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Environment, Climate Change and Land Reform
Committee
Room T3.40
The Scottish Parliament
Edinburgh
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Your ref:
Our ref:

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.

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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

A handwritten signature in black ink that reads "Roseanna". The signature is written in a cursive style with a large, looped initial 'R'.

ROSEANNA CUNNINGHAM

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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.

1. 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 authorities¹ and waste composition analysis of household waste.² 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.³
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

¹ www.wastedataflow.org/home.aspx

² www.zerowastescotland.org.uk/sites/default/files/The%20composition%20of%20household%20waste%20at%20the%20kerbside%20in%202014-15.pdf

³ The recognised approach for calculating national packaging recycling rates uses an estimated 'clean' weight of packaging placed on the market and divides this by the total 'dirty' weight recovered through the waste management system. This method is used by the UK Government to calculate and report packaging recycling (inc. drinks containers) rates to the EU³.

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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.

2. 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

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final view of these key elements of the scheme, ahead of the handover to industry leadership of the implementation process.

3. 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_{2e}) 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).

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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.

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4. 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.

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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.

5. 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.

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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.

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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.

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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.

6. 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.

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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

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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.

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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.

7. 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 ktCO₂eq between 2023 and 2048.

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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.

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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.

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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 re-processors will continue to use current arrangements as the volume of metals are such that they can be readily managed using existing infrastructure.

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8. 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.

9. 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

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- 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.

10. 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.

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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.

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