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Environment, Climate Change and Land
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Room T3.40
The Scottish Parliament
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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 again on 29 April.

Yours

A handwritten signature in black ink that reads "Roseanna".

ROSEANNA CUNNINGHAM

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.