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Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee report on The Deposit and Return Scheme for Scotland Amendment Regulations 2023 [draft]



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Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero and Just Transition, with the exception of matters relating to just transition; on matters relating to land reform, natural resources and peatland, Scottish Land Commission; Crown Estate Scotland, and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands; and on matters relating to energy within the responsibility of the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy.



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Membership Change

1. Prior to the publication of this report, the membership of the Net Zero, Energy and Transport Committee changed. On 14 June 2023, Fiona Hyslop MSP resigned as Deputy Convener of the Committee. Bob Doris MSP was in attendance as a substitute member for consideration of this instrument. The Committee would like to thank the former Deputy Convener for her contribution to the Committee's work.

Introduction

2. [The Deposit and Return Scheme for Scotland Amendment Regulations 2023 \[draft\]](#) were laid before Parliament on 17 May 2023 and are subject to the affirmative procedure. The draft instrument was referred to the Net Zero, Energy and Transport Committee for consideration.
3. It is for the Net Zero, Energy and Transport Committee to recommend to the Scottish Parliament whether the Regulations should be approved. The Minister for Green Skills, Circular Economy and Biodiversity lodged motion [S6M-09033](#) which recommended the Committee approve the Regulations.
4. The instrument makes a number of provisions seeking to make revisions to the implementation and operation of the Deposit Return Scheme (DRS). The Regulations amend the commencement date for the DRS from 16 August 2023 to 1 March 2024. They also exclude all drinks containers under 100ml and products with low sales volumes (less than 5,000 items per year) from the scheme. Provisions in the Regulations also amend obligations for retailers in relation to takeback services and return points.
5. According to the [Policy Note](#) the purpose of the Regulations are to make amendments to the scheme in response to an independent Gateway Review of the readiness of the DRS, engagement with industry stakeholders and were made in the context of uncertainty around whether the scheme would receive a full exclusion from the UK Internal Market Act 2020 (UKIMA).
6. [On 7 June, the Minister wrote](#) to the Committee indicating that following recent developments the Regulations would be 'revisited'. The Minister wrote to the [Committee again on 9 June](#) setting out next steps in relation to DRS and the Regulations. A copy of this correspondence is available in **Annexe A**.

Consideration by the Delegated Powers and Law Reform (DPLR) Committee

7. At its meeting on 30 May 2023, the DPLR Committee considered the instrument. [The Committee's report](#) said that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

[Read the Official Report – 30 May 2023.](#)

Consideration by the Net Zero, Energy and Transport Committee

8. At its meeting on 13 June 2023, the Net Zero, Energy and Transport Committee took evidence on the Regulations from—
- Lorna Slater, Minister for Green Skills, Circular Economy and Biodiversity, Scottish Government;
 - Ailsa Heine, Solicitor, Scottish Government;
 - David McPhee, Deputy Director, Deposit Return Scheme, Scottish Government;
 - Euan Page, Head of UK Frameworks, Constitution and UK Relations Division, Scottish Government; and
 - Haydn Thomas, Head of Deposit Return Scheme Policy Unit, Scottish Government.
9. Maurice Golden MSP was also in attendance at this session. The evidence taken and debate held at that meeting regarding this instrument can be found in the Official Report.

[Read the Official Report from 13 June 2023.](#)

10. In her opening remarks, the Minister said—
- ” Without the changes that are being made to the regulations today, the go-live date would still be 16 August this year. The Regulations change that to 1 March next year. As I have explained, the UK Government’s intervention means that that date, in turn, is no longer possible and I am committing to bring before the Parliament further regulations in line with parliamentary procedures and timelines to change the go-live date to October 2025”.ⁱ
11. The Committee queried what the route forward would be for DRS following the recent decision to delay to the scheme. The Minister said she would be meeting with UK Minister Rebecca Pow MP to discuss the practicalities and interoperability of a four-nations approach to DRS.ⁱⁱ
12. Members asked about the Waste and Resource Common Framework and how it could be utilised to establish a framework for a UK-wide scheme. The Minister raised concerns about the effectiveness of Common Frameworks for resolving issues around DRS, saying—
- ” The Scottish Government followed the Common Framework process all the way through, but that did not result in the exclusion from the Internal Market Act that we needed in order to launch our scheme.”ⁱⁱⁱ

ⁱ Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , col 5.

ⁱⁱ Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , col 5.

13. The Committee asked if the problems relating to the function of Common Frameworks could be resolved. A Scottish Government official said lessons from the DRS issue needed to be learned to ensure Common Frameworks remained fit for purpose. A question was raised as to whether the Scottish Government had formally used the dispute resolution mechanisms in the Common Frameworks process to address disagreements around DRS. A Scottish Government official said they had not engaged this mechanism.^{iv}
14. The Minister was asked to explain what areas of uncertainty around a UK-wide scheme the Scottish Government were facing. The Minister said their initial assessment identified three areas—
 - The deposit amount
 - The size of containers included in the scheme
 - Labelling requirements^v
15. The deposit amount for a UK scheme was discussed. The Minister said the Scottish Government analysis determined 20p as the appropriate level. She said that she hoped the rest of the UK would consider the Scottish Government's research when constructing their schemes.^{vi} The Committee probed whether the Scottish Government would be flexible in its approach to a deposit amount. A Scottish Government official said a UK deposit level could not yet be determined because other nations were yet to establish the mechanics of their individual schemes.^{vii}
16. Members questioned the extent to which divergence would be allowed within a UK-wide system for DRS. The Minister said it was not clear to her at this stage how a future UK approach would operate, however she hoped the four nations could collaborate effectively to deliver mutual benefits.^{viii}
17. The Committee asked if the UK Government had previously raised concerns about Scotland's DRS. The Minister said until January 2023 the UK Government had not raised concerns to her about the details of the scheme.^{ix}
18. Members asked what confidence assessment the Scottish DRS had received under the March Gateway review. The Minister said the Review identified uncertainty around an exclusion from UKIMA and a lack of ruling by trading standard on shelf-edge price as risks to progress on delivering the scheme. The Committee asked when the review would be published. The Minister said she would publish the Scottish Government's response before the beginning of the summer parliamentary recess. She noted that since March notable changes had been made to scheme and she wanted to reflect these recent developments when sharing the findings from the report with the Committee. The Convener expressed his disappointment

iii Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 6-7.

iv Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 15-17.

v Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 7-8.

vi Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 7-8.

vii Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , col 11.

viii Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 8-9.

ix Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 11-12.

that the report had not been shared with the Committee.^x

19. The Committee examined if the Scottish Government had taken legal advice prior to the decision to pause the launch date. The Minister said the Scottish Government has received legal advice on DRS on an ongoing basis. The Committee was asked to clarify if she had received such advice. A Scottish Government official said "the Scottish Government's position on any matter, and its decision making, is consistent with the legal advice that it receives".^{xi}
20. Members asked how much of a contingency the Scottish Government has budgeted for potential legal action on the issue of compensation. The Minister said she did not consider that any action the Scottish Government has taken gives rise to any obligation to pay compensation.^{xii}
21. The future of Circularity Scotland Ltd (CSL) following the decision to pause to the scheme until October 2025, and who would fund the organisation, was explored. The Minister said CSL was funded by industry and the Scottish Government would not be providing financial support. She noted that CSL, given their learning and expertise, may have a role in administering a UK scheme in 2025, but said that was a matter for industry at a UK-level to decide.^{xiii}
22. Members questioned how CSL would fund itself until the October 2025 launch date. The Minister said CSL has existing funding but needs to work out what its next steps will be. The Committee queried what would happen to a £9million start up investment provided to CSL from the Scottish National Investment Bank. The Minister said this was a contractual arrangement between these two parties. The Committee asked if the Scottish Government would help to facilitate CSL becoming a UK-wide administrator. The Minister said she intended to discuss this matter with the UK Government.^{xiv}
23. The environmental implication of delaying the scheme and the removal of glass were discussed. The Minister said the impact would be substantial as the Scottish Government's impact assessment suggested glass would account for 32% of carbon savings from the scheme. The Committee asked whether glass recycling ambitions could be achieved through kerbside collection. The Minister said kerbside services are financed by local authorities and that, in the case of DRS this is funded by industry in accordance with the polluter pays principle. She also noted there were practical barriers to kerbside collection of glass.^{xv}
24. The Committee questioned the economic impact of removing glass from the scheme. A Scottish Government official said their analysis suggested removing glass would reduce the scheme's economic benefits by 41% in the longer term. Members asked what the reaction had been from industry to the decision to removal of glass from the Scheme. The Minister said retailers had raised significant concerns about this recent development. A Scottish Government official added that

x Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 12-14.

xi Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 17-18.

xii Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , col 18.

xiii Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , col 19.

xiv Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 19-21.

xv Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 21-23.

removing glass also presented new practical challenges for businesses.^{xvi}

25. The Committee explored what recent discussion the Scottish Government has held with counterparts in the Welsh Government about the future of their scheme. The Minister said the Welsh Government had also intended to include glass in their scheme and therefore was "incensed" by the UK Government's new position. She also expected UKIMA to become an obstacle for the Welsh Government when introducing their DRS Regulations in the future.^{xvii}
26. Maurice Golden MSP asked the Minister about the role of the Scottish Government in the application process for a scheme administrator. He questioned if the Minister had signed off on CSL decision to purchase new vehicles and new sheds. The Minister said that the Scottish Government does not have authority to interfere in CSL's internal decision making.^{xviii}
27. The information the Scottish Government holds in regards to DRS infrastructure was mentioned. The Minister said operational details including where infrastructure is located is recorded by CSL and not held by the Scottish Government. Mr Golden asked the Minister to confirm the total business liability from delaying the launch of the scheme. The Minister said businesses made significant investments in the scheme, however delays were a product of UKIMA decision and not operational issues with the scheme. Mr Golden queried CSL's monthly operational costs. The Minister said she would not share CSL's private figures. Mr Golden asked for the total amount budgeted for DRS through Zero Waste Scotland. The Minister agreed to write to the Member with that information.^{xix}
28. The Committee invited the Minister to clarify her rationale for bringing forward this SSI despite the launch date in the Regulations being incongruent with the October 2025 date recently announced by the Scottish Government. The Minister explained that without new Regulations the scheme would come into effect on 16 August this year. She recognised the process was "convoluted", but said that, in her view, it was the smoothest process available.^{xx} The Committee asked why the commencement date for the SSI was March 2024 and not October 2025. A Scottish Government official said the Regulations were laid on 17 May, before recent changes to the launch date were announced in June.^{xxi}
29. The Committee questioned if the Minister had considered expediting the process of introducing a new SSI. The Minister said the compressed timetable would have meant less opportunity for the Parliament to scrutinise the Regulations. She said that it was her intention to bring forward new Regulations at the earliest opportunity to ensure the launch date aligned with the Scottish Government's current position.^{xxii}

^{xvi} Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 23-25.

^{xvii} Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 25-26.

^{xviii} Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 26-28.

^{xix} Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 28-30.

^{xx} Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , col 31.

^{xxi} Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , col 33.

^{xxii} Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , col 31-33.

30. The Committee asked if these Regulations had been discussed and agreed with the UK Government to ensure alignment. The Minister said the Scottish Government is not required to agree with the UK Government matters within devolved competence. The Committee asked whether the contents of future Regulations might change as a consequence of the Minister's discussions with the UK Government. The Minister said she anticipated the Scottish Government would need to bring forward new Regulations in the future to align with a UK-wide approach.^{xxiii}
31. The Committee asked what industry's reaction has been to the proposed changes in the Regulations. The Minister said they were supported by businesses. She said the provisions were brought forward following discussions with industry to address specific needs. The Committee probed if there had been calls from businesses for the Scottish Government to make further amendments to the scheme. The Minister said she did not intend to bring further Regulations to alter the mechanics of the scheme, but this was dependent on the how a UK scheme was developed.^{xxiv}
32. Following the conclusion of evidence taking, the Minister moved motion S6M-09033 in her name—
- That the Net Zero, Energy and Transport Committee recommends that the Deposit and Return Scheme for Scotland Amendment Regulations 2023 [draft] be approved.
33. Various contributions were made by Members.^{xxv} Areas of discussion focussed on—
- The legislative process for the Regulations. Some Members were not supportive of the Scottish Government's approach, others argued it was the only option available.
 - Interoperability of a UK-wide scheme and the need for effective communication between the Scottish Government and UK Government going forward. The responsibility of the UK Government for delays to the scheme was also highlighted;
 - Changes made to the scheme through the Regulations and how they addressed concerns from industry;
 - The timescale and scope of further Regulations. The Minister said future Regulations would amend the launch date and consequential changes to registration dates.
34. The motion was agreed to without division.

xxiii Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , col 35.

xxiv Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , col 38.

xxv Net Zero, Energy and Transport Committee. [Official Report, 13 June 2023](#) , cols 40-43.

Conclusion

The Net Zero, Energy and Transport Committee recommends that the Deposit and Return Scheme for Scotland Amendment Regulations 2023 [draft] be approved.

Annexe A - Letter from the Minister for Green Skills, Circular Economy and Biodiversity, 9 June 2023

Dear Edward

Thank you for the invitation to give evidence regarding DRS at Committee on 13 June which I accept.

My letter to you of 7 June updated you on the situation we have been put in by the UK Government not granting a full exclusion for Scotland's DRS from the Internal Market Act. This led to me announcing on 7 June a further delay in launching our DRS to 2025 at the earliest, reflecting the UK Government stated intentions for its own potential start date.

I indicated in that letter that I would revisit the passage of the DRS amendment Regulations laid on 17 May. Having done so it is my intention that the DRS amendment Regulations go through the full Parliamentary process. These amendments contain the package of changes which reflect feedback from industry partners, and also, crucially, without these amendment Regulations, Scotland's DRS would still go live on 16 August this year.

I recognise that, in the meantime, the effect of these amendment Regulations is that the coming into force date of DRS is the date of 1 March 2024. That of course, is simply a short-term interim position. I will bring forward subsequent amendment regulations to change the date to 2025, as I set out on 7 June to Parliament. There is not sufficient time, in line with Parliamentary procedures, to conclude that process in the current Parliamentary term but I will aim to begin that process during this term (ie before the end of June) so that the amendment regulations to reset the date to 2025 are set out.

I appreciate that this means the Committee will consider two sets of regulations: one set to complete the passage of regulations already laid; and a second to change the date to 2025. Indeed, as it stands, we will have to bring further amendments to reflect discussions with the UKG on interoperability. But that is the process which the IMA decision has left us with.

I acknowledge the outstanding commitment to share with Committee our response to the March Gateway Review. Given the decision by the current UK Government to exclude glass, as it stands, and to set out several interoperability conditions, the pathway on which we are now embarked is very different from the context in which the Gateway Review was carried out; and, indeed very different from that in which we sought to frame our response to the Review. Given the very clear call from all stakeholders for certainty, I believe it is important to make sure that our response to the Review best reflects the position we are now in. I will ensure this is provided to Committee before Parliamentary recess.

I look forward to engaging with the Committee on 13 June in its scrutiny of the draft Amendment Regulations.

Kind regards

Lorna Slater

