place with the industry in terms of maximising the potential of the existing capacity as part of any future supply chain agreement with the scheme administrator. Significant interest has also been expressed by a number of PET re-processing organisations in the potential for investment in Scotland. It is anticipated that metal reprocessors will continue to use current arrangements as the volume of metals are such that they can be readily managed using existing infrastructure.

#### Interaction with UK Government

97. The Scottish Government is clear that deposit return is a form of extended producer responsibility, and therefore packaging which is being dealt with through DRS should be exempt from alternative packaging producer responsibility arrangements. We have set this position out to the other UK administrations and will continue to explore how this policy can best be given effect. The delivery of this objective would require an amendment to UK statutory instruments and could not be achieved through the Regulations which will establish DRS.

98. We have also separately been engaging with the UK Government regarding the VAT treatment of deposits. Given the innovative nature of the scheme, there is no direct precedent to follow in respect of this issue. It is, however, our view, based on technical analysis, that deposits should not attract VAT on the basis that they do not represent payment for a taxable supply. While discussions are ongoing, officials have not yet identified a satisfactory solution which delivers this objective. Ministers will closely monitor progress in the coming weeks with a view to directly engaging on this matter should this be necessary.

#### Stakeholder Engagement

99. Our public consultation on the design of a DRS for single-use drinks containers closed in December 2018, with 3,215 responses received. This comprised responses from 159 organisations, 2,008 individuals and 1,048 campaign respondents. There was widespread agreement amongst both organisational and individual respondents that a well-run and appropriately targeted DRS could provide opportunities in relation to improving the environment, changing people's attitudes to recycling and littering, and building the circular economy.

100. The views expressed through that exercise have been supplemented by feedback from more than 350 organisations, covering a range of sectors. Since October 2017 these organisations have been engaged via dedicated sector workshops, business as usual interviews, events, islands engagement workshops, working groups, site visits and one-to-one stakeholder meetings. Since the public consultation was launched in June 2018, more than 170 individual meetings have taken place with stakeholders, Zero Waste Scotland and/or the Scottish Government.

101. In February 2019, the Scottish Government established a DRS Implementation Advisory Group to provide industry expertise and advice on implementation, and to facilitate access to expertise and resources. The Group membership includes:

- British Soft Drinks Association
- Federation of Small Businesses • Natural Source Waters Association (formerly Natural Hydration Council)
- Scotch Whisky Association • Scottish Beer & Pub Association
- Scottish Grocer's Federation
- National Federation of Retail Newsagents
- Scottish Wholesale Association
- Scottish Licensed Trade Association
- Scottish Retail Consortium
- UK Hospitality

102. The Implementation Advisory Group has established three working groups to look at: establishing a scheme administrator; the operational implications of DRS for producers and distributors; and the operational implications of DRS for retailers. Membership of those groups is made up of trade bodies and individual businesses who have volunteered their support.

103. With specific reference to industry engagement, separate bilateral engagements have taken place with key sectors including drinks producers, wholesalers/distributors, retailers, glass manufacturers, aluminium manufacturers and the waste & resources sector. A range of organisations of varying scale have been engaged through those discussions, thereby allowing us to fully understand how DRS will impact across Scotland's business community. All of the above sectors also offered views as part of the public consultation on the draft

Regulations to establish the scheme.

104. We have been particularly mindful of the representations made by small businesses regarding our proposals. We believe that the flexible approach being adopted in key areas should help to ensure that DRS works for these businesses. In particular: • The adoption of a De Minimis below which producers will not be required to pay a registration fee to SEPA is likely to aid their participation in the scheme.

- The adoption of a flexible approach to product labelling provides the scheme administrator with the ability to address concerns for those small producers operating across the UK and further afield.
- The adoption of a flexible approach to the operation of return points, whereby businesses can choose to accept manual returns, will help smaller retailers to participate in the scheme. The ability to charge a reasonable handling fee should ensure that DRS is cost neutral for return point operators.
- The potential for the Scottish National Investment Bank to support retailers wishing to acquire a Reverse Vending Machine (RVM) could help to mitigate initial capital outlays linked to participation in the scheme. Those discussions are ongoing.
- The introduction of a case-by-case exemptions process will allow return point operators to work together where appropriate, provided a high level of accessibility is maintained.

105. Subject to the passage of the Regulations, it is expected that industry will seek to establish its own implementation and delivery structures for DRS, likely involving the creation of a single scheme administrator. Given the overlapping interests of Scottish Ministers and industry with regards to the effective delivery of the scheme, it will be important to ensure continued positive communication and collaboration. The future of the DRS Implementation Advisory Group and its membership will be considered in this context.

#### Legal Considerations

106. The Committee has asked about analysis carried out in relation to the impact of DRS on free movement of goods compatibility with EU law requirements, and to address concerns in relation to European Convention on Human Rights (ECHR) rights.

107. Throughout the process of developing the scheme, potential impacts on the free movement of goods between the UK and EU member states have been considered and attempts have been made to minimise such impacts. It is our view that the implementation period between the making of the Regulations introducing DRS and the full coming into force of those Regulations is sufficiently long so as not to impose a disproportionate burden on domestic or international producers. The Regulations do not impose any explicit difference in treatment of imported or domestic goods. The approach to the identification and registration of producers is designed to reduce any barrier to entry to the UK market, and the Regulations leave flexibility in a number of areas, for example identification of scheme packaging, in order to avoid any barrier that a single consistent approach could impose.

108. To the extent that the scheme could constitute an indirect barrier to importing goods to the UK or Scotland, it is our view that such a barrier is limited, proportionate and justified by the overriding environmental benefits of the scheme. As discussed above, analysis has been carried out in relation to alternative measures and this is detailed further in the Final BRIA. Such analysis indicates that DRS will realise greater environmental, economic and societal benefits than would be seen in alternative scenarios. It is therefore our view that the Regulations imposing the scheme would satisfy EU requirements in relation to the free movement of goods even if Scotland remained a member of the EU, and are within the competence of the Scottish Ministers. We have committed to a review of the Regulations after sufficient time has passed to allow proper analysis of any actual impacts on different sectors of the drinks market in Scotland. This will allow us to reconsider any actual impacts

on different producers once the scheme is operational and, if appropriate respond to this through amendments to the Regulations.

109. It is further the view of the Scottish Ministers that the scheme is fully compliant with the ECHR. To the extent that there is any impact on the property rights of actors under the scheme, effort has been made to minimise such impact and in our view such impact is proportionate to the environmental benefits achieved.

110. To address the specific concerns relating to discrimination raised in the Committee's report, it is acknowledged that businesses throughout the supply chain will incur costs as a result of the introduction of DRS in Scotland. The costs to be incurred by wholesalers will relate largely to stock management arrangements, including stock monitoring, storage and distribution. Similar costs will also be incurred by producers and also by large retailers. It is important to note that the handling fee paid to retailers who are acting as a return point is to meet costs associated with the delivery of an additional service to the public following the scheme's introduction, that service being to accept the return of scheme packaging and reimburse deposits. The handling fee is not designed to meet the wider costs associated with supplying the Scottish drinks market. On a similar basis, the Scottish Government does not consider that wholesalers should be entitled through the Regulations to recover such costs from producers.

# Annexe B

## Briefing Note - Scottish Government response and key changes to the regulations (March 2020)

### Summary of Key Changes to the Regulations

1. The Regulations are broadly similar to the draft Regulations scrutinised by the Committee in 2019 in terms of the key attributes of the scheme. A summary of the key attributes of the scheme is set out in the policy note accompanying the Regulations. A link to the Regulations and policy note is included in the [cover paper](#).

2. A number of changes have been made to the detail of the scheme in response to issues raised or recommendations made by industry, stakeholders and the Committee.

3. Changes include:

- The Regulations **have been amended to include a commencement date of 1 July 2022** - at which point DRS would be considered fully operational.
- **New duty to review the scheme:** New Regulation 32 creates a duty on Scottish Ministers to review the operation of the Regulations before 1 October 2026 and lay the report in the Scottish Parliament, and for the review to include consideration of the materials included in the scheme, the level of deposit and collection targets.
- Introduction of a **tiered producer fee** – a de minimis threshold, meaning those producers with a taxable turnover of £85,000 or less will not be required to pay a fee for registration (Regulation 7(5)).

Key areas of concern to the Committee where there appears to have been no change or further information provided include:

- There is no additional provision for the Scheme Administrator to set a variable return rate.
- There is no detail on the plan to address reprocessing infrastructure gaps.
- There is no provision to compensate wholesalers.
- The Scheme Administrator will not be required to publish an annual Strategic Environment Assessment (SEA)
- There is no further detail on the framework and mechanisms for dispute resolution

### Committee recommendations and Government response.

4. A full business case (Stage 2) has not been published but there are updates to the full business case (Stage 1) in paragraphs 7 – 13 of the accompanying letter included in Annexe 1, which is described as setting out the Government's final view of the key elements of the scheme, ahead of the handover to industry. An updated socio-economic case for DRS (forming part of an addendum to the Full Business Case Stage 1) can be viewed at <https://www.gov.scot/isbn/9781839605895>. Comment on this is provided in paragraphs 15 – 20 of the accompanying letter. A final Business Regulatory Impact

Assessment (BRIA) for the scheme has been published and can be viewed at:  
<https://www.gov.scot/isbn/9781839606014>

## Scope - Materials

### 5. Committee recommendations/requests included:

- The Committee considered that the Scheme should be as comprehensive as possible, but accepted the Scheme is focused on drinks containers at this time and additional materials will require to be phased in.
- The Committee encouraged the Government to work with the **glass industry** to address concerns and asked the Government to clarify how the industry will be represented on the Implementation Advisory Group (IAG) or other working groups.
- Given the Committee heard concerns that **baseline data** on recycling being used in the business case was 4 years old, the Committee recommended that the Scottish Government update baseline data as a matter of priority.
- The Committee considered that the Scheme should be designed to include cartons, pouches, HDPE plastic, biodegradable and other emerging plastics in the future and requested an update on discussions on **inclusion of additional materials**, provisions for review, and likely time-frames.
- The Committee asked the Scottish Government to clarify if further regulations are required to add additional materials to the Scheme.
- The Committee asked for further information on the rationale for setting the **size range of containers** to be included in the regulations, as stakeholders had raised concerns that smaller containers would not be accepted by RVMs.

### ***Approach in Regulations and Government response:***

6. The scope of the scheme in terms of materials covered is unchanged, it will include plastic bottles made from PET plastic, aluminium and steel cans and glass bottles that contain at least 50 millilitres and no more than 3 litres of liquid.

7. **Glass:** The Scottish Government confirmed that the glass industry is not represented on the IAG, which is formed from trade bodies directly involved in the drinks supply chain. They note, however, that some drinks producers represented on the IAG have a strong interest in maintaining a high-quality supply of glass bottles, and that as responsibility for implementation is passed to industry, it will be for the relevant businesses, and any scheme administrator(s), to determine how best to engage wider industry.

8. The Government set out in its response that it remains committed to the inclusion of glass, saying it will significantly reduce CO2 equivalent emissions associated with glass drink packaging, and reduce dangerous glass litter. In relation to concerns raised by the industry about a reduction in the availability of quality clear glass, the Government said that section 34 of the Environmental Protection Act 1990 requires those handling waste to ensure that it is handled in a fashion that promotes high-value recycling, and this will apply in relation to the handling of returned scheme packaging. The Scottish Government said it has published a Code of Practice to aid compliance with this obligation.

**9. Expanding scope:** In response to the Committee’s questions regarding a potential timeframe for expanding the scope of materials, the Government said it was “content to commit to such a review”, the timing of which should take account of the anticipated timeframes for a fully established scheme i.e. after the end of the third full year of operation. New Regulation 32 creates a duty on Scottish Ministers to review the operation of the Regulations before 1 October 2026 and lay the report in the Scottish Parliament, and for the review to include consideration of the materials included in the scheme article, the level of deposit and the collection targets.

**10.** The Scottish Government wrote to the Committee in December 2019 on the question of whether regulations were required to add **additional materials** – the Government said it would be possible for industry to voluntarily extend the scope of materials to be included in the scheme, but that there are clear advantages to legislating for any such change e.g. to ensure legal obligations apply consistently across all materials. Its response to the Committee did not provide detail on any discussions on inclusion of cartons, pouches, HDPE plastic, biodegradable and other emerging plastics in the future, although as mentioned the Government has committed to review materials included after the third year of operation. The accompanying letter discusses scope in paragraphs 37 – 41.

**11. Size range:** The Government referenced the Full Business Case Stage 1 which sets out the rationale for the container size limits which have been adopted for the scheme - that the size range of containers accepted by the four main RVM manufacturers is above and including 50ml and below and including 3 litres. The final BRIA states that the size range of containers in scope represents 98% of all drinks containers and is “consistent with the size of containers that most RVMs can accommodate”.

**12.** The final BRIA recognises there are potentially **competition impacts** where producers could be incentivised by the scheme to change from containers within the scheme to those outside, but considers those impacts are likely to be small.

**13. Recycling rates:** updated information is provided in the accompanying letter – paragraphs 4 - 6.

### **Scope – retailers and return points**

**14.** In its report the Committee:

- Asked the Government to include consideration of support to **local transport systems and to manual return** – it also asked for an indication of the number of retailers likely to need to take returns manually, and for further detail on the preferred model for manual returns.
- Asked the Government to ensure that the Scheme Administrator takes a strategic approach to an assessment of where **return locations** are required, in consultation with communities, and undertakes a national mapping exercise to inform the assessment.
- Sought assurance from the Government that it has the **appropriate powers to compel online retailers** out-with Scotland to participate in the Scheme.
- Sought clarification on existing regulatory requirements, or plans to include additional regulatory requirements, on **vehicles accepting returns**.

- Requested further detail on any consideration by the Scottish Government on potential impacts on **reducing consumer choice** in Scotland.
- Asked for further detail on how **handling fees** will be determined and what appeal/dispute mechanism will be in place, if this will be a matter for the Scheme Administrator and what guidance the Government intends to provide on this.
- Asked for information on work the Scottish Government has done or plans in assessing potential **barriers to consumers** and how these will be addressed either directly by the Scottish Government or by the Scheme Administrator, and what direction the Government intends to provide to the Scheme Administrator.
- Considered there is likely to be a need for **community based and shared return points** and this could assist both small retailers and communities.

### ***Approach in Regulations and Government response:***

**15.** As with the previous draft, the regulations still provide for a broad '**return to retail**' model where retailers can choose to install reverse vending machines (RVMs) or to return deposits over the counter, collecting containers manually.

**16.** In response to calls from stakeholders, changes have been made to exempt **on-trade hospitality retailers** from operating a return point, and also to include a 'reasonable excuse' defence in relation to the acceptance of scheme articles by a return-point operator in order to account for situations such as where retailers do not wish to accept returns of alcoholic items on **religious or ethical grounds**. An amendment has also been made to allow return points to refuse to accept items if the return comprises a **number of items** disproportionately greater than the number of scheme articles that retailer sells on average in a single transaction. The Scottish Government has also amended the Regulations to allow Ministers to grant an exemption where they are satisfied that the location, layout, design, or construction of the retail premises does not permit, or cannot be reasonably altered to permit, the operation of a return point on the premises without significant risk of the retailer being in breach of legal requirements relating to: food safety, health and safety, fire safety, environmental protection, or public health.

**17.** Regarding the strategic approach taken to **identifying return locations**, and the potential for a mapping exercise, the Government said it expected a scheme administrator "will be proactive in identifying those parts of the country which require additional return-point infrastructure, with the establishment of that infrastructure being necessary to support the scheme administrator in meeting its statutory collection targets" but do not believe it would be appropriate for Ministers to direct efforts in this regard "as to do so could raise questions about the extent of Ministers' influence over a privately owned and operated entity".

**18.** On **vehicles used** in takeback services – the Government has amended the Regulations to allow for all vehicle costs associated with the operation of takeback services to be covered through the handling fee (Regulation 11(4)(5)). However the Government did not respond to the Committee's request for clarification on clarification what existing regulatory requirements, additional regulatory requirements, could apply to **vehicles accepting returns**.

**19.** Regarding **manual handling**, the BRIA states that generally, it is expected that high volume retailers will choose to introduce RVMs, while low-volume retailers will choose to operate manual collection and return. An estimate is made of 14,386 manual return points



(15% of returns), and 3,021 automatic return points (85% of returns). It also states that in other countries with DRS, a high proportion of overall returns are received automatically.

**20. On handling fees**, the Government said that DRS should be cost-neutral for return points and SEPA will have powers of enforcement action against a person that is not complying with their obligations – including failure to pay a handling fee – and beyond that, any dispute regarding handling fees would be a matter for the courts. The BRIA states that the handling fee has not been decided and could be variable, although it is likely that a scheme administrator will agree a system-wide approach. The Full Business Case Stage 1 provided estimates of handling fees, and the Scottish Government refers to upper estimates being increased, but even under these estimates there is still a ‘clear economic case’ for the scheme.

**21.** The final BRIA considers impacts on consumers including competition impacts and potential for reduced **consumer choice**. Producers in particular have indicated that these increased costs could influence the number of product ranges supplied to the Scottish market, with lower-volume products likely to be most at risk. The scheme design seeks to mitigate this risk by introducing a degree of flexibility around the fraud prevention measures to be adopted. Distinct Scottish labelling is not mandated and it will be left to producers (working with the scheme administrator) to identify the most effective fraud-prevention measures for the purposes of the scheme.

**22. On community return points**, the Government agreed there is significant scope for “community-based organisations to proactively establish and operate return points” and said “Ministers are keen to facilitate such efforts”.

### **Level of deposit**

**23.** In its report the Committee:

- Sought re-assurance from the Government that the introduction of the deposit **will not adversely impact groups** with protected characteristics and those on low incomes.
- Asked for information on plans to assess **potential barriers to consumers** and how these will be addressed by the Scottish Government or by the Scheme Administrator.
- Asked the Scottish Government to clarify **who has the power or ability to set the deposit rate** to ensure that there is no doubt or confusion.
- Asked the Scottish Government to confirm that it can, and intends to, use the process of approving the Scheme Administrator and operating plan to set out a transparent process for increasing the deposit.
- Agreed with the proposed minimum deposit of 20 pence and that this should be set in the regulations but recommended there should be scope for the Scheme Administrator to **set a variable rate**, for example based on size, to discourage materials switching or other unintended consequences.
- Asked for clarity that the deposit would be **exempt from VAT**.

### **Government response and approach in Regulations**

**24.** As with the draft Regulations, the Regulations set the deposit level at a flat rate of 20 pence (Regulation 5).

**25.** The Scottish Government continues to believe that a flat-rate deposit of 20p is most likely to deliver the outcomes being sought through DRS citing:

- International evidence that a deposit in the range being proposed is likely to incentivise public participation.
- Support in the public consultation - only a third supporting a variable rate.
- The BRIA found that a flat deposit could incentivise a shift towards purchasing larger-sized products but this change is likely to be small.
- No evidence found to suggest a 20p deposit is likely to result in an increase in negative health outcomes.
- Concern that the introduction of a variable deposit could unnecessarily increase costs for low income consumers.
- Practical challenges associated with allowing a scheme administrator to set deposit levels, as there is no obligation to set up a scheme administrator, and no obligation for there to be a single scheme administrator.

**26.** The Government has committed to reviewing the deposit level as part of the new duty to review the scheme introduced to the Regulations (Regulation 32).

**27.** Regarding **impacts on low income groups**, modelling work undertaken suggests that DRS will result in an initial additional outlay of around £1.40 for those individuals falling within the lowest 10% household income group. While this money can be reclaimed, it is anticipated that it will then be spent on servicing further deposits and so cannot be redirected to other priorities.

**28.** On **VAT**, the Government said it has consistently indicated its view to the UK Government that the deposit should not attract VAT and that this requires agreement with and guidance from HMRC.

### **Operational impacts and costs**

**29.** In its report the Committee:

- Asked the Government to provide detail on its plans regarding **communication** and the extent to which this will be a matter for the Scheme Administrator.
- Urged the Government to engage with **smaller producers** to understand their concerns in advance of finalising the Regulations and consider what support can be provided to smaller producers, including considering the merit in **tiered producer registration fees** so that small producers pay less.
- Asked for **an assessment of employment impacts** of DRS for business, including small business and key manufacturers, before laying the final draft regulations.
- Asked if the Government explored the potential to use producer fees to **incentivise broader environmental outcomes** such as more resource efficient packaging choices or recycled content, or if there is scope for EPR to interact with DRS in future to further improve environmental outcomes for in scope materials.

- Asked the Government to provide assurance that DRS will be **cost neutral for wholesalers** and to provide clarification on how the additional costs to wholesalers will be treated.
- Asked the Government to provide an up-to-date analysis of the current **reprocessing infrastructure** and gaps and set out the plan to address any gaps, including plans to invest, and to consider the value of including provisions in relation to infrastructure (counting and processing) in the regulations.

### ***Government response and approach in Regulations***

**30.** The direct operational costs of the scheme administrator under the preferred scheme design are estimated in the final BRIA at £92.9 million a year once the scheme is established. Costs are projected to be funded by income from unredeemed deposits (46%) and sale of materials (20%), with the balance from producer fees (33%). One-off set up costs for establishing new Scottish SKUs are estimated to be £46 million, whilst ongoing costs associated with inefficiencies created in production, logistics and storage are estimated to be £73 million (spread over 25 years).

**31. Impacts on small producers:** The Government said that it is keen to ensure that DRS does not represent a disproportionate burden for any producer, but it is important for all businesses to meet their responsibilities. However, the Government has accepted the calls for a tiered producer registration fee and has amended the Regulations to introduce a de minimis threshold, meaning those producers with a taxable turnover of £85,000 or less will not be required to pay a fee for registration (Regulation 7(5)) – the same threshold used for VAT registration.

**32.** The final BRIA states that “the scheme has been designed with features that mitigate the potential impact on smaller producers and retailers” including “flexibility around the fraud-prevention measures to be adopted by producers and alternative collection mechanisms for smaller retailers”. It states that these mitigations will need to be kept under review as the scheme is developed and implemented.

**33. Impacts on wholesalers:** The Government said in its response that it does not intend to introduce any mechanism via the Regulations through which to compensate wholesalers for the wider impact DRS will have on their operating costs. It acknowledges that businesses throughout the supply chain will incur costs as a result of the introduction of DRS in Scotland and said that costs to be incurred by wholesalers will relate largely to stock-management arrangements, including stock monitoring, storage and distribution – but similar costs will also be incurred by producers and by large retailers.

**34. Employment impacts:** This is touched on in paragraphs 90 – 94. No specific detail is provided.

**35. Reprocessing infrastructure:** This is touched on in paragraphs 95 – 96. No specific detail is provided.

**36. Communication:** The final BRIA estimates a cost of £8.7 million for national stakeholder and consumer awareness raising and lists communications as a cost category for the scheme administrator. It also states that retailers will have a degree of responsibility for communicating the impact of DRS on consumers, often using materials made available by the scheme administrator.

**37.** In its report the Committee:

- Considered that **targets should be established from the outset** and progress regularly reviewed and reported on.
- Said that the Government should produce an updated **Strategic Environmental Assessment** (SEA) of the Scheme, including the need for additional infrastructure and changing consumer behaviours and the longer-term impacts alongside the final draft Regulations.
- Recommended that the final draft Regulations should require the scheme administrator to provide an updated SEA of the final proposed Scheme, prior to its launch and should be required to report on this on an annual basis.
- Asked the Government to provide direction to the Scheme Administrator to **enable donations to be made at return points** to support communities and environmental improvements.

### ***Government response and approach in Regulations***

**38. Targets:** Under the new Regulations, the initial 70% collection target applies to the calendar year beginning 1 January 2023 and ending 31 December 2023, meaning there will be no applicable collection target from the implementation date in July 2022 until January 2023. The Government did not respond to the Committee's position that targets should be established from the outset of the scheme.

**39. SEA:** The Government has provided an updated SEA alongside the Regulations as requested by the Committee. It states that the final option will save an estimated 3,909 ktCO<sub>2</sub>eq between 2023 and 2048 and, "based on extensive stakeholder engagement, represents an optimum environmental outcome taking account of technical practicalities in establishing and operating a successful scheme". The 2019 SEA modelled that the preferred scheme would save 4,038ktCO<sub>2</sub>eq between 2021 and 2046 from the diversion of waste from landfill and incineration.

**40.** The Government noted the Committee's suggestion that the scheme administrator publish an annual SEA, but said that international experience suggests that a scheme administrator will be proactive in demonstrating its environmental benefits therefore it does not see a need to legislate for this. It noted however that Regulation 16(b) which requires the scheme administrator to provide such additional information as the Scottish Ministers may request could be used to require information about the environmental impact of its operations.

### **Consumer of social impacts or risks**

**41.** In its report the Committee:

- Recommended that a requirement for universal access underpins the development of the DRS by the Scheme Administrator, ensuring that rural areas have sufficient return points, in the right places.

### ***Government response and approach in Regulations***

**42.** The Government's response emphasises in general that the 'return to retail model' i.e. obligation on all retailers to act as a return point, and approach to exemptions (i.e. avoiding a prescriptive suite of exemptions), is designed to ensure return points are accessible across Scotland and not just in major population centres.

**43.** The Islands Communities Impact Assessment accompanying the Regulations sets out that a DRS Islands Forum has been established to provide an ongoing engagement mechanism for representatives of island communities and this Forum will be formally introduced to any scheme administrator or producer that will be discharging obligations through the Regulations.

### **Implications for local authorities**

**44.** The Committee asked the Scottish Government to:

- Set out its assessment of the risks of removing higher value items from kerbside collections before finalising the Regulations.
- Provide further detail on the data used to determine recycling rates to ensure that the baseline data is up-to-date before finalising the Regulations.
- Outline the implications of DRS for resource management contracts and impacts on existing waste and recycling infrastructure and provide information on any plans to provide additional financial support to local authorities.
- Provide detail of work on the opportunities for DRS to complement local authority services to maximise environmental benefits or other positive outcomes.
- Confirm if DRS will enable more close-loop recycling with the potential for more recycling as opposed to ‘down-cycling’.
- Provide an assessment of geographical or regional differences across local authorities that may impact on DRS implementation or operation.
- Publish the results of the Zero Waste Scotland assessment in advance of laying the final Draft Regulations and set out what could change as a result of that new evidence.
- Make the data used in the Government’s BRIA on local authority impacts available.

### ***Government response and approach in Regulations***

**45.** The BRIA contains a number of references to local authorities including:

- A recognition that currently the majority of the costs of managing packaging waste are borne by local authorities rather than producers, which DRS seeks to address.
- Similar to the previous 2019 BRIA, it sets out that local authority costs of DRS will include reduced revenue from sale of materials in scope and increased sorting costs per tonne as a consequence of valuable materials being removed. Benefits include reduced tonnage, lower disposal costs and waste and litter collection efficiencies. An overall net benefit to local authorities is predicted of £168 million (lower than the net benefit of £191.1 million estimated in the 2019 BRIA).
- The Programme Board established to support DRS delivery includes Highlands and Island Enterprise and a local authority Chief Executive.

**46.** Kerbside recycling is commented on in paragraphs 21 – 25 of the accompanying letter.

**47.** Zero Waste Scotland Assessment – does not appear to have been published.

**48.** Financial Implications for Local Authorities are set out in paragraphs 78 – 83 of the covering letter.

### **Governance and administration of the Scheme**

**49.** In the report the Committee:

- Asked the Scottish Government to clarify if it is possible to legislate for a single Scheme Administrator.
- Asked If the Scottish Government is involved in discussions about setting up a body and how far progressed any discussions are.
- Recommended that the final regulations should provide the Scheme Administrator the ability to determine further exemptions if it deems that to be desirable or necessary.
- Recommended that the Scheme Administrator should have the power to vary the level of fees.
- Asked the Scottish Government to provide further detail on the framework and mechanisms for dispute resolution before laying the final draft Regulations and to set out a requirement for a dispute resolution mechanism in the Regulations.
- Asked the Scottish Government to provide an assessment of the additional enforcement requirements to be placed on SEPA and provide re-assurance that the powers and resources required by SEPA will be in place before the date of launch of the Scheme.
- Said if there is a requirement for additional powers, the Scottish Government should identify how those powers are to be provided for, before laying the final Draft Regulations.
- Asked for an assessment from the Scottish Government on additional provisions or support that may be necessary both to prevent and to detect potential fraud as the Scheme is developed and implemented.
- Encouraged the Scottish Government and industry to engage with the Scottish National Investment Bank at the earliest opportunity to actively explore the scope of the Bank to support the Scheme. The Committee also said it would welcome updates from the Scottish Government on the progress of those discussions.

### ***Government response and approach in Regulations:***

**50.** The Addendum to the Full Business Case assumes that a Scheme Administrator would incur initial set-up costs of £27.6 million. The direct operational costs of the Scheme Administrator under the preferred scheme design are estimated at £92.9 million a year once the scheme is fully established. Costs are projected to be funded by income from unredeemed deposits (46%) and sale of materials (20%), with the balance from producer fees (33%). The indicative producer fees equate to £31.9 million per annum or an average of 1.4p per drinks container falling within scope of the scheme.

**51. Fraud prevention:** The Government comment on this is paragraphs 52-57 of the covering letter and note that Zero Waste Scotland commissioned research looking at fraud

in other schemes in relation to different labelling options, which was shared with the DRS Producer Working Group to inform industry considerations.

**52. Dispute resolution:** There is no reference to dispute resolution.

**53. Enforcement:** The Government responded that the Regulations provide for wide-ranging criminal penalties (on summary conviction a fine not exceeding the statutory maximum of £10,000, or on indictment and conviction an unlimited fine). They also provide SEPA with extensive examination and investigative powers. It is the Government's intention that a separate Instrument be brought forward to include specified offences in relation to DRS in the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 – which will provide SEPA with the power to impose fixed and variable monetary penalties.

### The proposed timeframe

**54.** In its report the Committee:

- Recognised swift action was needed on DRS in the context of the climate emergency but considered that the ambition to have the Scheme operational within 12 months of passing the Regulations may be challenging in practice.
- Asked the Government, before laying the final Regulations, to provide a forecast of when DRS is likely to be operational and what key actions need to happen in order for that to be possible e.g. time-frames for setting up the Scheme Administrator; development of labelling systems; any new infrastructure and enforcement and monitoring mechanisms.
- Asked how the Government is taking industry concerns about the challenges involved in preparing for implementation in April 2021 into account and what industry can and should be doing by way of preparation in the coming months.

**55.** The Government comments on the proposed timeline in paragraphs 69 to 75 of the accompanying letter. The Regulations have been amended to include a **commencement date of 1 July 2022** - at which point DRS would be considered fully operational. Provisions on registration of producers will commence on 1 January 2022, provisions concerning the approval of scheme administrators will come into force on the day after the day on which these Regulations are made, and provisions concerning the exemption of return point operators will commence on 1 January 2021.

**56.** The Government states that this timetable has been developed following extensive engagement with the Scottish Government's DRS Implementation Advisory Group (IAG) and validated by industry experts.

**57.** The Accompanying Statement does not link the delay to the Coronavirus pandemic but the Cabinet Secretary for Economy, Fair Work and Culture, Fiona Hyslop MSP said in the Chamber on 18 March 2020 that the delay would “give businesses more time to prepare their premises for the scheme and crucially, provides flexibility in the immediate term as the whole country prepares to deal with Covid-19 - the impact of which continues to be closely monitored”.

**58.** The Scottish Government is still committed to introducing DRS in Scotland and not delaying implementation until the rest of the UK implements a DRS.

## **Further issues raised/other changes made to the Regulations**

### **Identifying DRS containers**

59. The Committee asked the Scottish Government:

- For further information on technical solutions in place elsewhere or under development that could provide an alternative to, or complement, a separate labelling system.

#### ***Government response and approach in Regulations:***

60. The Government states that the majority of containers sold onto the Scottish market will incorporate new identifying marks once the DRS is implemented, allowing them to be easily distinguished as part of the scheme. Similar to other DRS, these are expected to include a DRS identifying barcode, which would facilitate automatic collection via an RVM, and a specific symbol allowing easy visual recognition for manual returns. Labelling changes are not mandatory, and a series of options will exist to mitigate any potential competition impact. The options most likely to be open to producers are: 1) to amend primary packaging to include an identifying deposit mark and barcode; 2) to purchase adhesive labels from the scheme administrator displaying the deposit mark and barcode; 3) to continue using an international barcode but pay a higher producer fee to account for the increased risk of fraud.

### **Free movement of goods**

61. The Committee asked the Scottish Government:

- To provide clarity on the impact of DRS on free movement of goods compatibility with EU law requirements.

#### ***Government response and approach in Regulations:***

62. The Scottish Government addresses this in paragraphs 106 – 108 of the covering letter. The Government states it “is satisfied that the Regulations fall within the competence of the Scottish Ministers and are compliant with EU law. To the extent they have the potential to impact on free movement of goods, the Scottish Government considers that they are proportionate and justified on environmental grounds”.

### **ECHR rights (wholesalers)**

63. The Committee asked the Scottish Government:

- To provide a view on the concerns in relation to ECHR rights.

#### ***Government response and approach in Regulations:***

64. The Scottish Government addresses this in paragraphs 109 – 110 of the covering letter. The Government states it is satisfied that the Regulations are “fully compliant with the European Convention on Human Rights”. It states that the “different treatment of actors in the scheme has a purpose and does not amount to discrimination under the ECHR”.

SPICe/Clerks



March 2020

# Annexe C

## Correspondence from the Convener to the Cabinet Secretary, 26 March 2020

Dear Roseanna,

### Deposit and Return Scheme: revised regulations

I am writing to you following the laying of the revised Deposit and Return regulations and various accompanying documents on 16 March 2020. Thank you for the accompanying letter, which Members found helpful.

The Committee originally planned to hear from your officials on 24 March, however, given the current circumstances, we have agreed to write, seeking further information, before considering the motion in relation to the regulations following the Easter recess.

The Committee notes that the regulations have been amended to include a commencement date of 1 July 2022, at which point the scheme would be considered be fully operational.

The Committee appreciates that we are in a very challenging situation with regard to the COVID-19 pandemic, and Government priorities are rightly being focussed on our response to that. Clearly this might have an impact on response times. We appreciate the need to be flexible given the current priorities and would hope to have a response before we consider the motion on the regulations.

Yours sincerely,

Gillian Martin MSP

Convener, Environment, Climate Change and Land Reform Committee

## Annexe

### ECCLR Committee questions on the revised regulations

#### The proposed timeframe

1. How and when was the new timescale chosen, who was consulted and who made representations in relation to this?
2. What specific considerations in relation to Covid-19 led to the chosen delay period? If the Covid-19 outbreak had not occurred would other considerations have led to a delay? If so, for what period?
3. How does the Scottish Government expect the implementation of the scheme to be impacted on by the current circumstances of the Covid-19 pandemic, and how will this be kept under review to ensure businesses have access to the appropriate guidance and support?
4. Will the Scottish Government publish a timetable and workplan for the various workstreams that need to take place in order to meet the need deadlines?

## Scope – Materials

5. Is the Scottish Government confident that RVMs will be able to accept containers at the smaller end of the size range?

6. Will the Scottish Government consider the potential for further materials such as cartons, pouches, HDPE plastic, biodegradable and other emerging plastics to be added before the October 2026 review date, in particular should evidence become available of significant materials switching to avoid charges, or if there is significant demand from industry or consumers?

7. Is the glass industry currently represented on the Implementation Advisory Group? If not, how will appropriate engagement with the glass industry be achieved in the further design and implementation of the scheme?

8. Can the Committee be provided with the Code of Practice referenced on meeting section 34 of the Environmental Protection Act 1990 on handling high-value waste recycling?

9. Regarding the availability of clear or 'flint' glass, the Government's response said that section 34 of the Environmental Protection Act 1990 requires those handling waste to ensure that it is handled in a fashion that promotes high-value recycling. Does this mean that manual and RVM return points will be required to keep clear glass intact in accepting DRS returns? Would the same requirements apply to returns of non-DRS items such as clear glass jars in existing glass recycling systems? In view of the continuing concerns expressed by some in the glass industry about the availability of clear flint, the Committee would value a more detailed response on this issue to reassure the industry.

## Scope – retailers and return points

10. What support will be required for retailers providing manual returns? The Committee understands that the Scottish Government is working with the the Royal Environmental Health Institute of Scotland (REHIS) to better understand potential risks associated with operating a return point in a retail setting in relation to food safety, health and safety, environmental and public health impacts. And will work with REHIS to develop guidance for retailers, particularly smaller businesses. The Committee would welcome further information on the guidance to be issued to small retailers and collection points in terms of manual handling of glass?

11. What existing or new regulatory requirements could apply to vehicles accepting returns – for example would delivery service vehicles for online grocery shopping require a waste carrier licence?

12. Can the Scottish Government confirm it has the powers to require online retailers located outwith Scotland to register and comply with obligations in the Regulations? Are there any legal or practical barriers associated with enforcing these requirements in those circumstances?

13. How will the Scottish Government review the accessibility of the scheme (particularly in rural areas) following its implementation, and will this be done in advance of the statutory review in 2026?

14. What tools or mechanisms could be applied to facilitate the establishment of community return points? Are there opportunities for this to be integrated into wider

support for community-based circular economy projects such as re-use and repair centres?

### **Level of deposit**

**15.** Would a scheme administrator or producer be able to increase or vary the deposit (above the minimum 20p) without Government intervention, or do the Regulations prevent any level of deposit other than 20p being legally applied to a scheme article?

### **Operational impacts and costs**

**16.** Which amendments have been made to the Regulations “in order to support the effective participation of small producers in DRS” other than the introduction of a tiered producer fee?

**17.** the Scottish Government considering any mechanisms outwith the Regulations to support wholesalers – for example what is the Government’s position on the proposal for a “duty drawback” system allowing for deposits/fees paid on products later sold out-with Scotland to be refunded?

**18.** What role does the Scottish Government expect to have in the initial public communications around implementation of the scheme – is a proportion of the £8.7million estimated in the BRIA for communications expected to be public expenditure?

**19.** What assessment of employment impacts of DRS for business, including small business and key manufacturers has been undertaken? Will the Scottish Government commit to such an undertaking if it has not been done?

**20.** What up-to-date analysis of the current reprocessing infrastructure and gaps has the Government undertaken? This is a just transition issue. What plans are in place to address any gaps, including plans to invest? How is the Scottish Government supporting this? Is the Scottish National Investment Bank expected to play a role in this area?

**21.** The Government has indicated it is up to industry to decide what infrastructure is needed in order to meet obligations in the Regulations, and the Committee understands there are ongoing discussions about infrastructure. Will the Scottish Government be providing support to the industry in the provision of that infrastructure (counting and processing)?

### **Environmental Impacts**

**22.** Why is it necessary and appropriate for the scheme to operate under no collection target between implementation in July 2022 and the 1st January 2023?

**23.** Why does the updated SEA show a slightly lower expected emissions reduction over 25 years than the previous SEA?

**24.** Could the Scottish Government use Regulation 16(b) to require the scheme administrator to publish information on the transport emissions associated with DRS, as a means of encouraging and monitoring low carbon transport infrastructure?

**25.** Does the Scottish Government plan to ensure, or encourage producers or a scheme administrator to enable deposits to be donated to good causes to support community and environmental benefits?

## Implications for local authorities

**26.** The Committee is keen to understand the impact of DRS for local authorities. The Committee understands the Zero Waste Scotland Report is considered to be commercial in confidence, but asks what further information can be provided to enable the Committee to fully understand the impacts?

**27.** Regarding the Zero Waste modelling which estimated 3 local councils will be financially disadvantaged by DRS, does the Scottish Government anticipate providing additional support in those areas should the estimates be realised, what are the key causes of those losses, and what are the key opportunities to mitigate those losses?

## Wider waste policy context

**28.** Will it continue to be appropriate for producers of DRS items to be exempt from the PRN system if it is reformed as anticipated under the UK Environment Bill with the aim to achieve full cost recovery? Will DRS achieve equivalent environmental outcomes?

**29.** Given the UK Government has included primary powers in the UK Environment Bill to introduce its own DRS Regulations – is the Scottish Government in discussion, or planning to be in discussion, with UK Government about potential integration or compatibility of DRS schemes?

**30.** Can the Scottish Government provide an update on the development of common frameworks on waste and whether they will seek to set a framework to support integrated ambitions across DRS, future extended producer responsibility and other key resource management schemes?

**31.** The Committee notes that the UK Government intends to use primary powers in the UK Environment Bill to ban the export of plastic waste to non-OECD countries and asks what the implications of such as ban would be in Scotland, and whether there are opportunities associated with DRS to invest in reprocessing infrastructure that would align with these UK-wide measures?

## Governance and administration of the scheme

**32.** Is it possible to legislate for a single Scheme Administrator?

**33.** How progressed are discussions on the establishment of a Scheme Administrator?

**34.** Does the Scheme Administrator have the power to determine exemptions and vary the fee levels?

**35.** What is the framework and mechanism for dispute resolution? And why is a requirement for a dispute resolution mechanism not set out in the Regulations?

**36.** What additional provisions and support are required in the development and implementation of the scheme are to prevent and detect fraud?

**37.** Regarding new Regulation 32, why has the Scottish Government set a four-year period before the first review is required. Why has an earlier review period not been specified?

**38.** Will there be a need for review of some aspects of the scheme implementation earlier than October 2026 to ensure the system has been set up effectively and equitably?

## **Other Issues**

**39.** In relation to cross border consumer concerns, what further clarification can be provided on charging and return arrangements for those living near the border with England, if they shop in England?

**40.** How is the Scottish Government responding to the concerns expressed in relation to online shopping?

# Annexe D

## Correspondence from the Cabinet Secretary to the Convener, 1 April 2020

Dear Gillian

Thank you for your letter of 26 March regarding The Deposit and Return Scheme for Scotland Regulations 2020. I am grateful for the Committee's flexible approach to considering the Regulations as we all work to respond to COVID-19.

As you recognise in your letter, our response to COVID-19 is rightly the Scottish Government's priority at present. Nevertheless, I wanted to answer as many of the Committee's questions as possible in advance of the Easter recess. I am happy to attach those answers as an Annex to this letter.

I am mindful of the Committee's intention to consider the motion on the Regulations following recess and will provide answers to the remaining questions in due course.

I hope this is helpful.

Yours

**ROSEANNA CUNNINGHAM**

### **ANNEX**

#### **The proposed timeframe**

##### **Q1. How and when was the new timescale chosen, who was consulted and who made representations in relation to this?**

A. When the draft Regulations were published in September 2019, we indicated that we had begun an extensive programme of engagement with a range of stakeholders, primarily supported through the DRS Implementation Advisory Group (IAG), to better understand the factors governing implementation in different sectors. The estimated timescales presented by IAG members were tested further by Zero Waste Scotland, which also sought input from a number of industry representatives who had been involved in the establishment of other schemes internationally.

The output of this work was subject to external assurance in the form of a Gateway Review in November 2019. As a result of the evidence, Ministers agreed before the final Regulations were laid that summer 2022 was the earliest go-live date which would give high confidence of successful delivery.

##### **Q2. What specific considerations in relation to COVID-19 led to the chosen delay period? If the COVID-19 outbreak had not occurred would other considerations have led to a delay? If so, for what period?**

A. As described above, the revised commencement date of July 2022 was arrived at through our assessment of industry readiness to implement DRS, based on the best information available at the time and including a contingency period to allow for unexpected events and delays.

While this assessment was carried out prior to developments in relation to COVID-19, we have taken the view that the extended timetable will provide much-needed time for businesses to respond to the pandemic. We will continue to monitor developments closely.

**Q3. How does the Scottish Government expect the implementation of the scheme to be impacted on by the current circumstances of the COVID-19 pandemic, and how will this be kept under review to ensure businesses have access to the appropriate guidance and support?**

A. As noted above, the go-live date of 1 July 2022 will provide flexibility in the immediate term as our stakeholders deal with COVID-19. The Scottish Government's DRS Programme Board will retain responsibility for providing assurance to Ministers that implementation remains on track and will work closely with industry to monitor the impact of COVID-19.

**Q4. Will the Scottish Government publish a timetable and workplan for the various workstreams that need to take place in order to meet the need deadlines?**

A. The programme has been developing a more detailed understanding of the plan for the remaining phases of delivery as part of its work in finalising the regulations. This will continue and be an iterative process involving close engagement with any scheme administrator(s), once established. Once developed and agreed, we will be happy to consider how this information can best be shared with the Committee. Our analysis is that the critical path for the project is the time that will be needed for retailers to scope requirements, procure and install RVMs at a large number of sites across Scotland, including the time needed to secure planning consent where required.

### **Scope – Materials**

**Q5. Is the Scottish Government confident that RVMs will be able to accept containers at the smaller end of the size range?**

A. The upper and lower size limits for containers in scope were set in the Regulations based on our understanding of the specifications for currently available RVMs.

**Q6. Will the Scottish Government consider the potential for further materials such as cartons, pouches, HDPE plastic, biodegradable and other emerging plastics to be added before the October 2026 review date, in particular should evidence become available of significant materials switching to avoid charges, or if there is significant demand from industry or consumers?**

A. While the Regulations set October 2026 as the date by which a review must be completed, this does not prevent a review of some or all of the scheme beforehand if it is appropriate. We have already committed to consider the scope of materials further, once the scheme is up and running smoothly with the established range of material.

**Q7. Is the glass industry currently represented on the Implementation Advisory Group? If not, how will appropriate engagement with the glass industry be achieved in the further design and implementation of the scheme?**

A. The glass industry is not represented on the Implementation Advisory Group (IAG), which is formed from trade bodies directly involved in the drinks supply chain as these businesses will be directly involved in the scheme. We would note, however, that drinks



producers such as the Scotch whisky sector, which is represented on the IAG, have a strong interest in maintaining a high-quality supply of glass bottles.

As responsibility for implementation of DRS is passed to industry, it will be for the relevant businesses, and any scheme administrator(s), to determine how best to engage wider industry in implementation discussions, including the future remit and membership of any advisory group such as the IAG.

**Q8. Can the Committee be provided with the Code of Practice referenced on meeting section 34 of the Environmental Protection Act 1990 on handling high-value waste recycling?**

A. The current guidance can be found here: <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2012/10/duty-care-code-practice/documents/00404095-pdf/00404095-pdf/govscot%3Adocument/00404095.pdf>.

**Q9. Regarding the availability of clear or ‘flint’ glass, the Government’s response said that section 34 of the Environmental Protection Act 1990 requires those handling waste to ensure that it is handled in a fashion that promotes high-value recycling. Does this mean that manual and RVM return points will be required to keep clear glass intact in accepting DRS returns? Would the same requirements apply to returns of non-DRS items such as clear glass jars in existing glass recycling systems? In view of the continuing concerns expressed by some in the glass industry about the availability of clear flint, the Committee would value a more detailed response on this issue to reassure the industry.**

A. Section 34 of the EPA 1990, as amended by the Waste (Scotland) Regulations 2012 requires any person who manages controlled waste (including, for the purposes of these Regulations, return points, producers and Scheme Administrators) to apply the Waste Hierarchy set out in Article 4(1) of Directive 2009/98/EC (the “Waste Framework Directive”) and to take reasonable steps to increase the quantity and quality of recyclable materials, with the desired outcome being closed-loop recycling. Producers and any scheme administrator will therefore have to ensure glass is sorted and processed in a way that maintains the recyclate in a high-value state.

Bodies responsible for kerbside collection of glass are already required to ensure they are obeying the duties in Section 34 of the EPA.

### **Environmental Impacts**

**Q22. Why is it necessary and appropriate for the scheme to operate under no collection target between implementation in July 2022 and the 1st January 2023?**

A. Once DRS reaches its steady state, producers will be required to collect 90% of their PET plastic, metal, and glass drinks containers. This is modelled on the best-performing schemes in Europe, which are achieving collection rates of around 90%. Nevertheless, we recognise that all schemes take time to build up to full performance. This is why the targets begin in the first full year of operation (at 70%) before ramping up to 80% in the second year and then 90% as the steady-state target.

**Q23. Why does the updated SEA show a slightly lower expected emissions reduction over 25 years than the previous SEA?**

A. The Strategic Environmental Assessment (SEA), published in June 2018, estimated the potential environmental benefits of four different scheme designs. The SEA Addendum published alongside the final Regulations calculated the projected environmental benefits of the final design for Scotland's DRS. It found these to be higher than those projected for schemes 1, 2, or 3 in the original SEA, due to features including a return-to-retail design, 20p deposit, and legally mandated steady-state target of 90%.

Scheme 4 in the original SEA covered a wider range of materials than the final scheme design, including HDPE drinks containers, drinks cartons, and single-use paper cups. The final scheme design is still expected to outperform scheme 4 for materials targeted under both schemes, but achieve a slightly lower carbon benefit due to the additional material which would have been captured by scheme 4.

**Q24. Could the Scottish Government use Regulation 16(b) to require the scheme administrator to publish information on the transport emissions associated with DRS, as a means of encouraging and monitoring low carbon transport infrastructure?**

A. Regulation 16(1)(b) requires a scheme administrator to provide any information requested by the Scottish Government and/or SEPA for the purposes of monitoring its compliance with its member producers' obligations on their behalf. As the Regulations are silent on the subject of the transport infrastructure to be employed by producers (or a scheme administrator as the case may be), a scheme administrator would not be in breach of regulation 16(1)(b) if it did not provide such information to the Scottish Ministers or SEPA if asked. There is nothing to stop a scheme administrator from choosing to publish or share this information.

It should be noted that transport and logistics is one of the significant cost elements for running DRS. It is therefore in the interests of industry to design efficient transport and logistics systems which should have the effect of bearing down on emissions.

The 'additional benefits' section of the application form for approval of a scheme administrator asks applicants to provide examples of how operational decisions or efficiencies could reduce or minimise the environmental impact of operations. Although it is made clear this section is not a formal part of the approval process and responses will not influence whether an application would be approved, we anticipate that any applicant would want to take this opportunity to demonstrate its commitment to operating the scheme in an environmentally friendly manner.

**Q25. Does the Scottish Government plan to ensure, or encourage producers or a scheme administrator to enable deposits to be donated to good causes to support community and environmental benefits?**

A. While Ministers do not have the power to require producers or a scheme administrator to enable deposits to be donated, the vast majority of European schemes offer this option, and producers and any scheme administrator(s) operating in the Scottish scheme will be free to operate this approach. Similarly, return points may choose to allow consumers to opt to have their deposits donated to a good cause rather than being returned directly to them. There are strong reasons to anticipate they will do so: allowing charitable donations will enhance the reputation of the scheme/retailer at little or no cost to them.

The 'additional benefits' section of the application form for approval of a scheme administrator asks applicants to indicate how they could support financial contributions to

good causes; again, although this will not influence whether an application is approved, we anticipate that any applicant would want to take this opportunity to demonstrate its willingness to act in this way.

### **Wider waste policy context**

**Q28. Will it continue to be appropriate for producers of DRS items to be exempt from the PRN system if it is reformed as anticipated under the UK Environment Bill with the aim to achieve full cost recovery? Will DRS achieve equivalent environmental outcomes?**

A. We view deposit return as a form of producer responsibility, therefore, if a producer is discharging their obligations for material through DRS, they should not also be required to pay into any other extended producer responsibility system. Our research, as laid out in the Full Business Case and BRIA, indicates that DRS will achieve at least the same environmental outcomes as the reformed EPR system and within a shorter number of years. DRS will recover the full net costs of running the system, that is, those costs above any income derived from sale of materials and unredeemed deposits, from drinks producers. This is in line with the approach being considered for the reformed EPR system.

**Q29. Given the UK Government has included primary powers in the UK Environment Bill to introduce its own DRS Regulations – is the Scottish Government in discussion, or planning to be in discussion, with UK Government about potential integration or compatibility of DRS schemes?**

A. We have been clear in our willingness to engage with the UK Government and other administrations on DRS to ensure our approaches are compatible, assuming the system introduced in the rest of the UK matches our ambition. The Cabinet Secretary for the Environment, Climate Change, and Land Reform has met her counterparts on a number of occasions to discuss this issue and officials continue to engage with Defra on this and wider EPR issues.

**Q30. Can the Scottish Government provide an update on the development of common frameworks on waste and whether they will seek to set a framework to support integrated ambitions across DRS, future extended producer responsibility and other key resource management schemes?**

A. We are continuing to engage with the UK Government and the other devolved administrations on the development of common frameworks and will be able to share a full update on this wider work in due course. It is the intention that deposit return, extended producer responsibility and other waste-management issues will be captured in a wider framework agreement between the administrations.

**Q31. The Committee notes that the UK Government intends to use primary powers in the UK Environment Bill to ban the export of plastic waste to non-OECD countries and asks what the implications of such a ban would be in Scotland, and whether there are opportunities associated with DRS to invest in reprocessing infrastructure that would align with these UK-wide measures?**

A. Deposit return should offer an incentive for reprocessors to set up in Scotland, to take advantage of the supply of high quality recyclable material on offer. Zero Waste Scotland has a workstream tackling this issue. We support action that encourages more domestic reprocessing or otherwise ensures waste is being recycled to the highest quality.

## **Governance and administration of the scheme**

### **Q32. Is it possible to legislate for a single Scheme Administrator?**

A. The enabling powers in the Climate Change (Scotland) Act 2009 provide that, if Ministers opt to designate a scheme administrator, Ministers acquire significant powers of direction over its activities. In our view this would be incompatible with the principle of producer responsibility and our intention of allowing industry flexibility to meet its obligations in the most efficient and effective way possible.

### **Q33. How progressed are discussions on the establishment of a Scheme Administrator?**

A. A coalition of major drinks producers and trade bodies has confirmed to us its intention to apply for approval as a scheme administrator. The proposal is led by three trade bodies with combined membership accounting for c. 80% of the containers placed on the Scottish market: the British Beer and Pub Association, the British Soft Drinks Association, and the Natural Source Waters Association. It is supported by producers including AG Barr, C&C Group, Coca-Cola European Partners, and Highland Spring Group.

The group is engaging with wider industry to raise awareness and build support in advance of submitting an application. While these conversations are ongoing, we understand the reaction from industry has been broadly positive.

### **Q34. Does the Scheme Administrator have the power to determine exemptions and vary the fee levels?**

A. The Regulations give the power to approve and refuse applications for exemptions from the obligation to operate a return point to Scottish Ministers. This would ensure a functioning exemptions process even in the scenario that producers choose to discharge their obligations individually rather than through a single scheme administrator. While this is the case, we would expect to work collaboratively with any scheme administrator to ensure that there is an efficient and effective process that is aligned with their proposed operating model.

The Regulations require producers, or a scheme administrator acting on their behalf, to pay to return-point operators, hospitality retailers and distance retailers offering a takeback service a reasonable handling fee for each item of scheme packaging returned. While the Regulations stipulate the minimum factors which the handling fee for each category must take into account, it will be for retailers to set the handling fee. This may be done as part of a commercial negotiation with producers or a scheme administrator.

### **Q35. What is the framework and mechanism for dispute resolution? And why is a requirement for a dispute resolution mechanism not set out in the Regulations?**

A. SEPA is the enforcement body under the Regulations. Any actor therefore has the option of making a complaint to SEPA where they consider that another party is not discharging an obligation under the Regulations and, where SEPA found that this was the case, it could take enforcement action with the aim of compelling the other party to act in accordance with its obligations.

In keeping with the spirit of industry responsibility for DRS, some aspects of the functioning of the scheme are for the relevant businesses to agree as part of a commercial

negotiation. Where this is the case, it is for those businesses to agree a mechanism for dispute resolution and it would not be appropriate for the Scottish Ministers to specify one.

**Q36. What additional provisions and support are required in the development and implementation of the scheme to prevent and detect fraud?**

A. In line with the principle of producer responsibility for the scheme, the Regulations provide producers with flexibility to identify and adopt appropriate fraud-prevention measures. We would expect any scheme administrator, once established, to work with producers and other stakeholders to agree an approach.

**Q37. Regarding new Regulation 32, why has the Scottish Government set a four-year period before the first review is required. Why has an earlier review period not been specified?**

A. DRS is anticipated to reach its steady state in the third full year of operation, i.e. the calendar year 2025. Review by October 2026 allows sufficient time to collate and analyse the appropriate data on scheme performance for that year before carrying out the review. This is the latest date a review should be completed and does not prevent the Scottish Ministers from carrying out additional reviews, and making changes to the Regulations earlier than that date, should the need arise.

**Q38. Will there be a need for review of some aspects of the scheme implementation earlier than October 2026 to ensure the system has been set up effectively and equitably?**

A. The statutory review requirement is only one part of the monitoring and review that is planned. In line with best practice we envisage an ongoing programme of monitoring and evaluation to ensure the benefits of DRS set out in the Full Business Case Stage 1 are being delivered. The outputs of this work will be considered by the Scottish Government's DRS Programme Board as part of its continuing responsibility for providing strategic monitoring, assurance, and support for the implementation of DRS.

**Other Issues**

**Q39. In relation to cross border consumer concerns, what further clarification can be provided on charging and return arrangements for those living near the border with England, if they shop in England?**

A. Products bought in England will not have the Scottish deposit applied, so anyone shopping south of the Border will not be able to return the packaging for those items to our system. They will still have access to kerbside recycling collections and will therefore be able to dispose of their containers responsibly. Cross-border movement of deposit-bearing items once England has a DRS will be an issue we will consider carefully once we see more details of Defra's proposed approach.

**Q40. How is the Scottish Government responding to the concerns expressed in relation to online shopping?**

A. As the Committee has noted, the inclusion of online sales in the requirement to pay the deposit and, in particular, online takeback of goods will be important to the success and accessibility of the scheme. As with other aspects, the Regulations provide a great deal of flexibility over how duties should be discharged – particularly in terms of the provision of a takeback service. However, it is important that the duties are discharged. We would

encourage producers to work together with any scheme administrator(s) to find a common approach to providing this service.

# Annexe E

## Correspondence from the Cabinet Secretary to the Convener, 23 April 2020

Dear Gillian

Further to my letter of 1 April, I am pleased to enclose answers to the remaining questions regarding the Deposit and Return Scheme for Scotland Regulations 2020 as set out in your letter of 26 March. I look forward to discussing the Regulations with the Committee.

Yours

**ROSEANNA CUNNINGHAM**

### **ANNEX**

#### **Scope – retailers and return points**

**Q10. What support will be required for retailers providing manual returns? The Committee understands that the Scottish Government is working with the Royal Environmental Health Institute of Scotland (REHIS) to better understand potential risks associated with operating a return point in a retail setting in relation to food safety, health and safety, environmental and public health impacts. And will work with REHIS to develop guidance for retailers, particularly smaller businesses. The Committee would welcome further information on the guidance to be issued to small retailers and collection points in terms of manual handling of glass?**

A. Where it is impossible or unreasonable for a retailer to operate a return point in compliance with their health and safety or environmental-health obligations, they will be able to apply for an exemption.

The approach to the storage of glass which is manually collected will ultimately be a matter for retailers working in conjunction with producers or their scheme administrator; Zero Waste Scotland has been working with industry to support their decision-making, for example through conducting trials of different container solutions for those retailers operating manual handling.

We will work with REHIS to develop guidance which builds on this early evidence-gathering and supports retailers on manual handling of glass without risking being in breach of legal obligations such as food safety or public health.

**Q11. What existing or new regulatory requirements could apply to vehicles accepting returns – for example would delivery service vehicles for online grocery shopping require a waste carrier licence?**

A. Any organisation carrying returned containers in its vehicles will have to register with SEPA as a waste carrier. Registration is on the basis of organisations rather than individual vehicles. We understand that many supermarkets are already registered as waste carriers. This is an online application process requiring a few details, costing £211 for the first three years and £144 for each three-year renewal. It is a core part of the Duty of Care that waste material is only passed to an authorised person.

The Regulations provide significant flexibility in relation to the operation of distance sales takeback, allowing for an online retailer to participate in a collective service or contract the service rather than having to provide one themselves. This may be appealing to those distance sellers who do not wish to secure a waste carrier licence.

**Q12. Can the Scottish Government confirm it has the powers to require online retailers located outwith Scotland to register and comply with obligations in the Regulations? Are there any legal or practical barriers associated with enforcing these requirements in those circumstances?**

A. SEPA has the ability to carry out enforcement and investigatory activity in relation to the compliance with the Regulations of online retailers based outside Scotland, although their powers will not be as extensive as they would be in relation to retailers with a presence in Scotland. These powers include the power to request information. If the retailer in question does not respond, or there is sufficient evidence of another breach of the obligations amounting to an offence, SEPA will have power to take enforcement action which could include a fine or accepting an undertaking through the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015, or a referral to the procurator fiscal to begin criminal legal proceedings.

The Regulations do not require retailers to register as retailers with SEPA or any other entity. A person selling scheme articles to consumers in Scotland via online or distance sales may fall within the definition of both retailer and producer in the Regulations, for example because they produce drinks in scheme packaging as well as selling them. In that case they will be required to register as a producer or it will be an offence for anyone to sell their scheme articles to a consumer in Scotland.

**Q13. How will the Scottish Government review the accessibility of the scheme (particularly in rural areas) following its implementation, and will this be done in advance of the statutory review in 2026?**

A. Accessibility of the scheme, including in rural and island areas, has been fully accounted for in the policy design of DRS and will be kept under review as part of our monitoring of the early operation of the scheme. While the Regulations commit the Scottish Ministers to reviewing the scheme by October 2026, this does not prevent aspects of the Regulations being revisited before then if this is considered necessary in order to strengthen accessibility.

Accessibility will also be a key consideration for any scheme administrator(s) in ensuring compliance with all relevant legal obligations, including the requirement to collect 90% of in-scope packaging once the scheme reaches its steady state. Any scheme administrator(s) will therefore likely wish to play a role in encouraging the set-up of community return points in order to ensure sufficient coverage across Scotland.

Compliance with legal obligations to provide accessible and non-discriminatory services will be tested as part of the scheme administrator approval process. Retailers will, when acting as retailers and as return points, be required to comply with their obligations under the Equality Act 2010. These will also apply to anyone operating a voluntary return point, who will be required to provide information about the accessibility of their return point when applying for registration.



Finally, SEPA will play an important role in ensuring that return-point operators comply with all relevant legal obligations, thereby ensuring accessibility for those members of the public who wish to return containers as part of the scheme.

**Q14. What tools or mechanisms could be applied to facilitate the establishment of community return points? Are there opportunities for this to be integrated into wider support for community-based circular economy projects such as re-use and repair centres?**

A. The Regulations allow anybody to apply to Ministers to be registered as a voluntary return point and we have been working with stakeholders, including a community trust, to ensure that this process is accessible and streamlined. It is for individual organisations to determine whether an opportunity exists to act as a voluntary return point. We can see significant benefit in such an arrangement, with the operation of a voluntary return point potentially generating increased footfall and opportunities for charitable giving to community-based initiatives, including organisations focussed on delivering the circular economy.

Retailers may also wish to work with their communities to establish alternative local return arrangements as part of any request for a return point exemption. Finally, as set out above, any scheme administrator(s) will likely wish to play a role in encouraging the set-up of community return points in order to ensure sufficient coverage across Scotland.

As part of our role in overseeing the approval of voluntary return points, we will work closely with all relevant partners to deliver a system which meets the needs of the scheme and our wider communities.

**Level of deposit**

**Q15. Would a scheme administrator or producer be able to increase or vary the deposit (above the minimum 20p) without Government intervention, or do the Regulations prevent any level of deposit other than 20p being legally applied to a scheme article?**

A. The Regulations require that, subject to certain exceptions, “any person who markets, offers for sale or sells a scheme article in Scotland must charge a deposit when marketing, offering for sale or selling a scheme article in Scotland”. A deposit is defined as a “redeemable sum of 20 pence that does not form part of the consideration paid for the article”. The amount of the deposit must be displayed at any place where the scheme article is displayed for sale.

All sellers must be in compliance with these obligations or risk enforcement action being taken against them. It would in theory be possible for a Scheme Administrator acting on behalf of all or many producers to ask producers they act for to charge a higher deposit. Ensuring this was applied universally would require agreement from all producers. In addition, return points and other retailers offering takeback services would not be bound, under the Regulations, to return more than the 20p deposit. Our view is therefore that any attempt to charge a higher deposit is likely to be impractical.

The 20p deposit was chosen to incentivise public participation and so better scheme performance. The Regulations require the Scottish Ministers to review the scheme as a whole, and the deposit level in particular, after sufficient time has passed to make a clear assessment of the operation of the scheme. Such review may be undertaken earlier.

Should a change in the deposit level be required, the Scottish Ministers could do this using a negative procedure SSI.

### **Operational impacts and costs**

#### **Q16. Which amendments have been made to the Regulations “in order to support the effective participation of small producers in DRS” other than the introduction of a tiered producer fee?**

A. In addition to the tiered producer registration fee, which will mean drinks producers with a turnover of £85,000 or less will be exempt from the £360 fee to register with SEPA, a significant change has been moving the implementation date to July 2022, providing extra time for implementation for all obligated businesses. The timeframe for implementation was an issue that was raised by all producers, including small producers. The five-year review period we have introduced is also likely to be of benefit to small producers, as a number of the issues the review will cover will have impacts on them. The Regulations mandate that materials in scope, targets and the deposit level should be reviewed, which will be of interest to small producers, and it is likely that other issues such as labelling and interaction with any UK scheme will be covered.

I recognise that some of the key asks of small producers, such as guarantees around membership on any scheme administrator board and a tiered approach to the fees charged by any scheme administrator(s) to producers, have not been included in the Regulations. As I have noted before, this relates to the classification of any scheme administrator(s) – our aim has been to keep direction of the makeup and operation of the scheme administrator at an absolute minimum, partly to avoid imposing too much governmental control over what we intend to be a private body.

In assessing whether an application provides the necessary evidence that a prospective scheme administrator would be able to subsist for a period of five years and discharge its member producers' obligations, Ministers will have regard to how the applicant proposes to take into account the interests of small producers, including potential competition-law implications if larger producers were to use their influence within the scheme administrator to disadvantage smaller producers by imposing unreasonable membership requirements.

#### **Q17. Is the Scottish Government considering any mechanisms outwith the Regulations to support wholesalers – for example what is the Government's position on the proposal for a “duty drawback” system allowing for deposits/fees paid on products later sold out-with Scotland to be refunded?**

A. Issues related to the detailed operation of the scheme, including the terms on which deposits are paid, will be for producers and any scheme administrator(s) to determine, and will likely be a contractual matter between wholesalers, retailers and producers.

#### **Q18. What role does the Scottish Government expect to have in the initial public communications around implementation of the scheme – is a proportion of the £8.7million estimated in the BRIA for communications expected to be public expenditure?**

A. We anticipate there will be a need for the Scottish Government to undertake a public information campaign to support the rollout of deposit return. This will be from existing budgets and is not factored into the £8.7million estimated in the BRIA, which will fall on industry over a 25-year period.

**Q19. What assessment of employment impacts of DRS for business, including small business and key manufacturers has been undertaken? Will the Scottish Government commit to such an undertaking if it has not been done?**

A. The Scottish Government has undertaken a full Business and Regulatory Impact Assessment (available here: <https://www.gov.scot/publications/deposit-return-scheme-scotland-full-business-regulatory-impact-assessment-2/>) which is a national cost-benefit analysis that considers issues such as employment directly created by the scheme, specifically in any scheme administrator(s). We will continue to monitor the impact of the scheme and consider what further analyses are required.

As I noted in my letter of 16 March when I laid the Regulations, we believe DRS is unlikely to result in a significant shift in consumer purchasing patterns, with any impact on consumption or changes in product preferences expected to be marginal. We have also been careful to deliver a scheme which is comprehensive in scope and so favours no particular packaging material. This will help to guard against any particular industry being disproportionately impacted by the scheme, although packaging design choices are ultimately a matter for individual producers.

**Q20. What up-to-date analysis of the current reprocessing infrastructure and gaps has the Government undertaken? This is a just transition issue. What plans are in place to address any gaps, including plans to invest? How is the Scottish Government supporting this? Is the Scottish National Investment Bank expected to play a role in this area?**

A. Zero Waste Scotland has undertaken detailed analysis of the current reprocessing infrastructure for the key materials that form the basis of the DRS system and understands that the key opportunity will be around reprocessing of PET plastic. The current market for recycled PET is restricted due to the quantity and quality of PET currently collected for recycling in Scotland; DRS will increase both quantity and quality of PET for recycling, creating a new reprocessing opportunity.

Preparatory work with Scottish Enterprise and Scottish Development International has resulted in a readiness to work with potential investors as they begin to emerge and a number of credible industry players have been in discussion with Zero Waste Scotland and Scottish Government around the potential opportunities that may arise from the DRS system. It will be for industry to decide whether to seek support for this work from the Scottish National Investment Bank.

**Q21. The Government has indicated it is up to industry to decide what infrastructure is needed in order to meet obligations in the Regulations, and the Committee understands there are ongoing discussions about infrastructure. Will the Scottish Government be providing support to the industry in the provision of that infrastructure (counting and processing)?**

A. Zero Waste Scotland has been conducting work to scope requirements and to identify possible sites, including existing waste management infrastructure that has available capacity. However, decisions on how this should be configured will be for industry. We are continuing to engage with the Scottish National Investment Bank but it will be for industry to decide whether they need to draw on their support.

**Implications for local authorities**

**Q26. The Committee is keen to understand the impact of DRS for local authorities. The Committee understands the Zero Waste Scotland Report is considered to be commercial in confidence, but asks what further information can be provided to enable the Committee to fully understand the impacts?**

A. The modelling undertaken by Zero Waste Scotland examines the current collection systems that are in place in each local authority area, the current levels of recycling of in-scope DRS materials, how each authority collects these materials and derives value from them and the composition of the residual (landfill) waste, to identify what in-scope DRS materials are still being discarded by citizens.

These data are then entered into a model that compares the performance of each scheme against the expected capture rate from the DRS scheme to identify the in-scope DRS materials that will effectively be removed from each local authority and the impact that will have on the authority financially.

While the commercially sensitive nature of some of the data gathered means it would not be appropriate to publish detailed findings, the Scottish Government has undertaken work to estimate the overall economic impact of the scheme on local councils. Our addendum to the Full Business Case Stage 1 for DRS concludes that local councils are likely to realise a net benefit of £168 million over 25 years, £137 million of which is expected to come in the form of reduced disposal costs for DRS material which is no longer entering kerbside collections.

The Scottish Government is committed to engaging local councils in our ongoing efforts to deliver the scheme, as demonstrated, for example, through the participation of a local authority chief executive on our DRS Programme Board.

**Q27. Regarding the Zero Waste modelling which estimated 3 local councils will be financially disadvantaged by DRS, does the Scottish Government anticipate providing additional support in those areas should the estimates be realised, what are the key causes of those losses, and what are the key opportunities to mitigate those losses?**

A. The analysis undertaken to date is based purely on local authorities' existing collection arrangements. As set out in the DRS Full Business Case Stage 1 Addendum, we believe that there are significant potential benefits for local authorities from route and collection-system optimisation activities, the inclusion of other materials in recycling streams, and changes to the market for recyclable materials following the introduction of DRS. All of these opportunities could help to mitigate the losses referenced above.

It is also important to recognise the wider behaviour change that DRS is intended to deliver, with consumers being encouraged to think differently about how they dispose of products at end of life. We are, for example, hopeful that the scheme can deliver wider benefits in the form of reduced littering and higher levels of recycling of other non-DRS material. As well as delivering wider environmental benefits, these changes could also deliver operational benefits to local councils undertaking waste management activities. We are therefore not anticipating a need to provide additional financial support to local authorities at this stage.

