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Net Zero, Energy and Transport Committee

The Deposit and Return Scheme for Scotland Amendment Regulations 2022



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Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero, Energy and Transport.



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Introduction

1. The Net Zero, Energy and Transport Committee reports to the Parliament as follows-
2. [The Deposit and Return Scheme for Scotland Amendment Regulations 2022](#) were laid before the Parliament on 15 December 2021 and are subject to the affirmative procedure. The regulations were referred to the Net Zero, Energy and Transport Committee for consideration.
3. Scotland's Deposit and Return Scheme (DRS) aims to promote and secure an increase in recycled materials, by ensuring the targeted materials are collected in larger quantities and separately to other materials. The scheme forms part of the Scottish Government's response to the global climate emergency.
4. These regulations amend the Deposit and Return Scheme for Scotland Regulations 2020 ("the original Regulations") to move back the full implementation date for the DRS. The amending Regulations provide for a revised full implementation date of 16 August 2023. Previously it had been 1 July 2022.
5. The amending Regulations also make a number of provisions that respond to feedback from the public and private sectors since the original Regulations were passed in May 2020. The Scottish Government considers that these will provide additional clarity or reduce risks associated with implementation. These include:
 - Allowing online retailers, and others selling through a distance sale, to refuse to accept a return of a disproportionately large number of containers in a single transaction;
 - Clarifying that, for products that are filled and sealed in a retail or hospitality setting, for example the kind of can known as a 'crawler', the person filling and sealing them will be the producer and bear responsibility for their collection;
 - Providing that a producer that is a producer only by virtue of filling and sealing crawlers is exempt from the annual fee to register with SEPA, and changing this fee from £360 to £365 for eligible producers to cover the cost of regulating these additional producers;
 - Creating a duty for wholesalers or others selling articles not intended for sale in Scotland to disclose at point of sale that the items are not intended for sale in Scotland and cannot be returned for a deposit, which will help to prevent fraud;
 - Adjusting SEPA's enforcement powers in line with SEPA's existing powers in the Environment Act 1995, which will help ensure effective enforcement of DRS.
6. The explanatory note provides further detail on the instrument and [is available here](#).

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on [18 January 2022](#) and determined that it did not need to draw the attention of Parliament to the instrument on any grounds within its remit. [Read the official report for the meeting on 18 January 2022.](#)

Consideration by the Committee

8. At its meeting on [25 January 2022](#), the Net Zero, Energy and Transport Committee took evidence on the instrument from Lorna Slater, Minister for Green Skills, Circular Economy and Biodiversity. Committee Members were joined by Maurice Golden MSP who also asked questions during the evidence session and contributed to the debate.
9. The Committee explored a range of issues with the Minister and her officials during the evidence session, including the costs of setting up the scheme, the role of Circularity Scotland, a collective of industry bodies set up as a company and appointed by the Scottish Government as the scheme administrator, the impact of DRS on local authority revenues and jobs, and any risks associated with an August 2023 implementation date.
10. *Delay to scheme and new date for commencement:* The Committee discussed with the Minister and officials the reasons for the scheme being delayed, the disappointment this has caused, and the implications of the delay. A submission to the Committee from the Marine Conservation Society focused on the environmental impact of a further delay in the midst of an intertwined climate emergency and nature crisis, arguing that "Scotland's seas and beaches are bearing the brunt of the delays to DRS."
11. The Minister said she accepted everyone's frustration with the delay, and the depth of feeling about it. But with a plan, milestones and a scheme administrator now in place, the Scottish Government was now moving "full steam ahead" with the August 2023 implementation date. She told the Committee that:
 - ” The scheme that we have set out will be implemented as quickly as practicably possible. The independent gateway review concluded that July to September 2023 was the soonest that that could happen. We have worked with industry, Circularity Scotland and other stakeholders to narrow that down to the specific date of the middle of August 2023. The risk of having a scheme that does not work on day 1, that is less ambitious and that, for some reason, does not get public support and momentum or get retailers and producers on board is much greater than the risk posed by the unfortunate but necessary delay that we are proposing, in order to make sure that the scheme works from day 1 and is ambitious, rather than watered down. The scheme will be with us for decades and will have a hugely positive overall effect on our environment.
12. The Minister was asked whether she had known the scheme would be delayed before her November 2021 statement to Parliament on DRS. She said that:
 - ” At the time of the November statement, the matter was under discussion between me and different stakeholders. It was being assessed, and I committed to doing that assessment by listening to environmental NGOs, business and industry and Circularity Scotland, and reading the result of the independent review. That decision was very much under full assessment. We needed to make sure that we had spoken to everyone who mattered, including all the stakeholders, and had taken a careful decision. That decision was finalised when I made my announcement to Parliament on 14 December.

13. *Status of Circularity Scotland*: As to whether she had been aware that, prior to the November statement, Circularity Scotland issued tenders for DRS with a start date of later than 2022, the Minister responded:
- ” In line with the principle of producer responsibility—the polluter pays principle—Circularity Scotland is a private company. It was established by the industry to lead on the delivery of the DRS. As an independent private company, its procurement decisions and processes are its business and not for Government intervention.
14. The Minister was asked to confirm whether Circularity Scotland, as a company, was exempt from freedom of information legislation. A Scottish Government official confirmed that this was the case.
15. *Digital DRS system*: the Minister was asked about digital DRS systems and whether the Scottish Government had conducted, or would conduct, a business case and feasibility study for it. She replied that digital DRS was "a very interesting technology" that the Scottish Government and Circularity Scotland had looked at. But:
- ” ... It is not quite yet mature enough to be implemented on the timescale for our DRS. However, we are aware of it, and Circularity Scotland intends the reverse vending machines that it advises businesses to install to be compatible with future digital schemes, so that there should not be any problem with moving to such a thing in the future. It is an exciting technology, and when it is mature, we will look at implementing it.
16. *Glass*: The Minister was asked about the inclusion of glass in the scheme, and whether she was concerned that if this leads to more glass being crushed, there might mean less glass recycle for industry. The Minister responded that:
- ” The deposit return scheme will significantly increase the quantity and quality of glass recycle, creating an aggregated and high-quality feedstock for reprocessing. I understand that Circularity Scotland proposes that the glass be collected whole or naturally broken and absolutely not mechanically crushed, which is compatible with closed-loop recycling. Section 34 of the Environmental Protection Act 1990 requires those handling waste to ensure that it is handled in a fashion that “promotes high quality recycling”. Return points, producers and Circularity Scotland, when handling return scheme packaging, including glass, will therefore have an obligation to promote high-value recycling. Scotland’s code of practice for managing controlled waste makes it clear that “the use of recovered glass cullet in re-melt applications to create new glass products” is considered an example of high-quality recycling and so should be prioritised. The current best practice is not to crush the glass, so that is not the intention.
17. *Robustness of gateway review*: In a submission to the Committee, the Association for the Protection of Rural Scotland argued that the Scottish Government’s gateway review and assurance of action plan was weak and contained many shortcomings, including what they described as the "skewed choice" of organisations interviewed. The submission adds that:

” Fully 40% of those spoken to were either Scottish Government or under their direct oversight ... and another 40% were producers or retailers. No organisations interviewed were operators of deposit return schemes.

The Association expressed concerns that domestic and international experts were not spoken to, which it said was the equivalent of "trying to work out whether a vehicle could be fixed without speaking to a single mechanic."

18. The Minister was invited to respond. She said that:

” During the gateway review, a wide range of stakeholders from across the public, private and third sectors took part in the discussions with me, my officials and/or the gateway reviewers. We published a full list of participants in the business and regulatory impact assessment. The gateway review gave a preparedness estimate of 12 to 24 months for individual stakeholders, including retailers. That informed its judgment that a full implementation date of July to September 2023 was possible, albeit with significant risk. That was reinforced by our wider stakeholder engagement. While an individual business might be in a different position, I have considered the circumstances that face the industry as a whole. It is essential that the scheme is a success not just for the short term, but for decades to come. The gateway review, which followed standard procedure, focused on what would be a deliverable timetable and made recommendations on the governance programme to improve the likelihood of success. We supplemented the review with meetings with a wide range of industry representatives and environmental nongovernmental organisations, as well as drawing on wider intelligence, including evidence from other schemes.

19. *DRS vending machines*: The Minister was asked where DRS vending machines will be sourced from and whether she could guarantee they would be built in Scotland. She said:

” There is a problem with sourcing them, due to Brexit and other challenges. I am not able to provide a guarantee, because it is for Circularity Scotland and the industry to decide on their own procurement procedures, but of course we all very much hope and intend that as much of this as possible is done in Scotland.

20. The Minister then moved motion S6M-02582—that the Net Zero, Energy and Transport Committee recommends that the Deposit and Return Scheme for Scotland Amendment Regulations 2022 [Draft] be approved.

21. There was a short debate. Members welcomed the overall ambition to establish a DRS system in Scotland but views were mixed on the regulations. Some Members argued that the current process lacks transparency, with some key details, including on finances, insufficiently clear. There was also a view that it should not be a private company administering the scheme, as this could lead to aspects of the scheme being administered in secrecy by a body not subject to freedom of information laws. The Minister was encouraged to bring back regulations which take account of the concerns organisations have raised. Other Members said that no one would benefit from further delays, which would impact on Scotland's environment. They welcomed the regulations as helping drive forward Scotland's agenda on net zero.

22. The motion was then agreed to by division (For 4, Against 1, Abstentions 2).

Conclusion

23. The Net Zero, Energy and Transport Committee recommends that the Deposit and Return Scheme for Scotland Amendment Regulations 2022 [Draft] be approved.

